

*Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2003 No. (N.I. )**

**NORTHERN IRELAND**

**The Energy (Northern Ireland) Order 2003**

*Made - - - - 2003  
Coming into operation in accordance with Article 1(2)  
and (3)*

At the Court at Buckingham Palace, the day of 2003

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**PART I**

**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Energy (Northern Ireland) Order 2003.

(2) Except as provided by paragraph (3), this Order shall come into operation on such day or days as the Department may by order appoint.

(3) The following provisions come into operation on the day after the day on which this Order is made—

- (a) this Part;
- (b) Articles 59 and 60;
- (c) Article 64;

- (d) Articles 66 and 67;
- (e) paragraph 1(2) of Schedule 3 (and Article 65 so far as relating thereto);
- (f) Schedule 4 (and Article 65 so far as relating thereto).

### **Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“authorised supplier”—

(a) in relation to electricity, means a person authorised by a licence or exemption to supply electricity;

(b) in relation to gas, means a person authorised by a licence or exemption to supply gas;

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

“consumers” includes both existing consumers and future consumers;

“the Council” means the General Consumer Council for Northern Ireland;

“the Department” means the Department of Enterprise, Trade and Investment;

“electricity licence” means a licence under Article 10 of the Electricity Order;

“the Electricity Order” means the [Electricity \(Northern Ireland\) Order 1992 \(NI 1\)](#);

“gas licence” means a licence under Article 8 of the Gas Order;

“the Gas Order” means the [Gas \(Northern Ireland\) Order 1996 \(NI 2\)](#);

“licence holder” means the holder of an electricity licence or a gas licence;

“Northern Ireland” has the same meaning as in the Northern Ireland Act 1998 (c. 47);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

(3) Expressions used in this Order, as regards matters relating to electricity, which are defined in Article 2 or 3 of the Electricity Order or used in Part II of that Order have the same meaning as in that Part of that Order.

(4) Expressions used in this Order, as regards matters relating to gas, which are defined in Article 2 or 3 of the Gas Order or used in Part II of that Order have the same meaning as in that Part of that Order.

## **PART II**

### **NEW REGULATORY ARRANGEMENTS**

#### *The Northern Ireland Authority for Energy Regulation*

#### **The Northern Ireland Authority for Energy Regulation**

3.—(1) There shall be a body corporate to be known as the Northern Ireland Authority for Energy Regulation (in this Order referred to as “the Authority”) for the purpose of carrying out—

- (a) functions transferred to the Authority from the Director General of Gas for Northern Ireland and the Director General of Electricity Supply for Northern Ireland; and
- (b) the other functions of the Authority under this Order.

- (2) The functions of the Authority are performed on behalf of the Crown.
- (3) The expenses of the Authority shall be defrayed out of money appropriated for that purpose by Act of the Assembly.
- (4) The offices of Director General of Gas for Northern Ireland and Director General of Electricity Supply for Northern Ireland are abolished.
- (5) Schedule 1 has effect with respect to the Authority.

#### **Transfer to Authority of functions, property, etc. of Directors**

4.—(1) The functions, property, rights and liabilities of the Director General of Gas for Northern Ireland and the Director General of Electricity Supply for Northern Ireland (“the Directors”) are transferred to the Authority.

- (2) Any statutory provision or any document which—
  - (a) refers to either of the Directors; and
  - (b) was passed or made before the transfer effected by paragraph (1),

shall have effect after the transfer, so far as necessary for the purposes of or in consequence of the transfer, as if references to the Director were references to the Authority.

- (3) Anything which —
  - (a) has been done by or in relation to either of the Directors for the purpose of or in connection with anything transferred by this Article; and
  - (b) is in effect immediately before it is transferred,

shall be treated as if done by or in relation to the Authority.

- (4) Anything (including legal proceedings) which—
  - (a) relates to anything transferred; and
  - (b) is in the process of being done by or in relation to either of the Directors immediately before it is transferred,

may be continued by or in relation to the Authority.

(5) Nothing in this Article affects the validity of anything done by or in relation to either of the Directors before the transfer takes effect.

#### **Forward work programme of the Authority**

5.—(1) The Authority shall, before each financial year, publish a document (the “forward work programme”) containing a general description of the projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year.

- (2) That description shall include the objectives of each project.
- (3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Authority expects to incur during the year in the exercise of its functions.
- (4) Before publishing the forward work programme for any year, the Authority shall give notice—
  - (a) containing a draft of the forward work programme; and
  - (b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) The notice under paragraph (4) shall be published by the Authority in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

### **Annual and other reports of Authority**

6.—(1) The Authority shall, as soon as practicable after the end of each financial year, make to the Department of Enterprise, Trade and Investment (in this Order referred to as “the Department”) a report (the “annual report” for that year) on—

- (a) its activities during that year; and
- (b) the activities of the Competition Commission during that year in respect of any references made by the Authority.

(2) The annual report for each year shall include—

- (a) a general survey of developments in respect of matters falling within the scope of the Authority’s functions;
- (b) a report on the progress of the projects described in the forward work programme for that year;
- (c) a summary of final and provisional orders made, and penalties imposed, by the Authority under Part VI during the year; and
- (d) a report on such other matters as the Department may from time to time require.

(3) The annual report for each year shall set out any general directions given by the Department under—

- (a) Article 50(2) of the [Electricity \(Northern Ireland\) Order 1992 \(NI 1\)](#) (in this Order referred to as “the Electricity Order”); or
- (b) Article 27(2) of the [Gas \(Northern Ireland\) Order 1996 \(NI 2\)](#) (in this Order referred to as “the Gas Order”).

(4) The Department shall consult the Authority before exercising the power under paragraph (2) (d) in relation to any matter.

(5) The Department shall—

- (a) lay a copy of each annual report before the Assembly; and
- (b) arrange for the report to be published in such manner as the Department considers appropriate.

(6) The Authority shall also make to the Department such reports with respect to the matters mentioned in paragraph (2)(a) or (b) as the Department may require and the Authority shall, if the Department so directs, arrange for copies of any report under this paragraph to be published in such manner as is specified in the direction.

(7) The Authority may also prepare other reports with respect to any matter falling within the scope of its functions and may arrange for any such report to be published in such manner as it considers appropriate.

(8) The Authority shall send—

- (a) a copy of each annual or other report published under this Article to the General Consumer Council for Northern Ireland (in this Order referred to as “the Council”); and
- (b) a copy of each report under paragraph (7) to the Department.

(9) In making or preparing any report under this Article the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or

might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

(10) Paragraph 12A of Schedule 7 to the Competition Act 1998 (c. 41) (annual reports of Competition Commission) does not apply to activities of the Competition Commission on which the Authority is required to report under this Article.

#### **Publication by Authority of advice and information about consumer matters**

7.—(1) If it appears to the Authority that the publication of any advice and information would promote the interests of consumers in relation to gas or electricity supplied by authorised suppliers, the Authority may publish that advice or information in such manner as it thinks fit.

(2) In publishing advice or information under this Article the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

(3) Before deciding to publish under this Article any advice or information relating to a particular individual or body of persons the Authority shall consult that individual or body.

(4) The Office of Fair Trading shall consult the Authority before publishing under section 6 of the Enterprise Act 2002 (c. 40) any information or advice which may be published by the Authority under this Article.

#### **Powers of Authority in relation to external matters**

8.—(1) The Authority may liaise, co-operate and enter into arrangements with relevant persons in—

- (a) any other part of the United Kingdom;
- (b) any other member State;
- (c) any other State in which there is a gas pipe-line or electricity transmission system which is or may be connected (directly or indirectly) to a gas pipe-line or electricity transmission system in Northern Ireland.

(2) In paragraph (1) “relevant persons” means—

- (a) persons exercising functions in relation to electricity or gas which correspond to any of those of the Authority or the Department; and
- (b) persons whose activities consist of or include—
  - (i) generating, supplying or participating in the transmission of electricity; or
  - (ii) storing, supplying or participating in the conveyance of gas.

#### *The energy group of the General Consumer Council*

#### **The energy group of the General Consumer Council for Northern Ireland**

9.—(1) The Council shall establish a group in connection with the exercise of the Council’s functions in relation to energy.

(2) Accordingly, in paragraph 10(1) of Schedule 1 to the [General Consumer Council \(Northern Ireland\) Order 1984 \(NI 12\)](#) after head (b) there shall be inserted —

“(bb) a group in connection with the exercise of its functions in relation to energy.”

(3) The following bodies are abolished—

- (a) the group established by the Council under paragraph 10(1)(d) of Schedule 1 to the General Consumer Council (Northern Ireland) Order 1984 in connection with the exercise of the Council's functions in relation to the supply of energy (other than electricity); and
- (b) the Consumer Committee for Electricity, established under Article 7 of the Electricity Order.

(4) In the following provisions of this Part references to the Council's relevant functions are references to the functions of the Council under—

- (a) the Electricity Order;
- (b) the Gas Order; and
- (c) this Order.

### **Forward work programme of the Council**

**10.**—(1) The Council shall, before each financial year, publish a document (the “forward work programme”) containing a general description of the projects which it plans to undertake during the year in the exercise of its relevant functions (other than projects comprising routine activities in the exercise of those functions).

(2) That description shall include the objectives of each project.

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Council expects to incur during the year in the exercise of its relevant functions.

(4) Before publishing the forward work programme for any year, the Council shall give notice—

- (a) containing a draft of the forward work programme; and
- (b) specifying the time within which representations or objections to the proposals contained in it may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) The notice under paragraph (4) shall be published by the Council in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

(6) The Council shall send a copy of any notice given by it under paragraph (4) to the Authority and the Department.

### *General*

### **Co-operation between Authority and Council**

**11.**—(1) The Authority and the Council (in respect of its relevant functions) shall make arrangements with a view to securing—

- (a) co-operation and the exchange of information between them; and
- (b) consistent treatment of matters which affect both of them.

(2) As soon as practicable after agreement is reached on those arrangements, the Authority and the Council shall prepare a memorandum setting them out and send a copy of it to the Department.

(3) Arrangements under this Article shall be kept under review by the Authority and the Council.

(4) As soon as practicable after agreement is reached on any changes to those arrangements, the Authority and the Council shall revise their memorandum and send a copy of the revised memorandum to the Department.

(5) The Department shall lay a copy of any document received by it under this Article before the Assembly.

## PART III

### OBJECTIVES OF REGULATION OF ELECTRICITY AND GAS

#### *Electricity*

#### **The principal objective and general duties of the Department and the Authority in relation to electricity**

12.—(1) The principal objective of the Department and the Authority in carrying out their respective electricity functions is to protect the interests of consumers of electricity supplied by authorised suppliers, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission or supply of electricity.

(2) The Department and the Authority shall carry out those functions in the manner which it considers is best calculated to further the principal objective, having regard to—

- (a) the need to secure that all reasonable demands for electricity are met; and
- (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity Order or this Order; and
- (c) the need to secure—
  - (i) that the prices charged to tariff customers by public electricity suppliers for electricity supplied under Article 19(1) of the Electricity Order to premises in any area specified in an order made by the Department are in accordance with tariffs which do not distinguish (whether directly or indirectly) between different parts of that area; and
  - (ii) that public electricity suppliers are not thereby disadvantaged in competing with other persons authorised by a licence or exemption to supply electricity to such premises.

(3) In performing that duty, the Department or the Authority shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes; and
- (d) individuals residing in rural areas;

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(4) The Department and the Authority may, in carrying out any electricity functions, have regard to the interests of consumers in relation to gas.

(5) Subject to paragraph (2), the Department and the Authority shall carry out their respective electricity functions in the manner which it considers is best calculated—

- (a) to promote the efficient use of electricity and efficiency and economy on the part of persons authorised by licences or exemptions to supply or participate in the transmission of electricity;

- (b) to protect the public from dangers arising from the generation, transmission or supply of electricity;
  - (c) to secure a diverse and viable long-term energy supply;
  - (d) to promote research into, and the development and use of, new techniques by or on behalf of persons authorised by a licence to generate, supply or participate in the transmission of electricity; and
  - (e) to secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the generation, transmission or supply of electricity;
- and shall have regard, in carrying out those functions, to the effect on the environment of activities connected with the generation, transmission or supply of electricity.

- (6) In this Article “electricity functions” means—
- (a) functions under Part II of the Electricity Order; and
  - (b) functions under this Order relating to electricity.

#### **Exceptions from the general duties**

**13.**—(1) Article 12 does not apply in relation to functions of the Department under—

- (a) Article 39, 40, 58, 59 or 60 of the Electricity Order; or
- (b) Article 61.

(2) Article 12 does not apply in relation to anything done by the Authority—

- (a) in the exercise of functions relating to the determination of disputes; or
- (b) in the exercise of functions under—
  - (i) Article 46(3) of the Electricity Order; or
  - (ii) Article 8.

(3) The Authority may nevertheless, when exercising any function under Article 46 (3) of the Electricity Order, have regard to any matter in respect of which a duty is imposed by Article 12 if it is a matter to which the Office of Fair Trading could have regard when exercising that function.

(4) The duties imposed by Article 12 do not affect the obligation of the Authority or the Department to perform or comply with any other duty or requirement (whether arising under this Order or another statutory provision, by virtue of any Community obligation or otherwise).

### *Gas*

#### **The principal objective and general duties of the Department and the Authority in relation to gas**

**14.**—(1) The principal objective of the Department and the Authority in carrying out their respective gas functions is to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland.

(2) The Department and the Authority shall carry out those functions in the manner which it considers is best calculated to further the principal objective, having regard to—

- (a) the need to protect the interests of consumers of gas;
- (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under Part II of the Gas Order or this Order;
- (c) the need to secure that the prices charged in connection with the conveyance of gas through designated pipe-lines (within the meaning of Article 59) are in accordance with a common



tariff which does not distinguish (whether directly or indirectly) between different parts of Northern Ireland or the extent of use of any pipe-line; and

- (d) the need to protect the interests of gas licence holders in respect of the prices at which, and the other terms on which, any services are provided by one gas licence holder to another.

(3) In performing that duty, the Department or the Authority shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age; and
- (c) individuals with low incomes;

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

(4) The Department and the Authority may, in carrying out any gas functions, have regard to the interests of consumers in relation to electricity.

(5) Subject to paragraph (2), the Department and the Authority shall carry out their respective gas functions in the manner which it considers is best calculated—

- (a) to promote the efficient use of gas;
- (b) to protect the public from dangers arising from the conveyance, storage, supply or use of gas;
- (c) to secure a diverse and viable long-term energy supply; and
- (d) to facilitate competition between persons whose activities consist of or include storing, supplying or participating in the conveyance of gas;

and shall have regard, in carrying out those functions, to the effect on the environment of activities connected with the conveyance, storage or supply of gas.

