STATUTORY INSTRUMENTS

2000 No. 2956

ELECTRICITY
GAS

The Utilities Act 2000 (Supply of Information) Regulations 2000

Made - - - -	*1st November 2000*
Laid before Parliament	*3rd November 2000*
Coming into force	*25th November 2000*

The Secretary of State in exercise of the powers conferred on him by section 27(1) and (6) of the Utilities Act 2000**(a)** hereby makes the following Regulations:—

Citation and Commencement

1. These Regulations may be cited as the Utilities Act 2000 (Supply of Information) Regulations 2000 and shall come into force on 25th November 2000.

Interpretation

2. In these Regulations—

"the Act" means the Utilities Act 2000;

"the Authority" means the Gas and Electricity Markets Authority;

"the Council" means the Gas and Electricity Consumer Council;

"electricity licence" means a licence under section 6 of the Electricity Act 1989**(b)**;

"gas licence" means a licence under section 7 or 7A of the Gas Act 1986**(c)**;

"licence holder" means the holder of a gas licence or an electricity licence.

National security

3.—(1) The Authority, a licence holder or the Council may refuse to supply under section 24 (provision of information to Council) or 26 (provision of information by Council to Authority) of the Act any information which it would be against the interests of national security to make public.

(2) The Secretary of State may certify for the purposes of paragraph (1) whether or not the making public of particular information would be against the interests of national security, and any such certificate shall, subject to any exercise of a court's jurisdiction to review it, be conclusive.

(a) 2000 c. 27.
(b) 1989 c. 29.
(c) 1986 c. 44.

(3) A certificate under paragraph (2) may identify the information in question by means of a general description.

Price sensitive information

4.—(1) The Authority or a licence holder may refuse to supply under section 24 of the Act any information which—

(a) relates to particular securities or to a particular issuer of securities or to particular issuers of securities;

(b) is specific or precise;

(c) has not been made public; and

(d) if it were made public would be likely to have a significant effect on the price of the securities.

(2) For the purposes of this regulation—

(a) "price" includes value;

(b) information shall be treated as relating to a particular issuer of securities which is a company not only where it is about the company but also where it may affect the company's business prospects;

(c) "made public", in relation to information, shall be construed in accordance with subsection (1) of section 58 of the Criminal Justice Act 1993**(a)**; and

(d) "securities" means any securities to which Part V of the Criminal Justice Act 1993 (insider dealing) applies.

Information whose disclosure would be affected by the application of other legislation

5.—(1) The Authority may refuse to supply under section 24 of the Act any information not falling within regulation 4(1) which—

(a) was disclosed to the Authority in circumstances in which that disclosure would have been prohibited by or under an enactment imposing general restrictions on the disclosure of information but for an exemption from those restrictions naming the Authority as a person to whom information may be disclosed whether generally or for specified purposes or in specified circumstances; or

(b) was obtained by the Authority in the exercise of functions which it may exercise concurrently with the Director General of Fair Trading under sections 44, 50, 52, 53, 56A to 56G, 86 and 88 of the Fair Trading Act 1973**(b)** or under Part I of the Competition Act 1998**(c)**.

(2) The Authority, a licence holder or the Council may refuse to supply under section 24 or 26 of the Act any information—

(a) whose disclosure would be prohibited by or under any enactment other than the Gas Act 1986 or the Electricity Act 1989; or

(b) whose disclosure is incompatible with any Community obligation.

(3) Subject to paragraph (4), the Authority, a licence holder or the Council may refuse to supply under section 24 or 26 of the Act any information which constitutes personal data within the meaning of section 1(1) of the Data Protection Act 1998**(d)** and where—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in that section, the disclosure of the information to a member of the public would contravene any of the data protection principles or section 10 of that Act (right to prevent processing likely to cause damage or distress); or

(b) in any other case, the disclosure of the information to a member of the public would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(a) 1993 c. 36.
(b) 1973 c. 41.
(c) 1998 c. 41.
(d) 1998 c. 29.

(4) A licence holder may not, by virtue of paragraph (3), refuse to supply information which relates to a person who has made a complaint to which section 32 of the Gas Act 1986 or section 46 of the Electricity Act 1989 applies and which is being investigated by the Council.

