STATUTORY RULES OF NORTHERN IRELAND

2008 No. 3

ELECTRICITY

GAS

The Energy Order 2003 (Supply of Information) Regulations (Northern Ireland) 2008

Made - - - -	*7th January 2008*
Coming into operation	*15th February 2008*

The Department of Enterprise, Trade and Investment, in exercise of the powers conferred on it by Article 27(1) and Article 66(3) of the Energy (Northern Ireland) Order 2003(**1**) and of every other power enabling it in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Energy Order 2003 (Supply of Information) Regulations (Northern Ireland) 2008 and shall come into operation on 15th February 2008.

Interpretation

2. In these Regulations—

"direction" means a direction under Article 24 or 26 of the Order;

"electricity licence" means a licence under Article 10 of the Electricity (Northern Ireland) Order 1992(**2**);

"gas licence" means a licence under Article 8 of the Gas (Northern Ireland) Order 1996(**3**);

"licence holder" means the holder of a gas licence or an electricity licence; and

"the Order" means the Energy (Northern Ireland) Order 2003.

National Security

3. The Authority or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order any information which would be against the interests of national security to make public.

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

Price sensitive information

4.—(1) The Authority or a licence holder may refuse to supply under Article 24 of the Order 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(**4**); 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 Article 24 of the Order 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 a statutory provision 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 Office of Fair Trading under Part IV of the Enterprise Act 2002(**5**) or under Part I of the Competition Act 1998(**6**).

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

(a) whose disclosure would be prohibited by or under any statutory provision other than the Electricity (Northern Ireland) Order 1992, the Gas (Northern Ireland) Order 1996 or the Order; or

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

(3) Subject to paragraph (4), the Authority or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order any information which constitutes personal data within the meaning of section 1(1) of the Data Protection Act 1998(**7**) 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

(**4**) 1993 c.36
(**5**) 2002 c.40; see also Article 46 of S.I. 1992/231 (N.I. 1) and Article 23 of S.I. 1996/275 (N.I. 2)
(**6**) 1998 c.41; see also Article 46 of S.I. 1992/231 (N.I. 1) and Article 23 of S.I. 1996/275 (N.I. 2)
(**7**) 1998 c.29

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 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.

(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 Article 22 of the Order applies and which is being investigated by the Council.

Information relevant to court proceedings or enforcement action

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

(2) The Authority or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order 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 Article 24 of the Order any information whose disclosure would, or would be likely to, prejudice any action under Article 42 (orders for securing compliance) or 45 (financial penalties) of the Order.

(4) A licence holder may refuse to supply information under Article 24 of the Order 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, or a licence holder may refuse to supply under Article 24, and the Council may refuse to supply under Article 26, of the Order—

(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 Article 22 of the Order applies.

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