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## STATUTORY INSTRUMENTS

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# 1992 No. 231 (N.I. 1)

## The Electricity (Northern Ireland) Order 1992

- - - - - 11th February 1992

### Modifications etc. (not altering text)

- C1** Order power to apply certain provisions (with modifications) conferred by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 79A(7) (as inserted (18.9.2013) by [Marine Act \(Northern Ireland\) 2013 \(c. 10\)](#), ss. 42, 49 (with ss. 1(1), 46(3), 47))
- C2** Order power to modify certain provisions conferred by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 79A(8) (as inserted (18.9.2013) by [Marine Act \(Northern Ireland\) 2013 \(c. 10\)](#), ss. 42, 49 (with ss. 1(1), 46(3), 47))

## PART I

### INTRODUCTORY

#### *Title and commencement*

1.—(1) This Order may be cited as the Electricity (Northern Ireland) Order 1992.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint<sup>F1</sup>.

(3) An order under paragraph (2) may also appoint a day for the coming into operation of any provision of an order made under section 38(2) of the Northern Ireland Constitution Act 1973<sup>F2</sup> as necessary or expedient in consequence of this Order which appears to the Head of the Department to be consequential on any provision of this Order brought into operation by the order.

**F1** fully exercised by SR 1992/63,117,1998/441

**F2** 1973 c. 36

#### *Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F3</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“the Department” means the Department of Economic Development;

*Definition rep. by 2003 NI 6*

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“modifications” includes additions, omissions, amendments and substitutions;

“prescribed” means prescribed by regulations;

“regulations”

(a) except in Article 42 and Schedule 7, means regulations made by the Department;

(b) in Article 42 and Schedule 7, means regulations made by the Director, with the consent of the Department;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

**F3** 1954 c. 33 (NI)

## PART II

### ELECTRICITY SUPPLY

#### *Introductory*

#### ***Interpretation of Part II***

**3.** In this Part—

“the 1973 Act” means the Fair Trading Act 1973<sup>F4</sup>;

“the 1980 Act” means the Competition Act 1980<sup>F5</sup>;

<sup>F6</sup> .....

[<sup>F7</sup>“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;]

[<sup>F8</sup>“distribute” in relation to electricity, means distribute by means of a distribution system, that is to say, a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system;]

“electrical plant” means any plant, equipment, apparatus or appliance used for, or for purposes connected with, the generation, transmission [<sup>F9</sup>, distribution] or supply of electricity, other than—

(a) an electric line;

(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(c) an electrical appliance under the control of a consumer;

“electric line” means any line which is used for carrying electricity for any purpose and includes—

(a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;

(b) any apparatus connected to any such line for the purpose of carrying electricity; and

(c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

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[<sup>F10</sup>“electricity distributor” means any person who is authorised by a licence under Article 10(1)(b) except where he is acting otherwise than for purposes connected with the distribution by him of electricity;

“electricity supplier” means any person who is authorised by a licence under Article 10(1)(c) to supply electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence;]

“exemption” means an exemption under Article 9;

“extension” in relation to a generating station, includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station;

*Definition rep. by 2003 NI 6*

“generating station”, in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station;

“high voltage line” means an electric line of a nominal voltage [<sup>F11</sup>of or] exceeding 110 kilovolts; and “low voltage line” shall be construed accordingly;

“information” includes accounts, estimates and returns;

[<sup>F12</sup>“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;]

“licence” means a licence granted under Article 10;

“licence holder” means the holder of a licence granted under Article 10;

“line” means any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity;

*Definition rep. by SI 1999/506*

“notice” means notice in writing;

“premises” includes any land, building or structure;

<sup>F13</sup> .....

*Definition rep. by 2003 NI 6*

<sup>F13</sup> .....

*Definitions rep. by 2003 NI 6*

“supply”, in relation to electricity, means supply through electric lines otherwise than to premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on;

<sup>F13</sup> .....

“transferred provision” has the meaning assigned to it by section 1(g) of the Interpretation Act (Northern Ireland) 1954<sup>F14</sup>;

[<sup>F15</sup>“transmission”, in relation to electricity, means transmission by means of a transmission system;

“transmission licence” means a licence under Article 10(1)(b);

“transmission system” means a system which—

- (a) consists (wholly or mainly) of high voltage lines and electrical plant; and
- (b) is used for conveying electricity—
  - (i) from a generating station to a substation;

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- (ii) from one generating station to another;
- (iii) from one substation to another;
- (iv) to a substation in Northern Ireland from a place outside Northern Ireland; or
- (v) from a substation in Northern Ireland to a place outside Northern Ireland]

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971<sup>F16</sup>.

- F4** 1973 c. 41
- F5** 1980 c. 2
- F6** Art. 3: definition of "authorised area" repealed (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), **4(a)**
- F7** SR 2005/335
- F8** Art. 3: definition of "distribute" inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), **4(b)**
- F9** Words in art. 3 in definition of "electrical plant" inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), **4(d)**
- F10** Art. 3: definitions of "electricity distributor" "electricity supplier" inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), **4(c)**
- F11** Words in art. 3 in definition of "high voltage line" inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 1**
- F12** Art. 3: definition of "the SEM" "the SEM Committee" "the Irish Minister" and "CER" inserted (1.11.2007) by [Electricity \(Single Wholesale Market\) \(Northern Ireland\) Order 2007 \(S.I. 2007/913 \(N.I. 7\)\)](#), arts. 1(3), 12, **Sch. 4 para. 1**; S.R. 2007/444, **art. 2**, Sch. 1
- F13** Art. 3: definitions of "private electricity supplier" "public electricity supplier" "tariff customer" repealed (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), **4(e)**
- F14** 1954 c. 33 (NI)
- F15** Art. 3: definitions of "transmission" "transmission licence" "transmission system" substituted (3.7.2007) for definition of "transmit" by [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419 \(N.I. 6\)\)](#), arts. 1(2), 65, **Sch. 3 para. 1(1)** (subject to Sch. 4); S.R. 2007/320, **art. 2**, Sch. 1
- F16** 1971 c. 80

*Arts.4#7 rep. by 2003 NI 6*

#### *Licensing of supply, etc.*

#### ***Prohibition on unlicensed supply, etc.***

**8.—(1)** A person who—

- <sup>F17</sup>(a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- [<sup>F18</sup>(b) participates in the transmission of electricity for that purpose; <sup>F19</sup>. . . ]
- <sup>F17</sup>(c) supplies electricity to any premises, [<sup>F20</sup> or
- (d) acts as SEM operator,]

shall be guilty of an offence unless he is authorised to do so by a licence or exemption.

(2) A person guilty of an offence under this Article shall be liable—

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

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

(3) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department or the Director.

[<sup>F21</sup>(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.]

[<sup>F22</sup>(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.]

**F17** mod. by SR 1999/352

**F18** Art. 8(1)(b) substituted (5.5.2007 for certain purposes otherwise 3.7.2007) by [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419 \(N.I. 6\)\)](#), arts. 1(2), 28(2); S.R. 2007/283, **art. 2**, Sch. 1; S.R. 2007/320, **art. 2**, Sch. 1

**F19** Word in art. 8(1)(b) omitted (5.5.2007 for certain purposes otherwise 20.6.2007) by virtue of [Electricity \(Single Wholesale Market\) \(Northern Ireland\) Order 2007 \(S.I. 2007/913 \(N.I. 7\)\)](#), arts. 1(3), **4(1)(a)**; S.R. 2007/284, **art. 2**, Sch.; S.R. 2007/303, **art. 2**, Sch.

**F20** Art. 8(1)(d) and preceding word inserted (5.5.2007 for certain purposes otherwise 20.6.2007) by [Electricity \(Single Wholesale Market\) \(Northern Ireland\) Order 2007 \(S.I. 2007/913 \(N.I. 7\)\)](#), arts. 1(3), **4(1)(b)**; S.R. 2007/284, **art. 2**, Sch.; S.R. 2007/303, **art. 2**, Sch.

**F21** Art. 8(4)(5) inserted (5.5.2007 for certain purposes otherwise 3.7.2007) by [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419 \(N.I. 6\)\)](#), arts. 1(2), 28(3); S.R. 2007/283, **art. 2**, Sch. 1; S.R. 2007/320, **art. 2**, Sch. 1

**F22** Art. 8(6)(7) added (5.5.2007 for certain purposes otherwise 20.6.2007) by [Electricity \(Single Wholesale Market\) \(Northern Ireland\) Order 2007 \(S.I. 2007/913 \(N.I. 7\)\)](#), arts. 1(3), **4(2)**; S.R. 2007/284, **art. 2**, Sch.; S.R. 2007/303, **art. 2**, Sch.

### **Exemptions from Article 8**

9.—(1) The Department may, after consultation with the Director, by order grant exemption from sub-paragraph (a) [<sup>F23</sup>, (c) or (d)] of Article 8(1).

(2) An exemption granted to persons of a particular class shall be published in such manner as the Department considers appropriate for bringing it to the attention of persons of that class.

[<sup>F24</sup>(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.]

(4) The requirement to consult imposed by paragraph (1) shall not apply to the granting of any exemptions which, having regard to the provisions of Article 8, need to be granted before that Article comes into operation.

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- F23** Words in art. 9(1) substituted (5.5.2007 for certain purposes otherwise 20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), **4(3)**; S.R. 2007/284, art. 2, Sch.; S.R. 2007/303, art. 2, Sch.
- F24** Art. 9(3) substituted (5.5.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 2**; S.R. 2007/284, art. 2, Sch.

### **Licences authorising supply, etc.**

**10.**—(1) The Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department, may grant a licence authorising any person—

- (a) to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- [<sup>F25</sup>(b) to participate in the transmission of electricity for that purpose; <sup>F26</sup>. . . ]
- [<sup>F27</sup>(c) to supply electricity to any premises.]
- [<sup>F28</sup>(d) to act as SEM operator.]
- [<sup>F29</sup>(2) A licence under Article 10(1)(c) may authorise the holder to supply electricity—
  - (a) to any premises;
  - (b) only to premises specified in the licence, or to premises of a description so specified; or
  - (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated.

(2A) The grantor may, with the consent of the holder of a supply licence, modify terms included in the licence in pursuance of paragraph (2) so as to extend or restrict the premises to which the licence holder may give a supply of electricity.]

(3) An application for a licence <sup>F30</sup>. . . shall be made in the prescribed manner and shall be accompanied by such fee (if any) as may be prescribed; and within 14 days from the making of such an application, the applicant shall publish a copy of the application in the prescribed manner.

- (4) Before granting a licence under this Article, the Department or the Director shall give notice—
- (a) stating that the Department or the Director, as the case may require, proposes to grant the licence;
  - (b) stating the reasons why it is proposed to grant the licence; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,

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

(5) A notice under paragraph (4) shall be given by publishing the notice in such manner as the Department or the Director considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.

(6) A licence shall be in writing and, unless previously revoked in accordance with any term contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence.

[<sup>F31</sup>(7) As soon as practicable after granting a licence, the Department shall send a copy of the licence to the Authority and, in the case of a licence under paragraph (1)(b), to any licence holder under that sub-paragraph whose interests may be affected by the grant.

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(8) As soon as practicable after granting any licence under paragraph (1)(b) the Authority shall send a copy of the licence to any licence holder under that sub-paragraph whose interests may be affected by the grant.]

(9) Neither the requirement to consult imposed by paragraph (1) or (2) nor paragraphs (3) and (4) shall apply to the granting of any licences which, having regard to the provisions of Article 8, need to be granted before that Article comes into operation.

(10) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

- F25** Art. 10(1)(b) substituted (5.5.2007 for certain purposes otherwise 3.7.2007) by Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)), arts. 1(2), 28(4); S.R. 2007/283, **art. 2**, Sch. 1; S.R. 2007/320, **art. 2**, Sch. 1
- F26** Word in art. 10(1)(b) omitted (5.5.2007 for certain purposes otherwise 20.6.2007) by virtue of Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), **4(4)(a)**; S.R. 2007/284, **art. 2**, Sch.; S.R. 2007/303, **art. 2**, Sch.
- F27** Art. 10(1)(c) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), **6(1)** (with transitional provisions in Pt. IV)
- F28** Art. 10(1)(d) and preceding word inserted (5.5.2007 for certain purposes otherwise 20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), **4(4)(b)**; S.R. 2007/284, **art. 2**, Sch.; S.R. 2007/303, **art. 2**, Sch.
- F29** Art. 10(2)(2A) substituted (1.11.2007) for art. 10(2) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), **6(2)** (with transitional provisions in Pt. IV)
- F30** Words in art. 10(3) deleted (1.11.2007) by virtue of Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), **6(3)** (with transitional provisions in Pt. IV)
- F31** Art. 10(7)(8) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), **6(4)** (with transitional provisions in Pt. IV)

### [<sup>F32</sup>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.]

- F32** Art. 10A inserted (5.5.2007 for certain purposes otherwise 3.7.2007) by Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)), arts. 1(2), 28(5); S.R. 2007/283, **art. 2**, Sch. 1; S.R. 2007/320, **art. 2**, Sch. 1

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### [<sup>F33</sup>Distribution licences

**10AA.**—(1) A distribution licence may authorise the holder to distribute 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 distribution 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 distribution licence by virtue of that sub-paragraph may restrict where the licence holder may carry on an activity which he is authorised by the licence to carry on.]

**F33** Art. 10AA inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 20**

VALID FROM 15/04/2011

### [<sup>F34</sup>Electricity transmission: requirement for participants to be certified as independent

**10B.**—(1) A person who participates in the transmission of electricity within the meaning of sub-paragraph (b) or both sub-paragraphs (a) and (b) of Article 8(4) and who holds a transmission licence immediately before the coming into operation of the 2011 Regulations must, on and after the relevant date, ensure that he is certified at all times when he acts under the authority of that licence.

(2) Any person who intends to participate in the transmission of electricity within the meaning of Article 8(4)(b) and who is granted a transmission licence after the coming into operation of the 2011 Regulations must ensure that he is certified at all times when he acts under the authority of the licence.

(3) In paragraph (1) the “relevant date” in respect of a person is 3rd March 2012 or any later date before 4th March 2013 which the Authority specifies under paragraph (4) or (5) in respect of that person.

(4) The Authority may specify a later date in respect of a person if—

- (a) the person has asked the Authority to specify a later date;
- (b) the person is not, and is not part of, a vertically integrated undertaking; and
- (c) no senior officer of the person is also a senior officer of a relevant producer or supplier.

(5) The Authority may also specify a later date in respect of a person if the Authority decides that, for reasons beyond its and the person's control, the Authority will not reasonably be able to make a final decision before 3rd March 2012 as to whether or not to certify the person.

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**



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### Application for certification

**10C.**—(1) An application for certification may not be made unless the applicant has first consulted, in such manner and within such period as the Authority may specify in writing, with any related transmission licensee in respect of the application.

(2) An application for certification must be made—

- (a) in writing to the Authority; and
- (b) before such date and in such form and contain such information as the Authority may specify in writing.

(3) The applicant must, at the same time as it makes an application for certification, send a copy of it to any related transmission licensee.

(4) If the application is made on or after 3rd March 2013 and either—

- (a) the applicant is; or
- (b) the application is made on the basis of the third certification ground under Article 10F(5) and the applicant nominates as an independent system operator,

a person from a third country or a person controlled by a person from a third country, the Authority must notify the Department and the European Commission as soon as is reasonably practicable.

(5) A related transmission licensee may, make such representations to the Authority as it thinks fit in respect of the application for certification in question, including representations as to any qualification measures whether or not proposed by the applicant.

(6) The Authority may specify a date by which such representations must be made.

(7) The Authority may request from an applicant for certification any further information the Authority considers is relevant to the application, and the applicant must supply that information if—

- (a) it is in the applicant's possession or control; or
- (b) it is information which the applicant could reasonably be expected to obtain.

(8) The Authority may request a relevant producer or supplier, and any related transmission licensee, for any information the Authority considers relevant to an application for certification, and the person so requested must supply that information if—

- (a) it is in his possession or control; or
- (b) it is information which he could reasonably be expected to obtain.

(9) A person requested to supply information under paragraph (7) or (8) must do so by the date specified by the Authority in the request.

(10) The Authority shall have regard to any representations made by a related transmission licensee in accordance with paragraphs (5) and (6) in making a decision as to whether or not the applicant should be certified and what, if any, qualification measures should be taken.

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

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### Report where applicant connected with a country outside the European Economic Area

**10D.**—(1) This Article applies if the Department is notified by the Authority under Article 10C(4) that an application has been made by, or nominating as an independent system operator, a person from a third country or a person controlled by a person from a third country.

(2) The Department must prepare a report on whether the security of electricity supplies in the United Kingdom and the European Economic Area would be put at risk by the certification of the applicant.

(3) In preparing the report, the Department must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

(4) The Department must send the report to the Authority within the 6 weeks beginning with the day on which the notification under Article 10C(4) is received by it.

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

VALID FROM 15/04/2011

### Certification

**10E.**—(1) The Authority must, within the 4 months beginning with the day on which it receives an application for certification, make a preliminary decision as to whether it should certify the applicant.

(2) If—

- (a) the Authority has asked an applicant or a relevant producer or supplier or related transmission licensee for information under Article 10C(7) or (8); and
- (b) the information has not been supplied by the date specified by the Authority under Article 10C(9),

then the period of 4 months referred to in paragraph (1) shall be extended by the period of delay in supplying such information.

(3) As soon as is reasonably practicable after making the preliminary decision under paragraph (1), the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) any related transmission licensee;
- (c) the Department; and
- (d) the European Commission.

(4) The Authority must enclose with the notification under paragraph (3)(a), (b) or (d) a copy of any report which the Department has prepared under Article 10D in respect of the applicant and which the Authority receives before giving the notification.

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(5) Article 3 of the Electricity Regulation sets out the obligation to make a final decision, together with related processes, time limits, matters to be taken into account and conditions.

(6) As soon as is reasonably practicable after making the final decision in any case, the Authority must notify the decision and the reasons for it to—

- (a) the applicant;
- (b) any related transmission licensee;
- (c) the Department; and
- (d) the European Commission.

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

VALID FROM 15/04/2011

### Grounds for certification

**10F.**—(1) This Article applies to—

- (a) a preliminary decision under Article 10E as to whether an applicant should be certified; and
- (b) a final decision under Article 3 of the Electricity Regulation as to whether to certify an applicant.

(2) Subject to paragraph (7), the Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following four grounds (“the certification grounds”) applies.

(3) The first certification ground is that the ownership unbundling requirement in Article 10G is met in relation to the applicant and to any related transmission licensee.

(4) The second certification ground is that the applicant has applied for a derogation from the ownership unbundling requirement on the grounds in paragraph (9) of Article 9 of the Directive (alternative arrangements for independence), and the Authority has determined that the requirements of that paragraph are met.

(5) The third certification ground is that—

- (a) the applicant has applied for a derogation from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 13 of the Directive (independent system operator);
- (b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and
- (c) the Authority—
  - (i) has determined that the requirements of those paragraphs and of paragraphs (1) and (2) of Article 14 of the Directive (unbundling of transmission system owners) are met; and
  - (ii) is minded to designate the nominated independent system operator.

(6) The fourth certification ground is that the applicant has been granted an exemption under Article 17 of the Electricity Regulation (new interconnectors) and remains entitled to the benefit of it.

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(7) The Authority may make a preliminary decision to certify an applicant where it is satisfied that the certification ground to which his application relates applies in the case of the applicant or would apply if particular qualification measures were taken and that—

- (a) those qualification measures are within the powers of the Authority to impose under regulations 11 and 94 of the 2011 Regulations or any other powers of the Authority under this Order or the Energy (Northern Ireland) Order 2003 and the Authority is minded so to exercise those powers; or
- (b) the Authority is otherwise satisfied that such qualification measures will be taken.

(8) But, regardless of whether a certification ground applies under paragraph (2), the Authority must not certify the applicant—

- (a) if, on the basis of an opinion expressed by the European Commission under Article 11 of the Directive (certification in relation to persons from countries outside the European Economic Area), the Authority considers that the certification of the applicant would put at risk the security of electricity supplies in the European Economic Area;
- (b) if a report prepared by the Department under Article 10D states that the certification of the applicant would put at risk the security of electricity supplies in the United Kingdom or the European Economic Area;
- (c) on the second certification ground if the European Commission has not verified, in accordance with paragraph (10) of Article 9 of the Directive (verification of independence under alternative arrangements), that the requirement in that paragraph as to arrangements for effective independence is met.

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 10](#)

VALID FROM 15/04/2011

### The ownership unbundling requirement

[<sup>F34</sup>10G.—(1) For the purposes of Article 10F(3), the ownership unbundling requirement is met by an applicant for certification or (as the case may be) a related transmission licensee (“a relevant person”) if the Authority considers that each of the following five tests is passed.

- (2) The first test is that the relevant person—
  - (a) does not control a relevant producer or supplier;
  - (b) does not have a majority shareholding in a relevant producer or supplier; and
  - (c) will not, on or after the relevant date (within the meaning of Article 10B(3)), exercise any shareholder rights it holds, or becomes the holder of, in relation to a relevant producer or supplier.

(3) For the purposes of paragraph (2)(c), the Authority is entitled to think that the relevant person will not exercise any shareholder rights it holds, or becomes the holder of, if the relevant person has given an undertaking that it will not exercise those shareholder rights.

(4) The second test is that the relevant person is not controlled by a person who controls a relevant producer or supplier.

