



STATUTORY INSTRUMENTS.

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EUROPEAN COMMUNITIES (ENERGY END-USE EFFICIENCY AND
ENERGY SERVICES) REGULATIONS 2009

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EUROPEAN COMMUNITIES (ENERGY END-USE EFFICIENCY AND
ENERGY SERVICES) REGULATIONS 2009

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EUROPEAN COMMUNITIES (ENERGY END-USE EFFICIENCY AND ENERGY SERVICES) REGULATIONS 2009

I, EAMON RYAN, Minister for Communications, Energy and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006¹, hereby make the following Regulations:

PART 1

GENERAL

Citation.

1. (1) These Regulations may be cited as the European Communities (Energy End-use Efficiency and Energy Services) Regulations 2009.

Interpretation.

2. (1) In these Regulations—

“Act of 1999” means the Electricity Regulation Act 1999 (No. 23 of 1999);

“Act of 2002” means the Gas (Interim) (Regulation) Act 2002 (No. 10 of 2002);

“advanced meter” means an individual meter, and its associated communications and information technology systems, that accurately reflects an individual final customer’s energy usage and provides effective information on time of use of energy;

“Advisory Report” has the meaning assigned to it in Regulation 2 of the Regulations of 2006;

“Annex” means an annex to the Directive;

“Article” means an Article of the Directive;

“biomass” means the biodegradable fraction of products, waste and residues from biological origin from agriculture (including vegetal and animal substances), forestry and related industries including fisheries and aquaculture, as well as the biodegradable fraction of industrial and municipal waste;

“BER assessment” has the meaning assigned to it in Regulation 2 of the Regulations of 2006;

¹OJ No. L 114, 27.4.2006, p. 64

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 22nd December, 2009.

“BER Certificate” has the meaning assigned to it in Regulation 2 of the Regulations of 2006;

“Building Energy Rating” has the meaning assigned to it in Regulation 2 of the Regulations of 2006;

“Commission” means the Commission for Energy Regulation;

“Directive” means Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006¹;

“Display Energy Certificate” has the meaning assigned to it by Regulation 2(1) (inserted by Regulation 3 of the European Communities (Energy Performance of Buildings) (Amendment) (No. 2) Regulations 2008 (S.I. No. 591 of 2008)) of the Regulations of 2006;

“distribution system operator” means—

(a) in relation to natural gas, the holder of a licence granted under section 16(1)(d) (inserted by Regulation 24 of the European Communities (Internal Market in Natural Gas) (BGÉ) Regulations 2005 (S.I. No. 760 of 2005)) of the Act of 2002, and

(b) in relation to electricity, the holder of a licence granted under section 14(1)(g) of the Act of 1999;

“energy” means all forms of commercially available energy, including energy in the form of electricity, natural gas (including liquefied natural gas), liquefied petroleum gas, fuel for heating and cooling (including district heating and cooling), coal and lignite, peat, transport fuels (excluding aviation and maritime bunker fuels) and biomass;

“energy audit” means a systematic procedure to obtain adequate knowledge of the existing energy consumption profile of a building or group of buildings, of an industrial operation or installation or of a private or public service, to identify and quantify cost effective energy savings opportunities and report the findings;

“energy distributor” means a person, other than a distribution system operator or transmission system operator, that transports energy with a view to its delivery to final customers and to distribution stations that sell energy to final customers and subject to the foregoing, includes energy undertakings;

“energy efficiency” means a ratio between an output of performance, service, goods or energy and an input of energy;

“energy efficiency improvement” means an increase in energy end-use efficiency as a result of technological, behavioural or economic changes;

“energy efficiency improvement measure” means any action, including provision of information, that leads to verifiable and measurable or estimable energy efficiency improvement;

“energy efficiency improvement programme” means an activity focussing on groups of final customers and that normally lead to verifiable and measurable or estimable energy efficiency improvement;

“energy performance contracting” means a contractual arrangement between the beneficiary and the provider (normally an energy services company) of an energy efficiency improvement measure, where investments in that measure are paid for in relation to a contractually agreed level of energy efficiency improvement;

“energy service” means the physical benefit, utility or good derived from a combination of energy, with energy efficient technology or with action, or both, which may include the operations, maintenance and control necessary to deliver the service, which is delivered on the basis of a contract and in normal circumstances has proven to lead to verifiable and measurable or estimable energy efficiency improvement or primary energy savings, or both;

“energy services company (ESCO)” means a person that delivers energy services or other energy efficiency improvement measures in a final customer's facility or premises, and accepts some degree of financial risk in so doing. The payment for the services delivered is based either wholly or in part on the achievement of energy efficiency improvements and on the meeting of the other agreed performance criteria;

“energy supplier” means an energy distributor, distribution system operator or retail energy sales company;

“energy undertaking” has the meaning assigned to it in section 2 (as amended by section 22 of the Act of 2002) of the Act of 1999;

“final customer” means a person purchasing energy for his or her own use;

“financial instruments for energy savings” means all financial instruments such as funds, subsidies, tax rebates, loans, third-party financing, energy performance contracting, guarantee of energy savings contracts, energy outsourcing and other related contracts that are made available to the market place by public or private bodies in order to cover partly or totally the initial project cost for implementing energy efficiency improvement measures;

“GWh” means gigawatt hours, a measure of energy usage;

“major renovation” shall be interpreted in accordance with recital 13 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings²;

“Minister” means Minister for Communications, Energy and Natural Resources;