(6) In this Article “gas functions” means—

- (a) functions under Part II of the Gas Order; and
- (b) functions under this Order relating to gas.

### **Exceptions from the general duties**

**15.**—(1) Article 14 does not apply in relation to functions of the Department under—

- (a) Article 40 of the Gas Order; or
- (b) Article 61.

(2) Article 14 does not apply in relation to anything done by the Authority in the exercise of functions under—

- (a) Article 23(3) of the Gas Order; or
- (b) Article 8.

(3) The Authority may nevertheless, when exercising any function under Article 23(3) of the Gas Order, have regard to any matter in respect of which a duty is imposed by Article 14 if it is a matter to which the Office of Fair Trading could have regard when exercising that function.

(4) The duties imposed by Article 14 do not affect the obligation of the Authority or the Department to perform or comply with any other duty or requirement (whether arising under this Order or another statutory provision, by virtue of any Community obligation or otherwise).

## PART IV

### FUNCTIONS OF THE GENERAL CONSUMER COUNCIL

#### **Preliminary**

16.—(1) In this Part—

“the interests of consumers” means the interests of consumers in relation to gas or electricity supplied by authorised suppliers; and

“consumer matter” means any matter connected with the interests of consumers.

(2) In considering the interests of consumers the Council shall have regard to the interests of—

- (a) individuals who are disabled or chronically sick;
- (b) individuals of pensionable age;
- (c) individuals with low incomes; and
- (d) individuals residing in rural areas,

but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.

#### **Acquisition and review of information**

17.—(1) The Council shall obtain and keep under review—

- (a) information about consumer matters; and
- (b) information about the views of consumers on such matters.

(2) Where the Authority is required by any provision of this Order, the Electricity Order or the Gas Order to publish a notice or any other document, the Authority shall send a copy of the document to the Council.

#### **Provision of advice and information to public authorities and other persons**

18.—(1) The Council may—

- (a) make proposals, or provide advice and information, about consumer matters; and
- (b) represent the views of consumers on such matters,

to public authorities, persons authorised by a licence or exemption under the Electricity Order or the Gas Order and other persons whose activities may affect the interests of consumers.

(2) Subject to paragraph (5), information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be disclosed in the exercise of the Council’s power under this Article unless one or more of sub-paragraphs (a) to (c) of paragraph (3) applies to the information.

(3) Information relating to a particular individual or body may be disclosed if—

- (a) the individual or body has consented to the disclosure;
- (b) it is information that is available to the public from some other source; or
- (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

(4) Before deciding to disclose any information relating to a particular individual or body in pursuance of paragraph (3)(c), the Council shall—

- (a) consult that individual or body; and

- (b) have regard to any opinion expressed by the Authority as to the application of paragraph (3)
- (c) to the information or as to the desirability or otherwise of its disclosure;

and sub-paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(5) Paragraphs (2) to (4) do not apply to a disclosure of information which is made to the Authority, the Department, the Competition Commission or any other public authority.

### **Provision of information to consumers**

**19.**—(1) The Council may provide information about consumer matters, in such form as appears to the Council to be most useful to the recipients, to consumers of electricity or gas supplied by authorised suppliers.

(2) The power conferred by paragraph (1) may be exercised by—

- (a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or
- (b) furnishing information to any consumer (whether in response to a request or otherwise).

(3) Information may only be disclosed in the exercise of that power if it is information that is available to the public from some other source.

### **Publication of statistical information about complaints**

**20.**—(1) The Council may publish, in such form and manner and with such frequency as it thinks appropriate, such statistical information as it considers appropriate in relation to—

- (a) complaints made by consumers about any matter relating to the activities of the holders of licences under—
  - (i) Article 10(1)(b) or (c) or (2) of the Electricity Order; or
  - (ii) Article 8(1)(a) or (c) of the Gas Order; and
- (b) the handling of such complaints.

(2) In paragraph (1) “complaints” includes complaints made directly to the licence holders concerned (or anyone carrying on activities on their behalf) and complaints to the Authority or the Council.

### **Power to publish advice and information about consumer matters**

**21.**—(1) If it appears to the Council that the publication of any advice and information about consumer matters (including information about the views of consumers on such matters) would promote the interests of consumers, the Council may publish that advice or information in such manner as it thinks fit.

(2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be published under this Article unless one or more of sub-paragraphs (a) to (c) of paragraph (3) applies to the information.

(3) Information relating to a particular individual or body may be published if—

- (a) that individual or body has consented to the publication;
- (b) it is information that is available to the public from some other source; or
- (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

(4) Before deciding to publish any information relating to a particular individual or body in pursuance of paragraph (3)(c), the Council shall—

- (a) consult that individual or body; and
- (b) have regard to any opinion expressed by the Authority as to the application of paragraph (3)
- (c) to the information or as to the desirability or otherwise of its publication;

and sub-paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

### **Consumer complaints**

**22.**—(1) This Article applies to a complaint which any customer or potential customer of, or user of electricity or gas supplied by, an authorised supplier (“the complainant”) has in his capacity as such against—

- (a) the supplier, in respect of any matter connected with the services provided by him in the course of carrying on regulated activities; or
- (b) any other person authorised by a licence or exemption, in respect of any matter affecting those services which is connected with the carrying on by that other person of regulated activities.

(2) Where a complaint to which this Article applies (other than one appearing to it to be frivolous or vexatious) is referred to the Council by or on behalf of the complainant, the Council shall (subject to paragraph (5)) investigate the complaint for the purpose of determining whether it is appropriate to take any action under paragraph (6).

(3) Where it appears to the Council that the complaint relates to a matter in respect of which any enforcement function is or may be exercisable the Council shall (unless it considers that the Authority already has notice of that matter) inform the Authority of the matter.

(4) Where it appears to the Council that the complaint relates to a matter which constitutes a dispute of a kind which can be referred to the Authority under any provision of the Electricity Order, the Council shall inform the complainant that he may have the right to refer the dispute to the Authority.

(5) The Council is not required by this Article—

- (a) to investigate a complaint, until the complainant has taken such steps as appear to the Council to be reasonable for him to take for the purpose of giving the person against whom the complaint is made a reasonable opportunity to deal with the complaint;
- (b) to investigate any matter to which paragraph (3) applies, until the Authority has had a reasonable opportunity to exercise any enforcement function in respect of that matter; or
- (c) to investigate any matter constituting a dispute which has been referred to the Authority under any provision of the Electricity Order.

(6) Where it appears to the Council to be appropriate to do so with a view to assisting in reaching a satisfactory resolution of a complaint referred to it under this Article, the Council shall make representations on behalf of the complainant to the person against whom the complaint is made about anything to which the complaint relates.

(7) After investigating a complaint the Council may make a report to the Authority; and such a report may include information about—

- (a) any representations made by the Council under paragraph (6); and
- (b) the response of the person against whom the complaint is made to the complaint or any such representations.

(8) No report under paragraph (7), or information about a complaint referred to the Council under this Article from which the complainant may be identified, shall be published or disclosed by the Council or the Authority in the exercise of any power under the Electricity Order, the Gas Order or this Order, without the consent of the complainant.

(9) Where a representation made to the Authority about any matter (other than one appearing to it to be frivolous or vexatious) appears to the Authority—

- (a) to be about a matter which is or amounts to a complaint to which this Article applies; and
- (b) to have been made by or on behalf of the complainant,

the Authority shall refer the complaint to the Council.

(10) In this Article—

“enforcement function” means a function under Article 42 or 45;

“regulated activities” means activities which are authorised or regulated by a licence or exemption.

### **Power of Council to investigate other matters**

**23.**—(1) The Council may investigate any matter (not being a matter which it is its duty to investigate under this Part) which appears to it to be a matter relating to the interests of consumers in relation to electricity or gas supplied by authorised suppliers.

(2) Where the Council has investigated a matter under this Article it may make a report on that matter to the Authority, the Department, the Office of Fair Trading or any other public authority whose functions appear to the Council to be exercisable in relation to that matter.

(3) Subject to paragraph (4), the Council may—

- (a) send a report on any matter investigated under this Article to any person who appears to the Council to have an interest in that matter; and
- (b) publish any such report in such manner as the Council thinks appropriate.

(4) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall not be included in a report which is to be sent to any person under paragraph (3)(a) or published under paragraph (3)(b), unless one or more of sub-paragraphs (a) to (c) of paragraph (5) applies.

(5) Information relating to a particular individual or body may be included in such a report if—

- (a) that individual or body has consented to the disclosure;
- (b) it is information that is available to the public from some other source; or
- (c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

(6) Before deciding to include in such a report any information relating to a particular individual or body in pursuance of paragraph (5)(c), the Council shall—

- (a) consult that individual or body; and
- (b) have regard to any opinion expressed by the Authority as to the application of paragraph (5)(c) to the information or as to the desirability or otherwise of its inclusion in the report;

and sub-paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

(7) The power to undertake an investigation under this Article includes, without prejudice to the generality of paragraph (1), power to investigate any matter relating to, or to anything connected with, gas fittings (or their use) or the use of gas.

(8) In paragraph (7), “gas fittings” means gas fittings (within the meaning of paragraph 1 of Schedule 5 to the Gas Order) which are used or intended to be used by persons supplied with gas by authorised suppliers.

### **Provision of information to Council**

24.—(1) The Council may direct—

- (a) the Authority; or
- (b) the holder of a gas licence or an electricity licence,

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.

(2) A person to whom a direction under this Article is given shall comply with it as soon as is reasonably practicable.

(3) Before giving a direction under this Article and in specifying the form in which any information is to be supplied, the Council shall have regard to the desirability of minimising the costs, or any other detriment, to the Authority or licence holder.

(4) If the Authority fails to comply with a direction under this Article it shall, if so required by the Council, give notice to the Council of the reasons for its failure.

### **Publication of notice of reasons**

25.—(1) Subject to the following provisions of this Article, the Council may publish a notice given to it under Article 24(4).

(2) Information which relates to the affairs of any particular individual or body of persons (corporate or unincorporate) shall be excluded from any notice published under paragraph (1) unless one or more of sub-paragraphs (a) to (c) of paragraph (3) applies to the information.

(3) Information relating to a particular individual or body may be published if—

- (a) that individual or body has consented to the publication;
- (b) it is information that is available to the public from some other source; or
- (c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

(4) Before deciding to publish any information relating to a particular individual or body in pursuance of paragraph (3)(c), the Council shall—

- (a) consult that individual or body; and
- (b) have regard to any opinion expressed by the Authority as to the application of paragraph (3) (c) to the information or as to the desirability or otherwise of its publication;

and sub-paragraph (b) applies whether the opinion is given in relation to the information itself or to information of a description which applies to that information.

### **Provision of information by Council to Authority**

26.—(1) The Authority may direct the Council to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions.

(2) The Council shall comply with a direction under this Article as soon as is reasonably practicable.

(3) Where the Council refuses to supply any information under paragraph (1), it shall give notice to the Authority of its reason for the refusal and the Authority may publish that notice in such manner as it considers appropriate.

(4) In publishing any notice under this Article the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual

or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that person or body.

### **Articles 24 to 26: supplementary**

**27.**—(1) The Department may make regulations prescribing—

- (a) descriptions of information which the Authority, a licence holder or the Council may refuse to supply under Article 24 or 26; or
- (b) circumstances in which the Authority, a licence holder or the Council may refuse to comply with a direction under Article 24 or 26.

(2) The Council may, if no person is prescribed for the purpose under paragraph (3), refer a failure by a licence holder to comply with a direction under Article 24 to the Authority.

(3) The Department may make regulations for the purpose of enabling a failure to comply with a direction under Article 24 or 26 to be referred by the person who gave the direction to such person (other than the Authority) as may be prescribed by the regulations.

(4) A person to whom such a failure is referred (whether under paragraph (2) or regulations under paragraph (3)) shall—

- (a) consider any representations made by either party;
- (b) determine whether the person failing to comply with the direction is entitled to refuse to do so and, if not, order him to comply with the direction; and
- (c) give notice of his determination and any order under paragraph (b), with reasons, to both parties.

(5) A notice under paragraph (4) may be published by either party to the reference; and paragraphs (2) to (4) of Article 25 apply to the publication of such a notice as they apply to the publication of a notice under Article 24(4).

## **PART V**

### **LICENCES**

#### *New kinds of licences*

#### **New kind of electricity transmission licence**

**28.**—(1) Part II of the Electricity Order shall be amended as follows.

(2) In Article 8(1) (prohibition on unlicensed activities in connection with supply of electricity) for sub-paragraph (b) there shall be substituted—

“(b) participates in the transmission of electricity for that purpose; or”.

(3) In Article 8, after paragraph (3) there shall be inserted—

“(4) For the purposes of this Part, a person participates in the transmission of electricity if—

- (a) he co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place; or
- (b) he makes available for use for the purposes of such a transmission system anything which forms part of it.

(5) Where different people have different interests in anything which forms part of a transmission system, only the person in actual possession of the thing may be regarded for the purposes of paragraph (4) as making it available for use.”.

(4) In Article 10(1) (licences authorising supply etc.) for sub-paragraph (b) there shall be substituted—

“(b) to participate in the transmission of electricity for that purpose; or”.

(5) After Article 10 there shall be inserted—

**“Transmission licences**

**10A.**—(1) A transmission licence may authorise the holder to participate in the transmission of electricity in any area, or only in an area specified in the licence.

(2) The Authority may, with the consent of the holder of a transmission licence, modify any term included in the licence in pursuance of paragraph (1).

(3) Without prejudice to the generality of Article 11(1)(a), conditions included in a transmission licence by virtue of that sub-paragraph may—

- (a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on; or
- (b) restrict where he may carry on an activity which he is authorised by the licence to carry on.”.

**Conversion of existing electricity transmission licences**

**29.**—(1) In this Article—

- (a) references to an existing transmission licence are to a licence under Article 10(1)(b) of the Electricity Order which is in force immediately before the commencement date; and
- (b) references to the commencement date are to the date on which Article 28 comes into operation.

(2) An existing transmission licence shall have effect on and after the commencement date—

- (a) as a licence under Article 10(1)(b) of the Electricity Order (as amended by Article 28) authorising the holder to participate in the transmission of electricity in the area which for the purposes of his existing transmission licence was his authorised area; and
- (b) with such incidental, consequential and supplementary modifications as appear to the Department to be necessary or expedient.

