Status: *Point in time view as at 01/11/2007. This version of this Order contains provisions that are not valid for this point in time.*
Changes to legislation: *The Energy (Northern Ireland) Order 2003 is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

STATUTORY INSTRUMENTS

2003 No. 419 (N.I. 6)

The Energy (Northern Ireland) Order 2003

- - - - - - *27th February 2003*

PART I

INTRODUCTORY

Title and commencement

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

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

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

(a) this Part;

(b) Articles 59 and 60;

(c) Article 64;

(d) Articles 66 and 67;

(e) paragraph 1(2) of Schedule 3 (and Article 65 so far as relating thereto);

(f) Schedule 4 (and Article 65 so far as relating thereto).

Subordinate Legislation Made

P1 Art. 1(2) power partly exercised: 1.4.2003 appointed for specified provisions by S.R. 2003/203, art. 2, **Sch.**;
2.3.2004 for specified provisions by S.R. 2004/71, art. 2, **Sch.**;
10.2.2005 for specified provisions by S.R. 2005/31, art. 2, **Sch.**;
5.5.2007 for specified provisions by S.R. 2007/283, art. 2, **Sch. 1**;
3.7.2007 for specified provisions by S.R. 2007/320, art. 2, **Sch. 1**

Interpretation

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

(2) In this Order—

"authorised supplier"

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

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

"the Authority" means the Northern Ireland Authority for **[**[F1]Utility**]** Regulation;

"consumers" includes both existing consumers and future consumers;

"the Council" means the General Consumer Council for Northern Ireland;

"the Department" means the Department of Enterprise, Trade and Investment;

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

"the Electricity Order" means the Electricity (Northern Ireland) Order 1992 (NI 1);

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

"the Gas Order" means the Gas (Northern Ireland) Order 1996 (NI 2);

"licence holder" means the holder of an electricity licence or a gas licence;

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

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

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

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

F1 Art. 2(2): word substituted (1.4.2007) in the definition of "the Authority" by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(1)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

PART II

NEW REGULATORY ARRANGEMENTS

The Northern Ireland Authority for Energy Regulation

The Northern Ireland Authority for Energy Regulation

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

(a) functions transferred to the Authority from the Director General of Gas for Northern Ireland and the Director General of Electricity Supply for Northern Ireland; and

(b) the other functions of the Authority under this Order.

(2) The functions of the Authority are performed on behalf of the Crown.

(3) The expenses of the Authority shall be defrayed out of money appropriated for that purpose by Act of the Assembly.

(4) The offices of Director General of Gas for Northern Ireland and Director General of Electricity Supply for Northern Ireland are abolished.

(5) Schedule 1 has effect with respect to the Authority.

Modifications etc. (not altering text)

C1 Art. 3 modified (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **3(1)(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

VALID FROM 15/04/2011

[F2Designation of Authority as national regulatory authority for Northern Ireland

3A.—(1) The Authority is designated as the national regulatory authority for Northern Ireland in accordance with Article 35(3) of the Electricity Directive and Article 39(3) of the Gas Directive.

(2) The Authority shall ensure that its staff do not—

(a) seek or take any instructions that might compromise, or might reasonably be seen to compromise, the Authority's independence in relation to its functions as designated regulatory authority for Northern Ireland; or

(b) carry out any other activity, or have any financial or other interest, that might compromise, or might reasonably be seen to compromise, the Authority's independence in relation to those functions.

(3) The Authority may make representations to the regulatory authority for Great Britain designated under section 3A of the Utilities Act 2000 about matters to be discussed or decided at any meeting of the Board of Regulators of the Agency; and whenever the Authority receives from that regulatory authority any documents or other information related to any such meeting, the Authority shall consider whether or not to do so.**]**

F2 Art. 3A inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 35**

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

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

(2) Any statutory provision or any document which—

(a) refers to either of the Directors; and

(b) was passed or made before the transfer effected by paragraph (1),

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

(3) Anything which —

(a) has been done by or in relation to either of the Directors for the purpose of or in connection with anything transferred by this Article; and

(b) is in effect immediately before it is transferred,

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

(4) Anything (including legal proceedings) which—

(a) relates to anything transferred; and

(b) is in the process of being done by or in relation to either of the Directors immediately before it is transferred,

may be continued by or in relation to the Authority.

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

Forward work programme of the Authority

5.—(1) The Authority shall, before each financial year, publish a document (the "forward work programme") containing a general description of the projects, **[**[F3]which it plans to undertake during the year in the exercise of its relevant functions (other than projects comprising routine activities in the exercise of those functions)**]**.

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

(3) The forward work programme for any year shall also include an estimate of the overall expenditure which the Authority expects to incur during the year in the exercise of its **[**[F4]relevant functions**]** .

[[F5](3A) The forward work programme prepared under this Article may, if the Authority so decides, be combined in a single programme with the forward work programme of the Authority prepared under Article 4 of the Water and Sewerage Services (Northern Ireland) Order 2006: and references in the following provisions of this Article to a forward work programme include references to such a combined programme.**]**

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

(a) containing a draft of the forward work programme; and

(b) specifying the time within which representations or objections to the proposals contained in it may be made,

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

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

[[F6](6) The Authority shall send a copy of any notice given by it under paragraph (4) to the Council and the Department and also (in the case of notice concerning a combined single programme under paragraph (3A)) to the Department for Regional Development.

(7) In this Article and the following provisions of this Order references to the Authority's relevant functions are references to the functions of the Authority under—

(a) the Electricity Order;

(b) the Gas Order; and

(c) this Order.**]**

F3 Words in art. 5(1) substituted (1.4.2007) by virtue of Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(2)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F4 Word in art. 5(3) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F5 Art. 5(3A) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F6 Art. 5(6)(7) added (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(5)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Annual and other reports of Authority

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

(a) its activities during that year **[**[F7]in the exercise of its relevant functions**]** ; and

(b) the activities of the Competition Commission during that year in respect of any references made by the Authority **[**[F8]in the exercise of its relevant functions**]** .

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

(a) a general survey of developments in respect of matters falling within the scope of the Authority's **[**[F9]relevant functions**]** ;

(b) a report on the progress of the projects described in the forward work programme for that year **[**[F10]prepared under Article 5**]** ;

(c) a summary of final and provisional orders made, and penalties imposed, by the Authority under Part VI during the year; and

(d) a report on such other matters as the Department may from time to time require.

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

(a) Article 50(2) of the Electricity (Northern Ireland) Order 1992 (NI 1) (in this Order referred to as "the Electricity Order"); or

(b) Article 27(2) of the Gas (Northern Ireland) Order 1996 (NI 2) (in this Order referred to as "the Gas Order").

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

[[F11](4A) The annual report prepared under this Article may, if the Authority so decides, be combined in a single report with the annual report of the Authority prepared under Article 5 of the Water and Sewerage Services (Northern Ireland) Order 2006; and references in the following provisions of this Article to an annual report include references to such a combined report.**]**

(5) The Department shall—

(a) lay a copy of each annual report before the Assembly; and

(b) arrange for the report to be published in such manner as the Department considers appropriate.

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

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

(8) The Authority shall send—

(a) a copy of each annual or other report published under this Article to the General Consumer Council for Northern Ireland (in this Order referred to as "the Council"); and

(b) a copy of each report under paragraph (7) to the Department.

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

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

F7 Words in art. 6(1)(a) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(6)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F8 Words in art. 6(1)(b) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(7)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F9 Word in art. 6(2)(a) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(8)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F10 Words in art. 6(2)(b) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(9)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F11 Art. 6(4A) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(10)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

VALID FROM 15/04/2011

[F12 Report on activities as designated regulatory authority

6A.—(1) The Authority shall, each year, prepare a report (the "regulatory authority report") on the activities it has carried out in the preceding 12 months in its capacity as designated regulatory authority for Northern Ireland.

(2) The regulatory authority report shall include, in particular, a general survey of the steps taken and results achieved by the Authority in the performance of its functions under Article 37 of the Electricity Directive and Article 41 of the Gas Directive.

(3) In preparing the regulatory authority report, the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.

(4) The first regulatory authority report shall be prepared by 1st July 2012.

(5) Subsequent regulatory authority reports shall be prepared by 1st July each year.

(6) As soon as is practicable after preparing a regulatory authority report, the Authority shall—

(a) send a copy of it to—

(i) the Department;

(ii) the European Commission; and

(iii) the Agency; and

(b) publish it in such manner as the Authority considers appropriate for bringing it to the attention of others who may be interested in it.

F12 Arts. 6A, 6B inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 36**

VALID FROM 15/04/2011

Decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission

6B. The Authority shall carry out its functions in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Electricity Directive, the Gas Directive, the Electricity Regulation, the Gas Regulation or the Agency Regulation.**]**

F12 Arts. 6A, 6B inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 36**

Publication by Authority of advice and information about consumer matters

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

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

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

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

Powers of Authority in relation to external matters

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

(a) any other part of the United Kingdom;

(b) any other member State;

(c) any other State in which there is a gas pipe-line or electricity transmission system which is or may be connected (directly or indirectly) to a gas pipe-line or electricity transmission system in Northern Ireland.

(2) In paragraph (1) "relevant persons" means—

(a) persons exercising functions in relation to electricity or gas which correspond to any of those of the Authority or the Department; and

(b) persons whose activities consist of or include—

(i) generating, supplying or participating in the transmission of electricity; or

(ii) storing, supplying or participating in the conveyance of gas.

VALID FROM 15/04/2011

Duty on the authority to have regard to the need for consultation and co-operation with other authorities

[[F13]8A.—(1) When carrying out its functions as designated regulatory authority for Northern Ireland, the Authority shall, to the extent it considers necessary, consider whether there is a need to—

(a) consult and co-operate with the Agency or the designated regulatory authorities of Great Britain or other Member States;

(b) provide the Agency or the designated regulatory authorities of Great Britain or other Member States with information they may require in order to carry out their functions under the Electricity Directive, the Gas Directive, the Electricity Regulation, the Gas Regulation or the Agency Regulation; and

(c) consult relevant national authorities.

(2) In meeting its duty under paragraph (1) the Authority shall, wherever it thinks fit, co-operate with the designated regulatory authorities of Great Britain or other Member States within a regions with a view to achieving, within that region, compliance with those requirements of the Third Package which apply in relation to regions to provide for regional co-operation.

(3) In this Article.—

"region" means—

(a) in relation to electricity, any geographical area defined in accordance with Article 12(3) of the Electricity Regulation which includes Northern Ireland; and

(b) in relation to gas, any geographical area defined in accordance with Article 12(3) of the Gas Regulation which includes Northern Ireland;

"relevant national authority" means any of the following—

(a) the Competition Commission;

(b) the Office of Communications; and

(c) the Office of Fair Trading.

(4) The provisions of this Article are without prejudice to any provision of the SEM Order.**]**

F13 Art. 8A inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 38**

The energy group of the General Consumer Council

The energy group of the General Consumer Council for Northern Ireland

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

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

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

(3) The following bodies are abolished—

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

(b) the Consumer Committee for Electricity, established under Article 7 of the Electricity Order.

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

(a) the Electricity Order;

(b) the Gas Order; and

(c) this Order.

Modifications etc. (not altering text)

C2 Art. 9(1)(2) excluded (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **45(7)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Forward work programme of the Council

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

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

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

[[F14](3A) The forward work programme prepared under this Article may, if the Council so decides, be combined in a single programme with the forward work programme of the Council prepared under Article 46 of the Water and Sewerage Services (Northern Ireland) Order 2006: and references in the following provisions of this Article to a forward work programme include references to such a combined programme.**]**

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

(a) containing a draft of the forward work programme; and

(b) specifying the time within which representations or objections to the proposals contained in it may be made,

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

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

(6) The Council shall send a copy of any notice given by it under paragraph (4) to the Authority and the Department **[**[F15]and also (in the case of a combined single programme under paragraph (3A)) to the Department for Regional Development**]** .

F14 Art. 10(3A) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(11)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F15 Words in art. 10(6) added (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(12)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

General

Co-operation between Authority and Council

11.—(1) The Authority and the Council [F16]. . . shall make arrangements with a view to securing **[**[F17]as respects the exercise of their respective relevant functions**]**—

(a) co-operation and the exchange of information between them; and

(b) consistent treatment of matters which affect both of them.