“primary energy equivalent” means the process for making units of different energy streams more comparable by adjusting units of electrical energy use to take account of the conversion losses in electricity generation;

²OJ No. L 1, 4.1.2003, p. 65

“public body” has the meaning assigned to it in Regulation 10;

“Regulations of 2006” means European Communities (Energy Performance of Buildings) Regulations 2006 (S.I. No. 666 of 2006);

“retail energy sales company” means any person that sells energy to final customers, and subject to the foregoing, includes an energy undertaking;

“SEI” means Sustainable Energy Ireland;

“small energy supplier” means an energy distributor or retail energy sales company that—

- (a) distributes or sells less than 75 GWh of energy per annum, or the equivalent,
- (b) employs fewer than 10 full-time people, or the equivalent, or
- (c) has an annual turnover or balance sheet total not exceeding €2 million;

“transmission system operator” means the holder of a license granted under section 14(1)(e) of the Act of 1999;

“transport fuel” means any form of commercially available energy used to drive propulsion of a means of transport;

“Voluntary Agreement” means a voluntary agreement approved by the Minister under Regulation 17.

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Application.

3. (1) These Regulations apply to—

- (a) energy distributors,
- (b) distribution system operators,
- (c) retail energy sales companies,
- (d) providers of energy services and energy efficiency improvement measures, including energy audits, and
- (e) final customers.

(2) These Regulations apply to the Defence Forces only to the extent that they do not cause any conflict with the nature and primary aim of their activities. These Regulations do not apply to material used exclusively for military purposes.

(3) These Regulations do not apply to persons holding a greenhouse gas emissions permit granted in accordance with Regulation 6 of the European Communities (Greenhouse Gas Emissions Trading) Regulations 2004 (S.I. No. 437 of 2004).

PART 2

ENERGY EFFICIENCY SAVING TARGETS

Energy savings targets.

4. (1) The indicative energy savings target referred to in Article 4, aimed to be achieved by the State in the year 2016, is set at 13,117 GWh (primary energy equivalent).

(2) The intermediate indicative energy savings target referred to in Article 4, aimed to be to be achieved by the State in the year 2010, is set at 5,000 GWh (primary energy equivalent).

Monitoring and measurement.

5. (1) SEI shall, as appropriate, collate data on or measure, verify or estimate, the cumulative energy savings within the State from 1 January 2008, attributable to energy efficiency improvement measures or energy services, arising directly or indirectly from the actions of the State and shall report to the Minister on these savings as soon as may be each year from the above date until and including 2016.

(2) In complying with its obligations under paragraph (1), SEI shall have regard to the conversion factors set out in Annex II, unless in its view other conversion factors are more appropriate, and to the general framework for the measurement and verification of energy savings set out in Annex IV.

(3) Where conversion factors, other than those specified in Annex II are used by SEI, this shall be noted in the report referred to in paragraph (1).

Provision of information by energy suppliers.

6. (1) SEI may request that an energy supplier provide to it, not more than once each year, aggregated statistical information on that energy supplier's final customers, including such detail and in such format as SEI may specify. An energy supplier shall comply with a request made under this paragraph.

(2) In making a request pursuant to paragraph (1), SEI—

(a) shall request—

(i) such information that, in its view, is sufficient to enable it to properly design and implement energy efficiency improvement programmes and to promote and monitor energy services and other energy efficiency improvement measures, and

- (ii) current information on final customer consumption, including, where applicable, load profiles, customer segmentation and geographical location of customers,
- (b) may request historic information, of a similar character to that specified in subparagraph (a), and
- (c) shall preserve the integrity and confidentiality of information that is either of private character or commercially sensitive.

(3) Where an energy supplier fails to comply in full with a request under paragraph (1) within a period of 6 weeks, or such other longer period as SEI may specify in the request, SEI may apply to the High Court for an order directing the energy supplier concerned to comply with the request.

PART 3

ENERGY SERVICES

Financial instruments for energy savings.

7. (1) SEI shall ensure that model contracts are made available for the use of providers and users of financial instruments for energy savings, in connection with the procurement by those users of energy services and other energy efficiency improvement measures. SEI shall promote the availability of these contracts.

Energy audits.

8. (1) SEI shall monitor the market availability and quality of energy audits to all classes of final customer of energy, including, in relation to the residential sector, energy audit tools made available on the internet. Where it is of the opinion that such audits are not generally available to a particular class of final customer, or are not available to a sufficient quality, it shall inform the Minister.

(2) Where the Minister is satisfied, on the advice of SEI, that energy audits are not generally available to a particular class of final customer, or are not available to a sufficient quality, he or she shall make appropriate arrangements to promote or support their provision or otherwise ensure their availability and quality.

(3) A BER assessment corresponds to an energy audit for the purposes of this Regulation.

Registration of energy auditors.

9. (1) The competent authority shall, within one year of the date of its appointment, establish a system for the registration of persons conducting energy audits and shall consult publicly before establishing such a system.

(2) A person registered with the competent authority under this Regulation shall be known as a “Registered Energy Auditor”.

(3) A person who is not a Registered Energy Auditor and who purports to be such commits an offence.

(4) The competent authority may, with the consent of the Minister, and after public consultation—

- (a) specify minimum qualifications and any other requirements necessary to be a Registered Energy Auditor,
- (b) specify matters to be addressed by a Registered Energy Auditor in conducting an energy audit and requirements in relation to those matters,
- (c) publish guidelines on best practice in the conduct of an energy audit, and
- (d) establish a code of conduct to be complied with by Registered Energy Auditors.