(5) But even where the second test is not passed, the Authority is entitled to treat it as passed if—

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- (a) the control over the relevant person was gained through the exercise of a right conferred as a condition of the provision of financial support or a guarantee in relation to the relevant person's business; or
  - (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (6) The third test is that the relevant person is not controlled by a person who has a majority shareholding in a relevant producer or supplier.
- (7) But even where the third test is not passed, the Authority is entitled to treat it as passed if—
- (a) the control over the relevant person was gained through the exercise of a right conferred as a condition of the provision of financial support or a guarantee in relation to the relevant person's business; or
  - (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (8) Where the Authority treats the second or third test as having been passed only by virtue of paragraph (5) or (7), it must specify a time limit after which it will cease to treat that test as having been passed; and it may extend the time limit if it thinks it necessary or expedient to do so.
- (9) Paragraphs (10) and (11) apply where the Authority is entitled to treat the second or third test as having been passed only by virtue of paragraph (5) or (7).
- (10) In deciding whether to treat the test as having been passed, the Authority—
- (a) must take into account—
    - (i) whether the relationship (direct or indirect) between the relevant person and the relevant producer or supplier has led or might lead the relevant person to discriminate in favour of the relevant producer or supplier; and
    - (ii) the length of time for which that is likely to continue to be so; and
  - (b) may, in particular, take into account any information or undertakings given to the Authority by the relevant person, the relevant producer or supplier or the person who controls the relevant person and controls or has a majority shareholding in the relevant producer or supplier.
- (11) The information and undertakings that may be taken into account under paragraph (10) (b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the relevant person and the business of the relevant producer or supplier.
- (12) The fourth test is that, where the relevant person is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—
- (a) controls a relevant producer or supplier other than a gas producer or gas supply undertaking; or
  - (b) has a majority shareholding in a relevant producer or supplier other than a gas producer or gas supply undertaking.
- (13) The fifth test is that, where the relevant person is a company, partnership or other business, none of its senior officers is also a senior officer of a relevant producer or supplier other than a gas producer or gas supply undertaking.]

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

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### Designation for the purposes of EU electricity legislation

**10H.**—(1) This Article applies for any period during which a person—

- (a) holds a transmission licence in relation to which the duty under Article 10B(1) or (2) applies; and
- (b) is certified.

(2) If the person is certified on the first or second certification ground in Article 10F, the Department shall designate that person as an electricity transmission system operator for the purposes of Article 10(2) of the Directive (designation of transmission system operators).

(3) If the person is certified on the third certification ground in Article 10F, the Department shall designate the independent system operator nominated in the application for certification as an electricity transmission system operator for the purposes of that Article.

(4) As soon as is reasonably practicable after a person is designated by virtue of this Article, the Department must give notice of the designation to—

- (a) the person so designated;
- (b) the applicant (if different);
- (c) the Authority; and
- (d) the European Commission.

(5) Where, in the case of a person certified on the first or second certification ground, there is a related transmission licensee, conditions included pursuant to Article 11A(1) in the transmission licences of the certified person and the related transmission licensee may make provision for determining which of them is to act as transmission system operator for the purposes of any provision of the Electricity Regulation and any designation under this Article is without prejudice to any such provision.

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 10](#)

VALID FROM 15/04/2011

### Monitoring and review of certification

<sup>[F34]</sup>**10I.**—(1) The Authority must monitor, in respect of each certified person, whether the grounds on which the person was certified continue to apply.

(2) Where for the purposes of certifying any person, the Authority has treated the second or third test in Article 10G as having been passed only by virtue of paragraph (5) or (7) of that Article, then where after the expiry of the time limit provided under paragraph (8) of that Article it has ceased to treat that test as having been passed by such virtue, the certification shall be withdrawn unless the Authority reviews the certification and is satisfied that the test in question is otherwise passed.

(3) If, on or after 3rd March 2013, as a result of information it has received or obtained, the Authority considers that a person from a third country has taken or may take control of a certified

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person or a person designated as independent system operator, the Authority must, as soon as is reasonably practicable, notify the information to the Department and the European Commission.

(4) The Authority may review the final certification for any person if—

- (a) the certified person or any related transmission licensee notifies it of any event or circumstance which may affect the grounds on which that person was certified; or
- (b) for any other reason the Authority considers that the grounds for the certification of that person may no longer apply.

(5) A review under paragraph (2) or (4) is to be carried out within the 4 months beginning with—

- (a) if paragraph (4)(a) applies, the day on which the Authority receives the notification under that paragraph;
- (b) if the review is in pursuance of paragraph (2), the expiry of the time limit referred to in that paragraph; or
- (c) otherwise, the first day on which the Authority considers that the grounds for certification may no longer apply.

(6) The Authority must also review a final certification if the European Commission asks it to do so.

(7) A review under paragraph (6) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.

(8) But where the Authority considers that the circumstances giving rise to the review of the certification of any person under paragraph (4) or (6) represent or result from the contravention of a relevant condition or requirement for the purposes of Article 41 of the Energy (Northern Ireland) Order 2003, by a related transmission licensee, the Authority may suspend the carrying out of the review while the Authority is taking steps in relation to such contravention pursuant to Part VI of that Order and during any period allowed to the related transmission licensee for complying with any enforcement order.

(9) As soon as is reasonably practicable after beginning a review under this Article, the Authority must notify the certified person to whom the review relates and any related transmission licensee that the review is being carried out and the reasons for it.

(10) The Authority may ask the certified person for any information the Authority thinks is relevant to the review, and the person must supply the information if—

- (a) it is in the certified person's possession or control; or
- (b) it is information which the certified person could reasonably be expected to obtain.

(11) The Authority may ask a relevant producer or supplier or related transmission licensee for any information the Authority thinks is relevant to a review under this Article, and the relevant producer or supplier or related transmission licensee must supply that information if—

- (a) it is in the possession or control of the relevant producer or supplier or related transmission licensee; or
- (b) it is information which the relevant producer or supplier or related transmission licensee could reasonably be expected to obtain.

(12) A person required to supply information under paragraph (10) or (11) must do so by any deadline specified by the Authority in the request.]

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

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VALID FROM 15/04/2011

### **Report as to any connection of a certified person with a country outside the European Economic Area**

**10J.**—(1) This Article applies if the Department is notified by the Authority under Article 10I(3) that a person from a third country has taken or may take control of a certified person or (in relation to a certified person) a person designated as an independent system operator.

(2) The Department must prepare a report on whether the security of electricity supplies in the United Kingdom and the European Economic Area would be put at risk by the continued certification of the person.

(3) In preparing the report, the Department must take into account—

- (a) any relevant international law; and
- (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

(4) The Department must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

VALID FROM 15/04/2011

### **Continuation or withdrawal of certification**

**10K.**—(1) Where the Authority reviews under Article 10I whether the grounds for the certification of a person apply or continue to apply, it may, within the review period, make a preliminary decision that either—

- (a) the certification should be continued on the certification ground in question; or
- (b) the certification should be withdrawn.

(2) If the Authority does not make a decision under paragraph (1) within the review period, it is to be taken as having decided at the end of the review period that the certification should be continued on the certification ground in question.

(3) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this Article, the Authority must—

- (a) notify the European Commission of the decision; and
- (b) enclose the information it considers relevant to the decision.

(4) Article 3 of the Electricity Regulation sets out an obligation to make a final review decision, together with related processes, time limits, matters to be taken into account and conditions.

(5) Paragraphs (6) to (8) apply in relation to the Authority's final decision under Article 3 of the Electricity Regulation whether or not to confirm the certification.

(6) As soon as is reasonably practicable after making the final decision, the Authority must notify the decision and the reasons for it to—

- (a) the person in relation to whom the review was carried out;



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- (b) any related transmission licensee;
- (c) the Department; and
- (d) the European Commission

(7) If the final decision is to continue the certification, the person in question is to be taken as continuing to be certified by the Authority.

(8) Otherwise, the person is to be taken as no longer certified.

(9) Article 10F(8)(a) and (b) applies in relation to a decision mentioned in this Article as it applies in relation to a decision mentioned in Article 10F(1), but as if the reference in Article 10F(8)(b) to a report under Article 10D were a reference to a report under Article 10J.]

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

VALID FROM 15/04/2011

## Interpretation

[<sup>F34</sup>**10L.**—(1) In Articles 10B to 10K and this Article—

“certification ground” shall be construed in accordance with Article 10F(2);

“certified” means, in relation to any person, certified in accordance with Article 10E or continued to be certified in accordance with Article 10K;

“control”, in relation to one person having control over another, has the meaning given in Article 2(34) of the Directive, but in determining whether one person (“person A”) controls another person (“person B”) no account is to be taken of any power to exercise a contractual or other right which would give person A decisive influence over person B where the right was conferred as a condition of the provision of any financial support or guarantee by person A in relation to the business of person B; and references to one person controlling another are to be interpreted accordingly;

“electricity generation undertaking” means a person who generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;

“electricity supply undertaking” means a person who supplies electricity to any premises;

“Electricity Regulation” means Regulation [\(EC\) No. 714/2009](#) of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation [\(EC\) No. 1228/2003](#);

“gas producer” means a gas undertaking carrying out the function of production mentioned in Article 2(1) of European Parliament and Council Directive [2009/73/EC](#) concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC](#);

“gas supply undertaking” means a person who sells gas to one or more customers, including by the supply to any premises of gas which has been conveyed to those premises through pipes;

“licence” means—

- (a) in relation to an electricity generation undertaking or an electricity supply undertaking, a licence under Article 10(1)(a) or (c); and
- (b) in relation to a gas supply undertaking, a licence under Article 8(1)(c) of the Gas (Northern Ireland) Order 1996;

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“majority shareholding” means a simple majority of shares;

“person from a third country” means any person the Authority thinks is a person from a third country;

“qualification measures”, in relation to an applicant for certification, means measures taken or arrangements made to ensure that the certification ground to which his application relates applies in his case;

“related transmission licensee” means, in relation to an applicant for certification or a certified person, any other person (including a person nominated or designated as independent system operator for the purposes of the third certification ground) who—

- (a) holds; or
- (b) in the case of an applicant for certification would, pursuant to any qualification measures proposed in the application, hold, a transmission licence under which that person participates or would participate in the transmission of electricity (within the meaning of Article 8(4)(a)) by means of the transmission system of the applicant or certified person;

“review period”, in relation to a review under Article 10I, means the period specified in paragraph (5) or (7) of that Article as extended by any period of suspension under paragraph (8) of that Article;

“senior officer” means—

- (a) in relation to a company, a director;
- (b) in relation to a partnership, a partner;
- (c) in relation to any other business, a person holding a position equivalent to that of a director or partner;

“shareholder right”, in relation to a company, means a right conferred by the holding of a share in the company's share capital—

- (a) to vote at general meetings of the company; or
- (b) to appoint or remove a member of the company's board of directors;

“third country” means a country that is not, and is not part of, a European Economic Area state.

(2) In Article 10B to 10K and this Article, “relevant producer or supplier”, in relation to an applicant for certification or a certified person, means—

- (a) an electricity generation undertaking, an electricity supply undertaking or a gas supply undertaking which meets the requirements of paragraph (3); or
- (b) a gas producer which meets the requirements of paragraph (4).

(3) An undertaking mentioned in paragraph (2)(a) meets the requirements of this paragraph if it carries out its generation or supply activity in a European Economic Area state and it—

- (a) requires a licence or similar authority to do so;
- (b) would, in the Authority's opinion, require a licence to do so if it carried out the activity in Northern Ireland; or
- (c) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of it.

(4) A gas producer meets the requirements of this paragraph if it—

- (a) carries out its production activity in a European Economic Area state; and

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(b) has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of it.]

**F34** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 10](#)

### Conditions of licences

11.—(1) A licence may include—

- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by<sup>F35</sup> Article 12 of the Energy (Northern Ireland) Order 2003]<sup>F36</sup> or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007]; and
- (b) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph—

- (a) may require the licence holder to enter into agreements with other persons for the use of any electric lines and electrical plant<sup>F37</sup> owned, leased or operated by him] (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
- (b) may include provision for determining the terms on which such agreements are to be entered into.

(3) <sup>F35</sup>Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph] may require the licence holder—

- (a) to comply with any direction given by the Director as to such matters as are specified in the licence or are of a description so specified;
- (b) except in so far as the Director consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by the Director such questions arising under the licence<sup>F35</sup>, or under any document referred to in the licence,] as are specified in the licence or are of a description so specified; and
- (d) to refer for approval by the Director such things falling to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified.

<sup>F35</sup>(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 <sup>F38</sup>, distribution] 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) Conditions included in a licence under paragraph (1)(a) may—

- (a) instead of specifying or describing any contracts or agreements to which they apply, refer to contracts or agreements designated (whether before or after the imposition of the conditions) by the Department or the Director; and

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(b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.

[<sup>F35</sup>(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.]

(6) Any provision included under paragraph (5) in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.

[<sup>F35</sup>(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.]

[<sup>F39</sup>(6B) Conditions included in a licence may relate to activities whether or not they are carried out in Northern Ireland.]

(7) Any sums received by the Director in consequence of any condition of a licence shall be paid into the Consolidated Fund.

**F35** 2003 NI 6

**F36** Words in art. 11(1)(a) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 3(2)**; S.R. 2007/303, **art. 2**, Sch.

**F37** Words in art. 11(2)(a) substituted (3.7.2007) by Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)), arts. 1(2), 65, **Sch. 3 para. 3(2)**; S.R. 2007/320, **art. 2**, Sch. 1

**F38** Words in art. 11(3A)(a) inserted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 11(1), **Sch. 2 para. 2** (with transitional provisions in Pt. IV)

**F39** Art. 11(6B) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 3(3)**; S.R. 2007/303, **art. 2**, Sch.

#### <sup>F40</sup>**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<sup>F41</sup> in Northern Ireland and Ireland];

(ii) additional generating capacity under construction or being planned<sup>F41</sup> in Northern Ireland and Ireland];

(iii) the quality and level of maintenance of the generating plant and equipment and of the transmission and supply systems<sup>F41</sup> in Northern Ireland and Ireland];

(iv) measures taken and planned to ensure that peak demand for electricity is met and to deal with shortfalls in electricity supply<sup>F41</sup> in Northern Ireland and Ireland];

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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.

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(6) The conditions referred to in paragraph (1) shall in particular in the case of a licence under Article 10(1)(b) or (c) <sup>F42</sup> . . . 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) <sup>F42</sup> . . . 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) <sup>F42</sup> . . . —

- (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.]

**F40** SR 2005/335

**F41** Words in art. 11A(2)(a)(i)-(iv) added (20.6.2007) by [Electricity \(Single Wholesale Market\) \(Northern Ireland\) Order 2007 \(S.I. 2007/913 \(N.I. 7\)\)](#), arts. 1(3), 12, **Sch. 4 para. 4**; S.R. 2007/303, **art. 2**, Sch.

**F42** Words in art. 11A(6)-(8) deleted (1.11.2007) by virtue of [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 3** (with transitional provisions in Pt. IV)

VALID FROM 15/04/2011

#### [<sup>F43</sup>Standard conditions of licences

**11AA.**—(1) Such conditions as may be determined by the Department, and published by it in such manner as it considers appropriate, in relation to licences under sub-paragraph (a), (b), (bb), (c) or (d) of Article 10(1), shall be standard conditions for the purposes of licences under that sub-paragraph.

(2) The standard conditions for the purposes of licences under sub-paragraph (a), (b), (bb), (c) or (d) of Article 10(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.

(3) Subject to paragraph (5) and Article 14(1)(b), each condition which by virtue of paragraph (1) is a standard condition for the purposes of licences under sub-paragraph (a), (b),

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(bb), (c) or (d) of Article 10(1) shall be incorporated (that is to say, incorporated by reference, or in the case of a licence in force at the time of any determination under paragraph (1), deemed to be incorporated by reference) in each licence under that sub-paragraph.

(4) The modification under Article 14(1)(b) of a condition of a licence shall not prevent so much of the condition as is not modified being regarded as a standard condition for the purposes of this Part.

(5) In relation to a licence in force at the time of any determination under paragraph (1), except with the consent of the licence holder, paragraph (3) shall not have effect in relation to a particular standard condition or part thereof if the effect of paragraph (3) would be to modify the conditions of that licence.]

**F43** Art. 11AA inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 52](#)

VALID FROM 20/11/2012

### Conditions on transmission licences relating to priority dispatch

[<sup>F44</sup>**11AB.**—(1) Without prejudice to the generality of Article 11(1), a transmission licence shall include such conditions as appear to the grantor to be requisite or expedient to ensure that in the dispatch of electricity generating installations, priority is given to:

- (a) generating installations using only energy from renewable sources;
- (b) generating installations using energy from renewable sources and other energy sources, but which qualify to be treated as hybrid plants in accordance with the criteria set out in the SEM Decision Document;
- (c) installations generating electricity from high efficiency co-generation; and
- (d) waste energy plants,

in accordance with Article 16(2)(c) of Directive [2009/28/EC](#) and, in particular, the criteria for priority dispatch specified in the SEM Decision Document.

(2) The conditions included in a licence in pursuance of paragraph (1) are subject to the requirement and prohibitions imposed on the holder of that licence under this Order for the maintenance of a safe and secure electricity supply but where the licence holder takes any measure for that purpose which would, but for this paragraph, significantly contravene those conditions, the licence holder shall take such corrective action as is necessary to ensure that such contravention is minimised.

(3) Where a licence holder takes any measure and any corrective action under paragraph (2), the licence holder shall report to the Authority on those measures and on the corrective action.

(4) In this Article—

“Directive [2009/28/EC](#)” means 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources;

“high efficiency co-generation” means co-generation of electricity that meets the criteria of Annex III of Directive [2004/8/EC](#) of the European Parliament and of the Council on the promotion of co-generation based on useful heat demand in the internal energy market and amending Directive [92/42/EEC](#);

“energy from renewable sources” has the meaning given in Article 2(a) of Directive [2009/28/EC](#);

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“waste energy plant” means any stationary or mobile technical unit and equipment dedicated to the thermal treatment of waste with recovery and beneficial use of the combustion heat generated, including the incineration by oxidation of waste as well as other thermal waste treatment processes such as pyrolysis, gasification or plasma processes insofar as the substances resulting from the treatment are subsequently combusted with recovery and beneficial use of the combustion heat generated;

“SEM Decision Document” means the Decision Paper SEM-11-062 of the Single Electricity Market Committee of 26th August 2011.]

**F44** Art. 11AB inserted (20.11.2012) by [Electricity \(Priority Dispatch\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/385\)](#), **reg. 2**

**Modifications etc. (not altering text)**

**C3** Art. 11AB(2)(3) applied (20.11.2012) by [Electricity \(Priority Dispatch\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/385\)](#), **reg. 4**

VALID FROM 25/07/2014

[<sup>F45</sup>**Licensing and Energy Efficiency**

**11AC.—(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 that any activity authorised by it is carried out in accordance with the requirements and prohibitions laid down by the Energy Efficiency Directive and referred to in the following paragraphs.

(2) Subject to paragraph (7), the conditions included in a licence in accordance with paragraph (1) shall in particular in the case of a licence under Article 10(1)(c) include such conditions as appear to the grantor to be requisite or expedient to require, where a customer of the licence holder takes a supply of electricity through a smart meter, that the licence holder ensures that—

- (a) the meter complies with the relevant requirements of Article 9(2)(a) and 10(2) and, where the customer so requests, Article 9(2)(c) of the Energy Efficiency Directive;
- (b) the customer is provided with the information required by Article 9(2)(a) and 10(2) of the Energy Efficiency Directive;
- (c) the information required by Article 10(2)(b) of the Energy Efficiency Directive is provided in the format so required;
- (d) where the customer so requests, the customer or another person acting on the customer's behalf is provided with the information required by Article 9(2)(d) of the Energy Efficiency Directive in a format so required;
- (e) the meter and any information provided by it is secure as required by Article 9(2)(b) of the Energy Efficiency Directive; and
- (f) the advice and information required by Article 9(2)(e) of the Energy Efficiency Directive is provided to the customer.

(3) The conditions included in the licence in accordance with paragraph (1) shall in particular in the case of a licence under Article 10(1)(c) also include such conditions as appear to the grantor to be requisite or expedient to require, where a customer of the licence holder does not take a supply of electricity through a smart meter, that the licence holder ensures that any bill or



statement of account provided to the customer complies with the requirements of Article 10(1) of and paragraph 1.1 of Annex VII to the Energy Efficiency Directive.

(4) The conditions included in the licence in accordance with paragraph (1) shall in particular in the case of a licence under Article 10(1)(c) also include such conditions as appear to the grantor to be requisite or expedient to require that the licence holder ensures that—

- (a) the information required by Article 10(3)(a) of the Energy Efficiency Directive is provided, where it is available and the customer to whom it relates so requests, to an energy service provider designated by the customer;
- (b) any bill or statement of account sent to a customer—
  - (i) contains the information required by Article 10(3)(c) of and paragraph 1.2 and 1.3 of Annex VII to the Energy Efficiency Directive;
  - (ii) complies with the guidance issued and published by the Authority, in particular for the purposes referred to in Article 10(3)(d) of the Energy Efficiency Directive; and
  - (iii) if the customer so requests, is in an electronic format.
- (c) where a customer so requests, the information required by Article 10(3)(b) of the Energy Efficiency Directive is provided to the customer;
- (d) any customer taking a supply of electricity from the licence holder is provided with the information required by paragraph 1.3 of Annex VII to the Energy Efficiency Directive in contract documentation;
- (e) any information provided to a customer in accordance with any conditions included under this paragraph is provided in a timely manner and in an easily understandable format for the purposes referred to in Article 10(3)(e) of the Energy Efficiency Directive; and
- (f) a charge is not made in respect of any bill or statement of account sent to a customer or in respect of any information provided to the customer (whether in the bill or statement of account or otherwise) contrary to Article 11(1) of the Energy Efficiency Directive.

