STATUTORY INSTRUMENTS

2007 No. 913 (N.I. 7)

NORTHERN IRELAND

The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007

Made - - - - 21st March 2007
Coming into operation in accordance with Article 1(2) to (4)

At the Court at Buckingham Palace, the 21st day of March 2007

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by section 23 of the Northern Ireland (Miscellaneous Provisions) Act 2006 (c. 33) and paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:–

Introductory

Title and commencement

1.—(1) This Order may be cited as the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.

(2) This Article and Article 2 come into operation one week after the day on which this Order is made.

(3) The remaining provisions of this Order come into operation on such day or days as the Department may by order appoint.

(4) An order under paragraph (3) may contain such transitional or saving provisions as the Department thinks appropriate.

Subordinate Legislation Made

P1 Art. 1(3) power partly exercised: 5.5.2007 appointed for specified provisions by S.R. 2007/284, art. 2, **Sch**; 20.6.2007 appointed for specified provisions by S.R. 2007/303, art. 2, **Sch.**; 1.11.2007 appointed for specified provisions by S.R. 2007/444, 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—

"the Authority" means the Northern Ireland Authority for Utility Regulation;

"consumers" include both existing and future consumers;

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

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

"the Energy Order" means the Energy (Northern Ireland) Order 2003 (NI 6);

"modifications" includes additions, omissions, amendments and substitutions;

"the SEM" means the Single Electricity Market, that is to say the new arrangements in Northern Ireland and Ireland which are—

(a) designed to promote the establishment and operation of a single competitive wholesale electricity market in Northern Ireland and Ireland; and

(b) described in the Memorandum of Understanding mentioned in paragraph (3);

"the SEM Committee" means the Committee established by Article 6(1);

"SEM matter"shall be construed in accordance with Article 6(3);

"statutory provision" has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(3) The Memorandum of Understanding mentioned above is the Memorandum of Understanding relating to the establishment and operation of a single competitive wholesale electricity market in Northern Ireland and Ireland —

(a) which was signed on behalf of the Government of Ireland on 5th December 2006 and on behalf of the Government of the United Kingdom on 6th December 2006, and

(b) a copy of which was presented to Parliament by the Secretary of State by command of Her Majesty on 8th December 2006.

(4) Expressions used in this Order which are defined in Article 3 of the Electricity Order have the meanings given by that Article.

(5) In this Order, and in any provision of the Electricity Order or the Energy Order amended by this Order—

"CER" means the Commission for Energy Regulation (being a body established by Act of the Oireachtas);

[[F1]"the Irish Minister" means the Minister for Communications, Energy and Natural Resources (being a Minister of the Government of Ireland).**]**

(6) The Department may by order subject to negative resolution make such amendments to the definitions in paragraph (5) as appear to it to be necessary or expedient in consequence of any change in the law of Ireland.

Textual Amendments

F1 Art. 2(5): definition of "the Irish Minister" substituted (30.10.2007) by Electricity (Single Wholesale Market) (Amendment) Order (Northern Ireland) 2007 (S.R. 2007/458), **art. 2**

Licences

Power to modify licence conditions in connection with the SEM

3.—(1) The Department after consultation with the Authority, or the Authority with the consent of the Department, may, in accordance with this Article, modify the conditions of a particular licence where it considers it necessary or expedient to do so—

(a) for the purpose of implementing, or facilitating the operation of, the SEM; or

(b) in consequence of, or for giving full effect to, the SEM.

(2) The power to modify licence conditions under this Article includes power—

(a) to make modifications relating to the operation or ownership of transmission systems or other systems for the conveyance of electricity; and

(b) to make incidental, consequential or transitional modifications.

(3) Conditions included in a licence by virtue of the power conferred by this Article—

(a) need not relate to the activity authorised by the licence;

(b) may require the licence holder—

(i) to carry out, or procure the carrying out by a subsidiary company of, any activity specified in the licence;

(ii) to apply for, or cause a subsidiary company to apply for, a licence of a kind so specified;

(c) may do any of the things authorised by Article 11(2) to (6B) of the Electricity Order;

(d) may require the licence holder to enter into such new agreements or arrangements, or new agreements or arrangements for such purposes or of such description, as may be specified in or determined by or under the conditions;

(e) may include provision for determining the terms on which such new agreements or arrangements are to be entered into, including terms for the agreement or arrangement to be governed by a law other than that of Northern Ireland;

(f) may require the licence holder to amend or terminate, or agree to the amendment or termination of, such existing agreements or arrangements, or existing agreements or arrangements of such description, as may be specified in or determined by or under the conditions.

(4) Before making modifications under this Article, the Department or the Authority shall consult—

(a) the holder of any licence being modified; and

(b) such other persons as it considers appropriate.

(5) The requirements of paragraphs (1) and (4) as to consultation may be satisfied by consultation before, as well as by consultation after, the coming into operation 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 to make modifications under this Article may not be exercised after the end of the period of 24 months beginning with the day on which this Article comes into operation.

(8) Article 38(1) of the Energy Order applies in relation to the power to modify a licence under this Article as it applies in relation to a power to amend a licence under the Electricity Order.

(9) Nothing in this Article prejudices the generality of any other power to modify a licence; and nothing in paragraph (2) or (3) prejudices the generality of paragraph (1).

