

ELECTRICITY (SINGLE WHOLESAL MARKET) (NORTHERN IRELAND) ORDER 2007

S.I. 2007 913

EXPLANATORY MEMORANDUM

COMMENTARY ON ARTICLES

22. Comments are not given where the wording is self-explanatory.
23. [Article 2](#) defines certain key terms used throughout the Order, in particular, “the SEM”. “The SEM” is defined as the Single Electricity Market, being the new arrangements in NI and ROI which are designed to promote the establishment and operation of a single competitive wholesale electricity market in NI and ROI and are described in broad terms in the MOU.
24. [Article 3](#) allows the Department after consultation with the Authority, or the Authority with the consent of the Department, to modify the licences of market participants without their consent to the extent considered necessary or expedient for the purpose of implementing or facilitating the operation of the SEM or in consequence thereof. The purpose of this Article is to provide for the introduction of new contractual and licensing arrangements relating to the trading of wholesale electricity in NI and ROI in place of the existing wholesale electricity trading arrangements in NI and to facilitate the appropriate operation of those arrangements. These arrangements will be implemented in part by requiring market participants to become party to new contracts in place of certain existing contracts and in part by requiring the amendment of certain existing contracts.
25. Before making modifications using this power, the Department or the Authority must consult the holder of any licence being modified, and such other persons as the Department or the Authority consider appropriate. In addition, where the Department or the Authority make any modifications under Article 3, they must publish such modifications in such manner as they consider appropriate. There is a time limit on the power to modify licence conditions under this Article, being the end of the period of 24 months beginning on the day on which this Article comes into operation.
26. The purpose of Article 4 is to establish a new licenseable activity of acting as SEM Operator, so as to enable the independent licensing and regulation of the person or persons who administer the SEM trading arrangements. In particular, the SEM Operator’s responsibility will include responsibility, pursuant to the trading and settlement code referred to in the MOU, for the calculation of charges and other payments due under that code. It is therefore this function which forms the basis of the prohibited activity. Undertaking the function of SEM Operator without authorisation by way of licence of exemption will be a new criminal offence.
27. [Article 5](#) provides for Schedule 1, which makes provision for property arrangements schemes in respect of certain licence holders, to have effect.

*This Explanatory Memorandum refers to the Electricity
(Single Wholesale Market) (Northern Ireland) Order 2007913*

28. [Schedule 1](#) provides power to the Authority to make property arrangements schemes to enable the transfer of property, rights or liabilities between the owner and the operator of a transmission system for the purposes of implementing the SEM as provided for in the MOU on the application of either or both of the owner and operator.
29. [Article 6](#) and [Schedule 2](#) establish a special committee of the Authority to take any decision as to the exercise of certain of the Authority's functions in circumstances provided by the Order. In particular, 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, and the Authority is required to give effect to any decision so taken. A "relevant function" here means: (a) a function under Part II of the Electricity (Northern Ireland) Order 1992 No. 231 (N.I. 1) (the "Electricity Order"); (b) a function under the Energy (Northern Ireland) Order 2003 No. 419 (N.I. 6) (the "Energy Order") which relates to electricity; (c) a function under the Electricity Order 1992 (Amendment) Regulation (Northern Ireland) 2005 (SR 2005/335); and a function under [Article 3](#) of the Order, other than a function specified as not being a relevant function under this Article (for example, the determination of disputes under [Article 26](#) and the fixing of the maximum resale price of electricity under [Article 47](#) of the Electricity Order are not relevant functions for the purposes of this Order). A matter will be 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.
30. [Schedule 2](#) has effect in relation to the SEM Committee and provides details of the following (among other things): the composition of the SEM Committee and the terms of appointment and remuneration of its members; the establishment of sub-committees; the regulation of its proceedings; meeting requirements; decision making and voting procedures; and the delegation of its functions.
31. [Article 7](#) requires the Authority to publish a statement relating to the carrying out of the SEM Committee functions and describing how it will work together with CER in the exercise of their respective statutory functions in relation to the SEM.
32. [Article 8](#) provides for [Schedule 3](#) to have effect where the SEM Committee determines that there are reasonable grounds for suspecting that a licence holder may be contravening or may have contravened any condition of his licence and that such contravention would materially affect, or is likely materially to affect the SEM.
33. [Schedule 3](#) provides powers for officers of the Authority to enter premises of a licence holder, both with and without a warrant, where the SEM Committee has made a determination under [Article 8](#), and sets out various new offences for failure to co-operate with investigations of the Authority in this regard.
34. [Article 9](#) introduces a new set of duties which will apply to the Department in carrying out its electricity functions in relation to matters which it considers materially affect or are likely to materially affect the SEM; to the Authority in giving effect to any decision of the SEM Committee; and to the SEM Committee in taking any decision as to the exercise of a relevant function of the Authority. The SEM duties consist of a principal objective, followed by a suite of subsidiary and additional duties,
35. The principal objective of the Department, the Authority and the SEM Committee in carrying out their electricity functions in relation to SEM matters is to protect the interests of consumers of electricity in NI and ROI supplied by licence holders or persons authorised by exemption under Part II of the Electricity Order or any corresponding provision of ROI law (for the purposes of this Article, "authorised persons"), wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the sale of purchase of electricity through the SEM.

*This Explanatory Memorandum refers to the Electricity
(Single Wholesale Market) (Northern Ireland) Order 2007913*

36. [Article 9\(2\)](#) requires the Department, the Authority and the SEM Committee to carry out their electricity functions in the manner they consider is best calculated to further the principal objective, having regard to a number of factors, including the need to secure that all reasonable demands for electricity in NI and ROI are met; the need to secure that authorised persons are able to finance their regulated activities; the need to secure co-ordinated regulation of the SEM; the need to ensure transparent pricing in the SEM; and the need to avoid unfair discrimination between consumers in NI and consumers in ROI. In addition, subject to [Article 9\(2\)](#), the Department, the Authority and the SEM Committee are required to carry out their electricity functions in the manner they consider is best calculated to, among other things, promote efficiency and economy on the part of authorised persons; and secure a diverse, viable and environmentally sustainable long-term energy supply in NI and ROI. Further, subject to [Article 9\(2\)](#), the Department, the Authority and the SEM Committee must have regard to the effect on the environment in NI and ROI of activities and the need (where appropriate) to promote the use of energy from renewable sources.
37. The Department, the Authority and the SEM Committee have an additional duty not to discriminate unfairly between authorised persons or between persons who are applying to become authorised persons.
38. Further, in carrying out any of their functions in relation to the SEM, the Department, the Authority and the SEM Committee may have regard to the interests of gas consumers in NI and ROI.
39. Finally, in carrying out their functions in relation to the SEM, the Department, the Authority and the SEM Committee must have regard to principles of best regulatory practice as specified.
40. [Article 10](#) disapplies [Article 9](#) of the Order in relation to certain functions of the Department and the Authority under the Electricity Order and the Energy Order (broadly, the same functions to which the existing duties of the Department and the Authority under the Energy Order do not apply).
41. [Article 11](#) provides that the Order shall not be a relevant change in law for the purposes of any agreement in force between the holder of a generation licence and any other licence holder which contains provisions relating to a relevant change in law.
42. [Article 12](#) provides that the provisions of [Schedule 4](#) are to have effect subject to the minor and consequential amendments specified in that Schedule.
43. [Schedule 4](#) sets out various minor and consequential amendments to the Electricity Order and the Energy Order.