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STATUTORY INSTRUMENTS

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**1992 No. 231**

**The Electricity (Northern Ireland) Order 1992**

**PART I**

**INTRODUCTORY**

*Title and commencement*

1.—(1) This Order may be cited as the Electricity (Northern Ireland) Order 1992.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) An order under paragraph (2) may also appoint a day for the coming into operation of any provision of an order made under section 38(2) of the Northern Ireland Constitution Act 1973 as necessary or expedient in consequence of this Order which appears to the Head of the Department to be consequential on any provision of this Order brought into operation by the order.

*Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of Economic Development;

“the Director” means the Director General of Electricity Supply for Northern Ireland;

“modifications” includes additions, omissions, amendments and substitutions;

“prescribed” means prescribed by regulations;

“regulations”—

(a) except in Article 42 and Schedule 7, means regulations made by the Department;

(b) in Article 42 and Schedule 7, means regulations made by the Director, with the consent of the Department;

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

## PART II

### ELECTRICITY SUPPLY

#### *Introductory*

#### *Interpretation of Part II*

#### **3. In this Part—**

“the 1973 Act” means the Fair Trading Act 1973;

“the 1980 Act” means the Competition Act 1980;

“authorised area”, in relation to a person authorised by a licence under sub-paragraph (b) or (c) of Article 10(1) to transmit or supply electricity, means so much of the area designated as such in the licence as is not for the time being designated in a subsequent licence under that sub-paragraph;

“electrical plant” means any plant, equipment, apparatus or appliance used for, or for purposes connected with, the generation, transmission or supply of electricity, other than—

- (a) an electric line;
- (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
- (c) an electrical appliance under the control of a consumer;

“electric line” means any line which is used for carrying electricity for any purpose and includes—

- (a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;
- (b) any apparatus connected to any such line for the purpose of carrying electricity; and
- (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

“exemption” means an exemption under Article 9;

“extension” in relation to a generating station, includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station;

“final order” means an order under Article 28 other than a provisional order;

“generating station”, in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station;

“high voltage line” means an electric line of a nominal voltage exceeding 110 kilovolts; and

“low voltage line” shall be construed accordingly;

“information” includes accounts, estimates and returns;

“licence” means a licence granted under Article 10;

“licence holder” means the holder of a licence granted under Article 10;

“line” means any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity;

“the Monopolies Commission” means the Monopolies and Mergers Commission;

“notice” means notice in writing;

“premises” includes any land, building or structure;

“private electricity supplier” means a person, other than a public electricity supplier, who is authorised by a licence or exemption to supply electricity;

“provisional order” means an order under Article 28 which, if not previously confirmed in accordance with paragraph (4) of that Article, will cease to have effect at the end of such period (not exceeding 3 months) as is determined by or under the order;

“public electricity supplier” means any person who is authorised by a licence under Article 10(1)(c) to supply electricity except where he is acting otherwise than for purposes connected with the supply of electricity to premises in his authorised area;

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

“relevant requirement”, in relation to a licence holder, means any duty or other requirement imposed on him by or under Article 12 or Articles 19 to 26;

“supply”, in relation to electricity, means supply through electric lines otherwise than to premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on;

“tariff customer” means a person who requires a supply of electricity under Article 19 and is supplied by the public electricity supplier otherwise than on the terms specified in such an agreement as is mentioned in Article 25(1);

“transferred provision” has the meaning assigned to it by section 1(g) of the Interpretation Act (Northern Ireland) 1954;

“transmit”, in relation to electricity, means transmit by means of a transmission system, that is to say, a system which consists (wholly or mainly) of high voltage lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

#### *General duties of the Department*

4.—(1) It shall be the duty of the Department to exercise the functions assigned or transferred to the Department by this Part in accordance with the following provisions of this Article.

(2) It shall be the duty of the Department to exercise the functions assigned or transferred to the Department by this Part in the manner which the Department considers is best calculated—

- (a) to secure that all reasonable demands for electricity are satisfied;
- (b) to secure that licence holders are able to finance the carrying on of the activities which they are authorised by their licences to carry on; and
- (c) subject to paragraph (3), to promote competition in the generation and supply of electricity.

(3) It shall be the duty of the Department to exercise the functions assigned or transferred to the Department by this Part in the manner which the Department considers is best calculated to secure—

- (a) that the prices charged to tariff customers by public electricity suppliers for electricity supplied under Article 19(1) 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
- (b) that public electricity suppliers are not thereby disadvantaged in competing with persons authorised by a licence or exemption to supply electricity to such premises.

(4) Subject to paragraphs (2) and (3), it shall be the duty of the Department to exercise the functions assigned or transferred to the Department by this Part in the manner which the Department considers is best calculated—

- (a) to protect the interests of consumers of electricity supplied by persons authorised by licences to supply electricity in respect of—
  - (i) the prices charged and the other terms of supply;
  - (ii) the continuity of supply; and
  - (iii) the quality of the electricity supply services provided;
- (b) to promote efficiency and economy on the part of persons authorised by licences to supply or transmit electricity and the efficient use of electricity supplied to consumers;
- (c) to promote research into, and the development and use of, new techniques by or on behalf of persons authorised by a licence to generate, transmit or supply electricity;
- (d) to protect the public from dangers arising from the generation, transmission or supply 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 a duty to take into account, in exercising those functions, the effect on the physical environment of activities connected with the generation, transmission or supply of electricity.

(5) In performing the duty under paragraph (4)(a)(i), the Department shall take into account, in particular, the protection of the interests of consumers of electricity in rural areas.

(6) In performing the duty under paragraph (4)(a)(iii), the Department shall take into account, in particular, the interests of those who are disabled or of pensionable age.

(7) In this Article references to the functions assigned to the Department by this Part do not include references to functions under Articles 39, 40 or 58 to 60.

#### *The Director General of Electricity Supply for Northern Ireland*

**5.—(1)** The Department shall appoint a person to be known as the Director General of Electricity Supply for Northern Ireland (“the Director”) for the purpose of carrying out the functions assigned or transferred to him by this Order.

(2) An appointment of a person to hold office as the Director shall be for a term not exceeding 5 years; but previous appointment to that office shall not affect eligibility for re-appointment.

(3) The Department may remove any person from office as the Director on the ground of incapacity or misbehaviour.

(4) Subject to paragraphs (2) and (3), the Director shall hold and vacate office as such in accordance with the terms of his appointment.

(5) The provisions of Schedule 1 shall have effect with respect to the Director.

#### *General duties of the Director*

**6.—(1)** It shall be the duty of the Director to exercise the functions assigned or transferred to him by this Part in accordance with paragraphs (2) to (6) of Article 4; and, accordingly, those paragraphs shall apply to the duty imposed by this paragraph on the Director as they apply to the duty imposed by Article 4(1) on the Department as if any reference to the Department, other than the reference in paragraph (3)(a), were a reference to the Director.

(2) In this Article references to the functions assigned to the Director do not include references to functions relating to the determination of disputes.

*The Consumer Committee for Electricity*

7.—(1) The Director shall establish a Consumer Committee for Electricity (“the consumer committee”) for the purposes of this Part.

(2) The consumer committee shall consist of—

- (a) a chairman appointed by the Director after consultation with the Department; and
- (b) such other members, not being less than 6 or more than 9, as the Director after consultation with the chairman may appoint.

(3) An appointment of a person to hold office as the chairman of the consumer committee shall be for a term not exceeding 4 years.

(4) Subject to paragraph (3), the chairman and other members of the consumer committee shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

(5) The provisions of Schedule 2 shall have effect with respect to the consumer committee.

*Licensing of supply, etc.*

*Prohibition on unlicensed supply, etc.*

8.—(1) A person who—

- (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) transmits electricity for that purpose; or
- (c) supplies electricity to any premises,

shall be guilty of an offence unless he is authorised to do so by a licence or exemption.

(2) A person guilty of an offence under this Article shall be liable—

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

(3) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department or the Director.

*Exemptions from Article 8*

9.—(1) The Department may, after consultation with the Director, by order grant exemption from sub-paragraph (a) or (c) of Article 8(1).

(2) An exemption granted to persons of a particular class shall be published in such manner as the Department considers appropriate for bringing it to the attention of persons of that class.

(3) An exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in operation for such period as may be specified in or determined by or under the exemption.

(4) The requirement to consult imposed by paragraph (1) shall not apply to the granting of any exemptions which, having regard to the provisions of Article 8, need to be granted before that Article comes into operation.

*Licences authorising supply, etc.*

**10.**—(1) The Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department, may grant a licence authorising any person—

- (a) to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) to transmit electricity for that purpose in that person's authorised area; or
- (c) to supply electricity to any premises in that person's authorised area.

(2) The Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department, may—

- (a) grant a licence authorising any person to supply electricity to any premises specified or of a description specified in the licence; or
- (b) extend such a licence by adding to the premises or descriptions of premises specified in the licence.

(3) An application for a licence or extension shall be made in the prescribed manner and shall be accompanied by such fee (if any) as may be prescribed; and within 14 days from the making of such an application, the applicant shall publish a copy of the application in the prescribed manner.

(4) Before granting a licence under this Article, the Department or the Director shall give notice—

- (a) stating that the Department or the Director, as the case may require, proposes to grant the licence;
- (b) stating the reasons why it is proposed to grant the licence; and
- (c) 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 licence may be made,

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

(5) A notice under paragraph (4) shall be given by publishing the notice in such manner as the Department or the Director considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.

(6) A licence shall be in writing and, unless previously revoked in accordance with any term contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence.

(7) As soon as practicable after granting a licence, the Department shall send a copy of the licence to the Director and—

- (a) in the case of a licence under paragraph (1)(b), to any licence holder under that sub-paragraph whose authorised area previously included the whole or any part of the area designated in the licence;
- (b) in the case of a licence under paragraph (1)(c), to any public electricity supplier whose authorised area previously included the whole or any part of the area designated in the licence;
- (c) in the case of a licence or extension under paragraph (2), to any public electricity supplier whose authorised area includes any premises specified or described in the licence or extension.

(8) As soon as practicable after granting any licence or extension falling within sub-paragraph (a), (b) or (c) of paragraph (7), the Director shall send a copy of the licence or extension to any such person as is mentioned in that sub-paragraph.

(9) Neither the requirement to consult imposed by paragraph (1) or (2) nor paragraphs (3) and (4) shall apply to the granting of any licences which, having regard to the provisions of Article 8, need to be granted before that Article comes into operation.

(10) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

#### *Conditions of licences*

**11.**—(1) A licence may include—

- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by Articles 4 and 6; and
- (b) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph—

- (a) may require the licence holder to enter into agreements with other persons for the use of any electric lines and electrical plant of his (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
- (b) may include provision for determining the terms on which such agreements are to be entered into.

(3) Conditions included in a licence under paragraph (1)(a) may require the licence holder—

- (a) to comply with any direction given by the Director as to such matters as are specified in the licence or are of a description so specified;
- (b) except in so far as the Director consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by the Director such questions arising under the licence as are specified in the licence or are of a description so specified; and
- (d) to refer for approval by the Director such things falling to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified.

(4) Conditions included in a licence under paragraph (1)(a) may—

- (a) instead of specifying or describing any contracts or agreements to which they apply, refer to contracts or agreements designated (whether before or after the imposition of the conditions) by the Department or the Director; and
- (b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.