(10) In this Article "subsidiary", in relation to a company, has the same meaning as in the Companies (Northern Ireland) Order 1986 (NI 6).

Licensing of SEM operator

4.—(1) In Article 8(1) of the Electricity Order (prohibition on unlicensed activities)—

(a) omit"or" at the end of sub-paragraph (b); and

(b) after sub-paragraph (c) insert "or

(d) acts as SEM operator,".

(2) At the end of Article 8 of that Order add—

"(6) For the purposes of this Part a person acts as SEM operator if his responsibilities include responsibility, pursuant to the trading and settlement code referred to in the SEM Memorandum, for calculating charges and other payments due under that code.

(7) In paragraph (6) "the SEM Memorandum" means the Memorandum of Understanding referred to in Article 2(3) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.".

(3) In Article 9(1) of that Order (exemptions) for "or (c)" substitute " , (c) or (d) ".

(4) In Article 10(1) of that Order (licences)—

(a) omit"or" at the end of sub-paragraph (b); and

(b) after sub-paragraph (c) insert "or

(d) to act as SEM operator.".

Commencement Information

I1 Art. 4 wholly in operation at 20.6.2007; art. 4 not in operation at date of making see art. 1(3); art. 4 in operation for specified purposes at 5.5.2007 by S.R. 2007/284, **art. 2**, Sch.; art. 4 in operation at 20.6.2007 for all remaining purposes by S.R. 2007/303, **art. 2**, Sch.

PROSPECTIVE

Property arrangements schemes in respect of certain licence holders

5. Schedule 1 (which makes provision about property arrangements schemes in respect of certain licence holders) has effect.

The SEM Committee

The SEM Committee

6.—(1) There shall be a committee of the Authority to be known as the Single Electricity Market Committee (referred to in this Order as "the SEM Committee").

(2) Any decision as to the exercise of a relevant function of the Authority in relation to a SEM matter must be taken on behalf of the Authority by the SEM Committee.

(3) For the purposes of this Order a matter is a SEM matter if the SEM Committee determines that the exercise of a relevant function of the Authority in relation to that matter materially affects, or is likely materially to affect, the SEM.

(4) For the purposes of this Order "a relevant function" means—

(a) a function under Part II of the Electricity Order;

(b) a function under the Energy Order which relates to electricity;

(c) a function under Part IV of the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 (SR 2005/ 335);

(d) a function under Article 3 or Schedule 1,

other than a function which is mentioned in paragraph (5).

(5) The functions of the Authority under any of the following provisions are not relevant functions—

(a) in the Electricity Order—

Article 8(3) (prosecution of licensing offences);

Article 23 (approval of interest rate on deposit by way of security);

Article 26 (determination of disputes);

Article 31 (power to require information about customer complaints);

Articles 42 to 45A (standards of performance);

Article 45B (approval of customer complaints procedures);

Article 47 (fixing of maximum resale price of electricity);

Article 47A (billing disputes);

Article 52 (keeping of register);

Schedule 3 (consents relating to compulsory acquisition or disposal of land);

Schedule 6 (public electricity supply code);

Schedule 7 (electricity meters);

(b) in the Energy Order—

Article 7 (publication of advice and information on consumer matters);

Article 18(4) (disclosure of information by Council);

Article 21(4) (publication of information by Council);

Article 22(9) (reference of complaints to Council);

Article 23(6) (publication of information by Council);

Article 24 (provision of information to Council);

Article 25(4) (publication of information by Council);

Article 27 (reference of failure to supply information to Council);

Part VII (electricity from renewable sources).

(6) The Department may by order remove any provision from the list of provisions in paragraph (5).

(7) An order under paragraph (6)—

(a) shall not be made unless the Department has consulted the Authority; and

(b) is subject to negative resolution.

(8) Schedule 2 has effect (and paragraphs 6 and 9 of Schedule 1 to the Energy Order do not have effect) in relation to the SEM Committee.

Commencement Information

I2 Art. 6 partly in operation; art. 6 not in operation at date of making see art. 1(3); art. 6 in operation for certain purposes at 1.11.2007 by S.R. 2007/444, **art. 2**, Sch. 1

Working arrangements for the SEM

7.—(1) The Authority shall publish a statement—

(a) setting out the procedures adopted by the Authority under paragraph 7 of Schedule 1 to the Energy Order for ensuring compliance with Article 6(2); and

(b) describing how the Authority will work together with CER in the exercise of their respective statutory functions in relation to the SEM.

(2) A statement under this Article may be amended from time to time; and the Authority shall as soon as practicable thereafter publish the statement as so amended.

Powers of entry

8.—(1) Schedule 3 (which confers powers of entry) applies if (and only if) the SEM Committee determines—

(a) that there are reasonable grounds for suspecting that a licence holder is contravening, or has contravened, any condition of his licence; and

(b) that any such contravention would materially affect, or be likely materially to affect, the SEM.

(2) Article 9 applies in relation to the functions of the SEM Committee under this Article as it applies to the exercise of the functions of that Committee mentioned in Article 9(1)(c).

