

2015 No. 249

ELECTRICITY

GAS

**The Electricity and Gas (Ownership Unbundling) Regulations
(Northern Ireland) 2015**

Made - - - - - *13th May 2015*

Coming into operation - - - - - *5th June 2015*

The Department of Enterprise, Trade and Investment being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to energy and energy sources(b), in exercise of the powers conferred on it by the said section 2(2), and of every other power enabling it in that behalf makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Electricity and Gas (Ownership Unbundling) Regulations (Northern Ireland) 2015 and shall come into operation on 5th June 2015.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Assembly.

Electricity transmission: independence

3.—(1) The Electricity (Northern Ireland) Order 1992(d) is amended as follows.

(2) In Article 10G(1) (the ownership unbundling requirement) for the words “the Authority considers that each of the following five tests is passed” substitute—

“in relation to each of the five tests below—

- (a) the Authority considers that it is passed; or
- (b) it is treated as passed by virtue of paragraphs (5), (7), or (13A)”.

(a) 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.

(b) The European Communities (Designation) Order 2010 S.I. 2010/761

(c) 1954 c.33 (N.I.)

(d) S.I. 1992/231 (N.I. 1)

(3) After Article 10G(13) insert—

“(13A) Except where paragraph (13B) applies, the Authority may treat one or more of the five tests in this Article as passed if—

- (a) the test or tests are not passed in relation to a relevant producer or supplier;
- (b) the applicant has demonstrated to the Authority’s satisfaction that the applicant does not have a relationship with the relevant producer or supplier which might lead the applicant to discriminate in favour of the relevant producer or supplier; and
- (c) the Authority thinks it appropriate to treat the test or tests as passed.

(13B) This paragraph applies where the applicant, or a person who controls or has a majority shareholding in the applicant, controls or has a majority shareholding in a person (“A”) who operates a generating station and—

- (a) A is a relevant producer or supplier; and
- (b) the generating station is directly physically connected to anything that forms part of the applicant’s transmission system.”.

(4) After Article 10I(12) (monitoring and review of certification) insert—

“(12A) If, before any of the deadlines mentioned in paragraph (5) or (7) (or before such deadline as previously extended under this paragraph), the Authority asks the certified person or a relevant producer or supplier for information under paragraph (10) or (11), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.”.

(5) In Article 10L(1) (interpretation) substitute the definition of “review period” with—

““review period” in relation to a review under Article 10I, means the period specified in paragraph (5) or (7) of that Article as extended, if appropriate, by—

- (a) any period of suspension under paragraph (8) of that Article, or
- (b) the 4 months mentioned in paragraph (12A) of that Article;”.

Gas transmission: independence

4.—(1) The Gas (Northern Ireland) Order 1996(a) is amended as follows.

(2) In Article 8G(1) (the ownership unbundling requirement) for the words “the Authority considers that each of the following tests is passed” substitute—

“in relation to each of the five tests below—

- (a) the Authority considers that it is passed; or
- (b) it is treated as passed by virtue of paragraphs (5), (7) or (13A)”.

(3) After Article 8G(13) insert—

“(13A) The Authority may treat one or more of the five tests in this Article as passed if—

- (a) the test or tests are not passed in relation to a relevant producer or supplier;
- (b) the applicant has demonstrated to the Authority’s satisfaction that the applicant does not have a relationship with the relevant producer or supplier which might lead the applicant to discriminate in favour of the relevant producer or supplier; and
- (c) the Authority thinks it appropriate to treat the test or tests as passed.”.

(a) S.I. 1996 (N.I. 2)

(4) After Article 8I(12) (monitoring and review of certification) insert—

“(12A) If, before any of the deadlines mentioned in paragraphs (5) or (7) (or before such deadline as previously extended under this paragraph), the Authority asks the certified person or a relevant producer or supplier for information under paragraph (10) or (11), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.”.

(5) In Article 8L(1) (interpretation) substitute the definition of “review period” with—

““review period” in relation to a review under Article 8I means the period specified in paragraph (5) or (7) of that Article as extended, if appropriate, by—

- (a) any period of suspension under paragraph (8) of that Article, or
- (b) the 4 months mentioned in paragraph (12A) of that Article;”.