(5) Conditions included in a licence may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

(6) Any provision included under paragraph (5) in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.

(7) Any sums received by the Director in consequence of any condition of a licence shall be paid into the Consolidated Fund.

*General duties of licence holders*

**12.—**(1) It shall be the duty of a public electricity supplier to develop and maintain an efficient, co-ordinated and economical system of electricity supply.

(2) It shall be the duty of the holder of a licence authorising him to transmit electricity—

(a) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and

(b) subject to paragraph (3), to facilitate competition in the supply and generation of electricity.

(3) Paragraph (2)(b) shall apply in relation to a person who is also the holder of a licence authorising him to supply or generate electricity as if the duty to facilitate competition in the supply or, as the case may be, the generation of electricity were a duty to make his transmission system available to his competitors on terms which neither prevent nor restrict such competition.

(4) For the purposes of paragraph (3) a person's competitors are any other persons authorised (whether by a licence or exemption) to supply or, as the case may be, generate electricity.

*Powers, etc., of licence holders*

**13.—**(1) Subject to paragraph (2), Schedule 3 (which makes provision with respect to the compulsory acquisition of land) and Schedule 4 (which confers other powers and makes other provision) shall have effect—

(a) in relation to a public electricity supplier or a person authorised by a licence to transmit electricity; and

(b) to the extent that his licence so provides, in relation to any other licence holder;

and references in those Schedules to a licence holder shall be construed accordingly.

(2) Where any provision of either of the Schedules mentioned in paragraph (1) is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

(3) A licence under Article 10(1)(a) may provide that Schedule 4 shall have effect in relation to the licence holder as if—

(a) any reference to any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on included a reference to any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from, and air and water heated by, such heat; and

(b) any reference to electric lines or electrical plant included a reference to pipes and associated works used or intended to be used for conveying heat so produced, and steam produced from, and air and water heated by, such heat;

and in this paragraph “associated works”, in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as may be prescribed.

(4) A licence under Article 10(1)(b) or (c) may provide that, where any part of the licence holder's authorised area is designated in a subsequent licence under that sub-paragraph, 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.

(5) The provisions of Schedule 5 (which provides for water rights for hydro-electric stations) shall have effect.



### *Modification of licences*

#### *Modification by agreement*

**14.**—(1) Subject to the following provisions of this Article, the Director may modify the conditions of a licence if the licence holder consents to the modifications.

(2) Before making modifications under this Article, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (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.

(3) A notice under paragraph (2) shall be given—

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

(4) The Director shall also send a copy of a notice under paragraph (2) to the Department; and if, within the period specified in the notice, the Department directs the Director not to make any modifications, the Director shall comply with the direction.

#### *Modification references to Monopolies Commission*

**15.**—(1) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the generation, transmission or supply of electricity in pursuance of a licence; and
  - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.

(2) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this Article by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.

(3) The Director may specify in a reference under this Article, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this Article or a variation of such a reference, the Director—

- (a) shall serve a copy of the reference or variation on the licence holder; and
- (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) The Director shall also send a copy of a reference under this Article, or a variation of such a reference, to the Department; and if, before the end of the period of 28 days from the day on which the Department receives the copy of the reference or variation, the Department directs the Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

(6) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this Article, to give to the Commission—

- (a) any information in his possession which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the Commission for that purpose; or
  - (ii) is information which, in his 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 his power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this paragraph.

(7) In determining for the purposes of this Article whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Department and the Director by Articles 4 and 6.

(8) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (modifications of provisions about performance of such functions) shall apply in relation to references under this Article as if—

- (a) the functions of the Commission in relation to those references were functions under the 1973 Act;
- (b) “merger reference” included in a reference under this Article;
- (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
- (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to paragraph (2) of this Article; and
- (e) paragraph 16(2) of that Schedule were omitted.

(9) For the purposes of references under this Article the Secretary of State may appoint additional members of the Monopolies Commission; and if any functions of the Commission in relation to any such reference are performed by a group—

- (a) the chairman of the Commission shall select one, two or three members from any such additional members together with the additional members appointed under section 12(9) of the Electricity Act 1989, to be members of the group; and
- (b) the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the 1973 Act shall be reduced accordingly.

*Reports on modification references*

16.—(1) In making a report on a reference under Article 15, the Monopolies Commission—

- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;
- (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
- (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify in the report modifications by which those effects could be remedied or prevented.

(2) Where, on a reference under Article 15, the Monopolies Commission conclude that the licence holder is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (1)(b) shall have effect subject to the provisions of this paragraph.

(3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under Article 15 as it applies to reports of the Commission under that Act.

(4) A report of the Monopolies Commission on a reference under Article 15 shall be made to the Director.

(5) Subject to paragraph (6), the Director—

- (a) shall, on receiving such a report, send a copy of it to the licence holder to which the report relates and to the Department; and
- (b) shall, not less than 14 days from the day on which the Department receives that copy, publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(6) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, the Department may, before the end of the period of 14 days mentioned in paragraph (5)(b), direct the Director to exclude that matter from every copy of the report to be published under that sub-paragraph.

*Modification following report*

17.—(1) Where a report of the Monopolies Commission on a reference under Article 15—

- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this Article, make such modifications of the conditions of that licence as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Before making modifications under this Article, the Director shall have regard to the modifications specified in the report.

(3) Before making modifications under this Article, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (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.

(4) A notice under paragraph (3) shall be given—

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

#### *Modification by order under other statutory provisions*

**18.**—(1) Where in the circumstances mentioned in paragraph (2) the Secretary of State by order exercises any of the powers specified in—

- (a) Parts I and II of Schedule 8 to the 1973 Act; or
- (b) section 10(2)(a) of the 1980 Act,

the order may also provide for the modification of the conditions of a licence to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to or of taking account of any provision made by the order.

(2) Paragraph (1) shall have effect where—

- (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to the generation, transmission or supply of electricity;
- (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and the two or more enterprises which ceased to be distinct enterprises were both engaged in the generation, transmission or supply of electricity; or
- (c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the generation, transmission or supply of electricity.

(3) In this Article expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

#### *Supply by public electricity suppliers*

##### *Duty to supply on request*

**19.**—(1) Subject to the following provisions of this Part and any regulations made under those provisions, a public electricity supplier shall, upon being required to do so by the owner or occupier of any premises—

- (a) give a supply of electricity to those premises; and
- (b) so far as may be necessary for that purpose, provide electric lines or electrical plant or both.

(2) Where any person requires a supply of electricity under paragraph (1), he shall give to the public electricity supplier a notice specifying—

- (a) the premises in respect of which the supply is required;
- (b) the day on which the supply is required to commence;
- (c) the maximum power which may be required at any time; and
- (d) the minimum period for which the supply is required to be given.

(3) Where a public electricity supplier receives from any person a notice under paragraph (2) requiring him to give a supply of electricity to any premises and—

- (a) he has not previously given a supply of electricity to those premises; or
- (b) the giving of the supply requires the provision of electric lines or electrical plant or both; or
- (c) other circumstances exist which make it necessary or expedient for him to do so,

the supplier shall, as soon as practicable after receiving that notice, give to that person a notice under paragraph (4).

(4) A notice under this paragraph shall—

- (a) state the extent to which the proposals specified in the other person's notice under paragraph (2) are acceptable to the supplier and specify any counter proposals made by the supplier;
- (b) state whether the prices to be charged by the supplier will be determined by a tariff under Article 21(1), or a special agreement under Article 25(1), and specify the tariff or the proposed terms of the agreement;
- (c) specify any payment which that person will be required to make under Article 22(1), or under regulations made under Article 22(2);
- (d) specify any security which that person will be required to give under Article 23;
- (e) specify any other terms which that person will be required to accept under Article 24; and
- (f) state the effect of Article 26.

(5) In this Article and Articles 20 to 26—

- (a) any reference to giving a supply of electricity includes a reference to continuing to give such a supply;
- (b) any reference to requiring a supply of electricity includes a reference to requiring such a supply to continue to be given; and
- (c) any reference to the provision of an electric line or an item of electrical plant is a reference to the provision of such a line or item either by the installation of a new one or by the modification of an existing one.

#### *Exceptions from duty to supply*

**20.**—(1) Nothing in Article 19(1) shall be taken as requiring a public electricity supplier to give a supply of electricity to any premises if—

- (a) such a supply is being given to the premises by a private electricity supplier; and
- (b) that supply is given (wholly or partly) through the public electricity supplier's electric lines and electrical plant.

(2) Nothing in Article 19(1) shall be taken as requiring a public electricity supplier to give a supply of electricity to any premises if and to the extent that—

- (a) he is prevented from doing so by circumstances not within his control; or

(b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under Article 32, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or

(c) it is not reasonable in all the circumstances for him to be required to do so.

(3) Paragraph (2)(c) shall not apply in relation to a supply of electricity which is being given to any premises unless the public electricity supplier gives to the occupier, or to the owner if the premises are not occupied, not less than 7 working days' notice of his intention to discontinue the supply under that sub-paragraph.

#### *Power to recover charges*

**21.**—(1) Subject to the following provisions of this Article, the prices to be charged by a public electricity supplier for the supply of electricity by him under Article 19(1) shall be in accordance with such tariffs (which, subject to any condition included in his licence, may relate to the supply of electricity in different areas, cases and circumstances) as may be fixed by him.

(2) A tariff fixed by a public electricity supplier under paragraph (1)—

(a) shall be so framed as to show the methods by which and the principles on which the charges are to be made as well as the prices which are to be charged; and

(b) shall be published in such manner as in the opinion of the supplier will secure adequate publicity for it.

(3) A tariff fixed by a public electricity supplier under paragraph (1) may include—

(a) a standing charge in addition to the charge for the actual electricity supplied;

(b) a charge in respect of the availability of a supply of electricity; and

(c) a rent or other charge in respect of any electricity meter or electrical plant provided by the supplier;

and such a charge as is mentioned in sub-paragraph (b) may vary according to the extent to which the supply is taken up.

(4) In fixing tariffs under paragraph (1), a public electricity supplier shall not show undue preference to any person or class of persons, and shall not exercise any undue discrimination against any person or class of persons.

#### *Power to recover expenditure*

**22.**—(1) Where any electric line or electrical plant is provided by a public electricity supplier under Article 19(1), the supplier may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the supply of electricity to such extent as is reasonable in all the circumstances.

(2) Regulations made, after consultation with the Director, may make provision for entitling a public electricity supplier to require a person requiring a supply of electricity under Article 19(1) to pay to the supplier, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply, such amount as may be reasonable in all the circumstances if—

(a) the supply is required within the prescribed period after the provision of the line or plant; and

(b) a person for the purpose of supplying whom the line or plant was provided (“the initial contributor”) has made a payment to the supplier in respect of those expenses.

(3) Regulations under paragraph (2) may require a public electricity supplier who, under this Article or the regulations, has recovered any amount in respect of expenses reasonably incurred in providing any electric line or electrical plant—

- (a) to exercise his rights under the regulations in respect of those expenses; and
- (b) to apply any payments received by him in the exercise of those rights in making such payments as may be appropriate towards reimbursing the initial contributor and any persons previously required to make payments under the regulations.

(4) Any reference in this Article to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in maintaining it, in so far as they will not be recoverable by the supplier as part of the charges made by him for the supply.