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

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

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

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

F16 Words in art. 11(1) omitted (1.4.2007) by virtue of Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(13)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F17 Words in art. 11(1) inserted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(13)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

PART III

OBJECTIVES OF REGULATION OF ELECTRICITY AND GAS

Electricity

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

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

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

(a) the need to secure that all reasonable demands **[**[F18]in Northern Ireland or Ireland**]** for electricity are met; and

(b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity Order or this Order **[**[F19].**]**

(c) [F20]. . . . . .

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

(a) individuals who are disabled or chronically sick;

(b) individuals of pensionable age;

(c) individuals with low incomes; and

(d) individuals residing in rural areas;

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

(4) The Department and the Authority may, in carrying out any electricity functions, have regard to the interests of consumers in relation to gas **[**[F21]and in relation to water or sewerage services**]** .

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

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

(b) to protect the public from dangers arising from the generation, transmission or supply of electricity;

[[F22](c) to secure a diverse, viable and environmentally sustainable long#term energy supply;**]**

(d) to promote research into, and the development and use of, new techniques by or on behalf of persons authorised by a licence to generate, supply or participate in the transmission of electricity; and

(e) to secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the generation, transmission or supply of electricity;

and shall have regard, in carrying out those functions, to the effect on the environment of activities connected with the generation, transmission or supply of electricity.

[[F22](6) In carrying out their respective electricity functions the Department or the Authority shall not discriminate between persons whose activities consist of or include generating, supplying or transmitting electricity as regards either rights or obligations.

(7) In this Article—

"electricity functions" means functions under Part II of the Electricity Order and functions under this Order relating to electricity; and

"environmental sustainability" includes the need to guard against climate change.**]**

F18 Words in art. 12(2)(a) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 9**; S.R. 2007/303, **art. 2**, Sch.

F19 Words in art. 12(2)(b) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 61, **Sch. 3 para. 1** (with transitional provisions in Pt. IV)

F20 Art. 12(2)(c) repealed (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 61, **Sch. 3 para. 1** (with transitional provisions in Pt. IV)

F21 Words in art. 12(4) added (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(14)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F22 SR 2005/335

Exceptions from the general duties

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

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

(b) Article 61.

[[F23](1A) Article 12 does not apply in relation to the carrying out of functions of the Department or the Authority to which Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 applies.**]**

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

(a) in the exercise of functions relating to the determination of disputes; or

(b) in the exercise of functions under—

(i) Article 46(3) of the Electricity Order; or

(ii) Article 8.

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

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

F23 Art. 13(1A) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 10**; S.R. 2007/303, **art. 2**, Sch.

Gas

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

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

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

[[F24](a) the need to ensure a high level of protection of the interests of consumers of gas;**]**

(b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under Part II of the Gas Order or this Order;

(c) the need to secure that the prices charged in connection with the conveyance of gas through designated pipe-lines (within the meaning of Article 59) are in accordance with a common tariff which does not distinguish (whether directly or indirectly) between different parts of Northern Ireland or the extent of use of any pipe-line; and

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

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

(a) individuals who are disabled or chronically sick;

(b) individuals of pensionable age; and

(c) individuals with low incomes;

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

(4) The Department and the Authority may, in carrying out any gas functions, have regard to the interests of consumers in relation to electricity **[**[F25]and in relation to water or sewerage services**]** .

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

(a) to promote the efficient use of gas;

(b) to protect the public from dangers arising from the conveyance, storage, supply or use of gas;

[[F26](c) to secure a diverse, viable and environmentally sustainable long-term energy supply; and**]**

(d) to facilitate competition between persons whose activities consist of or include storing, supplying or participating in the conveyance of gas;

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

[[F27](5A) In carrying out their respective gas functions the Department or the Authority shall not discriminate between persons whose activities consist of or include storing, supplying or participating in the conveyance of gas as regards either rights or obligations.**]**

(6) In this Article "gas functions" means—

(a) functions under Part II of the Gas Order; and

(b) functions under this Order relating to gas.

[[F28](7) For the purposes of paragraph (5)(c) environmental sustainability includes the need to guard against climate change.**]**

F24 Art. 14(2)(a) substituted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), **reg. 13(1)**

F25 Words in art. 14(4) added (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(15)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

F26 Art. 14(5)(c) substituted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), **reg. 13(2)**

F27 Art. 14(5A) inserted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), **reg. 13(3)**

F28 Art. 14(7) added (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), **reg. 13(4)**

Modifications etc. (not altering text)

C3 Art. 14 applied (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), **reg. 16**

Exceptions from the general duties

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

(a) Article 40 of the Gas Order; or

(b) Article 61.

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

(a) Article 23(3) of the Gas Order; or

(b) Article 8.

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

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

PART IV

FUNCTIONS OF THE GENERAL CONSUMER COUNCIL

Preliminary

16.—(1) In this Part—

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

"consumer matter" means any matter connected with the interests of consumers.

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

(a) individuals who are disabled or chronically sick;

(b) individuals of pensionable age;

(c) individuals with low incomes; and

(d) individuals residing in rural areas,

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

Acquisition and review of information

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

(a) information about consumer matters; and

(b) information about the views of consumers on such matters.

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

Provision of advice and information to public authorities and other persons

18.—(1) The Council may—

(a) make proposals, or provide advice and information, about consumer matters; and

(b) represent the views of consumers on such matters,

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

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

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

(a) the individual or body has consented to the disclosure;

(b) it is information that is available to the public from some other source; or

(c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of the individual or body.

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

(a) consult that individual or body; and

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

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

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

Provision of information to consumers

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

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

(a) publishing information in any manner the Council thinks appropriate for the purpose of bringing it to the attention of those likely to be interested; or

(b) furnishing information to any consumer (whether in response to a request or otherwise).

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

Publication of statistical information about complaints

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

(a) complaints made by consumers about any matter relating to the activities of the holders of licences under—

(i) Article 10(1)(b) or (c) [F29]. . . of the Electricity Order; or

(ii) Article 8(1)(a) or (c) of the Gas Order; and

(b) the handling of such complaints.

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

F29 Words in art. 20(1)(a) omitted (1.11.2007) by virtue of Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 61, **Sch. 3 para. 2** (with transitional provisions in Pt. IV)

Power to publish advice and information about consumer matters

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

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

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

(a) that individual or body has consented to the publication;

(b) it is information that is available to the public from some other source; or

(c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

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

(a) consult that individual or body; and

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

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

Consumer complaints

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

(a) the supplier, in respect of any matter connected with the services provided by him in the course of carrying on regulated activities; or

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

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

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

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

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

(a) to investigate a complaint, until the complainant has taken such steps as appear to the Council to be reasonable for him to take for the purpose of giving the person against whom the complaint is made a reasonable opportunity to deal with the complaint;

(b) to investigate any matter to which paragraph (3) applies, until the Authority has had a reasonable opportunity to exercise any enforcement function in respect of that matter; or

(c) to investigate any matter constituting a dispute which has been referred to the Authority under any provision of the Electricity Order.

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

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

(a) any representations made by the Council under paragraph (6); and

(b) the response of the person against whom the complaint is made to the complaint or any such representations.

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

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

(a) to be about a matter which is or amounts to a complaint to which this Article applies; and

(b) to have been made by or on behalf of the complainant,

the Authority shall refer the complaint to the Council.

(10) In this Article—

"enforcement function" means a function under Article 42 or 45;

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

Power of Council to investigate other matters

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

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

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

(a) send a report on any matter investigated under this Article to any person who appears to the Council to have an interest in that matter; and

(b) publish any such report in such manner as the Council thinks appropriate.

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

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

(a) that individual or body has consented to the disclosure;

(b) it is information that is available to the public from some other source; or

(c) it is not information the disclosure of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

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

(a) consult that individual or body; and

(b) have regard to any opinion expressed by the Authority as to the application of paragraph (5)(c) to the information or as to the desirability or otherwise of its inclusion in the report;

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

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

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

Provision of information to Council

24.—(1) The Council may direct—

(a) the Authority; or

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

to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its functions **[**[F30]under this Part**]** .

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

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

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

F30 Words in art. 24(1) added (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(16)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Publication of notice of reasons

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

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

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

(a) that individual or body has consented to the publication;

(b) it is information that is available to the public from some other source; or

(c) it is not information the publication of which would or might, in the opinion of the Council, seriously and prejudicially affect the interests of that individual or body.

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

(a) consult that individual or body; and

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

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

Provision of information by Council to Authority

26.—(1) The Authority may direct the Council to supply to it, in such form as it may reasonably specify, such information specified or described in the direction as it may require for the purpose of exercising its **[**[F31]relevant functions**]** .

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

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

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

F31 Word in art. 26(1) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(17)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Articles 24 to 26: supplementary

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

(a) descriptions of information which the Authority, a licence holder or the Council may refuse to supply under Article 24 or 26; or

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

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

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

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

(a) consider any representations made by either party;

(b) determine whether the person failing to comply with the direction is entitled to refuse to do so and, if not, order him to comply with the direction; and

(c) give notice of his determination and any order under paragraph (b), with reasons, to both parties.

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

PART V

LICENCES

New kinds of licences

New kind of electricity transmission licence

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

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

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

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

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

(a) he co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place; or

(b) he makes available for use for the purposes of such a transmission system anything which forms part of it.

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

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

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

(5) After Article 10 there shall be inserted—

"**Transmission licences**

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

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

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

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

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

Commencement Information

I1 Art. 28 wholly in operation at 3.7.2007; art. 28 not in operation at date Order made see art. 1(2); art. 28 in operation for certain purposes at 5.5.2007 by S.R. 2007/283, **art. 2**, Sch.1; art. 28 in operation for all remaining purposes at 3.7.2007 by S.R. 2007/320, **art. 2**, Sch. 1

Conversion of existing electricity transmission licences

29.—(1) In this Article—

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

(b) references to the commencement date are to the date on which Article 28 comes into operation.

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

(a) as a licence under Article 10(1)(b) of the Electricity Order (as amended by Article 28) authorising the holder to participate in the transmission of electricity in the area which for the purposes of his existing transmission licence was his authorised area; and

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

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

(a) the terms of a licence, or

(b) the conditions of a licence.

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

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

(a) the Authority; and

(b) the holder of the licence,

in such manner as it considers appropriate.

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

New kind of gas conveyance licence

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

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

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

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

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

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

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

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

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

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

(5) After Article 8 there shall be inserted—

"**Licences under Article 8(1)(a)**

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

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

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

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

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

Conversion of existing gas conveyance licences

31.—(1) In this Article—

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

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

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

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

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

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

(a) the terms of a licence, or

(b) the conditions of a licence.

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

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

(a) the text of each licence modified under this Article; and

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

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

(a) the Authority; and

(b) the holder of the licence,

in such manner as it considers appropriate.

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

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

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

New standard conditions for gas conveyance licences

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

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

(3) In Article 11 of the Gas Order —

(a) in paragraph (1) for "sub-paragraph (a), (b) or (c)" there shall be substituted " sub-paragraph (b) or (c) "; and

(b) in paragraph (2) after "paragraph (1)" there shall be inserted " or Article 32(1) of the Energy (Northern Ireland) Order 2003 ".

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

(a) such modifications as appear to the Department to be necessary or expedient for the purpose of securing that the standard conditions determined under paragraph (1) are incorporated in that licence (or incorporated with such modifications as the Department considers requisite to meet the circumstances of the case);

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

(c) such other modifications as may be agreed with the licence holder.

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

(a) the terms of a licence, or

(b) the conditions of a licence.

(6) As soon as practicable after making any modifications under paragraph (4), the Department shall publish the text of each licence modified under that paragraph.

(7) Before modifying any licence under paragraph (4)(a) or (b), the Department shall consult—

(a) the Authority; and

(b) the holder of the licence,

in such manner as it considers appropriate.

(8) Paragraph (7) may be satisfied by consultation before, as well as by consultation after, the commencement of paragraph (3).

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

Conditions of licences

Conditions of electricity licences

33.—(1) Article 11 of the Electricity Order (conditions of licences) shall be amended as follows.

(2) In paragraph (3)—

(a) for "Conditions included in a licence under paragraph (1)(a)" there shall be substituted " Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph ";

(b) in sub-paragraph (c) after "licence" (in the first place it appears) there shall be inserted " , or under any document referred to in the licence, ".