(5) The competent authority may, with the consent of the Minister, charge a reasonable fee for registration as a Registered Energy Auditor. In setting this fee, the competent authority shall seek to recover the cost to it of establishing, maintaining and promoting the registration system.

(6) The competent authority may refuse to register a person, or revoke a registration, as the case may be, under this Regulation, where a person—

- (a) does not possess the minimum qualifications or does not satisfy another requirement specified by the competent authority pursuant to paragraph 4(a),
- (b) fails to address the matters specified by the competent authority pursuant to paragraph 4(b) when conducting an energy audit,
- (c) fails to comply with a code of conduct established by the competent authority pursuant to paragraph 4(d), or
- (d) has otherwise acted in a manner likely to bring the system of registration established pursuant to this Regulation into disrepute.

(7) The Minister shall appoint a person the Minister considers suitably qualified to be the competent authority for the purposes of this Regulation. Notice of the appointment of the competent authority shall be published in the *Iris Oifigiúil*.

(8) The competent authority shall perform its functions in accordance with this Regulation and any guidance issued to it by the Minister.

(9) The Minister may withdraw the appointment of a person as the competent authority. Any such withdrawal shall be published in the *Iris Oifigiúil*.

PART 4

PUBLIC SECTOR

Designation as a public body.

10. (1) In this Part, “public body” means—

- (a) a Department of State,
- (b) a body, institution or office established under—
 - (i) the Constitution,
 - (ii) any enactment (other than the Companies Acts),
 - (iii) the Companies Acts, in pursuance of powers conferred by or under another enactment, and financed wholly or partly, whether directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government, or shares held by or on behalf of a Minister of the Government,
- (c) a recognised school or centre for education, as defined in section 2 of the Education Act 1998 (No. 51 of 1998),
- (d) Trinity College and the constituent universities of the National University of Ireland, as defined in section 3 of the Universities Act 1997 (S.I. No. 24 of 1997), and
- (e) a body designated in accordance with paragraph (2).

(2) A body, other than a public body within the meaning of subparagraph (a), (b) (c) or (d) of paragraph (1), that is financed principally from moneys provided by the Oireachtas or by a public body, may—

- (a) on application to SEI, or as a condition of its participation in an energy efficiency improvement programme for public bodies that is operated or managed by SEI, be designated by SEI, or
- (b) after consultation with the body concerned, be designated by the Minister,

as a public body for the purposes of this Part.

Exemplary role of public bodies.

11. (1) Public bodies shall fulfill an exemplary role with regard to energy efficiency, with the aim of achieving the energy savings target established in paragraph (3).

(2) Without prejudice to the generality of paragraph (1), public bodies shall fulfill their exemplary role through their use of energy audits pursuant to Regulation 13, energy efficient procurement pursuant to Regulation 14, energy

efficient buildings pursuant to Regulation 15 and their energy management practices, use of financial instruments for energy savings, and other energy services and other cost effective actions relevant to these Regulations.

(3) An indicative energy savings target for all public bodies to be achieved in the year 2016 is set at 1,500 GWh (primary energy equivalent). This target is a subset of the targets referred to in Regulation 4.

(4) SEI shall periodically publish details of the exemplary role and actions of public bodies with regard to energy efficiency. Public bodies shall cooperate with SEI in this regard.

(5) SEI shall facilitate and enable the exchange of information on best practice on energy efficiency between public bodies, both within the State and internationally. SEI shall cooperate with the European Commission concerning the Commission's obligations under Article 7(3).

Public sector exemplar measures 1 — general measures.

12. (1) SEI shall, with the approval of the Minister and the Minister for Finance, publish guidelines on the use by public bodies of financial instruments for energy savings, including energy performance contracting, including in particular, requirements that such instruments stipulate the achievement of measurable and pre-determined energy savings. SEI shall promote the use of such instruments to public bodies.

(2) From 1 January 2011, a public body shall include in its annual reports published after that date, a statement describing the actions it is taking, or has taken, to improve its energy efficiency and an assessment of the energy savings arising from those actions. SEI shall specify the format of a statement and assessment under this paragraph.

Public sector exemplar measures 2 — energy audits.

13. (1) A public body, within the meaning of Regulation 10(1)(a) and (b), shall, within 3 years of the establishment of the registration system referred to in Regulation 9, and within each subsequent 5 year period, engage a suitably qualified person to conduct an energy audit of its energy use.

(2) A public body referred to in paragraph (1) shall require the person conducting the energy audit to have regard to any specifications, requirements or guidelines produced by SEI pursuant to this paragraph or by the competent authority under Regulation 9(4)(b) or (c). This paragraph does not affect the obligations of a Registered Energy Auditor under Regulation 9.

(3) The report of an energy audit conducted pursuant to paragraph (1) shall include advice, appropriate to the public body concerned, on how the recommendations of the report may be financed through financial instruments for energy savings.

(4) SEI may request details from a public body of the results of its energy audits or request a copy of the report of its energy audits and a public sector body shall cooperate with such requests.

(5) A public body may, at its discretion, invoke an exemption from the requirements of paragraph (1) in respect of a building for which it holds a valid BER Certificate and Advisory Report or Display Energy Certificate.

(6) SEI shall promote the benefits of energy audits to public bodies and shall, in particular, highlight the additional benefits of an energy audit, not provided by a BER assessment and Advisory Report or Display Energy Rating Certificate.

Public sector exemplar measures 3 — procurement.