*Power to require security*

**23.**—(1) Subject to the following provisions of this Article, a public electricity supplier may require any person who requires a supply of electricity under Article 19(1) to give him reasonable security for the payment to him of all money which may become due to him—

- (a) in respect of the supply; or
- (b) where any electric line or electrical plant falls to be provided in pursuance of that paragraph, in respect of the provision of the line or plant;

and if that person fails to give such security, the supplier may if he thinks fit refuse to give the supply, or to provide the line or plant, for so long as the failure continues.

(2) Where any person has not given such security as is mentioned in paragraph (1), or the security given by any person has become invalid or insufficient—

- (a) the public electricity supplier may by notice require that person, within 7 days from the service of the notice, to give him reasonable security for the payment of all money which may become due to him in respect of the supply; and
- (b) if that person fails to give such security, the supplier may if he thinks fit discontinue the supply for so long as the failure continues;

and any notice under sub-paragraph (a) shall state the effect of Article 26.

(3) Where any money is deposited with a public electricity supplier by way of security under this Article, the supplier shall pay interest, at such rate as may be fixed by the supplier with the approval of the Director, on every sum of 50p so deposited for every 3 months during which it remains in the hands of the supplier.

(4) A public electricity supplier shall not be entitled to require security under paragraph (1)(a) if—

- (a) the person requiring the supply is prepared to take the supply through a pre-payment meter; and
- (b) it is reasonably practicable in all the circumstances (including in particular the risk of loss or damage) for the supplier to provide such a meter.

*Additional terms of supply*

**24.** A public electricity supplier may require any person who requires a supply of electricity under Article 19(1) to accept in respect of the supply—

- (a) any restrictions which must be imposed for the purpose of enabling the supplier to comply with regulations under Article 32; and

- (b) any terms restricting any liability of the supplier for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.

*Special agreements with respect to supply*

**25.**—(1) Notwithstanding anything in Articles 19 to 24, a person who requires a supply of electricity under Article 19(1)—

- (a) may enter into a special agreement with the public electricity supplier for the supply on such terms as may be specified in the agreement; and
- (b) shall enter into such an agreement in any case where—
  - (i) the maximum power to be made available at any time exceeds one megawatt; or
  - (ii) it is otherwise reasonable in all the circumstances for such an agreement to be entered into.

(2) The Department may by order provide that paragraph (1) shall have effect as if for the wattage mentioned in sub-paragraph (b)(i) there were substituted such other wattage as may be specified in the order; but before making such an order, the Department shall consult with public electricity suppliers and with persons or bodies appearing to be representative of persons likely to be affected.

(3) So long as any such agreement as is mentioned in paragraph (1) is effective, the rights and liabilities of the parties to the agreement shall be those arising under the agreement and not those provided for by Articles 19 to 24; but nothing in this paragraph shall prejudice the giving of a notice under Article 19(2) specifying as the day on which the supply is required to commence the day on which such an agreement ceases to be effective.

*Determination of disputes*

**26.**—(1) Any dispute arising under Articles 19 to 25 between a public electricity supplier and a person requiring a supply of electricity—

- (a) may be referred to the Director by either party; and
- (b) on such a reference, shall be determined by order made either by the Director or, if he thinks fit, by an arbitrator appointed by him;

and the practice and procedure to be followed in connection with any such determination shall be such as the Director may consider appropriate.

(2) Where any dispute arising under Articles 19 to 25 between a public electricity supplier and a person requiring a supply of electricity to continue to be given falls to be determined under this Article, the Director may give directions as to the circumstances in which, and the terms on which, the supplier is to continue to give the supply pending the determination of the dispute.

(3) Where any dispute arising under Article 23(1) falls to be determined under this Article, the Director may give directions as to the security (if any) to be given pending the determination of the dispute.

(4) Directions under paragraph (2) or (3) may apply either in cases of particular descriptions or in particular cases.

(5) An order under this Article—

- (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs incurred by the person making the order) as that person considers appropriate; and
- (b) shall be final and shall be enforceable, in so far as it includes such provision as to costs, as if it were a judgement of the county court.



(6) In including in an order under this Article any such provision as to costs as is mentioned in paragraph (5), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

#### *The public electricity supply code*

**27.** The provisions of Schedule 6 (which relate to the supply of electricity by public electricity suppliers) shall have effect.

#### *Enforcement of preceding provisions*

#### *Orders for securing compliance*

**28.**—(1) Subject to paragraphs (2) and (5) and Article 29, where the Director is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, he 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 paragraph (5), where it appears to the Director—

- (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,

he shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him 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 Director 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 30 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 paragraph (5) and Article 29, the Director shall confirm a provisional order, with or without modifications, if—

- (a) he 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 Director shall not make a final order or make or confirm a provisional order in relation to a licence holder if he is satisfied—

- (a) that the duties imposed on him by Article 6 preclude the making or, as the case may be, the confirmation of the order;
- (b) that the licence holder has agreed to take and is taking all such steps as it appears to the Director 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
- (c) that the contraventions were, or the apprehended contraventions are, of a trivial nature.

(6) Where the Director is satisfied as mentioned in paragraph (5), he shall—

- (a) serve notice that he is so satisfied on the licence holder; and
  - (b) publish the notice in such manner as he 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.
- (7) 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 Director.

#### *Procedural requirements*

**29.**—(1) Before he makes a final order or confirms a provisional order, the Director shall give notice—

- (a) stating that he 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 his opinion, constitute or would constitute contraventions of that condition or requirement; and
  - (iii) the other facts which, in his opinion, justify the making or confirmation of the order; and
- (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 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 Director 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 Director 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 Director shall—
- (a) serve on the licence holder to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
  - (b) in that notice specify the period (not being less than 28 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 Director 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 he 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 Director shall give notice—

- (a) stating that he 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 Director decides not to revoke the order to which the notice relates, he shall give notice of his decision.

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

- (a) by publishing the notice in such manner as the Director 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*

**30.**—(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 28; or
- (b) that any of the requirements of Article 29 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 Director for an injunction or for any other appropriate relief.

*Power to require information, etc.*

**31.**—(1) Where it appears to the Director that a licence holder may be contravening, or may have contravened, any relevant condition or requirement, the Director may, for any purpose connected with such of his functions under Article 28 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 by the Director and—

- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Director or to any person appointed by the Director 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 Director 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 Director, 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.

*Provisions with respect to supply generally**Regulations relating to supply and safety*

**32.**—(1) Regulations may make such provision as the Department thinks fit for the purpose of—

- (a) securing that supplies of electricity are regular and efficient;
- (b) protecting the public from dangers arising from the generation, transmission or supply of electricity, from the use of electricity supplied or from the installation, maintenance or use of any electric line or electrical plant; and
- (c) without prejudice to the generality of sub-paragraph (b), eliminating or reducing the risks of personal injury, or damage to property or interference with its use, arising as mentioned in that sub-paragraph.

(2) Without prejudice to the generality of paragraph (1), regulations under this Article may—

- (a) prohibit the supply or transmission of electricity except by means of a system approved by the Department;

- (b) make provision requiring notice in the prescribed form to be given to the Department, in such cases as may be specified in the regulations, of accidents and of failures of supplies or transmissions of electricity;
  - (c) make provision as to the keeping, by persons authorised by a licence or exemption to supply or transmit electricity, of maps, plans and sections and as to their production (on payment, if so required, of a reasonable fee) for inspection or copying;
  - (d) make provision for relieving persons authorised by a licence to supply electricity from any obligation to supply in such cases as may be prescribed;
  - (e) make provision requiring compliance with notices given by the Department specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer, for the purpose of—
    - (i) preventing or ending a breach of regulations under this Article; or
    - (ii) eliminating or reducing a risk of personal injury or damage to property or interference with its use;
  - (f) provide for particular requirements of the regulations to be deemed to be complied with in the case of any electric line or electrical plant complying with specified standards or requirements;
  - (g) provide for the granting of exemptions from any requirement of the regulations for such periods as may be determined by or under the regulations;
  - (h) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.
- (3) Regulations under this Article may provide that any person—
- (a) who contravenes any specified provision of the regulations; or
  - (b) who does so in specified circumstances,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but nothing in this paragraph shall affect any liability of any such person to pay compensation in respect of any damage or injury which may have been caused by the contravention.

(4) No proceedings shall be instituted in respect of an offence under the regulations except by or on behalf of the Department or the Director of Public Prosecutions for Northern Ireland.

### *Electrical inspectors*

**33.**—(1) The Department may appoint competent and impartial persons to be electrical inspectors under this Part.

- (2) The duties of an electrical inspector under this Part shall be as follows—
- (a) to inspect and test, periodically and in special cases, electric lines and electrical plant belonging to persons authorised by a licence or exemption to generate, transmit or supply electricity;
  - (b) to examine, periodically and in special cases, the generation, transmission or supply of electricity by such persons;
  - (c) to inspect and test, if and when required by any consumer, any such lines and plant on the consumer's premises, for the purpose of determining whether any requirement imposed by or under this Part in respect of the lines or plant or the supply of electricity through or by them has been complied with; and
  - (d) such other duties as may be imposed by regulations under this Article or as the Department may determine.
- (3) Regulations may—

- (a) prescribe the manner in which and the times at which any duties are to be performed by electrical inspectors;
  - (b) require persons authorised by a licence or exemption to generate, transmit or supply electricity—
    - (i) to furnish electrical inspectors with records or other information; and
    - (ii) to allow such inspectors access to premises and the use of electrical plant and other facilities;
  - (c) make provision for relieving persons authorised by a licence to supply electricity from any obligation to supply in such cases as may be prescribed; and
  - (d) prescribe the amount of the fees which are to be payable to such inspectors.
- (4) Any fees received by electrical inspectors shall be paid to the Department.

*Use, etc., of meters*

**34.** The provisions of Schedule 7 (which relate to the use, certification, testing and maintenance of electricity meters) shall have effect.

*Protection of public interest**Electricity from non-fossil fuel sources*

**35.**—(1) The Department may, after consultation with the Director and with the licence holders concerned, by order require each holder of a licence under Article 10(1)(b) or (c), before a day specified in the order, to make (in so far as he has not already done so) and produce evidence to the Director showing that he has made—

- (a) such arrangements; or
- (b) where a previous order under this paragraph has had effect in relation to him, such additional arrangements,

as will secure the result mentioned in paragraph (2).

(2) The result referred to in paragraph (1) is that, for a period specified in the order, there will be available to the licence holder—

- (a) from non-fossil fuel generating stations; or
- (b) if the order so provides, from non-fossil fuel generating stations of any particular description,

an aggregate amount of generating capacity which is not less than that specified in relation to him in the order.

- (3) A holder of a licence under Article 10(1)(b) or (c) who—
  - (a) fails to comply with an order under paragraph (1); or
  - (b) having complied with such an order, by any act of his prevents the arrangements made by him from securing the result mentioned in paragraph (2),

shall be guilty of an offence and shall be liable on conviction on indictment to a fine.