(5) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a transmission licence include such conditions as appear to the grantor to be requisite or expedient to ensure that—

- (a) in relation to network regulation and network tariffs, the requirements of Article 15(1) fourth indent of and Annex XI to the Energy Efficiency Directive are complied with;
- (b) the licence holder complies with the requirements of Article 15(5), third indent of and Annex XII to the Energy Efficiency Directive in relation to electricity from high efficiency co generation;
- (c) where Article 15(6) of the Energy Efficiency Directive requires the licence holder to be responsible for conducting balancing services and other operational services—
  - (i) such services are part of a service bidding process which is transparent, non discriminatory and open to scrutiny in accordance with the requirements of that provision; and
  - (ii) in meeting the requirements for such services and ancillary services, the licence holder complies with Article 15(8), second indent of the Energy Efficiency Directive;
- (d) the licence holder carries out the tasks required by Article 15(8), third indent of the Energy Efficiency Directive for the purposes set out therein.

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(6) The conditions included in a licence in accordance with paragraph (1) shall in particular in the case of a distribution licence include such conditions as appear to the grantor to be requisite or expedient to ensure that—

- (a) any customer taking a supply of electricity distributed by the licence holder is provided with the information required by paragraph 1.3 of Annex VII to the Energy Efficiency Directive in contract documentation;
- (b) in relation to network regulation and network tariffs, the requirements of Article 15(1), fourth indent of and Annex XI to the Energy Efficiency Directive are complied with;
- (c) the licence holder complies with the requirements of Article 15(5), third indent and Annex XII to the Energy Efficiency Directive in relation to electricity from high efficiency co generation;
- (d) where Article 15(6) of the Energy Efficiency Directive requires the licence holder to be responsible for conducting balancing services and other operational services—
  - (i) such services are part of a service bidding process which is transparent, non discriminatory and open to scrutiny in accordance with the requirements of that provision; and
  - (ii) in meeting the requirements for such services and ancillary services, the licence holder, complies with Article 15(8), second indent of the Energy Efficiency Directive;
- (e) the licence holder carries out the tasks required by Article 15(8), third indent for the purposes set out therein.

(7) The duty on the Authority in paragraph (2) to include conditions in a licence shall only have effect where the Department—

- (a) has determined that it is technically possible, financially reasonable and proportionate in relation to the potential energy savings to implement a programme for the widespread provision of smart meters; and
- (b) notifies the Authority in writing to that effect.

(8) In this Article—

- (a) “the Energy Efficiency Directive” means the European Parliament and Council Directive 2012/27/EU on energy efficiency, amending Directive 2009/125/EC and 2010/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC;
- (b) “smart meter” means—
  - (i) an electricity meter which can send and receive information using an electronic communications network; or
  - (ii) an electricity meter and a device which is associated with or ancillary to that meter and which enables information to be sent and received by the meter using an electronic communication network;
- (c) “electronic communication” has the same meaning as in Section 4(1) of the Electronic Communications Act (Northern Ireland) 2001; and
- (d) other expressions which are also used in the Energy Efficiency Directive shall have the same meaning as in that Directive.]

**F45** Art. 11AC inserted (25.7.2014) by Energy Efficiency Regulations (Northern Ireland) 2014 (S.R. 2014/198), reg. 8

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### ***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.

### ***[<sup>F46</sup> General duties of electricity distributors and transmission licence holders***

**12.**—(1) It shall be the duty of an electricity distributor to—

- (a) develop and maintain an efficient, coordinated and economical system of electricity distribution; and
- (b) facilitate competition in the supply and generation of electricity.

(2) It shall be the duty of the holder of a licence under Article 10(1)(b), as appropriate having regard to the activities authorised by the licence, to—

- (a) 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) facilitate competition in the supply and generation of electricity.]

**F46** Art. 12 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 7 (with transitional provisions in Pt. IV)

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**Powers, etc., of licence holders**

13.—<sup>F47</sup>(1) Subject to paragraph (2), Schedule 3 (which makes provision with respect to the compulsory acquisition of land) and Schedule 4 (which confers other powers and makes other provision) shall have effect—

- (a) in relation to the holder of a licence under Article 10(1)(b) except where he is acting for purposes connected with the distribution of electricity;
- (b) in relation to the holder of a licence under Article 10(1)(b) to the extent that his licence so provides where he is acting for purposes connected with the distribution of electricity; and
- (c) to the extent that his licence so provides, in relation to any other licence holder;

and references in those Schedules to a licence holder shall be construed accordingly.]

(2) Where any provision of either of the Schedules mentioned in paragraph (1) is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

(3) A licence under Article 10(1)(a) may provide that Schedule 4 shall have effect in relation to the licence holder as if—

- (a) any reference to any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on included a reference to any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from, and air and water heated by, such heat; and
- (b) any reference to electric lines or electrical plant included a reference to pipes and associated works used or intended to be used for conveying heat so produced, and steam produced from, and air and water heated by, such heat;

and in this paragraph “associated works”, in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as may be prescribed.

(4) <sup>F48</sup>.....

<sup>F49</sup>(4A) A transmission licence may provide that, where the licence is modified so as to reduce in any respect the area in which the licence holder may carry on activities, Schedule 4 shall have effect in relation to the licence holder as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.]

(5) The provisions of Schedule 5 (which provides for water rights for hydro-electric stations) shall have effect.

<p><b>F47</b> Art. 13(1) substituted (1.11.2007) by <a href="#">Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321)</a>, regs. 1(2), <b>8(1)</b> (with transitional provisions in Pt. IV)</p> <p><b>F48</b> Art. 13(4) repealed (1.11.2007) by <a href="#">Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321)</a>, regs. 1(2), <b>8(2)</b> (with transitional provisions in Pt. IV)</p> <p><b>F49</b> Art. 13(4A) inserted (3.7.2007) by <a href="#">Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6))</a>, arts. 1(2), 65, Sch. 3 para. 6(3); S.R. 2007/320, <b>art. 2</b>, Sch. 1</p>
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## Modification of licences

### Modification by agreement

14.—(1) Subject to the following provisions of this Article, the Director may modify the conditions of a licence if the licence holder consents to the modifications.

(2) Before making modifications under this Article, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and
- (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.

(3) A notice under paragraph (2) shall be given—

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

(4) The Director shall also send a copy of a notice under paragraph (2) to the Department; and if, within the period specified in the notice, the Department directs the Director not to make any modifications, the Director shall comply with the direction.

VALID FROM 06/02/2015

#### [<sup>F50</sup>Modification of conditions under Article 14: supplementary

14A.—(1) Paragraph (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under Article 14.

(2) If the conditions modified are standard conditions, the Authority must—

- (a) 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; and
- (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

(3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.

(4) The modification of part of a standard condition of a particular licence under Article 14 does not prevent any other part of the conditions from continuing to be regarded as a standard condition for the purposes of this Part.

(5) The modification of a condition of a licence under this Article has effect subject to the giving of a direction under paragraph 2 of Schedule 5A in relation to the decision to which the modification relates.]

**F50** Arts. 14-14G substituted (6.2.2015) for art. 14 by [Gas and Electricity Licence Modification and Appeals Regulations \(Northern Ireland\) 2015 \(S.R. 2015/1\)](#), **reg. 4(1)** (with reg. 6)

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### **Modification references to Monopolies Commission**

15.—(1) The Director may make to the<sup>[F51]</sup> Competition Commission] a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
  - (i) relate to the<sup>[F52]</sup> carrying on of activities authorised or regulated by a particular] licence; and
  - (ii) are specified in the reference, operate, or may be expected to operate, against the public interest; and
- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.

(2) The Director may, at any time, by notice given to the<sup>[F51]</sup> Competition Commission] vary a reference under this Article by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.

(3) The Director may specify in a reference under this Article, or a variation of such a reference, for the purpose of assisting the<sup>[F51]</sup> Competition Commission] in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this Article or a variation of such a reference, the Director—

- (a) shall serve a copy of the reference or variation on the licence holder; and
- (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) The Director shall also send a copy of a reference under this Article, or a variation of such a reference, to the Department; and if, before the end of the period of 28 days from the day on which the Department receives the copy of the reference or variation, the Department directs the<sup>[F51]</sup> Competition Commission] not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

(6) It shall be the duty of the Director, for the purpose of assisting the<sup>[F51]</sup> Competition Commission] in carrying out an investigation on a reference under this Article<sup>[F52]</sup> or in carrying out functions under Article 17A], to give to the Commission—

- (a) any information in his possession which relates to matters falling within the scope of the investigation<sup>[F52]</sup> or the carrying out of those functions] and—
  - (i) is requested by the Commission for that purpose; or
  - (ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation<sup>[F52]</sup> or such functions], shall take account of any information given to them for that purpose under this paragraph.

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(7) In determining for the purposes of this Article whether any particular matter operates, or may be expected to operate, against the public interest, the<sup>[F51]</sup> Competition Commission] shall have regard to the matters as respects which duties are imposed on the Department and the Director by<sup>[F52]</sup> Article 12 of the Energy (Northern Ireland) Order 2003]<sup>[F53]</sup> or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.]

<sup>[F54]</sup>Paras. (8) and (8A) rep. by 2002 c. 40

(9) The Secretary of State may appoint members of the Competition Commission for the purposes of references under this Article.

(9A) In selecting a group to perform the Commission's functions in relation to any such reference, the chairman of the Commission must select up to three of the members appointed under paragraph (9) to be members of the group.]

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| <b>F51</b> | SI 1999/506  |
| <b>F52</b> | 2003 NI 6  |
| <b>F53</b> | Words in art. 15(7) added (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, <b>Sch. 4 para. 5</b> ; S.R. 2007/303, <b>art. 2</b> , Sch. |
| <b>F54</b> | 1998 c.41  |

#### <sup>[F55]</sup>References under Article 15: time limits

**15A.**—(1) Every reference under Article 15 shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.

(2) A report of the Competition Commission on a reference under Article 15 shall not have effect (and no action shall be taken in relation to it under Article 17) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Director under paragraph (3).

(3) The Director may, if he has received representations on the subject from the Competition Commission and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.

(4) No more than one extension is possible under paragraph (3) in relation to the same reference.

(5) The Director shall, in the case of an extension made by him under paragraph (3)—

- (a) publish that extension in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it; and
- (b) send a copy of what has been published by him under sub-paragraph (a) to the licence holder.]

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| <b>F55</b> | 2002 c. 40 |
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#### References under Article 15: powers of investigation

**15B.**—(1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in paragraphs (2) and (3), for the purposes of references under Article 15 as they apply for the purposes of 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);

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- (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).
- (2) Section 110 shall, in its application by virtue of paragraph (1), have effect as if—
- (a) subsection (2) were omitted; and
  - (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.
- (3) Section 111(5)(b)(ii) shall, in its application by virtue of paragraph (1), have effect as if—
- (a) for the words “published (or, in the case of a report under section 50 or 65, given)” there were substituted “made”;
  - (b) for the words “published (or given)”, in both places where they appear, there were substituted “made”; and
  - (c) the words “by this Part” were omitted.
- (4) 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 (1), have effect in relation to those sections as applied by virtue of that paragraph.
- (5) Accordingly, corresponding provisions of this Order shall not have effect in relation to those sections as applied by virtue of that paragraph.

#### **Reports on modification references**

- 16.—(1) In making a report on a reference under Article 15, the<sup>[F56]</sup> Competition Commission]
- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;
  - (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
  - (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify in the report modifications by which those effects could be remedied or prevented.

<sup>[F57]</sup>(1A) For the purposes of<sup>[F58]</sup> Articles 17 and 17A], a conclusion contained in a report of the Competition Commission is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted in connection with the reference concerned in pursuance of paragraph 15 of Schedule 7 to the Competition Act 1998.

(1B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under Article 15 as the conclusions of the Competition Commission, the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

*Para. (2) rep. by 1998 c.41*

<sup>[F59]</sup>(3) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the Competition Commission on a reference under Article 15.

(3A) In making any report on a reference under Article 15 the Competition Commission must have regard to the following considerations before disclosing any information.



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(3B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the Competition Commission thinks is contrary to the public interest.

(3C) The second consideration is the need to exclude from disclosure (so far as practicable)—

- (a) commercial information whose disclosure the Competition 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 Competition Commission thinks might significantly harm the individual's interests.

(3D) The third consideration is the extent to which the disclosure of the information mentioned in paragraph (3C)(a) or (b) is necessary for the purposes of the report.]

(4) A report of the<sup>F56</sup> Competition Commission] on a reference under Article 15 shall be made to the Director.

(5) Subject to paragraph (6), the Director—

- (a) shall, on receiving such a report, send a copy of it to the licence holder to which the report relates and to the Department; and
- (b) shall, not less than 14 days from the day on which the Department receives that copy, publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(6) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, the Department may, before the end of the period of 14 days mentioned in paragraph (5)(b), direct the Director to exclude that matter from every copy of the report to be published under that sub-paragraph.

**F56** SI 1999/506  
**F57** 2002 c. 40  
**F58** 2003 NI 6  
**F59** 2002 c. 40

### ***Modification following report***

17.—(1) Where a report of the<sup>F60</sup> Competition Commission] on a reference under Article 15—

- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
- (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
- (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence; and
- (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this Article, make such modifications of the conditions of that licence as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Before making modifications under this Article, the Director shall have regard to the modifications specified in the report.

(3) Before making modifications under this Article, the Director shall give notice—

- (a) stating that he proposes to make the modifications and setting out their effect;
- (b) stating the reasons why he proposes to make the modifications; and

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- (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.

(4) A notice under paragraph (3) shall be given—

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

[<sup>F61</sup>(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.]

**F60** SI 1999/506

**F61** 2003 NI 6

### [<sup>F62</sup>**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

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- (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);

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- (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.]

**F62** 2003 NI 6

### **Modification by order under other statutory provisions**

**18**<sup>F63</sup>.—(1) Where the Office of Fair Trading, the Competition Commission or (as the case may be) the Secretary of State (in this Article “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a licence to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.

(2) In paragraph (1) “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or
  - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or

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- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission [<sup>F64</sup>, distribution] or supply of electricity.
- (3) In paragraph (2) expressions which are also used in Part 3 or, as the case may be, Part 4 of the Enterprise Act 2002 have the same meanings as in that Part of that Act.

**F63** mod. by SI 2003/1592

**F64** Words in art. 18(2)(b) inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 4** (with transitional provisions in Pt. IV)

*Art. 18A rep. by 2003 NI 6*

VALID FROM 06/02/2015

*[<sup>F65</sup> Appeal from decisions of the Authority*

**F65** Arts. 14-14G substituted (6.2.2015) for art. 14 by [Gas and Electricity Licence Modification and Appeals Regulations \(Northern Ireland\) 2015 \(S.R. 2015/1\)](#), **reg. 4(1)** (with reg. 6)

**Appeal to the CMA**

**14B.**—(1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification of a condition of a licence under Article 14.

- (2) An appeal may be brought under this Article only by—
- (a) a relevant licence holder (within the meaning of Article 14);
  - (b) any other person who holds a licence of any type under Article 10(1) whose interests are materially affected by the decision;
  - (c) a qualifying body or association in the capacity of representing a person falling within sub-paragraphs (a) or (b);
  - (d) the General Consumer Council for Northern Ireland in the capacity of representing consumers whose interests are materially affected by the decision.
- (3) The permission of the CMA is required for the bringing of an appeal under this Article.
- (4) The CMA may refuse permission to bring an appeal only on one of the following grounds—
- (a) in relation to an appeal brought by a person falling within paragraph (2)(b), that the interests of the person are not materially affected by the decision;
  - (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
  - (c) in relation to an appeal brought by the General Consumer Council for Northern Ireland, that the interests of the consumers represented are not materially affected by the decision;
  - (d) in relation to any appeal—
    - (i) that the appeal is brought for reasons that are trivial or vexatious;
    - (ii) that the appeal has no reasonable prospect of success.

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(5) References in this Article to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

#### **Procedure on appeal to CMA**

**14C.**—(1) Schedule 5A has effect.

(2) Except where specified otherwise in Schedule 5A, the functions of the CMA with respect to an appeal under Article 14B are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 <sup>F66</sup>.

**F66** 2013 c.24

#### **Determination by CMA of appeal**

**14D.**—(1) This Article applies to every appeal brought under Article 14B.

(2) In determining an appeal the CMA must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—

- (a) in the carrying out of its principal objective under Article 12 of the Energy Order or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (as the case may be) <sup>F67</sup>;
- (b) in the performance of its duties under either such Article;
- (c) in the performance of its duties under Article 6B of the Energy Order.

(3) In determining the appeal the CMA—

- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
- (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.

(4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—

- (a) that the Authority failed properly to have regard to any matter mentioned in paragraph (2);
- (b) that the Authority failed to give the appropriate weight to any matter mentioned in paragraph (2);
- (c) that the decision was based, wholly or partly, on an error of fact;
- (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of Article 14(8)(b);
- (e) that the decision was wrong in law.

(5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

**F67** S.I. 2007/913(N.I.7)

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### **CMA's powers on allowing appeal**

**14E.**—(1) This Article applies where the CMA allows an appeal to any extent.

(2) If the appeal is in relation to a price control decision, the CMA must do one or more of the following—

- (a) quash the decision (to the extent that the appeal is allowed);
- (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA;
- (c) substitute the CMA's decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.

(3) If the appeal is in relation to any other decision, the CMA must do one or both of the following—

- (a) quash the decision (to the extent that the appeal is allowed);
- (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA.

(4) A direction under paragraphs (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).

(5) A person to whom a direction is given under paragraphs (2) or (3) must comply with it.

(6) A direction given under paragraphs (2) or (3) to a person other than the Authority is enforceable as if it were an order of the High Court.

(7) For the purposes of this Article a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the CMA's opinion, to limit or control the charges on, or the revenue of, the holder of the licence.

(8) In determining for the purposes of paragraph (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.

(9) In this Article and Articles 14F and 14G any reference to a party to an appeal is to be read in accordance with Schedule 5A.

### **Time limits for CMA to determine an appeal**

**14F.**—(1) The CMA must—

- (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
- (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.

(2) Paragraph (1)(a) or (b) does not apply if paragraph (3) applies.

(3) This subsection applies where—

- (a) the CMA has received representations on the timing of the determination from a party to the appeal; and
- (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in paragraph (1)(a) or (b).

(4) Where paragraph (3) applies, the CMA must—

- (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
- (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.

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- (5) Where paragraph (3) applies, the CMA must also—
- (a) inform the parties to the appeal of the time limit for determining the appeal; and
  - (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.
- (6) In this Article “price control decision” is to be read in accordance with Article 14E.
- (7) References in this Article to the permission date are to the date on which the CMA gave permission to bring the appeal in accordance with Article 14B(3).

#### **Determination of appeal by CMA: supplementary**

**14G.**—(1) A determination by the CMA on an appeal—

- (a) must be contained in an order made by the CMA;
- (b) must set out the reasons for the determination;
- (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
- (d) must be notified by the CMA to the parties to the appeal;
- (e) must be published by the CMA—
  - (i) as soon as reasonably practicable after the determination is made;
  - (ii) in such manner as the CMA considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).

(2) The CMA may exclude from publication under paragraph (1)(e) any information which it is satisfied is—

- (a) commercial information, the disclosure of which would, or might in the CMA's opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or
- (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CMA's opinion, significantly harm the individual's interests.

(3) The Authority must take such steps as it considers requisite for it to comply with an order of the CMA made by virtue of paragraph (1)(a).

(4) The steps must be taken—

- (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
- (b) in any other case, within a reasonable time.

(5) Paragraphs (2) to (4) of Article 14A apply where a condition of a licence is modified in accordance with Article 14E as they apply where a condition of a licence is modified under Article 14.]

#### *Supply by public electricity suppliers*

#### **[<sup>F68</sup> Duty to connect on request**

**19.**—(1) An electricity distributor is under a duty—



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- (a) to make a connection between a distribution system of his and any premises, when required to do so by—
    - (i) the owner or occupier of the premises; or
    - (ii) an electricity supplier or person supplying electricity under an exemption acting with the consent of the owner or occupier of the premises, for the purpose of enabling electricity to be conveyed to or from the premises;
  - (b) to make a connection between a distribution system of his and any distribution system of another electricity distributor, when required to do so by that distributor for the purpose of enabling electricity to be conveyed to or from that other system.
- (2) Any duty under paragraph (1) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.
- (3) The duties under this Article shall be performed subject to such terms as may be agreed under Article 20 for so long as the connection is required.
- (4) In this Article and Articles 20 to 26—
- (a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);
  - (b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant); and
  - (c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.
- (5) The duties under this Article are subject to the following provisions of this Part and any regulations made under those provisions.]

**F68** Arts. 19-26 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 9 (with transitional provisions in Pt. IV)

#### [<sup>F69</sup> Procedure for requiring a connection

**20.**—(1) Where a person requires a connection to be made by an electricity distributor in pursuance of Article 19(1), he shall give the distributor a notice requiring him to offer terms for making the connection.

- (2) That notice must specify—
- (a) the premises or distribution system to which a connection to the distributor's system is required;
  - (b) the date on or by which the connection is to be made; and
  - (c) the maximum power at which electricity may be required to be conveyed through the connection.

(3) The person requiring a connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.

(4) A request under paragraph (3) shall be made as soon as practicable after the notice under paragraph (1) is given (if not made before that time).

(5) As soon as practicable after receiving the notice under paragraph (1) and any information requested under paragraph (3) the distributor shall give to the person requiring the connection a notice—

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- (a) stating the extent to which the proposals specified in the other person's notice under paragraph (1) are acceptable to the distributor and specifying any counter proposals made by the distributor;
- (b) specifying any payment which that person will be required to make under Article 22(1), or under regulations made under Article 22(2);
- (c) specifying any security which that person will be required to give under Article 23;
- (d) specifying any other terms which that person will be required to accept under Article 24; and
- (e) stating the effect of Article 26.]

