

**2015 No. 16**

**GAS**

**ELECTRICITY**

**The Enterprise and Regulatory Reform Act 2013 (Amendment)  
(Gas and Electricity Appeals) Regulations 2015**

<i>Made</i> - - - -	<i>8th January 2015</i>
<i>Laid before Parliament</i>	<i>12th January 2015</i>
<i>Coming into force</i> - -	<i>6th February 2015</i>

The Secretary of State is a Minister 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 that section.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Enterprise and Regulatory Reform Act 2013 (Amendment) (Gas and Electricity Appeals) Regulations 2015 and come into force on 6th February 2015.

(2) In these Regulations—

“the 2013 Act” means the Enterprise and Regulatory Reform Act 2013(c);

“the Authority” means the Northern Ireland Authority for Utility Regulation;

“the CMA” means the Competition and Markets Authority;

“the CMA panel” has the same meaning as in Schedule 4 to the 2013 Act (see Part 3 of that Schedule)(d);

“the Electricity Order” means the Electricity (Northern Ireland) Order 1992(e);

“the Gas Order” means the Gas (Northern Ireland) Order 1996(f); and

“the operative date” means 6th February 2015.

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(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).

(c) 2013 c. 24.

(d) Schedule 4 was amended by paragraph 2(2) to (4) of Schedule 5 to the Financial Services (Banking Reform) Act 2013 (c. 33).

(e) S.I. 1992/231 (N.I.1), amended by S.R. (N.I.) 2015 No. 1. There are other amendments to S.I. 1992/231 (N.I.1) but none is relevant to these Regulations.

(f) S.I. 1996/275 (N.I.2), amended by S.R. (N.I.) 2015 No. 1. There are other amendments to S.I. 1996/275 (N.I.2) but none is relevant to these Regulations.

## **Amendments to the Enterprise and Regulatory Reform Act 2013**

2.—(1) Part 3 of Schedule 4 to the 2013 Act (Competition and Markets Authority: the CMA panel) is amended as follows.

(2) In paragraph 35 (membership of CMA panel)(a)—

- (a) in sub-paragraph (1), omit paragraph (e),
- (b) in sub-paragraph (2), for “(e)” substitute “(d)”, and
- (c) in sub-paragraph (3), in the definition of “specialist utility functions”, after paragraph (d) insert—

“(da) an appeal under article 14B of the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1));

(db) an appeal under article 14B of the Gas (Northern Ireland) Order 1996 (SI 1996/275 (NI 2));”.

(3) In paragraph 48 (performance of functions of chair with respect to constitution etc of CMA group)(b), in sub-paragraph(4)(c), after sub-paragraph (ii) insert—

“(iia) Schedule 5A to the Electricity (Northern Ireland) Order 1992 (SI 1992/231 (NI 1));

(iib) Schedule 3A to the Gas (Northern Ireland) Order 1996 (SI 1996/275 (NI 2));”.

(4) In paragraph 51 (requirement to make rules of procedure for certain groups), in sub-paragraph (6)(c), omit sub-paragraphs (v) and (vii).

## **Transitional and saving provisions in relation to references to the CMA under the Electricity (Northern Ireland) Order 1992 and membership of CMA groups**

3.—(1) The following provisions apply notwithstanding any amendment of any provision of the 2013 Act made by these Regulations.

(2) Paragraphs (3) to (5) apply where the Authority has made a reference under Article 15 of the Electricity Order which is in progress immediately before the operative date.

(3) Any persons who are, immediately before the operative date, members of a group constituted under Schedule 4 to the 2013 Act for the purpose of carrying out functions of the CMA in relation to the reference mentioned in paragraph (2) are to continue as members of the group on and after the operative date for the purpose of carrying out those functions.

(4) Any persons who are, immediately before the operative date, members of the CMA panel appointed for the purpose set out in paragraph 35(1)(e) of the 2013 Act are to continue as members of the CMA panel for the purpose of being available for selection as members of a group constituted to carry out functions of the CMA in relation to the reference mentioned in paragraph (2).

(5) The provisions of paragraphs 51 to 53 of Schedule 4 to the 2013 Act are to apply in respect of a group constituted under Schedule 4 to the 2013 Act for the purpose of carrying out functions of the CMA in relation to the reference mentioned in paragraph (2) as though that group were a special reference group.