(4) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

- (5) Regulations may—
  - (a) make provision as to the method of calculating the capacity of generating stations, and the manner in which such capacity shall be treated as available for the purposes of this Article;

- (b) provide that this Article shall have effect in relation to any non-fossil fuel generating station which is driven by water, wind or solar power with such modifications as may be prescribed; and
  - (c) provide that electricity generated outside Northern Ireland shall be treated for the purposes of this Article as generated by a non-fossil fuel generating station in such circumstances and to such extent as may be prescribed.
- (6) In this Article—
- “coal products” means any substances produced directly or indirectly from coal;
  - “fossil fuel” means coal, coal products, peat, lignite, crude liquid petroleum or petroleum products;
  - “non-fossil fuel generating station” means a generating station which is (or may be) fuelled or driven otherwise than by a fossil fuel;
  - “petroleum products” has the same meaning as in the Energy Act 1976.
- (7) In relation to any time before Article 8 comes into operation, any requirement imposed by paragraph (1) to consult with holders of a licence under Article 10(1)(b) or (c) shall be construed as a requirement to consult with Northern Ireland Electricity.

#### *Fossil fuel levy*

- 36.** Where the Department has made one or more orders under Article 35 in relation to holders of a licence under Article 10(1)(b) or (c), regulations may provide—
- (a) for the imposition on such licence holders, and on persons authorised by a licence under Article 10(2) to supply electricity within the authorised area of a public electricity supplier, of a levy;
  - (b) for the collection of payments in respect of that levy by a prescribed person; and
  - (c) for the making by that person of payments out of that levy.

#### *Fuel stocks, etc., at generating stations*

- 37.—**(1) This Article applies to any generating station which—
- (a) is of a capacity not less than 10 megawatts; and
  - (b) is fuelled otherwise than by waste or manufactured gases;
- and in this paragraph “waste” has the same meaning as in Article 36(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978.
- (2) The Department may by order provide that paragraph (1) shall have effect as if for the capacity mentioned in that paragraph there were substituted such other capacity (not exceeding 100 megawatts) as may be specified in the order.
- (3) In respect of any generating station to which this Article applies, the Department may give a direction requiring the person who operates it—
- (a) to make such arrangements with respect to stocks of fuel and other materials held at or near that generating station for the purposes of its operation as will—
    - (i) enable those stocks to be brought within a specified time to, and thereafter maintained at, a specified level; and
    - (ii) ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by a direction under paragraph (4);
  - (b) to create such stocks and make such arrangements with respect to them;

and the amount of any stocks may be specified by reference to the period for which it would enable the generating station to be maintained in operation.

(4) In respect of any generating station to which this Article applies, the Department may give a direction—

- (a) authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station; and
- (b) requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels.

(5) In paragraphs (3) and (4) “specified” means specified by or under the Department’s direction; and a direction may—

- (a) specify the cases and circumstances in which any stocks are to be treated as held at or near any generating station;
- (b) specify the extent to which the direction may be treated as complied with where, under arrangements made or approved by the Department, access can be had to stocks held for the use of a number of consumers;
- (c) specify the manner in which any period mentioned in paragraph (3) or (4) is to be determined;
- (d) require anything falling to be specified under the direction to be specified by such persons and by reference to such matters as may be specified.

(6) A direction under paragraph (3) or (4) which confers on any person the function of specifying anything falling to be specified under the direction may require that person to exercise that function and to do so in such manner as may be specified by the direction.

#### *Provisions supplementary to Article 37*

**38.**—(1) The Department may give a direction requiring any person authorised by a licence to transmit electricity 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 authorised by a licence to transmit electricity to operate his transmission system, 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 authorised by a licence to transmit electricity shall give effect to any direction given to him under paragraph (2) notwithstanding any other duty imposed on him by or under this Part.

(4) The Department shall lay before the Assembly a copy of every direction given under Article 37 or this Article unless the Department is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

(5) A person who, without reasonable excuse, contravenes a direction of the Department under Article 37 or this Article 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) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

(7) Paragraphs 1 to 4, 7 and 8 of Schedule 2 to the Energy Act 1976 (administration of Act and other matters) shall have effect as if—

- (a) Article 37 were contained in that Act;



- (b) the powers of paragraph 1 were exercisable for any purpose connected with securing compliance with a direction under that Article;
- (c) information obtained by virtue of that paragraph could lawfully be disclosed to any person by whom anything falls to be specified under such a direction; and
- (d) the powers conferred by sub-paragraph (1)(c) of that paragraph included power to direct that information and forecasts be furnished to any such person.

*Consent required for construction, etc., of generating stations*

**39.**—(1) Subject to paragraphs (2) and (4), a generating station shall not be constructed, extended or operated except in accordance with a consent granted by the Department.

(2) Paragraph (1) shall not apply to a generating station whose capacity—

- (a) does not exceed the permitted capacity, that is to say, 2 megawatts; and
- (b) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended.

(3) The Department may by order provide that paragraph (2) shall have effect as if for the permitted capacity mentioned in sub-paragraph (a) there were substituted such other capacity as may be specified in the order.

(4) The Department may by order direct that paragraph (1) shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.

(5) A consent under this Article—

- (a) may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Department to be appropriate; and
- (b) shall continue in force for such period as may be specified in or determined by or under the consent.

(6) Any person who without reasonable excuse contravenes the provisions of this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

(8) The provisions of Schedule 8 (which relate to consents under this Article and Article 40) shall have effect.

*Consent required for overhead lines*

**40.**—(1) Subject to paragraph (2), an electric line shall not be installed or kept installed above ground except in accordance with a consent granted by the Department.

(2) Paragraph (1) shall not apply—

- (a) in relation to an electric line which has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying a single consumer;
- (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
- (c) in such other cases as may be prescribed.

(3) A consent under this Article—

- (a) may include such conditions (including conditions as to the ownership and operation of the line) as appear to the Department to be appropriate;

- (b) may be varied or revoked by the Department at any time after the end of such period as may be specified in the consent; and
  - (c) subject to sub-paragraph (b), shall continue in force for such period as may be specified in or determined by or under the consent.
- (4) Any person who without reasonable excuse contravenes the provisions of this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

*Preservation of amenity and fisheries*

**41.** The provisions of Schedule 9 (which relate to the preservation of amenity and fisheries) shall have effect.

*Consumer protection: standards of performance*

*Electricity supply: performance in individual cases*

**42.—**(1) Regulations may, after consultation with public electricity suppliers and with persons or bodies appearing to the Director to be representative of persons likely to be affected, prescribe such standards of performance in connection with the provision by such suppliers of electricity supply services to tariff customers as, in the opinion of the Director, ought to be achieved in individual cases.

(2) Regulations under this Article may—

- (a) prescribe circumstances in which public electricity suppliers are to inform persons of their rights under this Article;
- (b) prescribe such standards of performance in relation to any duty arising under sub-paragraph (a) as, in the Director's opinion, ought to be achieved in all cases; and
- (c) prescribe circumstances in which public electricity suppliers are to be exempted from any requirements of the regulations or this Article.

(3) If a public electricity supplier fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.

(4) The making of compensation under this Article in respect of any failure by a public electricity supplier to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.

(5) Any dispute arising under this Article or regulations made under it—

- (a) may be referred to the Director by either party; and
- (b) on such a reference, shall be determined by order made either by the Director or, if he thinks fit, by the consumer committee or any sub-committee of that committee;

and the practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.

(6) An order under paragraph (5) shall be final and shall be enforceable as if it were a judgement of the county court.

*Electricity supply: overall performance*

**43.**—(1) The Director may, after consultation with public electricity suppliers and with persons or bodies appearing to him to be representative of persons likely to be affected,—

- (a) determine such standards of overall performance in connection with the provision of electricity supply services as, in his opinion, ought to be achieved by such suppliers; and
- (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.

(2) Different standards may be determined under this Article for different public electricity suppliers.

*Promotion of efficient use of electricity*

**44.**—(1) The Director may, after consultation with public electricity suppliers and with persons or bodies appearing to him to be representative of persons likely to be affected,—

- (a) determine such standards of performance in connection with the promotion of the efficient use of electricity by consumers as, in his opinion, ought to be achieved by such suppliers; and
- (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.

(2) Different standards may be determined under this Article for different public electricity suppliers.

*Information with respect to levels of performance*

**45.**—(1) The Director shall collect information with respect to—

- (a) the compensation made by public electricity suppliers under Article 42;
- (b) the levels of overall performance achieved by such suppliers in connection with the provision of electricity supply services; and
- (c) the levels of performance achieved by such suppliers in connection with the promotion of the efficient use of electricity by consumers.

(2) On or before such date in each year as may be specified in a direction given by the Director, each public electricity supplier shall furnish to the Director the following information, namely—

- (a) as respects each standard prescribed by regulations under Article 42, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
- (b) as respects each standard determined under Article 43 or 44, such information with respect to the level of performance achieved by the supplier as may be so specified.

(3) A public electricity supplier who without reasonable excuse fails to do anything required of him by 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.

(4) The Director shall at least once in every year arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or furnished to him under this Article as it may appear to him expedient to give to customers or potential customers of public electricity suppliers.

(5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as that is practicable—

- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.

*Consumer protection: miscellaneous*

*Functions with respect to competition*

**46.**—(1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the 1973 Act (additional functions of Director for protection of consumers) so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of electricity, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.

(2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—

- (a) the functions of that Director under sections 44 (power to require information) and 45 (information with respect to complex monopoly situations) of the 1973 Act; and
- (b) the functions of that Director under sections 50, 52 and 53 (monopoly references) and 86 and 88 (reports of Monopolies Commission) of that Act,

so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the generation, transmission or supply of electricity; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.

(3) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading) the functions of that Director under sections 2 to 10 (investigation of anti-competitive practice and competition references to Monopolies Commission) and 16 (reports of Monopolies Commission) of the 1980 Act so far as relating to courses of conduct which have or are intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection with the generation, transmission or supply of electricity; and references in those sections and in section 19 of that Act (restriction on disclosure of information) to that Director shall be construed accordingly.

(4) Before either Director first exercises in relation to any matter functions transferred by any of the following provisions, namely—

- (a) paragraph (2)(a);
- (b) paragraph (2)(b); and
- (c) paragraph (3),

he shall consult the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions transferred by that provision have been exercised in relation to that matter by the other Director.

(5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of paragraph (2) or (3), to give to the Commission—

- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the Commission for that purpose; or

(ii) is information which in his 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 his power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this paragraph.

(6) If any question arises as to whether paragraph (2) or (3) applies to any particular case, that question shall be referred to and determined by the Department; and no objection shall be taken to anything done under—

(a) Part IV or section 86 or 88 of the 1973 Act (reports of Monopolies Commission); or

(b) sections 2 to 10 of the 1980 Act (investigation of anti-competitive practice and competition references to Monopolies Commission),

by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.

(7) In this Article expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

#### *Fixing of maximum charges for reselling electricity*

**47.**—(1) This Article applies to electricity supplied to a consumer's premises by an authorised electricity supplier, that is to say, a person who is authorised by a licence or exemption to supply electricity.

(2) The Director may fix maximum prices at which electricity to which this Article applies may be resold, and shall publish any prices so fixed in such manner as in his opinion will secure adequate publicity for them.

(3) Different prices may be fixed under this Article in different classes of cases, which may be defined by reference to areas, tariffs applicable to electricity supplied by the authorised electricity suppliers or any other relevant circumstances.

(4) If any person resells electricity to which this Article applies at a price exceeding the maximum price fixed under this Article and applicable thereto, the amount of the excess shall be recoverable summarily by the person to whom the electricity was resold.

#### *Investigation of complaints*

#### *Investigation of enforcement matters*

**48.**—(1) Subject to paragraph (2), it shall be the duty of the Director to investigate any matter which appears to him to be an enforcement matter and which—

(a) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter; or

(b) is referred to him by the consumer committee under paragraph (3).