14. SEI shall, with the approval of the Minister and the Minister for Finance, given after consultation with the Minister for the Environment, Heritage and Local Government, publish guidelines on energy efficiency considerations that should be considered by public bodies when devising assessment criteria for procurement of goods and services. These guidelines shall include a summary of those bodies' obligations under Regulation 15.

Public sector exemplar measures 4 — buildings.

15. (1) A public body shall only purchase or lease a building, or a portion of a building, for its own use, where that building has a Building Energy Rating equal to or better than—

- (i) from 1 January 2012, B3, and
- (ii) from 1 January 2015, A3.

(2) Paragraph (1) does not apply in respect of—

- (a) a purchase or first letting of a building by a public body where that purchase or letting is made before the relevant date specified in that paragraph, or
- (b) a building not intended for human occupancy for extended periods, such as a warehouse or store.

(3) A public body may, at its discretion, invoke an exemption from the requirements of paragraph (1), where—

- (a) it is renewing or extending a lease for a building occupied by it immediately prior to such renewal or extension,
- (b) it is leasing a building or a portion of a building owned by another public sector body or is sub-letting from another public body,
- (c) it is purchasing or leasing a protected structure or proposed protected structure, or a national monument, or a portion of such structure, or
- (d) it has established that no building that complies with paragraph (1) is available that is satisfactory in terms of location, size, specification or price (having regard to the energy costs likely to be associated with a particular building).

(4) In this Regulation—

“protected structure” and “proposed protected structure” have the meaning assigned to them in section 2 of the Planning and Development Act 2000 (No. 30 of 2000);

“national monument” means a national monument for the purposes of the National Monuments Acts 1930 to 2004, including a recorded monument under section 12 of the National Monuments (Amendment) Act 1994 (No. 17 of 1994) or a registered historic monument under section 5 of the National Monuments (Amendment) Act 1987 (No. 17 of 1987).

PART 5

PROMOTION OF ENERGY EFFICIENCY BY ENERGY SUPPLIERS

Requirements on energy suppliers.

16. (1) (a) This Regulation does not apply to small energy suppliers.

(b) In this Regulation, “energy supplier” excludes distribution system operators.

(2) The Minister may require an energy supplier, or a particular class of energy supplier, to—

(a) ensure the offer and promotion to its final customers of competitively priced energy services,

(b) ensure the availability to and promotion to its final customers of competitively priced energy audits,

(c) ensure the availability to and promotion to its final customers of competitively priced energy efficiency improvement measures, or

(d) contribute to the Energy Efficiency Fund at a rate specified by the Minister.

(3) The Minister shall not place a requirement under paragraph (2)(d) on an energy undertaking.

(4) Subject to paragraph (5), the Minister may issue or publish, as the case may be, a notice placing at least one of the requirements specified in paragraph (2) on an energy supplier or on a particular class of energy supplier, as the case may be. The determination of which requirement is to be placed on a particular energy supplier or class of supplier is at the discretion of the Minister.

(5) An energy supplier or class of energy supplier participating in an approved Voluntary Agreement under Regulation 17 is exempted from paragraph (4). That exemption ceases immediately if the Minister revokes approval for the Voluntary Agreement or the Voluntary Agreement ceases to function.

(6) Notwithstanding paragraphs (4) and (5), all energy suppliers shall promote energy end use efficiency to their final customers, with an emphasis on information relevant to the form of energy provided by that energy supplier and how that energy is typically used.

(7) The Minister shall monitor an energy supplier's compliance with a notice issued or published under paragraph (4) and with paragraph (6). An energy supplier shall cooperate and provide the Minister with all reasonable information requested by him or her in this regard.

(8) If, in the opinion of the Minister, an energy supplier has not satisfactorily complied with a notice issued or published by him or her under paragraph (4), or with paragraph (6), the Minister may issue a direction to the energy supplier concerned specifying the remedial action the energy supplier shall take and the timeframe for compliance with the direction.

(9) Remedial action under paragraph (8) may include similar, alternative or additional actions to be taken by the energy supplier concerned to comply with the requirement specified in the notice issued or published under paragraph (4), or with paragraph (6) or the placing of alternative or additional requirements from those specified in paragraph (2) on the energy supplier concerned.

(10) An energy supplier that is aggrieved by a direction issued under paragraph (8) may, within the period of 30 days beginning on the day on which the direction is served on it, appeal to the High Court against the direction and in determining the appeal the judge may make any order he or she considers appropriate, including confirming the direction with or without modification, or cancelling the direction.

(11) Where an energy supplier fails to comply in full with a direction issued by the Minister under paragraph (8) within the timeframe specified, or fails to cooperate with the Minister, or provide the Minister with all reasonable information requested by him or her, under paragraph (7), the Minister may apply to the High Court for an order directing the energy supplier concerned to comply with the direction, to cooperate or to provide the information requested.

(12) The Minister shall determine the rate of an energy supplier's contribution to the Energy Efficiency Fund. This determination shall take account of the estimated cost, in the opinion of the Minister, to the energy supplier concerned or to a particular class of energy supplier, of complying with a requirement under subparagraph (a), (b) or (c) of paragraph (2). The Minister shall invite submissions from the energy supplier concerned or, at his or her discretion, from the class of energy supplier concerned, before making a determination under this paragraph.

(13) The Minister may specify requirements in relation to the energy services, energy audits and energy efficiency improvement measures to be offered, made available or promoted under paragraph (2), including the manner in which those services, audits or measures shall be delivered. Before making a specification pursuant to this paragraph, the Minister shall publicly invite submissions.