(3) Modifications under paragraph (2)(b) may relate to—

- (a) the terms of a licence, or
- (b) the conditions of a licence.

(4) As soon as practicable after the commencement date, the Department shall publish the text of each licence modified under this Article.

(5) Before modifying any licence under paragraph (2)(b), the Department shall consult—

- (a) the Authority; and
- (b) the holder of the licence,

in such manner as it considers appropriate.

(6) Paragraph (5) may be satisfied by consultation before, as well as by consultation after, the commencement date.



### **New kind of gas conveyance licence**

**30.**—(1) Part II of the Gas Order shall be amended as follows.

(2) In Article 6(1) (prohibition on unlicensed activities in connection with supply of gas) for sub-paragraph (a) there shall be substituted—

“(a) participates in the conveyance of gas from one place to another;”.

(3) In Article 6, after paragraph (3) there shall be inserted—

“(4) For the purposes of this Part, a person participates in the conveyance of gas if—

(a) he co-ordinates, and directs, the flow of gas into and through a pipe-line by means of which the conveyance of gas takes place; or

(b) he makes a pipe-line available for use for the purposes of such conveyance.

(5) Where different people have different interests in a pipe-line, only the person with actual possession of the pipe-line may be regarded for the purposes of paragraph (4) as making it available for use.”.

(4) In Article 8(1) (licences authorising supply, etc.) for sub-paragraph (a) there shall be substituted—

“(a) to participate in the conveyance of gas from one place to another;”.

(5) After Article 8 there shall be inserted—

#### **“Licences under Article 8(1)(a)**

**8A.**—(1) A licence under Article 8(1)(a) may authorise the holder to participate in the conveyance of gas in any area, or only in an area specified in the licence.

(2) The Authority may, with the consent of the holder of a licence under Article 8(1)(a), modify any term included in the licence in pursuance of paragraph (1).

(3) Conditions included in a licence under Article 8(1)(a) by virtue of Article 10(1)(a) may (without prejudice to the generality of that sub-paragraph)—

(a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on; or

(b) restrict where he may carry on an activity which he is authorised by the licence to carry on.”.

### **Conversion of existing gas conveyance licences**

**31.**—(1) In this Article—

(a) references to an existing conveyance licence are to a licence under Article 8(1)(a) of the Gas Order which is in force immediately before the commencement date; and

(b) references to the commencement date are to the date on which Article 30 comes into operation.

(2) An existing conveyance licence shall have effect on and after the commencement date—

(a) as a licence under Article 8(1)(a) of the Gas Order (as amended by Article 30) authorising the holder to participate in the conveyance of gas in the area which for the purposes of his existing conveyance licence was his authorised area; and

(b) with such incidental, consequential and supplementary modifications as appear to the Department to be necessary or expedient.

(3) Modifications under paragraph (2)(b) may relate to—

(a) the terms of a licence, or

(b) the conditions of a licence.

(4) The Department may make such incidental, consequential and supplementary modifications as appear to the Department to be necessary or expedient to the standard conditions of licences under Article 8(1)(a) of the Gas Order.

(5) As soon as practicable after the commencement date, the Department shall publish—

- (a) the text of each licence modified under this Article; and
- (b) if the standard conditions of licences under Article 8(1)(a) have been modified under paragraph (4), the text of those conditions as modified.

(6) Before modifying any licence under paragraph (2)(b), the Department shall consult—

- (a) the Authority; and
- (b) the holder of the licence,

in such manner as it considers appropriate.

(7) Paragraph (6) may be satisfied by consultation before, as well as by consultation after, the commencement date.

(8) Any modification of part of a standard condition of a licence under this Article shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part II of the Gas Order.

(9) Where at any time the Department modifies under this Article the standard conditions of licences under Article 8(1)(a) of the Gas Order, it shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time.

### **New standard conditions for gas conveyance licences**

**32.**—(1) Such conditions as may be determined by the Department and published by it in such manner as it considers appropriate shall be standard conditions for the purposes of licences under Article 8(1)(a) of the Gas Order in place of the conditions determined in relation to such licences under Article 11(1) of that Order.

(2) No conditions shall be determined under paragraph (1) after the commencement of paragraph (3).

(3) In Article 11 of the Gas Order —

- (a) in paragraph (1) for “sub-paragraph (a), (b) or (c)” there shall be substituted “sub-paragraph (b) or (c)”; and
- (b) in paragraph (2) after “paragraph (1)” there shall be inserted “or Article 32(1) of the Energy (Northern Ireland) Order 2003”.

(4) As soon as practicable after the commencement of paragraph (3), the Department shall make to a licence in force under Article 8(1)(a)—

- (a) such modifications as appear to the Department to be necessary or expedient for the purpose of securing that the standard conditions determined under paragraph (1) are incorporated in that licence (or incorporated with such modifications as the Department considers requisite to meet the circumstances of the case);
- (b) such incidental, consequential and supplementary modifications as appear to the Department to be necessary or expedient; and
- (c) such other modifications as may be agreed with the licence holder.

(5) Modifications under paragraph (4) may relate to—

- (a) the terms of a licence, or

- (b) the conditions of a licence.
- (6) As soon as practicable after making any modifications under paragraph (4), the Department shall publish the text of each licence modified under that paragraph.
- (7) Before modifying any licence under paragraph (4)(a) or (b), the Department shall consult—
  - (a) the Authority; and
  - (b) the holder of the licence,in such manner as it considers appropriate.
- (8) Paragraph (7) may be satisfied by consultation before, as well as by consultation after, the commencement of paragraph (3).
- (9) Any modification of part of a standard condition of a licence under this Article shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part II of the Gas Order.

### *Conditions of licences*

#### **Conditions of electricity licences**

- 33.**—(1) Article 11 of the Electricity Order (conditions of licences) shall be amended as follows.
- (2) In paragraph (3)—
    - (a) for “Conditions included in a licence under paragraph (1)(a)” there shall be substituted “Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph”;
    - (b) in sub-paragraph (c) after “licence” (in the first place it appears) there shall be inserted “, or under any document referred to in the licence,”.
  - (3) After paragraph (3) there shall be inserted—
    - “(3A) Conditions included in a licence under Article 10(1)(b) or (c) by virtue of paragraph (1)(a) may require the holder, in such circumstances as are specified in the licence—
      - (a) so to increase his charges in connection with the transmission or supply of electricity as to raise such amounts as may be determined by or under the conditions; and
      - (b) to pay the amounts so raised to such persons as may be so determined”.
  - (4) For paragraph (5) there shall be substituted—
    - “(5) Conditions included in a licence may contain provision for the conditions—
      - (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
      - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.”.
  - (5) After paragraph (6) there shall be inserted—
    - “(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.”.

#### **Conditions of gas licences**

- 34.**—(1) Article 10 of the Gas Order (conditions of licences) shall be amended as follows.

- (2) In paragraph (3)—
- (a) for “Conditions included in a licence under paragraph (1)(a)” there shall be substituted “Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph”;
  - (b) in sub-paragraph (c) after “licence” (in the first place it appears) there shall be inserted “, or under any document referred to in the licence,”.
- (3) After paragraph (3) there shall be inserted—
- “(3A) Conditions included in a licence under Article 8(1)(a) by virtue of paragraph (1) (a) may require the holder, in such circumstances as are specified in the licence—
- (a) so to increase his charges in connection with the conveyance of gas as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such persons as may be so determined”.
- (4) For paragraph (5) there shall be substituted—
- “(5) Conditions included in a licence may contain provision for the conditions—
- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.”.
- (5) After paragraph (6) there shall be inserted—
- “(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.”.

### **Standard conditions of gas licences**

**35.** In Article 11 of the Gas Order (standard conditions of licences) after paragraph (1) there shall be inserted—

- “(1A) The standard conditions for the purposes of licences under sub-paragraph (a), (b) or (c) of Article 8(1) may contain provision—
- (a) for any standard condition included in such a licence not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
  - (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
  - (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.”.

### *Modification of licences following Competition Commission report*

### **Modification of electricity licences following Competition Commission report**

- 36.**—(1) In Article 17 of the Electricity Order after paragraph (4) there shall be inserted—
- “(5) After considering any representations or objections made in response to proposals set out in a notice under paragraph (3) the Authority shall give notice to the Competition Commission—

- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
  - (b) stating the reasons for making the modifications.
- (6) The Authority shall include with the notice under paragraph (5) a copy of any representations or objections received in relation to the notice under paragraph (3).
- (7) If the period of four weeks from the date on which the notice under paragraph (5) is given elapses without a direction under Article 17A(1)(a) having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
  - (b) if a direction under Article 17A(1)(b) has been given, make the modifications which are not specified in the direction.”
- (2) After Article 17 of the Electricity Order there shall be inserted—

**“Competition Commission’s power to veto modifications following report**

**17A.—**(1) The Competition Commission (in this Article referred to as “the Commission”) may, within the period of four weeks after the date on which it is given a notice under Article 17(5), direct the Authority—

- (a) not to make the modifications set out in that notice; or
- (b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

(2) The Department may, within the period of four weeks after the date on which the Commission is given a notice under Article 17(5) and on the application of the Commission, direct that the period for giving a direction under paragraph (1) (and, accordingly, the period mentioned in Article 17(7)) shall be extended by 14 days.

(3) The power to give a direction under paragraph (1) may only be exercised in respect of such of the modifications set out in the notice under Article 17 (5)(a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

(4) If the Commission gives a direction under paragraph (1), the Commission—

- (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
- (b) shall itself make such modifications of the conditions of the licence as appear to it to be requisite for the purpose of remedying or preventing—
  - (i) if the direction was given under paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
  - (ii) if the direction was given under paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under Article 17(7)(b).

(5) In exercising its function under paragraph (4)(b) the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence.

(6) Before making modifications under paragraph (4)(b) the Commission shall give notice—

- (a) stating that it proposes to make the modifications and setting them out;

- (b) stating the reason why it proposes to make them;
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) A notice under paragraph (4)(a) or (6) shall be given—

- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy on the Authority and the holder of the licence in question.

(8) After making modifications under this Article the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

(9) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph (4)(a), (6) or (8).

(10) In giving any notice under paragraph (4)(a) or (6), or publishing any notice under paragraph (8), the Commission shall have regard to the following considerations before disclosing any information.

(11) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(12) The second consideration is the need to exclude from disclosure (so far as practicable)

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(13) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (12)(a) or (b) is necessary for the purposes of the notice.

(14) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (15) and (16), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under this Article, as they apply for the purposes of any investigation on references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(15) Section 110 shall, in its application by virtue of paragraph (14), have effect as if—

- (a) subsection (2) were omitted;

- (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under Article 17A (8) of the Electricity (Northern Ireland) Order 1992 in connection with the reference concerned or, if no direction has been given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”;
  - (c) in subsection (9) the words from “or section” to “section 65 (3))” were omitted.
- (16) Section 111 (5)(b) shall, in its application by virtue of paragraph (14), have effect as if for sub-paragraph (ii) there were substituted—
- “(ii) if earlier, the day on which a notice is published by the Commission under Article 17A (8) of the Electricity (Northern Ireland) Order 1992 in connection with the reference concerned or, if no direction is given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”.
- (17) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (14), have effect in relation to those sections as applied by virtue of that paragraph.
- (18) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.”.

### **Modification of gas licences following Competition Commission report**

- 37.—(1) In Article 17 of the Gas Order after paragraph (5) there shall be inserted—
- “(5A) After considering any representations or objections made in response to proposals set out in a notice under paragraph (4), the Authority shall give notice to the Competition Commission—
- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
  - (b) stating the reasons for making the modifications.
- (5B) The Authority shall include with the notice under paragraph (5A) a copy of any representations or objections received in relation to the notice under paragraph (4).
- (5C) If the period of four weeks from the date on which the notice under paragraph (5A) is given elapses without a direction under Article 17A(1)(a) having been given to it, the Authority shall—
- (a) make the modifications set out in the notice; or
  - (b) if a direction under Article 17A(1)(b) has been given, make the modifications which are not specified in the direction.”.

(2) After Article 17 of the Gas Order there shall be inserted—

### **“Competition Commission’s power to veto modifications following report**

- 17A.—(1) The Competition Commission (in this Article referred to as “the Commission”) may, within the period of four weeks after the date on which it is given a notice under Article 17(5A), direct the Authority—
- (a) not to make the modifications set out in that notice; or

(b) not to make such of the modifications as may be specified in the direction; and the Authority shall comply with any such direction.

(2) The Department may, within the period of four weeks after the date on which the Commission is given a notice under Article 17(5A) and on the application of the Commission, direct that the period for giving a direction under paragraph (1) (and, accordingly, the period mentioned in Article 17(5C)) shall be extended by 14 days.

(3) The power to give a direction under paragraph (1) may only be exercised in respect of such of the modifications set out in the notice under Article 17(5A)(a) as appear to the Commission not to be the modifications which are requisite for the purpose of remedying or preventing all or any of the adverse effects specified in the report as effects which could be remedied or prevented by modifications.

(4) If the Commission gives a direction under paragraph (1), the Commission—

- (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
- (b) shall itself make such modifications of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—
  - (i) if the direction was given under paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
  - (ii) if the direction was given under paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under Article 17(5C)(b).

(5) In exercising its function under paragraph (4)(b) the Commission shall have regard to the matters to which the Authority is required to have regard when determining the conditions of a licence.

(6) Before making modifications under paragraph (4)(b) the Commission shall give notice—

- (a) stating that it proposes to make the modifications and setting them out;
- (b) stating the reason why it proposes to make them;
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) A notice under paragraph (4)(a) or (6) shall be given—

- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders.

(8) After making modifications under this Article the Commission shall publish a notice stating that the modifications have been made and setting them out, with the reasons for making them.

(9) Where, in consequence of a reference under Article 15 (2) the Commission modifies under paragraph (4)(b) the standard conditions of licences of any type (that is to say, licences under Article 8(1)(a) or (b) or (c)) the Authority may make such incidental and consequential modifications as it considers necessary or expedient of any conditions of licences of that type granted before that time.



(10) Where the Commission modifies the standard conditions of licences of any type as mentioned in paragraph (9) the Authority—

- (a) shall make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
- (b) shall publish the modifications made for those purposes in such manner as it considers appropriate.

(11) The modification under this Article of part of a standard condition of a particular licence in consequence of a reference under Article 15(1) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

(12) For the purposes of the law relating to defamation, absolute privilege attaches to any notice under paragraph (4)(a), (6) or (8).