(3) After paragraph (3) there shall be inserted—

"(3A) Conditions included in a licence under Article 10(1)(b) or (c) by virtue of paragraph (1)(a) may require the holder, in such circumstances as are specified in the licence—

(a) so to increase his charges in connection with the transmission or supply of electricity as to raise such amounts as may be determined by or under the conditions; and

(b) to pay the amounts so raised to such persons as may be so determined" .

(4) For paragraph (5) there shall be substituted—

"(5) Conditions included in a licence may contain provision for the conditions—

(a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or

(b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined." .

(5) After paragraph (6) there shall be inserted—

"(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time." .

Conditions of gas licences

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

(2) In paragraph (3)—

(a) for "Conditions included in a licence under paragraph (1)(a)" there shall be substituted " Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph ";

(b) in sub-paragraph (c) after "licence" (in the first place it appears) there shall be inserted " , or under any document referred to in the licence, ".

(3) After paragraph (3) there shall be inserted—

"(3A) Conditions included in a licence under Article 8(1)(a) by virtue of paragraph (1)(a) may require the holder, in such circumstances as are specified in the licence—

(a) so to increase his charges in connection with the conveyance of gas as to raise such amounts as may be determined by or under the conditions; and

(b) to pay the amounts so raised to such persons as may be so determined" .

(4) For paragraph (5) there shall be substituted—

"(5) Conditions included in a licence may contain provision for the conditions—

(a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or

(b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined." .

(5) After paragraph (6) there shall be inserted—

"(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time." .

Standard conditions of gas licences

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

"(1A) The standard conditions for the purposes of licences under sub-paragraph (a), (b) or (c) of Article 8(1) may contain provision—

(a) for any standard condition included in such a licence not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;

(b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or

(c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined." .

Modification of licences following Competition Commission report

Modification of electricity licences following Competition Commission report

36.—(1) In Article 17 of the Electricity Order after paragraph (4) there shall be inserted—

"(5) After considering any representations or objections made in response to proposals set out in a notice under paragraph (3) the Authority shall give notice to the Competition Commission—

(a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and

(b) stating the reasons for making the modifications.

(6) The Authority shall include with the notice under paragraph (5) a copy of any representations or objections received in relation to the notice under paragraph (3).

(7) If the period of four weeks from the date on which the notice under paragraph (5) is given elapses without a direction under Article 17A(1)(a) having been given to it, the Authority shall—

(a) make the modifications set out in the notice; or

(b) if a direction under Article 17A(1)(b) has been given, make the modifications which are not specified in the direction." .

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

"**Competition Commission's power to veto modifications following report**

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

(a) not to make the modifications set out in that notice; or

(b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

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

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

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

(a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and

(b) shall itself make such modifications of the conditions of the licence as appear to it to be requisite for the purpose of remedying or preventing—

(i) if the direction was given under paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;

(ii) if the direction was given under paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under Article 17(7)(b).

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

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

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

(b) stating the reason why it proposes to make them;

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

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

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

(a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy on the Authority and the holder of the licence in question.

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

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

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

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

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

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

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

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

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

(a) section 109 (attendance of witnesses and production of documents etc.);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

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

(a) subsection (2) were omitted;

(b) in subsection (4), for the words "the publication of the report of the Commission on the reference concerned" there were substituted " the publication by the Commission of a notice under Article 17A (8) of the Electricity (Northern Ireland) Order 1992 in connection with the reference concerned or, if no direction has been given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period ";

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

(16) Section 111 (5)(b) shall, in its application by virtue of paragraph (14), have effect as if for sub-paragraph (ii) there were substituted—

"(ii) if earlier, the day on which a notice is published by the Commission under Article 17A (8) of the Electricity (Northern Ireland) Order 1992 in connection with the reference concerned or, if no direction is given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which such a direction may be given within the permitted period." .

(17) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 116 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of paragraph (14), have effect in relation to those sections as applied by virtue of that paragraph.

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

Modification of gas licences following Competition Commission report

37.—(1) In Article 17 of the Gas Order after paragraph (5) there shall be inserted—

"(5A) After considering any representations or objections made in response to proposals set out in a notice under paragraph (4), the Authority shall give notice to the Competition Commission—

(a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and

(b) stating the reasons for making the modifications.

(5B) The Authority shall include with the notice under paragraph (5A) a copy of any representations or objections received in relation to the notice under paragraph (4).

(5C) If the period of four weeks from the date on which the notice under paragraph (5A) is given elapses without a direction under Article 17A(1)(a) having been given to it, the Authority shall—

(a) make the modifications set out in the notice; or

(b) if a direction under Article 17A(1)(b) has been given, make the modifications which are not specified in the direction." .

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

"**Competition Commission's power to veto modifications following report**

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

(a) not to make the modifications set out in that notice; or

(b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

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

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

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

(a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and

(b) shall itself make such modifications of the relevant conditions as appear to it to be requisite for the purpose of remedying or preventing—

(i) if the direction was given under paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;

(ii) if the direction was given under paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under Article 17(5C)(b).

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

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

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

(b) stating the reason why it proposes to make them;

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

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

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

(a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and

(b) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders.

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

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

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

(a) shall make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and

(b) shall publish the modifications made for those purposes in such manner as it considers appropriate.

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

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

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

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

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

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

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

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

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

(a) section 109 (attendance of witnesses and production of documents etc.);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

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

(a) subsection (2) were omitted;

(b) in subsection (4), for the words "the publication of the report of the Commission on the reference concerned" there were substituted " the publication by the Commission of a notice under Article 17A (8) of the Gas (Northern Ireland) Order 1996 in connection with the reference concerned or, if no direction has been given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period ";

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

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

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

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

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

Modification of licences: general provisions

38.—(1) In exercising any power to modify an electricity licence under the Electricity Order or this Order, the Department, the Authority, the Secretary of State, the Office of Fair Trading or the Competition Commission (as the case may be) shall have regard to the requirements and prohibitions laid down in**[**[F32] European Parliament and Council Directive 2003/54/EC concerning common rules for the internal market in electricity and repealing Directive 96/92.**]**

(2) In exercising any power to modify a gas licence under the Gas Order or this Order, the Department, the Authority, the Secretary of State, the Office of Fair Trading or the Competition Commission (as the case may be) shall have regard to the requirements and prohibitions laid down in European Parliament and Council **[**[F33]Directive 2003/55/EC concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC**]** .

F32 SR 2005/335

F33 Words in art. 38(2) substituted (1.10.2006) by Gas Order 1996 (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006/358), **reg. 14(1)**

Modifications etc. (not altering text)

C4 Art. 38(1) applied (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), **3(8)** (with art. 3(9)); S.R. 2007/303, **art. 2**, Sch.

C5 Art. 38(1) applied (3.7.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(1), **60(8)** (with reg. 60(9) and transitional provisions in Pt. IV)

Powers to alter licensable activities

Power to alter activities requiring electricity licence

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

(a) that specified activities are to become licensable activities; or

(b) that specified activities are to cease to be licensable activities.

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

(3) For the purposes of—

(a) this Article; and

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

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

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

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

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

Power to alter activities requiring gas licence

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

(a) that specified activities are to become licensable activities; or

(b) that specified activities are to cease to be licensable activities.

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

(3) For the purposes of—

(a) this Article; and

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

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

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

(a) amendments or repeals in any provision of this Order or any other statutory provision; and

(b) provision modifying any standard conditions of gas licences or (in the case of an order under paragraph (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.

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

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

PART VI

ENFORCEMENT

Introductory

Introductory

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

(a) relevant conditions of gas and electricity licences;**[**[F34] and**]**

(b) relevant requirements **[**[F35].**]**

(c) [F36]. . . . . .

(2) In this Part—

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

"relevant requirement" means—

(a) in relation to an electricity licence holder, any duty or other requirement imposed on him by or under—

(i) any of Articles 12, 19 to 26, **[**[F37]43A**]** 43(3), 44(3), 45A or 45B of the Electricity Order;

(ii) an order made under Article 27(4)(b); or

(iii) Part VII;

(b) in relation to a gas licence holder, any duty or other requirement imposed on him by or under an order made under Article 27(4)(b).

F34 Word in art. 41(1)(a) added (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 61, **Sch. 3 para. 3(a)** (with transitional provisions in Pt. IV)

F35 Words in art. 41(1)(b) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 61, **Sch. 3 para. 3(a)** (with transitional provisions in Pt. IV)

F36 Art. 41(1)(c) repealed (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 61, **Sch. 3 para. 3(a)** (with transitional provisions in Pt. IV)

F37 Word in art. 41(2) inserted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 61, **Sch. 3 para. 3(b)** (with transitional provisions in Pt. IV)

Modifications etc. (not altering text)

C6 Art. 41 modified (3.7.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(1), **13(2)** (with transitional provisions in Pt. IV)

VALID FROM 15/04/2011

Meaning of relevant requirement in relation to electricity

[[F38]**41A.**—(1) In the case of electricity, "relevant requirement" in respect of any regulated person means any duty or other requirement imposed on that person by or under a provision—

(a) specified in this Article; or

(b) in the Electricity Regulation and designated under this Article, in respect of that person.

(2) In respect of any licence holders, Article 27(4)(b) is specified for the purposes of paragraph (1).

(3) In respect of holders of an electricity generation licence—

(a) Part VII (Electricity from renewable sources);

(b) designated provisions of the Electricity Regulation;

(c) Articles 10C(8) and (9) of the Electricity Order (Certification procedure);

(d) Articles 10I(11) and (12) of the Electricity Order (Monitoring and review of certification);

(e) Articles 8C(4) and (5) of the Gas Order (Certification procedure); and

(f) Articles 8I(11) and (12) of the Gas Order (Monitoring and review of certification),

are specified for the purposes of paragraph (1).

(4) In respect of holders of an electricity supply licence—

(a) Article 43(3) of the Electricity Order (Overall standards of performance: electricity supply);

(b) Article 44(3) of the Electricity Order (Promotion of efficient use of electricity);

(c) Article 45A of the Electricity Order (Information to be given to customers about overall performance);

(d) Article 45B of the Electricity Order (Procedures for dealing with complaints);

(e) those in Part VII (Electricity from renewable sources);

(f) the Electricity and Gas (Billing) (No. 2) Regulations (Northern Ireland) 2010;

(g) Articles 10C(8) and (9) of the Electricity Order (Certification procedure);

(h) Articles 10I(10), (11) and (12) of the Electricity Order (Monitoring and review of certification) insofar as they apply to that person;

(i) Articles 8C(4) and (5) of the Gas Order (Certification procedure); and

(j) Articles 8I(11) and (12) of the Gas Order (Monitoring and review of certification),

are specified for the purposes of paragraph (1).

(5) In respect of holders of an electricity distribution licence—

(a) Article 12(1) of the Electricity Order (General duties of electricity distributors and transmission licence holders);

(b) Articles 19 to 26 of the Electricity Order (Duty to connect on request);

(c) Article 43A of the Electricity Order (Overall standards of performance: electricity distributors); and

(d) Article 45A of the Electricity Order (Information to be given to customers about overall performance),

are specified for the purposes of paragraph (1).

(6) In respect of holders of an electricity transmission licence—

(a) Article 12(2) of the Electricity Order (General duties of electricity distributors and transmission licence holders);

(b) Article 10B(1) or (2) and Article 10C(3) of the Electricity Order insofar as they apply to that person; and

(c) Articles 10C(7) or (8) and (9) and 10I(10), (11) and (12) of the Electricity Order insofar as they apply to that person,

are specified for the purposes of paragraph (1).

(7) The Department shall for the purposes of paragraph (1) designate those provisions of the Electricity Regulation which impose a duty or requirement on any or on any particular regulated person in respect of such persons and shall publish any such designation in the Belfast Gazette**]**

F38 Arts. 41A, 41B inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 76**

VALID FROM 15/04/2011

Meaning of relevant requirement in relation to gas

[F38 41B.—(1) In the case of gas, "relevant requirement" in respect of any regulated person means any duty or other requirement imposed on that person by or under a provision

(a) specified in this Article; or

(b) in the Gas Regulation and designated under this Article,

in respect of that person.