Objective and duties of Department, the Authority and SEM Committee

Principal objective and duties of Department, the Authority and SEM Committee in relation to SEM

9.—(1) The principal objective of—

(a) the Department in carrying out its electricity functions in relation to matters which it considers materially affect, or are likely materially to affect, the SEM;

(b) the Authority in giving effect to any decision of the SEM Committee;

(c) the SEM Committee in carrying out its functions under Article 6(2),

is to protect the interests of consumers of electricity in Northern Ireland and Ireland supplied by authorised persons, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale or purchase of electricity through the SEM.

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

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

(b) the need to secure that authorised persons are able to finance the activities which are the subject of obligations imposed by or under Part II of the Electricity Order or the Energy Order or any corresponding provision of the law of Ireland; and

(c) the need to secure that the functions of the Department, the Authority, the Irish Minister and CER in relation to the SEM are exercised in a co-ordinated manner,

(d) the need to ensure transparent pricing in the SEM;

(e) the need to avoid unfair discrimination between consumers in Northern Ireland and consumers in Ireland.

(3) The Department, the Authority and the SEM Committee may, in carrying out any of the functions mentioned in paragraph (1), have regard to the interests of consumers in Northern Ireland and Ireland in relation to gas.

(4) Subject to paragraph (2), the Department, the Authority and the SEM Committee shall carry out the functions mentioned in paragraph (1) in the manner which it considers is best calculated—

(a) to promote efficiency and economy on the part of authorised persons;

(b) to secure a diverse, viable and environmentally sustainable long-term energy supply in Northern Ireland and Ireland; and

(c) to promote research into, and the development and use of—

(i) new techniques by or on behalf of authorised persons;

(ii) methods of increasing efficiency in the use and generation of electricity.

(5) Subject to paragraph (2), in carrying out any of the functions mentioned in paragraph (1) the Department, the Authority and the SEM Committee shall have regard to—

(a) the effect on the environment in Northern Ireland and Ireland of the activities of authorised persons, and

(b) the need, where appropriate, to promote the use of energy from renewable energy sources.

(6) In carrying out any of the functions mentioned in paragraph (1) the Department, the Authority and the SEM Committee shall not discriminate unfairly—

(a) between authorised persons; or

(b) between persons who are applying to become authorised persons.

(7) In carrying out any of the functions mentioned in paragraph (1) in accordance with the preceding provisions of this Article, the Department, the Authority and the SEM Committee shall have regard to—

(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;

(b) any other principles appearing to it to represent the best regulatory practice.

(8) In this Article—

"authorised person" means the holder of a licence or exemption granted under Part II of the Electricity Order or any corresponding provision of the law of Ireland;

"electricity functions" means —

(a) functions under Part II of the Electricity Order;

(b) functions under the Energy Order relating to electricity;

(c) functions under Part IV of the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 (SR 2005/ 335); and

(d) functions under this Order;

"environmental sustainability" includes the need to guard against climate change; and

"renewable energy sources" has the same meaning as in the Directive.

(9) In relation to any time after the coming into operation of Article 3 but before the establishment of the SEM Committee, this Article has effect as if for paragraph (1)(b) there were substituted—

"(b) the Authority in carrying out its functions under Article 3;" .

Commencement Information

I3 Art. 9 wholly in operation at 1.11.2007; art. 9 not in operation at date of making see art. 1(3); art. 9 in operation for specified purposes at 20.6.2007 by S.R. 2007/303, **art. 2**, Sch.; art. 9 in operation at 1.11.2007 for all remaining purposes by S.R. 2007/444, **art. 2**, Sch. 1

Exceptions from the general duties

10.—(1) Article 9 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 of the Energy Order.

(2) Article 9 does not apply in relation to anything done by the SEM Committee in taking a decision as to the exercise of any function of the Authority—

(a) which relates to the determination of disputes;

(b) under Article 46(3) of the Electricity Order; or

(c) under Article 8 of the Energy Order;

or to anything done by the Authority in giving effect to that decision.

(3) The SEM Committee may nevertheless, when taking a decision as to the exercise of any function of the Authority under Article 46(3) of the Electricity Order, have regard to any matter in respect of which a duty is imposed by Article 9 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 9 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).

Commencement Information

I4 Art. 10 partly in operation; art. 10 not in operation at date of making see art. 1(3); art. 10(1) in operation at 20.6.2007 and art. 10(4) in operation for specified purposes at 20.6.2007 by S.R. 2007/303, **art. 2**, Sch.; art. 10(2)(3) in operation at 1.11.2007 by S.R. 2007/444, **art. 2**, Sch. 1

Miscellaneous

Effect of this Order on certain agreements

11.—(1) This Article applies in relation to an agreement in force between the holder of a licence under Article 8(1)(a) of the Electricity Order and any other licence holder which—

(a) contains (in whatever terms) provisions which apply where there is a relevant change in law (as defined in the agreement); but

(b) also contains provision which excludes from the definition of a relevant change in law any change in law which provides that it should not be a relevant change in law.

(2) For the purposes of any such agreement neither—

(a) this Order, nor

(b) the coming into operation of any provision of this Order,

shall be a relevant change in law.

Minor and consequential amendments

12. The statutory provisions set out in Schedule 4 shall have effect subject to the minor and consequential amendments specified in that Schedule.