**F69** Arts. 19-26 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 9 (with transitional provisions in Pt. IV)

#### [<sup>F70</sup> **Exceptions from duty to connect**

**21.**—(1) Nothing in Article 19(1) requires an electricity distributor to make a connection if and to the extent that—

- (a) he is prevented from doing so by circumstances beyond his control;
- (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under Article 32, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
- (c) there is a lack of capacity or there are exceptional circumstances which render it impracticable for him to do so.

(2) Without prejudice to the generality of paragraph (1) an electricity distributor is not required to make a connection if—

- (a) making the connection involves the distributor doing something which, without the consent of another person, would require the exercise of a power conferred on him by any provision of Schedule 3 or 4;
- (b) those provisions do not have effect in relation to him; and
- (c) any necessary consent has not, at the time the request is made, been given.

(3) Paragraph (1)(c) does not permit an electricity distributor to disconnect any premises or distribution system to which a connection is being maintained by him unless the distributor gives—

- (a) where the connection is to premises, to the occupier or to the owner if the premises are not occupied;
- (b) where the connection is to another distribution system, to the electricity distributor who runs that system,

not less than seven working days' notice of his intention to disconnect the premises or distribution system.]

**F70** Arts. 19-26 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 9 (with transitional provisions in Pt. IV)

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## [<sup>F71</sup> Power to recover expenditure

**22.**—(1) Where any electric line or electrical plant is provided by an electricity distributor under Article 19(1), the distributor may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the connection to such extent as is reasonable in all the circumstances.

(2) Regulations made, after consultation with the Authority, may make provision for entitling an electricity distributor to require a person requiring a connection in pursuance of Article 19(1) to pay to the distributor, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of making the connection, such amount as may be reasonable in all the circumstances if—

- (a) the connection is required within the prescribed period after the provision of the line or plant; and
- (b) a person (“the initial contributor”) has made a payment to the distributor in respect of those expenses, the line or plant having been provided for the purpose of making a connection to any premises or distribution system as required by that person.

(3) Regulations under paragraph (2) may require an electricity distributor who, in pursuance of this Article or the regulations, has recovered any amount in respect of expenses reasonably incurred in providing any electric line or electrical plant—

- (a) to exercise his rights under the regulations in respect of those expenses; and
- (b) to apply any payments received by him in the exercise of those rights in making such payments as may be appropriate towards reimbursing the initial contributor and any persons previously required to make payments under the regulations.

(4) Any reference in this Article to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in continuing to provide it.]

**F71** Arts. 19-26 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 9 (with transitional provisions in Pt. IV)

## [<sup>F72</sup> Power to require security

**23.**—(1) Subject to the following provisions of this Article, an electricity distributor may require any person who requires a connection in pursuance of Article 19(1) to give him reasonable security for the payment to him of all money which may become due to him under Article 22 in respect of the provision of any electric line or electrical plant.

(2) If a person fails to give any security required under paragraph (1), or the security given has become invalid or insufficient, and he fails to provide alternative or additional security, the electricity distributor may if he thinks fit—

- (a) if the connection has not been made, refuse to provide the line or plant for so long as the failure continues; or
- (b) if the connection is being maintained, disconnect the premises or distribution system in question.

(3) Where any money is deposited with an electricity distributor by way of security in pursuance of this Article, the distributor shall pay interest, at such rate as may from time to time be fixed by the distributor with the approval of the Authority, on every sum of 50p so deposited for every three months during which it remains in the hands of the distributor.]

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**F72** Arts. 19-26 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 9 (with transitional provisions in Pt. IV)

### [<sup>F73</sup> **Additional terms of connection**

**24.** An electricity distributor may require any person who requires a connection in pursuance of Article 19(1) above to accept in respect of the making of the connection—

- (a) any restrictions which must be imposed for the purpose of enabling the distributor to comply with regulations under Article 32;
- (b) any terms which it is reasonable in all the circumstances for that person to be required to accept; and
- (c) without prejudice to the generality of sub-paragraph (b), any terms restricting any liability of the distributor for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.]

**F73** Arts. 19-26 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 9 (with transitional provisions in Pt. IV)

### [<sup>F74</sup> **Special agreements with respect to connection**

**25.**—(1) Notwithstanding anything in Articles 19 to 24, a person who requires a connection in pursuance of Article 19(1) may enter into an agreement with the electricity distributor (referred to in this Part as a “special connection agreement”) for the making of the connection on such terms as may be agreed by the parties.

(2) So long as a special connection agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided for by Articles 19 to 24.

(3) Nothing in paragraph (2) prevents the giving of a notice under Article 20(1) requiring a connection to be made as from the time when a special connection agreement ceases to be effective.]

**F74** Arts. 19-26 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 9 (with transitional provisions in Pt. IV)

### [<sup>F75</sup> **Determination of disputes**

**26.**—(1) A dispute arising under Articles 19 to 25 between an electricity distributor and a person requiring a connection.

- (a) may be referred to the Authority by either party; and
- (b) on such a reference, shall be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator appointed by the Authority,

and the practice and procedure to be followed in connection with any such determination shall be such as the Authority may consider appropriate.

(2) No dispute arising under Articles 19 to 25 which relates to the making of a connection between any premises and a distribution system may be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made.

(3) Where a dispute arising under Articles 19 to 25 between an electricity distributor and a person requiring a connection falls to be determined under this Article, the Authority may give directions

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as to the circumstances in which, and the terms on which, the distributor is to make or (as the case may be) to maintain a connection pending the determination of the dispute.

(4) Where any dispute arising under Article 23(1) falls to be determined under this Article, the Authority may give directions as to the security (if any) to be given pending the determination of the dispute.

(5) Directions under paragraphs (3) or (4) may apply either in cases of particular descriptions or in particular cases.

(6) A person making an order under this Article shall include in the order his reasons for reaching his decision with respect to the dispute.

(7) An order under this Article—

(a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and

(b) shall be final and shall be enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the county court.

(8) In including in an order under this Article any such provision as to costs or expenses as is mentioned in paragraph (7), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

(9) Article 19(4)(a) does not apply to the references in this Article to making a connection.]

**F75** Arts. 19-26 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 9 (with transitional provisions in Pt. IV)

## [<sup>F76</sup> **Electricity Supply Code**

**27.** Schedule 6 (which relates to the distribution and supply of electricity) shall have effect.]

**F76** Art. 27 substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 5(1) (with transitional provisions in Pt. IV)

### *Enforcement of preceding provisions*

*Arts. 28#30 rep. by 2003 NI 6*

### **Power to require information, etc.**

**31.**—(1) Where it appears to the Director that a licence holder may be contravening, or may have contravened, any relevant condition or requirement<sup>F77</sup> (as defined in Article 41 of the Energy (Northern Ireland) Order 2003)], the Director may, for any purpose connected with such of his functions under Article<sup>F77</sup> . . . [<sup>F78F77</sup> . . . 45B] as are exercisable in relation to that matter, serve a notice under paragraph (2) on any person.

(2) A notice under this paragraph is a notice signed by the Director and—

(a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Director or to any person appointed by the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or

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(b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Director such information as may be specified or described in the notice.

(3) No person shall be required under this Article to produce any documents which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(4) A person who without reasonable excuse fails to do anything required of him by notice under paragraph (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under paragraph (2) to produce shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under paragraph (2), the High Court may, on the application of the Director, make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs of and incidental to the application shall be borne by the person in default or by any officers of a company or other body or association who are responsible for its default.

**F77** 2003 NI 6  
**F78** 1992 NI 13

### **[<sup>F79</sup>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.]

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F79 SR 2005/335

*Provisions with respect to supply generally*

**Regulations relating to supply and safety**

- 32.**—(1) Regulations may make such provision as the Department thinks fit for the purpose of—
- (a) securing that supplies of electricity are regular and efficient;
  - (b) protecting the public from dangers arising from the generation, transmission [<sup>F80</sup>, distribution] or supply of electricity, from the use of electricity supplied or from the installation, maintenance or use of any electric line or electrical plant; and
  - (c) without prejudice to the generality of sub-paragraph (b), eliminating or reducing the risks of personal injury, or damage to property or interference with its use, arising as mentioned in that sub-paragraph.
- (2) Without prejudice to the generality of paragraph (1), regulations under this Article may—
- (a) prohibit the [<sup>F81</sup>distribution] or transmission of electricity except by means of a system approved by the Department;
  - (b) make provision requiring notice in the prescribed form to be given to the Department, in such cases as may be specified in the regulations, of accidents and of failures of [<sup>F82</sup>in the distribution or transmission] of electricity;
  - (c) [<sup>F83</sup>make provision as to the keeping, by electricity distributors or persons authorised by a licence or exemption to participate in the transmission of electricity, of maps, plans and sections as to their productions (on payment if so required of a reasonable fee) for inspection or copying;]
  - [<sup>F84</sup>(d) make provision for relieving electricity distributors from any duty under Article 19 or for authorising them to disconnect any premises or distribution system in such cases as may be prescribed;]
  - (e) make provision requiring compliance with notices given by the Department specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer, for the purpose of—
    - (i) preventing or ending a breach of regulations under this Article; or
    - (ii) eliminating or reducing a risk of personal injury or damage to property or interference with its use;
  - (f) provide for particular requirements of the regulations to be deemed to be complied with in the case of any electric line or electrical plant complying with specified standards or requirements;
  - (g) provide for the granting of exemptions from any requirement of the regulations for such periods as may be determined by or under the regulations;
  - (h) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.
- (3) Regulations under this Article may provide that any person—
- (a) who contravenes any specified provision of the regulations; or
  - (b) who does so in specified circumstances,

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shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but nothing in this paragraph shall affect any liability of any such person to pay compensation in respect of any damage or injury which may have been caused by the contravention.

(4) No proceedings shall be instituted in respect of an offence under the regulations except by or on behalf of the Department or the Director of Public Prosecutions for Northern Ireland.

- F80** Words in art. 32(1)(b) inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 5(a)** (with transitional provisions in Pt. IV)
- F81** Word in art. 32(2)(a) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 5(b)** (with transitional provisions in Pt. IV)
- F82** Words in art. 32(2)(b) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 5(c)** (with transitional provisions in Pt. IV)
- F83** Words in art. 32(2)(c) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 5(d)** (with transitional provisions in Pt. IV)
- F84** Art. 32(2)(d) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 5(e)** (with transitional provisions in Pt. IV)

### **Electrical inspectors**

**33.**—(1) The Department may appoint competent and impartial persons to be electrical inspectors under this Part.

(2) The duties of an electrical inspector under this Part shall be as follows—

- (a) to inspect and test, periodically and in special cases, electric lines and electrical plant belonging to persons authorised by a licence or exemption to generate,<sup>[F85]</sup> supply or participate in the transmission of] electricity;
- (b) to examine, periodically and in special cases, the generation, transmission <sup>[F86]</sup>, distribution] or supply of electricity by such persons;
- (c) to inspect and test, if and when required by any consumer, any such lines and plant on the consumer's premises, for the purpose of determining whether any requirement imposed by or under this Part in respect of the lines or plant or the <sup>[F87]</sup>conveyance] of electricity through or by them has been complied with; and
- (d) such other duties as may be imposed by regulations under this Article or as the Department may determine.

(3) Regulations may—

- (a) prescribe the manner in which and the times at which any duties are to be performed by electrical inspectors;
- (b) require persons authorised by a licence or exemption to generate,<sup>[F88]</sup> supply or participate in the transmission of] electricity—
  - (i) to furnish electrical inspectors with records or other information; and
  - (ii) to allow such inspectors access to premises and the use of electrical plant and other facilities;
- <sup>[F89]</sup>(c) make provision for relieving electricity distributors from any duty under Article 19 or for authorising them to disconnect any premises or distribution system in such cases as may be prescribed;]
- (d) prescribe the amount of the fees which are to be payable to such inspectors.

(4) Any fees received by electrical inspectors shall be paid to the Department.



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- F85** Words in art. 33(2)(a) substituted (3.7.2007) by Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)), arts. 1(2), 65, Sch. 3 para. 11; S.R. 2007/320, **art. 2**, Sch. 1
- F86** Words in art. 33(2)(b) inserted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 11(1), **Sch. 2 para. 6(a)** (with transitional provisions in Pt. IV)
- F87** Word in art. 33(2)(c) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 11(1), **Sch. 2 para. 6(b)** (with transitional provisions in Pt. IV)
- F88** Words in art. 33(3)(b) substituted (3.7.2007) by Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)), arts. 1(2), 65, Sch. 3 para. 11; S.R. 2007/320, **art. 2**, Sch. 1
- F89** Art. 33(3)(c) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 11(1), **Sch. 2 para. 6(c)** (with transitional provisions in Pt. IV)

### *Use, etc., of meters*

**34.** The provisions of Schedule 7 (which relate to the use, certification, testing and maintenance of electricity meters) shall have effect.

### *Protection of public interest*

#### <sup>F90</sup>*Electricity from non-fossil fuel sources*

**35.**—(1) The Department may, after consultation with the Director and with the licence holders concerned, by order require<sup>F91</sup> any holder of a licence under Article 10(1)(b) or (c), before a day specified in the order, to make (in so far as he has not already done so) and produce evidence to the Director showing that he has made—

- (a) such arrangements; or
- (b) where a previous order under this paragraph has had effect in relation to him, such additional arrangements,

as will secure the result mentioned in paragraph (2).

(2) The result referred to in paragraph (1) is that, for a period specified in the order, there will be available to the licence holder—

- (a) from non-fossil fuel generating stations; or
- (b) if the order so provides, from non-fossil fuel generating stations of any particular description,

an aggregate amount of generating capacity which is not less than that specified in relation to him in the order.

(3) A holder of a licence under Article 10(1)(b) or (c) who—

- (a) fails to comply with an order under paragraph (1); or
- (b) having complied with such an order, by any act of his prevents the arrangements made by him from securing the result mentioned in paragraph (2),

shall be guilty of an offence and shall be liable on conviction on indictment to a fine.

(4) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

(5) Regulations may—

- (a) make provision as to the method of calculating the capacity of generating stations, and the manner in which such capacity shall be treated as available for the purposes of this Article;

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- (b) provide that this Article shall have effect in relation to any non-fossil fuel generating station which is driven by water, wind or solar power with such modifications as may be prescribed; and
- (c) provide that electricity generated outside Northern Ireland shall be treated for the purposes of this Article as generated by a non-fossil fuel generating station in such circumstances and to such extent as may be prescribed.
- (6) In this Article—
- “coal products” means any substances produced directly or indirectly from coal;
- “fossil fuel” means coal, coal products, peat, lignite, crude liquid petroleum or petroleum products;
- “non-fossil fuel generating station” means a generating station which is (or may be) fuelled or driven otherwise than by a fossil fuel;
- “petroleum products” has the same meaning as in the Energy Act 1976<sup>F92</sup>.

(7) In relation to any time before Article 8 comes into operation, any requirement imposed by paragraph (1) to consult with holders of a licence under Article 10(1)(b) or (c) shall be construed as a requirement to consult with Northern Ireland Electricity.

**F90** prosp. rep. with saving by [2003 NI 6](#)

**F91** [2003 NI 6](#)

**F92** [1976 c. 76](#)

### ***Fossil fuel levy***

**36.** Where the Department has made one or more orders under Article 35 in relation to holders of a licence under Article 10(1)(b) or (c), regulations may provide—

- [<sup>F93</sup>(a) for the imposition on such licence holders, and on other persons authorised by a licence under Article 10(1)(c), of a levy;]
- (b) for the collection of payments in respect of that levy by a prescribed person; and
- (c) for the making by that person of payments out of that levy.

**F93** [Art. 36\(a\)](#) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), [Sch. 2 para. 7](#) (with transitional provisions in [Pt. IV](#))

### ***Fuel stocks, etc., at generating stations***

**37.—**(1) This Article applies to any generating station which—

- (a) is of a capacity not less than 10 megawatts; and
- (b) is fuelled otherwise than by waste or manufactured gases;

and in this paragraph “waste” has the same meaning as in Article 36(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978<sup>F94</sup>.

(2) The Department may by order provide that paragraph (1) shall have effect as if for the capacity mentioned in that paragraph there were substituted such other capacity (not exceeding 100 megawatts) as may be specified in the order.

(3) In respect of any generating station to which this Article applies, the Department may give a direction requiring the person who operates it—

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- (a) to make such arrangements with respect to stocks of fuel and other materials held at or near that generating station for the purposes of its operation as will—
    - (i) enable those stocks to be brought within a specified time to, and thereafter maintained at, a specified level; and
    - (ii) ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by a direction under paragraph (4);
  - (b) to create such stocks and make such arrangements with respect to them;
- and the amount of any stocks may be specified by reference to the period for which it would enable the generating station to be maintained in operation.
- (4) In respect of any generating station to which this Article applies, the Department may give a direction—
- (a) authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station; and
  - (b) requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels.
- (5) In paragraphs (3) and (4) “specified” means specified by or under the Department's direction; and a direction may—
- (a) specify the cases and circumstances in which any stocks are to be treated as held at or near any generating station;
  - (b) specify the extent to which the direction may be treated as complied with where, under arrangements made or approved by the Department, access can be had to stocks held for the use of a number of consumers;
  - (c) specify the manner in which any period mentioned in paragraph (3) or (4) is to be determined;
  - (d) require anything falling to be specified under the direction to be specified by such persons and by reference to such matters as may be specified.
- (6) A direction under paragraph (3) or (4) which confers on any person the function of specifying anything falling to be specified under the direction may require that person to exercise that function and to do so in such manner as may be specified by the direction.

F94 1978 NI 19

### ***Provisions supplementary to Article 37***

**38.**—<sup>[F95]</sup>(1) The Department may give a direction requiring the holder of a transmission licence to give to the Department, after consultation with specified persons, any information or advice which the Department may reasonably require for purposes connected with the exercise of its functions under Article 37.

(2) The Department may give a direction requiring any person who is authorised by a licence to participate in the transmission of electricity to carry on the activities which the licence authorises or regulates (or any of them), at any time when a direction under Article 37 (4) is in force, either in a specified manner or with a view to achieving specified objectives.

(3) In paragraphs (1) and (2) “specified” means specified by or under the Department’s direction; and a person subject to a direction under paragraph (2) shall give effect to it notwithstanding any other duty imposed on him by or under this Part.]

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(4) The Department shall lay before the Assembly a copy of every direction given under Article 37 or this Article unless the Department is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

(5) A person who, without reasonable excuse, contravenes a direction of the Department under Article 37 or this Article shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

(7) Paragraphs 1 to 4, 7 and 8 of Schedule 2 to the Energy Act 1976<sup>F96</sup> (administration of Act and other matters) shall have effect as if—

- (a) Article 37 were contained in that Act;
- (b) the powers of paragraph 1 were exercisable for any purpose connected with securing compliance with a direction under that Article;
- (c) information obtained by virtue of that paragraph could lawfully be disclosed to any person by whom anything falls to be specified under such a direction; and
- (d) the powers conferred by sub-paragraph (1)(c) of that paragraph included power to direct that information and forecasts be furnished to any such person.

**F95** Art. 38(1)-(3) substituted (3.7.2007) by Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)), arts. 1(2), 65, Sch. 3 para. 13; S.R. 2007/320, art. 2, Sch. 1

**F96** 1976 c. 76

### ***Consent required for construction, etc., of generating stations***

**39.**—(1) Subject to paragraphs (2) and (4), a generating station shall not be constructed, extended or operated except in accordance with a consent granted by the Department.

(2) Paragraph (1) shall not apply to a generating station whose capacity—

- (a) does not exceed the permitted capacity, that is to say,<sup>[F97]</sup> 10 megawatts; and
- (b) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended.

<sup>[F98]</sup>(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.]

(3) The Department may by order provide that paragraph (2) shall have effect as if for the permitted capacity mentioned in sub-paragraph (a) there were substituted such other capacity as may be specified in the order.

(4) The Department may by order direct that paragraph (1) shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.

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(5) A consent under this Article—

- (a) may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Department to be appropriate; and
- (b) shall continue in force for such period as may be specified in or determined by or under the consent.

(6) Any person who without reasonable excuse contravenes the provisions of this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

(8) The provisions of Schedule 8 (which relate to consents under this Article and Article 40) shall have effect.

[<sup>F98</sup>(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.]

**F97** SR 1994/180

**F98** SR 2005/335

**Modifications etc. (not altering text)**

**C4** [Art. 39\(2\)](#) modified (5.3.2008) by [Electricity \(Offshore Wind and Water Driven Generating Stations\) \(Permitted Capacity\) Order \(Northern Ireland\) 2008 \(S.R. 2008/54\)](#), **art. 2(1)**

***Consent required for overhead lines***

**40.**—(1) Subject to paragraph (2), an electric line shall not be installed or kept installed above ground except in accordance with a consent granted by the Department.

(2) Paragraph (1) shall not apply—

- (a) in relation to an electric line which has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying a single consumer;
- (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
- (c) in such other cases as may be prescribed.

[<sup>F99</sup>(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.]

(3) A consent under this Article—

- (a) may include such conditions (including conditions as to the ownership and operation of the line) as appear to the Department to be appropriate;
- (b) may be varied or revoked by the Department at any time after the end of such period as may be specified in the consent; and

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(c) subject to sub-paragraph (b), shall continue in force for such period as may be specified in or determined by or under the consent.

(4) Any person who without reasonable excuse contravenes the provisions of this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

[<sup>F99</sup>(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.]

