
 STATUTORY INSTRUMENTS

2015 No. 0000

ELECTRICITY

GAS

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

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

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 2015 and come into force on [].

(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 “if the Authority thinks that each of the following five tests is passed” substitute—

“if—

- (a) the Authority thinks that each of the following five tests is passed, or
- (b) the Authority thinks that one or more of the following five tests is not passed but—
 - (i) the applicant has demonstrated to the Authority’s satisfaction that it does not have a relationship with the relevant producer or supplier which might lead the applicant to discriminate in favour of that relevant producer or supplier; and

(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.

- (ii) the Authority considers it appropriate to treat the unpassed tests as passed.”.
- (3) After section 8K(9) (monitoring and review of certification) insert—
 - “(10) If, before any of the deadlines mentioned in subsections (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.”.

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 “if the Authority thinks that each of the following five tests is passed” substitute—
 - “if—
 - (a) the Authority thinks that each of the five tests below is passed, or
 - (b) (except where subsection (1A) applies) the Authority thinks that one or more of the five tests below is not passed but—
 - (i) the applicant has demonstrated to the Authority’s satisfaction that it does not have a relationship with the relevant producer or supplier which might lead the applicant to discriminate in favour of that relevant producer or supplier; and
 - (ii) the Authority considers it appropriate to treat the unpassed tests as passed.”.
- (3) After section 10F(1) (the ownership unbundling requirement) insert—
 - “(1A) This subsection applies where the applicant, or a person who controls the applicant, controls or has a majority shareholding in a relevant producer or supplier and that relevant producer or supplier operates a generating station which 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 under subsections (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.”.

Transitional

- 4.—(1) These Regulations apply in respect of any application under section 8D(2) of the Gas Act 1986 or section 10B(2) of the Electricity Act 1989 received by the Authority on or after the date on which these Regulations come into force (“the relevant date”).
- (2) The Authority is not required by virtue of these Regulations to review the certification basis under section 8K(5) of the Gas Act 1986 (monitoring and review of certification) or section 10I(5) of the Electricity Act 1989 (monitoring and review of certification) in respect of any application received by the Authority before the relevant date unless notified by the certified person under section 8K(5)(a) of the Gas Act 1986 or section 10I(5)(a) of the Electricity Act 1989 as applicable.
- (3) In this regulation, “the Authority” means the Gas and Electricity Markets Authority.

(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.

Review

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

(2) In paragraphs (1)(a) and (3)(a), for “these Regulations” substitute “the Internal Markets Regulations”.

(3) In paragraph (6), after the definition of “2010 Amending Decision” insert the following definition—

““Internal Markets Regulations” means—

- (a) these Regulations; and
- (b) the Electricity and Gas (Ownership Unbundling) Regulations 2015(b);”.

Date

Name
Minister of State
Department of Energy and Climate Change

DRAFT

(a) S.I. 2011/2704
(b) [...]

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. Regulation 2(2) provides that the Gas and Electricity Markets Authority (“the Authority”) has discretion to treat one 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). Regulation 2(3) provides that the deadline for conducting a review of the certification basis of a certified person is extended where the Authority has requested information from the certified person or a relevant producer or supplier under section 8L(2) or (3) of the 1986 Act.

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(2) provides that the Authority has discretion to treat one of the five ownership unbundling tests in section 10F as if it were passed. This enables an electricity transmission operator or an electricity interconnector operator to be certified under section 10D of the 1989 Act (certification). Regulation 3(3) provides that the Authority’s discretion does not apply in circumstances where the applicant (or the person who controls 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. Regulation 3(4) provides that the deadline for conducting a review of the certification basis of a certified person is extended where the Authority has requested information from the certified person or a relevant producer or supplier under section 10J(2) or (3) of the 1989 Act.

Regulation 4 makes transitional provision in respect of these Regulations. These Regulations apply in respect of an application received by the Authority on or after the date that these Regulations come into force; they do not apply to an application received before the date that these Regulations come into force but not yet determined.

Regulation 5 provides for these Regulations to be 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.

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.