
DRAFT STATUTORY INSTRUMENTS

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);”.

(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.