Commencement Information

I5 Art. 12 partly in operation; art. 12 not in operation at date of making see art. 1(3); art. 12 in operation for specified purposes at 5.5.2007 by S.R. 2007/284, **art. 2**, Sch.; art. 12 in operation for specified purposes at 20.6.2007 by S.R. 2007/303, **art. 2**, Sch.; art. 12 in operation for specified purposes at 1.11.2007 by S.R. 2007/444, **art. 2**, Sch. 1

Christine Cook
Deputy Clerk of the Privy Council

SCHEDULES

PROSPECTIVE

SCHEDULE 1

Article 5

PROPERTY ARRANGEMENTS SCHEMES

Scheme-making power

1.—(1) The Authority may, on application, make a scheme providing for—

(a) the transfer to the system operator of, or

(b) the creation in favour of the system operator of any rights in relation to,

property, rights or liabilities of an existing transmission licence holder.

(2) A scheme under sub-paragraph (1) ("a property arrangements scheme") may also contain—

(a) provision for the creation, in relation to property which the scheme transfers, of an interest in or right over the property in favour of the relevant existing transmission licence holder;

(b) provision for the creation of any rights or liabilities as between the relevant existing transmission licence holder and the system operator;

(c) provision for imposing on the relevant existing transmission licence holder or the system operator an obligation to enter into a written agreement with, or to execute an instrument of another kind in favour of, the other;

(d) supplemental, incidental and consequential provision.

(3) The property, rights or liabilities which may be transferred by a property arrangements scheme include property, rights or liabilities which would not otherwise be capable of being transferred.

(4) If a property arrangements scheme provides for the division of an estate in land and any rent is—

(a) payable in respect of the estate under a lease, or

(b) charged on the estate,

the scheme may contain provision for apportionment or division so that one part is payable in respect of, or charged on, only one part of the estate and the other part is payable in respect of, or charged on, only the other part of the estate.

(5) A property arrangements scheme that contains provision which adversely affects a third party may also contain provision requiring the system operator or the relevant existing transmission licence holder to pay the third party compensation.

Applications for schemes

2.—(1) An application for the making of a property arrangements scheme may be made by—

(a) the system operator,

(b) the relevant existing transmission licence holder, or

(c) by both jointly.

(2) No application for a property arrangements scheme may be made after the end of the period of three months beginning with the day on which Article 5 comes into operation.

(3) An application for a property arrangements scheme shall specify the property, rights or liabilities in relation to which provision of a kind mentioned in paragraph 1(1) is proposed to be included in the scheme.

The Authority's functions in relation to applications

3.—(1) On an application for the making of a property arrangements scheme, the Authority shall, in relation to any property, rights or liabilities in respect of which the application proposes provision of a kind mentioned in paragraph 1(1), determine whether provision of such a kind is, in relation to that property, or those rights or liabilities, necessary or expedient for implementation purposes.

(2) Sub-paragraph (1) does not apply if the system operator and the relevant existing transmission licence holder agree that provision of a kind mentioned in paragraph 1(1) is, in relation to the property, rights or liabilities concerned, necessary or expedient for implementation purposes.

(3) If the Authority determines under sub-paragraph (1) that provision of a kind mentioned in paragraph 1(1) is not, in relation to any property, rights or liabilities, necessary or expedient for implementation purposes, it shall refuse the application in relation to that property, or those rights or liabilities.

(4) If—

(a) the Authority determines under sub-paragraph (1) that provision of a kind mentioned in paragraph 1(1) is, in relation to any property, rights or liabilities, necessary or expedient for implementation purposes, or

(b) the system operator and the relevant existing transmission licence holder agree that that is the case,

the Authority shall, subject to paragraph 4(2), make a property arrangements scheme in relation to that property, or those rights or liabilities.

4.—(1) Subject to the following provisions of this paragraph, where the Authority is required to make a property arrangements scheme, the terms of the scheme shall be such as the system operator and the relevant existing transmission licence holder may agree or, if they fail to agree, as the Authority may determine.

(2) The Authority may not include in a property arrangements scheme provision which would adversely affect a third party unless it determines that it is necessary or expedient for implementation purposes for the provision to be made.

(3) Where the Authority does include in a property arrangements scheme provision which would adversely affect a third party, the Authority shall determine whether the scheme should include provision for compensation and, if so, what that provision should be.

(4) A property arrangements scheme shall not provide for any provision to come into operation before the end of the period of 21 days beginning with the day on which the scheme is made.

5.—(1) A determination under paragraph 4, so far as relating to any financial matter, shall be made on the basis of what is just in all the circumstances of the case.

(2) A determination under paragraph 4, so far as relating to any other matter, shall be made on the basis of what appears to the Authority to be appropriate in all the circumstances of the case having regard, in particular, to what is necessary or expedient for implementation purposes.

6. The Authority may require any of the following persons to give it information and assistance in connection with the making of a determination under this Schedule—

(a) the system operator,

(b) any existing transmission licence holder, and

(c) any person who makes representations to the Authority about the application to which the determination relates.

7. The Authority may engage such consultants as it thinks fit for the purpose of advising it in relation to the making of a determination under this Schedule.

Effect of property arrangements scheme

8. A property arrangements scheme shall, by virtue of this paragraph, have effect according to its terms.

9.—(1) A transaction of any description effected by or under a property arrangements scheme shall have effect subject to the provisions of any statutory provision which provides for transactions of that description to be registered in any statutory register.

