

2005 No. 335

ELECTRICITY

**Electricity Order 1992 (Amendment) Regulations
(Northern Ireland) 2005**

Made - - - - - *11th July 2005*

Coming into operation *1st August 2005*

The Department of Enterprise, Trade and Investment, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the regulation of the electricity sector(b), in exercise of the powers conferred on it by the said section 2(2), and of every other power enabling it in that behalf, hereby makes the following Regulations:

**PART I
INTRODUCTORY**

Citation and commencement

1. These Regulations may be cited as the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 1st August 2005.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“the Authority” means the Northern Ireland Authority for Energy Regulation;

“the 1992 Order” means the Electricity (Northern Ireland) Order 1992(d);

“the Department” means the Department of Enterprise, Trade and Investment; and

“the Energy Order” means the Energy (Northern Ireland) Order 2003(e).

(a) 1972 c. 68
(b) S.I. 1998/745
(c) 1954 c. 33 (N.I.)
(d) S.I. 1992/231 (N.I.)
(e) S.I. 2003/419 (N.I. 6)

PART II

AMENDMENTS TO THE 1992 ORDER

Revocation and replacement

3. The 1992 Order shall be amended as provided by this Part.

Interpretation of Part II of the 1992 Order

4. In Article 3, for the definition of “Directive” there shall be substituted the following definition—

““the Directive” means European Parliament and Council Directive 2003/54/EC concerning common rules for the internal market in electricity and repealing Directive 96/92;”.

Conditions of licences

5. For Article 11A there shall be substituted the following Articles—

“Compliance with Community obligations

11A.—(1) Without prejudice to the generality of Article 11(1), a licence shall include such conditions as appear to the grantor to be requisite or expedient to ensure any activity authorised by it is carried out in compliance with the relevant requirements and prohibitions laid down by the Directive.

(2) The conditions included in a licence in accordance with paragraph (1) shall, in particular—

- (a) require the licence holder to give to the Authority, in each year it is required by the Authority to do so, a report containing such information as the Authority may require in relation to—
 - (i) the present and likely future balance between supply of and demand for electricity;
 - (ii) additional generating capacity under construction or being planned;
 - (iii) the quality and level of maintenance of the generating plant and equipment and of the transmission and supply systems;
 - (iv) measures taken and planned to ensure that peak demand for electricity is met and to deal with shortfalls in electricity supply;

and to give a copy of that report to the Department;

- (b) require the licence holder to keep accounts in accordance with the requirements of Article 19 of the Directive and to have them audited in accordance with those requirements and shall confer on the Department and the Authority a right of access to his accounts for the purpose of ensuring compliance with those requirements; and
- (c) ensure that any person who is an eligible customer for the purposes of Article 21 of the Directive can exercise his freedom to purchase electricity from the supplier of his choice within the meaning of that Article.

(3) The conditions referred to in paragraph (1) shall in particular in the case of a transmission licence ensure that the holder does not disclose information contrary to Article 12 or 16 of the Directive and require the holder, as appropriate having regard to the activities authorised by the licence—

- (a) to carry out the tasks laid down for him by Articles 9, 11(1) or 14(1) and (7) of the Directive;
- (b) where he carries out the tasks laid down by Article 11(1) of the Directive, to do so in accordance with such criteria as may be determined and published by the Authority for the purposes of paragraph (2) of that Article;

- (c) where he carries out the tasks laid down by Article 14(1) of the Directive, to act in accordance with paragraph (2) of that Article and to provide the information required by paragraph (3) of that Article;
- (d) in relation to any task referred to in Article 11(3) to (5) or 14(4) of the Directive, to follow such rules for priority as may be specified in the conditions for the purposes of those provisions;
- (e) to comply with the requirements of Article 11(6) or 14(5) of the Directive in procuring the energy used in the carrying out of his functions;
- (f) where he balances electricity inputs to and offtakes from any transmission system used under the licence, to adopt and follow rules which comply with the relevant requirements of Article 11(7) or 14(6) of the Directive;
- (g) to comply with the requirements for system access laid down by Article 20 of the Directive.

(4) Subject to paragraph (5), the conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a transmission licence granted to a person forming part of a vertically integrated undertaking (within the meaning of the Directive), as appropriate having regard to the activities authorised by the licence—

- (a) require that person to comply with the requirements for independence in terms of his legal form, organisation and decision making laid down by Article 10(1) or 15(1) of the Directive; and
- (b) require that person to comply with the requirements for independence in terms of his management and decision making rights laid down by Articles 10(2) or 15(2) of the Directive.

