



STATUTORY INSTRUMENTS.

S.I. No. 463 of 2011



EUROPEAN COMMUNITIES (INTERNAL MARKET IN ELECTRICITY
AND GAS) (CONSUMER PROTECTION) REGULATIONS 2011

(Prn. A11/1655)

EUROPEAN COMMUNITIES (INTERNAL MARKET IN ELECTRICITY AND GAS) (CONSUMER PROTECTION) REGULATIONS 2011

I, PAT RABBITTE, 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 2009/72/EC of the European Parliament of the Council of Europe 13 July 2009¹ and Directive 2009/73/EC of the European Parliament of the Council of Europe 13 July 2009², hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations of 2011.

Interpretation

2. (1) In these Regulations—

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

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

“Authority” means Sustainable Energy Authority of Ireland;

“codes of practice” means codes of practice established and maintained under Regulation 6;

“Commission” means Commission for Energy Regulation;

“Commission Recommendation” means Commission Recommendation 98/257/EC of 30 March 1998³;

“customer charter” means a customer charter established and maintained under Regulation 5;

“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) (inserted by Regulation 16 of the European Communities

¹OJ No. L211, 14.08.2009, p.55

²OJ No. L211, 14.08.2009, p.94

³OJ No. L115, 17.04.1998, p.31

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 16th September, 2011.

(Internal Market in Electricity) Regulations 2005 (S.I. No. 60 of 2005)) of the Act of 1999;

“energy consumer checklist” has the meaning given to it in the Gas and Electricity Directives;

“final customer” means—

- (a) in relation to natural gas, a customer purchasing natural gas for his or her own use, and
- (b) in relation to electricity, a person being supplied with electricity at a single premises for consumption on those premises;

“Gas and Electricity Directives” means Directive 2009/72/EC of the European Parliament of the Council of Europe 13 July 2009¹ and Directive 2009/73/EC of the European Parliament of the Council of Europe 13 July 2009²;

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

“Regulations of 2005” means European Communities (Internal Market in Electricity) Regulations 2005 (S.I. No. 60 of 2005);

“supplier” means—

- (a) in relation to natural gas, the holder of a licence under section 16(1)(d) of the Act of 2002, and
- (b) in relation to electricity the holder of a licence under section 14(1)(b) or 14(1)(h) of the Act of 1999;

“universal design” has the meaning assigned to it by section 19A (inserted by section 52 of the Disability Act 2005 (No. 14 of 2005)) of the National Disability Authority Act 1999 (No. 14 of 1999);

“vulnerable customer” means a household customer who is—

- (a) critically dependent on electrically powered equipment, which shall include but is not limited to life protecting devices, assistive technologies to support independent living and medical equipment, or
- (b) particularly vulnerable to disconnection during winter months for reasons of advanced age or physical, sensory, intellectual or mental health.

(2) A word or expression which is used in these Regulations and which is also used in the Gas and Electricity Directives, has unless the context otherwise requires, the same meaning in these Regulations as it has in those Directives.

¹OJ No. L211, 14.08.2009, p.55

²OJ No. L211, 14.08.2009, p.94

Consumer protection obligations

3. (1) In carrying out its function under section 9(1F) (inserted by Regulation 10 of these Regulations) of the Act of 1999 the Commission shall ensure that the specific needs of vulnerable customers are taken into account in—

- (a) the provision of its own services to household customers, and
- (b) coming to any decision or determination which impacts on household customers.

(2) Where it consults on measures which, in the opinion of the Commission, are likely to have a significant impact on final customers, it shall publish an easily comprehensible assessment of those impacts or potential impacts within or along with the consultation and decision documents.

(3) Distribution system operators and suppliers shall apply the principles of universal design to—

- (a) all products and services offered or provided to final customers, and
- (b) communications with final customers.