(2) Subject to sub-paragraph (1), a transaction of any description effected by or under a property arrangements scheme shall be binding on all persons, notwithstanding that it would, apart from this provision, have required the consent or concurrence of any person.

Review of determinations

10.—(1) Any person aggrieved by a determination of the Authority under this Schedule may apply to the Competition Appeal Tribunal for a review of the determination.

(2) Subject to sub-paragraph (3), no application under sub-paragraph (1) may be made after the end of the period of 7 days beginning with the day on which the determination is made.

(3) Where the Authority has made a property arrangements scheme, an application under sub-paragraph (1) may be made in respect of a determination relating to the scheme at any time before the end of the period of 7 days beginning with the day on which the scheme is made.

(4) On an application under sub-paragraph (1), the Competition Appeal Tribunal may—

(a) dismiss the application, or

(b) make an order substituting its own determination.

11.—(1) This paragraph applies where—

(a) the Competition Appeal Tribunal makes an order under paragraph 10(4)(b), and

(b) the Authority has not made a property arrangements scheme in relation to the property, rights or liabilities concerned.

(2) The Tribunal may include in the order provision requiring the Authority to make a property arrangements scheme in relation to that property, or those rights or liabilities.

(3) Where paragraph 4 applies because of provision under this paragraph, anything the Tribunal has determined shall be treated for the purposes of that paragraph as determined by the Authority.

12.—(1) This paragraph applies where—

(a) the Competition Appeal Tribunal makes an order under paragraph 10(4)(b),

(b) the Authority has made a property arrangements scheme in relation to the property, rights or liabilities concerned, and

(c) the scheme has not come into operation.

(2) Where the Tribunal's determination is that provision of the kind mentioned in paragraph 1(1) is not, in relation to the property, rights or liabilities concerned, necessary or expedient for implementation purposes, it may include in the order provision quashing the scheme.

(3) In any other case, the Tribunal may include in the order—

(a) provision for the scheme to have effect with such amendments with respect to any matter dealt with by the Authority's determination as it thinks fit, and

(b) to the extent that the Authority's determination dealt with any financial matter, provision requiring the Authority to redetermine the matter in accordance with the order and to amend the scheme accordingly.

13.—(1) This paragraph applies where—

(a) the Competition Appeal Tribunal makes an order under paragraph 10(4)(b),

(b) the Authority has made a property arrangements scheme in relation to the property, rights or liabilities concerned, and

(c) the scheme has come into operation.

(2) The Tribunal may include in the order such provision as it thinks fit for the purpose of doing justice between—

(a) the system operator,

(b) the relevant existing transmission licence holder, and

(c) any third party adversely affected by the scheme,

in the light of its determination.

(3) Without prejudice to the generality of sub-paragraph (2), the Tribunal may include in the order—

(a) provision for retransfer,

(b) provision for the surrender or extinction of rights, and

(c) provision for the payment of compensation.

14. An order under paragraph 10(4)(b) may include provision for the award of interest at such rate and for such period as the Competition Appeal Tribunal thinks fit.

15. Section 120(6) to (8) of the Enterprise Act 2002 (c. 40) (appeal with leave on point of law from decision of Competition Appeal Tribunal to Court of Appeal) shall apply in relation to decisions of the Tribunal under this Schedule as they apply in relation to decisions under that section.

Interim arrangements pending review of determination

16.—(1) This paragraph applies where—

(a) a person makes an application under paragraph 10(1) for the review of a determination, and

(b) the Authority has not made a property arrangements scheme in relation to the property, rights or liabilities to which the determination relates.

(2) The Competition Appeal Tribunal may on application by the system operator or the relevant existing transmission licence holder make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.

(3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power to make provision for the system operator to have access to, or

otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the Tribunal thinks fit.

(4) No application under sub-paragraph (2) may be made after the end of the period of 7 days beginning with the day on which the application under paragraph 10(1) is made.

17.—(1) This paragraph applies where—

(a) a person makes an application under paragraph 10(1) for the review of a determination, and

(b) the Authority has made a property arrangements scheme in relation to the property, rights or liabilities to which the determination relates.

(2) The Competition Appeal Tribunal may on application by—

(a) the system operator,

(b) the relevant existing transmission licence holder, or

(c) a third party who is adversely affected by any provision of the scheme,

make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.

(3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power—

(a) to make provision postponing or suspending the operation of any provision of the scheme for such period, and on such terms, as the Tribunal thinks fit;

(b) to make provision for the system operator to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the Tribunal thinks fit.

(4) No application under sub-paragraph (2) may be made after the end of the period of 7 days beginning with the day on which the application under paragraph 10(1) is made.

18. In exercising its powers under paragraph 16 or 17, the Competition Appeal Tribunal shall have regard, in particular, to what is necessary or expedient for implementation purposes.

19. Paragraphs 16 and 17 are without prejudice to any powers of the Competition Appeal Tribunal to make orders on an interim basis under rules under section 15 of the Enterprise Act 2002 (c. 40).

20.—(1) If an order under paragraph 16 or 17 is registered in the High Court, it shall be enforceable as an order of the High Court.

(2) An order under paragraph 16 or 17 may be registered by a person entitled to any right under the interim arrangements for which the order makes provision.

(3) Sub-paragraphs (1) and (2) have effect subject to any provision made by rules of court.