(13) In giving any notice under paragraph (4)(a) or (6), or publishing any notice under paragraph (8), the Commission shall have regard to the following considerations before disclosing any information.

(14) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(15) The second consideration is the need to exclude from disclosure (so far as practicable)

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(16) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (15)(a) or (b) is necessary for the purposes of the notice.

(17) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (18) and (19), for the purposes of any investigation by the Commission for the purposes of the exercise of its functions under this Article, as they apply for the purposes of any investigation on references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

(18) Section 110 shall, in its application by virtue of paragraph (17), have effect as if—

- (a) subsection (2) were omitted;
- (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under Article 17A (8) of the Gas (Northern Ireland) Order 1996 in connection with the reference concerned or, if no direction has been given by the Commission under Article 17A(1) of that Order in connection with the reference

concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”;

(c) in subsection (9) the words from “or section” to “section 65 (3)” were omitted.

(19) Section 111 (5)(b) shall, in its application by virtue of paragraph (17), have effect as if for sub-paragraph (ii) there were substituted—

“(ii) if earlier, the day on which a notice is published by the Commission under Article 17A (8) of the Gas (Northern Ireland) Order 1996 in connection with the reference concerned or, if no direction is given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period.”.

(20) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (17), have effect in relation to those sections as applied by virtue of that paragraph.

(21) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.”.

### **Modification of licences: general provisions**

**38.**—(1) In exercising any power to modify an electricity licence under the Electricity Order or this Order, the Department, the Authority, the Secretary of State, the Office of Fair Trading or the Competition Commission (as the case may be) shall have regard to the requirements and prohibitions laid down in European Parliament and Council Directive 96/92 EC concerning common rules for the internal market in electricity.

(2) In exercising any power to modify a gas licence under the Gas Order or this Order, the Department, the Authority, the Secretary of State, the Office of Fair Trading or the Competition Commission (as the case may be) shall have regard to the requirements and prohibitions laid down in European Parliament and Council Directive 98/30 EC concerning common rules for the internal market in natural gas.

### *Powers to alter licensable activities*

#### **Power to alter activities requiring electricity licence**

**39.**—(1) The Department may by order provide—

- (a) that specified activities are to become licensable activities; or
- (b) that specified activities are to cease to be licensable activities.

(2) Schedule 2 has effect in relation to the making of an order under this Article.

(3) For the purposes of—

- (a) this Article; and
- (b) Schedule 2 so far as applying in relation to the making of an order under this Article,

activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under Article 8 of the Electricity Order.

(4) An order under this Article may make consequential, transitional, incidental or supplementary provision including amendments or repeals in any provision of this Order or any other statutory provision.

(5) An order under this Article may only provide for activities to become licensable activities if they are activities connected with the generation, transmission or supply of electricity.

(6) An order under this Article may provide that it is to remain in force only for a period specified in the order.

### **Power to alter activities requiring gas licence**

**40.**—(1) The Department may by order provide—

- (a) that specified activities are to become licensable activities; or
- (b) that specified activities are to cease to be licensable activities.

(2) Schedule 2 has effect in relation to the making of an order under this Article.

(3) For the purposes of—

- (a) this Article; and
- (b) Schedule 2 so far as applying in relation to the making of an order under this Article,

activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under Article 6 of the Gas Order.

(4) An order under this Article may make consequential, transitional, incidental or supplementary provision including—

- (a) amendments or repeals in any provision of this Order or any other statutory provision; and
- (b) provision modifying any standard conditions of gas licences or (in the case of an order under paragraph (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.

(5) An order under this Article may only provide for activities to become licensable activities if they are activities connected with the conveyance, storage or supply of gas.

(6) An order under this Article may provide that it is to remain in force only for a period specified in the order.

## **PART VI**

### **ENFORCEMENT**

#### *Introductory*

#### **Introductory**

**41.**—(1) This Part has effect in relation to the enforcement of—

- (a) relevant conditions of gas and electricity licences;
- (b) relevant requirements; and
- (c) (in the case of an electricity licence holder who is a public electricity supplier) the standards of performance prescribed under Article 42 of the Electricity Order.

(2) In this Part—

“relevant conditions”, in relation to any licence holder, means any condition of his licence;

“relevant requirement” means—

- (a) in relation to an electricity licence holder, any duty or other requirement imposed on him by or under—
  - (i) any of Articles 12, 19 to 26, 43(3), 44(3), 45A or 45B of the Electricity Order;
  - (ii) an order made under Article 27(4)(b); or
  - (iii) Part VII;
- (b) in relation to a gas licence holder, any duty or other requirement imposed on him by or under an order made under Article 27(4)(b).

### *Orders for securing compliance*

#### **Orders for securing compliance**

**42.**—(1) Subject to paragraphs (2), (5) and (6) and Article 43, where the Authority is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, it shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to paragraphs (5) and (6), where it appears to the Authority—

- (a) that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and
- (b) that it is requisite that a provisional order be made,

the Authority shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to it requisite for the purpose of securing compliance with that condition or requirement.

(3) In determining for the purposes of paragraph (2)(b) whether it is requisite that a provisional order be made, the Authority shall have regard, in particular—

- (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and
- (b) to the fact that the effect of the provisions of this Article and Article 44 is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.

(4) Subject to paragraphs (5) and (6) and Article 43, the Authority shall confirm a provisional order, with or without modifications, if—

- (a) it is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and
- (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

(5) The Authority shall not make a final order or make or confirm a provisional order in relation to a licence holder if it is satisfied—

- (a) that the duties imposed on it by Article 12 or 14 preclude the making or, as the case may be, the confirmation of the order; or
- (b) that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

(6) The Authority is not required to make a final order or make or confirm a provisional order if it is satisfied—

- (a) that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
  - (b) that the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (7) Where the Authority is satisfied as mentioned in paragraphs (5) and (6), it shall—
- (a) serve notice that it is so satisfied on the licence holder; and
  - (b) publish the notice in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (8) A final or provisional order—
- (a) shall require the licence holder to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by the Authority.
- (9) In this Part—
- “final order” means an order under this Article other than a provisional order;
- “provisional order” means an order under this Article which if not previously confirmed in accordance with paragraph (4), will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

### **Procedural requirements**

**43.**—(1) Before it makes a final order or confirms a provisional order, the Authority shall give notice—

- (a) stating that the Authority proposes to make or confirm the order and setting out its effect;
- (b) setting out—
  - (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
  - (ii) the acts or omissions which, in the Authority’s opinion, constitute or would constitute contraventions of that condition or requirement; and
  - (iii) the other facts which, in its opinion, justify the making or confirmation of the order; and
- (c) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (2) A notice under paragraph (1) shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the licence holder to whom the order relates.
- (3) The Authority shall not make a final order with modifications, or confirm a provisional order with modifications, except—

- (a) with the consent to the modifications of the licence holder to whom the order relates; or
  - (b) after complying with the requirements of paragraph (4).
- (4) The requirements mentioned in paragraph (3) are that the Authority shall—
- (a) serve on the licence holder to whom the order relates such notice as appears to it requisite of its proposal to make or confirm the order with modifications;
  - (b) in that notice specify the period (not being less than 21 days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the Authority shall—
- (a) serve a copy of the order on the licence holder to whom the order relates; and
  - (b) publish the order in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the Authority shall give notice—
- (a) stating that the Authority proposes to revoke the order and setting out its effect; and
  - (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under paragraph (6), the Authority decides not to revoke the order to which the notice relates, it shall give notice of its decision.
- (8) A notice under paragraph (6) or (7) shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice on the licence holder to whom the order relates.

### **Validity and effect of orders**

**44.**—(1) If the licence holder to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—

- (a) that its making or confirmation was not within the powers of Article 42; or
- (b) that any of the requirements of Article 43 have not been complied with in relation to it,

he may, within 42 days from the date of service on him of a copy of the order, make an application to the High Court under this Article.

(2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

(3) Except as provided by this Article, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.

(4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.

(5) Where a duty is owed under paragraph (4) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(6) In any proceedings brought against a licence holder under paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(7) Without prejudice to any right which any person may have under paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Authority for an injunction or for any other appropriate relief.

### *Financial penalties*

#### **Financial penalties**

**45.**—(1) Where the Authority is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, the Authority may, subject to Article 47, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.

(2) Where the Authority is satisfied that an electricity licence holder who is a public electricity supplier has failed or is failing to achieve any standard of performance prescribed under Article 42 of the Electricity Order, the Authority may, subject to Article 47, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.

(3) The Authority shall not impose a penalty on a licence holder under paragraph (1) or (2) where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

(4) Before imposing a penalty on a licence holder under paragraph (1) or (2) the Authority shall give notice—

- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
- (b) setting out the relevant condition or requirement or the standard of performance in question;
- (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
- (d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) Before varying any proposal stated in a notice under paragraph (4)(a) the Authority shall give notice—

- (a) setting out the proposed variation and the reasons for it; and
- (b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(6) As soon as practicable after imposing a penalty, the Authority shall give notice—

- (a) stating that it has imposed a penalty on the licence holder and its amount;
- (b) setting out the relevant condition or requirement or the standard of performance in question;

- (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and
  - (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.
- (7) The licence holder may, within 21 days of the date of service on him of a notice under paragraph (6), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this Article shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
  - (b) by serving a copy of the notice on the licence holder; and
  - (c) by serving a copy of the notice on the Council.
- (9) No penalty imposed by the Authority under this Article may exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Department).
- (10) Any sums received by the Authority by way of penalty under this Article shall be paid into the Consolidated Fund.

#### **Statement of policy with respect to penalties**

- 46.—(1) The Authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) The Authority may revise its statement of policy and where it does so shall publish the revised statement.
- (4) Publication under this Article shall be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

#### **Time limits on the imposition of financial penalties**

- 47.—(1) Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period—
- (a) the notice under Article 45(4) relating to the penalty is served on the licence holder under Article 45(8), or
  - (b) a notice relating to the contravention or failure is served on the licence holder under Article 51(2).
- (2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under Article 45(4) was served on the licence holder under Article 45(8)—



- (a) within three months from the confirmation of the provisional order or the making of the final order, or
- (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

### **Interest and payment of instalments**

**48.**—(1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being prescribed under Article 127 of the [Judgments Enforcement \(Northern Ireland\) Order 1981 \(NI 6\)](#).

(2) If an application is made under paragraph (7) of Article 45 in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(3) If the Authority grants an application under that paragraph in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under that paragraph, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

### **Appeals**

**49.**—(1) If the licence holder on whom a penalty is imposed is aggrieved by—

- (a) the imposition of the penalty;
- (b) the amount of the penalty; or
- (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

the licence holder may make an application to the High Court under this Article.

(2) An application under paragraph (1) must be made—

- (a) within 42 days from the date of service on the licence holder of a notice under Article 45(6), or
- (b) where the application relates to a decision of the Authority on an application by the licence holder under Article 45(7), within 42 days from the date the licence holder is notified of the decision.

(3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within paragraph (4), the court—

- (a) may quash the penalty;
- (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
- (c) in the case of an application under paragraph (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.

(4) The grounds falling within this paragraph are—

- (a) that the imposition of the penalty was not within the power of the Authority under Article 45;
- (b) that any of the requirements of paragraphs (4) to (6) or (8) of Article 45 have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance; or
- (c) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.

(5) If an application is made under this Article in relation to a penalty, the penalty is not required to be paid until the application has been determined.

(6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.

(7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this Article it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.

(8) Except as provided by this Article, the validity of a penalty shall not be questioned by any legal proceedings whatever.

### **Recovery of penalties**

**50.** Where a penalty imposed under Article 45(1) or (2), or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under Article 49 during the period within which such an application can be made, or
- (b) an application has been made under that Article and determined,

the Authority may recover from the licence holder, as a civil debt due to it, any of the penalty and any interest which has not been paid.

### *Power to require information*

#### **Power to require information**

**51.—**(1) Where it appears to the Authority that a licence holder—

- (a) may be contravening, or may have contravened, any relevant condition or requirement, or
- (b) (in the case of an electricity licence holder who is a public electricity supplier) may be failing or may have failed to achieve any standard of performance prescribed under Article 42 of the Electricity Order,

the Authority may, for any purpose connected with such of its functions under this Part as are exercisable in relation to that matter, serve a notice under paragraph (2) on any person.

(2) A notice under this paragraph is a notice signed on behalf of the Authority and—

- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Authority or to any person appointed by the Authority for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- (b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

(3) No person shall be required under this Article to produce any documents which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(4) A person who without reasonable excuse fails to do anything required of him by notice under paragraph (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under paragraph (2) to produce shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under paragraph (2), the High Court may, on the application of the Authority, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs of and incidental to the application shall be borne by the person in default or by any officers of a company or other body or association who are responsible for its default.

## PART VII

### ELECTRICITY FROM RENEWABLE SOURCES

#### **Obligation in connection with electricity from renewable sources**

**52.**—(1) The Department may by order impose on each electricity supplier who falls within a specified description (“a designated electricity supplier”) an obligation to do what is set out in paragraph (2) (and that obligation is referred to in this Part as the “renewables obligation”).

(2) Subject to the provisions of this Article and Articles 53 and 55, the renewables obligation is that the designated electricity supplier must, before a specified day (or before each of several specified days, or before a specified day in each year), produce to the Authority evidence of a specified kind showing—

- (a) that he has supplied to customers in Northern Ireland during a specified period such amount of electricity generated by using renewable sources as is specified in relation to such a supplier; or
- (b) that another electricity supplier has done so (or that two or more others have done so); or
- (c) that between them they have done so.

(3) In this Part “electricity supplier” means the holder of a licence under Article 10(1)(c) or (2) of the Electricity Order, except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

(4) Evidence of the supply of electricity may not be produced more than once in relation to the same electricity.

(5) In the case of electricity generated by a generating station fuelled or driven partly by renewable sources and partly by fossil fuel or peat, only the proportion attributable to the renewable sources can count towards discharging the renewables obligation (but this is subject to Article 53(1)(g)).

(6) Before making an order under this Article, the Department shall consult—

- (a) the Authority;
- (b) the Council;
- (c) the electricity suppliers to whom the proposed order would apply;
- (d) persons generating electricity from renewable sources in Northern Ireland; and
- (e) such other persons, if any, as the Department considers appropriate.

(7) In this Article and Article 53—

“fossil fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products (and “natural gas” and “petroleum products” have the same meanings as in the Energy Act 1976 (c. 76));

“peat” includes substances produced directly or indirectly from peat;

“renewable sources” means sources of energy other than fossil fuel, peat or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel or peat;

“specified” means specified in the order.