Vulnerable customers

4. (1) A supplier shall—

- (a) establish, maintain and regularly update a register (“Priority Services Register”) of its customers who are vulnerable customers that are critically dependent on electrically powered equipment,
- (b) establish, maintain and regularly update a register (“Special Services Register”) of its customers who are vulnerable customers that are particularly vulnerable to natural gas or electricity disconnection during winter months,
- (c) take reasonable steps to identify household customers who should be included on a Priority Services or Special Services Register,
- (d) ensure that data contained on a Priority Services or Special Services Register is forwarded to the distribution system operator for inclusion on an industry register as appropriate,
- (e) ensure that customers on a Priority Services Register are not disconnected or de-energised at any time for reasons of non-payment of bills,
- (f) ensure that a customer on a Special Services Register shall not be disconnected or de-energised during the winter months for reasons of non-payment of bills, and
- (g) provide an annual report to the Commission on the measures it has taken under this Regulation.

- (2) A distribution system operator shall—
- (a) take reasonable steps to cooperate with suppliers in identifying and protecting vulnerable customers,
 - (b) where appropriate, recommend to a supplier that a household customer should be added to that supplier's Priority Services or Special Services Register,
 - (c) maintain an industry register of vulnerable customers,
 - (d) ensure that vulnerable customers are assisted during planned maintenance or upgrades to the electricity or gas distribution systems, and
 - (e) provide an annual report to the Commission on the measures it has taken under this Regulation.
- (3) The Commission may issue guidelines for the purposes of this Regulation.
- (4) The Commission shall monitor compliance with this Regulation.
- (5) The Commission shall include in its annual report a report on any measures taken under this Regulation, including measures taken by suppliers and distribution system operators.

Customer charters

5. (1) A supplier and a distribution system operator shall—
- (a) establish, publish, adhere to and maintain, in a form approved by the Commission, a charter (“customer charter”) for household customers,
 - (b) review the content of a customer charter at intervals determined by the Commission, and
 - (c) provide all household customers with a copy of a customer charter.
- (2) Any amendment to a customer charter shall be subject to the prior approval of the Commission.
- (3) A customer charter shall set out conditions attaching to the supply of electricity or natural gas to household customers. Such conditions shall be fair, transparent, readily accessible and expressed in clear and comprehensible language.
- (4) A customer charter shall be provided in advance of the making of any contractual commitment by a household customer.
- (5) A customer charter shall not include any non-contractual barriers to the exercise of, by a final customer, of his or her statutory rights.
- (6) A customer charter shall, at a minimum, and where appropriate, provide that all household customers—

- (a) are informed of their statutory rights to be supplied with electricity or natural gas of a specified quality at reasonable prices,
- (b) have a right to a contract with a supplier which includes—
 - (i) the name and address of the supplier,
 - (ii) services to be provided,
 - (iii) service quality levels offered as well as the time for the initial connection,
 - (iv) types of maintenance service, if such service is offered,
 - (v) means by which up-to-date information on all applicable tariffs and, if offered, maintenance charges may be obtained,
 - (vi) methods of payment of bills by final customers,
 - (vii) potential duration of the contract,
 - (viii) conditions for renewal and termination of services or the contract or both including connection and disconnection of final customers,
 - (ix) existence of any right of withdrawal by either party and whether withdrawal from the contract without charge is permitted,
 - (x) contact details for customer service and details of complaints mechanism offered by the supplier,
 - (xi) compensation and the refund arrangements which apply if contracted service quality levels are not met, including in the case of inaccurate and delayed billing,
 - (xii) method of initiating procedures for settlement of complaints,
 - (xiii) provision of services to vulnerable customers,
 - (xiv) establishment and maintenance of Priority Services and Special Services Registers,
 - (xv) emergency electricity or gas service contact number,
 - (xvi) information relating to consumer rights, including on the complaint handling and all of the information referred to in this paragraph, clearly communicated through billing or the energy undertaking's website,
 - (xvii) fair conditions that are well known in advance,

