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STATUTORY INSTRUMENTS

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**2007 No. 913**

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

*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.

**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);
  - “the Irish Minister” means the Minister for Communications, Marine 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.

### *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.”.

#### **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.

### **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;”.

### **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).

### *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.

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**Status:** *This is the original version (as it was originally made).*

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Deputy Clerk of the Privy Council