STATUTORY INSTRUMENTS

2014 No. 3333

ELECTRICITY

GAS

The Electricity and Gas (Ownership Unbundling) Regulations 2014

Made - - - -	*17th December 2014*
Laid before Parliament	*22nd December 2014*
Coming into force - -	*15th January 2015*

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 makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Electricity and Gas (Ownership Unbundling) Regulations 2014 and come into force on 15th January 2015.

(2) These Regulations do not extend to Northern Ireland.

Gas transmission and the operation of gas interconnectors: independence

2.—(1) The Gas Act 1986(**c**) is amended as follows.

(2) In section 8H(1) (the ownership unbundling requirement) for the words "the Authority thinks that each of the following five tests is passed" substitute—

"in relation to each of the five tests below—

(a) the Authority thinks that it is passed, or

(b) it is treated as passed by virtue of subsection (7), (9) or (9A).".

(3) After section 8H(9) insert—

"(9A) The Authority may treat one or more of the five tests in this section as passed if—

(a) the test or tests are not passed in relation to a relevant producer or supplier,

(**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. Sections 8C to 8Q and Schedule 2AA were inserted by S.I. 2011/2704. Other amendments have been made to the 1986 Act that are not relevant to these Regulations.

(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.".

(4) After section 8K(9) (monitoring and review of certification) insert—

"(10) If, before any of the deadlines mentioned in subsection (4), (6) or (9) (or before such deadline as previously extended under this subsection), the Authority asks the certified person or a relevant producer or supplier for information under section 8L(2) or (3), 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 section 8N(1) (continuation or withdrawal of certification) after "mentioned in section 8K(4) or (6)" insert "or where relevant the 4 months mentioned in section 8K(10),".

(6) In section 8N(3) after "mentioned in section 8K(9)" insert "or where relevant the 4 months mentioned in section 8K(10)".

Electricity transmission and the operation of electricity interconnectors: independence

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

(2) In section 10F(1) (the ownership unbundling requirement) for the words "the Authority thinks that each of the following five tests is passed" substitute—

"in relation to each of the five tests below—

(a) the Authority thinks that it is passed, or

(b) it is treated as passed by virtue of subsection (7), (9) or (9A).".

(3) After section 10F(9) insert—

"(9A) Except where subsection (9B) applies, the Authority may treat one or more of the five tests in this section 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.

(9B) This subsection 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 or electricity interconnector.".

(4) After section 10I(9) (monitoring and review of certification) insert—

"(10) If, before any of the deadlines mentioned in subsection (4), (6) or (9) (or before such deadline as previously extended under this subsection), the Authority asks the certified person or a relevant producer or supplier for information under section 10J(2) or (3), 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 section 10L(1) (continuation or withdrawal of certification) after "mentioned in section 10I(4) or (6)" insert "or where relevant the 4 months mentioned in section 10I(10)".

(**a**) 1989 c. 29. Sections 10A to 10O were inserted by S.I. 2011/2704. Other amendments have been made to the 1989 Act that are not relevant to these Regulations.

(6) In section 10L(3) after "mentioned in section 10I(9)" insert "or where relevant the 4 months mentioned in section 10I(10)".

Transitional

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

(a) any application under section 8D(2) of the Gas Act 1986 or section 10B(2) of the Electricity Act 1989 received by the Authority before the day on which these Regulations come into force, and

(b) any review by the Authority under section 8K(3), (5) or (8) of the Gas Act 1986 or section 10I(3), (5) or (8) of the Electricity Act 1989 where the period for carrying out the review began before the day on which these Regulations come into force.

(2) In this regulation, "the Authority" means the Gas and Electricity Markets Authority.

Review

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

(2) In paragraph (6), in the definition of "Internal Markets Regulations", after sub-paragraph (b) insert—

"(c) the Electricity and Gas (Ownership Unbundling) Regulations 2014(**b**);".

Matt Hancock
Minister of State
17th December 2014 Department of Energy and Climate Change

(**a**) S.I. 2011/2704. Regulation 51 was amended by the Electricity and Gas (Internal Markets) Regulations 2014 (S.I. 2014/3332).
(**b**) S.I. 2014/3333.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972 (c. 68). They make amendments to the electricity and gas regulatory regimes in Great Britain 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 repealing Directive 2003/54/EC ("the Electricity Directive") (OJ No L 211, 14.8.2009, p55), 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") (OJ No L 211, 14.8.2009, p94).

By regulation 1, these Regulations do not extend to Northern Ireland.

Regulation 2 amends sections 8H (the ownership unbundling requirement) and 8K (monitoring and review of certification) of the Gas Act 1986 ("the 1986 Act"), which implement Article 9 of the Gas Directive in respect of the ownership arrangements permitted for certain gas transporters and operators of gas interconnectors. By regulations 2(2) and 2(3), section 8H(1) is amended, and a new section 8H(9A) is inserted, such that the Gas and Electricity Markets Authority ("the Authority") has discretion to treat one or more of the five ownership unbundling tests in section 8H as if it were passed. This enables a gas transporter or gas interconnector operator to be certified under section 8F of the 1986 Act (certification). By regulation 2(4), section 8K is amended such that the four month deadlines in section 8K may be extended. Regulations 2(5) and 2(6) make consequential amendments to section 8N of the 1986 Act (continuation or withdrawal of certification).

Regulation 3 amends sections 10F (the ownership unbundling requirement) and 10I (monitoring and review of certification) of the Electricity Act 1989 ("the 1989 Act"), which implement Article 9 of the Electricity Directive in respect of the ownership arrangements permitted for certain electricity transmission operators and operators of electricity interconnectors. Regulation 3 makes equivalent amendments to sections 10F, 10I and 10L of the 1989 Act to those made to sections 8H, 8K and 8N of the 1986 Act, save that regulation 3(3) also inserts a new section 10F(9B) such that the Authority's discretion 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 falls within the definition of a 'relevant producer or supplier' (section 10O(3) of the 1989 Act) and the generating station is directly physically connected to the applicant's transmission system or electricity interconnector.

By regulation 4, these Regulations do not apply in respect of an application received by the Authority before the date on which these Regulations come into force, or where a review pursuant to s8K Gas Act 1986 or s10I Electricity Act 1989 has commenced before that date.

By regulation 5, these Regulations are subject to review by the Secretary of State as part of the Secretary of State's review of the Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704).

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been placed in the Library of each House of Parliament and is annexed to the Explanatory Memorandum. Copies of the impact assessment are available on the gov.uk website. A transposition note setting out how the main elements of the Electricity Directive and Gas Directive are transposed into the law of Great Britain is also available on the gov.uk website.

© Crown copyright 2014

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.25

UK2014121824 12/2014 19585

http://www.legislation.gov.uk/id/uksi/2014/3333

ISBN 978-0-11-112638-7

9 780111 126387