- (xviii) that household customers are given adequate notice of any intention to modify contract conditions and are informed about their right to terminate the contract when the notice is given, and
 - (ixx) that household customers are notified directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect in a transparent and comprehensible manner,
- (c) receive fair and transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of electricity services, or natural gas services or both,
 - (d) are offered a choice of payment methods which do not unduly discriminate between household customers—
 - (i) which shall be fair,
 - (ii) prepayment methods shall adequately reflect likely consumption, and
 - (iii) any difference in cost arising from choice of method of payment, including prepayment systems, reflects the cost to the supplier of the different payment methods,
 - (e) shall be protected against unfair, misleading or predatory selling methods, and
 - (f) shall benefit from transparent, simple and inexpensive procedures for dealing with their complaints and such procedures including out-of-court dispute settlement procedures shall enable complaints to be settled fairly and promptly preferably within 3 months with provision, where warranted, for a system of reimbursement and compensation, in accordance with the Commission Recommendation.
- (7) Paragraphs (2), (3) and (4) apply equally where a household customer enters into a supply contract through an intermediary.
- (8) A supplier shall—
- (a) put in place procedures to facilitate final customers, if they so wish, in changing supplier within 3 weeks of the supplier making the request to the distribution system operator,
 - (b) put in place procedures in a non-discriminatory manner as regards costs, efforts and time,
 - (c) ensure that household customers are not charged or penalised for changing to another supplier, and

- (d) ensure that a customer charter provides that all final customers shall receive a final closure account following any change of supplier no later than 6 weeks after the change of supplier has taken place.

(9) In this Regulation a reference to a household customer includes a person proposing to become a household customer of the supplier concerned, and who has or is entitled to have a connection to the natural gas system or electricity network.

(10) This Regulation is without prejudice to any requirements on energy undertakings to develop, publish, adhere to and keep up to date codes of practice to ensure that energy undertakings provide a high standard of protection to all final customers, as directed by the Commission.

Codes of practice

6. (1) The Commission may from time to time draw up guidelines for the drafting of codes of practice by suppliers and distribution system operators with respect to consumer protection as regards final customers and adhering to their customer charters.

(2) The Commission shall ensure that a distribution system operator and a supplier shall—

- (a) establish, publish, adhere to and maintain, in a form approved by the Commission, codes of practice for final customers,
- (b) review the content of a code of practice at intervals determined by the Commission, and
- (c) publish all codes of practice.

(3) Where the Commission deems it to be appropriate, it may restrict certain codes of practice to suppliers of household customers only.

(4) Any amendments to a code of practice shall be subject to the prior approval of the Commission.

(5) Codes of practice shall ensure that final customers are provided with a high standard of protection, as appropriate, in the areas of—

- (a) billing,
- (b) complaints handling,
- (c) prepayment metering,
- (d) disconnection, and
- (e) marketing.

(6) A code of practice shall not include any non-contractual barriers to the exercise of, by a final customer, of his or her statutory rights.

(7) The Commission shall monitor compliance with codes of practice.

Dispute resolution

7. (1) The Commission shall provide a dispute and customer complaint resolution service for any final customer having an unresolved complaint with an energy undertaking or their intermediaries and shall publish the procedures and details of the service. The service shall be transparent, simple and inexpensive.

(2) The Commission shall not provide the service referred to in paragraph (1) where the complaint—

- (a) is or has been the subject of legal proceedings before a court,
- (b) is made after the expiration of 6 years from the date on which the cause of the complaint is alleged to have occurred, or
- (c) relates to a matter that does not concern the functions or objectives of the Commission.

(3) For the purpose of paragraph (b) of paragraph (2) conduct that is of a continuing nature is taken to have occurred at the time when it stopped and conduct that consists of a series of acts or omissions is taken to have occurred when the last of those acts or omissions occurred.

(4) A customer is not entitled to make a complaint unless—

- (a) the customer—
 - (i) has previously communicated the substance of his or her complaint to the energy undertaking concerned, and
 - (ii) has exhausted any dispute resolution mechanism with the undertaking, and
- (b) a final decision in writing has been issued by the energy undertaking concerned.

(5) A complaint shall be submitted in writing, save where the Commission considers it appropriate to accept a complaint which is not in writing.

(6) Where the Commission accepts a complaint which is not in writing, it shall reduce the complaint to writing as soon as possible after receiving it.