(14) An energy supplier in receipt of a notice issued under paragraph (4), or addressed in a notice published under paragraph (4), other than in relation to subparagraph (d) of paragraph (2), may itself offer, make available or promote the energy services, energy audits, or energy efficiency improvement measures, as the case may be, or may make arrangements with another person to do so on its behalf. Such arrangements with another person shall not detract from the energy supplier's obligations under this Regulation and all communications concerning this Regulation shall continue to be with the energy supplier.

(15) An energy supplier opting to make arrangements with another person to offer, make available or promote on its behalf energy services, energy audits, or energy efficiency improvement measures, as the case may be, shall publicly invite interested persons to tender for this business.

(16) A notice published under paragraph (4) shall be published in the *Iris Oifigiúil* and in at least 2 newspapers published in and circulating in the State.

(17) The Minister may appoint another person to perform the functions of the Minister under this Regulation and Regulation 17 on such terms and conditions as the Minister may specify and in accordance with any guidance the Minister may issue to the person so appointed.

(18) A person appointed under paragraph (17) shall have all such powers as are conferred on the Minister under this Regulation and Regulation 17, unless otherwise specified by the Minister in the terms of the appointment.

(19) The Minister may revoke an appointment under paragraph (17).

(20) Where the Minister makes an appointment under paragraph (17), or revokes such appointment under paragraph (19), he or she shall publish details of such appointment or revocation in the *Iris Oifigiúil* and shall lay details before each House of the Oireachtas, including the terms and conditions, if any, of that appointment.

(21) In this Regulation, "class of energy supplier" means—

- (a) all energy distributors or all retail energy companies,
- (b) all energy distributors or all retail energy companies doing business in a particular form of energy,
- (c) all energy distributors or all retail energy companies doing business in a particular region or locality, or
- (d) all energy distributors or all retail energy companies that distribute or sell a volume of energy or that employ a number of full time staff, or the equivalent, above or below a particular threshold specified by the Minister in a notice published pursuant to paragraph (4).

Voluntary Agreements by energy suppliers.

17. (1) One or more energy suppliers may establish a Voluntary Agreement for the purpose of promoting energy efficiency to its or their final customers and as an alternative to the requirements of Regulation 16(2).

(2) A Voluntary Agreement shall clearly state—

- (a) the energy saving objectives of the Agreement, quantified and with appropriate indications of timescale for achievement,
- (b) the energy efficiency improvement measures the parties to the Agreement will implement to achieve the objectives of the Agreement,
- (c) its monitoring, measuring and reporting procedures,
- (d) its provisions for implementing alternative or additional measures, or both, if the objectives of the Agreement are not achieved or are not likely to be achieved, and
- (e) in respect of a Voluntary Agreement involving more than one energy supplier, the name of the energy supplier or other person who shall act as the principal point of contact with the Minister on behalf of all parties to the Agreement.

(3) A Voluntary Agreement shall be submitted by the energy supplier concerned to the Minister for approval. Prior to such submission, the energy supplier concerned shall publish a notice of its intentions and publicly invite submissions. The Minister may specify the format of such notices and the manner in which they shall be published.

(4) The Minister may approve a Voluntary Agreement if he or she is satisfied that paragraphs (2) and (3) have been complied with and that the Agreement is likely to have an effect equivalent to placing one or more of the requirements of Regulation 16(2) on the energy supplier concerned.

(5) The Minister may revoke his or her approval of a Voluntary Agreement where, in his or her opinion—

- (a) the Agreement is not having, or is not likely to have, an effect equivalent to placing one or more of the requirements of Regulation 16(2) on the energy supplier concerned,
- (b) the energy supplier concerned is not complying with the stated terms of the Voluntary Agreement,
- (c) the energy supplier concerned has failed to comply with paragraph (7) or to cooperate with the Minister in accordance with paragraph (8), or
- (d) the Agreement has ceased to function effectively or no longer exists.

(6) Before issuing a revocation under paragraph (5), the Minister shall inform the energy supplier concerned of his or her opinion and invite a submission.

(7) The energy supplier concerned shall submit a report to the Minister as soon as may be each year after the approval of a Voluntary Agreement under paragraph (4), or in accordance with such other frequency as may be specified by the Minister, detailing such matters as may be specified by the Minister in his or her approval.

(8) The Minister shall monitor an approved Voluntary Agreement and all parties to a Voluntary Agreement shall cooperate with the Minister in this regard and provide any reasonable information requested by the Minister.

(9) In this Regulation “energy supplier concerned” means, in respect of a Voluntary Agreement—

(a) involving one energy supplier, that supplier, or

(b) involving more than one energy supplier, the name of the energy supplier or other person identified in the Voluntary Agreement as the principal point of contact with the Minister on behalf of all parties to the Agreement, as required by paragraph (2)(e).

Energy Efficiency Fund.

18. (1) The Minister may, with the consent of the Minister for Finance, establish an Energy Efficiency Fund (“Fund”).

(2) The Fund shall be managed and controlled by the Minister.

(3) The Minister shall pay into the Fund the amount of any contribution from an energy supplier under a notice issued or published by the Minister under Regulation 16(4).

(4) A statement of moneys paid into and out of the Fund shall be shown in a special note to the Appropriation Account under the Communications, Energy and Natural Resources Vote.

(5) The objectives of the Fund shall be to support the delivery of energy efficiency improvement programmes and other energy efficiency improvement measures and to promote the development of a market for energy efficiency improvement measures.