(2) The Director may, if he thinks fit, require the consumer committee to investigate and report to him on any matter falling within paragraph (1) which relates to a person authorised by a licence to supply electricity.

(3) It shall be the duty of the consumer committee to refer to the Director any matter which—

(a) appears to the committee to be an enforcement matter; and

- (b) is the subject of a representation (other than one appearing to the committee to be frivolous) made to the committee by or on behalf of a person appearing to the committee to have an interest in that matter.

(4) In this Article and Article 49 “enforcement matter” means any matter in respect of which any functions of the Director under Article 28 are or may be exercisable.

#### *Investigation of certain other matters*

**49.**—(1) It shall be the duty of the consumer committee to investigate any matter which appears to the committee to be a relevant matter and which—

- (a) is the subject of a representation (other than one appearing to the committee to be frivolous) made to the committee by or on behalf of a person appearing to the committee to have an interest in that matter; or
- (b) is referred to the committee by the Director under paragraph (2).

(2) Subject to paragraph (3), it shall be the duty of the Director to refer to the consumer committee any matter which—

- (a) appears to the Director to be a relevant matter; and
- (b) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter.

(3) Nothing in paragraph (2) shall require the Director to refer to the consumer committee any matter in respect of which he is already considering exercising functions under this Part.

(4) Where on an investigation under paragraph (1) any matter appears to the consumer committee to be a matter in respect of which it would be appropriate for the Director to exercise any functions under this Part, the committee shall refer that matter to the Director with a view to his exercising those functions with respect to that matter.

(5) In this Article “relevant matter”, in relation to the consumer committee, means any matter (other than an enforcement matter)—

- (a) in respect of which any functions of the Director under this Part are or may be exercisable; and
- (b) which relates to a public electricity supplier or to any other person authorised by a licence to supply electricity.

#### *Other functions of Director*

##### *General functions*

**50.**—(1) It shall be the duty of the Director, so far as it appears to him practicable to do so—

- (a) to keep under review the carrying on both in Northern Ireland and elsewhere of activities to which this paragraph applies; and
- (b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his functions under this Part;

and this paragraph applies to any activities connected with the generation, transmission and supply of electricity, including in particular activities connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat.

(2) The Department may give general directions indicating—

- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under paragraph (1)(a) or (b); and
- (b) considerations to which, in cases where it appears to the Director that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.

(3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Department or the Director General of Fair Trading to do so, to give information, advice and assistance to the Department or that Director with respect to any matter in respect of which any function of the Director under this Part is exercisable.

(4) It shall be the duty of the Director to make such arrangements as he considers appropriate for the provision of information by him to the consumer committee.

#### *Publication of information and advice*

**51.**—(1) The Director may arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as it may appear to him expedient to give to customers or potential customers of persons authorised by a licence to supply electricity.

(2) In arranging for the publication of any such information or advice the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5)(a) and (b).

(3) The Director General of Fair Trading shall consult the Director before publishing under section 124 of the 1973 Act (publication of information and advice) any information or advice which may be published by the Director under this Article.

#### *Keeping of register*

**52.**—(1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to paragraph (3) and to any direction given under paragraph (4), the Director shall cause to be entered in the register the provisions of—

- (a) every licence and every exemption granted to a particular person;
- (b) every modification or revocation of a licence;
- (c) every direction or consent given or determination made under a licence; and
- (d) every final or provisional order, every confirmation of a provisional order, every revocation of such an order and every notice under Article 28(6).

(3) In entering any provision in the register, the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5)(a) and (b).

(4) If it appears to the Department that the entry of any provision in the register would be against the public interest or the commercial interests of any person, the Department may direct the Director not to enter that provision in the register.

(5) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as may be specified in an order made by the Department.

(6) Any person may, on the payment of such fee as may be specified in an order so made, require the Director to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.

(7) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

*Annual and other reports*

- 53.**—(1) The Director shall, as soon as practicable after the end of each calendar year—
- (a) make to the Department a report on—
    - (i) his activities during that year; and
    - (ii) the Monopolies Commission’s activities during that year so far as relating to references made by him; and
  - (b) send a copy of that report to the chairman of the consumer committee.
- (2) Every such report shall—
- (a) include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director’s functions;
  - (b) set out any final or provisional orders made, and provisional orders confirmed, by the Director during that year;
  - (c) set out any general directions given to the Director during that year under Article 50(2); and
  - (d) include a general survey of the activities during that year of the consumer committee and a summary of any reports made to him by the committee under Article 55.
- (3) The Department shall lay a copy of every report made by the Director under paragraph (1) before the Assembly and shall arrange for copies of every such report to be published in such manner as the Department considers appropriate.
- (4) The Director shall also make to the Department—
- (a) such reports with respect to the matters mentioned in paragraph (2)(a) as the Department may require; and
  - (b) such other reports with respect to those matters as may appear to him to be expedient;
- and the Director shall, if the Department so directs, arrange for copies of any report made under this paragraph to be published in such manner as is specified in the direction.
- (5) In making or preparing any report under this Article the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5)(a) and (b).
- (6) Section 125(1) of the 1973 Act (annual and other reports) shall not apply to activities of the Monopolies Commission on which the Director is required to report by this Article.

*Provisions with respect to the consumer committee**General duty of the consumer committee to advise Director, etc.*

- 54.** It shall be the duty of the consumer committee—
- (a) to make representations to and consult with each public electricity supplier about all such matters as appear to the committee to affect the interests of customers or potential customers of that supplier;
  - (b) to keep under review matters affecting the interests of consumers of electricity supplied to premises; and
  - (c) to advise the Director on any matter relating to the supply of electricity on which the committee considers it should offer advice or which is referred to the committee by the Director.



*Periodical and other reports of the consumer committee*

**55.**—(1) The consumer committee—

- (a) shall make a report to the Director on any such matter as he may require; and
- (b) may make a report to the Director concerning any matter which appears to the committee to affect the interests of customers or potential customers of public electricity suppliers.

(2) The consumer committee shall at least once in every year, and whenever directed to do so by the Director, make a report to him on its activities; and every such report shall include a statement of the matters on which, during the period to which it relates, the committee has advised the Director under Article 54.

(3) The Director may arrange for a report made to him under this Article to be published in such manner as he considers appropriate.

(4) In publishing any report under this Article the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5)(a) and (b).

*Provisions with respect to the General Consumer Council*

*Abolition of the General Consumer Council's functions in relation to electricity*

**56.** Article 6 of the General Consumer Council (Northern Ireland) Order 1984 (which confers functions on the General Consumer Council for Northern Ireland in relation to the supply of electricity) shall cease to have effect.

*Continuity of employment of employees of the General Consumer Council*

**57.**—(1) This Article applies to any person who—

- (a) immediately before the date on which Article 56 comes into operation is an employee of the General Consumer Council (in this Article referred to as his “former employer”); and
- (b) within 4 weeks from that date, is employed by the Director (in this Article referred to as his “new employer”) in pursuance of an offer made before that date.

(2) A person to whom this Article applies shall not, by reason of the termination of his employment with his former employer, be entitled to receive any redundancy payment under Part II of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 or be eligible for any compensation benefit in respect of that redundancy payable under any scheme made under Article 3 of the Superannuation (Northern Ireland) Order 1972.

(3) Schedule 1 to the said Act of 1965 (computation of period of employment) shall have effect in relation to a person to whom this Article applies as if it included the following provisions, that is to say—

- (a) the period of his employment with his former employer shall count as a period of employment with his new employer; and
- (b) the change of employer shall not break the continuity of the period of employment.

(4) Where this Article applies to a person, the period of his employment with his former employer shall count as a period of employment with his new employer for the purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.

(5) In this Article references to employees of the General Consumer Council include employees who are also office holders but exclude office holders who are not also employees.

*Miscellaneous**Directions for preserving security of electricity supplies, etc.*

**58.**—(1) The Department may, after consultation with a person to whom this Article applies, give to that person such directions of a general character as appear to the Department to be requisite or expedient for the purpose of—

- (a) preserving the security of buildings or installations used for, or for purposes connected with, the generation, transmission or supply of electricity; or
- (b) mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Department to be requisite or expedient to do so for any such purpose as is mentioned in paragraph (1), the Department may, after consultation with a person to whom this Article applies, give to that person a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.

(3) A person to whom this Article applies shall give effect to any direction given to him by the Department under this Article notwithstanding any other duty imposed on him by or under this Order.

(4) A copy of every direction given under this Article shall be laid before the Assembly unless the Department is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

(5) A person shall not disclose, or be required under any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Department has notified him that the Department is of the opinion that disclosure of that thing is against the interests of national security or the commercial interests of some other person.

(6) This Article applies to any licence holder and any person authorised by an exemption to generate or supply electricity.

(7) In this Article “civil emergency” means any natural disaster or other emergency which, in the opinion of the Department, is or may be likely to disrupt electricity supplies.

*Provision of statistical information*

**59.**—(1) The Department may, if the Department considers it expedient for the purpose of obtaining statistical information relating to the generation, transmission or supply of electricity, serve a notice under this Article on any licence holder or any person who is authorised by an exemption to generate or supply electricity.

(2) A notice under this Article may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Department such statistical information about that person’s business as may be so specified.

(3) Subject to paragraphs (4) and (5), no information with respect to any particular business which—

- (a) has been obtained under this Article; and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be published or otherwise disclosed without the consent of that individual or the person for the time being carrying on that business.

(4) Paragraph (3) does not apply in relation to any disclosure which is made after consultation with the individual concerned, or the person for the time being carrying on the business concerned, and is of information relating to—

- (a) the quantities of electricity generated by particular methods or by the use of particular fuels;
- (b) the quantities of particular fuels used for the generation of electricity;
- (c) the quantities of electricity transferred between Northern Ireland and countries or territories outside Northern Ireland; or
- (d) the quantities of electricity supplied in Northern Ireland either generally or to persons of any particular class or description.

(5) Paragraph (3) does not apply in relation to any disclosure which is made to any Northern Ireland department or any department of the Government of the United Kingdom or for the purposes of any proceedings under this Article.

(6) The Department may, after consultation with persons or bodies appearing to the Department to be representative of persons likely to be affected, by order amend paragraph (4) so as to add other descriptions of information which may be disclosed notwithstanding that it may relate to a particular person or business.

(7) Any person who without reasonable excuse fails to furnish information in compliance with a requirement under this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(8) Any person who publishes or discloses any information in contravention of paragraph (3) or, in purported compliance with a requirement under this Article, knowingly or recklessly furnishes any information which is false in any material particular shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(9) In this Article “information” does not include estimates as to future matters.

#### *Promotion of new techniques in national interest*

**60.**—(1) The Secretary of State shall exercise the power conferred on him by section 5 of the Science and Technology Act 1965 (expenditure on research and development in science or technology) for the purpose of promoting such research into, and such development of, new techniques relating to the generation, transmission or supply of electricity as appears to him to be necessary in the national interest.

(2) The Secretary of State may, if he considers it expedient for purposes connected with the performance of his duty under this Article, serve notice under this paragraph on any licence holder or any person who is authorised by an exemption to generate or supply electricity.

(3) A notice under paragraph (2) may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Secretary of State such information about that person’s business as may be so specified.

