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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

**The Electricity and Gas (Internal Markets) Regulations 2011**

**PART 7**

**Regulatory authority**

*Designation, reporting and members*

**Designation of the Gas and Electricity Markets Authority as the regulatory authority for Great Britain**

**22.** After section 3 of the Utilities Act 2000(1) insert—

**“3A Designation of Authority as regulatory authority for Great Britain**

(1) The Authority is designated as the regulatory authority for Great Britain in accordance with Article 35 of the Electricity Directive and Article 39 of the Gas Directive.

(2) The Authority must ensure that members of its staff do not—

- (a) seek or take any instructions that might compromise, or might reasonably be seen to compromise, the Authority’s independence in relation to its functions as designated regulatory authority for Great Britain; or
- (b) carry out any other activity, or have any financial or other interest, that might compromise, or might reasonably be seen to compromise, the impartiality of those members of staff.

(3) If a representative of the Authority is appointed under Article 13(2) of the Agency Regulation to represent the United Kingdom on the Board of Regulators of the Agency, the Authority must—

- (a) in advance of any meeting of the Board, ensure that the designated regulatory authority for Northern Ireland is given access to any documents and other information that the Authority has access to in relation to that meeting;
- (b) provide that authority with an opportunity to make representations in respect of those documents or that information;
- (c) have regard to any representations so made; and
- (d) notify that authority of the matters discussed and decisions taken by the Board.”.

**Authority to prepare annual reports on its activities as designated regulatory authority**

**23.** After section 5 of the Utilities Act 2000 insert—

### “Report on activities as designated regulatory authority

**5ZA.**—(1) The Authority must, as soon as is practicable after the end of each reporting period, prepare a report on the activities it has carried out in that period as designated regulatory authority for Great Britain.

(2) A report prepared under subsection (1) is referred to as a regulatory authority report.

(3) The regulatory authority report must include, in particular, a general survey of the steps taken and results achieved by the Authority in the performance of its functions in accordance with Article 37 of the Electricity Directive and Article 41 of the Gas Directive.

(4) In preparing the regulatory authority report, the Authority must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

(5) The Authority must—

(a) send a copy of the regulatory authority report to—

- (i) the Secretary of State,
- (ii) the European Commission, and
- (iii) the Agency; and

(b) publish it in such manner as the Authority considers appropriate.

(6) In this section “reporting period” means—

- (a) the period beginning with the date on which this section comes into force and ending on 15 July 2012;
- (b) each subsequent period of 12 months.

(7) Nothing in this section or section 5 prevents a regulatory authority report and an annual report from including a report on the same matters.”.

### Members of the Gas and Electricity Markets Authority

**24.**—(1) Schedule 1 to the Utilities Act 2000 (Gas and Electricity Markets Authority) is amended as follows.

(2) After paragraph 2 insert—

“**2A.** A person holding office as chairman or other member must not—

- (a) seek or take any instructions that might compromise, or might reasonably be seen to compromise, the independence of the Authority in relation to its functions as designated regulatory authority for Great Britain; or
- (b) carry out any other activity, or have any financial or other interest, that might compromise, or might reasonably be seen to compromise, that person’s impartiality.”.

(3) For paragraph 3 substitute—

“**3.**—(1) An appointment of a person to hold office as chairman or other member must be for a term of not less than 5 years and not more than 7 years.

(2) But in appointing as chairman or other member a person who is on the Authority’s staff, the Secretary of State may make the appointment subject to a condition that the appointment will end if that person ceases to be on the Authority’s staff.

- (3) The appointment of a person as chairman or other member may be renewed only once.
- (4) The Secretary of State must ensure that there is sufficient continuity in the persons holding office as chairman or other member in determining—
- (a) the term of a person’s appointment in accordance with sub-paragraph (1) (whether initially or on renewal); and
  - (b) whether or not to renew an appointment in accordance with sub-paragraph (3).
- (5) A person holding office as chairman or other member may resign that office by giving notice in writing to the Secretary of State.
- (6) A person holding office as chairman or other member may be removed from office by the Secretary of State on one of the following grounds only—
- (a) a breach of paragraph 2A;
  - (b) incapacity; or
  - (c) misbehaviour.”.

#### **Definitions in the Utilities Act 2000**

- 25.** In section 106(1) of the Utilities Act 2000 (interpretation), in the appropriate places insert—
- ““the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;”;
- ““the Agency Regulation” means Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators(2);”;
- ““designated regulatory authority” means an authority designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive;”;
- ““designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A;”;
- ““the Electricity Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(3);”;
- ““the Gas Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC(4);”.