(5) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a transmission licence granted to a person forming part of a vertically integrated undertaking (within the meaning of the Directive) who carries on the combination of activities to which Article 17 of the Directive applies, as appropriate having regard to the activities authorised by the licence, require that person to—

- (a) comply with the requirements laid down by that provision for independence in terms of his legal form, organisation and decision-making in relation to those activities; and
- (b) meet the requirements of points (a) to (d) of that Article.

(6) The conditions referred to in paragraph (1) shall in particular in the case of a licence under Article 10(1)(b) or (c) or a licence under Article 10(2) require that any supply of electricity by the licence holder to a household customer, or (as the case may be) any transmission by a licence holder in connection with such a supply, meets specified quality standards.

(7) The conditions referred to in paragraph (1) shall in particular in the case of a licence under Article 10(1)(c) or a licence under Article 10(2) granted after 1st July 2007—

- (a) require that any supply of electricity by the licence holder to a household customer is given at reasonable, easily and clearly comparable and transparent prices;
- (b) require the introduction and maintenance of safeguards to help any consumers referred to in Article 12(3) of the Energy (Northern Ireland) Order 2003 in particular to avoid disconnection from an electricity supply.

(8) The conditions referred to in paragraph (1) shall in particular in the case of a licence under Article 10(1)(c) or a licence under Article 10(2)—

- (a) ensure that consumers of electricity have access to the information required by Article 3(6) of the Directive;
- (b) ensure that household customers are not charged for changing supplier and are able to use procedures which comply with item (f) of Annex A to the Directive; and
- (c) require that information provided to consumers of electricity (including information about the contractual terms and conditions offered to such consumers) by the holder of such a licence complies with the requirements of Article 3(5) of the Directive.

Provision of additional capacity or energy efficiency measures

11B.—(1) Where it appears to the Department, on the basis of a report given in pursuance of a condition included in a licence under Article 11A(2)(a) or otherwise, that there is insufficient capacity existing, under construction or planned to meet the projected demand for electricity at any time in the future, it may itself invite tenders for, or may direct the Authority to invite tenders for—

(a) such further generating capacity; or
(b) the provision of such energy efficiency or demand-side management measures (within the meaning of Article 7 of the Directive),
as, in its opinion, will meet any such projected shortfall in supply.

(2) Where the Department has invited tenders under paragraph (1) it may enter into such arrangements as it considers necessary or expedient to ensure that any capacity or measures tendered for are used to meet the projected shortfall in supply.

(3) Where the Authority has invited tenders in pursuance of a direction under paragraph (1) in relation to any generating capacity or energy efficiency or demand-side management measures, the Department may by further direction require it to enter into such arrangements as may be specified therein to ensure that the capacity or measures tendered for are provided and used to meet the projected shortfall in supply.

(4) A direction under paragraph (3) may include in particular provision for ensuring adequate finance for the provision and use of any capacity or measures to which it relates.

(5) Where the Department invites tenders under paragraph (1), or the Authority invited tenders in pursuance of a direction under that paragraph, each shall do so in accordance with such procedures as may be specified by the Department and which comply with the requirements of Article 7 of the Directive and shall select the successful tenderer on the basis of criteria determined and published by the Department in accordance with and for the purposes of that Article.”.

General duties of holders of transmission licences

6. For Article 12(2) to (4) there shall be substituted the following paragraph—

“(2) It shall be the duty of the holder of a licence authorising him to transmit electricity as appropriate having regard to the activities authorised by the licence—

- (a) to take such steps as are reasonably practicable to—
- (i) ensure the development and maintenance of an efficient, co-ordinated and economical system of electricity transmission which has the long-term ability to meet reasonable demands for the transmission of electricity; and
 - (ii) contribute to security of supply through adequate transmission capacity and system reliability; and
- (b) to facilitate competition in the supply and generation of electricity.”.

Duty of public electricity supplier

7. In Article 20(2) for sub-paragraph (c) there shall be substituted the following sub-paragraph—

“(c) there is a lack of capacity or there are exceptional circumstances which render it impracticable for him to do so.”.

Dispute resolution

8. After Article 31 there shall be inserted the following Article—

“Dispute resolution

31A.—(1) Any person adversely affected by any decision, act or failure to act by a licence holder in relation to any matter falling within Article 23(1), (2) or (4) of the Directive

(other than a matter falling to be dealt with under Article 26) may make a complaint under this Article (hereinafter referred to as “a complaint”).