### **Orders under Article 52: supplementary**

**53.**—(1) An order under Article 52 may make provision generally in relation to the renewables obligation imposed by the order, and may in particular specify—

- (a) different obligations for successive periods of time;
  - (b) that only electricity generated using specified descriptions of renewable source is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);
  - (c) that only electricity generated by specified descriptions of generating station is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);
  - (d) that a specified minimum amount of electricity generated as mentioned in sub-paragraph (b) or (c) is to be counted towards the discharge of the renewables obligation;
  - (e) how the amount of electricity supplied by an electricity supplier (whether generally or to particular customers or descriptions of customer) is to be determined;
  - (f) how the proportion referred to in Article 52(5) or in the definition of “renewable sources” in Article 52(7) is to be determined;
  - (g) the consequences for the discharge of the renewables obligation if a generating station of the type mentioned in Article 52(5) uses more than a specified proportion of fossil fuel or peat during a specified period (which may include the consequence that none of the electricity generated by that generating station during that period is to count towards discharging the obligation);
  - (h) that specified information, or information of a specified nature, is to be given to the Authority (in addition to the evidence referred to in Article 52(2)), and the form in which it is to be given.
- (2) An order may, in relation to any specified period (“the current period”)—
- (a) provide that evidence of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;
  - (b) provide that evidence of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period;
  - (c) specify how much later the later period referred to in sub-paragraph (a) or (b) may be;
  - (d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in sub-paragraph (a) or (b);
  - (e) specify a maximum proportion of electricity supplied in any period evidence of which may be counted towards discharging the renewables obligation for a different period.

(3) An order may make any provision capable of being made under section 2(2) of the European Communities Act 1972 (c. 68) in connection with European Parliament and Council Directive

[2001/77/EC](#) on the promotion of electricity produced from renewable energy sources in the internal electricity market.

- (4) An order may make—
- (a) different provision for different cases or circumstances; and
  - (b) different provision in relation to different electricity suppliers,

if the Department is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers.

(5) An order may provide for the Authority to require an electricity supplier to provide it with information, or with information of a particular kind, which is in its opinion relevant to the question whether the supplier is discharging, or has discharged, the renewables obligation.

(6) That information must be given to the Authority in whatever form it requires.

(7) No person shall be required by virtue of this Article to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court.

(8) An order may make further provision as to the functions of the Authority in relation to the obligation imposed by the order.

### **Green certificates**

**54.**—(1) An order under Article 52 may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate to the operator of a generating station in Northern Ireland or to an electricity supplier.

- (2) A certificate under this Article is to certify—
- (a) that the generating station or, in the case of a certificate issued to an electricity supplier, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate; and
  - (b) that it has been supplied to customers in Northern Ireland.

(3) If an electricity supplier produces a certificate to the Authority, it is to count for the purposes of Article 52(2) as sufficient evidence of the facts certified.

### **Payment as alternative to complying with order under Article 52**

**55.**—(1) An order under Article 52 may provide that instead of producing evidence under Article 52(2), a designated electricity supplier may discharge (in whole or in part) his renewables obligation (or his obligation in relation to a particular period) by making a payment to the Authority.

- (2) The order may make provision—
- (a) as to the sum which for the purposes of paragraph (1) is to correspond to the supply of a given amount of electricity;
  - (b) for different such sums in relation to different periods;
  - (c) for different such sums in relation to electricity generated in different ways specified in the order (such as those referred to in Article 53(1)(b) and (c)); and
  - (d) for any such sum to be adjusted from time to time for inflation by a method specified in the order (which may refer to a specified scale or index or to other specified data of any description, including such a scale or index or such data in a form not current when the order was made, but in a subsequent form attributable to revision or any other cause and taking effect afterwards).

(3) The Authority shall pay the amounts received to electricity suppliers in accordance with a system of allocation specified in the order.

(4) The system of allocation specified in the order may provide for payments to specified categories of electricity supplier only.

### **Power to amend this Part**

**56.**—(1) The Department may by order make such amendments to the preceding provisions of this Part as appear to the Department to be necessary or expedient—

- (a) to take account of any amendments made or proposed to be made to any of the corresponding Great Britain provisions; or
- (b) for giving effect to, or enabling effect to be given to—
  - (i) any Community obligation; or
  - (ii) any arrangement or agreement entered into between the Government of the United Kingdom and the government of any other member State.

(2) In this Article “the corresponding Great Britain provisions” means—

- (a) sections 32 to 32C of the Electricity Act 1989 (c. 29); and
- (b) any provision amending or re-enacting (with or without modification) any provision mentioned in sub-paragraph (a).

### **Non-fossil fuel obligation**

**57.**—(1) Subject to the following provisions of this Article, Article 35 of the Electricity Order (electricity from non-fossil fuel sources) shall cease to have effect.

(2) The Department may by order make such provision as it considers necessary or expedient for the purpose of—

- (a) saving orders under Article 35 of the Electricity Order made before the coming into operation of paragraph (1);
- (b) preserving, modifying, replacing or otherwise dealing with arrangements (as mentioned in that Article) made pursuant to such an order, including making provision for substituting different parties to the arrangements or for replacement arrangements to be between parties different from those party to the replaced arrangements.

(3) The power in paragraph (2)(b) may be exercised both before the coming into operation of paragraph (1) and afterwards.

(4) An order under this Article may, in particular, provide for Article 35 (apart from paragraphs (3) and (4)) to continue to have effect with modifications specified in the order.

(5) An order under this Article may impose requirements in relation to the sale of any electricity acquired under arrangements made pursuant to an order under Article 35 of the Electricity Order (or such arrangements as modified or replaced by virtue of an order under this Article).

(6) Requirements imposed under paragraph (5) may include requirements as to the application of the proceeds of sale of any electricity mentioned in that paragraph.

(7) An order under this Article may provide—

- (a) that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of Part VI; and
- (b) for one of those requirements to be that a person referred to in sub-paragraph (a) or (b) of paragraph (8) is not to act or omit to act as set out there;

but, while paragraphs (3) and (4) of Article 35 of the Electricity Order remain in force, an order may not provide for anything which would be an offence under Article 35 (3) of that Order to be treated as a relevant requirement.

- (8) The persons, acts and omissions referred to in paragraph (7)(b) are—
- (a) an act or omission by a person subject to requirements contained in the order which prevents any arrangements made pursuant to the order from securing such results as are specified in the order; and
  - (b) an act or omission by a party to arrangements made pursuant to an order under Article 35 of the Electricity Order made before the coming into operation of paragraph (1) (or such arrangements as modified or replaced by virtue of an order under this Article) which prevents the arrangements from securing the result mentioned in paragraph (2) of that Article (or that paragraph as modified by virtue of an order under this Article), or such corresponding result as is specified in the order.

#### **Abolition of fossil fuel levy**

58. Article 36 of the Electricity Order (fossil fuel levy) shall cease to have effect.

## **PART VIII**

### **MISCELLANEOUS AND SUPPLEMENTARY**

#### *Common tariff for conveyance of gas through designated pipe-lines*

#### **Designation of pipe-lines for purposes of common tariff**

59.—(1) The Department, after consultation with the Authority, may by order designate any pipe-line as a pipe-line to which Article 60 applies; and references in that Article to a “designated pipe-line” are to a pipe-line which is designated under this Article.

(2) A pipe-line shall not be designated under this Article unless—

- (a) it is a high-pressure pipe-line; or
- (b) it is connected to a high-pressure pipe-line which is so designated.

(3) For the purposes of this Article a pipe-line is a high-pressure pipe-line if it has a design operating pressure exceeding 7 bar gauge.

(4) Before making an order under this Article, the Department shall give notice—

- (a) stating that it proposes to make the order and setting out its effect; and
- (b) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) An order under this Article may provide that the order (or so much thereof as designates any particular pipe-line) shall cease to have effect on the happening of any event specified in the order.

(6) If an order under this Article contains provision to the effect that the designation by the order of any particular pipe-line is, subject to any provision made by virtue of paragraph (5), to have effect for a period specified in the order, the Department shall not—

- (a) revoke that order; or
- (b) amend that order so that the designation of that pipe-line ceases to have effect,

before the end of that period.

### **Modification of gas licences: common tariff for conveyance of gas through designated pipe-lines**

**60.**—(1) The Department after consultation with the Authority, or the Authority with the consent of the Department, may in accordance with this Article modify—

- (a) the conditions of a particular licence under sub-paragraph (a) or (c) of Article 8(1) of the Gas Order; or
- (b) the standard conditions of licences under sub-paragraph (a) or (c) of Article 8(1) of that Order,

where it considers it necessary or expedient to do so for the purpose of implementing, or facilitating the operation of, arrangements designed to secure that the prices charged in connection with the conveyance of gas through designated pipe-lines are in accordance with a common tariff which does not distinguish (whether directly or indirectly) between different parts of Northern Ireland or the extent of use of any such pipe-line.

(2) The power to modify licence conditions under sub-paragraph (a) or (b) of paragraph (1) may not be exercised more than once pursuant to the designation of any pipe-line under Article 59.

(3) The power to modify licence conditions under sub-paragraph (a) or (b) of paragraph (1) includes power to make incidental, consequential or transitional modifications.

(4) Before making modifications under this Article the Department or the Authority shall consult the holder of any licence being modified and such other persons as it considers appropriate.

(5) Any modification of part of a standard condition of a licence under paragraph (1)(a) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part II of the Gas Order.

(6) Where at any time the Department or the Authority modifies under paragraph (1)(b) the standard conditions of licences under sub-paragraph (a) or (c) of Article 8(1) of the Gas Order, it shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time.

(7) Where the Department or the Authority makes any modifications under this Article it shall publish those modifications in such manner as it considers appropriate.

### *Miscellaneous*

#### **Grants for energy purposes**

**61.**—(1) The Department may, in accordance with this Article, make grants to persons engaged in, or in commercial activities connected with—

- (a) the generation, transmission or supply of electricity;
- (b) the conveyance, storage or supply of gas; or
- (c) providing advice or undertaking research or other activities relating to any of the matters mentioned in sub-paragraph (a) or (b).

(2) A grant shall not be made under this Article unless in the opinion of the Department—

- (a) the making of the grant is likely to achieve one or more of the purposes set out in paragraph (3); and
- (b) the amount of the grant is reasonable having regard to all the circumstances.

(3) Those purposes are—

- (a) to secure a diverse and viable long term energy supply;
- (b) to promote research and development in relation to matters connected with energy supply;



- (c) in relation to grants under paragraph (1)(a) or (c), to promote efficiency and economy on the part of persons authorised by licences or exemptions to supply or participate in the transmission of electricity;
  - (d) in relation to grants under paragraph (1)(b) or (c), to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland;
  - (e) any other purpose prescribed by regulations made by the Department with the approval of the Department of Finance and Personnel.
- (4) Grants under this Article shall—
- (a) be of such amounts; and
  - (b) be made subject to such conditions (including conditions as to repayment),
- as the Department may determine.

### **Reasons for decisions**

**62.**—(1) This Article applies to the following decisions of the Authority, the Department or the Secretary of State, namely—

- (a) the revocation of an electricity licence or a gas licence;
- (b) the modification of the conditions of an electricity licence or a gas licence;
- (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of—
  - (i) Article 11(3)(a) or (b) of the Electricity Order; or
  - (ii) Article 10(3)(a) or (b) of the Gas Order;
- (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of —
  - (i) Article 11(3)(c) of the Electricity Order; or
  - (ii) Article 10(3)(c) of the Gas Order;
- (e) the determination of a dispute referred under Article 26(1) of the Electricity Order;
- (f) the making of a final order (within the meaning of Part VI), the making or confirmation of a provisional order (within the meaning of that Part) or the revocation of a final order or of a provisional order which has been confirmed.

(2) As soon as reasonably practicable after making such a decision the Authority, the Department or the Secretary of State shall publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.

(3) The Authority shall send a copy of a notice published in respect of a decision mentioned in sub-paragraph (a), (b), (c), (d) or (f) of paragraph (1) to the licence holder to whose licence, or to whom, the decision relates.

(4) In preparing a notice under paragraph (2) the Authority, the Department or the Secretary of State shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.

(5) This Article does not apply to a decision resulting in any provision which the Department has directed the Authority not to enter in a register under—

- (a) Article 52(4) of the Electricity Order; or
- (b) Article 29(4) of the Gas Order.

### General restrictions on disclosure of information

63.—(1) Information which—

- (a) has been obtained under or by virtue of the provisions of this Order, Part II of the Electricity Order or Part II of the Gas Order; and
- (b) relates to the affairs of any individual or to any particular business,

shall not be disclosed during the lifetime of the individual or so long as the business continues to be carried on, except as provided below.

(2) Paragraph (1) does not apply to a disclosure made with the consent of the individual or the person for the time being carrying on the business.

(3) Paragraph (1) does not apply to a disclosure if—

- (a) it is made for the purpose of facilitating the performance of any functions of the Department, the Authority, the Council or the Competition Commission under the Electricity Order, the Gas Order or this Order;
- (b) it is required by a notice under Article 31 or 59 of the Electricity Order, Article 30(1) or (2) of the Gas Order or Article 51 or the information has been obtained in pursuance of a notice under Article 30(2) of the Gas Order;
- (c) it is made by a licence holder and is required to be made by a condition of his licence; or
- (d) it is made by one licence holder to another and is required by that other licence holder for purposes connected with the carrying on of activities which he is authorised by his licence to carry on.

(4) Paragraph (1) does not apply to any disclosure of information made—

- (a) for the purpose of facilitating the performance by a person or body mentioned in paragraph (5) of any function under a statutory provision specified in paragraph (6);
- (b) for the purpose of facilitating the performance by the Comptroller and Auditor General for Northern Ireland or the Health and Safety Executive for Northern Ireland of any of his or its functions;
- (c) for the purpose of facilitating the exercise by the Secretary of State of any power conferred by the Financial Services and Markets Act 2000 (c. 8) or by the statutory provisions relating to companies, insurance companies or insolvency;
- (d) for the purpose of facilitating the performance by the Department or the Department of Finance and Personnel of any functions conferred by the statutory provisions relating to companies or insolvency or for the purposes of facilitating the performance of the functions of an inspector appointed under the statutory provisions relating to companies;
- (e) for the purpose of facilitating the performance by the official receiver for Northern Ireland of his functions under the statutory provisions relating to insolvency or by a recognised professional body for the purposes of Article 350 of the [Insolvency \(Northern Ireland\) Order 1989 \(NI 19\)](#) of its functions as such a body;
- (f) for the purposes of facilitating the performance by a district council of its functions under the Consumer Protection Act 1987 (c. 43);
- (g) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (h) for the purposes of any civil proceedings brought under or by virtue of the Electricity Order, the Gas Order, this Order or any statutory provision specified in paragraph (6); or
- (i) in pursuance of a Community obligation;

and sections 17 and 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) apply to this paragraph as if it were listed in Schedule 4 to that Act.