#### *Principal objectives*

#### **Authority’s principal objective in relation to gas**

- 26.—**(1) In section 4AA(1A) of the Gas Act 1986 (principal objective and general duties of the Secretary of State and the Authority: interests of consumers)(5)—
- (a) omit “and” immediately preceding paragraph (b); and
  - (b) after paragraph (b) insert—

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(2) OJ No L 211, 14.08.2009, p. 1.

(3) OJ No L 211, 14.08.2009, p. 55.

(4) OJ No L 211, 14.08.2009, p. 94.

(5) Section 4AA was inserted by section 9 of the Utilities Act 2000 (c. 27), and was subsequently amended by section 16(1) and (3) of the Energy Act 2010 (c. 27). Other amendments have been made that are not relevant for these purposes.

“; and

- (c) their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Great Britain, of the objectives set out in Article 40(a) to (h) of the Gas Directive.”.

#### **Authority’s principal objective in relation to electricity**

**27.** In section 3A(1A) of the Electricity Act 1989 (principal objective and general duties of the Secretary of State and the Authority: interests of consumers)<sup>(6)</sup>—

- (a) omit “and” immediately preceding paragraph (b); and  
 (b) after paragraph (b) insert—

“; and

- (c) their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Great Britain, of the objectives set out in Article 36(a) to (h) of the Electricity Directive.”.

#### *Dispute resolution*

#### **Authority’s dispute resolution functions in relation to gas**

**28.**—(1) The Gas Act 1986<sup>(7)</sup> is amended as follows.

(2) In each of the following, for “Article 25” substitute “Article 41”—

- (a) the italic heading preceding section 27B (meaning of “Article 25 dispute”); and  
 (b) the title of section 27B.

(3) In section 27B—

- (a) for subsection (1) substitute—

“(1) For the purposes of sections 27C and 27D, a dispute is an “Article 41 dispute” if—

- (a) it arises from a written complaint—

- (i) made against a gas transporter,  
 (ii) made against the holder of a licence under section 7ZA,  
 (iii) made against the owner of an LNG import or export facility,  
 (iv) made against the owner of a storage facility,  
 (v) made against a person carrying out an activity described in section 5(1)(a) or (aa) who has been granted an exemption under section 6A(1), or  
 (vi) made by a person falling within paragraph (a) of subsection (1B) against a person falling within paragraph (b) of that subsection;

- (b) it is wholly or mainly a dispute regarding an obligation of the person complained against under any relevant condition or relevant requirement in relation to that person imposed for the purpose of implementing the Gas Directive; and

- (c) it is a dispute between the complainant and the person complained against.

(1A) Until section 75 of the Utilities Act 2000 comes into force the reference in subsection (1)(a)(v) above to a person who has been granted an exemption under

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<sup>(6)</sup> Section 3A was inserted by section 13 of the Utilities Act 2000 (c. 27), and was subsequently amended by section 17(1) and (3) of the Energy Act 2010 (c. 27). Other amendments have been made that are not relevant for these purposes.

<sup>(7)</sup> 1986 c. 44. Sections 27B to 27D, and the italic heading preceding section 27B, were inserted by regulation 3 of S.I. 2009/1349.

section 6A(1) includes a person to whom one or more of the exceptions to section 5(1) contained in Schedule 2A applies.

(1B) For the purposes of subsection (1)(a)(vi)—

(a) a person falls within this paragraph if the person is certified on the ground mentioned in section 8G(5) in respect of a pipe-line system or gas interconnector;

(b) a person falls within this paragraph if the person is designated under section 8J(3) in respect of the pipe-line system or gas interconnector mentioned in paragraph (a).”;

(b) in subsection (2), for “(1)(b)” substitute “(1)(a)”;

(c) in subsection (3)—

(i) omit the definitions of “2003 Directive”, “LNG import facility” and “owner”, and

(ii) for the definition of “household customer” substitute—

““household customer” means a customer who purchases gas for consumption by the customer’s own household;”.