**F99** SR 2005/335

### ***Preservation of amenity and fisheries***

**41.** The provisions of Schedule 9 (which relate to the preservation of amenity and fisheries) shall have effect.

### *Consumer protection: standards of performance*

#### [<sup>F100</sup> **Electricity supply and distribution: performance in individual cases.**

**42.—**(1) Regulations may, after consultation with persons or bodies appearing to the Authority to be representative of persons likely to be affected and arranging for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and considering the results, prescribe such standards of performance in connection with—

- (a) the activities of electricity suppliers, so far as affecting customers or potential customers of theirs, as in the Authority's opinion ought to be achieved in individual cases; and
  - (b) the activities of electricity distributors, so far as affecting customers or potential customers of electricity suppliers, as in the Authority's opinion ought to be achieved in individual cases.
- (2) Regulations under paragraph (1)(a) may—
- (a) prescribe circumstances in which electricity suppliers are to inform persons of their rights under this Article;
  - (b) prescribe such standards of performance in relation to any duty arising under sub-paragraph (a) as, in the Authority's opinion, ought to be achieved in all cases;
  - (c) prescribe circumstances in which electricity suppliers are to be exempted from any requirements of the regulations or this Article; and
  - (d) if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers, make different provision with respect to different electricity suppliers.
- (3) Regulations under paragraph (1)(b) may—
- (a) prescribe circumstances in which electricity distributors are to inform customers or potential customers of electricity suppliers of their rights under this Article;
  - (b) prescribe such standards of performance in relation to any duty arising under sub-paragraph (a) as, in the Authority's opinion, ought to be achieved in all cases;

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- (c) make provision as to the manner in which compensation under this Article is to be made;
  - (d) prescribe circumstances in which electricity distributors are to be exempted from any requirements of the regulations or this Article; and
  - (e) if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors, make different provision with respect to different electricity distributors.
- (4) If an electricity supplier or an electricity distributor fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.
- (5) Provision made under paragraph (3)(c) may—
- (a) require or permit compensation to be made on behalf of electricity distributors by electricity suppliers to customers or potential customers; and
  - (b) require electricity suppliers to provide services to electricity distributors in connection with the making of compensation under this Article.
- (6) The making of compensation under this Article in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (7) In paragraph (1), any reference to research or consultation includes research or consultation carried out in anticipation of the coming into operation of this Article.]

**F100** Arts. 42, 42A, 43, 43A, 43B substituted (3.7.2007 for art. 43B for certain purposes otherwise 1.11.2007) for arts. 42, 43 by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2)(3), **10** (with transitional provisions in Pt. IV)

### **Standards of performance in individual cases: disputes**

- [<sup>F101</sup>**42A.**—(1) Any dispute arising under Article 42 or regulations made under that Article—
- (a) may be referred to the Authority by either party or, with the agreement of either party, by the General Consumer Council; and
  - (b) on such a reference, shall be determined by order made by the Authority.
- (2) A person making an order under paragraph (1) shall include in the order his reasons for reaching his decision with respect to the dispute.
- (3) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.
- (4) An order under paragraph (1) shall be final and shall be enforceable as if it were a judgment of a county court.]

**F101** Arts. 42, 42A, 43, 43A, 43B substituted (3.7.2007 for art. 43B for certain purposes otherwise 1.11.2007) for arts. 42, 43 by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2)(3), **10** (with transitional provisions in Pt. IV)

### [<sup>F102</sup>**Overall standards of performance: electricity supply**

- 43.**—(1) The Authority may, from time to time—
- (a) determine such standards of overall performance in connection with the provision of electricity supply services as, in its opinion, ought to be achieved by electricity suppliers; and

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(b) arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined.

(2) Different standards may be determined under this Article for different electricity suppliers if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers.

(3) It shall be the duty of every electricity supplier to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this Article.]

**F102** Arts. 42, 42A, 43, 43A, 43B substituted (3.7.2007 for art. 43B for certain purposes otherwise 1.11.2007) for arts. 42, 43 by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2)(3), **10** (with transitional provisions in Pt. IV)

### **[<sup>F103</sup>Overall standards of performance: electricity distributors**

**43A.**—(1) The Authority may from time to time—

- (a) determine such standards of overall performance in connection with the activities of electricity distributors as, in its opinion, ought to be achieved by them; and
- (b) arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined.

(2) Different standards may be determined for different electricity distributors if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors.

(3) It shall be the duty of every electricity distributor to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this Article.]

**F103** Arts. 42, 42A, 43, 43A, 43B substituted (3.7.2007 for art. 43B for certain purposes otherwise 1.11.2007) for arts. 42, 43 by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2)(3), **10** (with transitional provisions in Pt. IV)

### **[<sup>F104</sup>Procedures for prescribing or determining standards of performance**

**43B.**—(1) Before determining standards of performance under Article 43 or 43A, the Authority shall—

- (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
- (b) publish a notice of its proposals in accordance with paragraphs (2) and (3) and consider any representations which are duly made in respect of those proposals; and
- (c) consult the General Consumer Council and other persons or bodies mentioned in paragraph (4).

(2) The notice required by paragraph (1)(b) is a notice—

- (a) stating that the Authority proposes to determine standards of performance and setting out the standards of performance proposed;
- (b) stating the reasons why it proposes to determine those standards of performance; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.



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(3) A notice required by paragraph (1)(b) shall be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals.

(4) The persons or bodies to be consulted by the Authority under paragraph (1)(c) are—

- (a) electricity suppliers (in the case of standards of performance under Article 43) or electricity distributors and electricity suppliers (in the case of standards of performance under Article 43A); and
- (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the determination.

(5) The Authority shall make arrangements for securing that notices under paragraph (1)(b) and determinations under Article 43 and 43A are made available to the public by whatever means it considers appropriate.

(6) Any requirement for research or consultation under this Article may be satisfied by research and consultation carried out in anticipation of its coming into operation.]

**F104** Arts. 42, 42A, 43, 43A, 43B substituted (3.7.2007 for art. 43B for certain purposes otherwise 1.11.2007) for arts. 42, 43 by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2)(3), **10** (with transitional provisions in Pt. IV)

#### ***Promotion of efficient use of electricity***

**44.**—(1) The Director may, after consultation with [<sup>F105</sup>electricity suppliers] and with persons or bodies appearing to him to be representative of persons likely to be affected,—

- (a) determine such standards of performance in connection with the promotion of the efficient use of electricity by consumers as, in his opinion, ought to be achieved by such suppliers; and
- (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.

(2) Different standards may be determined under this Article for different [<sup>F105</sup>electricity suppliers].

[<sup>F106</sup>(3) Each [<sup>F107</sup>electricity supplier] shall, in such form and manner and with such frequency as [<sup>F108</sup>the Authority] may direct, take steps to inform his customers of—

- (a) the standards determined under this Article which are applicable to that supplier; and
- (b) that supplier's level of performance as respects those standards.]

**F105** Words in art. 44(1)(2) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 8(a)** (with transitional provisions in Pt. IV)

**F106** 1992 NI 13

**F107** Words in art. 44(3) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 8(b)** (with transitional provisions in Pt. IV)

**F108** Words in art. 44(3) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 8(c)** (with transitional provisions in Pt. IV)

#### ***Information with respect to levels of performance***

**45.**—(1) [<sup>F109</sup>the Authority] shall collect information with respect to—

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- (a) the compensation made by [<sup>F110</sup>electricity suppliers and electricity distributors] under Article 42;
  - (b) the levels of overall performance achieved by such suppliers in connection with the provision of electricity supply services; and
  - (c) the levels of performance achieved by such suppliers in connection with the promotion of the efficient use of electricity by consumers.
- (2) On or before such date in each year as may be specified in a direction given by the Director, each [<sup>F111</sup>electricity supplier] shall furnish to the Director the following information, namely—
- (a) as respects each standard prescribed by regulations under Article 42, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under Article 43 or 44, such information with respect to the level of performance achieved by the supplier as may be so specified.
- [<sup>F112</sup>(2A) At such times as may be specified in a direction given by the Authority, each electricity distributor shall furnish to the Authority the following information, namely—
- (a) as respects each standard prescribed by regulations under Article 42, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under Article 43A, such information with respect to the level of performance achieved by the distributor as may be so specified.
- (2B) The Authority shall from time to time collect information with respect to—
- (a) the compensation made by electricity distributors under Article 42;
  - (b) the levels of overall performance achieved by electricity distributors.
- (2C) At such times as may be specified in a direction given by the Authority, each electricity distributor shall furnish to the Authority the following information, namely—
- (a) as respects each standard prescribed by regulations under Article 42, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under Article 43A, such information with respect to the level of performance achieved by the distributor as may be so specified.]
- (3) [<sup>F113</sup>An electricity supplier] who without reasonable excuse fails to do anything required of him by paragraph (2) [<sup>F114</sup>and any electricity distributor who without reasonable excuse fails to do anything required of him by paragraph (2A) or (2C)] shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) [<sup>F109</sup>the Authority] shall at least once in every year arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or furnished to him under this Article as it may appear to him expedient to give to customers or potential customers of [<sup>F115</sup>electricity suppliers or electricity distributors].
- (5) In arranging for the publication of any such information [<sup>F109</sup>the Authority] shall have regard to the need for excluding, so far as that is practicable—
- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of [<sup>F109</sup>the Authority], seriously and prejudicially affect the interests of that individual; and

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- (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of <sup>F109</sup>the Authority], seriously and prejudicially affect the interests of that body.

- F109** Words in art. 45(1)(4)(5) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 9(a)** (with transitional provisions in Pt. IV)
- F110** Words in art. 45(1)(a) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 9(b)** (with transitional provisions in Pt. IV)
- F111** Words in art. 45(2) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 9(c)** (with transitional provisions in Pt. IV)
- F112** Art. 45(2A)-(2C) inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 9(d)** (with transitional provisions in Pt. IV)
- F113** Words in art. 45(3) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 9(e)** (with transitional provisions in Pt. IV)
- F114** Words in art. 45(3) inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 9(e)** (with transitional provisions in Pt. IV)
- F115** Words in art. 45(4) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 9(f)** (with transitional provisions in Pt. IV)

#### <sup>F116</sup>**Information to be given to customers about overall performance**

**45A.—**(1) Each <sup>F117</sup>electricity supplier and each electricity distributor] shall, in such form and manner and with such frequency as the Director may direct, take steps to inform <sup>F118</sup>customers of electricity suppliers] of—

- (a) the standards of overall performance determined under Article 43 <sup>F119</sup>or, as the case may be Article 43A] which are applicable to that supplier <sup>F120</sup>or distributor]; and
- (b) that supplier's <sup>F121</sup>or that distributor's] level of performance as respects each of those standards.

(2) In giving any such direction, the Director shall not specify a frequency of less than once in every period of 12 months.]

- F116** 1992 NI 13
- F117** Words in art. 45A(1) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 10(a)** (with transitional provisions in Pt. IV)
- F118** Words in art. 45A(1) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 10(b)** (with transitional provisions in Pt. IV)
- F119** Words in art. 45A(1)(a) inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 10(c)** (with transitional provisions in Pt. IV)
- F120** Words in art. 45A(1)(a) inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 10(d)** (with transitional provisions in Pt. IV)
- F121** Words in art. 45A(1)(b) inserted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 10(e)** (with transitional provisions in Pt. IV)

#### **Modifications etc. (not altering text)**

- C5** Art. 45A(1) modified (3.7.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(1), **54(2)(3)** (with transitional provisions in Pt. IV)

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## [<sup>F122</sup>Procedures for dealing with complaints

**45B.**—(1) Each [<sup>F123</sup>electricity supplier] shall establish a procedure for dealing with complaints made by his customers or potential customers in connection with the provision of electricity supply services.

(2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—

- (a) the supplier has consulted the [<sup>F124</sup> General Consumer Council]; and
- (b) the proposed procedure or modification has been approved by [<sup>F125</sup>the Authority].

(3) The supplier shall—

- (a) publicise the procedure in such manner as may be approved by [<sup>F125</sup>the Authority]; and
- (b) send a description of the procedure, free of charge, to any person who asks for one.

(4) [<sup>F125</sup>the Authority] may give a direction to any [<sup>F126</sup>electricity supplier] requiring the supplier to review his procedure or the manner in which it operates.

(5) A direction under paragraph (4)—

- (a) may specify the manner in which the review is to be conducted; and
- (b) shall require a written report of the review to be made to [<sup>F125</sup>the Authority].

(6) Where [<sup>F125</sup>the Authority] receives a report under paragraph (5)(b), he may, after consulting the supplier, direct him to make such modifications of—

- (a) the procedure; or
- (b) the manner in which the procedure operates,

as may be specified in the direction.

(7) Paragraph (2) does not apply to any modification made in compliance with a direction under paragraph (6).]

**F122** 1992 NI 13

**F123** Words in art. 45B(1) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 11(a)** (with transitional provisions in Pt. IV)

**F124** 2003 NI 6

**F125** Words in art. 45B(2)-(6) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 11(b)** (with transitional provisions in Pt. IV)

**F126** Words in art. 45B(4) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 11(a)** (with transitional provisions in Pt. IV)

### *Consumer protection: miscellaneous*

#### **Functions with respect to competition**

*Para. (1) rep. by 2002 c. 40*

[<sup>F127</sup>(2) The functions to which paragraph (2A) applies shall be concurrent functions of the Director and the Office of Fair Trading.

(2A) This paragraph applies to the functions of the Office of Fair Trading under Part 4 of the Enterprise Act 2002 (other than sections 166 and 171) so far as relating to commercial activities connected with the generation, transmission or supply of electricity.

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(2B) So far as necessary for the purposes of, or in connection with, paragraphs (2) and (2A), references in Part 4 of the Act of 2002 to the Office of Fair Trading (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 and 171 of that Act and in any other provision of that Act where the context otherwise requires).]

<sup>F128</sup>[  
<sup>F129</sup>(3) The Director shall be entitled to exercise, concurrently with the Office of Fair Trading, the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,
- (c) agreements, decisions or concerted practices of the kind mentioned in Article 81(1) of the treaty establishing the European Community, or
- (d) conduct which amounts to abuse of the kind mentioned in Article 82 of the treaty establishing the European Community,

which relate to commercial activities connected with the generation, transmission or supply of electricity.]

(3A) So far as necessary for the purposes of, or in connection with, the provisions of paragraph (3), references in Part I of the Competition Act 1998 to<sup>F127</sup> [the Office of Fair Trading] are to be read as including a reference to the Director (<sup>F129</sup> except in sections 31D(1) to (6), 38(1) to (6)], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

<sup>F127</sup>(4) Before the Office of Fair Trading or the Director first exercises in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2), it or he shall consult the other.

(4A) Neither the Office of Fair Trading nor the Director shall exercise in relation to any matter functions which are exercisable concurrently by virtue of paragraph (2) if functions which are so exercisable have been exercised in relation to that matter by the other.]

(5) It shall be the duty of the Director, for the purpose of assisting the<sup>F130</sup> [Competition Commission] in carrying out an investigation on a reference made to them by the Director by virtue of paragraph (2)<sup>F128</sup>. . . , to give to the Commission—

- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the Commission for that purpose; or
  - (ii) is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require and which it is within his power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this paragraph.

(6) If any question arises<sup>F131</sup> in any particular case as to the jurisdiction of the Director under any of the provisions mentioned in<sup>F127</sup> [paragraph (2A)] or (3)<sup>F132</sup>. . . <sup>F131</sup>. . . , that question shall be referred to and determined by the Department; and no objection shall be taken to anything done under—

- (a) <sup>F127</sup>[Part 4 of the Enterprise Act 2002] (reports of<sup>F130</sup> [Competition Commission]); or

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[<sup>F128</sup>(b) Part I of the Competition Act 1998 (<sup>F129</sup> other than sections 31D(1) to (6), 38(1) to (6) and 51),]

by or in relation to the Director on the ground that it should have been done by or in relation to [<sup>F127</sup> the Office of Fair Trading].

[<sup>F127</sup>(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Director by virtue of paragraph (2) as if the references in section 117(1)(a) and (2) to the Office of Fair Trading included references to the Director.]

*Para. (7) rep. by 2002 c. 40*

**F127** 2002 c. 40  
**F128** 1998 c.41  
**F129** SI 2004/1261  
**F130** SI 1999/506  
**F131** 1994 c.40  
**F132** 2002 c. 40

### ***Fixing of maximum charges for reselling electricity***

**47.**—(1) This Article applies to electricity supplied to a consumer's premises by an authorised electricity supplier, that is to say, a person who is authorised by a licence or exemption to supply electricity.

(2) The Director may fix maximum prices at which electricity to which this Article applies may be resold, and shall publish any prices so fixed in such manner as in his opinion will secure adequate publicity for them.

(3) Different prices may be fixed under this Article in different classes of cases, which may be defined by reference to areas, tariffs applicable to electricity supplied by the authorised electricity suppliers or any other relevant circumstances.

(4) If any person resells electricity to which this Article applies at a price exceeding the maximum price fixed under this Article and applicable thereto, the amount of the excess shall be recoverable summarily by the person to whom the electricity was resold.

VALID FROM 12/04/2013

### **[<sup>F133</sup>Billing disputes**

<sup>x1</sup>**47A.**—(1) A billing dispute—

- (a) may be referred by the customer who is party to the dispute to the Authority for determination in accordance with this Article; and
- (b) on such a reference, shall be determined by order made by the Authority or, if the Authority thinks fit, an arbitrator appointed by the Authority.

(2) In this Article “billing dispute” means a dispute between an electricity supplier and a customer concerning the amount of the charge which the supplier is entitled to recover from the customer in connection with the provision of electricity supply services.

(3) The practice and procedure to be followed in connection with the determination of billing disputes shall be such as the Authority thinks appropriate and shall be published by the Authority.

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(4) Except with the consent of the Authority, no billing dispute may be referred for determination under this Article—

- (a) unless the matter in dispute has first been referred to the General Consumer Council pursuant to Article 22 of the Energy (Northern Ireland) Order 2003 and the matter has not been resolved to the satisfaction of the customer within 3 months of the matter being referred to the General Consumer Council;
- (b) after the end of the period of 12 months after the end of the period in respect of which the charge which is the subject of the dispute applies.

(5) Where a billing dispute is referred to the Authority, an order under this Article shall be made and notified to the parties to the dispute within the requisite period or such longer period as the Authority may agree with the person referring the dispute.

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

- (a) the period of 2 months from the date when the dispute was referred to the Authority; or
- (b) where the information given to the Authority in relation to the dispute was in its opinion insufficient to enable it to make a determination, the period of 4 months from the date the dispute was referred to the Authority.

(7) A person making an order under this Article shall include in the order his reasons for making his decision with respect to the dispute.

(8) An order under this Article—

- (a) may include provision requiring either party to the dispute to pay a sum in respect of the costs and expenses of the person making the order; and
- (b) shall be final and enforceable as if it were a judgment of the county court.

(9) In including in an order under this Article any such provision as to costs or expenses as is mentioned in paragraph 8(a), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

(10) The Authority or an arbitrator appointed by it shall not determine any billing dispute which is the subject of proceedings before, or with respect to which judgment has been given by, any court.

(11) Neither party to any billing dispute which has been referred to the Authority for determination in accordance with this Article shall commence proceedings before any court in respect of that dispute pending the determination of the dispute in accordance with this Article.

(12) An electricity supplier may not commence proceedings before any court in respect of any charge in connection with the provision by him of electricity supply services unless, not less than 28 days before doing so, the customer concerned was informed by him, in such form and manner (if any) as may be required by any condition of the electricity supplier's licence of—

- (a) his intention to commence proceedings; and
- (b) the customer's rights by virtue of this Article.

(13) The powers of the Authority under Article 31 shall also be exercisable for any purpose connected with the determination of any billing dispute referred to him in accordance with this Article as they are exercisable for a purpose mentioned in paragraph (1) of that Article.]

#### Editorial Information

- X1** A version of art. 47A was inserted prosp. by [Competition and Service \(Electricity\) \(Northern Ireland\) 1992 \(S.I. 1992/1720 \(N.I. 13\)\)](#), **arts. 1(2), 6** and was subsequently amended 1.11.2007 by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), **Sch. 2 para. 12(a)-(d)**

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(with transitional provisions in Pt. IV.). This amended prosp. version of art. 47A was substituted on 15.4.2011 (before coming into operation) by [Gas and Electricity \(Internal Markets\) Regulations 2011 \(S.R. 2011/155\)](#), [reg. 7](#). The said amending (S.R. 2011/155), reg. 7 itself being revoked by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), [reg. 31\(2\)](#) which also repealed by reg. 31(1), art. 6 of the Competition and Service (Electricity) (Northern Ireland) 1992 which inserted the prosp. version of art. 47A that never came into operation. A new current version of art. 47A is now in operation at 12.4.2013 by (S.R. 2013/92), reg. 31(3).

**F133** Art. 47A inserted (12.4.2013) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/92\)](#), [reg. 31\(3\)](#)

*Arts. 48 and 49 rep. by 2003 NI 6*

### *Other functions of Director*

#### **General functions**

- 50.**—(1) It shall be the duty of the Director, so far as it appears to him practicable to do so—
- (a) to keep under review the carrying on both in Northern Ireland and elsewhere of activities to which this paragraph applies; and
  - (b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his<sup>F134</sup> electricity functions];

and this paragraph applies to any activities connected with the generation, transmission <sup>F135</sup>, distribution] and supply of electricity, including in particular activities connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat.

- (2) The Department may give general directions indicating—
- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under paragraph (1)(a) or (b); and
  - (b) considerations to which, in cases where it appears to the Director that any of his<sup>F134</sup> electricity functions] are exercisable, he should have particular regard in determining whether to exercise those functions.

<sup>F136</sup>(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'.]

(3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Department or<sup>F137</sup> the Office of Fair Trading] to do so, to give information, advice and assistance to the Department or<sup>F137</sup> the Office of Fair Trading] with respect to any matter in respect of which any<sup>F134</sup> of the electricity functions of the Authority] is exercisable.