(4) Paragraphs (3), (5) and (7) to (9) of Article 59 shall apply for the purposes of this Article as they apply for the purposes of that Article.

#### *General restrictions on disclosure of information*

**61.**—(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

- (a) has been obtained under any of the provisions of this Part (other than Article 59); and

(b) relates to the affairs of any individual or to any particular business, shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Paragraph (1) does not apply to any disclosure of information which is made—

(a) for the purpose of facilitating the carrying out by the Department, the Director or the Monopolies Commission of any of its, his or their, as the case may require, functions under this Part;

(b) for the purpose of facilitating the carrying out by—

(i) any Minister of the Crown;

(ii) any Northern Ireland department;

(iii) the Director General of Fair Trading;

(iv) the Monopolies Commission;

(v) the Comptroller and Auditor General for Northern Ireland;

(vi) the Director General of Telecommunications;

(vii) the Director General of Gas Supply;

(viii) the Director General of Water Services;

(ix) the Director General of Electricity Supply;

(x) the Water Appeals Commission for Northern Ireland; or

(xi) the Civil Aviation Authority;

of any of its, his or their, as the case may require, functions under any of the statutory provisions specified in paragraph (3);

(c) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the Financial Services Act 1986 or by the statutory provisions relating to insurance companies;

(d) for the purpose of enabling or assisting the Department or the Department of Finance and Personnel to exercise any powers conferred on that Department by the statutory provisions relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by the Department under the statutory provisions relating to companies to carry out his functions;

(e) for the purpose of enabling or assisting the official receiver for Northern Ireland to carry out his functions under the statutory provisions relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of Article 350 of the Insolvency (Northern Ireland) Order 1989 to carry out its functions as such;

(f) for the purpose of facilitating the carrying out by the Health and Safety Agency of any of its functions under any statutory provision;

(g) for the purpose of facilitating the carrying out by any district council of its functions under the Consumer Protection Act 1987;

(h) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;

(i) for the purposes of any civil proceedings brought under this Part or any of the statutory provisions specified in paragraph (3); or

(j) in pursuance of a Community obligation.

(3) The statutory provisions referred to in paragraph (2) are—

- (a) the Trade Descriptions Act 1968;
  - (b) the Water Act (Northern Ireland) 1972;
  - (c) the 1973 Act;
  - (d) the Water and Sewerage Services (Northern Ireland) Order 1973;
  - (e) the Consumer Credit Act 1974;
  - (f) the Restrictive Trade Practices Act 1976;
  - (g) the Resale Prices Act 1976;
  - (h) the Gas (Northern Ireland) Order 1977;
  - (i) the Estate Agents Act 1979;
  - (j) the 1980 Act;
  - (k) the Telecommunications Act 1984;
  - (l) the Airports Act 1986;
  - (m) the Gas Act 1986;
  - (n) the Audit (Northern Ireland) Order 1987;
  - (o) the Consumer Protection Act 1987;
  - (p) the Consumer Protection (Northern Ireland) Order 1987;
  - (q) the Water Act 1989;
  - (r) the Electricity Act 1989;
  - (s) the Control of Misleading Advertisement Regulations 1988.
- (4) The Department may by order provide that paragraphs (2) and (3) shall have effect subject to such modifications as are specified in the order.
- (5) Nothing in paragraph (1) shall be construed—
- (a) as limiting the matters which may be published under Article 45 or 51 or may be included in, or made public as part of, a report of the Director, the Monopolies Commission or the consumer committee under any provision of this Part; or
  - (b) as applying to any information which has been so published or has been made public as part of such a report.
- (6) Any person who discloses any information in contravention of this Article 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 imprisonment for a term not exceeding two years or to a fine or to both.

*Directions restricting the use of certain information*

**62.**—(1) The Department may give to any person who is authorised by a licence to transmit electricity (“the authorised person”) such directions as appear to the Department to be requisite or expedient for the purpose of securing that, in any case where paragraph (2) applies, neither the person by whom the information mentioned in that paragraph is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.

(2) This paragraph applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to generate, transmit or supply electricity, the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.

(3) As soon as practicable after giving any directions under paragraph (1), the Department shall publish a copy of the directions in such manner as the Department considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.

(4) The obligation to comply with any directions under paragraph (1) is a duty owed to any person who may be affected by a contravention of them.

(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 any person 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 directions.

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

(8) In this Article—

“dealings” includes dealings entered into otherwise than for purposes connected with the transmission of electricity;

“outside person”, in relation to any person, means any person who is not an associate of his;

and for the purposes of this Article a person is an associate of another if he and that other are connected with each other within the meaning of section 839 of the Income and Corporation Taxes Act 1988.

#### *Making of false statements, etc.*

**63.**—(1) If any person, in giving any information or making any application under or for the purposes of any provision of this Part, or of any regulations made under this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he 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.

(2) Any person who seeks to obtain entry to any premises by falsely pretending to be—

- (a) an employee of a public electricity supplier;
- (b) an electrical inspector; or
- (c) a meter examiner,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) No proceedings shall be instituted in respect of an offence under paragraph (1) except by or with the consent of the Department or the Director of Public Prosecutions for Northern Ireland.

### *Supplemental*

#### *Powers to make regulations*

**64.**—(1) Regulations made under any provision of this Part may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and

procedure to be followed in connection with the determination of such questions, including provision—

- (a) as to the mode of proof of any matter;
  - (b) as to parties and their representation;
  - (c) for the right to appear before and be heard by the Department, the Director and other authorities; and
  - (d) as to awarding costs of proceedings for the determination of such questions, including the amount of the costs and the enforcement of the awards.
- (2) Regulations made under any provision of this Part which prescribe a period within which things are to be done may provide for extending the period so prescribed.
- (3) Regulations made under any provision of this Part may—
- (a) provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed;
  - (b) make such supplemental, consequential and transitional provision as the Department or, as the case may be, the Director considers appropriate.

#### *Concurrent proceedings*

**65.**—(1) Where an application or a reference is made by a licence holder under this Part in connection with any matter, the proceedings which—

- (a) are required under this Part to be taken in relation to that application or reference; and
- (b) if applicable, are required by Articles 20 to 24 of the Planning (Northern Ireland) Order 1991 to be taken for the purpose of planning permission;

may, where the Department concerned so directs, be taken concurrently (so far as practicable).

(2) In this Article “the Department concerned” means the Department, or where the matter to which the application or reference relates is a function of some other Department, the Department and that other Department acting jointly.

#### *Public inquiries*

**66.**—(1) The Department may cause an inquiry to be held in any case where the Department considers it advisable to do so in connection with any matter arising under this Part other than a matter in respect of which any functions of the Director under Article 28 are or may be exercisable.

(2) Without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954, the Department may make rules regulating the procedure to be followed in connection with inquiries held by or on behalf of the Department under this Part.

(3) Where—

- (a) an inquiry is to be held under this Part in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Part or by any other statutory provision) to be the subject of an inquiry (“the other inquiry”), it appears to the Department concerned that the matters are so far cognate that they should be considered together,

the Department concerned may direct that the 2 inquiries be held concurrently or combined as one inquiry.

(4) In paragraph (3) “the Department concerned” means the Department, or where causing the other inquiry to be held is a function of some other Department, the Department and that other Department acting jointly.

*Application to Crown land*

67.—(1) Subject to paragraphs (2) to (4), the provisions of this Part shall have effect in relation to Crown land as they have effect in relation to land which is not Crown land.

(2) The powers conferred by or under Schedule 3 shall not be exercisable in relation to Crown land, to the extent of the estate therein held by or on behalf of the Crown.

(3) The powers conferred by or under—

- (a) Schedules 3 and 4; and
- (b) subject to paragraph (4), Schedule 6,

shall not, except with the consent of the appropriate authority, be exercisable in relation to Crown land.

(4) The powers conferred by or under Schedule 6 shall, without the consent of the appropriate authority, be exercisable in relation to Crown land, to the extent of any estate therein for the time being held otherwise than by or on behalf of the Crown.

(5) For the purposes of paragraph (1) a Northern Ireland department may dispose of land vested in that department on such financial and other conditions as that department may consider appropriate.

(6) In this Article any reference to the Crown includes a reference to Her Majesty’s Government in Northern Ireland.

(7) In this Article—

“the appropriate authority”, in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate;

“government department” includes a department of the Government of the United Kingdom.

(8) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this Article as having an estate in land.



## PART III

### REORGANISATION OF THE INDUSTRY

#### *Introductory*

#### *Interpretation of Part III*

**68.—(1)** In this Part

“debentures” includes debenture stock;

“generating company” means a company designated as such by the Department;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“successor company” means a company nominated under Article 69(2) for the purposes of Article 69(1);

“the transfer date” means the day appointed under Article 69(3) for the purposes of Article 69(4);

“transferee”, in relation to any transfer of assets and liabilities effected or proposed to be effected under this Part, means the person to whom they are or are to be so transferred;

“transfer scheme” means a scheme under Article 69(1);

“transitional period”, in relation to Northern Ireland Electricity, means the period of Northern Ireland Electricity’s continued existence under Article 86(2) after the transfer date and until it is dissolved under Article 86(4);

“transmission and supply company” means the company designated as such by the Department.

(2) Subject to Article 70(5), in this Part any reference to the Crown is a reference to the Crown in right of Her Majesty’s Government in Northern Ireland.

(3) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than—

- (a) by, or by a nominee of, the Department or the Department of Finance and Personnel; or
- (b) by a company which is itself wholly owned by the Crown.

(4) References in this Part to assets and liabilities of Northern Ireland Electricity are references to all such assets and liabilities, whether or not capable of being transferred or assigned by Northern Ireland Electricity.

(5) It is hereby declared for the avoidance of doubt that any reference in this Part to assets and liabilities of Northern Ireland Electricity—

- (a) in relation to assets which consist of property of Northern Ireland Electricity, is a reference to property whether situated in Northern Ireland or elsewhere; and
- (b) in relation to assets which consist of other rights and to liabilities of Northern Ireland Electricity is a reference to rights to which Northern Ireland Electricity is entitled, or (as the case may be) liabilities to which Northern Ireland Electricity is subject, whether under the law of Northern Ireland or under the law of any country or territory outside Northern Ireland.

*Transfers to successor companies**Transfer of assets, etc., of Northern Ireland Electricity*

**69.**—(1) Before such date as the Department may direct, Northern Ireland Electricity shall make a scheme (a “transfer scheme”) for the division of all its assets and liabilities (other than excepted rights and liabilities) between 2 or more companies nominated by the Department for the purposes of this paragraph; and of the companies so nominated—

- (a) one shall be designated as a generating company; and
- (b) one shall be designated as a transmission and supply company.

(2) Subject to paragraph (3), the Department may, after consultation with Northern Ireland Electricity, by order nominate for the purposes of paragraph (1) any company formed and registered under the Companies (Northern Ireland) Order 1986 (a “successor company”).

(3) On such day as the Department may by order appoint for the purposes of paragraph (4) (the “transfer date”) each successor company must be a company limited by shares which is wholly owned by the Crown.

(4) Subject to the provisions of Article 72, on the transfer date all assets and liabilities to which immediately before that date Northern Ireland Electricity was entitled or subject (other than excepted rights and liabilities) shall become by virtue of this paragraph, assets and liabilities of the successor company to which they are allocated by a scheme under paragraph (1).