(4) In section 27C (determination of disputes)—

(a) in subsections (1), (2) and (3), for “Article 25” substitute “Article 41”;

(b) for subsection (8), substitute—

“(8) Sections 28 to 30F and 38 have effect in relation to a person against whom a complaint is made as mentioned in section 27B(1)(a), and on whom a duty or other requirement is imposed by an order under this section—

(a) as if references in those sections to a relevant requirement (other than the reference in section 28(8)) included references to that duty or requirement; and

(b) if the complaint is made against the person as mentioned in sub-paragraph (vi) of section 27B(1)(a), also as if references in those sections to a regulated person included references to that person.”;

(c) omit subsection (9).

(5) In section 27D (time limit for determinations), in subsections (1) and (4)(a), for “Article 25” substitute “Article 41”.

### **Authority’s dispute resolution functions in relation to electricity**

**29.**—(1) The Electricity Act 1989(8) is amended as follows.

(2) In each of the following, for “Article 23” substitute “Article 37”—

(a) the italic heading preceding section 44B (meaning of “Article 37 dispute”); and

(b) the title of section 44B.

(3) In section 44B—

(a) for subsection (1) substitute—

“(1) For the purposes of sections 44C and 44D a dispute is an “Article 37 dispute” if—

(a) it arises from a written complaint—

(i) made against the holder of a transmission licence,

(ii) made against the holder of a distribution licence,

(8) 1989 c. 29. Sections 44B to 44D, and the italic heading preceding section 44B, were inserted by S.I. 2009/1349, regulation 3.

- (iii) made against the holder of an interconnector licence,
  - (iv) made against a distribution exemption holder, or
  - (v) made by a person falling within paragraph (a) of subsection (1A) against a person falling within paragraph (b) of that subsection;
  - (b) it is wholly or mainly a dispute regarding an obligation of the person complained against under any relevant condition or relevant requirement in relation to that person imposed for the purpose of implementing the Electricity Directive; and
  - (c) it is a dispute between the complainant and the person complained against.
- (1A) For the purposes of subsection (1)(a)(v)—
- (a) a person falls within this paragraph if the person is certified on the ground mentioned in section 10E(5) in respect of a transmission system or electricity interconnector;
  - (b) a person falls within this paragraph if the person is designated under section 10H(3) in respect of the transmission system or electricity interconnector mentioned in paragraph (a).”;
- (b) in subsection (2)—
- (i) for “(1)(b)” substitute “(1)(a)”, and
  - (ii) in paragraph (a)(i) for “the licence” substitute “a licence”;
- (c) for subsection (3) substitute—
- “(3) In this section, “household customer” means a customer who purchases electricity for consumption by the customer’s own household.”.
- (4) In section 44C (determination of disputes)—
- (a) in subsections (1), (2) and (3), for “Article 23” substitute “Article 37”; and
  - (b) for subsection (8) substitute—
- “(8) Sections 25 to 28 have effect in relation to a person against whom a complaint is made as mentioned in section 44B(1)(a), and on whom a duty or other requirement is imposed by an order under this section—
- (a) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to that duty or requirement;
  - (b) if the complaint is made against the person as mentioned in sub-paragraph (v) of section 44B(1)(a), also as if references in those sections to a regulated person included references to that person.”.
- (5) In section 44D (time limit for determinations)—
- (a) in subsections (1) and (6)(a), for “Article 23” substitute “Article 37”;
  - (b) in subsection (2) omit “and (5)”; and
  - (c) omit subsections (4) and (5).

### *Monitoring*

#### **Authority’s monitoring functions in relation to gas**

- 30.**—(1) The Gas Act 1986 is amended as follows.
- (2) In section 34 (general functions), in subsection (1)(a) after “above” insert “or subsection (2A) below”.

(3) After section 34(2) insert—

“(2A) The activities referred to in subsection (1)(a) are the matters specified in the following provisions of the Gas Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 41(1)(g) to (k), (m), (n) and (r) to (t);
- (c) where a person is certified on the ground mentioned in subsection (5) of section 8G(9), Article 41(3)(a) and (b);
- (d) where a person is certified on the ground mentioned in subsection (6) of section 8G(10), Article 41(5)(b) and (d); and
- (e) Article 41(9).”.

(4) After section 34 insert—

**“34A Power to require information etc for the purpose of monitoring**

(1) The Authority may, for the purpose of performing its duty under subsection (1)(a) or (b) of section 34 in relation to activities falling within subsection (2A) of that section, serve a notice under subsection (2) on any regulated person.