Information relevant to court proceedings or enforcement action

6.—(1) The Authority, a licence holder or the Council may refuse to supply under section 24 or 26 of the Act any information whose disclosure would constitute or be punishable as a contempt of court.

(2) The Authority, a licence holder or the Council may refuse to supply under section 24 or 26 of the Act any information whose disclosure would, or would be likely to, prejudice any criminal proceedings.

(3) The Authority or a licence holder may refuse to supply under section 24 of the Act any information whose disclosure would, or would be likely to, prejudice—

(a) any action under sections 28 (orders for securing compliance) or 30A**(a)** (penalties) of the Gas Act 1986; or

(b) any action under sections 25 (orders for securing compliance) or 27A**(b)** (penalties) of the Electricity Act 1989.

(4) A licence holder may refuse to supply information under section 24 of the Act which the licence holder could not be compelled to give as evidence in civil proceedings or which is contained in documents or records which the licence holder could not be compelled to produce in evidence in any such proceedings.

Information concerning internal discussions or deliberations

7.—(1) Subject to paragraph (2), the Authority, a licence holder or the Council may refuse to supply under section 24 or 26 of the Act—

(a) any information concerning the discussions or deliberations of the Authority, a licence holder or the Council as to a decision or action to be taken or that may be taken by the Authority, a licence holder or the Council where the direction requiring the supply of that information is given before that decision or action has been taken;

(b) any information concerning the discussions or deliberations of the Authority, a licence holder or the Council as to a decision or action which has been taken and is to be announced or published by the Authority, a licence holder or the Council where the direction requiring the supply of that information is given before that decision or action has been announced or published;

(c) any information concerning the views of the Authority or a licence holder on its relationship with the Council or the performance by the Council of its functions;

(d) any information concerning the views of the Council on its relationship with the Authority or the performance by the Authority of its functions.

(2) A licence holder may not by virtue of sub-paragraphs (a) and (b) of paragraph (1) refuse to supply information which is relevant to the investigation of a complaint to which section 32 of the Gas Act 1986 or section 46 of the Electricity Act 1989 applies.

(3) The Authority may refuse to supply under section 24 of the Act any information which relates to the obtaining of information from confidential sources by the Authority for the purposes of its functions—

(a) under sections 28 or 30A of the Gas Act 1986;

(b) under sections 25 or 27A of the Electricity Act 1989; or

(c) in relation to any criminal proceedings which the Authority has power to conduct.

Information the cost or other burden of whose provision is excessive

8.—(1) A licence holder may refuse to supply under section 24 of the Act any information where the cost or effort that would be incurred or suffered by the licence holder in supplying that information would be excessive in relation to the likely benefit of the information to the Council.

(a) Section 30A was inserted by section 95 of the Utilities Act 2000.
(b) Section 27A was inserted by section 59 of the Utilities Act 2000.

(2) In determining the likely benefit of the information to the Council for the purposes of paragraph (1) the following shall be taken into account—

(a) the purposes for which the information is required by the Council; and

(b) the extent to which the provision of the information is necessary or expedient for those purposes.

Information not held by the person to whom a direction is given

9.—(1) A person may refuse to comply with a direction given to him under section 24 or section 26 of the Act if he does not hold the information specified or described in the direction.

(2) For the purposes of these Regulations, a person holds information if—

(a) he holds it, otherwise than on behalf of another person; or

(b) another person holds it on his behalf.

Statistics on levels of performance or complaints

10. Nothing in these Regulations entitles a licence holder to refuse to supply information to the Council under section 24 of the Act, being information whose supply the Council has directed in accordance with the Council's duties under section 33DA**(a)** of the Gas Act 1986 and section 42AA**(b)** of the Electricity Act 1989.