(6) Without prejudice to paragraph (6), the Fund shall promote energy audits and financial instruments for energy savings.

(7) The Fund may, with the consent of the Minister for Finance, directly or through such other person as the Minister may specify, issue or provide grants, loans, financial guarantees and such other types of financial support as may be determined by the Minister, in order to further its objectives, as outlined in paragraphs (6) and (7).

(8) Grants, loans, financial guarantees and other types of financial support issued or provided under paragraph (8), may be so issued or provided through an energy efficiency improvement programme and subject to the terms and conditions of that programme.

(9) The Minister, or such other person as the Minister may nominate, may publicly invite proposals to avail of moneys or other financial supports from the Fund. This invitation shall outline the criteria, consistent with the objectives of the Fund, to be used to assess proposals. All providers of energy efficiency improvement measures shall be eligible to submit proposals in response to an invitation under this paragraph.

(10) Without prejudice to any contractual arrangements entered into by the Fund, the Minister, with the consent of the Minister for Finance, may terminate the Fund at any time.

(11) The Fund shall complement, and not compete with, commercially financed energy efficiency improvement measures.

PART 6

AMENDMENTS TO ELECTRICITY REGULATION ACT 1999

Amendments to Act of 1999.

19. The Act of 1999 is amended by inserting after section 9K (inserted by section 14 of the Energy (Miscellaneous Provisions) Act 2006 (No. 40 of 2006)) the following:

“Energy efficient tariffs.

9L. The Commission shall, through licence conditions, place a requirement on energy undertakings to ensure that their tariffs do not create incentives that may unnecessarily increase the volume of distributed or transmitted energy.

Informative billing.

9M. (1) The Commission shall, where it considers it appropriate, having regard to subsection (2), direct an energy undertaking to comply with the requirements of subsection (5), or part thereof, from such date and in such manner as it may specify in that direction.

(2) In determining whether to issue a direction under subsection (1), the Commission shall have regard to the likely costs to the undertaking concerned of complying with such a direction and the likely energy efficiency benefits to final customers of the actions required of the undertaking concerned.

(3) Before issuing a direction under subsection (1), the Commission shall consult publicly.

(4) Nothing in this section shall affect the responsibilities or duties of an energy undertaking under the Data Protection Acts 1988 and 2003.

(5) The Commission may, by direction under subsection (1), require an energy undertaking to do any or all of the following—

- (a) provide bills to its final customers, based on actual energy use, at such frequency as may be specified by the Commission to enable those customers to regulate their own energy consumption in a timely manner,
- (b) provide such information in or with a bill to its final customers that, in the opinion of the Commission provides a comprehensive account of the customer's current energy costs,
- (c) present bills to its final customers in a manner which, in the opinion of the Commission, is clear and easily understandable,
- (d) provide any or all of the following information in or with its bills, contracts, or other relevant communications, in a manner which, in the opinion of the Commission, is clear and understandable—
 - (i) current actual prices and actual consumption of energy,
 - (ii) a comparison of the final customer's current energy consumption with that customer's consumption for the same period in the previous year, in graphic form where the Commission considers it practicable,
 - (iii) a comparison of the final customer's energy use with the energy use of an average normalised or benchmarked final customer, or
 - (iv) sources of information on available energy efficiency improvement measures, comparative customer profiles or objective technical specifications for energy-using equipment, including contact information and website addresses.

(6) The Commission may request that an energy undertaking provide such information, and in such format, as the Commission considers necessary for the purposes of determining whether to issue a direction under subsection (1), or for the purposes of monitoring compliance with a direction so issued.

(7) A reference to a "bill" in this section includes a bill provided or made available to the final customer in electronic format.

(8) An energy undertaking that fails to comply with a direction issued by the Commission under subsection (1), or with a request under subsection (6), commits an offence and is liable on summary conviction to a fine not exceeding €5,000.

(9) Where a direction under subsection (1) or a request under subsection (6) is to be issued or given to an energy undertaking, it shall be addressed to the undertaking and shall be given to the undertaking in one of the following ways—

- (a) by delivering it to the energy undertaking concerned,
- (b) by leaving it at the address at which the energy undertaking concerned carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the energy supplier concerned at the address at which the undertaking carries on business,
- (d) if an address for the service of a direction or request has been furnished by the energy undertaking concerned, by leaving it at, or sending it by pre-paid registered post addressed to the energy undertaking at, that address, or
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the energy undertaking concerned carries on business or, if an address for the service of a direction or request has been furnished by the energy undertaking concerned, that address, but only if—
 - (i) the sender's—
 - (I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
 - (II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction or request, and
 - (ii) it is also given in one of the other ways mentioned in any of the preceding paragraphs.

(10) For the purposes of subsection (9), a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.”.

PART 7

METERING AND BILLING FOR NON-REGULATED ENERGY SECTOR

Provision of advanced meters by providers of certain non-regulated forms of energy.