(2) A notice under this subsection is a notice signed by the Authority which—

- (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority any documents which are specified or described in the notice and are in that person’s custody or under that person’s control; or
- (b) requires that person, if that person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

(3) In paragraphs (a) and (b) of subsection (2) the reference to the Authority includes a reference to a person appointed by the Authority for the purpose of exercising the power in question.

(4) Sections 28 to 30 have effect in relation to a person on whom a notice is served under subsection (2) as if references in those sections to a relevant requirement (other than the reference in section 28(8)) included references to a requirement of that notice.

(5) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is liable—

- (a) on summary conviction—
  - (i) in England and Wales, to a fine not exceeding the statutory maximum;
  - (ii) in Scotland, to a fine not exceeding £5,000; or
- (b) on conviction on indictment, to a fine.

(6) The definition of “regulated person” in section 28(8)(11) applies for the purposes of this section.”.

**Authority’s monitoring functions in relation to electricity**

**31.—**(1) The Electricity Act 1989 is amended as follows.

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(9) Inserted by regulation 4 of these Regulations.

(10) Inserted by regulation 4 of these Regulations.

(11) The definition of “regulated person” in section 28(8) is substituted by regulation 39(4)(a) of these Regulations. Other amendments to section 28(8) have been made that are not relevant for these purposes.

(2) In section 47 (general functions), after subsection (1B)(12) insert—

“(1C) The activities to which subsection (1) applies also include, in particular, the matters specified in the following provisions of the Electricity Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 37(1)(g) to (k), (m) and (q) to (t); and
- (c) where a person is certified on the ground mentioned in subsection (5) of section 10E(13), Article 37(3)(a), (b) and (f).”.

(3) After section 47 insert—

**“47A Power to require information etc for the purpose of monitoring**

(1) The Authority may, for the purpose of performing its duty under subsection (1)(a) or (b) of section 47 in relation to activities falling within subsection (1C) of that section, serve a notice under subsection (2) on any regulated person.

(2) A notice under this subsection is a notice signed by the Authority which—

- (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority any documents which are specified or described in the notice and are in that person’s custody or under that person’s control; or
- (b) requires that person, if that person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

(3) In paragraphs (a) and (b) of subsection (2) the reference to the Authority includes a reference to a person appointed by the Authority for the purpose of exercising the power in question.

(4) Sections 25 to 27 have effect in relation to a person on whom a notice is served under subsection (2) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to a requirement of that notice.

(5) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is liable—

- (a) on summary conviction—
  - (i) in England and Wales, to a fine not exceeding the statutory maximum, and
  - (ii) in Scotland, to a fine not exceeding £5,000; or
- (b) on conviction on indictment, to a fine.”.

*Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission*

**Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission in relation to gas**

**32.** After section 4B of the Gas Act 1986(14) insert—

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(12) Subsection (1B) of section 47 was inserted by section 9 of the Climate Change and Sustainable Energy Act 2006 (c. 19). Other amendments have been made that are not relevant for these purposes.

(13) Inserted by regulation 5 of these Regulations.

(14) Section 4B was inserted by section 12 of the Utilities Act 2000 (c. 27). An amendment has been made that is not relevant for these purposes.



**“4C Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission**

The Authority must carry out its functions under this Part in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Gas Directive, the Gas Regulation or the Agency Regulation in relation to gas.”.

**Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission in relation to electricity**

33. After section 3D of the Electricity Act 1989(15) insert—

**“3E Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission**

The Authority must carry out its functions under this Part in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Electricity Directive, the Electricity Regulation or the Agency Regulation in relation to electricity.”.

*Consultation and cooperation*

**Authority to consult and cooperate with other authorities in relation to gas**

34. After section 4C of the Gas Act 1986(16) insert—

**“Authority to consult and cooperate with other authorities**

**4D.**—(1) When carrying out its functions as designated regulatory authority for Great Britain, the Authority must, wherever it thinks fit—

- (a) consult and cooperate with the Agency and the designated regulatory authorities for Northern Ireland and other Member States;
- (b) provide the Agency and the designated regulatory authorities for Northern Ireland and other Member States with information they may require in order to carry out their functions under the Gas Directive, the Gas Regulation or the Agency Regulation as it applies in relation to gas; and
- (c) consult relevant national authorities.