- (5) The persons and bodies specified for the purposes of paragraph (4)(a) are—
- (a) a Minister of the Crown;
  - (b) a Northern Ireland department;
  - (c) the Competition Commission;
  - (d) the Office of Fair Trading;
  - (e) the Director General of Telecommunications;
  - (f) the Director General of Water Services;
  - (g) the Gas and Electricity Markets Authority;
  - (h) the Water Appeals Commission for Northern Ireland;
  - (i) the Civil Aviation Authority;
  - (j) the Financial Services Authority.
- (6) The statutory provisions specified for the purposes of paragraph (4)(a) and (h) are—
- (a) the Trade Descriptions Act 1968 (c. 29);
  - (b) the Fair Trading Act 1973 (c. 41);
  - (c) the [Water and Sewerage Services \(Northern Ireland\) Order 1973 \(NI 2\)](#);
  - (d) the Consumer Credit Act 1974 (c. 39);
  - (e) the Estate Agents Act 1979 (c. 38);
  - (f) the Competition Act 1980 (c. 2);
  - (g) the Telecommunications Act 1984 (c. 12);
  - (h) the Airports Act 1986 (c. 31);
  - (i) the Gas Act 1986 (c. 44);
  - (j) the [Audit \(Northern Ireland\) Order 1987 \(NI 5\)](#);
  - (k) the [Consumer Protection \(Northern Ireland\) Order 1987 \(NI 20\)](#);
  - (l) the Consumer Protection Act 1987 (c. 43);
  - (m) the Control of Misleading Advertisements Regulations 1988 ([SI 1988/915](#));
  - (n) the Water Act 1989 (c. 15), the Water Industry Act 1991 (c. 56) and any of the other consolidation Acts (within the meaning of section 206 of the Water Industry Act 1991);
  - (o) the Electricity Act 1989 (c. 29);
  - (p) Part IV of the [Airports \(Northern Ireland\) Order 1994 \(NI 1\)](#);
  - (q) the [Water \(Northern Ireland\) Order 1999 \(NI 6\)](#);
  - (r) the Competition Act 1998 (c. 41);
  - (s) the Financial Services and Markets Act 2000 (c. 8);
  - (t) the Utilities Act 2000 (c. 27);
  - (u) the Enterprise Act 2002 (c. 40).
- (7) The Department may by order modify paragraph (3), (4), (5) or (6).
- (8) Nothing in paragraph (1) is to be construed either as limiting the matters which may be—
- (a) published under Article 45 of the Electricity Order or Article 7, 18, 19, 21, 25 or 27;
  - (b) made public by the Authority as part of a notice under Article 26; or

- (c) included in, or made public as part of, a report of the Authority, the Council or the Competition Commission under any provision of this Order, Part II of the Electricity Order or Part II of the Gas Order,

or as applying to information which has been so published or has been made public as part of such a notice or such a report.

(9) A person who discloses any information in contravention of this Article is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(10) Information obtained by the Authority in the exercise of functions which are exercisable concurrently with the Office of Fair Trading under Part I of the Competition Act 1998 (c. 41) is subject to Part 9 of the Enterprise Act 2002 (information) and not to paragraphs (1) to (9) of this Article.

### Assignment of wayleaves

**64.**—(1) In Schedule 4 to the Electricity Order (powers of licence holders) after paragraph 10 there shall be inserted —

*“Assignment of necessary wayleave*

**10A.**—(1) Subject to the following provisions of this paragraph, a necessary wayleave granted under paragraph 10 shall be capable of being assigned if (and only if)—

- (a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;
- (b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.

(2) A necessary wayleave shall not be assigned—

- (a) without the consent of the Department; or
- (b) to a person other than a licence holder.

(3) The relevant licence holder shall—

- (a) give notice of an application under sub-paragraph (1)(b) to—
- (i) the occupier of the land; and
- (ii) where the occupier is not also the owner of the land, the owner; and
- (b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.

(4) The notice under sub-paragraph (3) shall—

- (a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and
- (b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.

(5) Before determining whether to designate a wayleave in pursuance of an application under sub-paragraph (1)(b), the Department shall consider any representations or objections which are duly made as mentioned in sub-paragraph (4)(b) and not withdrawn .

(6) The Department shall give notice of its decision on an application under sub-paragraph (1)(b) to—

- (a) the licence holder; and
- (b) each person mentioned in sub-paragraph (3)(b).

(7) In this paragraph—

“assign” includes transfer by any means;

“relevant licence holder”, in relation to a necessary wayleave, means the licence holder to whom the wayleave was granted or to whom it has been assigned.

(8) In paragraphs 11 and 12 references to a licence holder include references to a licence holder to whom a wayleave has been assigned.”.

(2) In Schedule 3 to the Gas Order (powers of licence holders) after paragraph 10 there shall be inserted—

*“Assignment of necessary wayleave*

**10A.**—(1) Subject to the following provisions of this paragraph, a necessary wayleave granted under paragraph 10 shall be capable of being assigned if (and only if)—

- (a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;
- (b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.

(2) A necessary wayleave shall not be assigned—

- (a) without the consent of the Department; or
- (b) to a person other than a licence holder.

(3) The relevant licence holder shall—

- (a) give notice of an application under sub-paragraph (1)(b) to—
  - (i) the occupier of the land; and
  - (ii) where the occupier is not also the owner of the land, the owner; and
- (b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.

(4) The notice under sub-paragraph (3) shall—

- (a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and
- (b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.

(5) Before determining whether to designate a wayleave in pursuance of an application under sub-paragraph (1)(b), the Department shall consider any representations or objections which are duly made as mentioned in sub-paragraph (4)(b) and not withdrawn.

(6) The Department shall give notice of its decision on an application under sub-paragraph (1)(b) to—

- (a) the relevant licence holder; and
- (b) each person mentioned in sub-paragraph (3)(b).

(7) In this paragraph—

“assign” includes transfer by any means;

“relevant licence holder”, in relation to a necessary wayleave, means the licence holder to whom the wayleave was granted or to whom it has been assigned.

(8) In paragraphs 11 and 12 references to a licence holder include references to a licence holder to whom a wayleave has been assigned.”.

### *Supplementary*

#### **Amendments, transitional and transitory provisions, savings and repeals**

**65.** Schedule 3 (amendments), Schedule 4 (transitional and transitory provisions and savings) and Schedule 5 (repeals) have effect.

#### **Regulations, orders and directions**

**66.**—(1) Regulations under this Order and orders under Article 57, 59(1) or 63(7) shall be subject to negative resolution.

(2) No order shall be made under Article 39, 40, 45(9), 52(1) or 56(1) unless a draft of the order has been laid before and approved by resolution of the Assembly.

(3) Regulations and orders made by the Department under this Order may contain such incidental, supplementary or transitional provisions and such savings as appear to the Department to be necessary or expedient.

(4) Article 64 of the Electricity Order (powers to make regulations) applies to regulations under this Order as if they were made under Part II of that Order.

(5) Any power conferred by this Order to give a direction shall include power to vary or revoke the direction.

(6) Any direction given under this Order shall be in writing.

#### **Power to make transitional, consequential and saving provisions**

**67.**—(1) The Department may by regulations make such transitional and consequential provisions and such savings as it considers necessary or expedient in preparation for, or in connection with, or in consequence of—

(a) the coming into operation of any provision of this Order; or

(b) the operation of any statutory provision repealed or amended by a provision of this Order during any period when the repeal or amendment is not wholly in operation.

(2) Such regulations may make modifications of any statutory provision (including a provision in this Order).

Clerk of the Privy Council

## SCHEDULES

### SCHEDULE 1

#### THE NORTHERN IRELAND AUTHORITY FOR ENERGY REGULATION

##### *Membership*

1.—(1) The Authority shall consist of a chairman, and no fewer than two other members, appointed by the Department.

(2) The Department shall consult the chairman before appointing any other member.

##### *Terms of appointment, remuneration, pensions, etc.*

2.—(1) Subject to this Schedule, the chairman and other members shall hold and vacate office as such in accordance with the terms of their respective appointments.

(2) The terms of appointment of the chairman and other members shall be determined by the Department.

3.—(1) An appointment of a person to hold office as chairman or other member shall be for a term not exceeding five years.

(2) A person holding office as chairman or other member—

(a) may resign that office by giving notice in writing to the Department; and

(b) may be removed from office by the Department on the ground of incapacity or misbehaviour.

(3) A previous appointment as chairman or other member does not affect a person's eligibility for appointment to either office.

4.—(1) The Authority shall pay to the chairman and other members such remuneration, and such travelling and other allowances, as may be determined by the Department.

(2) The Authority shall, if required to do so by the Department—

(a) pay such pension, allowances or gratuities as may be determined by the Department to or in respect of a person who is or has been the chairman or a member of the Authority; or

(b) make such payments as may be so determined towards provision for the payment of a pension, allowances or gratuities to or in respect of such a person.

(3) If, where any person ceases to hold office as chairman or other member, the Department determines that there are special circumstances which make it right that he should receive compensation, the Authority shall pay to him a sum by way of compensation of such amount as may be determined by the Department.

### *Staff*

5. The Authority may, with the approval of the Department of Finance and Personnel as to numbers and terms and conditions of service, appoint such staff as it may determine.

### *Committees*

6.—(1) The Authority may establish committees and any committee of the Authority may establish sub-committees.

(2) The members of a committee of the Authority may include persons who are not members of the Authority (and the members of a sub-committee may include persons who are not members of the committee).

### *Proceedings, etc.*

7.—(1) The Authority may regulate its own procedure (including quorum).

(2) The Authority shall consult the Department before making or revising its procedures for dealing with conflicts of interest.

(3) The validity of anything done by the Authority is not affected by a vacancy among its members or by a defect in the appointment of a member.

8.—(1) The application of the seal of the Authority shall be authenticated by the signature of the chairman or by some other person who has been authorised by the Authority to act for that purpose.

(2) A document purporting to be duly executed under the seal of the Authority, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, be taken to be so executed or signed.

### *Performance of functions*

9.—(1) Anything authorised or required to be done by the Authority may be done by—

(a) any member or employee of the Authority who is authorised for that purpose by the Authority, whether generally or specially;

(b) any committee of the Authority which has been so authorised.

(2) Sub-paragraph (1) does not apply to any power to make a statutory instrument (within the meaning of section 1(e) of the Interpretation Act (Northern Ireland) 1954 (c. 33)).

(3) In sub-paragraph (1)(b) “committee of the Authority” does not include a committee whose members include any person who is not a member or employee of the Authority.

### *Rule-making authority*

10. In the [Statutory Rules \(Northern Ireland\) Order 1979 \(NI 12\)](#) in Schedule 1 (authorities which are rule-making authorities) in the Part headed “Other authorities” there shall be inserted (at the appropriate place) the following entry—

“The Northern Ireland Authority for Energy Regulation.”.



### *Supplementary powers*

**11.**—(1) The Authority has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

(2) That power includes the formation of advisory bodies.

### *Assembly disqualification*

**12.** In the Northern Ireland Assembly Disqualification Act 1975 (c. 25), in Part II of Schedule 1 (bodies of which all members are disqualified) there shall be inserted at the appropriate place the following entry—

“The Northern Ireland Authority for Energy Regulation.”.

### *Assembly Ombudsman*

**13.** In the *Ombudsman (Northern Ireland) Order 1996 (NI 8)*, in Schedule 2 (departments and other authorities subject to investigation) there shall be inserted at the appropriate place the following entry—

“The Northern Ireland Authority for Energy Regulation.”.

## SCHEDULE 2

### ORDERS ALTERING LICENSABLE ACTIVITIES

#### *Introductory*

**1.**—(1) In this Schedule references to an order are to an order under Article 39 or 40.

(2) An order providing for activities to become licensable activities may only be made on the application of the Authority made in accordance with paragraph 2.

(3) An order providing for activities to cease to be licensable activities may be made either—

- (a) on the application of the Authority made in accordance with paragraph 7; or
- (b) following consultation by the Department in accordance with paragraph 8.

#### *Application by Authority for order including new activities*

**2.**—(1) If the Authority proposes to make an application for an order providing for activities to become licensable activities, it shall give notice—

- (a) stating that it proposes to make an application for an order providing for the activities to become licensable activities;
- (b) setting out any conditions which it would expect to be included in such licences; and
- (c) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,

and shall consider any representations or objections which are duly made and not withdrawn.

(2) In the case of an order under Article 40, the notice shall also set out the conditions which the Authority would expect such an order to determine to be standard conditions for the purposes of licences authorising the undertaking of the activities.

(3) The notice shall be given by serving a copy on the Council and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of—

- (a) persons appearing to it to be carrying on, or be intending to carry on, the activities; and
- (b) any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities.

(4) If an objection has been duly made (and not withdrawn) by a person who is carrying on or intends to carry on the activities, the Authority shall make a reference to the Competition Commission under paragraph 3 before making the application.

(5) In any other case where the Authority considers it appropriate to make a reference to the Commission under paragraph 3 before making the application, the Authority may make such a reference.

(6) If a reference is made to the Commission, the application shall not be made unless the Commission has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest.

(7) The application shall set out—

- (a) the activities which the Authority considers should become licensable activities; and
- (b) the conditions which the Authority would expect to be included in such licences.

(8) In the case of an application for an order under Article 40 the application shall also set out the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question.

#### *References to Competition Commission*

**3.—(1)** A reference to the Competition Commission under this paragraph shall require the Commission to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest.

(2) The Authority may, at any time, by notice given to the Commission vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the Commission shall give effect to the variation.

(3) The Authority shall specify in the reference, or a variation of the reference, for the purpose of assisting the Commission in carrying out the investigation on the reference—

- (a) the conditions which the Authority would expect to be included in licences authorising the undertaking of the activities specified in the reference and (in the case of a reference in relation to an application for an order under Article 40) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of such licences; and
- (b) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have.

(4) As soon as practicable after making the reference, or a variation of the reference, the Authority shall serve a copy of it on the Council and publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of—

- (a) persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it; and
- (b) any other persons appearing to the Authority to be likely to be affected by it.

