SUBSIDIARY LEGISLATION 545.30

DISPUTE RESOLUTION (PROCEDURES) REGULATIONS

1st June, 2016

LEGAL NOTICE 209 of 2016.

Citation and scope.

1. (1) The title of these regulations is the Dispute Resolution (Procedures) Regulations.

(2) These regulations shall apply to the resolution of disputes by the Regulator for Energy and Water Services.

Definitions.

2. In these regulations, unless the context otherwise requires:

"Act" means the Regulator for Energy and Water Services Act; Cap. 545.

"authorisation" shall have the same meaning as under the Act;

"authorised provider" means any natural or legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession who has a valid authorisation to operate, provide or carry out any activity or operation or to provide any service relating to energy and energy and water services;

"consumer" means any person who uses or requests a service and, or product the provision of which is regulated by the Act who is acting for purposes which are outside his trade, business, craft or profession;

"decision" shall have the same meaning as under the Act;

"directive" shall have the same meaning as under the Act;

"the Minister" means the Minister responsible for Energy;

"person" includes any body corporate and any body of persons whether or not it has a legal personality distinct from that of its members;

"prescribed" means prescribed by regulations made under the Act;

"Regulator" means the Regulator for Energy and Water Services;

"Tribunal" means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act. Cap. 490.

Dispute resolution between authorised providers.

3. (1) In the event of a dispute arising between authorised providers in connection with their rights and, or obligations under the Act, the Regulator shall, subject to sub-regulation (2), at the request of an authorised provider who is party to the dispute, initiate an investigation of the dispute and as soon as possible and in any case, other than in circumstances which the Regulator considers exceptional, within four months from the date on which the dispute was notified to it by a party to the dispute, make a

determination to resolve the dispute and ensure compliance with the Act:

Provided that the period of four months may be extended by another two months where additional information is sought by the Regulator and all the parties to the dispute agree to such a further extension:

Provided further that nothing in this regulation shall be construed as prohibiting the Regulator from investigating of its own initiative any disputes it may become aware of and which the Regulator considers it should investigate upon its initiative.

(2) The Regulator may decide not to initiate an investigation referred to in sub-regulation (1) where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by any party to the dispute.

(3) Where the Regulator decides not to initiate an investigation under sub-regulation (2), it shall inform the parties of such decision as soon as possible thereafter.

(4) If, within four months from the date of a decision referred to in sub-regulation (3), the dispute is not resolved and the party seeking redress has not initiated legal proceedings before the ordinary courts or any other competent adjudicative forum however so described, the Regulator may, at the request of any of the parties to the dispute, initiate an investigation and give a decision in accordance with the provisions of this regulation.

(5) An authorised provider to which a decision under this regulation applies shall, saving any suspension of the decision pending the final determination of the appeal, forthwith comply with that decision. If the authorised provider concerned fails to do so, it shall be deemed to have committed an infringement of this regulation and the Regulator may impose an administrative fine in accordance with the provisions of the Act.

(6) In issuing a decision under this regulation the Regulator shall state the reasons on which it is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(7) The Regulator shall publish notice of a decision given under this regulation and shall indicate where copies of or information regarding the decision may be obtained.

(8) The procedure referred to in this regulation shall not preclude any party to the dispute from bringing an action before the courts or any other competent adjudicative forum.

Disputes involving consumers and authorised providers.

4. (1) Where a dispute, however so described, arises between an authorised provider and a consumer, further to which a consumer makes a complaint by alleging an infringement of the Act or subsidiary legislation made thereunder, by an authorised provider, any party to such a dispute may refer the dispute to the Regulator:

Provided that, when referring a dispute under this regulation, the consumer must *prima facie* show that he has been affected by the act or omission of the authorised provider giving rise to the dispute.

(2) Upon receipt of any reference as aforesaid, or upon otherwise becoming aware of any such dispute that the Regulator believes should be investigated, the Regulator shall notify all the parties to the dispute that the matter is being investigated. In doing so the Regulator shall regulate its own procedure, which procedure shall, as far as is reasonably possible, be transparent, simple, inexpensive and conducive to a prompt and fair settlement of the dispute, and shall afford all parties to the dispute reasonable opportunity to make their submissions and to produce any relevant information:

Provided that the Regulator may decide not to initiate an investigation in accordance with this regulation where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by any party to the dispute.