(2) In exercising functions in accordance with subsection (1), the Authority must, wherever it thinks fit, cooperate with the designated regulatory authorities for Northern Ireland and other Member States within a region which includes Great Britain with a view, within that region, to—

- (a) the integration of national markets;
- (b) the promotion and facilitation of cooperation between transmission system operators;
- (c) the optimal management of gas networks;

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(15) Section 3D was inserted by section 16 of the Utilities Act 2000 (c. 27). Amendments have been made that are not relevant for these purposes.

(16) Inserted by regulation 32 of these Regulations.

- (d) the promotion of jointly managed cross-border trade in gas and the allocation of cross-border capacity;
  - (e) ensuring an adequate level of interconnection capacity;
  - (f) the coordination of the development of network codes; and
  - (g) the coordination of the regulation of gas markets, including rules concerning the management of congestion of gas networks.
- (3) In this section—
- “network code” means a network code developed under Article 6 of the Gas Regulation and adopted by the European Commission;
- “region” includes a geographical area defined in accordance with Article 12(3) of the Gas Regulation; and
- “relevant national authority” means any of the following—
- (a) the Competition Commission;
  - (b) the Office of Communications;
  - (c) the Office of Fair Trading;
  - (d) the Water Services Regulation Authority.”.

#### **Authority to consult and cooperate with other authorities in relation to electricity**

**35.** After section 3E of the Electricity Act 1989(17) insert—

##### **“3F Authority to consult and cooperate with other authorities**

(1) When carrying out its functions as designated regulatory authority for Great Britain the Authority must, wherever it thinks fit—

- (a) consult and cooperate with the Agency and designated regulatory authorities for Northern Ireland and other Member States;
- (b) provide the Agency and the designated regulatory authorities for Northern Ireland and other Member States with information they may require in order to carry out their functions under the Electricity Directive, the Electricity Regulation or the Agency Regulation as it applies in relation to electricity; and
- (c) consult relevant national authorities.

(2) In exercising functions in accordance with subsection (1) the Authority must, wherever it thinks fit, cooperate with the designated regulatory authorities for Northern Ireland and other Member States within a region which includes Great Britain with a view, within that region, to—

- (a) the integration of national markets;
- (b) the promotion and facilitation of cooperation between transmission system operators;
- (c) the optimal management of electricity networks;
- (d) the promotion of jointly managed cross-border trade in electricity and the allocation of cross-border capacity;
- (e) enabling an adequate level of interconnection capacity;
- (f) the coordination of the development of network codes; and

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(17) Inserted by regulation 33 of these Regulations.

- (g) the coordination of the regulation of electricity markets, including rules concerning the management of congestion of electricity networks.
- (3) In this section—
  - “network code” means a network code developed under Article 6 of the Electricity Regulation and adopted by the European Commission;
  - “region” includes a geographical area defined in accordance with Article 12(3) of the Electricity Regulation; and
  - “relevant national authority” means any of the following—
    - (a) the Competition Commission;
    - (b) the Office of Communications;
    - (c) the Office of Fair Trading;
    - (d) the Water Services Regulation Authority.”.

### **Confidentiality requirements in respect of cross-border exchanges of information**

- 36.**—(1) The Utilities Act 2000(**18**) is amended as follows.
- (2) In section 105 (general restrictions on disclosure of information), after subsection (11A)(**19**) insert—
- “(11B) Nothing in this section applies to information to which section 105A applies.”.
- (3) After section 105 insert—

#### **“105A Restrictions on disclosure in respect of cross-border exchanges of information**

- (1) This section applies to any information provided to the Authority—
  - (a) for the purpose of enabling it to carry out its functions as designated regulatory authority for Great Britain; and
  - (b) by the designated regulatory authority for Northern Ireland or for another Member State (“the originating authority”) in accordance with Article 38(1) of the Electricity Directive or Article 42(1) of the Gas Directive.
- (2) The Authority may disclose information to which this section applies only if—
  - (a) the originating authority has confirmed in writing that the originating authority would be permitted to disclose the information in the circumstances in question; and
  - (b) the Authority would be permitted under section 105 to disclose the information if it was received under or by virtue of an enactment listed in subsection (1) of that section.
- (3) Subsection (1) applies whether the information is provided directly or indirectly by the originating authority.”.

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(18) 2000 c. 27.

(19) Subsection (11A) of section 105 was inserted by section 63(1) of, and paragraphs 18 and 20(d) of Schedule 7 to, the Consumers, Estate Agents and Redress Act 2007 (c. 17). Other amendments have been made to section 105 that are not relevant for these purposes.