(2) In respect of any licence holders, Article 27(4)(b) is specified for the purposes of paragraph (1).

(3) In respect of holders of a gas supply licence—

(a) Section 3(4) of the Energy Act (Northern Ireland) 2011 (Overall standards of performance);

(b) Section 5(3) of the Energy Act (Northern Ireland) 2011 (Standards for promoting efficient use of gas);

(c) Section 7 of the Energy Act (Northern Ireland) 2011 (Information to be given to customers about overall performance);

(d) Section 8 of the Energy Act (Northern Ireland) 2011 (Procedures for dealing with complaints);

(e) the Electricity and Gas (Billing) (No. 2) Regulations (Northern Ireland) 2010;

(f) Articles 10C(8) and (9) of the Electricity Order (Certification procedure);

(g) Articles 10I(11) and (12) of the Electricity Order (Monitoring and review of certification);

(h) articles 8C(4) and (5) of the Gas Order (Certification procedure); and

(i) Articles 8I(11) and (12) of the Gas Order (Monitoring and review of certification).

are specified for the purposes of paragraph (1).

(4) In respect of holders of a gas conveyance licence —

(a) Section 3(4) of the Energy Act (Northern Ireland) 2011 (Overall standards of performance);

(b) Section 7 of the Energy Act (Northern Ireland) 2011 (Information to be given to customers about overall performance),

are specified for the purposes of paragraph (1).

(5) In respect of holders of a gas conveyance licence involved in gas transmission—

(a) Article 8B(1) or (2) of the Gas Order and Article 8B(1) or (2) of the Electricity Order insofar as they apply to that person; and

(b) Article 8C(3), (4) and (5) and 8I(10), (11) and (12) of the Gas Order insofar as they apply to that person,

are specified for the purposes of paragraph (1).

(6) The Department shall for the purposes of paragraph (1) designate those provisions of the Gas Regulation which impose a duty or requirement, on any or on any particular, regulated person in respect of such persons and shall publish any such designation in the Belfast Gazette.**]**

F38 Arts. 41A, 41B inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 76**

Orders for securing compliance

Orders for securing compliance

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

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

(a) that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and

(b) that it is requisite that a provisional order be made,

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

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

(a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and

(b) to the fact that the effect of the provisions of this Article and Article 44 is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.

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

(a) it is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and

(b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

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

(a) that the duties imposed on it by Article 12 or 14 **[**[F39]or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.**]** preclude the making or, as the case may be, the confirmation of the order; or

(b) that the most appropriate way of proceeding is under the Competition Act 1998 (c. 41).

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

(a) that the licence holder has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or

(b) that the contraventions were, or the apprehended contraventions are, of a trivial nature.

(7) Where the Authority is satisfied as mentioned in paragraphs (5) and (6), it shall—

(a) serve notice that it is so satisfied on the licence holder; and

(b) publish the notice in such manner as it considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(8) A final or provisional order—

(a) shall require the licence holder to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;

(b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and

(c) may be revoked at any time by the Authority.

(9) In this Part—

"final order" means an order under this Article other than a provisional order;

"provisional order" means an order under this Article which if not previously confirmed in accordance with paragraph (4), will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

F39 Words in art. 42(5) inserted (1.11.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 11**; S.R. 2007/444, **art. 2**, Sch. 1

Procedural requirements

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

(a) stating that the Authority proposes to make or confirm the order and setting out its effect;

(b) setting out—

(i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;

(ii) the acts or omissions which, in the Authority's opinion, constitute or would constitute contraventions of that condition or requirement; and

(iii) the other facts which, in its opinion, justify the making or confirmation of the order; and

(c) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

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

(2) A notice under paragraph (1) shall be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the licence holder to whom the order relates.

(3) The Authority shall not make a final order with modifications, or confirm a provisional order with modifications, except—

(a) with the consent to the modifications of the licence holder to whom the order relates; or

(b) after complying with the requirements of paragraph (4).

(4) The requirements mentioned in paragraph (3) are that the Authority shall—

(a) serve on the licence holder to whom the order relates such notice as appears to it requisite of its proposal to make or confirm the order with modifications;

(b) in that notice specify the period (not being less than 21 days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and

(c) consider any representations or objections which are duly made and not withdrawn.

(5) As soon as practicable after making a final order or making or confirming a provisional order, the Authority shall—

(a) serve a copy of the order on the licence holder to whom the order relates; and

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

(6) Before revoking a final order or a provisional order which has been confirmed, the Authority shall give notice—

(a) stating that the Authority proposes to revoke the order and setting out its effect; and

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

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

(7) If, after giving a notice under paragraph (6), the Authority decides not to revoke the order to which the notice relates, it shall give notice of its decision.

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

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and

(b) by serving a copy of the notice on the licence holder to whom the order relates.

Validity and effect of orders

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

(a) that its making or confirmation was not within the powers of Article 42; or

(b) that any of the requirements of Article 43 have not been complied with in relation to it,

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

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

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

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

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

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

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

Financial penalties

Financial penalties

45.—(1) Where the Authority is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement**[**[F40] or any provision of the Community Regulation**]**, the Authority may, subject to Article 47, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.

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

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

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

(a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;

(b) setting out**[**[F40] the condition, requirement or prohibition**]** or the standard of performance in question;

(c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and

(d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

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

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

(a) setting out the proposed variation and the reasons for it; and

(b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

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

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

(a) stating that it has imposed a penalty on the licence holder and its amount;

(b) setting out**[**[F40] the condition, requirement or prohibition**]** or the standard of performance in question;

(c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and

(d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.

(7) The licence holder may, within 21 days of the date of service on him of a notice under paragraph (6), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.

(8) Any notice required to be given under this Article shall be given—

(a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;

(b) by serving a copy of the notice on the licence holder; and

(c) by serving a copy of the notice on the Council.

(9) No penalty imposed by the Authority under this Article may exceed 10 per cent. of the turnover of the licence holder (determined in accordance with provisions specified in an order made by the Department).

(10) Any sums received by the Authority by way of penalty under this Article shall be paid into the Consolidated Fund.

[[F40](11) In this Article "the Community Regulation" means Regulation 1228/2003 of the European Parliament and Council on conditions for access to the network for cross#border exchanges of electricity.**]**

F40 SR 2005/335

Modifications etc. (not altering text)

C7 Art. 45 applied (with modifications) (3.7.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(1), **56(2)** (with transitional provisions in Pt. IV)

Statement of policy with respect to penalties

46.—(1) The Authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.

(2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.

(3) The Authority may revise its statement of policy and where it does so shall publish the revised statement.

(4) Publication under this Article shall be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

(5) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

Modifications etc. (not altering text)

C8 Art. 46 applied (with modifications) (3.7.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(1), **56(2)** (with transitional provisions in Pt. IV)

Time limits on the imposition of financial penalties

47.—(1) Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of 12 months from the time of the contravention or failure, unless before the end of that period—

(a) the notice under Article 45(4) relating to the penalty is served on the licence holder under Article 45(8), or

(b) a notice relating to the contravention or failure is served on the licence holder under Article 51(2).

(2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under Article 45(4) was served on the licence holder under Article 45(8)—

(a) within three months from the confirmation of the provisional order or the making of the final order, or

(b) where the provisional order is not confirmed, within six months from the making of the provisional order.

[[F41](3) This Article shall not apply in relation to a penalty imposed for a contravention of any provision of the Community Regulation within the meaning of Article 45(11).**]**

F41 SR 2005/335

Modifications etc. (not altering text)

C9 Art. 47 applied (with modifications) (3.7.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(1), **56(2)** (with transitional provisions in Pt. IV)

Interest and payment of instalments

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

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

(3) If the Authority grants an application under that paragraph in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under that

paragraph, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

Modifications etc. (not altering text)

C10 Art. 48 applied (with modifications) (3.7.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(1), **56(2)** (with transitional provisions in Pt. IV)

Appeals

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

(a) the imposition of the penalty;

(b) the amount of the penalty; or

(c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,

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

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

(a) within 42 days from the date of service on the licence holder of a notice under Article 45(6), or

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

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

(a) may quash the penalty;

(b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or

(c) in the case of an application under paragraph (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.

(4) The grounds falling within this paragraph are—

(a) that the imposition of the penalty was not within the power of the Authority under Article 45;

(b) that any of the requirements of paragraphs (4) to (6) or (8) of Article 45 have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance; or

(c) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.

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

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

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

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

Modifications etc. (not altering text)

C11 Art. 49 applied (with modifications) (3.7.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(1), **56(2)** (with transitional provisions in Pt. IV)

Recovery of penalties

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

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

(b) an application has been made under that Article and determined,

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

Modifications etc. (not altering text)

C12 Art. 50 applied (with modifications) (3.7.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(1), **56(2)** (with transitional provisions in Pt. IV)

Power to require information

Power to require information

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

(a) may be contravening, or may have contravened, any relevant condition or requirement, or

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

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

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

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Authority or to any person appointed by the Authority for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or

(b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.

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

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

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

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

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

PART VII

ELECTRICITY FROM RENEWABLE SOURCES

Obligation in connection with electricity from renewable sources

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

(2) Subject to the provisions of this Article and Articles 53**[**[F42] to 55**]**, the renewables obligation is that the designated electricity supplier**[**[F42] must, by each specified day, have produced**]** to the Authority evidence of a specified kind showing—

(a) that he has supplied to customers in Northern Ireland during a specified period such amount of electricity generated by using renewable sources as is specified in relation to such a supplier; or

(b) that another electricity supplier has done so (or that two or more others have done so); or

(c) that between them they have done so.

(3) In this Part "electricity supplier" means the holder of a licence under Article 10(1)(c) [F43]. . . of the Electricity Order, except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

(4) Evidence of the supply **[**[F44]or other use**]** of electricity may not be produced more than once in relation to the same electricity.

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

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

(a) the Authority;

(b) the Council;

(c) the electricity suppliers to whom the proposed order would apply;

(d) persons generating electricity from renewable sources in Northern Ireland; and

(e) such other persons, if any, as the Department considers appropriate.

(7) In this Article and Article 53—

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

"peat" includes substances produced directly or indirectly from peat;

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

"specified" means specified in the order.

[[F42](8) In this Article and in Articles 53 to 55—

"Great Britain authority" means the Gas and Electricity Markets Authority;

"Great Britain supplier" means an electricity supplier within the meaning of Part I of the Electricity Act 1989.**]**

F42 SR 2004/524

F43 Words in art. 52(3) omitted (1.11.2007) by virtue of Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 61, **Sch. 3 para. 4** (with transitional provisions in Pt. IV)

F44 Words in art. 52(4) inserted (1.12.2006) by Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 4**

Modifications etc. (not altering text)

C13 Art. 52(6) modified (26.1.2009) by Energy Act 2008 (c. 32), **ss. 40(3)**, 110(2); S.I. 2009/45, **art. 2(a)(iii)**

Orders under Article 52: supplementary

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

(a) different obligations for successive periods of time;

(b) that only electricity generated using specified descriptions of renewable source is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);

(c) that only electricity generated by specified descriptions of generating station is to count towards discharging the obligation (or that such electricity is to count only up to a specified amount);

(d) that a specified minimum amount of electricity generated as mentioned in sub-paragraph (b) or (c) is to be counted towards the discharge of the renewables obligation;

(e) how the amount of electricity supplied by an electricity supplier (whether generally or to particular customers or descriptions of customer) is to be determined;

(f) how the proportion referred to in Article 52(5) or in the definition of "renewable sources" in Article 52(7) is to be determined;

(g) the consequences for the discharge of the renewables obligation if a generating station of the type mentioned in Article 52(5) uses more than a specified proportion of fossil fuel or peat during a specified period (which may include the consequence that none of the electricity generated by that generating station during that period is to count towards discharging the obligation);

(h) that specified information, or information of a specified nature, is to be given to the Authority (in addition to the evidence referred to in Article 52(2)), and the form in which it is to be given.

(2) An order may, in relation to any specified period ("the current period")—

(a) provide that evidence of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;

(b) provide that evidence of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period;

(c) specify how much later the later period referred to in sub-paragraph (a) or (b) may be;

(d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in sub-paragraph (a) or (b);

(e) specify a maximum proportion of electricity supplied in any period evidence of which may be counted towards discharging the renewables obligation for a different period.

