

2008 No. 3

ELECTRICITY

GAS

**The Energy Order 2003 (Supply of Information) Regulations
(Northern Ireland) 2008**

Made - - - - - *7th January 2008*

Coming into operation - *15th February 2008*

The Department of Enterprise, Trade and Investment, in exercise of the powers conferred on it by Article 27(1) and Article 66(3) of the Energy (Northern Ireland) Order 2003(a) and of every other power enabling it in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Energy Order 2003 (Supply of Information) Regulations (Northern Ireland) 2008 and shall come into operation on 15th February 2008.

Interpretation

2. In these Regulations—

“direction” means a direction under Article 24 or 26 of the Order;

“electricity licence” means a licence under Article 10 of the Electricity (Northern Ireland) Order 1992(b);

“gas licence” means a licence under Article 8 of the Gas (Northern Ireland) Order 1996(c);

“licence holder” means the holder of a gas licence or an electricity licence; and

“the Order” means the Energy (Northern Ireland) Order 2003.

National Security

3. The Authority or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order any information which would be against the interests of national security to make public.

(a) S.I. 2003/419 (N.I.6)
(b) S.I. 1992/231 (N.I. 1)
(c) S.I. 1996/275 (N.I. 2)

Price sensitive information

4.—(1) The Authority or a licence holder may refuse to supply under Article 24 of the Order any information which—

- (a) relates to particular securities or to a particular issuer of securities or to particular issuers of securities;
- (b) is specific or precise;
- (c) has not been made public; and
- (d) if it were made public would be likely to have a significant effect on the price of the securities.

(2) For the purposes of this regulation—

- (a) “price” includes value;
- (b) information shall be treated as relating to a particular issuer of securities which is a company not only where it is about the company but also where it may affect the company’s business prospects;
- (c) “made public”, in relation to information, shall be construed in accordance with subsection (1) of section 58 of the Criminal Justice Act 1993(a); and
- (d) “securities” means any securities to which Part V of the Criminal Justice Act 1993 (insider dealing) applies.

Information whose disclosure would be affected by the application of other legislation

5.—(1) The Authority may refuse to supply under Article 24 of the Order any information not falling within regulation 4(1) which—

- (a) was disclosed to the Authority in circumstances in which that disclosure would have been prohibited by or under a statutory provision imposing general restrictions on the disclosure of information but for an exemption from those restrictions naming the Authority as a person to whom information may be disclosed whether generally or for specified purposes or in specified circumstances; or
- (b) was obtained by the Authority in the exercise of functions which it may exercise concurrently with the Office of Fair Trading under Part IV of the Enterprise Act 2002(b) or under Part I of the Competition Act 1998(c).

(2) The Authority or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order any information—

- (a) whose disclosure would be prohibited by or under any statutory provision other than the Electricity (Northern Ireland) Order 1992, the Gas (Northern Ireland) Order 1996 or the Order; or
- (b) whose disclosure is incompatible with any Community obligation.

(3) Subject to paragraph (4), the Authority or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order any information which constitutes personal data within the meaning of section 1(1) of the Data Protection Act 1998(d) and where —

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in that section, the disclosure of the information to a member of the public would contravene any of the data protection principles or section 10 of that Act (right to prevent processing likely to cause damage or distress); or

(a) 1993 c.36

(b) 2002 c.40; see also Article 46 of S.I. 1992/231 (N.I. 1) and Article 23 of S.I. 1996/275 (N.I. 2)

(c) 1998 c.41; see also Article 46 of S.I. 1992/231 (N.I. 1) and Article 23 of S.I. 1996/275 (N.I. 2)

(d) 1998 c.29

- (b) in any case, the disclosure of the information to a member of the public would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) A licence holder may not, by virtue of paragraph (3) refuse to supply information which relates to a person who has made a complaint to which Article 22 of the Order applies and which is being investigated by the Council.

Information relevant to court proceedings or enforcement action

6.—(1) The Authority or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order any information whose disclosure would constitute or be punishable as a contempt of court.

(2) The Authority or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order any information whose disclosure would, or would be likely to, prejudice any criminal proceedings.

(3) The Authority or a licence holder may refuse to supply under Article 24 of the Order any information whose disclosure would, or would be likely to, prejudice any action under Article 42 (orders for securing compliance) or 45 (financial penalties) of the Order.

(4) A licence holder may refuse to supply information under Article 24 of the Order which the licence holder could not be compelled to give as evidence in civil proceedings or which is contained in documents or records which the licence holder could not be compelled to produce in evidence in any such proceedings.

Information concerning internal discussions or deliberations

7.—(1) Subject to paragraph (2), the Authority, or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order—

- (a) any information concerning the discussions or deliberations of the Authority, a licence holder or the Council as to a decision or action to be taken or that may be taken by the Authority, a licence holder or the Council where the direction requiring the supply of that information is given before that decision or action has been taken;
- (b) any information concerning the discussions or deliberations of the Authority, a licence holder or the Council as to a decision or action which has been taken and is to be announced or published by the Authority, a licence holder or the Council where the direction requiring the supply of that information is given before that decision or action has been announced or published;
- (c) any information concerning the views of the Authority or a licence holder on its relationship with the Council or the performance by the Council of its functions;
- (d) any information concerning the views of the Council on its relationship with the Authority or the performance by the Authority of its functions.

(2) A licence holder may not by virtue of sub-paragraphs (a) and (b) of paragraph (1) refuse to supply information which is relevant to the investigation of a complaint to which Article 22 of the Order applies.

