

2017 No. 493

ENERGY

The Electricity and Gas (Internal Markets) Regulations 2017

Made - - - - *28th March 2017*

Laid before Parliament *30th March 2017*

Coming into force - - *24th April 2017*

The Secretary of State is designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to energy and energy sources.

The Secretary of State, in exercise of the powers conferred by section 2(2) of that Act, makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Electricity and Gas (Internal Markets) Regulations 2017 and come into force on 24th April 2017.

(2) These Regulations extend to England and Wales and Scotland.

(3) In these Regulations—

“the 1986 Act” means the Gas Act 1986(c);

“the 1989 Act” means the Electricity Act 1989(d).

Amendment to section 8Q of the 1986 Act

2. For subsection (5) of section 8Q of the 1986 Act(e) (definition of “relevant producer or supplier”), substitute—

“(5) A person falls within this subsection if—

(a) the person requires a licence under section 7A of this Act(f) or section 6 of the Electricity Act 1989(g) (licences authorising supply, etc) to carry out the activity by virtue of which the person falls within subsection (4);

(a) S.I. 2010/761.

(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7). Other amendments have been made that are not relevant to these Regulations.

(c) 1986 c. 44.

(d) 1989 c. 29.

(e) Sections 8C to 8Q of the 1986 Act were inserted by S.I. 2011/2704.

(f) Section 7A of the 1986 Act was inserted by the Gas Act 1995 (c.45), section 6(1) and amended by the Utilities Act 2000 (c.27), sections 3(2) and 108 and Schedules 6 and 8 and the Energy Act 2004 (c.20), section 149.

(g) Section 6 of the 1989 Act was substituted by the Utilities Act 2000, section 30, and amended by the Energy Act 2004, sections 136(1), 145(1) and (5) and 197(9) and Schedule 23, Part 1, and by S.I. 2012/2400.

- (b) where the person does not carry out the activity in Great Britain, the person would, in the Authority’s opinion, require such a licence if carrying out the activity in Great Britain; or
- (c) the person has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of the person.”.

Amendment to section 100 of the 1989 Act

3. For subsection (5) of section 100 of the 1989 Act(a) (definition of “relevant producer or supplier”), substitute—

“(5) A person falls within this subsection if—

- (a) the person requires a licence under section 7A of the Gas Act 1986 (licensing of gas suppliers and gas shippers) or section 6 of this Act to carry out the activity by virtue of which the person falls within subsection (4);
- (b) where the person does not carry out the activity in Great Britain, the person would, in the Authority’s opinion, require such a licence if carrying out the activity in Great Britain; or
- (c) the person has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of the person.”.

Amendment to section 25 of the 1989 Act

4. In section 25(8) of the 1989 Act(b) (orders for securing compliance), in the definition of “regulated person”, after paragraph (d) insert—

“(e) a nominated electricity market operator;”.

Amendments to section 64 of the 1989 Act

5.—(1) Section 64(1) of the 1989 Act(c) (interpretation etc. of Part I) is amended as follows.

(2) For the definition of “the 2013 Amending Regulation” substitute—

““the 2013 Amending Regulations” means—

- (a) Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 2006/1346/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009(d); and
- (b) Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council(e);”.

(3) After the definition of “authorised supplier” insert—

““the CACM Regulation” means Commission Regulation (EU) No 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management(f);”.

(4) In the definition of “the Electricity Regulation”, for “the 2013 Amending Regulation” substitute “the 2013 Amending Regulations”.

(a) Sections 10A to 100 of the 1989 Act were inserted by S.I. 2011/2704.

(b) Section 25(8) of the 1989 Act was amended by S.I. 2011/2704.

(c) Relevant amendments to section 64(1) of the 1989 Act were made by S.I. 2011/2704 and S.I. 2014/3332.

(d) OJ No L 115, 25.4.2013, p.39.

(e) OJ No L 163, 15.6.2013, p.1.

(f) OJ No L 197, 25.7.2015, p.24.