20. (1) This Regulation does not apply to small energy suppliers.
- (2) This Regulation applies only to retail energy sales companies providing final customers with domestic hot water or district heating or cooling.
- (3) Having regard to paragraphs (1) and (2), SEI shall monitor the markets for the commercial provision of domestic hot water and district heating or cooling. SEI shall advise the Minister if any retail energy sales company is likely to come within the scope of this Regulation.
- (4) SEI shall, where directed by the Minister, assess, in accordance with paragraph (5), the feasibility of requiring a retail energy sales company to—
- (a) provide all of its final customers with advanced meters,
 - (b) provide a final customer with an advanced meter when that customer's existing meter is being replaced,
 - (c) provide a final customer with an advanced meter in respect of a new building, being provided with district heating or cooling or domestic hot water by that retail energy sales company for the first time, or
 - (d) provide a final customer with an advanced meter in respect of a building undergoing major renovation.
- (5) An assessment conducted under paragraph (4) shall consider whether it is technically possible, financially reasonable and proportionate in relation to the potential energy savings for the final customers concerned, to require that an advance meter be provided in the circumstances specified in subparagraph (a), (b), (c) or (d) of that paragraph.
- (6) SEI shall submit a report to the Minister of its assessment under paragraph (4).
- (7) Where a report under paragraph (6) concludes that it is feasible for a retail energy sales company to provide an advanced meter in any of the circumstances specified in subparagraph (a), (b), (c) or (d) of paragraph (4), the Minister shall publish that report and invite submissions from interested parties.
- (8) Following consideration of the submissions received under paragraph (7), the Minister shall determine whether, in his or her opinion, it is technically possible, financially reasonable and proportionate in relation to the potential energy savings for the final customer concerned, to require that an advance meter be provided by a particular retail energy sales company to its final customers.

(9) Where the Minister determines that advanced meters should be provided by a particular retail energy sales company, he or she shall notify the company concerned in writing.

(10) A retail energy sales company shall comply with a determination notified to it under paragraph (9) and shall provide such meters to its final customers in accordance with the determination and at a price or on such financial terms which, in the opinion of the Minister, is reasonable and appropriate.

(11) Where a retail energy sales company fails to comply with a determination notified to it under paragraph (10), within the timeframe specified in that notification, the Minister may apply to the High Court for an order directing the retail energy sales company concerned to comply with the determination.

Informative billing by certain non-regulated energy suppliers.

21. (1) This Regulation applies to retail energy sales companies only.

(2) This Regulation does not apply to—

(a) a small energy supplier, or

(b) an energy undertaking.

(3) The Minister shall, where he or she considers it appropriate, having regard to paragraphs (4) and (5), direct a retail energy sales company to comply with the requirements of paragraph (7), or part thereof, from such date and in such manner as he or she may specify in that direction.

(4) In determining whether to issue a direction, the Minister shall have regard to the likely costs to the retail energy sales company concerned of complying with such a direction and the likely energy efficiency benefits to the final customer of the actions required of that retail energy sales company.

(5) Before issuing a direction, the Minister shall consult publicly.

(6) Nothing in this Regulation shall affect the responsibilities or duties of a retail energy sales company under the Data Protection Acts 1988 and 2003.

(7) The Minister may, by direction, require a retail energy sales company to do any or all of the following—

(a) provide bills to its final customers, based on actual energy use, at such frequency as may be specified by the Minister, to enable those customers to regulate their own energy consumption in a timely manner,

(b) provide such information in or with a bill to its final customers that, in the opinion of the Minister, provides a comprehensive account of the customer's current energy costs,

- (c) present bills to its final customers in a manner which, in the opinion of the Minister, is clear and easily understandable,
- (d) provide any or all of the following information in or with its bills, contracts, transactions, or receipts at its energy distribution stations, in a manner that, in the opinion of the Minister, is clear and understandable—
 - (i) current actual prices and actual consumption of energy,
 - (ii) a comparison of the final customer's current energy consumption with consumption for the same period in the previous year, in graphic form if practicable,
 - (iii) a comparison of the final customer's energy use with the energy use of an average normalised or benchmarked final customer, or
 - (iv) sources of information on available energy efficiency improvement measures, comparative customer profiles or objective technical specifications for energy-using equipment, including contact information and website addresses.

(8) The Minister may request that an energy supplier provide such information, and in such format, as he or she considers necessary for the purposes of determining whether to issue a direction, or for the purposes of monitoring compliance with a direction so issued.

(9) Where a retail energy sales company fails to comply with a direction under, or with a request under paragraph (8), within the timeframe specified in that direction or request, the Minister may apply to the High Court for an order directing the retail energy sales company concerned to comply with the direction or request.

(10) In this Regulation—

“bill” includes a bill provided or made available to the final customer in electronic format;

“direction” means a direction of the Minister under paragraph (3).

PART 8

ENFORCEMENT

Authorised officers.

22. (1) The Minister may appoint a person as an authorised officer for the purpose of—

- (a) monitoring or assessing compliance, generally or by a particular person, with any aspect of these Regulations, and in particular a notice, direction or determination under these regulation, or

(b) investigating if an offence under these Regulations has been committed and gathering evidence of that offence.

(2) A person appointed as an authorised officer under this Regulation shall be assumed to be appointed for the purposes of both subparagraphs (a) and (b) of paragraph (1), unless the warrant of appointment states otherwise.

(3) An authorised officer shall be furnished with a warrant of his or her appointment, and when exercising a power conferred on him or her under these Regulations shall, if requested by any person affected, produce the warrant of his or her appointment for inspection.

(4) An appointment under this Regulation shall be for a fixed period and may be revoked or extended by the Minister.

Powers of authorised officers.