(3) An order may make any provision capable of being made under section 2(2) of the European Communities Act 1972 (c. 68) in connection with European Parliament and Council Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market.

[[F45](4) An order may make—

(a) different provision for different cases or circumstances; [F46]. . .

(b) different provision in relation to different suppliers, **[**[F47]and**]**

[F48](c) **[** different provision in relation to generating stations of different descriptions,**]**

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

(4A) In paragraph (4) "supplier" means an electricity supplier or a Great Britain supplier.**]**

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

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

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

(8) An order may make further provision as to the functions of the Authority in relation to the**[**[F45] matters dealt with**]** by the order.

F45 SR 2004/524

F46 Word in art. 53(4)(a) omitted (1.12.2006) by virtue of Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 5(a)**

F47 Art. 53(4)(c) and preceding word inserted (1.12.2006) by Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 5(b)**

F48 Art. 53(4)(c) and preceding word inserted (1.12.2006) by Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 5(b)**

Green certificates

54.—(1) An order under Article 52 may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate to the operator

of a generating station in Northern Ireland**[**[F49], to an electricity supplier or to a Great Britain supplier**]**[F50]or, if the order so provides, to a person of any other description specified in the order**]**.

[[F51](1A) A certificate is to certify the matters within paragraph (2) or, if the order provides that a certificate may certify the matters within paragraph (2ZA), (2ZB), or (2ZC), the matters within that paragraph**]**

(2) **[**[F52]The matters within this paragraph are**]**—

(a) that the generating station or, in the case of a certificate issued **[**[F53]otherwise than to the operator of a generating station,**]**[F49] or to a Great Britain supplier**]**, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate; and

(b) that it has been supplied to customers in Northern Ireland.

[[F54](2ZA) The matters within this paragraph are —

(a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate; and

(b) that it has been supplied to customers in Northern Ireland.

(2ZB) The matters within this paragraph are —

(a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate; and

(b) that the electricity has been used in a permitted way.

(2ZC) The matters within this paragraph are —

(a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate; and

(b) that the electricity has been used in a permitted way.

(2ZD) For the purposes of paragraphs (2ZB) and (2ZC), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if —

(a) it is used in one of the ways mentioned in paragraph (2ZE); and

(b) that way is specified in the order as a permitted way —

(i) in relation to all generating stations, or

(ii) in relation to generating stations of that description.

(2ZE) Those ways are —

(a) being consumed by the operator of the generating station or generating stations by which it was generated;

(b) being provided to —

(i) a transmission system (as transmission system is used in the definition of "transmit" in Article 3 of the Electricity (Northern Ireland) Order 1992) [F55]; or

(ii) a low voltage line or electrical plant (as both are defined in Article 3 of the Electricity (Northern Ireland) Order 1992) used to convey electricity

located in Northern Ireland in circumstances in which its supply to customers in Northern Ireland cannot be demonstrated;

(c) being used, as respects part, as mentioned in paragraph (a) and, as respects the remainder, as mentioned in paragraph (b);

(d) being used, as respects part, as mentioned in paragraph (a), (b) or (c) and, as respects the remainder, by being supplied to customers in Northern Ireland.**]**

[[F56](2A) In paragraphs **[**[F57](1), (2), (2ZA), (2ZB), (2ZC), and (2ZE)**]** "Northern Ireland" does not include any part of the territorial sea of the United Kingdom.

(2B) The provision that may be contained by virtue of this Article in an order under Article 52 includes—

(a) provision for the person to whom a certificate is to be issued to be determined either before or after the supply of the electricity to which it relates; and

(b) provision for a determination as to the person to whom a certificate is to be issued to be made in accordance with such arrangements as may be specified in or determined under the order.

(2C) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, the arrangements within paragraph (2B)(b) that may be specified in or determined under the order include arrangements—

(a) requiring the determination of the person to whom the certificate is to be issued to be made by reference to financial bids made in respect of the certificate or in respect of both the certificate and the electricity to which it relates; and

(b) requiring that person to make a payment, in accordance with his bid, to such person as may be specified in or determined under the order.

(2D) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, provision falling within paragraph (2B)(b) may require the relevant person—

(a) to make and implement the arrangements that are specified in or determined under the order; and

(b) to comply with directions given to him by the Authority for that purpose.

(2E) A person who receives a payment in accordance with provision made by virtue of paragraph (2C)(b) shall apply the money received in such manner as the Department may direct.

(2F) A direction under paragraph (2E) may require that the money received or part of that money be paid to the Department.

(2G) Part VI shall apply in relation to a requirement imposed by virtue of paragraph (2D) or (2E) on a person who is not an electricity licence holder as if he were an electricity licence holder.**]**

(3) If an electricity supplier produces a certificate to the Authority **[**[F58]or that certifies matters within paragraph (2) or (2ZA)**]** , it is to count for the purposes of Article 52(2) as sufficient evidence of the facts certified.

[[F56](4) An order under Article 52 may confer on the Authority functions in Northern Ireland in relation to the issue of Great Britain certificates.

(5) In this Article—

"Great Britain certificates" means certificates that are or may be issued by the Gas and Electricity Markets Authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989, in an order under section 32 of that Act;

"qualifying arrangement" means an arrangement made pursuant to an order under Article 35 of the Electricity Order (or such an arrangement as modified or replaced by virtue of an order under Article 57 of this Order);

"relevant person" means, in relation to electricity that is acquired, or is required to be acquired, under a qualifying arrangement, the person who acquired it, or who is required to acquire it.**]**

F49 SR 2004/524
F50 Words in art. 54(1) inserted (1.12.2006) by Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 3(2)**
F51 Art. 54(1A) inserted (1.12.2006) by Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 3(3)**
F52 Words in art. 54(2) substituted (1.12.2006) by Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 3(4)**
F53 Words in art. 54(2)(a) substituted (1.12.2006) by virtue of Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 3(5)**
F54 Art. 54(2ZA)-(2ZE) inserted (1.12.2006) by Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 3(6)**
F55 S.I. 1992/231 (N.I.1)
F56 2004 c. 20
F57 Words in art. 54(2A) substituted (1.12.2006) by Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 3(7)**
F58 Words in art. 54(3) inserted (1.12.2006) by Energy (Amendment) Order (Northern Ireland) 2006 (S.R. 2006/424), **art. 3(8)**

[F59 Use of green certificates issued in Great Britain

54A.—(1) An order under Article 52 may provide that—

(a) in such cases as may be specified in the order, and

(b) subject to such conditions as may be so specified,

a designated electricity supplier may (to the extent provided for in accordance with the order) discharge his renewables obligation (or his obligation in relation to a particular period) by the production to the Authority of a Great Britain certificate.

(2) In this Article "Great Britain certificate" means a certificate issued by the Great Britain authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989, in an order under section 32 of that Act (renewables obligations for Great Britain suppliers).**]**

F59 SR 2004/524

VALID FROM 01/02/2009

[F60 Amounts of electricity specified in certificates

54B.—(1) A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to different cases or circumstances.

(2) In particular, different amounts may be specified in relation to—

(a) electricity generated from different renewable sources;

(b) electricity generated by different descriptions of generating station;

(c) electricity generated in different ways.

(3) In this Article "banding provision" means provision made in a renewables obligation order by virtue of paragraph (1).

(4) Before making any banding provision, the Department must have regard to the following matters—

(a) the costs (including capital costs) associated with generating electricity from each of the renewable sources or with transmitting or distributing electricity so generated;

(b) the income of operators of generating stations in respect of electricity generated from each of those sources or associated with the generation of such electricity;

(c) the effect of paragraph 19 of Schedule 6 to the Finance Act 2000 (c.17) (supplies of electricity from renewable sources exempted from climate change levy) in relation to electricity generated from each of those sources;

(d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;

(e) the likely effect of the proposed banding provision on the number of renewables obligation certificates issued by the Authority, and the impact this will have on the market for such certificates and on consumers;

(f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, a Community obligation.

(5) For the purposes of paragraph (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.

(6) For the purposes of paragraph (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—

(a) the acquisition of the renewable source;

(b) the supply of heat produced in connection with the generation;

(c) the disposal of any by-product of the generation process.

(7) After the first order containing banding provision is made, no subsequent order containing such provision may be made except following a review held by virtue of paragraph (8).

(8) A renewables obligation order—

(a) may authorise the Department to review the banding provision at such intervals as are specified in or determined in accordance with the order, and

(b) may authorise the Department to review the whole or any part of the banding provision at any time when the Department is satisfied that one or more of the specified conditions is satisfied.

F60 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

VALID FROM 01/02/2009

Transitional provision and savings

54C.—(1) This Article applies where a renewables obligation order contains banding provision.

(2) The order may provide for the effect of any banding provision made in an earlier order, or of any provision of a pre-commencement order, to continue, in such circumstances as may be specified, in relation to—

(a) the electricity generated by generating stations of such a description as may be specified, or

(b) so much of that electricity as may be determined in accordance with the order.

(3) For the purposes of paragraph (2) "pre-commencement order" means an order made under Article 52 before the coming into operation of this Article.

(4) Paragraph (6) applies to a generating station in respect of which a statutory grant has been awarded if—

(a) the generating station is of a specified description or

(b) the circumstances of the case meet specified requirements.

(5) The requirements specified under paragraph (4)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this Article).

(6) A renewables obligation order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this paragraph applies to be conditional upon the operator of the station agreeing—

(a) if the grant or any part of it has been paid by a Minister or Department, to repay to the Minister or Department, as the case may be, the whole or a specified part of the grant or part before the repayment date

(b) to pay interest on an amount repayable under sub-paragraph (a) for such period, and at such rate, as may be determined by the Minister or Department as appropriate, and

(c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.

(7) For the purposes of paragraph (6)—

(a) "the repayment date" means the date specified in or determined in accordance with the order, and

(b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid;

and, for the purposes of provision made under that paragraph, a renewables obligation order may make provision about the cancellation of an award of a statutory grant or an instalment of such a grant.

(8) In this Article "statutory grant" means—

(a) a grant awarded under section 5(1) of the Science and Technology Act 1965 (grants to carry on or support scientific research), or

(b) any other grant which is payable out of public funds and awarded under a statutory provision.

(9) This Article is without prejudice to Article 55D (1)(b) (power for renewables obligation order to include transitional provision and savings).

F60 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

VALID FROM 01/02/2009

Use of renewables obligation certificates issued in Great Britain

54D.—(1) A renewables obligation order may provide that—

(a) in such cases as may be specified in the order, and

(b) subject to such conditions as may be so specified,

an electricity supplier may (to the extent provided for in accordance with the order) discharge his renewables obligation (or his obligation in relation to a particular period) by the production to the Authority of a Great Britain certificate.

(2) In this Article "Great Britain certificate" means a certificate issued by the Great Britain authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989, in an order under section 32 of that Act (renewables obligations for Great Britain suppliers).**]**

F60 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

Payment as alternative to complying with order under Article 52

55.—(1) An order under Article 52 may provide

[[F61](a) that a designated electricity supplier may (in whole or in part) discharge his renewables obligation by making a payment to the Authority before the day specified as the day by which evidence must be produced for the purposes of Article 52(2); and

(b) that a designated electricity supplier's renewables obligation that was not discharged in whole or in part before the day so specified is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of such period beginning with that day as may be specified in the order.**]**

(2) The order may make provision—

(a) as to the sum which for the purposes of paragraph (1) is to correspond to the supply of a given amount of electricity;

[[F61](aa) for the sums that must be paid in order for an obligation to be treated as having been discharged to increase at a rate specified in the order for each day after the time by which evidence had to be produced for the purposes of Article 52(2);**]**

(b) for different**[**[F61] sums or rates falling within sub-paragraph (a) or (aa)**]** in relation to different periods;

(c) for different such sums**[**[F61] or rates**]** in relation to electricity generated in different ways specified in the order (such as those referred to in Article 53(1)(b) and (c)); and

(d) for any such sum**[**[F61] or rate**]** to be adjusted from time to time for inflation by a method specified in the order (which may refer to a specified scale or index or to other specified data of any description, including such a scale or index or such data in a form not current when the order was made, but in a subsequent form attributable to revision or any other cause and taking effect afterwards).