(5) The Department shall not exercise any power conferred by this Article or Article 70 or 71 except with the consent of the Department of Finance and Personnel.

(6) In this Article “excepted rights and liabilities” means—

- (a) any rights and liabilities with respect to corporation tax (including rights to receive any sums by way of repayment supplement and liabilities to pay any sums by way of interest or penalty);
- (b) any rights and liabilities arising under an agreement which relates to any such assets and liabilities as are mentioned in sub-paragraph (a) and is specified or is of a description specified by the transfer scheme;
- (c) any rights and liabilities transferred by Article 90; and
- (d) such other rights and liabilities as the Department may determine.

*Transfer schemes under Article 69*

**70.**—(1) A transfer scheme may—

- (a) define the assets and liabilities to be allocated to a particular successor company—
  - (i) by specifying or describing the assets and liabilities in question;
  - (ii) by referring to all the assets and liabilities comprised in a specified part of Northern Ireland Electricity’s undertaking; or
  - (iii) partly in the one way and partly in the other;
- (b) provide that any assets or liabilities specified or described in the scheme shall be enforceable either by or against either or any, or by or against both or all, of 2 or more successor companies;
- (c) impose on any successor company an obligation to enter into such written agreements with, or execute such other instruments in favour of, any other successor company as may be specified in the scheme; and

(d) make such supplemental, incidental and consequential provision as Northern Ireland Electricity considers appropriate (including provision specifying the order in which any transfers or transactions are to be regarded as taking effect).

(2) An obligation imposed by a provision included in a transfer scheme under paragraph (1)(c) shall be enforceable by civil proceedings by the other successor company for an injunction or for any other appropriate relief.

(3) A transaction of any description which is effected under such a provision as is mentioned in paragraph (2)—

(a) shall have effect subject to the provisions of any statutory provision which provides for transactions of that description to be registered in any statutory register; but

(b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this paragraph, have required the consent or concurrence of any other person.

(4) Where a lease of any land is granted in pursuance of such a provision as is mentioned in paragraph (2), any right or obligation affecting that land—

(a) shall not become exercisable or enforceable by reason of the grant of the lease; but

(b) shall have effect as if the lessee were the same person in law as the lessor.

(5) It is hereby declared that the provisions of a transfer scheme in so far as they relate to any asset or liability of Northern Ireland Electricity in which there is a Crown interest bind the Crown, including the Crown in right of Her Majesty's Government in the United Kingdom to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

#### *Functions of the Department in relation to transfer schemes*

**71.**—(1) A transfer scheme shall not take effect unless it is approved by the Department; and the Department may modify such a scheme before approving it.

(2) If, in relation to a transfer scheme—

(a) Northern Ireland Electricity fails, before the date specified in the Department's direction under Article 69(1), to submit the scheme for the approval of the Department; or

(b) the Department decides not to approve the scheme that has been submitted to the Department by Northern Ireland Electricity (either with or without modifications),

the Department may make the scheme.

(3) It shall be the duty of Northern Ireland Electricity to provide the Department with all such information and other assistance as the Department may require for the purposes of or in connection with the exercise, in relation to a transfer scheme, of any power conferred on the Department by paragraph (1) or (2).

(4) The Department shall not exercise any power conferred on the Department by paragraph (1) or (2) except after consultation with Northern Ireland Electricity.

#### *Supplementary provisions as to transfers under Article 69*

**72.** The provisions of Schedule 10 shall apply, to the extent there mentioned, to any transfer which is effected by Article 69(4); and that paragraph shall have effect subject to the provisions of that Schedule.

### *Ownership of successor companies*

#### *Initial Government holding in the companies*

**73.**—(1) As a consequence of the vesting in a successor company of any assets and liabilities, the company shall issue such securities of the company as the Department may direct—

- (a) to the Department or the Department of Finance and Personnel; or
- (b) to any person entitled to require the issue of the securities following their initial allotment to the Department or the Department of Finance and Personnel.

(2) The Department shall not give a direction under paragraph (1) in relation to a successor company at a time when the company has ceased to be wholly owned by the Crown.

(3) Securities required to be issued under this Article shall be issued or allotted at such time or times and on such terms as the Department may direct.

(4) Shares in a company which are issued under this Article—

- (a) shall be of such nominal value as the Department may direct; and
- (b) shall be issued as fully paid and treated for the purposes of the Companies (Northern Ireland) Order 1986 as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(5) The Department shall not exercise any power conferred by this Article, or dispose of any securities issued or of any rights to securities initially allotted to the Department under this Article, without the consent of the Department of Finance and Personnel.

(6) For the purposes of the Companies (Northern Ireland) Order 1986, Part II of the Companies (Northern Ireland) Order 1989 and the Insolvency (Northern Ireland) Order 1989 the Crown is not to be treated as a shadow director of any successor company by reason that the company is wholly owned by the Crown or that the directors of that company are accustomed to act in accordance with the Crown's directions or instructions.

#### *Government investment in securities of the companies*

**74.**—(1) The Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, the Department may at any time acquire—

- (a) securities of a successor company; or
- (b) rights to subscribe for any such securities.

(2) The Department shall not dispose of any securities or rights acquired under this Article without the consent of the Department of Finance and Personnel.

#### *Exercise of functions through nominees*

**75.**—(1) The Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, the Department may, for the purposes of Article 73, 74 or 82, appoint any person to act as the nominee, or one of the nominees, of the Department of Finance and Personnel or the Department; and—

- (a) securities of a successor company may be issued under Article 73 to any nominee of the Department or the Department of Finance and Personnel appointed for the purposes of that Article or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
- (b) any such nominee appointed for the purposes of Article 74 may acquire securities or rights under that Article,

in accordance with directions given by the Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, by the Department.

(2) Any person holding any securities or rights as a nominee of the Department or the Department of Finance and Personnel under paragraph (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, the Department may direct.

*Target investment limit for Government shareholding*

**76.**—(1) As soon as the Department considers expedient and, in any case, not later than 6 months after any successor company ceases to be wholly owned by the Crown, the Department shall by order fix a target investment limit in relation to the shares for the time being held in that company by virtue of any provision of this Part by the Department, the Department of Finance and Personnel and their respective nominees (“the Government shareholding”).

(2) The target investment limit for the Government shareholding in a successor company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (“the ordinary voting rights”).

(3) The first target investment limit fixed under this Article for the Government shareholding in a particular company shall not exceed, by more than 0.5 per cent. of the ordinary voting rights, the proportion of those rights which is in fact carried by the Government shareholding in that company at the time when the order fixing the limit is made.

(4) The Department may by order fix a new target investment limit for the Government shareholding in a successor company in place of the one previously in force under this Article; but—

- (a) any new limit must be lower than the one it replaces; and
- (b) an order under this Article may, notwithstanding section 17(2) of the Interpretation Act (Northern Ireland) 1954, only be revoked by an order fixing a new limit.

(5) It shall be the duty of the Department and of the Department of Finance and Personnel so to exercise—

- (a) their powers under Article 74 and any power to dispose of any shares held under any provision of this Part; and
- (b) their power to give directions to their respective nominees,

as to secure in relation to each successor company that the Government shareholding in that company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this Article in relation to that company.

(6) Notwithstanding paragraph (5) but subject to paragraph (7), the Department or the Department of Finance and Personnel may take up, or direct any nominee of the Department or of the Department of Finance and Personnel to take up, any rights which are for the time being available to them, or to the nominee, either—

- (a) as an existing holder of shares or other securities of a successor company; or
- (b) by reason of the rescission of any contracts for the sale of such shares or securities.

(7) If, as a result of anything done under paragraph (6), the proportion of the ordinary voting rights carried by the Government shareholding in a successor company at any time exceeds the target investment limit for the time being in force under this Article in relation to that company, it shall be the duty of the Department or, as the case may be, the Department of Finance and Personnel to comply with paragraph (5) as soon after that time as is reasonably practicable.

(8) For the purposes of this Article the temporary suspension of any of the ordinary voting rights shall be disregarded.

(9) The Department shall not exercise any power conferred on it by this Article except with the consent of the Department of Finance and Personnel.

### *Finances of successor companies*

#### *Statutory reserves*

77.—(1) If the Department with the approval of the Department of Finance and Personnel so directs at any time before a successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction but not exceeding such proportion of the accumulated realised profits of Northern Ireland Electricity as is determined by or under the transfer scheme shall be carried by the company to a reserve (“the statutory reserve”).

(2) A company having a statutory reserve shall not apply it except in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

(3) Notwithstanding paragraph (2), the statutory reserve of a company shall not count as an undistributable reserve of the company for the purposes of Article 272(3)(d) of the Companies (Northern Ireland) Order 1986; but for the purpose of determining under that Article whether a company with a statutory reserve may make a distribution at any time any amount for the time being standing to the credit of the reserve shall be treated for the purposes of Article 272(3)(c) of that Order as if it were unrealised profits of the company.

#### *Statutory accounts*

78.—(1) The following provisions of this Article shall have effect for the purposes of any statutory accounts of a successor company, that is to say, any accounts prepared by such a company for the purpose of any provision of the Companies (Northern Ireland) Order 1986 (including group accounts).

(2) The vesting in the company effected under this Part shall be taken to have been effected immediately after the end of the last complete accounting year of Northern Ireland Electricity to end on or before the transfer date and to have been a vesting of such of the assets and liabilities to which Northern Ireland Electricity was entitled or subject immediately before the end of the year as are determined by or under the transfer scheme.

(3) The value of any asset and the amount of any liability which is taken under paragraph (2) to have been vested in the company shall be taken to have been—

- (a) the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by Northern Ireland Electricity in respect of the last complete accounting year of Northern Ireland Electricity to end before the transfer date; or
- (b) if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the transfer scheme.

(4) The amount to be included in respect of any item shall be determined as if—

- (a) anything done by Northern Ireland Electricity (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise); or
- (b) so much of anything so done as may be determined by or under the transfer scheme,

had been done by the company.

(5) Without prejudice to the generality of the preceding provisions, the amount to be included in any reserves of the company as representing the company’s accumulated realised profits or, as the case may be, losses shall be determined as if such proportion of—

- (a) any profits realised and retained; or
- (b) any losses realised; or
- (c) any other provision made,

by Northern Ireland Electricity as is determined by or under the transfer scheme, had been realised and retained, realised or made, as the case may require, by the company.

(6) In this Article “complete accounting year”, in relation to Northern Ireland Electricity, means an accounting year of Northern Ireland Electricity ending on 31st March.

*Temporary restrictions on borrowings, etc.*

**79.**—(1) If articles of association of a successor company confer on the Department powers exercisable with the consent of the Department of Finance and Personnel for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the public interest notwithstanding any rule of law and any statutory provision.

(2) For the purposes of this Article an alteration of the articles of association of a successor company shall be disregarded if the alteration—

- (a) has the effect of conferring or extending any such power as is mentioned in paragraph (1); and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) In this Article—

“group”, in relation to a company, means that company and all of its subsidiaries taken together; “subsidiary” has the meaning given by Article 4 of the Companies (Northern Ireland) Order 1986.

*Government lending to the companies*

**80.**—(1) Subject to Article 83, the Department may, with the approval of the Department of Finance and Personnel, make loans of such amounts and on such terms and conditions, including terms and conditions as to security, as the Department thinks fit to any successor company which is for the time being wholly owned by the Crown.