(2) A complaint shall be made in writing to the Authority and shall be accompanied by such information as is necessary or expedient to allow the Authority to make a determination in relation to the complaint.

(3) The Authority shall establish and publish such procedures as it thinks appropriate for the determination by it of a complaint.

(4) The procedures established under paragraph (3) shall provide for the determination of the complaint to be notified to the complainant within the requisite period or such longer period as the Authority may agree with the complainant.

(5) For the purposes of paragraph (4) the requisite period in any case means—

- (a) the period of two months from the date when the complaint was received by the Authority; or
- (b) where the information sent to the Authority under paragraph (2) was in its opinion insufficient to enable it to make a determination, the period of four months from the date the complaint was received by the Authority.

(6) For the purposes of this Article “determination” in relation to any complaint means a determination about the exercise of any power or duty conferred or imposed on the Authority in relation to electricity under this Order or the Energy (Northern Ireland) Order 2003 insofar as that power or duty relates to the subject matter of the complaint.”.

Consent required for constructing, etc. generating stations

9.—(1) For Article 39(2A) and (2B) there shall be substituted the following paragraphs—

“(2A) The Department shall only grant a consent under paragraph (1) in relation to the construction or extension of a generating station where it is satisfied that the station to which the consent relates will meet the published criteria.

(2B) Where the Department refuses to grant to any person a consent under paragraph (1), it shall by notice in writing—

- (a) inform him of the fact;
- (b) give him the reasons for that refusal; and
- (c) inform him of his right to challenge the refusal.”.

(2) For Article 39(9) there shall be substituted the following paragraph—

“(9) In this Article, “published criteria” means the criteria determined by the Department from time to time in accordance with and for the purposes of Article 6(2) of the Directive and published by it.”.

Consent required for direct lines

10.—(1) After Article 40(2) there shall be inserted the following paragraphs—

“(2A) The Department shall only grant a consent under paragraph (1) in relation to a direct line (within the meaning of the Directive) where it is satisfied that it will meet the published criteria.

(2B) Where the Department refuses to grant to any person a consent under paragraph (1), it shall by notice in writing—

- (a) inform him of the fact;
- (b) give him the reasons for that refusal; and
- (c) inform him of his right to challenge the refusal.”.

(2) After Article 40(5) there shall be added the following paragraph—

“(6) In this Article, “published criteria” means the criteria determined by the Department from time to time in accordance with and for the purposes of Article 22(2) of the Directive and published by it.”.

PART III
AMENDMENTS TO THE ENERGY ORDER

Amendments to the Energy Order

11. The Energy Order shall be amended as provided by this Part.

Functions of the Department and the Authority

- 12.**—(1) For Article 12(5)(c) there shall be substituted the following sub-paragraph—
“(c) to secure a diverse, viable and environmentally sustainable long-term energy supply;”.
- (2) For Article 12(6) there shall be substituted the following paragraphs—
“(6) In carrying out their respective electricity functions the Department or the Authority shall not discriminate between persons whose activities consist of or include generating, supplying or transmitting electricity as regards either rights or obligations.
(7) In this Article—
“electricity functions” means functions under Part II of the Electricity Order and functions under this Order relating to electricity; and
“environmental sustainability” includes the need to guard against climate change.”.

Compliance with Community legislation

- 13.**—(1) In Article 38(1), for the words from “European” to the end there shall be substituted the words “European Parliament and Council Directive 2003/54/EC concerning common rules for the internal market in electricity and repealing Directive 96/92.”.
- (2) In Article 45—
(a) in paragraph (1) after “condition or requirement” there shall be inserted “or any provision of the Community Regulation”;
(b) in paragraphs (4)(b) and (6)(a) for “the relevant condition or requirement” there shall be substituted in each case “the condition, requirement or prohibition”; and
(c) after paragraph (10) there shall be inserted the following paragraph—
“(11) In this Article “the Community Regulation” means Regulation 1228/2003 of the European Parliament and Council on conditions for access to the network for cross-border exchanges of electricity.”.
- (3) At the end of Article 47 there shall be inserted—
“(3) This Article shall not apply in relation to a penalty imposed for a contravention of any provision of the Community Regulation within the meaning of Article 45(11).”.