(7) The Commission may decide not to provide a dispute resolution service in relation to a complaint where the issue is, in the opinion of the Commission, vexatious or frivolous or not in good faith.

(8) An energy undertaking and a complainant shall comply with all reasonable requests for information by the Commission in carrying out an investigation into a complaint received by the Commission.

(9) The Commission shall notify a final customer in writing of the reasons for its decision.

(10) The Commission shall issue a determination to the energy undertaking concerned in writing regarding its decision on the matter in dispute (including, where appropriate the payment of a refund or compensation, which shall be proportionate).

(11) Where the matter the subject of a complaint impacts on other final customers the Commission in making its determination under paragraph (10) may require the undertaking concerned to comply with the determination in respect of those customers as well as the complainant.

(12) The energy undertaking concerned shall comply with any requirement made of it in a determination under paragraph (10).

(13) The Commission shall publish annually a report to the Minister on—

- (a) the number and type of complaints received and their resolution,
- (b) any decision by the Commission not to provide a dispute resolution service under Regulation (7), and
- (c) the service levels provided by energy undertakings.

(14) The Commission may, in the public interest, publish an outline of any complaint received (other than any personal information relating to the complainant).

(15) This paragraph does not apply to a dispute between a final customer and the holder of an electricity or natural gas licence where the dispute relates to third party access (within the meaning of section 10A (inserted by section 14 of the Act of 2002) of the Gas Act 1976 (No. 30 of 1976)) or section 34 of the Act of 1999.

(16) Costs shall not be awarded to a party under this Regulation.

(17) In this Regulation a reference to an energy undertaking includes a reference to its intermediary.

(18) In this Regulation “complaint” means a complaint made to the Commission by a final customer under this Regulation.

Single point of contact

8. (1) The Commission shall act as a single point of contact to provide final customers with all necessary information concerning—

- (a) the statutory rights of final customers in relation to their engagements with energy undertakings,
- (b) the roles of energy undertakings and their obligations to final customers, including under customer charters,

- (c) the dispute resolution service provided by the Commission,
- (d) measures taken to protect household customers including measures under any energy affordability action plan published by the Minister,
- (e) measures to assist final customers in reducing their energy consumption including grant schemes and other programmes offered by the Authority,
- (f) how to understand the information provided by suppliers on bills or through other standard communications, including—
 - (i) charges relating to the supply of electricity or gas or both,
 - (ii) consumption data, including historical consumption data, and
 - (iii) metering information,
- (g) how to compare offers from alternative suppliers,
- (h) how to switch suppliers,
- (i) the energy consumers checklist, and
- (j) any other issues which the Commission may consider to be of importance to final customers.

(2) In carrying out its functions under this Regulation the Commission shall apply the principle of universal design.

(3) The Commission and the Authority may agree on the exchange of information in order to carry out their respective functions relating to information provision to the public. This includes the functions of the Commission under Article 3(12) of Directive 2009/72/EC of the European Parliament of the Council of Europe 13 July 2009¹ and Article 3(9) of Directive 2009/73/EC of the European Parliament of the Council of Europe 13 July 2009² and the functions of the Authority under Articles 13(3), 13(6), 14, and 21(1) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009⁴.

(4) The Commission shall ensure that all visitors to its website are first directed to this single point of contact.

Electricity and gas consumption data

9. (1) All final customers shall have access to their historic consumption data, in an understandable form, covering at least the last 3 years and shall be able, by explicit agreement and free of charge, to give any supplier access to their metering data.

¹OJ No. L211, 14.08.2009, p.55

²OJ No. L211, 14.08.2009, p.94

⁴OJ No. L140, 05.06.2009, p.16

(2) The distribution system operator, as the party responsible for data management, shall be obliged to give such consumption data either to the energy supplier or consumer within a reasonable timeframe.