(3) The Regulator, in resolving any disputes referred to it under this regulation, may issue directives to the authorised provider concerned requiring that authorised provider to comply with any measure the Regulator may specify for the resolution of the dispute. Such directives may, having regard to its determination of the dispute and to all other relevant matters, include an order to effect the reimbursement of payments received or to make compensation payments. Such payments may also include the whole or part of the costs of any party relating to the engagement of a lawyer and, or of a technical adviser in relation to any submissions relating to the dispute:

Provided that, in the absence of such a directive by the Regulator, the consumer to a dispute shall have the right to request the Regulator that the whole or part of the costs relating to the engagement of a lawyer and, or of a technical adviser in relation to any submissions relating to the dispute be paid to the consumer concerned by any other party to the dispute.

(4) A party to which a measure under this regulation applies shall, saving any suspension of the decision pending the final determination of the appeal by the Tribunal, forthwith comply with that measure. If the party concerned fails to do so, it shall be deemed to have committed an infringement of this regulation and the Regulator may impose an administrative fine of not more than six hundred euro (€600) for each day of non-compliance in accordance with the provisions of the Act. The period of non-compliance shall be deemed to have commenced from the date of notification of the measure of the Regulator or from any such other date as may be communicated in the measure which date shall in any case be on or subsequent to the date of notification.

(5) The Regulator shall make publicly available any administrative procedures it may from time to time establish in relation to the handling of any disputes referred to it under this

regulation.

(6) The provisions of this regulation shall be without prejudice to the right of a consumer to have recourse to any other body in resolving any such disputes.

(7) In issuing a decision under this regulation the Regulator shall state the reasons on which it is based, and shall, subject to such requirements of commercial confidentiality as it may deem appropriate, notify the parties to the dispute with a copy of the decision.

(8) The Regulator shall publish notice of a decision given under this regulation and shall state where copies of, or information regarding, the decision may be obtained.

(9) The Regulator shall conclude dispute resolution proceedings under this regulation expeditiously within a time-frame of ninety calendar days starting on the date on which the Regulator has received the complete complaint file including all relevant documentation pertaining to that complaint, and ending on the date on which the outcome of the dispute resolution proceeding is made available. The Regulator shall notify the parties after receiving all the documents necessary to carry out the dispute resolution proceeding. In certain exceptional cases of a highly complex nature, including where one of the parties is unable, on justified grounds, to take part in the dispute resolution proceeding, the Regulator may extend the time-frame for the purpose of undertaking an examination of the case in question. The parties should be informed of any such extension, and of the expected approximate length of time that will be needed for the conclusion of the dispute.

(10) The Regulator shall:

(*a*) maintain an up-to-date website which provides the parties with easy access to information concerning dispute resolution proceedings, and which enables consumers to submit a complaint and the requisite supporting documents online;

(*b*) provide the parties, at their request, with the information referred to in paragraph (*a*) on a durable medium;

(*c*) where applicable, enable the consumer to submit a complaint offline;

(*d*) enable the exchange of information between the parties via electronic means or, if applicable, by post;

(*e*) take the necessary measures to ensure that the processing of personal data complies with the rules on the protection of personal data laid down in the Data Protection Act.

Cap. 586.

Refusal to deal with a dispute.

5. (1) The Regulator may refuse to deal with a given dispute on the grounds that:

(*a*) the consumer did not attempt to contact the authorised provider concerned in order to discuss his complaint

and seek, as a first step, to resolve the matter directly with the authorised provider;

(*b*) the dispute is frivolous or vexatious;

(*c*) the dispute is being or has previously been considered by another dispute resolution entity or by a Court;

(*d*) the consumer has not submitted the complaint to the Regulator within one year from the date upon which the consumer submitted the complaint to the authorised provider;

(*e*) dealing with such a type of dispute would otherwise seriously impair the effective operation of the Regulator;

(*f*) the consumer has not submitted the complaint to the Regulator within two years from the date upon which the facts constituting the substance of the complaint of the consumer have first arisen.

(2) Where, in accordance with its procedural rules, the Regulator is unable to consider a dispute that has been submitted to it, the Regulator shall provide both parties with a reasoned explanation of the grounds for not considering the dispute within three weeks of receiving the complaint file. Such procedural rules shall not significantly impair consumers' access to dispute resolution proceedings.

Decision made by the Regulator.

6. A decision made by the Regulator under these regulations shall be binding on the parties to the dispute:

Provided that in the case of disputes between authorised providers and consumers, the decision may be binding on consumers only if they are informed of its binding nature in advance and they have specifically accepted this.

Administrative Review Tribunal. Cap. 490.

7. The Administrative Review Tribunal established by article 5 of the Administrative Justice Act shall be competent to hear and determine appeals from decisions of the Regulator made under these regulations. An appeal from a decision of the Regulator made under these regulations shall lie to the Administrative Review Tribunal in accordance with article 32 of the Act.