(4) Sub-paragraphs (1) and (2) apply to an order on an interim basis made under rules under section 15 of the Enterprise Act 2002 in connection with an application under paragraph 10(1) as they apply to an order under paragraph 16 or 17.

Supplementary

21. The Department may by order designate the holder of a transmission licence as the system operator for the purposes of this Schedule.

22. An application under this Schedule shall not be made orally.

23.—(1) In this Schedule—

"existing transmission licence" means a transmission licence which is in force immediately before the day on which Article 5 comes into operation;

"implementation purposes" means the purposes of implementing the SEM in accordance with the timetable for implementation for the time being published by the Authority or facilitating the operation of the SEM;

"property arrangements scheme" has the meaning given by paragraph 1(2);

"relevant existing transmission licence holder", in relation to a property arrangements scheme, or an application for such a scheme, means the existing transmission licence holder to whose property, rights or liabilities the scheme, or application, relates;

"system operator" means the person designated under paragraph 21;

"third party", in relation to a property arrangements scheme, means a person other than the system operator or the relevant existing transmission licence holder.

(2) For the purposes of this Schedule, a provision of a property arrangements scheme adversely affects a third party if—

(a) his consent or concurrence would be required to the making of the provision otherwise than by means of the scheme, and

(b) he does not consent to the making of the provision by means of the scheme.

SCHEDULE 2

Article 6

THE SEM COMMITTEE

Membership

1.—(1) The SEM Committee shall consist of—

(a) not more than 3 persons ("Authority members") appointed by the Department after consultation with the Authority;

(b) not more than 3 persons ("CER members") appointed by the Department with the approval of the Irish Minister; and

(c) a person ("the independent member") appointed by the Department with the approval of the Irish Minister and after consultation with the Authority.

(2) An Authority member must be a member of, or a member of the staff of, the Authority.

(3) A CER member must be a member of CER.

(4) The Department may, with the approval of the Irish Minister and after consultation with the Authority, appoint a person ("the deputy independent member") who—

(a) may attend and take part in meetings of the SEM Committee; but

(b) may not vote on any matter except in the absence of the independent member.

(5) Paragraphs 2, 3 and 4 apply in relation to the deputy independent member as they apply in relation to the independent member.

Terms of appointment, remuneration, pensions, etc.

2.—(1) Subject to this Schedule, the members shall hold and vacate office in accordance with the terms of their appointment.

(2) Those terms of appointment shall be determined by the Department with the approval of the Irish Minister.

3.—(1) An appointment of a person as a member shall be for a term not exceeding 5 years.

(2) A person holding office as a member may resign that office by giving notice in writing to the Department and the Irish Minister.

(3) A person holding office as the independent member may on the ground of incapacity or misbehaviour be removed from office by the Department with the approval of the Irish Minister.

(4) An Authority member—

(a) may be removed from office by the Department—

(i) on the ground of incapacity or misbehaviour; or

(ii) at the request of the Authority;

(b) shall cease to hold office if he ceases to be either a member of, or a member of the staff of, the Authority.

(5) A CER member—

(a) may be removed from office by the Department with the approval of the Irish Minister—

(i) on the ground of incapacity or misbehaviour; or

(ii) at the request of CER;

(b) shall cease to hold office if he ceases to be a member of CER.

(6) A previous appointment as a member does not affect a person's eligibility for appointment to that office.

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

Sub-committees

5.—(1) The SEM Committee may establish sub-committees.

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

Proceedings, etc.

6.—(1) Subject to the provisions of this Schedule, the SEM Committee may regulate its own procedures.

(2) A member shall be treated for the purposes of such procedures as present at a meeting of the SEM Committee if, in accordance with arrangements made under those procedures, he is able to hear, and be heard by, all the persons present at the meeting.

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

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

Quorum

7. The quorum for a meeting of the SEM Committee is —

(a) the independent member (or the deputy independent member) and one other member; or

(b) one Authority member and one CER member.

Decision making and voting

8.—(1) A matter may be decided by agreement—

(a) of all members of the SEM Committee (whether at a meeting or not); or

(b) of all members of the SEM Committee present at a meeting.

(2) Where at any meeting of the SEM Committee all the members present are not agreed as to any matter falling to be decided at that meeting, the following provisions of this paragraph apply.

(3) The matter shall be put to a vote and may be decided by a majority of the votes cast.

(4) For this purpose there shall be 3 votes of which—

(a) the independent member (or the deputy independent member) if present shall have one;

(b) the Authority members who are present shall have one; and

(c) the CER members who are present shall have one.

(5) There shall be no casting vote; and accordingly where there is an equality of votes cast the matter shall not be decided at the meeting (but may be decided at a later meeting).

(6) In relation to a vote falling to be cast under head (b) or (c) of sub-paragraph (4)—

(a) where all the members mentioned in that head are agreed as to how the vote is to be cast, the vote shall be cast in that manner;

(b) where a majority of those members are agreed as to how the vote is to be cast, the vote shall be cast in that manner;

(c) in any other case, no vote shall be cast.

(7) Nothing in this paragraph affects the application of paragraph 7.

Performance of functions

9.—(1) Anything which is authorised or required to be done by the SEM Committee may be done by—

(a) any member of the SEM Committee who is authorised for that purpose by the Committee, either generally or specifically;

(b) any sub-committee of the SEM Committee which is so authorised; or

(c) any member of the staff of the Authority or CER who is so authorised.