(6) For the purposes of this regulation, a reference made by the Authority under Article 15 of the Electricity Order is in progress immediately before the operative date if the Authority made the reference before that date but—

- (a) the CMA has not made a report on the reference before that date; or
- (b) the CMA has made a report on the reference before the operative date but Article 17 of that Order applies to the report and, as at that date, any action which the CMA is required

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(a) Paragraph 35(1) was amended by paragraph 2 (2) of Schedule 5 to the Financial Services (Banking Reform) Act 2013.

(b) Paragraph 48(4) was amended by paragraph 2(4).of Schedule 5 to the Financial Services (Banking Reform) Act 2013.

or permitted to take under Article 17A of that Order in connection with the reference has not yet been taken(a).

### **Transitional and saving provisions in relation to references to the CMA under the Gas (Northern Ireland) Order 1996 and membership of CMA groups**

4.—(1) The following provisions apply notwithstanding any amendment of any provision of the 2013 Act made by these Regulations.

(2) Paragraphs (3) and (4) apply where the Authority has made a reference under Article 15 of the Gas Order which is in progress immediately before the operative date.

(3) Any persons who are, immediately before the operative date, members of a group constituted under Schedule 4 to the 2013 Act for the purpose of carrying out functions of the CMA in relation to the reference mentioned in paragraph (2) are to continue as members of the group on and after the operative date for the purpose of carrying out those functions.

(4) The provisions of paragraphs 51 to 53 of Schedule 4 to the 2013 Act are to apply in respect of a group constituted under Schedule 4 to the 2013 Act for the purpose of carrying out functions of the CMA in relation to the reference mentioned in paragraph (2) as though that group were a special reference group.

(5) For the purposes of this regulation, a reference made by the Authority under Article 15 of the Gas Order is in progress immediately before the operative date if the Authority made the reference before that date but—

- (a) the CMA has not made a report on the reference before that date; or
- (b) the CMA has made a report on the reference before the operative date but Article 17 of that Order applies to the report and, as at that date, any action which the CMA is required or permitted to take under Article 17A of that Order in connection with the reference has not yet been taken.

*Jo Swinson*

Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs  
8th January 2015

Department for Business, Innovation and Skills

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make amendments to Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (c. 24). Part 3 of Schedule 4 contains provisions dealing with the constitution of and procedure for groups of independent panel members of the Competition and Markets Authority (“the CMA”) carrying out certain functions of the CMA, including functions in respect of appeals and references from decisions of utility regulators. The amendments made to Schedule 4 by these Regulations are consequential on changes to the system for modifications to gas and electricity licences in Northern Ireland made by the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 1) (“the NI Regulations”).

The NI Regulations amend the powers of the Northern Ireland Authority for Utility Regulation (“the Authority”) to modify the licence conditions of gas and electricity licensees. The NI Regulations replace the existing powers and procedures in the Gas (Northern Ireland) Order 1996

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(a) Articles 17 and 17A of the Electricity (Northern Ireland) Order 1992 are being revoked by regulation 4(2) of the Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 but saved by regulation 6 of those Regulations for references to the Competition and Markets Authority made before 6th February 2015.

(S.I. 1996/275 (N.I.2)) (“the Gas Order”) and the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) (“the Electricity Order”), and provide a right for specified persons to appeal to the CMA following a decision by the Authority to modify the conditions of a gas or electricity licence.

The NI Regulations implement requirements of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC(a) (“the Electricity Directive”) and Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC(b) (“the Gas Directive”). In particular, Article 37(17) of the Electricity Directive and Article 41(17) of the Gas Directive require the provision of an appropriate appeals mechanism. The Electricity Directive and Gas Directive are part of a package of European Union energy measures collectively referred to as the “Third Package”.

Regulation 2 makes consequential amendments to Part 3 of Schedule 4 to the Enterprise and Regulatory Reform Act 2013 to reflect the fact that under the Gas Order and Electricity Order, as amended by the NI Regulations, regulatory references to the CMA in respect of decisions of the Authority are replaced by appeals and that such appeals are to be heard by groups of CMA panel members.

Regulations 3 and 4 make transitional and saving provision in relation to on-going references to the CMA made by the Authority under the Gas Order and Electricity Order.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen. As these Regulations make amendments which are consequential on the transposition made by the NI Regulations and do not themselves directly transpose any European requirements, no transposition note has been prepared.

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(a) OJ No L 211, 14.8.2009, p. 55.  
(b) OJ No L 211, 14.8.2009, p. 94.







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