Transitional

5.—(1) These Regulations do not apply in relation to—

(a) any application made under—

- (i) Article 8C(1) of the Gas (Northern Ireland) Order 1996; or
- (ii) Article 10C of the Electricity (Northern Ireland) Order 1992 or deemed to have been made under that Article by virtue of regulation 10A(2) of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011(a),

where that application has been received by the Authority before the day on which these Regulations come into operation;

(b) any review by the Authority under Article 8I(2), (4) or (6) of the Gas (Northern Ireland) Order 1996 (monitoring and review of certification) or Article 10I(2), (4) or (6) of the Electricity (Northern Ireland) Order 1992 (monitoring and review of certification) where the period for carrying out the review began before the day on which these Regulations come into operation.

(2) In this regulation, “the Authority” means the Northern Ireland Authority for Utility Regulation.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 13th June 2015.



J Mills

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

(a) S.R. 2011 No.155 as amended by the Gas and Electricity (Internal Markets) (Amendment) Regulations (Northern Ireland) 2013 (S.R.2013 No.173)

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 Northern Ireland in order to implement, and address matters arising out of or related to, the requirements 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 (“the Electricity Directive”) and 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 (“the Gas Directive”).

Regulation 1 covers the citation and commencement of the Regulations. Regulation 2 contains the interpretation provision for the Regulations.

Regulation 3 amends Articles 10G (the ownership unbundling requirement) and 10I (monitoring and review of certification) of the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”), which implement Article 9 of the Electricity Directive in respect of the ownership arrangements permitted for electricity transmission system operators. Regulation 3(2) amends Article 10G(1) and Regulation 3(3) inserts new paragraphs (13A) and (13B) in Article 10G. The amendments give the Northern Ireland Authority for Utility Regulation (“the Authority”) discretion to treat one or more of the five ownership unbundling tests in Article 10G as passed where the applicant demonstrates to the Authority’s satisfaction that the applicant’s relationship with a relevant producer/supplier (as defined in Article 10L(2) of the 1992 Order) would not lead the applicant to discriminate in favour of that producer/supplier. The new Article 10G(13B) limits that discretion by providing that it does not apply in circumstances where the applicant (or the person who controls or has a majority shareholding in the applicant) controls or has a majority shareholding in an electricity generator which is a relevant producer or supplier and the generating station is directly physically connected to the applicant’s transmission system. Regulation 3(4) inserts a new paragraph (12A) in Article 10I in order to extend the four month deadlines in that Article where additional information is requested as part of the review. Regulation 3(5) substitutes the definition of ‘review period’ in Article 10L of the 1992 Order so that it now reflects this extension.

Regulation 4 amends Articles 8G (the ownership unbundling requirement) and 8I (monitoring and review of certification) of the Gas (Northern Ireland) Order 1996 (“the 1996 Order”), which implement Article 9 of the Gas Directive in respect of the ownership arrangements permitted for gas transmission system operators. This regulation makes similar amendments to Articles 8G and 8I of the 1996 Order to those made to Articles 10G and 10I of the 1992 Order by regulation 3. Regulation 4(2) amends Article 8G(1) and regulation 4(3) inserts a new paragraph (13A) in Article 8G to give the Authority discretion to treat one or more of the five ownership unbundling tests in Article 8G as passed. Regulation 4(4) inserts a new paragraph (12A) in Article 8I in order to extend the four month deadlines in that Article where additional information is requested as part of the review. Regulation 4(5) substitutes the definition of ‘review period’ in Article 8L of the 1996 Order.

Regulation 5 specifies that these Regulations do not apply in respect of an application received by the Authority before the date on which these Regulations come into operation, or where a review pursuant to Article 8I of the 1996 Order or Article 10I of the 1992 Order has commenced before that date.

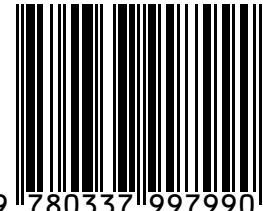
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