(5) After the definition of “line” insert—

““nominated electricity market operator” means a person designated under Article 4 or 5 of the CACM Regulation by any competent authority to perform tasks related to single day-ahead or single intraday coupling;”.

Amendments to Schedule 6A to the 1989 Act

6.—(1) Schedule 6A to the 1989 Act(a) (provisions imposing obligations enforceable as relevant requirements) is amended as follows.

(2) In paragraph 4(e)(v) (persons required to be certified as independent), for “points 5.1 to 5.10” substitute “points 5.1 to 5.4 and 5.10”.

(3) After paragraph 9A insert—

“Nominated electricity market operators

9B. The following provisions in the CACM Regulation are relevant provisions in relation to a nominated electricity market operator (“NEMO”)—

- (a) Article 7(1) to (4) (NEMO tasks);
- (b) Article 9(1), (4), (9), (12) and (14) (duties relating to development and adoption of terms and conditions or methodologies);
- (c) Article 10 (day-to-day management of the single day-ahead and intraday coupling);
- (d) Article 12 (duties relating to consultation);
- (e) Article 13 (confidentiality obligations);
- (f) Articles 32(5), 43(2), 56(2), 72(2) and 82(6) (requirements to provide information);
- (g) Articles 36 and 37 (duties in relation to algorithm development);
- (h) Articles 38, 39(1) to (3), 40, 41, 42, 45, 46(2), 47(4) to (6), 48(1), (3) and (4) and 50 (duties and requirements relating to single day-ahead coupling);
- (i) Articles 51, 52, 53, 54, 55(1) and (4), 57, 58(3), 59(5) to (7), 60 and 62 (duties and requirements relating to single intraday coupling);
- (j) Article 65(1) (removal of explicit allocation);
- (k) where the NEMO is a central counter party (within the meaning given by Article 2(42) of the CACM Regulation), Article 68 (duties relating to clearing and settlement);
- (l) Articles 75 to 77 and 80 (duties in relation to cost recovery);
- (m) Article 81 (requirements relating to delegation of tasks).”.

Transitional provisions

7.—(1) The amendments made by regulation 2 do not apply for the purposes—

- (a) of an application for certification made under section 8D of the 1986 Act before the commencement date;
- (b) of a review under section 8K(3), (5) or (8) of the 1986 Act if the period within which the review is to be carried out began before the commencement date.

(2) The amendments made by regulation 3 do not apply for the purposes—

- (a) of an application for certification made under section 10B of the 1989 Act before the commencement date;

(a) Schedule 6A was inserted by S.I. 2011/2704 and amended by S.I. 2012/2400 and S.I. 2014/3332.

(b) of a review under section 10I(3), (5) or (8) of the 1989 Act if the period within which the review is to be carried out began before the commencement date.

(3) The Authority is not required to carry out a review of the certification basis of a relevant certified person under section 8K(5) of the 1986 Act or section 10I(5) of the 1989 Act (as the case may be) solely because of the amendments made by regulation 2 or 3.

(4) In paragraph (3) “relevant certified person”—

(a) in relation to a review under section 8K(5) of the 1986 Act, means a person certified (within the meaning given in section 8Q(1) of that Act) before the commencement date;

(b) in relation to a review under section 10I(5) of the 1989 Act, means a person certified (within the meaning given in section 10O(1) of that Act) before the commencement date.

(5) In this regulation—

“the Authority” means the Gas and Electricity Markets Authority;

“the commencement date” means 24th April 2017.

Review

8.—(1) Regulation 51 of the Electricity and Gas (Internal Markets) Regulations 2011(a) (review) is amended as follows.

(2) In paragraph (2), for “and ITC Regulation” substitute “, ITC Regulation and CACM Regulation”.

(3) In paragraph (6)—

(a) after the definition of “the 2013 Amending Regulation” insert—

““CACM Regulation” means Commission Regulation (EU) No 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management;”;

(b) in the definition of “Internal Markets Regulations”, at the end insert—

“the Electricity and Gas (Internal Markets) Regulations 2017;”.