[[F61](2A) An order under Article 52 may provide that, where—

(a) a renewables obligation is one in relation to which provision made by virtue of paragraph (1)(b) applies in the case of the designated electricity supplier who is subject to the obligation, and

(b) the period ending with such day (after the day by which the obligation had to be complied with) as may be specified in or determined under the order has not expired,

the taking of steps under Article 45 in respect of a contravention by that supplier of that obligation is prohibited or otherwise restricted to the extent specified in the order.

(2B) An order under Article 52 may provide that, in a case in which the amount received by the Authority, or by the Great Britain authority, by way of discharge payments for a period falls short of the amount due in respect of that period, every person who—

(a) was subject to a renewables obligation for the relevant period or for a subsequent period specified in or determined under the order, and

(b) is of a description so specified or determined,

must, by the time and in the circumstances so specified or determined, make a payment (or further payment) to the Authority of an amount calculated in the manner so specified or determined.

(2C) An order under Article 52 may not by virtue of paragraph (2B) confer an entitlement on the Authority to receive a payment in respect of the shortfall for any period—

(a) in the case of a shortfall in the amount received by the Authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of paragraph (2A) applies, in one or more cases, to the taking of steps in relation to contraventions of renewables obligations for that period; or

(b) in the case of a shortfall in the amount received by the Great Britain authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of a corresponding provision having effect in Great Britain applies, in one or more cases, to the taking of steps in relation to contraventions of Great Britain obligations for that period.

(2D) The provision that may be made by virtue of paragraph (2B) includes—

(a) provision for the making of adjustments and repayments at times after a requirement to make payments in respect of a shortfall for a period has already arisen; and

(b) provision that Articles 42 to 51 are to apply in relation to a requirement imposed by virtue of that paragraph on a person who is not a licence holder as if he were a licence holder.

(3) The amounts received by the Authority by virtue of the preceding provisions of this Article must be paid by it to electricity suppliers in accordance with a system of allocation specified in an order under Article 52.**]**

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

[[F61](5) The references in paragraphs (3) and (4) to electricity suppliers include references to persons who are Great Britain suppliers.

(6) References in this Article to a designated electricity supplier's renewables obligation include references to his renewables obligation in relation to a particular period.

(7) For the purposes of this Article—

(a) the amount received by the Authority by way of discharge payments for a period falls short of the amount due in respect of that period, and

(b) the amount received by the Great Britain authority by way of discharge payments for a period falls short of the amount due in respect of that period,

if, and to the extent that, the Authority or (as the case may be) the Great Britain authority would have received more by way of discharge payments if every renewables obligation or (as the case may be) Great Britain obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.

(8) In this Article—

"discharge payment", in relation to a period, means—

(a) a payment by virtue of paragraph (1)(a) for discharging (in whole or in part) a designated electricity supplier's renewables obligation for that period;

(b) so much of a payment by virtue of paragraph (1)(b) for securing that such an obligation is treated as discharged to any extent as does not exceed the payment that would have discharged that obligation to the same extent if it had been made before the day mentioned in that paragraph; or

(c) so much of any payment to the Great Britain authority as corresponds, in relation to a Great Britain obligation for that period, to anything falling within paragraph (a) or (b);

"Great Britain obligation" means a renewables obligation of a Great Britain supplier under section 32 of the Electricity Act 1989;

"the relevant period"

(a) in relation to a shortfall in amounts received by the Authority by way of discharge payments for a period, means that period; and

(b) in relation to a shortfall in amounts received by the Great Britain authority by way of discharge payments for a period, means any period that includes the whole or a part of that period.**]**

F61 SR 2004/524

VALID FROM 01/02/2009

[F62 Allocation of amounts to electricity suppliers

55A.—(1) The amounts received by the Authority by virtue of Article 55 must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order.

(2) Paragraph (1) does not apply to those amounts to the extent that they are used by the Authority under Article 55B.

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

(4) That system may also provide for the postponement of a requirement to make payments to electricity suppliers of amounts received by the Authority under Article 55(1)(b) if, at the time the payments would otherwise fall to be made, the aggregate of the amounts so received (and not used under Article 55B or already paid under paragraph (1)) is less than an amount specified in the order.

(5) The references in this Article to electricity suppliers include references to Great Britain suppliers.

F62 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

VALID FROM 01/02/2009

Costs of the Authority and the Great Britain authority

55B.—(1) A renewables obligation order may provide for amounts received by the Authority by virtue of Article 55 to be used by the Authority—

(a) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under Articles 52 to 55F, or

(b) to make payments to the Great Britain authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under section 32 to 32M of the Electricity Act 1989.

(2) A renewables obligation order—

(a) may exclude amounts of a specified description from being used as mentioned in paragraph (1);

(b) may prevent the Authority using amounts to make payments in respect of costs of a specified description.

F62 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

VALID FROM 01/02/2009

Information

55C.—(1) A renewables obligation order may provide for the Authority to require—

(a) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, his renewables obligation;

(b) a person to provide the authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a renewables obligation certificate is, or was or will in future be, required to be issued to the person.

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

(3) A renewables obligation order may—

(a) require operators of generating stations generating electricity (wholly or partly) from biomass to give specified information, or information of a specified kind, to the Authority;

(b) specify what, for this purpose, constitutes “biomass”;

(c) require the information to be given in a specified form and within a specified period;

(d) authorise or require the Authority to postpone the issue of certificates under Article 54 to the operator of a generating station who fails to comply with a requirement imposed by virtue of paragraph (a) or (c) until such time as the failure is remedied;

(e) authorise or require the Authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a prescribed period.

(4) The Authority may publish information obtained by virtue of paragraph (3).

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

F62 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

VALID FROM 01/02/2009

Renewables obligation order; general provision

55D.—(1) A renewables obligation order may—

(a) make further provision as to the functions of the Authority in relation to the matters dealt with by the order;

(b) make transitional provision and savings;

(c) provide for anything falling to be calculated or otherwise determined under the Order to be calculated or 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 specified in the order;

(d) make different provision for different cases or circumstances;

(e) confer on the Authority functions in Northern Ireland in relation to the issue of Great Britain certificates;

(2) Provision made by virtue of paragraph (1)(b) may, in particular, include provision about the treatment of certificates issued under Article 54 before the substitution of that Article by the Energy (Amendment) Order (Northern Ireland) 2009.

(3) In paragraph (1) "Great Britain certificates" means certificates that are or may be issued by the Great Britain Authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989, in an order under section 32 of that Act;

F62 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

VALID FROM 01/02/2009

Renewables obligation orders: procedure

55E. Before making a renewables obligation order, the Department must consult—

(a) the Authority,

(b) the Council,

(c) the electricity suppliers to whom the proposed order would apply,

(d) such generators of electricity from renewable sources as the Department considers appropriate, and

(e) such other persons, if any, as the Department considers appropriate.

F62 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

VALID FROM 14/05/2015

[F63Renewables obligation closure order

55EA.—(1) The Department may make a renewables obligation closure order.

(2) A renewables obligation closure order is an order which provides that no renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after a specified date.

(3) Provision made under paragraph (2) may specify different dates in relation to different cases or circumstances.

(4) The cases or circumstances mentioned in paragraph (2) may in particular be described by reference to—

(a) accreditation of a generating station, or

(b) the addition of generating capacity to a generating station.

(5) A renewables obligation closure order may include provision about—

(a) the meaning of "accreditation" and "generating capacity" in paragraph (4),

(b) when generating capacity is to be treated as added to a generating station for the purposes of that paragraph.

(6) Power to make provision in a renewables obligation order (and any provision contained in such an order) is subject to provision contained in a renewables obligation closure order; but this Article is not otherwise to be taken as affecting the power to make provision in a renewables obligation order of the kind mentioned in paragraph (2).

(7) Article 55D applies in relation to a renewables obligation closure order as it applies in relation to a renewables obligation order (and paragraph (3) is not to be taken as limiting the application of that Article).

F62 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

F63 Arts. 55EA, 55EB inserted (14.5.2015) by Energy (Amendment) Order (Northern Ireland) 2015 (S.R. 2015/247), arts. 1(1), **2(1)**

VALID FROM 14/05/2015

Renewables obligation closure orders: procedure

55EB.—(1) Before making a renewables obligation closure order, the Department must consult—

(a) the Authority,

(b) the Council,

(c) such generators of electricity from renewable sources as the Department considers appropriate, and

(d) such other persons, if any, as the Department considers appropriate.

(2) The requirement to consult may be satisfied by consultation before, as well as consultation after, the making of the Energy (Amendment) Order (Northern Ireland) 2015.**]]**

F62 Arts. 52-55F substituted (1.2.2009) for arts. 52-55 by Energy (Amendment) Order (Northern Ireland) 2009 (S.R. 2009/35), **art. 2** (with art. 4)

F63 Arts. 55EA, 55EB inserted (14.5.2015) by Energy (Amendment) Order (Northern Ireland) 2015 (S.R. 2015/247), arts. 1(1), **2(1)**

VALID FROM 01/02/2009

Interpretation of Articles 52 to 55F

55F.—(1) In this Article and Articles 52 to 55E—

"banding provision" is to be construed in accordance with Article 54B(3);

"fossil fuel" means—

(a) coal,

(b) lignite,

(c) peat,

(d) natural gas (within the meaning of the Energy Act 1976),

(e) crude liquid petroleum,

(f) petroleum products (within the meaning of that Act), or

(g) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (f);

"Great Britain authority" means the Gas and Electricity Markets Authority;

"Great Britain supplier" means an electricity supplier within the meaning of Part 1 of the Electricity Act 1989;

"the renewables obligation" is to be construed in accordance with Article 52(4);

"renewables obligation certificate" is to be construed in accordance with Article 54;

"renewables obligation order" is to be construed in accordance with Article 52;

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

"specified", in relation to a renewables obligation order, means specified in the order.

(2) For the purposes of the definition of "renewable sources", a renewables obligation order may make provision—

(a) about what constitutes "waste";

(b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;

(c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;

(d) authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—

(i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and

(ii) for the results of that analysis to be made available to the Authority.

(3) A renewables obligation order may make provision, for the purposes of Articles 52 to 55E, about the circumstances in which electricity is to be regarded as having been supplied to customers in Northern Ireland.

Power to amend this Part

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

(a) to take account of any amendments made or proposed to be made to any of the corresponding Great Britain provisions; or

(b) for giving effect to, or enabling effect to be given to—

(i) any Community obligation; or

(ii) any arrangement or agreement entered into between the Government of the United Kingdom and the government of any other member State.

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

(a) sections 32 to 32C of the Electricity Act 1989 (c. 29); and

(b) any provision amending or re-enacting (with or without modification) any provision mentioned in sub-paragraph (a).

Modifications etc. (not altering text)

C14 Art. 56(1) modified (26.1.2009) by Energy Act 2008 (c. 32), **ss. 40(2)**, 110(2); S.I. 2009/45, **art. 2(a)(iii)**

C15 Art. 56(1) extended (18.12.2013) by Energy Act 2013 (c. 32), **ss. 55(4)**, 156(3)(f)

Non-fossil fuel obligation

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

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

(a) saving orders under Article 35 of the Electricity Order made before the coming into operation of paragraph (1);

(b) preserving, modifying, replacing or otherwise dealing with arrangements (as mentioned in that Article) made pursuant to such an order, including making provision for substituting different parties to the arrangements or for replacement arrangements to be between parties different from those party to the replaced arrangements.

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

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

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

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

(7) An order under this Article may provide—

(a) that any specified requirement contained in it is to be treated as a relevant requirement for the purposes of Part VI; and

(b) for one of those requirements to be that a person referred to in sub-paragraph (a) or (b) of paragraph (8) is not to act or omit to act as set out there;

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

(8) The persons, acts and omissions referred to in paragraph (7)(b) are—

(a) an act or omission by a person subject to requirements contained in the order which prevents any arrangements made pursuant to the order from securing such results as are specified in the order; and

(b) an act or omission by a party to arrangements made pursuant to an order under Article 35 of the Electricity Order made before the coming into operation of paragraph (1) (or such arrangements as modified or replaced by virtue of an order under this Article) which prevents the arrangements from securing the result mentioned in paragraph (2) of that Article (or that paragraph as modified by virtue of an order under this Article), or such corresponding result as is specified in the order.