<sup>F134</sup>(3A) In this Article “electricity functions” means—

- (a) functions under this Part; and
- (b) functions under the Energy (Northern Ireland) Order 2003 relating to electricity<sup>F138</sup> and
- (c) functions under the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.]]

*Para. (4) rep. by 2003 NI 6*



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**F134** 2003 NI 6

**F135** Word in art. 50(1) inserted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 11(1), **Sch. 2 para. 13** (with transitional provisions in Pt. IV)

**F136** Art. 50(2A) inserted (1.11.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 6(1)**; S.R. 2007/444, **art. 2**, Sch. 1

**F137** 2002 c. 40

**F138** Art. 50(3A)(c) and preceding word added (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, **Sch. 4 para. 6(2)**; S.R. 2007/303, **art. 2**, Sch.

*Art. 51 rep. by 2003 NI 6*

### **Keeping of register**

**52.**—(1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to paragraph (3) and to any direction given under paragraph (4), the Director shall cause to be entered in the register the provisions of—

- (a) every licence and every exemption granted to a particular person;
- (b) every modification or revocation of a licence;
- (c) every direction or consent given or determination made under a licence;

[<sup>F139</sup>(d) every final or provisional order under Article 42 of the Energy (Northern Ireland) Order 2003 relating to a licence holder, every confirmation of a provisional order so relating, every revocation of a final or provisional order so relating and every notice under paragraph (7) of that Article so relating; and

- (e) every penalty imposed under Article 45 of the Energy (Northern Ireland) Order 2003 on a licence holder and every notice under Article 45 (6) of that Order relating to such a penalty.]

(3) In entering any provision in the register, the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5)(a) and (b).

(4) If it appears to the Department that the entry of any provision in the register would be against the public interest or the commercial interests of any person, the Department may direct the Director not to enter that provision in the register.

(5) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as may be specified in an order made by the Department.

(6) Any person may, on the payment of such fee as may be specified in an order so made, require the Director to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.

(7) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

**F139** 2003 NI 6

### **Annual and other reports**

**53.**—<sup>F140</sup>(1) The Director shall, as soon as practicable after the end of each calendar year—

- (a) make to the Department a report on—
  - (i) his activities during that year; and

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(ii) the<sup>F141</sup> Competition Commission] activities during that year so far as relating to references made by him; and

(b) send a copy of that report to the chairman of the consumer committee.

<sup>F140</sup>(2) Every such report shall—

(a) include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's functions;

(b) set out any final or provisional orders made, and provisional orders confirmed, by the Director during that year;

(c) set out any general directions given to the Director during that year under Article 50(2); and

(d) include a general survey of the activities during that year of the consumer committee and a summary of any reports made to him by the committee under Article 55.

<sup>F140</sup>(3) The Department shall lay a copy of every report made by the Director under paragraph (1) before the Assembly and shall arrange for copies of every such report to be published in such manner as the Department considers appropriate.

*Para. (4) rep. by 2003 NI 6*

<sup>F140</sup>(5) In making or preparing any report under this Article the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5)(a) and (b).

<sup>F140</sup>(6) Section 125(1) of the 1973 Act (annual and other reports) shall not apply to activities of the<sup>F141</sup> Competition Commission] on which the Director is required to report by this Article.

**F140** prosp. rep. by [2003 NI 6](#)

**F141** SI 1999/506

*Arts. 54#57 rep. by 2003 NI 6*

### *Miscellaneous*

#### ***Directions for preserving security of electricity supplies, etc.***

**58.**—(1) The Department may, after consultation with a person to whom this Article applies, give to that person such directions of a general character as appear to the Department to be requisite or expedient for the purpose of—

(a) preserving the security of buildings or installations used for, or for purposes connected with, the generation, transmission or supply of electricity; or

(b) mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Department to be requisite or expedient to do so for any such purpose as is mentioned in paragraph (1), the Department may, after consultation with a person to whom this Article applies, give to that person a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.

(3) A person to whom this Article applies shall give effect to any direction given to him by the Department under this Article notwithstanding any other duty imposed on him by or under this Order.

(4) A copy of every direction given under this Article shall be laid before the Assembly unless the Department is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

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(5) A person shall not disclose, or be required under any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Department has notified him that the Department is of the opinion that disclosure of that thing is against the interests of national security or the commercial interests of some other person.

(6) This Article applies to any licence holder and any person authorised by an exemption to generate or supply electricity.

(7) In this Article “civil emergency” means any natural disaster or other emergency which, in the opinion of the Department, is or may be likely to disrupt electricity supplies.

### **Provision of statistical information**

**59.**—(1) The Department may, if the Department considers it expedient for the purpose of obtaining statistical information relating to the generation, transmission or supply of electricity, serve a notice under this Article on any licence holder or any person who is authorised by an exemption to generate or supply electricity.

(2) A notice under this Article may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Department such statistical information about that person's business as may be so specified.

(3) Subject to paragraphs (4) and (5), no information with respect to any particular business which—

- (a) has been obtained under this Article; and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be published or otherwise disclosed without the consent of that individual or the person for the time being carrying on that business.

(4) Paragraph (3) does not apply in relation to any disclosure which is made after consultation with the individual concerned, or the person for the time being carrying on the business concerned, and is of information relating to—

- (a) the quantities of electricity generated by particular methods or by the use of particular fuels;
- (b) the quantities of particular fuels used for the generation of electricity;
- (c) the quantities of electricity transferred between Northern Ireland and countries or territories outside Northern Ireland; or
- (d) the quantities of electricity supplied in Northern Ireland either generally or to persons of any particular class or description.

(5) Paragraph (3) does not apply in relation to any disclosure which is made to any Northern Ireland department or any department of the Government of the United Kingdom or for the purposes of any proceedings under this Article.

(6) The Department may, after consultation with persons or bodies appearing to the Department to be representative of persons likely to be affected, by order amend paragraph (4) so as to add other descriptions of information which may be disclosed notwithstanding that it may relate to a particular person or business.

(7) Any person who without reasonable excuse fails to furnish information in compliance with a requirement under this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(8) Any person who publishes or discloses any information in contravention of paragraph (3) or, in purported compliance with a requirement under this Article, knowingly or recklessly furnishes

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any information which is false in any material particular shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.
- (9) In this Article “information” does not include estimates as to future matters.

### ***Promotion of new techniques in national interest***

**60.**—(1) The Secretary of State shall exercise the power conferred on him by section 5 of the Science and Technology Act 1965<sup>F142</sup> (expenditure on research and development in science or technology) for the purpose of promoting such research into, and such development of, new techniques relating to the generation, transmission or supply of electricity as appears to him to be necessary in the national interest.

(2) The Secretary of State may, if he considers it expedient for purposes connected with the performance of his duty under this Article, serve notice under this paragraph on any licence holder or any person who is authorised by an exemption to generate or supply electricity.

(3) A notice under paragraph (2) may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Secretary of State such information about that person's business as may be so specified.

(4) Paragraphs (3), (5) and (7) to (9) of Article 59 shall apply for the purposes of this Article as they apply for the purposes of that Article.

**F142** 1965 c. 4

*Art. 61 rep. by 2003 NI 6*

### ***Directions restricting the use of certain information***

**62.**—(1) The Department may give to<sup>F143</sup>the holder of a transmission licence] (“the authorised person”) such directions as appear to the Department to be requisite or expedient for the purpose of securing that, in any case where paragraph (2) applies, neither the person by whom the information mentioned in that paragraph is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.

(2) This paragraph applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to generate,<sup>F144</sup>supply or participate in the transmission of] electricity <sup>F145</sup>or to act as SEM operator], the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.

(3) As soon as practicable after giving any directions under paragraph (1), the Department shall publish a copy of the directions in such manner as the Department considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.

(4) The obligation to comply with any directions under paragraph (1) is a duty owed to any person who may be affected by a contravention of them.

(5) Where a duty is owed under paragraph (4) to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

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(6) In any proceedings brought against any person under paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions.

(7) Without prejudice to any right which any person may have by virtue of paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under this Article, compliance with any such directions shall be enforceable by civil proceedings by the Department for an injunction or for any other appropriate relief.

(8) In this Article—

“dealings” includes dealings entered into otherwise than for purposes connected with the transmission of electricity;

“outside person”, in relation to any person, means any person who is not an associate of his; and for the purposes of this Article a person is an associate of another if he and that other are connected with each other within the meaning of section 839 of the Income and Corporation Taxes Act 1988<sup>F146</sup>.

- F143** Words in art. 62(1) substituted (3.7.2007) by Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)), arts. 1(2), 65, Sch. 3 para. 18(1); S.R. 2007/320, art. 2, Sch. 1
- F144** Words in art. 62(2) substituted (3.7.2007) by Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)), arts. 1(2), 65, Sch. 3 para. 18(2); S.R. 2007/320, art. 2, Sch. 1
- F145** Words in art. 62(2) inserted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, Sch. 4 para. 7; S.R. 2007/303, art. 2, Sch.
- F146** 1988 c. 1

### *Making of false statements, etc.*

**63.**—(1) If any person, in giving any information or making any application under or for the purposes of any<sup>F147</sup> relevant provision], makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

<sup>F147</sup>(1A) In paragraph (1) “relevant provision” means—

- (a) any provision of this Part or of any regulations made under this Part; and
- (b) any provision of the Energy (Northern Ireland) Order 2003 or of any regulations made under that Order.]

(2) Any person who seeks to obtain entry to any premises by falsely pretending to be—

- <sup>F148</sup>(a) an employee of, or other person acting on behalf of, an electricity supplier or electricity distributor;]
- (b) an electrical inspector; or
  - (c) a meter examiner,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) No proceedings shall be instituted in respect of an offence under paragraph (1) except by or with the consent of the Department or the Director of Public Prosecutions for Northern Ireland.

**F147** 2003 NI 6

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**F148** Art. 63(2)(a) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 11(1), **Sch. 2 para. 14** (with transitional provisions in Pt. IV)

### *Supplemental*

#### ***Powers to make regulations***

**64.**—(1) Regulations made under any provision of this Part may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—

- (a) as to the mode of proof of any matter;
- (b) as to parties and their representation;
- (c) for the right to appear before and be heard by the Department, the Director and other authorities; and
- (d) as to awarding costs of proceedings for the determination of such questions, including the amount of the costs and the enforcement of the awards.

(2) Regulations made under any provision of this Part which prescribe a period within which things are to be done may provide for extending the period so prescribed.

(3) Regulations made under any provision of this Part may—

- (a) provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed;
- (b) make such supplemental, consequential and transitional provision as the Department or, as the case may be, the Director considers appropriate.

#### ***Concurrent proceedings***

**65.**—(1) Where an application or a reference is made by a licence holder under this Part in connection with any matter, the proceedings which—

- (a) are required under this Part to be taken in relation to that application or reference; and
- (b) if applicable, are required by Articles 20 to 24 of the Planning (Northern Ireland) Order 1991<sup>F149</sup> to be taken for the purpose of planning permission;

may, where the Department concerned so directs, be taken concurrently (so far as practicable).

(2) In this Article “the Department concerned” means the Department, or where the matter to which the application or reference relates is a function of some other Department, the Department and that other Department acting jointly.

**F149** 1991 NI 11

#### ***Public inquiries***

**66.**—(1) The Department may cause an inquiry to be held in any case where the Department considers it advisable to do so in connection with

- [<sup>F150</sup>(a) any matter arising under this Part or the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007; or

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- (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).]

(2) Without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954<sup>F151</sup>, the Department may make rules regulating the procedure to be followed in connection with inquiries held by or on behalf of the Department under this Part.

(3) Where—

- (a) an inquiry is to be held under this Part in connection with any matter; and  
(b) in the case of some other matter required or authorised (whether by this Part or by any other statutory provision) to be the subject of an inquiry (“the other inquiry”), it appears to the Department concerned that the matters are so far cognate that they should be considered together,

the Department concerned may direct that the 2 inquiries be held concurrently or combined as one inquiry.

(4) In paragraph (3) “the Department concerned” means the Department, or where causing the other inquiry to be held is a function of some other Department, the Department and that other Department acting jointly.

**F150** Words in art. 66(1) substituted (20.6.2007) by Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (S.I. 2007/913 (N.I. 7)), arts. 1(3), 12, Sch. 4 para. 8; S.R. 2007/303, art. 2, Sch.  
**F151** 1954 c. 33 (NI)

### ***Application to Crown land***

**67.**—(1) Subject to paragraphs (2) to (4), the provisions of this Part shall have effect in relation to Crown land as they have effect in relation to land which is not Crown land.

(2) The powers conferred by or under Schedule 3 shall not be exercisable in relation to Crown land, to the extent of the estate therein held by or on behalf of the Crown.

(3) The powers conferred by or under—

- (a) Schedules 3 and 4; and  
(b) subject to paragraph (4), Schedule 6,

shall not, except with the consent of the appropriate authority, be exercisable in relation to Crown land.

(4) The powers conferred by or under Schedule 6 shall, without the consent of the appropriate authority, be exercisable in relation to Crown land, to the extent of any estate therein for the time being held otherwise than by or on behalf of the Crown.

(5) For the purposes of paragraph (1) a Northern Ireland department may dispose of land vested in that department on such financial and other conditions as that department may consider appropriate.

(6) In this Article any reference to the Crown includes a reference to Her Majesty's Government in Northern Ireland.

(7) In this Article—

“the appropriate authority”, in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;  
(b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;

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(c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

(a) belonging to Her Majesty in right of the Crown; or

(b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate;

“government department” includes a department of the Government of the United Kingdom.

(8) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this Article as having an estate in land.

## PART III

### REORGANISATION OF THE INDUSTRY

#### *Introductory*

#### ***Interpretation of Part III***

**68.**—(1) In this Part

“debentures” includes debenture stock;

“generating company” means a company designated as such by the Department;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“successor company” means a company nominated under Article 69(2) for the purposes of Article 69(1);

“the transfer date” means the day appointed under Article 69(3) for the purposes of Article 69(4);

“transferee”, in relation to any transfer of assets and liabilities effected or proposed to be effected under this Part, means the person to whom they are or are to be so transferred;

“transfer scheme” means a scheme under Article 69(1);

“transitional period”, in relation to Northern Ireland Electricity, means the period of Northern Ireland Electricity's continued existence under Article 86(2) after the transfer date and until it is dissolved under Article 86(4);

“transmission and supply company” means the company designated as such by the Department.

(2) Subject to Article 70(5), in this Part any reference to the Crown is a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(3) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than—

(a) by, or by a nominee of, the Department or the Department of Finance and Personnel; or



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(b) by a company which is itself wholly owned by the Crown.

(4) References in this Part to assets and liabilities of Northern Ireland Electricity are references to all such assets and liabilities, whether or not capable of being transferred or assigned by Northern Ireland Electricity.

(5) It is hereby declared for the avoidance of doubt that any reference in this Part to assets and liabilities of Northern Ireland Electricity—

(a) in relation to assets which consist of property of Northern Ireland Electricity, is a reference to property whether situated in Northern Ireland or elsewhere; and

(b) in relation to assets which consist of other rights and to liabilities of Northern Ireland Electricity is a reference to rights to which Northern Ireland Electricity is entitled, or (as the case may be) liabilities to which Northern Ireland Electricity is subject, whether under the law of Northern Ireland or under the law of any country or territory outside Northern Ireland.

#### *Transfers to successor companies*

#### ***Transfer of assets, etc., of Northern Ireland Electricity***

**69.**—(1) Before such date as the Department may direct, Northern Ireland Electricity shall make a scheme (a “transfer scheme”) for the division of all its assets and liabilities (other than excepted rights and liabilities) between 2 or more companies nominated by the Department for the purposes of this paragraph; and of the companies so nominated—

(a) one shall be designated as a generating company; and

(b) one shall be designated as a transmission and supply company.

(2) Subject to paragraph (3), the Department may, after consultation with Northern Ireland Electricity, by order nominate for the purposes of paragraph (1) any company formed and registered under the Companies (Northern Ireland) Order 1986<sup>F152</sup> (a “successor company”).

(3) On such day as the Department may by order appoint for the purposes of paragraph (4) (the “transfer date”) each successor company must be a company limited by shares which is wholly owned by the Crown.

(4) Subject to the provisions of Article 72, on the transfer date all assets and liabilities to which immediately before that date Northern Ireland Electricity was entitled or subject (other than excepted rights and liabilities) shall become by virtue of this paragraph, assets and liabilities of the successor company to which they are allocated by a scheme under paragraph (1).

(5) The Department shall not exercise any power conferred by this Article or Article 70 or 71 except with the consent of the Department of Finance and Personnel.

(6) In this Article “excepted rights and liabilities” means—

(a) any rights and liabilities with respect to corporation tax (including rights to receive any sums by way of repayment supplement and liabilities to pay any sums by way of interest or penalty);

(b) any rights and liabilities arising under an agreement which relates to any such assets and liabilities as are mentioned in sub-paragraph (a) and is specified or is of a description specified by the transfer scheme;

(c) any rights and liabilities transferred by Article 90; and

(d) such other rights and liabilities as the Department may determine.

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### **Transfer schemes under Article 69**

**70.**—(1) A transfer scheme may—

- (a) define the assets and liabilities to be allocated to a particular successor company—
  - (i) by specifying or describing the assets and liabilities in question;
  - (ii) by referring to all the assets and liabilities comprised in a specified part of Northern Ireland Electricity's undertaking; or
  - (iii) partly in the one way and partly in the other;
- (b) provide that any assets or liabilities specified or described in the scheme shall be enforceable either by or against either or any, or by or against both or all, of 2 or more successor companies;
- (c) impose on any successor company an obligation to enter into such written agreements with, or execute such other instruments in favour of, any other successor company as may be specified in the scheme; and
- (d) make such supplemental, incidental and consequential provision as Northern Ireland Electricity considers appropriate (including provision specifying the order in which any transfers or transactions are to be regarded as taking effect).

(2) An obligation imposed by a provision included in a transfer scheme under paragraph (1)(c) shall be enforceable by civil proceedings by the other successor company for an injunction or for any other appropriate relief.

(3) A transaction of any description which is effected under such a provision as is mentioned in paragraph (2)—

- (a) 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; but
- (b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this paragraph, have required the consent or concurrence of any other person.

(4) Where a lease of any land is granted in pursuance of such a provision as is mentioned in paragraph (2), any right or obligation affecting that land—

- (a) shall not become exercisable or enforceable by reason of the grant of the lease; but
- (b) shall have effect as if the lessee were the same person in law as the lessor.

(5) It is hereby declared that the provisions of a transfer scheme in so far as they relate to any asset or liability of Northern Ireland Electricity in which there is a Crown interest bind the Crown, including the Crown in right of Her Majesty's Government in the United Kingdom to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

### **Functions of the Department in relation to transfer schemes**

**71.**—(1) A transfer scheme shall not take effect unless it is approved by the Department; and the Department may modify such a scheme before approving it.

(2) If, in relation to a transfer scheme—

- (a) Northern Ireland Electricity fails, before the date specified in the Department's direction under Article 69(1), to submit the scheme for the approval of the Department; or
- (b) the Department decides not to approve the scheme that has been submitted to the Department by Northern Ireland Electricity (either with or without modifications),

the Department may make the scheme.

(3) It shall be the duty of Northern Ireland Electricity to provide the Department with all such information and other assistance as the Department may require for the purposes of or in connection

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with the exercise, in relation to a transfer scheme, of any power conferred on the Department by paragraph (1) or (2).

(4) The Department shall not exercise any power conferred on the Department by paragraph (1) or (2) except after consultation with Northern Ireland Electricity.

### ***Supplementary provisions as to transfers under Article 69***

72. The provisions of Schedule 10 shall apply, to the extent there mentioned, to any transfer which is effected by Article 69(4); and that paragraph shall have effect subject to the provisions of that Schedule.

### *Ownership of successor companies*

### ***Initial Government holding in the companies***

73.—(1) As a consequence of the vesting in a successor company of any assets and liabilities, the company shall issue such securities of the company as the Department may direct—

- (a) to the Department or the Department of Finance and Personnel; or
- (b) to any person entitled to require the issue of the securities following their initial allotment to the Department or the Department of Finance and Personnel.

(2) The Department shall not give a direction under paragraph (1) in relation to a successor company at a time when the company has ceased to be wholly owned by the Crown.

(3) Securities required to be issued under this Article shall be issued or allotted at such time or times and on such terms as the Department may direct.

(4) Shares in a company which are issued under this Article—

- (a) shall be of such nominal value as the Department may direct; and
- (b) shall be issued as fully paid and treated for the purposes of the Companies (Northern Ireland) Order 1986<sup>F153</sup> as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(5) The Department shall not exercise any power conferred by this Article, or dispose of any securities issued or of any rights to securities initially allotted to the Department under this Article, without the consent of the Department of Finance and Personnel.

<sup>F154</sup>(6) For the purposes of [<sup>F155</sup>the Companies Acts (as defined in section 2 of the Companies Act 2006)], [<sup>F156</sup>the Company Directors Disqualification (Northern Ireland) Order 2002] and the Insolvency (Northern Ireland) Order 1989<sup>F157</sup> the Crown is not to be treated as a shadow director of any successor company by reason that the company is wholly owned by the Crown or that the directors of that company are accustomed to act in accordance with the Crown's directions or instructions.

**F153** 1986 NI 6

**F154** By Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(2)** (with arts. 6, 11, 12) it is provided that in art. 73(6) for "the Companies (Northern Ireland) Order 1986" substitute (6.4.2008) "the Companies Acts (as defined in section 2 of the Companies Act 2006)"

**F155** Words in art. 73(6) substituted (1.10.2007) by Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194), arts. 1(3)(a), 10(1), **Sch. 4 para. 75** (with savings in art. 12)

**F156** 2002 NI 4

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**F157 1989 NI 19**

### ***Government investment in securities of the companies***

**74.**—(1) The Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, the Department may at any time acquire—

- (a) securities of a successor company; or
- (b) rights to subscribe for any such securities.