(2) Subject to Article 82, any loans which the Department makes under this Article shall be repaid to the Department at such times and by such methods, and interest thereon shall be paid to the Department at such rates and at such times, as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) Expenditure incurred or to be incurred by the Department in making loans under this Article shall be defrayed by means of sums charged on and issued out of the Consolidated Fund.

*Government guarantees for loans made to the companies*

**81.**—(1) Subject to Article 83, the Department may guarantee, in such manner and on such terms as the Department, with the approval of the Department of Finance and Personnel, may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Department by any successor company which is for the time being wholly owned by the Crown.

(2) Immediately after a guarantee is given under this Article, the Department shall lay a statement of the guarantee before the Assembly; and immediately after any sum is issued for fulfilling a guarantee so given, the Department shall so lay a statement relating to that sum.

(3) Any sums required by the Department for fulfilling a guarantee under this Article shall be charged on and issued out of the Consolidated Fund.

(4) The Department of Finance and Personnel may borrow money for the purpose of providing for issues out of the Consolidated Fund under paragraph (3).

(5) If any sums are issued in fulfilment of a guarantee given under this Article the company whose obligations are so fulfilled shall make to the Department, at such times and in such manner as the Department may direct,—

- (a) payments of such amounts as the Department may so direct in or towards repayment of the sums so issued; and
- (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Department may so direct.

*Conversion or discharge of certain loans or advances, etc.*

**82.**—(1) The Department may by order extinguish all or any of the liabilities of Northern Ireland Electricity or, as the case may be, a successor company in respect of the principal of such relevant loans as may be specified in the order.

(2) Where the Department has made an order under paragraph (1) and the Department considers it appropriate to do so, the Department may give a direction under this paragraph to Northern Ireland Electricity or, as the case may be, the successor company whose liabilities are extinguished by the order; and Northern Ireland Electricity or that company as the case may require shall, as a consequence of the making of the order, issue such securities as may be specified or described in the direction—

- (a) to the Department or to the Department of Finance and Personnel; or
- (b) to any person entitled to require the issue of the securities following their initial allotment to the Department or the Department of Finance and Personnel.

(3) For the purposes of any statutory accounts of a successor company, the value at the time of its issue of any such security shall be taken—

- (a) in the case of a share, to have been equal to its nominal value; and
- (b) in the case of a debenture, to have been equal to the principal sum payable under the debenture,

and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.

(4) In paragraph (3) “statutory accounts of a company” means any accounts prepared by the company for the purpose of any provision of the Companies (Northern Ireland) Order 1986 (including group accounts).

(5) The Department shall not—

- (a) make an order under paragraph (1) extinguishing the liability of any successor company; or
- (b) give a direction under paragraph (2) for the issue of securities,

except at a time when the company is wholly owned by the Crown.

(6) Except as may be agreed between the Department and Northern Ireland Electricity or, as the case may be, a successor company which is directed to issue debentures under this Article,—

- (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and



(b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.

(7) For the purposes of paragraph (6) any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

(8) The Department may direct Northern Ireland Electricity to do anything specified in the direction which is requisite or expedient for the purpose of securing, on such terms as the Department, with the approval of the Department of Finance and Personnel, thinks fit, the discharge, or the transfer to the Department, of Northern Ireland Electricity's liabilities in respect of any foreign currency loan made to Northern Ireland Electricity.

(9) Paragraphs (3) to (5) of Article 73 shall apply for the purposes of this Article as they apply for the purposes of that Article.

(10) In this Article—

“foreign currency” means a currency other than sterling;

“foreign currency loan” means a loan made wholly or mainly in a foreign currency;

“relevant loan” means—

- (a) any loan made, or deemed to have been made, by the Department or from the Consolidated Fund the liability to repay which vests or will vest in the successor company by virtue of Article 69(4);
- (b) any loan made to that company by the Department under Article 80; and
- (c) any sums payable under debentures issued as a consequence of the making of an order under this Article.

*Financial limits on borrowings, etc.*

**83.** The aggregate of any amounts outstanding by way of principal in respect of—

- (a) sums issued under Article 81 in fulfilment of guarantees given in respect of loans made to such companies; and
- (b) relevant loans within the meaning of Article 82,

shall not exceed £750 million.

*Provisions with respect to floatation*

*Responsibility for composite listing particulars*

**84.**—(1) Where—

- (a) the same document contains listing particulars for securities of 2 or more successor companies; and
- (b) any person's responsibility for any information included in the document is stated in the document to be confined to its inclusion as part of the listing particulars for securities of any one of those companies,

that person shall not be treated as responsible for that information in so far as it is stated in the document to form part of the listing particulars for securities of any other of those companies.

(2) In this Article—

“the 1986 Act” means the Financial Services Act 1986;

“listing particulars” means any listing particulars or supplementary listing particulars within the meaning of the 1986 Act;

“responsible” means responsible for the purposes of Part IV of the 1986 Act.

*Application of Trustee Investments Act 1961 in relation to investment in successor companies*

**85.**—(1) Paragraph (2) shall have effect for the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the Trustee Investments Act 1961 as applied in Northern Ireland by virtue of any transferred provision (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the 5 years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of a successor company during the calendar year in which the transfer date falls (“the first investment year”) or during any year following that year.

(2) The company shall be deemed to have paid a dividend as mentioned in the said paragraph 3(b)—

- (a) in every year preceding the first investment year which is included in the relevant 5 years; and
- (b) in the first investment year, if that year is included in the relevant 5 years and that company does not in fact pay such a dividend in that year.

(3) In paragraph (2) “the relevant 5 years” means the 5 years immediately preceding the year in which the investment in question is made or proposed to be made.

*Provisions with respect to Northern Ireland Electricity*

*Dissolution, etc., of Northern Ireland Electricity*

**86.**—(1) Any person who, immediately before the transfer date, holds office as Chairman or other member of Northern Ireland Electricity, shall cease to hold office on that date.

(2) Northern Ireland Electricity shall continue in existence after the transfer date until it is dissolved under paragraph (4).

(3) During the transitional period, Northern Ireland Electricity—

- (a) shall consist of a chairman appointed by the Department and such one or more other persons as may be so appointed; and
- (b) shall prepare such statements of accounts as the Department may direct;

and a direction under this paragraph may require the auditing of any such statements of accounts by such person as may be specified in the direction.

(4) The Department may by order, after consulting Northern Ireland Electricity and its successor company or companies, dissolve Northern Ireland Electricity on a day specified in the order, as soon as the Department is satisfied that nothing further remains to be done by Northern Ireland Electricity (whether under Schedule 13 or otherwise).

(5) An order under paragraph (4) may provide—

- (a) for the transfer of any remaining functions, assets and liabilities of Northern Ireland Electricity to the Department;
- (b) for the preparation by such persons as may be specified in the order of a statement of accounts for the period from the end of that dealt with in the last statement of accounts prepared under paragraph (3) by Northern Ireland Electricity down to the dissolution of Northern Ireland Electricity; and

(c) for the auditing of any such statement of accounts by such person as may be so specified; and the Department may, with the approval of the Department of Finance and Personnel, pay to any person on whom duties are imposed by such an order such remuneration, and such travelling and other allowances, as the Department, with the approval of the Department of Finance and Personnel, may determine.

*Compensation to members and employees of Northern Ireland Electricity*

**87.**—(1) The Department may pay to any person who, immediately before the transfer date, is the Chairman or other member of Northern Ireland Electricity such sums by way of compensation for loss of office, or loss or diminution of pension rights, as the Department may with the approval of the Department of Finance and Personnel determine.

(2) The Department may also pay to persons who, immediately before the transfer date, are employees of Northern Ireland Electricity such sums by way of compensation for loss of employment, or loss or diminution of remuneration or pension rights, as the Department may, with the approval of the Department of Finance and Personnel, determine.

*Grants towards expenditure during transitional period*

**88.**—(1) The Department may, with the approval of the Department of Finance and Personnel, make grants to Northern Ireland Electricity of such amounts as the Department thinks fit towards such expenditure incurred by Northern Ireland Electricity during its transitional period as is not met under Schedule 13 by such of its successor companies as may be designated by or under the transfer scheme.

(2) Grants under this Article may be made subject to such conditions as the Department, with the approval of the Department of Finance and Personnel, may determine.

*Amendment of pension scheme, etc.*

**89.** The provisions of Schedule 11 (which provide for pensions and for amending the Northern Ireland Electricity Superannuation Scheme and for giving special protection to certain persons who have or may acquire rights under that scheme) shall have effect.

*Miscellaneous*

*Northern Ireland Electricity Stock*

**90.**—(1) On the transfer date all the rights and liabilities to which Northern Ireland Electricity was entitled or subject immediately before that date under the terms of issue of Northern Ireland Electricity Stock shall become by virtue of this Article rights and liabilities of the Department of Finance and Personnel.

(2) Before the transfer date Northern Ireland Electricity shall pay to such bank as the Department of Finance and Personnel may direct a sum equal to the amounts accruing in respect of unclaimed interest or redemption money on Northern Ireland Electricity Stock before that date but excluding any amounts represented by money in the hands of that bank.

(3) In this Article “Northern Ireland Electricity Stock” means any stock created and issued under Article 20 of the Electricity Supply (Northern Ireland) Order 1972 or under section 28 of the Electricity (Supply) Act (Northern Ireland) 1931.

*Assembly disqualification*

**91.** In the Northern Ireland Assembly Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place) the following entry—

“Director of a successor company (within the meaning of Part III of the Electricity (Northern Ireland) Order 1992), being a director nominated or appointed by a Northern Ireland department or by a person acting on behalf of a Northern Ireland department”.

## PART IV SUPPLEMENTAL

*Repayment of fees*

**92.**—(1) Regulations under this Order which prescribe any fee for the purpose of any provision of this Order may make provision for the repayment of any such fee paid or purported to be paid, in pursuance of that provision of this Order, including provision—

- (a) that repayment shall be made only if a specified person is satisfied that specified conditions are met or in other circumstances;
  - (b) that repayment shall be made in part only;
  - (c) that, in the case of partial repayment, the amount repaid shall be a specified sum or determined in a specified manner; and
  - (d) for repayment of different amounts in different circumstances.
- (2) In this Article “specified” means specified in the regulations.

*Regulations and orders*

**93.**—(1) Any regulations or orders made by the Department under this Order (other than orders made under Article 69(2) or paragraph 14(6) of Schedule 4) shall be subject to negative resolution.

(2) Any regulations made by the Director under this Order shall be laid before the Assembly by the Department and shall be subject to negative resolution.

*Directions*

**94.**—(1) It shall be the duty of any person to whom a direction is given under this Order to give effect to that direction.

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

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

*Amendments, transitional provisions, savings and repeals*

**95.**—(1) The statutory provisions set out in Schedule 12 shall have effect subject to the amendments specified in that Schedule (being amendments consequential on this Order).

(2) Without prejudice to section 17(2) of the Interpretation Act (Northern Ireland) 1954, the Department may by order make such modifications of instruments made under statutory provisions as appear to the Department necessary or expedient in consequence of the provisions of this Order; and in this paragraph “instrument” has the meaning assigned to it by section 1(c) of that Act of 1954.

(3) The transitional provisions and savings contained in Schedule 13 shall have effect.

(4) The statutory provisions set out in Schedule 14 are hereby repealed to the extent specified in column 3 of that Schedule.

*G. I. de Deney*  
Clerk of the Privy Council