Abolition of fossil fuel levy

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

[[F64]Modifications of licences in connection with Energy Act 2004

58A.—(1) Where the Department or the Authority considers it necessary or expedient to do so in connection with—

(a) amendments of this Order made by section 120 of the Energy Act 2004, or

(b) provision made by an order under Article 56 to take account of amendments of the Electricity Act 1989 made by Chapter 4 of Part 2 of that Act of 2004,

it may modify the conditions of an electricity licence.

(2) The power to make modifications under this Article includes power to make incidental, consequential or transitional modifications.

(3) Before making a modification of a licence condition under this Article the Department shall consult the Authority and the licence holder.

(4) Before making a modification of a licence condition under this Article the Authority shall—

(a) consult the licence holder; and

(b) obtain the consent of the Department to the modification.

(5) Paragraphs (3) and (4)(a) may be satisfied by consultation—

(a) that, in the case of a modification within paragraph (1)(b), took place wholly or partly before the order in question comes into force; and

(b) that, in any case, took place wholly or partly before the commencement of this Article.

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

(7) The power conferred by virtue of paragraph (1)(a) may not be exercised after the end of the period of two years beginning with the commencement of this Article.

(8) The power conferred by virtue of paragraph (1)(b) may not be exercised in relation to an order under Article 56 after the end of the period of two years beginning with the day on which the order comes into force.**]**

F64 2004 c. 20

PART VIII

MISCELLANEOUS AND SUPPLEMENTARY

Common tariff for conveyance of gas through designated pipe-lines

Designation of pipe-lines for purposes of common tariff

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

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

(a) it is a high-pressure pipe-line; or

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

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

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

(a) stating that it proposes to make the order and setting out its effect; and

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

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

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

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

(a) revoke that order; or

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

before the end of that period.

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

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

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

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

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

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

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

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

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

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

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

Miscellaneous

[F65 Financial assistance for energy purposes

61.—(1) The Department may give financial assistance to any person if, in the opinion of the Department—

(a) the form and amount of the assistance is reasonable having regard to all the circumstances; and

(b) the giving of the assistance is likely to achieve one or more of the purposes set out in paragraph (2).

(2) Those purposes are—

(a) to secure a diverse and viable long-term energy supply;

(b) to promote the development and maintenance of an efficient, economic and co-ordinated gas industry in Northern Ireland;

(c) to promote efficiency and economy on the part of persons engaged in the generation, production, transmission, distribution or supply of energy;

(d) to promote the efficient use of energy;

(e) to promote the development or the bringing into use of—

(i) energy from renewable sources, or

(ii) technologies for the production of energy from such sources;

(f) to promote research and development in relation to other matters connected with energy supply;

(g) to promote the generation, production, transmission, distribution or supply of energy from renewable sources;

(h) to promote the production, distribution or use of renewable transport fuels;

(i) to limit or reduce emissions of greenhouse gases, or other effects on the environment, resulting from the generation, production, transmission, distribution, supply or use of energy;

(j) to conduct research, or to raise awareness, about matters referred to in sub-paragraph (i);

(k) any other purpose prescribed by regulations made by the Department with the approval of the Department of Finance and Personnel.

(3) Financial assistance under this Article may be given—

(a) in respect of particular activities carried on or supported by the recipient; or

(b) generally in respect of all or some part of the activities carried on or supported by the recipient.

(4) Financial assistance under this Article shall be given—

(a) in such form, and

(b) subject to such conditions,

as the Department considers appropriate.

(5) Without prejudice to the generality of paragraph (4), financial assistance under this Article may be given in one or more of the following forms—

(a) by making grants (whether or not repayable) or loans;

(b) by giving indemnities;

(c) by making investments in bodies corporate;

(d) by incurring expenditure for the benefit of a person;

(e) by providing services, staff or equipment for the benefit of a person.

(6) Without prejudice to the generality of paragraph (4), financial assistance under this Article may be given subject to conditions—

(a) as to repayment;

(b) requiring payments to be made to the Department (which need not be limited by reference to the value of the assistance given).

(7) In this Article—

"greenhouse gases" has the meaning given by section 82(9) of the Energy Act 2004;

"renewable sources" means sources of energy other than fossil fuel, peat or nuclear fuel, and includes waste (and for this purpose, "fossil fuel" and "peat" have the meaning given by Article 52(7));

"renewable transport fuel" means—

(a) liquid or gaseous fuel that is produced wholly or mainly from biomass; or

(b) any other description of fuel specified in an order made by the Department;

and for this purpose "biomass" means the biodegradable portion of a specified product, waste or residue.**]**

F65 Art. 61 substituted (25.7.2006) by Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33), **ss. 24**, 31(1)(e)

Reasons for decisions

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

(a) the revocation of an electricity licence or a gas licence;

(b) the modification of the conditions of an electricity licence or a gas licence;

(c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of—

(i) Article 11(3)(a) or (b) of the Electricity Order; or

(ii) Article 10(3)(a) or (b) of the Gas Order;

(d) the determination of a question referred in pursuance of a condition included in a licence by virtue of —

(i) Article 11(3)(c) of the Electricity Order; or

(ii) Article 10(3)(c) of the Gas Order;

(e) the determination of a dispute referred under Article 26(1) of the Electricity Order;

(f) the making of a final order (within the meaning of Part VI), the making or confirmation of a provisional order (within the meaning of that Part) or the revocation of a final order or of a provisional order which has been confirmed.

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

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

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

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

(a) Article 52(4) of the Electricity Order; or

(b) Article 29(4) of the Gas Order.

General restrictions on disclosure of information

63.—(1) Information which—

(a) has been obtained under or by virtue of the provisions of this Order, Part II of the Electricity Order **[**[F66], the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007**]** or Part II of the Gas Order; and

(b) relates to the affairs of any individual or to any particular business,

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

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

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

(a) it is made for the purpose of facilitating the performance of any functions of the Department, the Authority, the Council or the Competition Commission under the Electricity Order **[**[F67], the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007**]**, the Gas Order or this Order;

(b) it is required by a notice under Article 31 or 59 of the Electricity Order, Article 30(1) or (2) of the Gas Order or Article 51 or the information has been obtained in pursuance of a notice under Article 30(2) of the Gas Order;

(c) it is made by a licence holder and is required to be made by a condition of his licence; or

(d) it is made by one licence holder to another and is required by that other licence holder for purposes connected with the carrying on of activities which he is authorised by his licence to carry on.

[[F68](3A) In paragraph (3)(c) and (d)—

(a) references to a licence holder include references to a holder of a licence under the law of Ireland corresponding to Part II of the Electricity Order; and

(b) references to a licence include references to such a licence.**]**

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

(a) for the purpose of facilitating the performance by a person or body mentioned in paragraph (5) of any function under a statutory provision specified in paragraph (6);

[[F69](aa) for the purposes of facilitating the performance by the Irish Minister or CER (within the meaning of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007) of any function under the law of Ireland corresponding to the Electricity Order, this Order or that Order.**]**

(b) for the purpose of facilitating the performance by the Comptroller and Auditor General for Northern Ireland or the Health and Safety Executive for Northern Ireland of any of his or its functions;

(c) for the purpose of facilitating the exercise by the Secretary of State of any power conferred by the Financial Services and Markets Act 2000 (c. 8) or by the statutory provisions relating to companies, insurance companies or insolvency;

(d) for the purpose of facilitating the performance by the Department or the Department of Finance and Personnel of any functions conferred by the statutory provisions relating to companies or insolvency or for the purposes of facilitating the performance of the functions of an inspector appointed under the statutory provisions relating to companies;

(e) for the purpose of facilitating the performance by the official receiver for Northern Ireland of his functions under the statutory provisions relating to insolvency or by a recognised professional body for the purposes of Article 350 of the Insolvency (Northern Ireland) Order 1989 (NI 19) of its functions as such a body;

(f) for the purposes of facilitating the performance by a district council of its functions under the Consumer Protection Act 1987 (c. 43);

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

(h) for the purposes of any civil proceedings brought under or by virtue of the Electricity Order, the Gas Order, this Order or any statutory provision specified in paragraph (6); or

(i) in pursuance of a Community obligation;

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

(5) The persons and bodies specified for the purposes of paragraph (4)(a) are—

(a) a Minister of the Crown;

(b) a Northern Ireland department;

(c) the Competition Commission;

(d) the Office of Fair Trading;

(e) the Director General of Telecommunications;

(f) the Director General of Water Services;

(g) the Gas and Electricity Markets Authority;

(h) the Water Appeals Commission for Northern Ireland;

(i) the Civil Aviation Authority;

(j) the Financial Services Authority.

(6) The statutory provisions specified for the purposes of paragraph (4)(a) and (h) are—

(a) the Trade Descriptions Act 1968 (c. 29);

(b) the Fair Trading Act 1973 (c. 41);

(c) the Water and Sewerage Services (Northern Ireland) Order **[**[F70]2006**]** ;

(d) the Consumer Credit Act 1974 (c. 39);

(e) the Estate Agents Act 1979 (c. 38);

(f) the Competition Act 1980 (c. 2);

(g) the Telecommunications Act 1984 (c. 12);

(h) the Airports Act 1986 (c. 31);

(i) the Gas Act 1986 (c. 44);

(j) the Audit (Northern Ireland) Order 1987 (NI 5);

(k) the Consumer Protection (Northern Ireland) Order 1987 (NI 20);

(l) the Consumer Protection Act 1987 (c. 43);

(m) the Control of Misleading Advertisements Regulations 1988 (SI 1988/915);

(n) the Water Act 1989 (c. 15), the Water Industry Act 1991 (c. 56) and any of the other consolidation Acts (within the meaning of section 206 of the Water Industry Act 1991);

(o) the Electricity Act 1989 (c. 29);

(p) Part IV of the Airports (Northern Ireland) Order 1994 (NI 1);

(q) the Water (Northern Ireland) Order 1999 (NI 6);

(r) the Competition Act 1998 (c. 41);

(s) the Financial Services and Markets Act 2000 (c. 8);

(t) the Utilities Act 2000 (c. 27);

(u) the Enterprise Act 2002 (c. 40).

(7) The Department may by order modify paragraph (3), (4), (5) or (6).

(8) Nothing in paragraph (1) is to be construed either as limiting the matters which may be—

(a) published under Article 45 of the Electricity Order or Article 7, 18, 19, 21, 25 or 27;

(b) made public by the Authority as part of a notice under Article 26; or

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

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

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

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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

F66 Words in art. 63(1)(a) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 12(2)**; S.R. 2007/303, **art. 2**, Sch.

F67 Words in art. 63(3)(a) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 12(3)**; S.R. 2007/303, **art. 2**, Sch.

F68 Art. 63(3A) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 12(4)**; S.R. 2007/303, **art. 2**, Sch.

F69 Art. 63(4)(aa) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 12(5)**; S.R. 2007/303, **art. 2**, Sch.

F70 Words in art. 63(6)(c) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para. 48(18)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Modifications etc. (not altering text)

C16 Art. 63(6) modified by Wireless Telegraphy (Pre-Consolidation Amendments) Order 2006 (S.I. 2006/1391), arts. 1, 2, **Sch. para. 7(3)(j)** (the said S.I. coming into force immediately before the commencement of the Act resulting from the Wireless Telegraphy Bill introduced in the House of Lords on 20.4.2006 - the Wireless Telegraphy Act 2006 (c. 36) came into force on 8.2.2007, see s. 126 of the said Act)

Assignment of wayleaves

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

"Assignment of necessary wayleave

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

(a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;

(b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.

(2) A necessary wayleave shall not be assigned—

(a) without the consent of the Department; or

(b) to a person other than a licence holder.

(3) The relevant licence holder shall—

(a) give notice of an application under sub-paragraph (1)(b) to—

(i) the occupier of the land; and

(ii) where the occupier is not also the owner of the land, the owner; and

(b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.

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

(a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and

(b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.

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

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

(a) the licence holder; and

(b) each person mentioned in sub-paragraph (3)(b).

(7) In this paragraph—

"assign" includes transfer by any means;

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

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

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

"Assignment of necessary wayleave

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

(a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;

(b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.

(2) A necessary wayleave shall not be assigned—

(a) without the consent of the Department; or

(b) to a person other than a licence holder.