(3) The Authority may refuse to supply under Article 24 of the Order any information which relates to the obtaining of information from confidential sources by the Authority for the purposes of its functions—

- (a) under Article 42 or 45 of the Order; or
- (b) in relation to any criminal proceedings which the Authority has power to conduct.

Information the cost or other burden of whose provision is excessive

8.—(1) A licence holder may refuse to supply under Article 24 of the Order any information where the cost or effort that would be incurred or suffered by the licence holder in supplying that information would be excessive in relation to the likely benefit of the information to the Council.

(2) In determining the likely benefit of the information to the Council for the purposes of paragraph (1) the following shall be taken into account:

- (a) the purposes for which the information is required by the Council; and
- (b) the extent to which the provision of the information is necessary or expedient for those purposes.

Information not held by the person to whom a direction is given

9.—(1) A person may refuse to comply with a direction given to him if he does not hold the information specified or described in the direction.

(2) For the purpose of these Regulations, a person holds information if—

- (a) he holds it, otherwise than on behalf of another person, or
- (b) another person holds it on his behalf. Statistics on complaints

10. Nothing in these Regulations entitles a licence holder to refuse to supply information to the Council under Article 24 of the Order, being information whose supply the Council has directed for the purposes of the Council's functions under Article 20 of the Order.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment
on 7th January 2008.



Jenny Pyper
A senior officer of the
Department of Enterprise, Trade and Investment

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations prescribe types of information which the Northern Ireland Authority for Utility Regulation (“the Authority”) or the holder of a gas or electricity licence (“a licence holder”) may refuse to supply under Article 24, and the General Consumer Council for Northern Ireland (“the Council”) may refuse to supply under Article 26, of the Energy (Northern Ireland) Order 2003 (“the Order”). They also prescribe circumstances in which the Authority or a licence holder may refuse to comply with a direction under Article 24, or the Council may refuse to comply with a direction under Article 26, of the Order.

Under Article 24 of the Order, the Council may direct the Authority or a licence holder to supply such information as it may require for the purposes of exercising its functions. Under Article 26 of the Order, the Authority may direct the Council to supply such information as it may require for the purpose of exercising its functions.

The Authority or a licence holder (under Article 24 of the Order) or the Council (under Article 26 of the Order) may refuse to supply information the making public of which would be against the interests of national security (Regulation 3).

The Authority or a licence holder may refuse to supply price sensitive information to the Council under Article 24. Price sensitive information is defined in the same terms as in Part V of the Criminal Justice Act 1993 which covers the criminal offence of insider dealing (Regulation 4).

The Authority may refuse to supply to the Council under Article 24 any information which is subject to a statutory restriction on disclosure and which was disclosed to the Authority by virtue of an exemption to that statutory restriction and any information which it obtained in the exercise of various functions under the Enterprise Act 2002 and Competition Act 1998, being functions which the Authority exercises concurrently with the Office of Fair Trading (Regulation 5(1)).

The Authority or a licence holder under Article 24 of the Order, or the Council under Article 26 of the Order, may refuse to supply any information whose disclosure is prohibited under any other statutory provisions or whose disclosure is incompatible with any Community obligation (Regulation 5(2)).

The Authority, a licence holder or the Council may refuse to supply information which is personal data protected by the Data Protection Act 1998, but not where it relates to a person whose complaint is being investigated by the Council in accordance with the Council’s duty to investigate a consumer complaint under the Order (Regulation 5(3)).

The Authority, a licence holder or the Council may refuse to supply information whose disclosure would constitute or be punishable as contempt of court; or would prejudice or would be likely to prejudice any criminal proceedings. The Authority may also refuse to supply information which would prejudice or would be likely to prejudice any enforcement action against licence holders such as the making of compliance orders or the imposition of financial penalties. Additionally, a licence holder may refuse to supply information under Article 24 of the Order which could not be compelled from him in civil proceedings (Regulation 6).

The Authority or a licence holder under Article 24 of the Order, or the Council under Article 26 of the Order, may refuse to supply any information concerning discussions or deliberations as to a decision or action which is yet to be taken. The Authority or a licence holder under Article 24 of the Order, or the Council under Article 26 of the Order, may refuse to supply any information concerning discussions or deliberations as to a decision or action which has been taken but which has not yet been announced or published. However, in neither case can a licence holder withhold any such information that is relevant to a consumer complaint being investigated by the Council.

The Authority, a licence holder or the Council may refuse to supply information concerning:

- (a) the views of the Authority or a licence holder on its relationship with the Council or the Council's performance of its functions; or
- (b) the views of the Council on its relationship with the Authority or the performance by the Authority of its functions.

The Authority may furthermore refuse to supply under Article 24 of the Order information obtained from confidential sources for the purposes of any criminal proceedings which the Authority has power to conduct or any enforcement action under the Order (Regulation 7).

A licence holder may refuse to supply information under Article 24 of the Order where the cost or other burden of providing that information would be excessive in relation to the likely benefit of the information to the Council (Regulation 8).

A person may refuse to comply with a direction given under Article 24 or 26 if he does not hold the information in question. Holding information is defined for these purposes (Regulation 9).

A licence holder cannot by virtue of these Regulations refuse to supply under Article 24 of the Order information whose supply the Council has directed for the purposes of the Council's functions under Article 20 of the Order to publish statistical information relating to consumer complaints (Regulation 10).