
DRAFT STATUTORY INSTRUMENTS

2003 No.

The Energy (Northern Ireland) Order 2003

PART V

LICENCES

New kinds of licences

New kind of electricity transmission licence

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

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

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

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

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

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

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

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

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

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

(5) After Article 10 there shall be inserted—

“Transmission licences

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

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

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

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

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

Conversion of existing electricity transmission licences

29.—(1) In this Article—

- (a) references to an existing transmission licence are to a licence under Article 10(1)(b) of the Electricity Order which is in force immediately before the commencement date; and
 - (b) references to the commencement date are to the date on which Article 28 comes into operation.
- (2) An existing transmission licence shall have effect on and after the commencement date—
- (a) as a licence under Article 10(1)(b) of the Electricity Order (as amended by Article 28) authorising the holder to participate in the transmission of electricity in the area which for the purposes of his existing transmission licence was his authorised area; and
 - (b) with such incidental, consequential and supplementary modifications as appear to the Department to be necessary or expedient.
- (3) Modifications under paragraph (2)(b) may relate to—
- (a) the terms of a licence, or
 - (b) the conditions of a licence.
- (4) As soon as practicable after the commencement date, the Department shall publish the text of each licence modified under this Article.
- (5) Before modifying any licence under paragraph (2)(b), the Department shall consult—
- (a) the Authority; and
 - (b) the holder of the licence,
- in such manner as it considers appropriate.
- (6) Paragraph (5) may be satisfied by consultation before, as well as by consultation after, the commencement date.

New kind of gas conveyance licence

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

- (2) In Article 6(1) (prohibition on unlicensed activities in connection with supply of gas) for sub-paragraph (a) there shall be substituted—
- “(a) participates in the conveyance of gas from one place to another;”.
- (3) In Article 6, after paragraph (3) there shall be inserted—
- “(4) For the purposes of this Part, a person participates in the conveyance of gas if—
- (a) he co-ordinates, and directs, the flow of gas into and through a pipe-line by means of which the conveyance of gas takes place; or
 - (b) he makes a pipe-line available for use for the purposes of such conveyance.
- (5) Where different people have different interests in a pipe-line, only the person with actual possession of the pipe-line may be regarded for the purposes of paragraph (4) as making it available for use.”.
- (4) In Article 8(1) (licences authorising supply, etc.) for sub-paragraph (a) there shall be substituted—
- “(a) to participate in the conveyance of gas from one place to another;”.

(5) After Article 8 there shall be inserted—

“Licences under Article 8(1)(a)

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

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

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

- (a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on; or
- (b) restrict where he may carry on an activity which he is authorised by the licence to carry on.”.

Conversion of existing gas conveyance licences

31.—(1) In this Article—

- (a) references to an existing conveyance licence are to a licence under Article 8(1)(a) of the Gas Order which is in force immediately before the commencement date; and
- (b) references to the commencement date are to the date on which Article 30 comes into operation.

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

- (a) as a licence under Article 8(1)(a) of the Gas Order (as amended by Article 30) authorising the holder to participate in the conveyance of gas in the area which for the purposes of his existing conveyance licence was his authorised area; and
- (b) with such incidental, consequential and supplementary modifications as appear to the Department to be necessary or expedient.

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

- (a) the terms of a licence, or
- (b) the conditions of a licence.

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

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

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

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

- (a) the Authority; and
- (b) the holder of the licence,

in such manner as it considers appropriate.

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

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

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

New standard conditions for gas conveyance licences

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

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

(3) In Article 11 of the Gas Order —

- (a) in paragraph (1) for “sub-paragraph (a), (b) or (c)” there shall be substituted “sub-paragraph (b) or (c)”; and
- (b) in paragraph (2) after “paragraph (1)” there shall be inserted “or Article 32(1) of the Energy (Northern Ireland) Order 2003”.

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

- (a) such modifications as appear to the Department to be necessary or expedient for the purpose of securing that the standard conditions determined under paragraph (1) are incorporated in that licence (or incorporated with such modifications as the Department considers requisite to meet the circumstances of the case);
- (b) such incidental, consequential and supplementary modifications as appear to the Department to be necessary or expedient; and
- (c) such other modifications as may be agreed with the licence holder.

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

- (a) the terms of a licence, or
- (b) the conditions of a licence.

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

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

- (a) the Authority; and
- (b) the holder of the licence,

in such manner as it considers appropriate.

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

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

Conditions of licences

Conditions of electricity licences

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

(2) In paragraph (3)—

- (a) for “Conditions included in a licence under paragraph (1)(a)” there shall be substituted “Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph”;
- (b) in sub-paragraph (c) after “licence” (in the first place it appears) there shall be inserted “, or under any document referred to in the licence,”.