Consequential amendments

14. The Schedule shall have effect for the purposes of making consequential amendments to the Energy Order.

PART IV
CONDITIONS FOR EXISTING LICENCES

Existing licences

15.—(1) The Department, after consultation with the Authority, shall by notice in writing make such modifications to, or require the Authority by notice in writing to make such

modifications to, an existing licence as the Department or the Authority, as the case may be, considers requisite or expedient to ensure that any activity authorised by the licence is carried out in compliance with the relevant requirements and prohibitions laid down by the Directive.

- (2) A notice under paragraph (1) may in particular—
- (a) revoke or modify such conditions of; or
 - (b) include such new conditions in,

an existing licence as the Department or the Authority, as the case may be, considers requisite or expedient for the purposes of that paragraph.

(5) Article 11A(2) to (8) of the 1992 Order shall apply in relation to the modification or revocation of the conditions of, and the inclusion of any new conditions in, an existing licence under this regulation as it applies to the inclusion of any conditions in any other licence under that Article or Article 11 of the 1992 Order and any reference in the 1992 Order to Article 11A or to any provision thereof shall be construed as including a reference to that provision as so applied.

(6) Subject to Article 38(1) of the Energy Order, modifications made to a licence under this regulation are without prejudice to the power of the Department, the Authority, the Secretary of State, the Office of Fair Trading or the Competition Commission, as the case may be, to further modify that licence under or in accordance with the 1992 Order or the Energy Order.

Duties of the Department and the Authority

16. Article 12 of the Energy Order shall apply in relation to the exercise by the Department and the Authority of any functions under this Part as it applies to the exercise of their functions under Part II of that Order.

Interpretation of this Part

17. In this Part expressions which are also used in the 1992 Order shall have the same meaning as in that Order.

Revocation

18. The Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 1999 are hereby revoked.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 11th July 2005.

(L.S.)

Jenny Pyper
A senior officer of the Department

SCHEDULE

Regulation 14

CONSEQUENTIAL AMENDMENTS TO THE ENERGY ORDER

1. In Schedule 3, paragraphs 4 and 5 are repealed.
2. In Schedule 5, in the entry relating to the Electricity (Northern Ireland) Order 1992 (N.I. 1), the words “In Article 11A(2)(a) the words “(b) or”” are repealed.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations inter alia amend the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”) to ensure that it conforms with the requirements of Directive 2003/54/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity (“the Directive”). They revoke and replace the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 1999 which implemented Community obligations under Directive 96/92/EC which was replaced by the Directive.

Part I contains certain introductory provisions.

Part II amends the 1992 Order, as follows—

- (a) regulation 4 substitutes a new definition of “the Directive” for the one in Article 3 of the 1992 Order (Interpretation of Part II);
- (b) regulation 5 substitutes a new Article 11A in the 1992 Order requiring the inclusion of appropriate conditions in licences to ensure that the authorised activities comply with the requirements of the Directive;
- (c) regulation 5 also inserts a new Article 11B into the 1992 Order to provide for additional capacity or energy efficiency measures in the eventuality of a projected shortfall in electricity generating capacity;
- (d) regulation 6 amends the general duties of the holder of a transmission licence to ensure that those duties reflect the requirements of the Directive for long-term planning and security of supply;
- (e) regulation 7 narrows the scope of the exemption in Article 20(2) of the 1992 Order from the obligation of the public electricity supplier to supply anyone who applies to it for an electricity supply;
- (f) regulation 8 provides for the exercise of a dispute resolution function in relation to electricity by the Northern Ireland Authority for Energy Regulation (“the Authority”) to take place in accordance with the requirements of the Directive;
- (g) regulation 9 amends Article 39 of the 1992 Order by prohibiting the grant by the Department of its consent for the construction or extension of a generating station unless it is satisfied that the generating station meets certain specified criteria;
- (h) regulation 10 amends Article 40 of the 1992 Order by prohibiting the grant by the Department of its consent for an overhead line which is a direct line within the meaning of the Directive unless it is satisfied that the station meets certain specified criteria.

Part III in particular amends the electricity functions of the Authority and the Department of Enterprise, Trade and Investment under Article 12 of the Energy (Northern Ireland) Order 2003 (“the Energy Order”) to ensure that they reflect the requirements of the Directive.

In addition to implementing the Directive, this Part also extends financial penalties under Article 45 of the Energy Order to any licence holder who infringes the provisions of Regulation 1228/2003 of the European Parliament and Council on conditions for access to the network for cross-border exchanges in electricity.

Part IV provides for the modification of licences already issued under the 1992 Order to ensure compliance with the provisions of the Directive.

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