(3) Notwithstanding the provisions of section 9M (inserted by Regulation 19 of the European Communities (Energy End-Use Efficiency and Energy Services) Regulations 2009 (S.I. No. 542 of 2009)) of the Act of 1999 the Commission shall put in place procedures such that final customers are properly informed of actual electricity and gas consumption and related charges frequently enough to enable them to regulate their own electricity and gas consumption.

(4) The Commission may, where it considers it necessary, give guidelines to a distribution system operator on the implementation of paragraphs (1) and (2).

Amendment of section 9 Act of 1999

10. Section 9 of the Act of 1999 is amended by substituting for subsection (1F) (inserted by Regulation 3 of the Regulations of 2005) the following:

“(1F) It shall be a function of the Commission to ensure that there is a high standard of protection for all final customers, including in their dealings with energy undertakings.”.

Directions

11. (1) If, in the opinion of the Commission, a supplier or distribution system operator is not satisfactorily complying with the requirements of Regulation 4, 5 or 6 or a distribution system operator is failing to comply with Regulation 9(2), the Commission may issue a direction to the supplier or operator specifying the remedial actions the supplier or operator shall take and the period of time for compliance with the direction.

(2) A supplier or distribution system operator may make representations to the Commission, within the period of 21 days beginning on the day on which the direction is served on it. The Commission shall upon receiving such representations consider them and reply within a reasonable period.

(3) A supplier or distribution system operator that is aggrieved by a direction may—

- (a) if no representations are made under paragraph (2), within the period of 30 days beginning on the day on which the direction is moved on it, or
- (b) if representations are made under paragraph (2), within the period of 30 days beginning on the day on which notification of the reply 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.

(4) Where a supplier or distribution system operator fails to comply in full with a direction within the period specified or fails to cooperate with the Commission with regard to the direction, the Commission may apply to the High Court for an order directing the supplier or operator to comply with the direction or to cooperate.

(5) In this Regulation “direction” means a direction issued under this Regulation.

Service of directions and determinations

12. (1) Where the Commission issues a direction under Regulation 11 or a determination under Regulation 7 it shall be in writing, state the reasons on which it is based and be addressed to the undertaking concerned, and as soon as practicable, be sent or given in any of the following ways—

- (a) by delivering it to the undertaking,
- (b) by leaving it at the address at which the undertaking carries on business,
- (c) by sending it by pre-paid registered post to the address at which the undertaking carries on business,
- (d) if an address for the service of directions or determinations has been furnished by the undertaking to the Commission, by leaving it at, or sending it by pre-paid registered post to, that address, or
- (e) where in the case of a direction, the Commission considers that the immediate giving of the direction is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the undertaking ordinarily carries on business or, if an address for the service of notices has been furnished by the undertaking, that address, but only if—
 - (i) the sender’s facsimile machine generates a message confirming successful transmission of the total number of pages of the direction, or
 - (ii) the recipients facility for the reception of electronic mail generates a message confirming receipt of the electronic mail,

and the direction is also given under any of the above paragraphs.

(2) For the purposes of paragraph (1), a company within the meaning of the Companies Acts is deemed to be carrying on business at its registered office and every other body corporate and every unincorporated body is deemed to be carrying on business at its principal office or place of business.

(3) In this Regulation “direction” includes a notification of a reply in respect of a direction under Regulation 11.

Repeals and revocations

13. (1) Sections 21C and 21D (inserted by Regulation 6 of the European Communities (Internal Market in Natural Gas) (No. 2) Regulations 2004 (S.I. No. 452 of 2004) and re-numbered by Regulation 6 of the European Communities (Security of Natural Gas Supply) Regulations 2007 (S.I. No. 697 of 2007)) of the Act of 2002 are repealed.

(2) Regulations 23 and 24 of the Regulations of 2005 are revoked.



GIVEN under my Official Seal,
9 September 2011.

PAT RABBITTE,
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 give further legal effect to consumer protection provisions of Directive 2009/72/EC concerning common rules for the internal market in electricity and Directive 2009/73/EC concerning common rules for the internal market in natural gas, by strengthening the powers of the Commission for Energy Regulation in regard to consumer protection and the imposing specific obligations on electricity and gas distribution system operators and suppliers.

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