

SCHEDULES

SCHEDULE 1

Article 3

THE NORTHERN IRELAND AUTHORITY FOR ENERGY REGULATION

Membership

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

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

Terms of appointment, remuneration, pensions, etc.

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

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

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

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

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

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

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

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

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

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

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

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

Staff

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

Committees

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

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

Proceedings, etc.

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

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

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

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

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

Performance of functions

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

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

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

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

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

Rule-making authority

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

“The Northern Ireland Authority for Energy Regulation.”.

Supplementary powers

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

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

Assembly disqualification

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

“The Northern Ireland Authority for Energy Regulation.”.

Assembly Ombudsman

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

“The Northern Ireland Authority for Energy Regulation.”.

SCHEDULE 2

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

Article 65

AMENDMENTS

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

- 1.—(1) In Article 3, in the definition of “authorised area”, omit the words “(b) or” and “transmit or” and for the definition of “transmit” substitute—
- ““transmission”, in relation to electricity, means transmission by means of a transmission system;
- “transmission licence” means a licence under Article 10(1)(b);
- “transmission system” means a system which—
- (a) consists (wholly or mainly) of high voltage lines and electrical plant; and
 - (b) is used for conveying electricity—
 - (i) from a generating station to a substation;
 - (ii) from one generating station to another;
 - (iii) from one substation to another;
 - (iv) to a substation in Northern Ireland from a place outside Northern Ireland; or
 - (v) from a substation in Northern Ireland to a place outside Northern Ireland”.
- (2) Until the coming into operation of sub-paragraph (1), the definition of “transmit” in Article 3 shall have effect with the substitution for the words from “from a generating station” to the end of
- (a) “from a generating station to a substation;
 - (b) from one generating station to another;
 - (c) from one substation to another;
 - (d) to a substation in Northern Ireland from a place outside Northern Ireland; or
 - (e) from a substation in Northern Ireland to a place outside Northern Ireland.”.
2. In Article 10(7)(a) for the words from “whose authorised area” to the end substitute “whose interests may be affected by the grant of the licence”.
- 3.—(1) In Article 11(1)(a) for “Articles 4 and 6” substitute “Article 12 of the Energy (Northern Ireland) Order 2003”.

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

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

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

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

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

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

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

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

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

(a) functions under this Part; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) functions under this Part; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE 4

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

Article 65

REPEALS

Short Title	Extent of repeal
The Northern Ireland Assembly Disqualification Act 1975 (c. 25)	In Part III of Schedule 1, the entry relating to the Chairman of the Consumer Committee for Electricity.
The General Consumer Council (Northern Ireland) Order 1984 (NI 12).	In Schedule 1, paragraph 10(1)(d) and (5).
The Electricity (Northern Ireland) Order 1992 (NI 1).	In Article 2(2), the definition of “the Director”. In Article 3, the definitions of “final order”, “provisional order”, “relevant condition” and “relevant requirement” and in the definition of “authorised area” the words “(b) or” and “transmit or”. Articles 4 to 7. In Article 11A(2)(a) the words “(b) or”. In Article 13(4), the words “(b) or”. Article 18A. Articles 28 to 30. In Article 31(1), the words “28 or”. Articles 35 and 36. Articles 48 and 49. Article 50(4). Article 51. Articles 53 to 57. Article 61. Schedule 1. Schedule 2.
The Competition and Service (Northern Ireland) Order 1992 (NI 13).	In Schedule 1, paragraph 1.
The Airports (Northern Ireland) Order 1994 (NI 1).	In Schedule 9, paragraph 14.
The Gas (Northern Ireland) Order 1996 (NI 2)	In Article 2(2), the definition of “the Director”.

Short Title	Extent of repeal
	Articles 4 and 5.
	In Article 8(2)(a), the words “(a) or”.
	In Article 10A(2)(b) and (c) the words “(a) or”.
	Article 18A.
	Articles 19 to 21.
	Articles 25 and 26.
	Article 27(4).
	Article 28.
	Article 30(1).
	In Article 30(4), (5) and (6), the words “(1) or”.
	Articles 31 to 33.
	Article 34(1).
	Article 44.
	Schedule 1.
	In Schedule 6, the amendments to the Electricity (Northern Ireland) Order 1992.
The Ombudsman (Northern Ireland) Order 1996 (NI 8).	In Schedule 2, the entries relating to the Office of the Director General of Electricity Supply for Northern Ireland and the Office of the Director General of Gas for Northern Ireland.
The Competition Act 1998 (c. 41).	In Schedule 10, paragraphs 7(3), 8(3), 17(5), (7) and (8) and 18(5), (6) and (7).
The Water (Northern Ireland) Order 1999 (NI 6).	In Schedule 7, the amendments to Article 61 of the Electricity (Northern Ireland) Order 1992 and the Gas (Northern Ireland) Order 1996.
The Industrial Development Act (Northern Ireland) 2002 (c. 1).	Section 6.