STATUTORY RULES OF NORTHERN IRELAND

2015 No. 1

GAS

ELECTRICITY

The Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015

Made - - - -	*5th January 2015*
Coming into operation	*6th February 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(**1**) in relation to energy and energy sources(**2**), in exercise of the powers conferred on it by the said section 2(2), and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART 1

INTRODUCTORY

Citation and Commencement

1. These Regulations may be cited as the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 and shall come into operation on 6th February 2015.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

"the Authority" means the Northern Ireland Authority for Utility Regulation;

"the CMA" means the Competition and Markets Authority;

"the Department" means the Department of Enterprise, Trade and Investment;

(**1**) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and by the European Union (Amendment) Act 2008 (c.7), section 3(3) and Part I of the Schedule
(**2**) The European Communities (Designation) Order 2010 S.I. 2010/761
(**3**) 1954 c.33 (N.I.)

"the Electricity Order" means the Electricity (Northern Ireland) Order 1992(**4**);

"the Energy Order" means the Energy (Northern Ireland) Order 2003(**5**); and

"the Gas Order" means the Gas (Northern Ireland) Order 1996(**6**).

PART 2

AMENDMENTS TO GAS ORDER

3.—(1) For Article 14 of the Gas Order substitute the following Articles—

"**Modification of conditions of licences**

14.—(1) The Authority may make modifications of—

(a) the conditions of a particular licence;

(b) the standard conditions of licences of any type under Article 8(1).

(2) Before making any modifications under this Article, the Authority must give notice—

(a) stating that it proposes to make modifications;

(b) setting out the proposed modifications and their effect;

(c) stating the reasons why it proposes to make the modifications; and

(d) specifying the time within which representations with respect to the proposed modifications may be made.

(3) The time specified by virtue of paragraph (2)(d) may not be less than 28 days from the date of the publication of the notice.

(4) A notice under paragraph (2) must be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and

(b) by sending a copy of the notice to—

(i) each relevant licence holder,

(ii) the Department, and

(iii) the General Consumer Council.

(5) The Authority must consider any representations which are duly made.

(6) If, within the time specified by virtue of paragraph (2)(d), the Department directs the Authority not to make any modification, the Authority shall comply with the direction.

(7) Paragraphs (8) to (10) apply where, having complied with paragraphs (2) to (5), the Authority decides to proceed with the making of modifications of the conditions of any licence under this Article.

(8) The Authority must—

(a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications;

(**4**) S.I. 1992/231 (N.I.1)
(**5**) S.I. 2003/419 (N.I.6)
(**6**) S.I. 1996/275 (N.I.2)

(b) state the effect of the modifications;

(c) state how it has taken account of any representations duly made; and

(d) state the reason for any differences between the modifications and those set out in the notice by virtue of paragraph (2)(b).

(9) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 3A).

(10) The date specified by virtue of paragraph (9) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this Article.

(11) In this Article "relevant licence holder"—

(a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—

(i) which is to be modified by the inclusion of any new standard condition, or

(ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of paragraph (2)(d); or

(b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.

Modification of conditions under Article 14: supplementary

14A.—(1) Paragraphs (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under Article 14.

(2) If the conditions modified are standard conditions, the Authority must—

(a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and

(b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under Article 14 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this Article has effect subject to the giving of a direction under paragraph 2 of Schedule 3A in relation to the decision to which the modification relates.

Appeal from decisions of the Authority

Appeal to the CMA

14B.—(1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification of a condition of a licence under Article 14.

(2) An appeal may be brought under this Article only by—

(a) a relevant licence holder (within the meaning of Article 14);

(b) any other person who holds a licence of any type under Article 8(1) whose interests are materially affected by the decision;

(c) a qualifying body or association in the capacity of representing a person falling within sub-paragraph (a) or (b);

(d) the General Consumer Council in the capacity of representing consumers whose interests are materially affected by the decision.

(3) The permission of the CMA is required for the bringing of an appeal under this Article.

(4) The CMA may refuse permission to bring an appeal only on one of the following grounds—

(a) in relation to an appeal brought by a person falling within paragraph (2)(b), that the interests of the person are not materially affected by the decision;

(b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;

(c) in relation to an appeal brought by the General Consumer Council, that the interests of the consumers represented are not materially affected by the decision;

(d) in relation to any appeal—

(i) that the appeal is brought for reasons that are trivial or vexatious;

(ii) that the appeal has no reasonable prospect of success.

(5) References in this Article to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

Procedure on appeal to CMA

14C.—(1) Schedule 3A has effect.

(2) Except where specified otherwise in Schedule 3A, the functions of the CMA with respect to an appeal under Article 14B are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013(**7**).

Determination by CMA of appeal

14D.—(1) This Article applies to every appeal brought under Article 14B.

(2) In determining an appeal the CMA must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

(a) in the carrying out of its principal objective under Article 14 of the Energy Order; and

(b) in the performance of its duties under that Article and Article 6B of the Energy Order.

(3) In determining the appeal the CMA—

(a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but

(b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

(a) that the Authority failed properly to have regard to any matter mentioned in paragraph (2);

(**7**) 2013 c.24

(b) that the Authority failed to give the appropriate weight to any matter mentioned in paragraph (2);

(c) that the decision was based, wholly or partly, on an error of fact;

(d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of Article 14(8)(b);

(e) that the decision was wrong in law.

(5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

CMA's powers on allowing appeal

14E.—(1) This Article applies where the CMA allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the CMA must do one or more of the following—

(a) quash the decision (to the extent that the appeal is allowed);

(b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA;

(c) substitute the CMA's decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.

(3) If the appeal is in relation to any other decision, the CMA must do one or both of the following—

(a) quash the decision (to the extent that the appeal is allowed);

(b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA.

(4) A direction under paragraph (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).

(5) A person to whom a direction is given under paragraph (2) or (3) must comply with it.

(6) A direction given under paragraph (2) or (3) to a person other than the Authority is enforceable as if it were an order of the High Court.

(7) For the purposes of this Article a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the CMA's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

(8) In determining for the purposes of paragraph (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.

(9) In this Article and Articles 14F and 14G any reference to a party to an appeal is to be read in accordance with Schedule 3A.

Time limits for CMA to determine an appeal

14F.—(1) The CMA must—

(a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;

(b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.

(2) Paragraph (1)(a) or (b) does not apply if paragraph (3) applies.