Helen Liddell,
Minister for Energy and Competitiveness in Europe,
Department of Trade and Industry

1st November 2000

(a) Section inserted by section 20(5) of the Utilities Act 2000.
(b) Section inserted by section 20(6) of the Utilities Act 2000.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe types of information which the Gas and Electricity Markets Authority ("the Authority"), the holder of a gas or electricity licence ("a licence holder") or the Gas and Electricity Consumer Council ("the Council") may refuse to supply under section 24 or 26 of the Utilities Act 2000 ("the Act"). They also prescribe circumstances in which the Authority, a licence holder or the Council may refuse to comply with a direction under section 24 or 26 of the Act.

Under section 24 of the Act, the Council may direct the Authority or a licence holder to supply such information as it may require for the purposes of exercising its functions. Under section 26 of the Act, the Authority may direct the Council to supply such information as it may require for the purpose of exercising its functions.

The Authority, a licence holder or the Council may refuse to supply (whether under section 24 or section 26) information the making public of which would be against the interests of national security. The Secretary of State may issue a certificate for this purpose, which will be conclusive either way (subject to a court's inherent powers to review any decision by the Secretary of State) (Regulation 3).

The Authority or a licence holder may refuse to supply price sensitive information to the Council under section 24. Price sensitive information is defined in the same terms as in Part V of the Criminal Justice Act 1993 which covers the criminal offence of insider dealing (Regulation 4).

The Authority may refuse to supply to the Council under section 24 any information which is subject to a statutory restriction on disclosure and which was disclosed to the Authority by virtue of an exemption to that statutory restriction and any information which it obtained in the exercise of various functions under the Fair Trading Act 1973 and Competition Act 1998, being functions which the Authority exercises concurrently with the Director General of Fair Trading (Regulation 5(1)).

The Authority, a licence holder or the Council may refuse to supply under sections 24 or 26 any information whose disclosure is prohibited under any other enactments or whose disclosure is incompatible with any Community obligation (Regulation 5(2)).

The Authority, a licence holder or the Council may refuse to supply information which is personal data protected by the Data Protection Act 1998, but not where it relates to a person whose complaint is being investigated by the Council in accordance with the Council's duty to investigate under the Gas Act 1986 or Electricity Act 1989 (Regulation 5(3)).

The Authority, a licence holder or the Council may refuse to supply information whose disclosure would constitute or be punishable as contempt of court; or would prejudice or would be likely to prejudice any criminal proceedings. The Authority or a licence holder may also refuse to supply information which would prejudice or would be likely to prejudice any enforcement action against licence holders such as the making of compliance orders or the imposition of financial penalties. Additionally, a licence holder may refuse to supply information under section 24 of the Act which could not be compelled from him in civil proceedings (Regulation 6).

Before taking a decision or action the Authority, a licence holder or the Council may refuse to supply under section 24 or 26 of the Act any information concerning discussions or deliberations as to that decision or action. Before announcing or publishing a decision or action which has been taken and is to be announced or published, the Authority, a licence holder or the Council may refuse to supply under section 24 or 26 of the Act any information concerning discussions or deliberations as to that decision or action. However, in neither case can a licence holder withhold any such information that is relevant to a complaint being investigated by the Council in accordance with the Council's duties under section 32 of the Gas Act 1986 or section 46 of the Electricity Act 1989.

The Authority, a licence holder or the Council may refuse to supply information concerning: (i) the views of the Authority or a licence holder on its relationship with the Council or the

Council's performance of its functions or (ii) the views of the Council on its relationship with the Authority or the performance by the Authority of its functions. The Authority may furthermore refuse to supply under section 24 of the Act information obtained from confidential sources for the purposes of any criminal proceedings which the Authority has power to conduct or any enforcement action under the Gas Act 1986 or Electricity Act 1989 (Regulation 7).

A licence holder may refuse to supply information under section 24 of the Act where the cost or other burden of providing that information would be excessive in relation to the likely benefit of the information to the Council (Regulation 8).

A person may refuse to comply with a direction given under section 24 or 26 if he does not hold the information in question. Holding information is defined for these purposes (Regulation 9).

A licence holder cannot by virtue of these Regulations refuse to supply under section 24 of the Act information whose supply the Council has directed in accordance with the Council's duties under section 33DA of the Gas Act 1986 and section 42AA of the Electricity Act 1989 to publish statistical information relating to performance levels and consumer complaints (Regulation 10).

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