(5) The Authority shall, for the purpose of assisting the Commission in carrying out the investigation on the reference, give to the Commission—

- (a) any information which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested by the Commission for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within its power to give, in relation to any such matters,

and the Commission shall take account of the information for the purpose of carrying out the investigation.

(6) In determining for the purposes of this paragraph whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the Commission shall have regard—

- (a) in the case of a reference in relation to an application for an order under Article 39 to the matters referred to in Article 12;
- (b) in the case of a reference in relation to an application for an order under Article 40 to the matters referred to in Article 14.

#### *References under paragraph 3: time limits*

4.—(1) Every reference under paragraph 3 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the Competition Commission on a reference under paragraph 3 shall not have effect (in particular for the purposes of paragraph 2(6)) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under sub-paragraph (3).

(3) The Authority may, if it has received representations on the subject from the Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under sub-paragraph (3) in relation to the same reference.

(5) The Authority shall publish an extension under sub-paragraph (3) in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

#### *References under paragraph 3: application of Enterprise Act 2002*

5.—(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in sub-paragraphs (2) and (3), for the purposes of references under paragraph 3 as they apply for the purposes of references under that Part—

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);

- (g) section 115 (recovery of penalties); and
  - (h) section 116 (statement of policy).
- (2) Section 110 shall, in its application by virtue of sub-paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3))” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under paragraph 3 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words “the OFT,” and “or the Secretary of State” were omitted.
- (5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1) or (4), have effect in relation to those sections as applied by virtue of those sub-paragraphs.
- (6) Accordingly, corresponding provisions of this Order, the Electricity Order or the Gas Order shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.

#### *Reports on references*

- 6.—(1) In making a report on a reference under paragraph 3, the Competition Commission shall include in the report definite conclusions on whether the fact that the activities specified in the reference (or the reference as varied) are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Commission shall also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions.
- (3) Where the Commission concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it shall specify in the report—
- (a) the effects adverse to the public interest which that fact has or may be expected to have; and
  - (b) any modifications to the conditions specified in the reference in accordance with paragraph 3(3)(a) which it considers appropriate.
- (4) For the purposes of paragraph 2(6), a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.
- (5) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 3 as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.
- (6) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under paragraph 3.

(7) In making any report on a reference under paragraph 3 the Commission must have regard to the following considerations before disclosing any information.

(8) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Commission thinks is contrary to the public interest.

(9) The second consideration is the need to exclude from disclosure (so far as practicable)—

(a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or

(b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

(10) The third consideration is the extent to which the disclosure of the information mentioned in sub-paragraph (9)(a) or (b) is necessary for the purposes of the report.

(11) A report of the Commission on a reference under paragraph 3 shall be made to the Authority.

(12) On receiving the report, the Authority shall send a copy of it to the Department.

(13) Subject to sub-paragraph (14), the Authority shall, not less than 14 days after the copy is received by the Department, send another copy to the Council and publish that other copy in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(14) If it appears to the Department that the publication of any matter in the report would be against the public interest or the commercial interests of any person, it may, before the end of the period of 14 days mentioned in sub-paragraph (13), direct the Authority to exclude that matter from the copy of the report to be sent to the Council and published under that sub-paragraph.

#### *Application by Authority for order excluding activities*

7.—(1) Before making an application for an order providing for activities to cease to be licensable activities the Authority shall give notice—

(a) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and

(b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,

and shall consider any representations or objections duly made and not withdrawn.

(2) The notice shall be given—

(a) by serving a copy on the Department and the Council; and

(b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by such an order.

(3) An application under this paragraph shall set out—

(a) the activities which the Authority considers should cease to be licensable activities; and

(b) the Authority's reasons for proposing that the order be made.

#### *Consultation by Department about order excluding activities*

8.—(1) If the Department proposes to make an order providing for activities to cease to be licensable activities (otherwise than on an application by the Authority under paragraph 7), it shall give notice—

- (a) stating that it proposes to make an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
- and shall consider any representations or objections duly made (and not withdrawn).
- (2) The notice shall be given—
- (a) by serving a copy on the Authority and the Council; and
  - (b) by publishing it in such manner as the Department considers appropriate for bringing it to the attention of persons likely to be affected by such an order.

### SCHEDULE 3

#### AMENDMENTS

##### *The Electricity (Northern Ireland) Order 1992 (NI 1)*

1.—(1) In Article 3, in the definition of “authorised area”, omit the words “(b) or” and “transmit or” and for the definition of “transmit” substitute—

““transmission”, in relation to electricity, means transmission by means of a transmission system;

“transmission licence” means a licence under Article 10(1)(b);

“transmission system” means a system which—

- (a) consists (wholly or mainly) of high voltage lines and electrical plant; and
- (b) is used for conveying electricity—
  - (i) from a generating station to a substation;
  - (ii) from one generating station to another;
  - (iii) from one substation to another;
  - (iv) to a substation in Northern Ireland from a place outside Northern Ireland; or
  - (v) from a substation in Northern Ireland to a place outside Northern Ireland”.

(2) Until the coming into operation of sub-paragraph (1), the definition of “transmit” in Article 3 shall have effect with the substitution for the words from “from a generating station” to the end of

- (a) “from a generating station to a substation;
- (b) from one generating station to another;
- (c) from one substation to another;
- (d) to a substation in Northern Ireland from a place outside Northern Ireland; or
- (e) from a substation in Northern Ireland to a place outside Northern Ireland.”.

2. In Article 10(7)(a) for the words from “whose authorised area” to the end substitute “whose interests may be affected by the grant of the licence”.

3.—(1) In Article 11(1)(a) for “Articles 4 and 6” substitute “Article 12 of the Energy (Northern Ireland) Order 2003”.

- (2) In Article 11(2)(a) for “of his” substitute “owned, leased or operated by him”.
4. In Article 11A(2) in sub-paragraph (a) omit the words “(b) or” and for sub-paragraph (b) substitute—
- “**(b)** in the case of a transmission licence, require the holder to take such steps as the grantor, having regard to the framework of the licence, considers to be requisite or expedient to ensure that—
- (i) the requirements for systems access laid down by Article 17 or 18 of the Directive are complied with; and
- (ii) Articles 7.2 to 7.6, 8.1 and 8.2 and 9 of the Directive are complied with;”.
5. In Article 12 for paragraphs (2) to (4) substitute—
- “(2) It shall be the duty of the holder of a transmission licence—
- (a) to take such steps as are reasonably practicable within the framework of his licence to promote the development and maintenance of an efficient, co-ordinated and economical system of electricity transmission; and
- (b) to facilitate competition in the supply and generation of electricity.”.
- 6.—(1) In Article 13, in paragraph (1)(a) for the words from “a person” to “electricity” substitute “the holder of a transmission licence”.
- (2) In Article 13(4) omit the words “(b) or”.
- (3) After Article 13(4) insert—
- “(4A) A transmission licence may provide that, where the licence is modified so as to reduce in any respect the area in which the licence holder may carry on activities, Schedule 4 shall have effect in relation to the licence holder as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.”.
- 7.—(1) In Article 15(1)(a)(i) for “generation, transmission or supply of electricity in pursuance of a” substitute “carrying on of activities authorised or regulated by a particular”.
- (2) In Article 15(6) after “this Article” insert “or in carrying out functions under Article 17A”, after “the investigation” insert “or the carrying out of those functions” and after “such investigation” insert “or such functions”.
- (3) In Article 15(7) for “Articles 4 and 6” substitute “Article 12 of the Energy (Northern Ireland) Order 2003”.
8. In Article 16(1A) for “Article 17” substitute “Articles 17 and 17A”.
9. In Article 31(1) after “relevant condition or requirement” insert “(as defined in Article 41 of the Energy (Northern Ireland) Order 2003)”.
10. In Article 32(2)(c) for “transmit” substitute “participate in the transmission of”.
11. In Article 33(2)(a) and (3)(b) for “transmit or supply” substitute “supply or participate in the transmission of”.
12. In Article 35(1) for “each holder” substitute “any holder”.
13. In Article 38 for paragraphs (1) to (3) substitute—
- “(1) The Department may give a direction requiring the holder of a transmission licence to give to the Department, after consultation with specified persons, any information or advice which the Department may reasonably require for purposes connected with the exercise of its functions under Article 37.

(2) The Department may give a direction requiring any person who is authorised by a licence to participate in the transmission of electricity to carry on the activities which the licence authorises or regulates (or any of them), at any time when a direction under Article 37 (4) is in force, either in a specified manner or with a view to achieving specified objectives.

(3) In paragraphs (1) and (2) “specified” means specified by or under the Department’s direction; and a person subject to a direction under paragraph (2) shall give effect to it notwithstanding any other duty imposed on him by or under this Part.”.

**14.** In Article 42(5)(b) for “consumer committee or any sub-committee of that committee” substitute “General Consumer Council”.

**15.** In Article 45B(2)(a) for “consumer committee” substitute “General Consumer Council”.

**16.—(1)** In Article 50(1)(b) and (2)(b) for “functions under this Part” substitute “electricity functions”.

(2) In Article 50(3) for “function of the Director under this Part” substitute “of the electricity functions of the Authority”.

(3) In Article 50 after paragraph (3) insert —

“(3A) In this Article “electricity functions” means—

(a) functions under this Part; and

(b) functions under the Energy (Northern Ireland) Order 2003 relating to electricity.”.

**17.** In Article 52(2) for sub-paragraph (d) and the word “and” immediately before it substitute—

“(d) every final or provisional order under Article 42 of the Energy (Northern Ireland) Order 2003 relating to a licence holder, every confirmation of a provisional order so relating, every revocation of a final or provisional order so relating and every notice under paragraph (7) of that Article so relating; and

(e) every penalty imposed under Article 45 of the Energy (Northern Ireland) Order 2003 on a licence holder and every notice under Article 45 (6) of that Order relating to such a penalty.”.

**18.—(1)** In Article 62(1) for “any person who is authorised by a licence to transmit electricity” substitute “the holder of a transmission licence”.

(2) In Article 62(2) for “transmit or supply” substitute “supply or participate in the transmission of”.

**19.** In Article 63 in paragraph (1) for the words “provision of this Part or of any regulations made under this Part” substitute “relevant provision” and after that paragraph insert—

“(1A) In paragraph (1) “relevant provision” means—

(a) any provision of this Part or of any regulations made under this Part; and

(b) any provision of the Energy (Northern Ireland) Order 2003 or of any regulations made under that Order.”.

**20.** In Article 66(1) for the words from “any matter arising” to the end substitute “any matter relating to electricity arising under this Part or the Energy (Northern Ireland) Order 2003, other than a matter in respect of which any functions of the Authority under Part VI of that Order are or may be exercisable.”.



*The Gas (Northern Ireland) Order 1996 (NI 2)*

- 21.** In Article 8(2)(a) omit the words “(a) or”.
- 22.**—(1) In Article 9(1) for “Article 5” substitute “Article 14 of the Energy (Northern Ireland) Order 2003”.
- (2) In Article 9(7), in sub-paragraph (a) for “longer” substitute “other” and for sub-paragraph (b) substitute—
- “(b) so as to modify the activities which are designated activities for the purposes of this Article, either by adding to those activities or by removing some of them;”.
- 23.** In Article 10 in paragraphs (1)(a) and (3)(e) for “Article 5” substitute “Article 14 of the Energy (Northern Ireland) Order 2003” and in paragraph (2)(a) for “of his” substitute “owned, leased or operated by him”.
- 24.** In Article 10A(2) in sub-paragraphs (b) and (c) omit the words “(a) or” and after sub-paragraph (a) insert—
- “(aa) in the case of a licence under Article 8(1)(a), require the holder to take such steps as the grantor, having regard to the framework of the licence, considers to be requisite or expedient to ensure that—
- (i) the requirements for systems access laid down by Article 16 of the Directive are complied with; and
- (ii) Articles 5, 7, 8, 10 and 11 of the Directive are complied with;”.
- 25.** In Article 11(2) after “18(2)” insert “and to Article 60(5) of the Energy (Northern Ireland) Order 2003”.
- 26.** In Article 12(1)(a) for “an authorised area” substitute “the area within which it authorises participation in the conveyance of gas”.
- 27.** In Article 14 after paragraph (6) insert—
- “(6A) The modification under paragraph (1)(a) of part of a standard condition of a licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.”.
- 28.**—(1) In Article 15(1)(a)(i) and (2)(a)(i) for “required” substitute “regulated”.
- (2) In Article 15(7) after “this Article” insert “or in carrying out functions under Article 17A”, after “the investigation” insert “or the carrying out of those functions” and after “such investigation” insert “or such functions”.
- (3) In Article 15(8) for “Article 5” substitute “Article 14 of the Energy (Northern Ireland) Order 2003”.
- (4) In Article 15(10) for “and 17” substitute “, 17 or 17A”.
- 29.** In Article 16(1A) for “Article 17” substitute “Articles 17 and 17A”.
- 30.** In Article 17 after paragraph (6) insert—
- “(7) The modification under paragraph (1) of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.”.
- 31.**—(1) In Article 18 after paragraph (1) insert—

“(1A) The modification under paragraph (1)(i) of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.”.

(2) In Article 18(3)(a) and (b) for “required” substitute “regulated”.

**32.**—(1) In Article 27(1)(b) and (2)(b) for “functions under this Part” substitute “gas functions”.

(2) In Article 27(3) for “function of the Director or the Department under this Part” substitute “of the gas functions of the Authority or the Department”.

(3) In Article 27 after paragraph (3) insert —

“(3A) In this Article “gas functions” means—

(a) functions under this Part; and

(b) functions under the Energy (Northern Ireland) Order 2003 relating to gas.”.

**33.**—(1) In Article 29(2) for sub-paragraph (d) and the word “and” immediately before it substitute—

“(d) every final or provisional order under Article 42 of the Energy (Northern Ireland) Order 2003 relating to a licence holder, every confirmation of a provisional order so relating, every revocation of a final or provisional order so relating and every notice under paragraph (7) of that Article so relating; and

(e) every penalty imposed under Article 45 of the Energy (Northern Ireland) Order 2003 on a licence holder and every notice under Article 45 (6) of that Order relating to such a penalty.”.

(2) In Article 29(3) for the words from “the matters specified” to the end substitute “any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.”.