23. (1) An authorised officer may, for the purposes of performing any of his or her functions under these Regulations—

- (a) subject to paragraph (3), enter into any place or premises which he or she has reasonable cause to believe contains records or information relevant to his or her functions and therein carry out such searches, inspections and examinations as he or she considers reasonable and necessary,
- (b) have a member of the Garda Síochána accompany him or her if the authorised officer has reasonable cause to apprehend any serious obstruction in the performance of any those functions,
- (c) take with him or her any other person or any equipment or materials required for any purpose for which the power of entry is being exercised,
- (d) make such examination and inquiry as may be necessary,
- (e) require the production of any record (and, in the case of information in non-legible form, to reproduce it in legible form) which in the opinion of the authorised officer is necessary for him or her to inspect, examine and copy or require that a copy of it or of any entry therein be provided to him or her,
- (f) remove and retain such records for such period as he or she reasonably considers to be necessary,
- (g) require any person whom he or she has reasonable cause to believe to be able to give relevant information, to answer such questions as he or she thinks fit to ask and to sign a declaration of the truth of the answers given,
- (h) direct that any place or premises or part thereof and anything therein shall be left undisturbed for so long as it is reasonably necessary,

- (i) secure for later inspection any place or premises or part of any place or premises,
 - (j) direct that any matter or thing not be moved from the premises without his or her consent,
 - (k) take any measurements, photographs or video recordings or make any sound, electrical or other recordings which he or she considers necessary,
 - (l) require any person to afford him or her such facilities and assistance within his or her control or responsibilities as are reasonably necessary, and
 - (m) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material to afford the authorised officer all reasonable assistance in relation to its use.
- (2) An authorised officer shall not enter a dwelling other than with the consent of the occupier, or in accordance with a warrant issued under paragraph (3).
- (3) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that information required by an authorised officer for the purposes of performing any of his or her functions is held at any place or premises, the judge may issue a warrant authorising the authorised officer, accompanied if the authorised officer considers it necessary by one or more than one other authorised officer or member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so required, to enter, if need be by reasonable force, the place or premises, and exercise all or any of the powers conferred on an authorised officer under these Regulations.
- (4) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her under these Regulations or a warrant under paragraph (3), or impedes the exercise by the authorised officer or member, as the case may be, of such power, or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the authorised officer or member pursuant to this Regulation, or in purported compliance with such request or requirement or in answer to such question gives information to the authorised officer or member that he or she knows to be false or misleading in any material respect, commits an offence.
- (5) Where an authorised officer or a member of the Garda Síochána believes, upon reasonable grounds, that a person has committed an offence under these Regulations, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(6) A person who falsely represents himself or herself to be an authorised officer commits an offence.

Prosecution of offences.

24. (1) Proceedings for an offence under these Regulations may be brought and prosecuted summarily by the Minister.

(2) Where an offence under these Regulations is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been committed with the consent or approval of, or to have been attributable to any wilful neglect on the part of, any person who, when the offence was committed, was a director, member of the committee of management or other controlling authority of the body concerned, or the manager, secretary or other officer of the body, that person shall also be deemed to have committed the offence and may be proceeded against and punished accordingly.

Penalties.

25. A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding €5,000.

Service of notices etc.

26. (1) Where a notice, direction or determination is required under these Regulations to be issued or given to an energy supplier, it shall be addressed to that supplier and shall be given to that supplier in one of the following ways—

- (a) by delivering it to the energy supplier concerned,
- (b) by leaving it at the address at which the energy supplier concerned carries on business,
- (c) by sending it by post in a pre-paid registered letter addressed to the energy supplier concerned at the address at which that supplier carries on business,
- (d) if an address for the service of a notice, direction or determination has been furnished by the energy supplier concerned, by leaving it at, or sending it by pre-paid registered post addressed to the energy supplier at, that address, or
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the energy supplier concerned carries on business or, if an address for the service of a notice, direction or determination has been furnished by the energy supplier concerned, that address, but only if—
 - (i) the sender's—
 - (I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or

(II) facsimile machine generates a message confirming successful transmission of the total number of pages of the notice, direction or determination, and

(ii) it is also given in one of the other ways mentioned in any of the preceding paragraphs.

(2) Paragraph (1) does not apply in respect of a notice published by the Minister pursuant to Regulation 16(4).

(3) For the purposes of paragraph (1), a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.



GIVEN under my Official Seal,
18 December 2009.

EAMON RYAN,
Minister for Communications, Energy and Natural Resources.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations transpose into Irish law Directive 2006/32/EC on Energy End Use Efficiency and Energy Services. The Regulations—

- set indicative energy efficiency savings targets for the years 2010 and 2016,
- set a specific higher indicative target for the public sector to demonstrate its exemplar role, as required by the Directive,
- place a number of obligations on public bodies relating to the use of energy audits, energy efficient public procurement and purchase or lease of energy efficient buildings by reference to the BER rating,
- establish a system for the registration of energy auditors in order to maintain the highest standards in the conduct of such audits and foster a high level of confidence among users of energy audits,
- allow the Minister to place obligations on energy suppliers to offer and promote energy services, energy audits and energy efficiency improvement measures to their customers,
- allow energy suppliers to propose to engage in voluntary measures as an alternative to obligations,
- allow for the establishment of an Energy Efficiency Fund which, subject to available resources, may make available grants, loans or other types of financial support,
- amend the Electricity Regulation Act 1999 to allow the Commission for Energy Regulation to place requirements on energy undertakings in relation to informative billing,
- provide that the Minister may order an assessment of the feasibility of smart metering for suppliers of domestic hot water or district heating or cooling, if a market for such services is deemed to have developed in Ireland,
- allow the Minister to place requirements on certain non-regulated energy suppliers in relation to informative billing, and
- provide for surveillance and enforcement of the provisions of these Regulations.

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