Jesse Norman

Parliamentary Under Secretary of State and Minister for Industry and Energy
Department for Business, Energy and Industrial Strategy

28th March 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972. They make amendments to the electricity and gas regulatory regimes in Great Britain.

Regulations 2 and 3 amend:

— provisions of the Gas Act 1986 (“the 1986 Act”) which implement article 9 of Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ No L 211, 14.8.2009, p.94) (“the Gas Directive”) in respect of the ownership arrangements permitted for certain gas transporters and operators of gas interconnectors, and

— provisions of the Electricity Act 1989 (“the 1989 Act”) which implement article 9 of Directive 2009/72/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ No L 211, 14.8.2009, p.55)

(a) S.I. 2011/2704. Regulation 51 was amended by S.I. 2014/3332.

(“the Electricity Directive”), in respect of the ownership arrangements permitted for certain electricity transmission operators and operators of electricity interconnectors.

Regulation 2 amends the definition of “relevant producer or supplier” in section 8Q of the 1986 Act. The effect of the amendment is that, in determining whether a person meets the ownership unbundling requirement in section 8H, the Gas and Electricity Markets Authority (“the Authority”) must take into account producers or suppliers owned or controlled by or connected with that person wherever they are located, instead of only taking into account such producers or suppliers in an EEA state. Regulation 3 makes a corresponding amendment to section 100 of the 1989 Act which changes, in the same way, the matters which the Authority must take into account in determining whether a person meets the ownership unbundling requirement in section 10F of that Act.

Regulation 7 makes transitional provisions in relation to these amendments. Paragraphs (1) and (2) ensure that the amended definitions of “relevant producer or supplier” do not apply in relation to applications to be certified as independent which were made, or reviews of certification which were commenced, before the amendments come into force. Paragraph (3) makes clear that the Authority is not required to review existing certifications under section 8K of the 1986 Act or section 10I of the 1989 Act solely because of the change to the definition of “relevant producer or supplier”.

Regulation 4 amends the definition of “regulated person” in section 25(8) of the 1989 Act to include a nominated electricity market operator (“NEMO”). A NEMO is an entity which has been designated by a national regulatory authority of a Member State under Commission Regulation (EU) No 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (“the CACM Regulation”) to perform certain functions under that Regulation relating to cross-border trade in electricity. The effect of the amendment is that the Authority’s enforcement powers in sections 25 to 28 of the 1989 Act shall apply to NEMOs in respect of obligations which are specified in Schedule 6A as ‘relevant requirements’ for NEMOs. Regulation 6(3) inserts a new paragraph 9B into Schedule 6A to the 1989 Act to specify certain requirements in the CACM Regulation as relevant requirements for NEMOs. The requirements so specified are relevant requirements for any NEMO in respect of its operations in Great Britain, whether the NEMO has been designated as such by the Authority or by a competent authority in another Member State or Northern Ireland.

Regulation 6(2) makes a minor amendment to the 1989 Act in consequence of amendments to Regulation (EC) No 714/2009 of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity, and regulation 5(2) and (4) make consequential amendments to definitions in section 64(1) of the 1989 Act.

Regulation 8 amends regulation 51 of the Electricity and Gas (Internal Markets) Regulations 2011 (“the 2011 Regulations”) to add these Regulations to a list of instruments implementing EU legislation relating to the electricity and gas internal markets, which are subject to review by the Secretary of State.

An impact assessment for the application of the Authority’s enforcement powers to NEMOs is available from the Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET, and is published alongside this instrument on legislation.gov.uk. An impact assessment has not been prepared for the other amendments made by this instrument as no significant impacts on the private or voluntary sectors are foreseen.

Transposition notes setting out how the main elements of the Electricity Directive and the Gas Directive are transposed into the law of Great Britain are published alongside the 2011 Regulations on legislation.gov.uk.

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