(2) The Department shall not dispose of any securities or rights acquired under this Article without the consent of the Department of Finance and Personnel.

### ***Exercise of functions through nominees***

**75.**—(1) The Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, the Department may, for the purposes of Article 73, 74 or 82, appoint any person to act as the nominee, or one of the nominees, of the Department of Finance and Personnel or the Department; and—

- (a) securities of a successor company may be issued under Article 73 to any nominee of the Department or the Department of Finance and Personnel appointed for the purposes of that Article or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
- (b) any such nominee appointed for the purposes of Article 74 may acquire securities or rights under that Article,

in accordance with directions given by the Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, by the Department.

(2) Any person holding any securities or rights as a nominee of the Department or the Department of Finance and Personnel under paragraph (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, the Department may direct.

### ***Target investment limit for Government shareholding***

**76.**—(1) As soon as the Department considers expedient and, in any case, not later than 6 months after any successor company ceases to be wholly owned by the Crown, the Department shall by order fix a target investment limit in relation to the shares for the time being held in that company by virtue of any provision of this Part by the Department, the Department of Finance and Personnel and their respective nominees (“the Government shareholding”).

(2) The target investment limit for the Government shareholding in a successor company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (“the ordinary voting rights”).

(3) The first target investment limit fixed under this Article for the Government shareholding in a particular company shall not exceed, by more than 0.5 per cent. of the ordinary voting rights, the proportion of those rights which is in fact carried by the Government shareholding in that company at the time when the order fixing the limit is made.

(4) The Department may by order fix a new target investment limit for the Government shareholding in a successor company in place of the one previously in force under this Article; but—

- (a) any new limit must be lower than the one it replaces; and
- (b) an order under this Article may, notwithstanding section 17(2) of the Interpretation Act (Northern Ireland) 1954<sup>F158</sup>, only be revoked by an order fixing a new limit.

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(5) It shall be the duty of the Department and of the Department of Finance and Personnel so to exercise—

- (a) their powers under Article 74 and any power to dispose of any shares held under any provision of this Part; and
- (b) their power to give directions to their respective nominees,

as to secure in relation to each successor company that the Government shareholding in that company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this Article in relation to that company.

(6) Notwithstanding paragraph (5) but subject to paragraph (7), the Department or the Department of Finance and Personnel may take up, or direct any nominee of the Department or of the Department of Finance and Personnel to take up, any rights which are for the time being available to them, or to the nominee, either—

- (a) as an existing holder of shares or other securities of a successor company; or
- (b) by reason of the rescission of any contracts for the sale of such shares or securities.

(7) If, as a result of anything done under paragraph (6), the proportion of the ordinary voting rights carried by the Government shareholding in a successor company at any time exceeds the target investment limit for the time being in force under this Article in relation to that company, it shall be the duty of the Department or, as the case may be, the Department of Finance and Personnel to comply with paragraph (5) as soon after that time as is reasonably practicable.

(8) For the purposes of this Article the temporary suspension of any of the ordinary voting rights shall be disregarded.

(9) The Department shall not exercise any power conferred on it by this Article except with the consent of the Department of Finance and Personnel.

**F158** 1954 c. 33 (NI)

### *Finances of successor companies*

#### **Statutory reserves**

77.—(1) If the Department with the approval of the Department of Finance and Personnel so directs at any time before a successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction but not exceeding such proportion of the accumulated realised profits of Northern Ireland Electricity as is determined by or under the transfer scheme shall be carried by the company to a reserve (“the statutory reserve”).

(2) A company having a statutory reserve shall not apply it except in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

(3) Notwithstanding paragraph (2), the statutory reserve of a company shall not count as an undistributable reserve of the company for the purposes of [F159 section 831(4)(d) of the Companies Act 2006]; but for the purpose of determining under [F160 that section] whether a company with a statutory reserve may make a distribution at any time any amount for the time being standing to the credit of the reserve shall be treated for the purposes of [F161 section 831(4)(c) of that Act] as if it were unrealised profits of the company.

**F159** Words in art. 77(3) substituted (6.4.2008) by virtue of Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), Sch. 1 para. 189(3)(a) (with arts. 6, 11, 12)

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**F160** Words in art. 77(3) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(3)(b)** (with arts. 6, 11, 12)

**F161** Words in art. 77(3) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(3)(c)** (with arts. 6, 11, 12)

### **Statutory accounts**

**78.**—(1) The following provisions of this Article shall have effect for the purposes of any statutory accounts of a successor company, that is to say, any accounts prepared by such a company for the purpose of any provision of [<sup>F162</sup>the Companies Acts (as defined in section 2 of the Companies Act 2006)] (including group accounts).

(2) The vesting in the company effected under this Part shall be taken to have been effected immediately after the end of the last complete accounting year of Northern Ireland Electricity to end on or before the transfer date and to have been a vesting of such of the assets and liabilities to which Northern Ireland Electricity was entitled or subject immediately before the end of the year as are determined by or under the transfer scheme.

(3) The value of any asset and the amount of any liability which is taken under paragraph (2) to have been vested in the company shall be taken to have been—

- (a) the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by Northern Ireland Electricity in respect of the last complete accounting year of Northern Ireland Electricity to end before the transfer date; or
- (b) if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the transfer scheme.

(4) The amount to be included in respect of any item shall be determined as if—

- (a) anything done by Northern Ireland Electricity (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise); or
- (b) so much of anything so done as may be determined by or under the transfer scheme,

had been done by the company.

(5) Without prejudice to the generality of the preceding provisions, the amount to be included in any reserves of the company as representing the company's accumulated realised profits or, as the case may be, losses shall be determined as if such proportion of—

- (a) any profits realised and retained; or
- (b) any losses realised; or
- (c) any other provision made,

by Northern Ireland Electricity as is determined by or under the transfer scheme, had been realised and retained, realised or made, as the case may require, by the company.

(6) In this Article “complete accounting year”, in relation to Northern Ireland Electricity, means an accounting year of Northern Ireland Electricity ending on 31st March.

**F162** Words in art. 78(1) substituted (6.4.2008) by Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(4)** (with arts. 6, 11, 12)

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### ***Temporary restrictions on borrowings, etc.***

**79.**—(1) If articles of association of a successor company confer on the Department powers exercisable with the consent of the Department of Finance and Personnel for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the public interest notwithstanding any rule of law and any statutory provision.

(2) For the purposes of this Article an alteration of the articles of association of a successor company shall be disregarded if the alteration—

- (a) has the effect of conferring or extending any such power as is mentioned in paragraph (1); and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) In this Article—

“group”, in relation to a company, means that company and all of its subsidiaries taken together; “subsidiary” has the meaning given by Article 4 of the Companies (Northern Ireland) Order 1986<sup>F163</sup>.

**F163** 1986 NI 6

### ***Government lending to the companies***

**80.**—(1) Subject to Article 83, the Department may, with the approval of the Department of Finance and Personnel, make loans of such amounts and on such terms and conditions, including terms and conditions as to security, as the Department thinks fit to any successor company which is for the time being wholly owned by the Crown.

(2) Subject to Article 82, any loans which the Department makes under this Article shall be repaid to the Department at such times and by such methods, and interest thereon shall be paid to the Department at such rates and at such times, as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) Expenditure incurred or to be incurred by the Department in making loans under this Article shall be defrayed by means of sums charged on and issued out of the Consolidated Fund.

### ***Government guarantees for loans made to the companies***

**81.**—(1) Subject to Article 83, the Department may guarantee, in such manner and on such terms as the Department, with the approval of the Department of Finance and Personnel, may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Department by any successor company which is for the time being wholly owned by the Crown.

(2) Immediately after a guarantee is given under this Article, the Department shall lay a statement of the guarantee before the Assembly; and immediately after any sum is issued for fulfilling a guarantee so given, the Department shall so lay a statement relating to that sum.

(3) Any sums required by the Department for fulfilling a guarantee under this Article shall be charged on and issued out of the Consolidated Fund.

(4) The Department of Finance and Personnel may borrow money for the purpose of providing for issues out of the Consolidated Fund under paragraph (3).

(5) If any sums are issued in fulfilment of a guarantee given under this Article the company whose obligations are so fulfilled shall make to the Department, at such times and in such manner as the Department may direct,—

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- (a) payments of such amounts as the Department may so direct in or towards repayment of the sums so issued; and
- (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Department may so direct.

***Conversion or discharge of certain loans or advances, etc.***

**82.**—(1) The Department may by order extinguish all or any of the liabilities of Northern Ireland Electricity or, as the case may be, a successor company in respect of the principal of such relevant loans as may be specified in the order.

(2) Where the Department has made an order under paragraph (1) and the Department considers it appropriate to do so, the Department may give a direction under this paragraph to Northern Ireland Electricity or, as the case may be, the successor company whose liabilities are extinguished by the order; and Northern Ireland Electricity or that company as the case may require shall, as a consequence of the making of the order, issue such securities as may be specified or described in the direction—

- (a) to the Department or to the Department of Finance and Personnel; or
- (b) to any person entitled to require the issue of the securities following their initial allotment to the Department or the Department of Finance and Personnel.

(3) For the purposes of any statutory accounts of a successor company, the value at the time of its issue of any such security shall be taken—

- (a) in the case of a share, to have been equal to its nominal value; and
- (b) in the case of a debenture, to have been equal to the principal sum payable under the debenture,

and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.

(4) In paragraph (3) “statutory accounts of a company” means any accounts prepared by the company for the purpose of any provision of [F164the Companies Acts (as defined in section 2 of the Companies Act 2006)] (including group accounts).

(5) The Department shall not—

- (a) make an order under paragraph (1) extinguishing the liability of any successor company; or
- (b) give a direction under paragraph (2) for the issue of securities,

except at a time when the company is wholly owned by the Crown.

(6) Except as may be agreed between the Department and Northern Ireland Electricity or, as the case may be, a successor company which is directed to issue debentures under this Article,—

- (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
- (b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.

(7) For the purposes of paragraph (6) any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

(8) The Department may direct Northern Ireland Electricity to do anything specified in the direction which is requisite or expedient for the purpose of securing, on such terms as the Department, with the approval of the Department of Finance and Personnel, thinks fit, the discharge,



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or the transfer to the Department, of Northern Ireland Electricity's liabilities in respect of any foreign currency loan made to Northern Ireland Electricity.

(9) Paragraphs (3) to (5) of Article 73 shall apply for the purposes of this Article as they apply for the purposes of that Article.

(10) In this Article—

“foreign currency” means a currency other than sterling;

“foreign currency loan” means a loan made wholly or mainly in a foreign currency;

“relevant loan” means—

- (a) any loan made, or deemed to have been made, by the Department or from the Consolidated Fund the liability to repay which vests or will vest in the successor company by virtue of Article 69(4);
- (b) any loan made to that company by the Department under Article 80; and
- (c) any sums payable under debentures issued as a consequence of the making of an order under this Article.

**F164** Words in art. 82(4) substituted (6.4.2008) by [Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), arts. 2(2), 3(1)(b), **Sch. 1 para. 189(5)** (with arts. 6, 11, 12)

### ***Financial limits on borrowings, etc.***

**83.** The aggregate of any amounts outstanding by way of principal in respect of—

- (a) sums issued under Article 81 in fulfilment of guarantees given in respect of loans made to such companies; and
- (b) relevant loans within the meaning of Article 82,

shall not exceed £750 million.

### *Provisions with respect to floatation*

### ***Responsibility for composite listing particulars***

**84.**—(1) Where—

- (a) the same document contains listing particulars for securities of 2 or more successor companies; and
- (b) any person's responsibility for any information included in the document is stated in the document to be confined to its inclusion as part of the listing particulars for securities of any one of those companies,

that person shall not be treated as responsible for that information in so far as it is stated in the document to form part of the listing particulars for securities of any other of those companies.

(2) In this Article—

“the 1986 Act” means the Financial Services Act 1986<sup>F165</sup>;

“listing particulars” means any listing particulars or supplementary listing particulars within the meaning of the 1986 Act;

“responsible” means responsible for the purposes of Part IV of the 1986 Act.

**F165** 1986 c. 60

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*Art. 85 rep. by 2001 c. 14 (NI)*

*Provisions with respect to Northern Ireland Electricity*

***Dissolution, etc., of Northern Ireland Electricity***

**86.**—(1) Any person who, immediately before the transfer date, holds office as Chairman or other member of Northern Ireland Electricity, shall cease to hold office on that date.

(2) Northern Ireland Electricity shall continue in existence after the transfer date until it is dissolved under paragraph (4).

(3) During the transitional period, Northern Ireland Electricity—

(a) shall consist of a chairman appointed by the Department and such one or more other persons as may be so appointed; and

(b) shall prepare such statements of accounts as the Department may direct;

and a direction under this paragraph may require the auditing of any such statements of accounts by such person as may be specified in the direction.

(4) The Department may by order, after consulting Northern Ireland Electricity and its successor company or companies, dissolve Northern Ireland Electricity on a day specified in the order, as soon as the Department is satisfied that nothing further remains to be done by Northern Ireland Electricity (whether under Schedule 13 or otherwise).

(5) An order under paragraph (4) may provide—

(a) for the transfer of any remaining functions, assets and liabilities of Northern Ireland Electricity to the Department;

(b) for the preparation by such persons as may be specified in the order of a statement of accounts for the period from the end of that dealt with in the last statement of accounts prepared under paragraph (3) by Northern Ireland Electricity down to the dissolution of Northern Ireland Electricity; and

(c) for the auditing of any such statement of accounts by such person as may be so specified;

and the Department may, with the approval of the Department of Finance and Personnel, pay to any person on whom duties are imposed by such an order such remuneration, and such travelling and other allowances, as the Department, with the approval of the Department of Finance and Personnel, may determine.

***Compensation to members and employees of Northern Ireland Electricity***

**87.**—(1) The Department may pay to any person who, immediately before the transfer date, is the Chairman or other member of Northern Ireland Electricity such sums by way of compensation for loss of office, or loss or diminution of pension rights, as the Department may with the approval of the Department of Finance and Personnel determine.

(2) The Department may also pay to persons who, immediately before the transfer date, are employees of Northern Ireland Electricity such sums by way of compensation for loss of employment, or loss or diminution of remuneration or pension rights, as the Department may, with the approval of the Department of Finance and Personnel, determine.

***Grants towards expenditure during transitional period***

**88.**—(1) The Department may, with the approval of the Department of Finance and Personnel, make grants to Northern Ireland Electricity of such amounts as the Department thinks fit towards such expenditure incurred by Northern Ireland Electricity during its transitional period as is not met

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under Schedule 13 by such of its successor companies as may be designated by or under the transfer scheme.

(2) Grants under this Article may be made subject to such conditions as the Department, with the approval of the Department of Finance and Personnel, may determine.

#### ***Amendment of pension scheme, etc.***

**89.** The provisions of Schedule 11 (which provide for pensions and for amending the Northern Ireland Electricity Superannuation Scheme and for giving special protection to certain persons who have or may acquire rights under that scheme) shall have effect.

### *Miscellaneous*

#### ***Northern Ireland Electricity Stock***

**90.**—(1) On the transfer date all the rights and liabilities to which Northern Ireland Electricity was entitled or subject immediately before that date under the terms of issue of Northern Ireland Electricity Stock shall become by virtue of this Article rights and liabilities of the Department of Finance and Personnel.

(2) Before the transfer date Northern Ireland Electricity shall pay to such bank as the Department of Finance and Personnel may direct a sum equal to the amounts accruing in respect of unclaimed interest or redemption money on Northern Ireland Electricity Stock before that date but excluding any amounts represented by money in the hands of that bank.

(3) In this Article “Northern Ireland Electricity Stock” means any stock created and issued under Article 20 of the Electricity Supply (Northern Ireland) Order 1972<sup>F166</sup> or under section 28 of the Electricity (Supply) Act (Northern Ireland) 1931<sup>F167</sup>.

**F166** 1972 NI 9

**F167** 1931 c. 9 (NI)

#### ***Assembly disqualification***

**91.** In the Northern Ireland Assembly Disqualification Act 1975<sup>F168</sup>, in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place) the following entry—“Director of a successor company (within the meaning of Part III of the Electricity (Northern Ireland) Order 1992), being a director nominated or appointed by a Northern Ireland department or by a person acting on behalf of a Northern Ireland department”.

**F168** 1975 c. 25

## PART IV SUPPLEMENTAL

#### ***Repayment of fees***

**92.**—(1) Regulations under this Order which prescribe any fee for the purpose of any provision of this Order may make provision for the repayment of any such fee paid or purported to be paid, in pursuance of that provision of this Order, including provision—

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- (a) that repayment shall be made only if a specified person is satisfied that specified conditions are met or in other circumstances;
  - (b) that repayment shall be made in part only;
  - (c) that, in the case of partial repayment, the amount repaid shall be a specified sum or determined in a specified manner; and
  - (d) for repayment of different amounts in different circumstances.
- (2) In this Article “specified” means specified in the regulations.

### **Regulations and orders**

**93.**—(1) Any regulations or orders made by the Department under this Order (other than orders made under Article 69(2) or paragraph 14(6) of Schedule 4) shall be subject to negative resolution.

(2) Any regulations made by the Director under this Order shall be laid before the Assembly by the Department and shall be subject to negative resolution.

### **Directions**

**94.**—(1) It shall be the duty of any person to whom a direction is given under this Order to give effect to that direction.

(2) Any power conferred by this Order to give a direction shall include power to vary or revoke the direction.

(3) Any direction given under this Order shall be in writing.

### **Amendments, transitional provisions, savings and repeals**

#### *Para. (1)—Amendments*

(2) Without prejudice to section 17(2) of the Interpretation Act (Northern Ireland) 1954<sup>F169</sup>, the Department may by order make such modifications of instruments made under statutory provisions as appear to the Department necessary or expedient in consequence of the provisions of this Order; and in this paragraph “instrument” has the meaning assigned to it by section 1(c) of that Act of 1954.

(3) The transitional provisions and savings contained in Schedule 13 shall have effect.

#### *Para. (4)—Repeals*

**F169** 1954 c. 33 (NI)

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## SCHEDULES

*Schedule 1 rep. by 2003 NI 6*

*Schedule 2 rep. by 2003 NI 6*

### SCHEDULE 3

Article 13(1).

#### COMPULSORY ACQUISITION OF LAND

##### PART I

##### COMPULSORY ACQUISITION OF LAND BY LICENCE HOLDERS

1.—(1) Where a licence holder proposes to acquire, otherwise than by agreement, any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, he may apply to the Department for an order vesting that land in him and the Department shall have power to make a vesting order.

(2) The power of acquiring land compulsorily under this paragraph includes power to acquire, by the creation of a new right, an easement or other right over land.

2.—(1) No application shall be made under paragraph 1 for a vesting order in respect of land belonging to another licence holder except with the consent of the Director.

(2) The Director shall not give his consent under this paragraph if—

- (a) the land is being used by the licence holder to whom it belongs for the purposes of an installation necessary for the carrying on of the activities which he is authorised by his licence to carry on; or
- (b) it appears to the Director that the land will be so used and that the use will commence, or any necessary planning permission under Part IV of the Planning (Northern Ireland) Order 1991<sup>F170</sup> will be applied for, within the period of 5 years from the date of the application for his consent.

(3) The Department may, by order, provide that sub-paragraph (2) shall have effect as if for the period mentioned in head (b) there were substituted such other period as may be specified in the order.

(4) A consent under this paragraph which is not acted on within the period of 6 months from the day on which it is granted shall cease to have effect at the end of that period.

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**F170** 1991 NI 11

- 3.—(1) The power to make a vesting order under paragraph 1 in respect of land—
- (a) which is the property of any public body which has power under any transferred provision to acquire land compulsorily; or
  - (b) which is declared by or under any transferred provision to be inalienable;

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

(2) In this paragraph “public body” means a body established by or under any transferred provision.

4.—(1) Nothing in this Schedule shall authorise the acquisition, without the consent of the Department of the Environment, of any land on or in which there is, to the knowledge of the Department, any historic monument or archaeological object.

(2) In this paragraph “historic monument” and “archaeological object” have the same meanings as in<sup>F171</sup> the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995].

**F171** 1995 NI 9

5.—(1) Where a licence holder has acquired any land under paragraph 1, he shall not dispose of it except with the consent of the Director.

(2) A consent under this paragraph may be subject to such conditions as appear to the Director to be requisite or expedient.

6. Schedule 6 to the Local Government Act (Northern Ireland) 1972<sup>F172</sup> shall apply for the purposes of the acquisition of land by means of a vesting order made under paragraph 1 in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act subject to the following modifications—

- (a) for any reference to the council there shall be substituted a reference to the licence holder;
- (b) for any reference to the Department concerned there shall be substituted a reference to the Department;
- (c) for any reference to that Act there shall be substituted a reference to this Order;
- (d) in paragraph 6(2) for the words from “the fund” onwards there shall be substituted “funds of the licence holder (in this Schedule referred to as “the compensation fund”), and shall be discharged by payments made by the licence holder”; and
- (e) in paragraph 12(2) for “the clerk of the council” there shall be substituted “such person as may be designated for the purposes of this Schedule by the licence holder”.

**F172** 1972 c. 9 (NI)

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## PART II

### LICENCE HOLDERS' LAND EXCLUDED FROM COMPULSORY ACQUISITION

7. Where an application for a vesting order is made by a person with power to acquire land otherwise than by agreement (other than a licence holder) in respect of land which includes land belonging to a licence holder and used for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on and that licence holder has made a representation to the Department concerned before the expiration of one month from the date of the last publication of the notice mentioned in paragraph 2(a) of Schedule 6 to the Local Government Act (Northern Ireland) 1972<sup>F173</sup>, the Department concerned shall not make the vesting order unless the Department has certified—

- (a) that the land can be purchased and not replaced without serious detriment to the carrying on of those activities; or
- (b) that, if purchased, the land can be replaced by other land belonging to, or available for acquisition by, the licence holder without serious detriment to the carrying on of those activities.