(2) Sub-paragraph (1)(b) does not apply to a sub-committee whose members include any person who is not a member, or member of the staff, of the Authority or CER.

SCHEDULE 3

Article 8

POWERS OF ENTRY

Power to enter premises of a licence holder without a warrant

1.—(1) Where the SEM Committee has made a determination under Article 8 in respect of a licence holder, any member of staff of the Authority who is authorised in writing by the Authority to do so ("an investigating officer") may enter any premises owned or occupied by that or any other licence holder for the purposes of investigating on behalf of the Authority whether any such contravention as is mentioned in that Article has occurred or is occurring.

(2) No investigating officer is to enter any premises in the exercise of his powers under this paragraph unless he has given to the occupier of the premises a written notice which—

(a) gives at least 2 working days' notice of the intended entry;

(b) indicates the subject matter and purpose of the investigation; and

(c) indicates the nature of the offences created by paragraph 4.

(3) Sub-paragraph (2) does not apply—

(a) if the SEM Committee has reasonable grounds for suspecting that the premises are, or have been, occupied by the licence holder in respect of whom the determination under Article 8 was made; or

(b) if the investigating officer has taken all such steps as are reasonably practicable to give notice but has not been able to do so.

(4) In a case falling within sub-paragraph (3), the power of entry conferred by sub-paragraph (1) is to be exercised by the investigating officer on production of—

(a) evidence of his authorisation; and

(b) a document containing the information referred to in sub-paragraph (2)(b) and (c).

(6) Subject to paragraph 3, an investigating officer entering any premises under this paragraph may—

(a) take with him—

(i) such equipment as appears to him to be necessary; and

(ii) any other relevant officer whom the Authority has authorised in writing to accompany the investigating officer;

(b) require any person on the premises—

(i) to produce any document which he considers relates to any matter relevant to the investigation; and

(ii) if the document is produced, to provide an explanation of it;

(c) require any person to state, to the best of his knowledge and belief, where any such document is to be found;

(d) take copies of, or extracts from, any document which is produced;

(e) require any information which is stored in any electronic form and is accessible from the premises and which the investigating officer considers relates to any matter relevant to the investigation, to be produced in a form—

(i) in which it can be taken away, and

(ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form;

(f) take any steps which appear to be necessary for the purpose of preserving or preventing interference with any document which he considers relates to any matter relevant to the investigation.

(7) In this paragraph and paragraph 2—

"premises" does not include premises used as a dwelling,

"relevant officer" means a member of the staff of the Authority or of CER,

"working day" means any day other than Saturday, Sunday or a day which is a public holiday in Northern Ireland.

Power to enter premises of a licence holder under warrant

2.—(1) Where the SEM Committee has made a determination under Article 8 in respect of a licence holder, the High Court may, on an application made by the Authority, issue a warrant if the Court is satisfied that—

(a) there are reasonable grounds for suspecting that there are on any premises owned or occupied by a licence holder documents—

(i) the production of which has been required under Article 51 of the Energy Order or paragraph 1; and

(ii) which have not been produced as required;

(b) there are reasonable grounds for suspecting that—

(i) there are on any premises owned or occupied by a licence holder documents which the Authority has power under Article 51 of the Energy Order to require to be produced; and

(ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed; or

(c) an investigating officer has attempted to enter premises in the exercise of his powers under paragraph 1 but has been unable to do so and that there are reasonable grounds for suspecting that there are on the premises documents the production of which could have been required under that paragraph.

(2) Subject to paragraph 3, a warrant under this paragraph shall authorise a named member of the staff of the Authority ("the named officer"), and any other relevant officer whom the Authority has authorised in writing to accompany the named officer—

(a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;

(b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under sub-paragraph (1) was granted ("the relevant kind");

(c) to take possession of any documents appearing to be of the relevant kind if—

(i) such action appears to be necessary for preserving the documents or preventing interference with them; or

(ii) it is not reasonably practicable to take copies of the documents on the premises;

(d) to take any other steps which appear to be necessary for the purpose mentioned in head (c)(i);

(e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his knowledge and belief, where it may be found;

(f) to require any information which is stored in any electronic form and is accessible from the premises and which the named officer considers relates to any matter relevant to the investigation, to be produced in a form—

(i) in which it can be taken away, and

(ii) in which it is visible and legible or from which it can readily be produced in a visible and legible form.

(3) If, in the case of a warrant under sub-paragraph (1)(b), the Court is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise action mentioned in sub-paragraph (2) to be taken in relation to any such document.

(4) A warrant under this paragraph may authorise persons specified in the warrant to accompany the named officer who is executing it.

(5) Any person entering premises by virtue of a warrant under this paragraph may take with him such equipment as appears to him to be necessary.

(6) On leaving any premises which he has entered by virtue of a warrant under this paragraph, the named officer must, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(7) A warrant under this paragraph continues in force until the end of the period of one month beginning with the day on which it is issued.

(8) Any document of which possession is taken under sub-paragraph (2)(c) may be retained for a period of three months.

(9) A warrant issued under this paragraph must indicate—

(a) the subject matter and purpose of the investigation;

(b) the nature of the offences created by paragraph 4.

(10) The powers conferred by this paragraph are to be exercised on production of the warrant issued under this paragraph.