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

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

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

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

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

- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
- (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.”.

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

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

Conditions of gas licences

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

(2) In paragraph (3)—

- (a) for “Conditions included in a licence under paragraph (1)(a)” there shall be substituted “Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph”;
- (b) in sub-paragraph (c) after “licence” (in the first place it appears) there shall be inserted “, or under any document referred to in the licence,”.

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

“(3A) Conditions included in a licence under Article 8(1)(a) by virtue of paragraph (1)

(a) may require the holder, in such circumstances as are specified in the licence—

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

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

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

- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
- (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.”.

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

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

Standard conditions of gas licences

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

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

- (a) for any standard condition included in such a licence not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions;
- (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
- (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.”.

Modification of licences following Competition Commission report

Modification of electricity licences following Competition Commission report

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

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

- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
- (b) stating the reasons for making the modifications.

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

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

- (a) make the modifications set out in the notice; or
- (b) if a direction under Article 17A(1)(b) has been given, make the modifications which are not specified in the direction.”.

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

“Competition Commission’s power to veto modifications following report

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

- (a) not to make the modifications set out in that notice; or
- (b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

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

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

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

- (a) shall give notice setting out the modifications proposed by the Authority, the terms of the direction and the reasons for giving it; and
- (b) shall itself make such modifications of the conditions of the licence as appear to it to be requisite for the purpose of remedying or preventing—
 - (i) if the direction was given under paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
 - (ii) if the direction was given under paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under Article 17(7)(b).

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

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

- (a) stating that it proposes to make the modifications and setting them out;
- (b) stating the reason why it proposes to make them;
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

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

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

- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy on the Authority and the holder of the licence in question.

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

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

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

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

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

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

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

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

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

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

- (a) subsection (2) were omitted;
- (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under Article 17A (8) of the Electricity (Northern Ireland) Order 1992 in connection with the reference concerned or, if no direction has been given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”;
- (c) in subsection (9) the words from “or section” to “section 65 (3))” were omitted.

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

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

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

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

Modification of gas licences following Competition Commission report

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

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

- (a) setting out the modifications it proposes to make to remedy or prevent the adverse effects specified in the report; and
- (b) stating the reasons for making the modifications.

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

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

- (a) make the modifications set out in the notice; or
- (b) if a direction under Article 17A(1)(b) has been given, make the modifications which are not specified in the direction.”.

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

“Competition Commission’s power to veto modifications following report

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

- (a) not to make the modifications set out in that notice; or
- (b) not to make such of the modifications as may be specified in the direction;

and the Authority shall comply with any such direction.

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

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

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

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

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

- (i) if the direction was given under paragraph (1)(a), the adverse effects specified in the report as effects which could be remedied or prevented by modifications;
- (ii) if the direction was given under paragraph (1)(b), such of those adverse effects as are not remedied or prevented by the modifications made by the Authority under Article 17(5C)(b).

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

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

- (a) stating that it proposes to make the modifications and setting them out;
- (b) stating the reason why it proposes to make them;
- (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

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

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

- (a) by publishing the notice in such manner as the Commission considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by the making of the modifications; and
- (b) by serving a copy on the Authority and the holder of the licence in question or, as the case may be, the relevant licence holders.

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

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

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

- (a) shall make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
- (b) shall publish the modifications made for those purposes in such manner as it considers appropriate.

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

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

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

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

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

- (a) commercial information whose disclosure the Commission thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the Commission thinks might significantly harm the individual's interests.

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

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

- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

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

- (a) subsection (2) were omitted;
- (b) in subsection (4), for the words “the publication of the report of the Commission on the reference concerned” there were substituted “the publication by the Commission of a notice under Article 17A (8) of the Gas (Northern Ireland) Order 1996 in connection with the reference concerned or, if no direction has been given by the Commission under Article 17A(1) of that Order in connection with the reference concerned and within the period permitted for that purpose, the latest day on which it was possible to give such a direction within the permitted period”;
- (c) in subsection (9) the words from “or section” to “section 65 (3)” were omitted.

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

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

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

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

Modification of licences: general provisions

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

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

Powers to alter licensable activities

Power to alter activities requiring electricity licence

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

- (a) that specified activities are to become licensable activities; or
- (b) that specified activities are to cease to be licensable activities.

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

(3) For the purposes of—

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

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

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

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

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

Power to alter activities requiring gas licence

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

- (a) that specified activities are to become licensable activities; or
- (b) that specified activities are to cease to be licensable activities.

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

(3) For the purposes of—

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

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

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

- (a) amendments or repeals in any provision of this Order or any other statutory provision; and
- (b) provision modifying any standard conditions of gas licences or (in the case of an order under paragraph (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.

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

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