(3) The relevant licence holder shall—

(a) give notice of an application under sub-paragraph (1)(b) to—

(i) the occupier of the land; and

(ii) where the occupier is not also the owner of the land, the owner; and

(b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.

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

(a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and

(b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.

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

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

(a) the relevant licence holder; and

(b) each person mentioned in sub-paragraph (3)(b).

(7) In this paragraph—

"assign" includes transfer by any means;

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

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

Supplementary

Amendments, transitional and transitory provisions, savings and repeals

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

Regulations, orders and directions

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

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

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

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

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

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

Power to make transitional, consequential and saving provisions

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

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

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

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

SCHEDULES

SCHEDULE 1

Article 3

THE NORTHERN IRELAND AUTHORITY FOR ENERGY REGULATION

Membership

[[F71]**1.**—(1) The Authority shall consist of—

(a) a chairman; and

(b) not fewer than three other members,

appointed by the Department of Finance and Personnel.

(2) The Department of Finance and Personnel shall consult the chairman before appointing any other member.**]**

F71 Sch. 1 para. 1 substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **3(3)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Terms of appointment, remuneration, pensions, etc.

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

(2) The terms of appointment of the chairman and other members shall be determined by **[**[F72]the Department of Finance and Personnel**]** .

F72 Words in Sch. 1 substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **3(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

VALID FROM 15/04/2011

[[F73]**2A.** A person holding office as chairman or other member shall not—

(a) carry out any activity or have any financial or other interest that might compromise or might reasonably be seen to compromise that person's impartiality; or

(b) seek or take any instructions from any person or body that might compromise or might reasonably be seen to compromise the independence of the Authority when the Authority is carrying out functions in its capacity as national regulatory authority for Northern Ireland.**]**

F73 Sch. 1 para. 2A inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 45(a)**

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

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

(a) may resign that office by giving notice in writing to **[**[F74]the Department of Finance and Personnel**]** ; and

(b) may be removed from office by **[**[F74]the Department of Finance and Personnel**]** on the ground of incapacity or misbehaviour.

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

F74 Words in Sch. 1 substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **3(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

4.—(1) The Authority shall pay to the chairman and other members such remuneration, and such travelling and other allowances, as may be determined by **[**[F75]the Department of Finance and Personnel**]** .

(2) The Authority shall, if required to do so by **[**[F75]the Department of Finance and Personnel**]**—

(a) pay such pension, allowances or gratuities as may be determined by **[**[F75]the Department of Finance and Personnel**]** to or in respect of a person who is or has been the chairman or a member of the Authority; or

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

(3) If, where any person ceases to hold office as chairman or other member, **[**[F75]the Department of Finance and Personnel**]** determines that there are special circumstances which make it right that he should receive compensation, the Authority shall pay to him a sum by way of compensation of such amount as may be determined by **[**[F75]the Department of Finance and Personnel**]** .

F75 Words in Sch. 1 substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **3(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Staff

5. The Authority may, with the approval of **[**[F76]the Department of Finance and Personnel**]** of Finance and Personnel as to numbers and terms and conditions of service, appoint such staff as it may determine.

F76 Words in Sch. 1 substituted (1.4.2007) by virtue of Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **3(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Committees

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

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

Modifications etc. (not altering text)

C17 Sch. 1 para. 6 excluded (1.11.2007 for certain purposes, otherwise prosp.) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), **6(8)**; S.R. 2007/444, **art. 2**, Sch. 1

Proceedings, etc.

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

(2) The Authority shall consult **[**[F77]the Department of Finance and Personnel**]** before making or revising its procedures for dealing with conflicts of interest.

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

F77 Words in Sch. 1 substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), **3(4)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

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

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

Performance of functions

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

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

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

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

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

Modifications etc. (not altering text)

C18 Sch. 1 para. 9 excluded (1.11.2007 for certain purposes, otherwise prosp.) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), **6(8)**; S.R. 2007/444, **art. 2**, Sch. 1

Rule-making authority

10. [F78] . . . . . .

F78 Sch. 1 para. 10 repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Supplementary powers

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

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

Assembly disqualification

12. [F79] . . . . . .

F79 Sch. 1 para. 12 repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Assembly Ombudsman

13. [F80] . . . . . .

F80 Sch. 1 para. 13 repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

SCHEDULE 2

Articles 39 and 40

ORDERS ALTERING LICENSABLE ACTIVITIES

Introductory

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

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

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

(a) on the application of the Authority made in accordance with paragraph 7; or

(b) following consultation by the Department in accordance with paragraph 8.

Application by Authority for order including new activities

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

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

(b) setting out any conditions which it would expect to be included in such licences; and

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

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

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

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

(a) persons appearing to it to be carrying on, or be intending to carry on, the activities; and

(b) any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities.

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

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

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

(7) The application shall set out—

(a) the activities which the Authority considers should become licensable activities; and

(b) the conditions which the Authority would expect to be included in such licences.

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

References to Competition Commission

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

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

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

(a) the conditions which the Authority would expect to be included in licences authorising the undertaking of the activities specified in the reference and (in the case of a reference in relation to an application for an order under Article 40) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of such licences; and

(b) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have.

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

(a) persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it; and

(b) any other persons appearing to the Authority to be likely to be affected by it.

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

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

(b) any other assistance which the Commission may require, and which it is within its power to give, in relation to any such matters,

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

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

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

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

References under paragraph 3: time limits

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

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

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

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

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

References under paragraph 3: application of Enterprise Act 2002

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

(a) section 109 (attendance of witnesses and production of documents etc.);

(b) section 110 (enforcement of powers under section 109: general);

(c) section 111 (penalties);

(d) section 112 (penalties: main procedural requirements);

(e) section 113 (payments and interest by instalments);

(f) section 114 (appeals in relation to penalties);

(g) section 115 (recovery of penalties); and

(h) section 116 (statement of policy).

(2) Section 110 shall, in its application by virtue of sub-paragraph (1), have effect as if—

(a) subsection (2) were omitted; and

(b) in subsection (9) the words from "or section" to "section 65(3))" were omitted.

(3) Section 111(5)(b)(ii) shall, in its application by virtue of sub-paragraph (1), have effect as if—

(a) for the words "published (or, in the case of a report under section 50 or 65, given)" there were substituted " made ";

(b) for the words "published (or given)", in both places where they appear, there were substituted " made "; and

(c) the words " by this Part " were omitted.

(4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the Competition Commission in connection with references under paragraph 3 as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2), the words "the OFT," and "or the Secretary of State" were omitted.

(5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of sub-paragraph (1) or (4), have effect in relation to those sections as applied by virtue of those sub-paragraphs.

(6) Accordingly, corresponding provisions of this Order, the Electricity Order or the Gas Order shall not have effect in relation to those sections as applied by virtue of those sub-paragraphs.

Reports on references

6.—(1) In making a report on a reference under paragraph 3, the Competition Commission shall include in the report definite conclusions on whether the fact that the activities specified in the reference (or the reference as varied) are not licensable activities operates, or may be expected to operate, against the public interest.

(2) The Commission shall also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions.

(3) Where the Commission concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it shall specify in the report—

(a) the effects adverse to the public interest which that fact has or may be expected to have; and

(b) any modifications to the conditions specified in the reference in accordance with paragraph 3(3)(a) which it considers appropriate.

(4) For the purposes of paragraph 2(6), a conclusion contained in a report of the Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(5) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under paragraph 3 as the conclusions of the Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.

(6) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Commission on a reference under paragraph 3.

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

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

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

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

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

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

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

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

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

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

Application by Authority for order excluding activities

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

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

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

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

(2) The notice shall be given—

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

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

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

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

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

Consultation by Department about order excluding activities

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

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

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

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

(2) The notice shall be given—

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

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

Schedule 3—Amendments

SCHEDULE 4

Article 65

TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

Abolition of Consumer Committee for Electricity

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

(2) Any statutory provision or any document which—

(a) refers to the Consumer Committee for Electricity; and

(b) was passed or made before the coming into operation of Article 9(3)(b),

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

First financial year of Authority

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

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

First forward work programmes of Authority and Council

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

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

Last annual reports of the Directors

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

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

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

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

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

Investigations being carried out under the Electricity Order

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

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

(b) being investigated by the consumer committee under Article 49 of that Order (investigation of certain other matters) immediately before the repeal by this Order of that Article.

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

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

(a) agree with the Council that the Council is to investigate the matter under Article 23; or

(b) make such further investigations of the matter, and take such action, as it considers appropriate.

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

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

Investigations being carried out under the Gas Order

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

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

(b) being investigated by the Council under Article 26 of that Order (investigation of certain other matters) immediately before the repeal by this Order of that Article.

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

(3) In any other case—

(a) if the matter was being investigated by the Council, the Council shall investigate the matter under Article 23;

(b) if the matter was being investigated by the Director General of Gas for Northern Ireland, the Authority shall either—

(i) agree with the Council that the Council is to investigate the matter under Article 23; or

(ii) make such further investigations of the matter, and take such action, as it considers appropriate.

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

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

Grant of new electricity transmission licence

7.—(1) This paragraph applies in relation to any licence which—

(a) is granted under Article 10(1)(b) of the Electricity Order in the period of two months beginning with the commencement of paragraph 1(2) of Schedule 3; and

(b) authorises a person to transmit electricity, within the meaning of paragraph (d) or (e) of the definition of "transmit" in Article 3 of the Electricity Order.

(2) Neither the requirement to consult imposed by Article 10(1) of the Electricity Order nor Article 10(3) and (4) of that Order shall apply in relation to the granting of such a licence

8.—(1) This paragraph applies in relation to any licence granted under Article 10(1)(b) of the Electricity Order in the period of two months beginning with the commencement of Article 28.

(2) Anything required or authorised to be done by Article 10(3) to (5) of the Electricity Order in relation to the granting of such a licence may be done at any time before the commencement of Article 28.

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

9.—(1) This paragraph applies in relation to any licence granted under Article 8(1)(a) of the Gas Order in the period of two months beginning with the commencement of Article 30.

(2) Anything required or authorised to be done by Article 8(3), (4) or (7) of the Gas Order in relation to the granting of such a licence may be done at any time before the commencement of Article 30.

Modification of licences following Competition Commission report

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

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

Enforcement

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

(a) a provisional order which has been made before the commencement of those Articles; or

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

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

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

(b) under Article 30(1) of the Gas Order,

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

Financial penalties

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

Consultation concerning common tariff

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

Modification of existing licences

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

(a) a gas licence or an electricity licence; or

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

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

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

(a) the establishment of the Authority;

(b) the conferral by this Order of functions on the Authority or the Council; or

(c) the abolition of any office or body mentioned in Article 3(4) or 9(3).

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

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

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

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

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

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

(9) The powers of the Department and the Authority under sub-paragraphs (1) and (3) may not be exercised after the end of the period of two years beginning with the commencement of this paragraph.

References to Directors General

16.—(1) This paragraph applies to any provision of this Order which—

(a) contains a reference to the Authority; but

(b) comes into operation before the commencement of Article 4(2).

(2) Until that commencement any reference to the Authority shall be construed as a reference to the Director General of Electricity Supply for Northern Ireland or (as the context may require) the Director General of Gas for Northern Ireland.

References to Office of Fair Trading

17.—(1) This paragraph applies to any provision of this Order which—

(a) contains a reference to the Office of Fair Trading; but

(b) comes into operation before the commencement of section 2(3) of the Enterprise Act 2002.

(2) Until that commencement any reference to the Office of Fair Trading shall be construed as a reference to the Director General of Fair Trading.

References to provisions of the Enterprise Act 2002

18.—(1) Until the commencement of section 186 of the Enterprise Act 2002 the reference to paragraph 12A of Schedule 7 to the Competition Act 1998 in Article 6(10) shall be construed as a reference to section 125(1) of the Fair Trading Act 1973 (c.41).

(2) Until the commencement of Part 9 of the Enterprise Act 2002 the reference to that Part in Article 63(10) shall be construed as a reference to sections 55 and 56 of the Competition Act 1998 (c.41).

Schedule 5—Repeals

Status:
Point in time view as at 01/11/2007. This version of this Order contains provisions that are not valid for this point in time.

Changes to legislation:
The Energy (Northern Ireland) Order 2003 is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.