(11) If there is no one at the premises when the named officer proposes to execute the warrant he must, before executing it—

(a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and

(b) if the occupier is informed, afford him or his legal or other representative a reasonable opportunity to be present when the warrant is executed.

(12) If the named officer is unable to inform the occupier of the intended entry he must, when executing the warrant, leave a copy of it in a prominent place on the premises.

Privileged information, etc.

3. A person is not required under paragraph 1 or 2—

(a) to produce any document which he could not be compelled to produce in civil proceedings in the High Court; or

(b) to provide any information which he could not be compelled to give in evidence in any such proceedings.

Offences

4.—(1) A person is guilty of an offence if he fails to comply with a requirement imposed on him under paragraph 1 or 2.

(2) If a person is charged with an offence under sub-paragraph (1) in respect of a requirement to produce a document, it is a defence for him to prove—

(a) that the document was not in his possession or under his control; and

(b) that it was not reasonably practicable for him to comply with the requirement.

(3) If a person is charged with an offence under sub-paragraph (1) in respect of a requirement—

(a) to provide information,

(b) to provide an explanation of a document, or

(c) to state where a document is to be found,

it is a defence for him to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under paragraph 1 is not an offence if the person imposing the requirement has failed to act in accordance with that paragraph.

(5) A person is guilty of an offence if he intentionally obstructs any other person acting in the exercise of his powers under paragraph 1.

(6) A person guilty of an offence under sub-paragraph (1) or (5) is liable—

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

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

(7) A person who intentionally obstructs any other person in the exercise of his powers under a warrant issued under paragraph 2 is guilty of an offence.

(8) A person is guilty of an offence if, having been required to produce a document under paragraph 1 or 2—

(a) he intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it, or

(b) he causes or permits its destruction, disposal, falsification or concealment.

(9) If information is provided by a person to an investigating officer in pursuance of a requirement imposed under paragraph 1 or 2, that person is guilty of an offence if—

(a) the information is false or misleading in a material particular, and

(b) he knows that it is or is reckless as to whether it is.

(10) A person guilty of an offence under sub-paragraph (7), (8) or (9) is 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.

SCHEDULE 4

Article 12

AMENDMENTS

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

1. In Article 3 after the definition of "information" insert—

""the SEM", "the SEM Committee", "the Irish Minister" and "CER" have the same meanings as in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007;".

2. In Article 9(3) for paragraph (3) substitute—

"(3) An exemption granted under paragraph (1)—

(a) shall, if the order under paragraph (1) so provides, have effect for such period as may be specified in or determined under the order;

(b) may be revoked or amended by a subsequent order under that paragraph.".

3.—(1) Article 11 is amended as follows.

(2) In paragraph (1)(a) after "Article 12 of the Energy (Northern Ireland) Order 2003" insert " or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 ".

(3) After paragraph (6A) insert—

"(6B) Conditions included in a licence may relate to activities whether or not they are carried out in Northern Ireland.".

4. In Article 11A (2)(a) at the end of each of heads (i), (ii), (iii) and (iv) add " in Northern Ireland and Ireland" ".

5. In Article 15(7) at the end add " or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007." ".

6.—(1) In Article 50 after paragraph (2) insert—

"(2A) A direction under paragraph (2) does not apply in relation to—

(a) the exercise by the SEM Committee of its functions under Article 6(2) or 8 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007;

(b) the Authority in giving effect to any decision of the SEM Committee'."

(2) In Article 50(3A) at the end add "and

(c) functions under the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.".

Commencement Information

I6 Sch. 4 para. 6 wholly in operation at 1.11.2007; Sch. 4 para. 6 not in operation at date of making see art. 1(3); Sch. 4 para. 6(2) in operation at 20.6.2007 by S.R. 2007/303, **art. 2**, Sch.; Sch. 4 para. 6(1) in operation at 1.11.2007 by S.R. 2007/444, **art. 2**, Sch. 1

7. In Article 62(2) after "electricity" insert " or to act as SEM operator ".

8. In Article 66(1) for the words from "any matter relating to electricity" to the end substitute

"(a) any matter arising under this Part or the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007; or

(b) any matter relating to electricity arising under 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 Energy (Northern Ireland) Order 2003 (NI 6)

9. In Article 12(2)(a) after "demands" insert " in Northern Ireland or Ireland ".

10. In Article 13 (exemptions) after paragraph (1) insert—

"(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.".

11. In Article 42 (5) after "Article 12 or 14" insert " or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007. ".

12.—(1) Article 63 is amended as follows.

(2) In paragraph (1)(a) after "Electricity Order" insert " , the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 ".

(3) In paragraph (3)(a) after "Electricity Order" insert " , the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 ".

(4) After paragraph (3) insert—

"(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.”.

(5) In paragraph (4) after sub-paragraph (a) insert—

“(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.” .

13. In Schedule 3, omit paragraph 20.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for giving effect to the agreement between Her Majesty's Government and the Government of Ireland relating to a single wholesale electricity market in Northern Ireland and Ireland a copy of which was presented to Parliament by the Secretary of State by command of Her Majesty on 8th December 2006.

Status:
Point in time view as at 01/11/2007. This version of this Order contains provisions that are prospective.

Changes to legislation:
There are currently no known outstanding effects for the The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.