**34.** In Article 30 (2) for “Article 5” substitute “Article 14 of the Energy (Northern Ireland) Order 2003”.

**35.**—(1) In Article 36 for paragraph (1) substitute—

“(1) If in the case of any pipe-line it appears to the Authority, on the application of any person, that the pipe-line can and should be modified—

(a) by installing in it a junction through which another pipe-line may be connected to it; or

(b) by modifying apparatus and works associated with a high pressure pipe-line so as to increase the capacity of the pipe-line,

then, subject to paragraph (3), the Authority may, after giving a relevant licence holder an opportunity of being heard about the matter, give directions to that licence holder in accordance with paragraph (2) in consequence of the application.

(1A) In this Article “relevant licence holder”, in relation to a pipe-line, means a person holding a licence under Article 8(1)(a) authorising him to participate in the conveyance of gas by means of that pipe-line.”.

(2) In Article 36 (2) for “operator” (wherever occurring) substitute “relevant licence holder”.

**36.** In Article 45(1) and (2) for “convey” substitute “participate in the conveyance of”.

**37.** In Article 46 in paragraph (1) for the words “provision of this Part or of any regulations made under this Part” substitute “relevant provision” and after that paragraph insert—

“(1A) In paragraph (1) “relevant provision” means—

- (a) any provision of this Part or of any regulations made under this Part; and
- (b) any provision of the Energy (Northern Ireland) Order 2003 or of any regulations made under that Order.”.

**38.** In Article 48(1) for the words from “any matter arising” to the end substitute “any matter relating to gas arising under this Part or the Energy (Northern Ireland) Order 2003, other than a matter in respect of which any functions of the Authority under Part VI of that Order are or may be exercisable.”.

**39.** In Schedule 5, renumber paragraph 1 as sub-paragraph (1) of that paragraph and after that sub-paragraph insert—

“(2) For the purposes of this Schedule a relevant licence holder shall be taken to convey gas if he participates in its conveyance.”.

#### SCHEDULE 4

##### TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

###### *Abolition of Consumer Committee for Electricity*

**1.—**(1) The Consumer Committee for Electricity shall provide the Council with such information or assistance and such documents or records as the Council may require for the purposes of its functions under this Order.

(2) Any statutory provision or any document which—

- (a) refers to the Consumer Committee for Electricity; and
- (b) was passed or made before the coming into operation of Article 9(3)(b),

shall have effect after that time, so far as necessary for the purposes of or in consequence of this Order, as if references to the Committee were references to the Council.

###### *First financial year of Authority*

**2.—**(1) If the period beginning with the day on which the Authority is established and ending with the next 31st March is 6 months or more, the first financial year of the Authority is that period.

(2) Otherwise the first financial year of the Authority is the period beginning with the day on which the Authority is established and ending with the second following 31st March.

###### *First forward work programmes of Authority and Council*

**3.—**(1) The Authority’s first work programme required by Article 5(1) shall relate to the financial year following its first financial year.

(2) The Council’s first work programme required by Article 10(1) shall relate to the same financial year as the Authority’s first work programme.

*Last annual reports of the Directors*

4.—(1) After the abolition of the offices of Director General of Gas for Northern Ireland and Director General of Electricity Supply for Northern Ireland, any duty of either Director to make an annual report, in relation to any calendar year for which such a report has not been made, shall be carried out by the Authority.

(2) The period between the abolition of those offices and the end of the preceding calendar year (if less than 12 months) shall be treated as the calendar year for which the last annual reports are required.

(3) If that period is nine months or more, the Authority shall make the last annual reports as soon as practicable after the end of that period.

(4) If that period is less than nine months, the last annual reports shall be made no later than the first report of the Authority under Article 6(1).

(5) In this paragraph “annual reports” means reports required by Article 53(1) of the Electricity Order and Article 32(1) of the Gas Order.

*Investigations being carried out under the Electricity Order*

5.—(1) This paragraph applies to any matter—

- (a) being investigated by the Director General of Electricity Supply for Northern Ireland or the consumer committee under Article 48 of the Electricity Order (investigation of enforcement matters) immediately before the repeal by this Order of that Article,
- (b) being investigated by the consumer committee under Article 49 of that Order (investigation of certain other matters) immediately before the repeal by this Order of that Article.

(2) If the matter being investigated is a matter which appears to the Council to be a matter which is or amounts to a complaint to which Article 22 applies, the Council shall treat the matter as if it were a complaint referred to it under that Article.

(3) In any other case the Authority shall either—

- (a) agree with the Council that the Council is to investigate the matter under Article 23; or
- (b) make such further investigations of the matter, and take such action, as it considers appropriate.

(4) Where the Council or the Authority is required by virtue of sub-paragraph (2) or (3) to investigate a matter, it may treat anything done by the Director General of Electricity Supply for Northern Ireland or the consumer committee in investigating that matter as if done for the purposes of its own investigation.

(5) The Director General of Electricity Supply for Northern Ireland shall give the Council such information or assistance as may be necessary to enable it to carry out its functions under this paragraph.

*Investigations being carried out under the Gas Order*

6.—(1) This paragraph applies to any matter—

- (a) being investigated by the Director General of Gas for Northern Ireland or the Council under Article 25 of the Gas Order (investigation of enforcement matters) immediately before the repeal by this Order of that Article,

- (b) being investigated by the Council under Article 26 of that Order (investigation of certain other matters) immediately before the repeal by this Order of that Article.
- (2) If the matter being investigated is a matter which appears to the Council to be a matter which is or amounts to a complaint to which Article 22 applies, the Council shall treat the matter as if it were a complaint referred to it under that Article.
- (3) In any other case—
  - (a) if the matter was being investigated by the Council, the Council shall investigate the matter under Article 23;
  - (b) if the matter was being investigated by the Director General of Gas for Northern Ireland, the Authority shall either—
    - (i) agree with the Council that the Council is to investigate the matter under Article 23; or
    - (ii) make such further investigations of the matter, and take such action, as it considers appropriate.
- (4) Where the Council or the Authority is required by virtue of sub-paragraph (2) or (3) to investigate a matter, it may treat anything done by the Director General of Gas for Northern Ireland in investigating that matter as if done for the purposes of its own investigation.
- (5) The Director General of Gas for Northern Ireland shall give the Council such information or assistance as may be necessary to enable it to carry out its functions under this paragraph.

*Grant of new electricity transmission licence*

- 7.—(1) This paragraph applies in relation to any licence which—
    - (a) is granted under Article 10(1)(b) of the Electricity Order in the period of two months beginning with the commencement of paragraph 1(2) of Schedule 3; and
    - (b) authorises a person to transmit electricity, within the meaning of paragraph (d) or (e) of the definition of “transmit” in Article 3 of the Electricity Order.
  - (2) Neither the requirement to consult imposed by Article 10(1) of the Electricity Order nor Article 10(3) and (4) of that Order shall apply in relation to the granting of such a licence
- 8.—(1) This paragraph applies in relation to any licence granted under Article 10(1)(b) of the Electricity Order in the period of two months beginning with the commencement of Article 28.
- (2) Anything required or authorised to be done by Article 10(3) to (5) of the Electricity Order in relation to the granting of such a licence may be done at any time before the commencement of Article 28.

*Grant of new licence under Article 8(1)(a) of Gas Order*

- 9.—(1) This paragraph applies in relation to any licence granted under Article 8(1)(a) of the Gas Order in the period of two months beginning with the commencement of Article 30.
- (2) Anything required or authorised to be done by Article 8(3), (4) or (7) of the Gas Order in relation to the granting of such a licence may be done at any time before the commencement of Article 30.

*Modification of licences following Competition Commission report*

**10.** Article 36 does not apply in relation to the modification of an electricity licence following a report of the Competition Commission made before the commencement of that Article.

**11.** Article 37 does not apply in relation to the modification of a gas licence following a report of the Competition Commission made before the commencement of that Article.

*Enforcement*

**12.—**(1) Articles 42 to 44 and 51 (and the related repeals in Schedule 5) do not have effect in relation to—

- (a) a provisional order which has been made before the commencement of those Articles; or
- (b) a final order in respect of which notice has been given under Article 29 of the Electricity Order or Article 20 of the Gas Order before the commencement of those Articles.

(2) Subject to sub-paragraph (1), any notice served—

- (a) under Article 31(2) of the Electricity Order for the purposes of any of the functions of the Director General of Electricity Supply for Northern Ireland under Article 28 of that Order; or
- (b) under Article 30(1) of the Gas Order,

shall have effect as if served by the Authority under Article 51(2).

*Financial penalties*

**13.** The power of the Authority under Article 45(1) or (2) is not exercisable in respect of any contravention or failure before the commencement of that Article.

*Consultation concerning common tariff*

**14.** Any consultation undertaken by the Department or the Director General of Gas for Northern Ireland before the commencement of Article 60 shall be as effective, for the purposes of paragraph (4) of that Article, as if undertaken in accordance with that paragraph after that commencement.

*Modification of existing licences*

**15.—**(1) The Department after consultation with the Authority, or the Authority with the consent of the Department, may in accordance with this paragraph modify—

- (a) a gas licence or an electricity licence; or
- (b) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1) of the Gas Order,

where the Department or (as the case may be) the Authority considers it necessary or expedient to do so in consequence of this Order.

(2) In particular the Department or the Authority may under sub-paragraph (1)(a) or (b) make modifications in consequence of, or of preparations for—

- (a) the establishment of the Authority;
- (b) the conferral by this Order of functions on the Authority or the Council; or
- (c) the abolition of any office or body mentioned in Article 3(4) or 9(3).

(3) Where the Department or the Authority makes any modification under sub-paragraph (1)(a) or (b) it may make such incidental or consequential modifications to the licence or conditions as it considers necessary or expedient.

(4) Before making any modification under sub-paragraph (1) or (3) the Department or Authority shall consult the licence holder.

(5) Any consultation undertaken by the Director General of Gas for Northern Ireland or the Director General of Electricity Supply for Northern Ireland before the commencement of Article 3(1) shall be as effective for the purposes of this paragraph as if undertaken by the Authority after that time.

(6) Any modification of part of a standard condition of a gas licence under paragraph (1)(a) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part II of the Gas Order.

(7) Where at any time the Department or the Authority modifies under paragraph (1)(b) the standard conditions of licences under sub-paragraph (a), (b) or (c) of Article 8(1) of the Gas Order, it shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time.

(8) Where the Department or the Authority makes any modifications under this paragraph it shall publish those modifications in such manner as it considers appropriate.

(9) The powers of the Department and the Authority under sub-paragraphs (1) and (3) may not be exercised after the end of the period of two years beginning with the commencement of this paragraph.

#### *References to Directors General*

**16.—**(1) This paragraph applies to any provision of this Order which—

- (a) contains a reference to the Authority; but
- (b) comes into operation before the commencement of Article 4(2).

(2) Until that commencement any reference to the Authority shall be construed as a reference to the Director General of Electricity Supply for Northern Ireland or (as the context may require) the Director General of Gas for Northern Ireland.

#### *References to Office of Fair Trading*

**17.—**(1) This paragraph applies to any provision of this Order which—

- (a) contains a reference to the Office of Fair Trading; but
- (b) comes into operation before the commencement of section 2(3) of the Enterprise Act 2002.

(2) Until that commencement any reference to the Office of Fair Trading shall be construed as a reference to the Director General of Fair Trading.

#### *References to provisions of the Enterprise Act 2002*

**18.—**(1) Until the commencement of section 186 of the Enterprise Act 2002 the reference to paragraph 12A of Schedule 7 to the Competition Act 1998 in Article 6(10) shall be construed as a reference to section 125(1) of the Fair Trading Act 1973 (c. 41).

(2) Until the commencement of Part 9 of the Enterprise Act 2002 the reference to that Part in Article 63(10) shall be construed as a reference to sections 55 and 56 of the Competition Act 1998 (c. 41).

## SCHEDULE 5

Article 65

## REPEALS

Short Title	Extent of repeal
The Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part III of Schedule 1, the entry relating to the Chairman of the Consumer Committee for Electricity.
The General Consumer Council (Northern Ireland) Order 1984 (NI 12).	In Schedule 1, paragraph 10(1)(d) and (5).
The Electricity (Northern Ireland) Order 1992 (NI 1).	In Article 2(2), the definition of “the Director”.  In Article 3, the definitions of “final order”, “provisional order”, “relevant condition” and “relevant requirement” and in the definition of “authorised area” the words “(b) or” and “transmit or”.  Articles 4 to 7.  In Article 11A(2)(a) the words “(b) or”  In Article 13(4), the words “(b) or”.  Article 18A.  Articles 28 to 30.  In Article 31(1), the words “28 or”  Articles 35 and 36.  Articles 48 and 49.  Article 50(4).  Article 51.  Articles 53 to 57.  Article 61.  Schedule 1.  Schedule 2.
The Competition and Service (Northern Ireland) Order 1992 (NI 13).	In Schedule 1, paragraph 1.
The Airports (Northern Ireland) Order 1994 (NI 1).	In Schedule 9, paragraph 14.
The Gas (Northern Ireland)	In Article 2(2), the definition of “the Director”.



Short Title	Extent of repeal
	Articles 4 and 5.
	In Article 8(2)(a), the words “(a) or”.
	In Article 10A(2)(b) and (c) the words “(a) or”.
	Article 18A.
	Articles 19 to 21.
	Articles 25 and 26.
	Article 27(4).
	Article 28.
	Article 30(1).
	In Article 30(4), (5) and (6), the words “(1) or”.
	Articles 31 to 33.
	Article 34(1).
	Article 44.
	Schedule 1.
	In Schedule 6, the amendments to the Electricity (Northern Ireland) Order 1992.
<a href="#">The Ombudsman (Northern Ireland) Order 1996 (NI 8).</a>	In Schedule 2, the entries relating to the Office of the Director General of Electricity Supply for Northern Ireland and the Office of the Director General of Gas for Northern Ireland.
<a href="#">The Competition Act 1998 (c. 41).</a>	In Schedule 10, paragraphs 7(3), 8(3), 17(5), (7) and (8) and 18(5), (6) and (7).
<a href="#">The Water (Northern Ireland) Order 1999 (NI 6).</a>	In Schedule 7, the amendments to Article 61 of the Electricity (Northern Ireland) Order 1992 and the Gas (Northern Ireland) Order 1996.
<a href="#">The Industrial Development Act (Northern Ireland) 2002 (c1.)</a>	Section 6.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Energy (Northern Ireland) Order 2003 No. 419

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## EXPLANATORY NOTE

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

This Order provide for the establishment and functions of the Northern Ireland Authority for Energy Regulation and an energy group of the General Consumer Council for Northern Ireland. It also amends the legislation regulating the electricity and gas industries.