**F173** 1972 c. 9 (NI)

#### SCHEDULE 4

Article 13(1).

#### OTHER POWERS, ETC., OF LICENCE HOLDERS

##### *Interpretation*

1.—(1) In this Schedule—

“controlled works” means any such works as are mentioned in paragraph 2(1) being works done under the right conferred by that paragraph;

“emergency works” means—

- (a) in relation to a licence holder, work arising from faults in any electric lines or electrical plant;
- (b) in relation to a government department for the purpose of paragraph 4 or 6, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause
  - (i) danger to persons or property, or
  - (ii) interference with the exercise of any functions conferred on that department;
- (c) in relation to<sup>F174</sup> an electronic communications code operator] for the purpose of paragraph 4 or 6, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause
  - (i) danger to persons or property, or
  - (ii) the interruption of any service provided by the<sup>F174</sup> electronic communications network] of the operator;

“plan” includes section;

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“planning permission” means planning permission under Part IV of the Planning (Northern Ireland) Order 1991<sup>F175</sup>;

*Definition rep. by 2003 c. 21*

*Definition rep. by 1995 NI 19*

“sewer” means a sewer as defined in the Water and Sewerage Services (Northern Ireland) Order [<sup>F176</sup>2006];

[<sup>F177</sup>“street” has the same meaning as in the Street Works (Northern Ireland) Order 1995;]

*Definition rep. by 2003 c. 21*

*Definition rep. by 2003 c. 21*

(2) In this Schedule, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.

(3) For the purposes of paragraphs<sup>F177</sup> 3 to 6] and 9(4), “the arbitrator” means the arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.

**F174** 2003 c. 21

**F175** 1991 NI 11

**F176** Word in Sch. 4 para. 1(1) in definition of “sewer” substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 31(1)(a)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

**F177** 1995 NI 19

### *Works involving breaking up roads, etc.*

2.—(1) [<sup>F178</sup>Subject to the Street Works (Northern Ireland) Order 1995] and to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

- (a) the following kinds of works, that is to say, installing under, over, in, on, along or across any<sup>F178</sup> street] and inspecting, maintaining, adjusting, repairing or altering—
  - (i) any electric lines or electrical plant; and
  - (ii) any structures for housing or covering any such lines or plant; and
- (b) any works requisite for or incidental to the purposes of any works falling within head (a), including for those purposes—
  - (i) opening or breaking up any<sup>F178</sup> street] or any sewers, drains or tunnels within or under any<sup>F178</sup> street];
  - (ii) tunnelling or boring under any<sup>F178</sup> street]; and
  - (iii) removing or using all earth and materials in or under any<sup>F178</sup> street].

(2) Nothing in this paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land not dedicated to the public use without the consent of the owners and occupiers thereof, so, however that a licence holder may alter any existing line or works in or under any land where the line or work has been placed under this Order or any other statutory provisions.

*Sub#paras. (3)#(13) rep. by 1995 NI 19*

**F178** 1995 NI 19



**Status:** Point in time view as at 06/04/2008. This version of this Order contains provisions that are not valid for this point in time.

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### *Alteration of apparatus, etc., under roads*

3.—(1) Subject to sub-paragraph (2), a licence holder may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of—

- (a) any electric line or electrical plant under the control of another licence holder; or
- (b) any<sup>F179</sup> electronic communications apparatus] used for the purposes of<sup>F179</sup> an electronic communications network] which is operated by a person to whom the<sup>F179</sup> electronic communications code] applies; or
- <sup>F180</sup>(bb) any relevant pipe (within the meaning of Article 219 of the Water and Sewerage Services (Northern Ireland) Order 2006) which is under the control of a water undertaker or a sewerage undertaker]
- (c) any other apparatus<sup>F181</sup> . . . ;

under any<sup>F182</sup> street] which interferes with the exercise of his powers under this Schedule.

(2) In the case of an alteration under this paragraph of any<sup>F179</sup> electronic communications apparatus] installed for the purposes of<sup>F179</sup> an electronic communications network] which is operated by a person to whom the<sup>F179</sup> electronic communications code] applies, paragraph 23 of the<sup>F179</sup> electronic communications code] will apply instead of sub-paragraphs (3) to (14).

(3) One month before commencing the alterations, except where the alterations are emergency works, the licence holder shall—

- (a) serve a notice on the person for the time being entitled to the electric lines or electrical plant [<sup>F183</sup>pipe or apparatus] (in this paragraph referred to as “the owners”) describing the proposed alterations; and
- (b) give any further information required by the owners.

(4) The notice mentioned in sub-paragraph (3) shall contain a plan showing the manner in which it is intended that the alterations shall be made.

(5) Within 3 weeks from the service of the notice mentioned in sub-paragraph (3) upon any owners, the owners may require, by requisition served on the licence holder, that any question arising upon the notice as to the works, or to compensation in respect thereof, or any other question shall, in default of agreement, be determined by arbitration.

(6) Where—

- (a) no requisition is served on the licence holder; or
- (b) after any requisition has been served, any question required to be determined by arbitration has been so determined;

the licence holder may, upon paying or securing any compensation which he may be required to pay or secure, carry out the alterations specified in the notice, but subject in all respects to the provisions of this Schedule, and only in accordance with the notice served by him or such modifications thereof respectively as may have been determined by arbitration, or as may be agreed upon between the parties.

(7) At any time before the licence holder is entitled to commence any such alterations, the owners may serve a notice on the licence holder, stating that they desire to execute the alterations, and where any such notice has been served on the licence holder, he shall not be entitled to execute the alterations, except—

- (a) where the licence holder has required the owners to execute the alterations, and the owners have refused or neglected to comply; or
- (b) where the alterations are emergency works.

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(8) Where a notice such as is mentioned in sub-paragraph (7) has been served on the licence holder, he shall, not more than 48 hours and not less than 24 hours before the execution of the alterations is required to be commenced, serve on the owners a requisition stating the time when the alterations are required to be commenced, and the manner in which the alterations are required to be made.

(9) Upon receipt of any requisition, the owners may execute the alterations as required by the licence holder, subject to the restrictions and conditions, so far as they are applicable, to which the licence holder would be subject in executing the alterations.

(10) If the owners decline or, for 24 hours after the time when any such alterations are required to be commenced, neglect to comply with the requisition, the licence holder may execute the alterations in like manner as he might have done if notice had not been served on him under sub-paragraph (7) by the owners.

(11) Where any alterations are emergency works the licence holder may execute them without serving any requisition on the owners; but in that case the licence holder shall, within 24 hours after commencing to execute the alterations, give information thereof in writing to the owners.

(12) All expenses properly incurred by any owners in complying with any requisition of the licence holder under sub-paragraph (8) shall be a debt recoverable summarily by them from the licence holder.

*Sub#para. (13) rep. 1995 NI 19*

(14) If the licence holder commences the execution of any work in contravention of sub-paragraph (3)(a), he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F179** 2003 c. 21

**F180** Sch. 4 para. 3(1)(bb) inserted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 31(1)(b)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

**F181** Words in Sch. 4 para. 3(1)(c) repealed (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

**F182** 1995 NI 19

**F183** Words in Sch. 4 para. 3(3)(a) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 31(1)(c)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

### *Alteration of electric lines or electrical plant under roads*

4.—(1) A government department,<sup>[F184]</sup> electronic communications code operator], or other person (not being another licence holder) authorised under any statutory provision to exercise functions in relation to a<sup>[F185]</sup> street] may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of any electric line or electrical plant under the control of a licence holder under that<sup>[F185]</sup> street] which interferes with the exercise of those functions.

(2) Sub-paragraphs (3) to (13) of paragraph 3 shall apply for the purposes of sub-paragraph (1) of this paragraph as if—

- (a) any reference to the licence holder were a reference to the government department,<sup>[F184]</sup> electronic communications code operator] or other person, as the case may require; and
- (b) any reference to the owners were a reference to the licence holder.

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(3) If the<sup>F184</sup> electronic communications code operator] or, as the case may be, the other person commences the execution of any work in contravention of paragraph 3(3)(a) as applied by subparagraph (2) of this paragraph, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F184** 2003 c. 21  
**F185** 1995 NI 19

*Controlled works in a [<sup>F186</sup>street] near to apparatus*

**F186** 1995 NI 19

5.—(1) The following provisions of this paragraph apply where a licence holder requires to carry out any controlled works in a<sup>F187</sup> street] near to—

- (a) any electric lines or electrical plant of any other licence holder; or
- (b) any<sup>F188</sup> electronic communications apparatus] which is operated by a person to whom the<sup>F188</sup> electronic communications code] applies; and
- (c) any other apparatus belonging to or under the jurisdiction or control of a government department or other person (not being a licence holder).

*Sub#paras. (2), (3) rep. 1995 NI 19*

(4) Where the licence holder finds it necessary to undermine but not alter the position of any owners' electric line, electrical plant,<sup>F188</sup> electronic communications apparatus] or other apparatus he shall temporarily support it in position during the execution of the works, and before completion provide a suitable and proper foundation for it where so undermined.

(5) Where a licence holder lays any electric line crossing or liable to touch any apparatus belonging to [<sup>F189</sup>a water undertaker or sewerage undertaker] or to any gas undertaking, the conducting portion of the electric line shall be effectively insulated in a manner approved by the Department, and the licence holder shall not, except with the consent of the [<sup>F190</sup>water undertaker or sewerage undertaker] or, as the case may be, the gas undertaking, and of the Department—

- (a) lay the electric lines so as to come into contact with the apparatus; or
- (b) use the apparatus in connection with the supply of electricity.

(6) Any question arising under this paragraph shall, in default of agreement, be determined by arbitration.

*Sub#paras. (7), (8) rep. by 1995 NI 19*

<sup>F187</sup>(9) In this paragraph “owners” means any of the persons mentioned in paragraphs (a), (b) or (c) of sub#paragraph (1).]

**F187** 1995 NI 19  
**F188** 2003 c. 21  
**F189** Words in Sch. 4 para. 5(5) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 31(1)(d)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)  
**F190** Words in Sch. 4 para. 5(5) substituted (1.4.2007) by [Water and Sewerage Services \(Northern Ireland\) Order 2006 \(S.I. 2006/3336 \(N.I. 21\)\)](#), arts. 1(2), 308(1), **Sch. 12 para. 31(1)(d)** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (subject to art. 3, Sch. 2)

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### *Works in a <sup>F191</sup>street] near to electric lines or electrical plant*

**F191** 1995 NI 19

6.—(1) The following provisions of this paragraph apply where a government department,<sup>F192</sup> electronic communications code operator] or other person (not being a licence holder) requires to carry out any works in a<sup>F193</sup> street] for laying down or constructing any<sup>F192</sup> electronic communications apparatus] or other apparatus near to any electric lines or electrical plant of a licence holder.

(2) Sub-paragraphs<sup>F193</sup> (4) to (6)] of paragraph 5 shall apply for the purposes of sub-paragraph (1) of this paragraph as if—

- (a) any reference to the licence holder were a reference to the government department,<sup>F192</sup> electronic communications code operator] or other person, as the case may require; and
- (b) any reference to the owners were a reference to the licence holder.

*Sub#para. (3) rep. by 1995 NI 19*

**F192** 2003 c. 21

**F193** 1995 NI 19

*Para. 7 rep. by 1995 NI 19*

### *Emergency works*

8.—(1) Where any person would be required to serve any notice in respect of any works under<sup>F194</sup> paragraph 3 or 4] if the works were not emergency works, that person shall serve a notice in respect of the emergency works as soon as practicable after commencing the works.

(2) Failure to serve the notice required by sub-paragraph (1) shall be treated as a contravention of a requirement of the paragraph under which a notice would be required if the works were not emergency works.

**F194** 1995 NI 19

### *Protection from interference*

9.—(1) Subject to sub-paragraph (2), a licence holder who installs or alters, or changes the mode of operation of, any electric line or electrical plant shall take all reasonable precautions for securing that the operation of that line or plant does not interfere with the operation of any<sup>F195</sup> electronic communications apparatus] which—

- (a) is under the control of a person to whom the<sup>F195</sup> electronic communications code] applies; and
- (b) is not unusually sensitive to interference with its operation.

(2) In the case of any<sup>F195</sup> electronic communications apparatus] which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (1) shall not apply in relation to—

- (a) any momentary interference with its operation; or

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- (b) where it is installed in unreasonably close proximity to the electric line or electrical plant, any other interference with its operation.
- (3) Sub-paragraphs (1) and (2) shall be read as also applying in the converse case of a person to whom the<sup>F195</sup> electronic communications code] applies who installs or alters, or changes the mode of operation of, any<sup>F195</sup> electronic communications apparatus], and in such a case shall have effect as if—
- (a) any reference to the licence holder were a reference to that person;
- (b) any reference to an electric line or electrical plant were a reference to such apparatus; and
- (c) any reference to such apparatus under the control of a person to whom that code applies were a reference to such a line or such plant under the control of a licence holder.
- (4) Any difference arising under this paragraph between a licence holder and a person to whom the<sup>F195</sup> electronic communications code] applies shall be determined by arbitration.
- (5) In this paragraph “momentary interference” means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

**F195** 2003 c. 21

### *Acquisition of wayleaves*

**10.**—(1) This paragraph applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to install and keep installed an electric line on, under or over any land; and
- (b) the owner or occupier of the land, having been given a notice under sub-paragraph (3),—
- (i) has failed to give the wayleave before the end of that period; or
- (ii) has given the wayleave subject to terms and conditions to which the licence holder objects;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to install and keep installed the electric line on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the electric line.

(2) This paragraph also applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep an electric line installed on, under or over any land; and
- (b) the owner or occupier of the land has given notice to the licence holder under paragraph 12(2) requiring him to remove the electric line;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to keep the electric line installed on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the electric line.

(3) The notice referred to in sub-paragraph (1)(b) shall—

- (a) state the licence holder's intention to install an electric line;
- (b) give a description of the nature of the line and of the position and manner in which it is intended to be installed; and
- (c) require the owner or occupier of the land to give the necessary wayleave within a period (not being less than 21 days) specified in the notice.

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(4) Subject to sub-paragraphs (5) to (7), the Department may, on the application of the licence holder, grant the necessary wayleave subject to such terms and conditions as the Department thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(5) Subject to sub-paragraph (6), the Department shall not grant a wayleave under sub-paragraph (4) in any case where—

- (a) the land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and
- (b) the line is to be installed on or over the land.

(6) Sub-paragraph (5) shall not apply to any land in respect of which a wayleave has been given before the coming into operation of that sub-paragraph.

(7) Before granting a necessary wayleave, the Department shall afford—

- (a) the occupier of the land; and
- (b) where the occupier is not also the owner of the land, the owner,

an opportunity of being heard by a person appointed by the Department.

(8) A necessary wayleave granted under this paragraph shall bind any person who is at any time the owner or occupier of the land.

(9) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, he shall be deemed to have an estate in that land for the purposes of section 40 of the Mineral Development Act (Northern Ireland) 1969<sup>F196</sup>.

(10) In this paragraph “dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part.

**F196** 1969 c. 35 (NI)

*[<sup>F197</sup> Assignment of necessary wayleave*

**F197** 2003 NI 6

**10A.**—(1) Subject to the following provisions of this paragraph, a necessary wayleave granted under paragraph 10 shall be capable of being assigned if (and only if)—

- (a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;
- (b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.

(2) A necessary wayleave shall not be assigned—

- (a) without the consent of the Department; or
- (b) to a person other than a licence holder.

(3) The relevant licence holder shall—

- (a) give notice of an application under sub#paragraph (1)(b) to—
  - (i) the occupier of the land; and
  - (ii) where the occupier is not also the owner of the land, the owner; and

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- (b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.
- (4) The notice under sub#paragraph (3) shall—
  - (a) identify the wayleave and state that an application in respect of it has been made to the Department under sub#paragraph (1)(b); and
  - (b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.
- (5) Before determining whether to designate a wayleave in pursuance of an application under sub#paragraph (1)(b), the Department shall consider any representations or objections which are duly made as mentioned in sub#paragraph (4)(b) and not withdrawn.
- (6) The Department shall give notice of its decision on an application under sub#paragraph (1)(b) to—
  - (a) the licence holder; and
  - (b) each person mentioned in sub#paragraph (3)(b).
- (7) In this paragraph—
  - “assign” includes transfer by any means;
  - “relevant licence holder”, in relation to a necessary wayleave, means the licence holder to whom the wayleave was granted or to whom it has been assigned.
- (8) In paragraphs 11 and 12 references to a licence holder include references to a licence holder to whom a wayleave has been assigned.]

#### *Provisions supplementary to paragraph 10*

- 11.—(1) Where a wayleave is granted to a licence holder under paragraph 10—
  - (a) the occupier of the land; and
  - (b) where the occupier is not also the owner of the land, the owner,may recover from the licence holder compensation in respect of the grant.
- (2) Where in the exercise of any right conferred by such a wayleave any damage is caused to property, the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.
- (3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.
- (4) Any question of disputed compensation under this paragraph shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982<sup>F198</sup> shall apply to any such determination.

**F198** 1982 NI 9

#### *Temporary continuation of wayleaves*

- 12.—(1) This paragraph applies where at any time such a wayleave as is mentioned in paragraph 10 (whether granted under that paragraph or by agreement between the parties)—
  - (a) is determined by the expiration of a period specified in the wayleave;

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- (b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave; or
  - (c) by reason of a change in the ownership or occupation of the land after the granting of the wayleave, ceases to be binding on the owner or occupier of the land.
- (2) The owner or occupier of the land may—
- (a) in a case falling within sub-paragraph (1)(a), at any time after or within 3 months before the end of the period specified in the wayleave;
  - (b) in a case falling within sub-paragraph (1)(b), at any time after the wayleave has been terminated by him; or
  - (c) in a case falling within sub-paragraph (1)(c), at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that sub-paragraph,

give to the licence holder a notice requiring him to remove the electric line from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.

(3) Where within the period of 3 months from the date of the notice under sub-paragraph (2) the licence holder makes neither—

- (a) an application for the grant of the necessary wayleave under paragraph 10; nor
- (b) an application for a vesting order under paragraph 1 of Schedule 3 in respect of the land, the licence holder shall comply with the notice at the end of that period.

(4) Where—

- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for the grant of the necessary wayleave under paragraph 10; and
- (b) that application is refused by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

(5) Where—

- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for a vesting order under paragraph 1 of Schedule 3 in respect of the land; and
- (b) that order is not made by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

### *Substations*

13.—(1) This paragraph applies where—

- (a) under an agreement made before 1 April 1982, a transformer substation or a switching substation not exceeding 33 kilovolts nominal capacity was installed and kept installed on any land; and
- (b) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep that substation installed on that land; and
- (c) the agreement—
  - (i) is determined by the expiration of the period specified in the agreement;



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(ii) is terminated by the owner or occupier of the land in accordance with a term contained in the agreement; or

(iii) by reason of a change in the ownership or occupation of the land after the granting of the agreement, ceases to be binding on the owner or occupier of the land.

(2) The owner or occupier of the land may—

(a) in a case falling within sub-paragraph (1)(c)(i), at any time after or within 3 months before the end of the period specified in the agreement;

(b) in a case falling within sub-paragraph (1)(c)(ii), at any time after the agreement has been terminated by him; or

(c) in a case falling within sub-paragraph (1)(c)(iii), at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that sub-paragraph,

give to the licence holder a notice requiring him to remove the substation from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.

(3) Where—

(a) within the period of 3 months from the date of the notice under sub-paragraph (2) the licence holder makes an application for a vesting order under paragraph 1 of Schedule 3 in respect of the land; and

(b) that order is not made by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

(4) Where in compliance with a notice under this paragraph any damage is caused to property by the removal of any substation, the licence holder shall make good or pay compensation in respect of that damage.

(5) Any question of disputed compensation under this paragraph shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982<sup>F199</sup> shall apply to any such determination.

**F199** 1982 NI 9

### *Felling and lopping of trees, etc.*

**14.—**(1) This paragraph applies where any tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by a licence holder as—

(a) to obstruct or interfere with the installation, maintenance or working of the line or plant; or

(b) to constitute an unacceptable source of danger (whether to children or to other persons);

and in this paragraph “the land” means the land on which the tree is growing.

(2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned in sub-paragraph (1) (a) or (b), subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.

(3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) shall also be served on the owner.

(4) If within 21 days from the giving of a notice under sub-paragraph (2)—

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(a) the requirements of the notice are not complied with; and  
(b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5),  
the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b).

(5) If, within 21 days from the giving of a notice under sub-paragraph (2), the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Department.

(6) On a reference under sub-paragraph (5), the Department, after giving the parties an opportunity of being heard by a person appointed by the Department, may make such order as the Department thinks just, and any such order—

- (a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b); and
- (b) may determine any question as to what expenses (if any) are to be paid.

(7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6), he shall—

- (a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;
- (b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier.

(8) In this paragraph “tree” includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

### *Entry on land for purposes of exploration*

**15.**—(1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on, a person authorised in writing by a licence holder may, at any reasonable time, enter the land for the purpose of survey and valuation.

(2) A person authorised to enter upon any land under this paragraph shall not demand to do so as of right unless—

- (a) 14 days' notice of the intended entry has been given to the occupier; and
- (b) if required to do so, he has produced evidence of his authority.

(3) The powers conferred by this paragraph shall not be exercisable in relation to—

- (a) land which is covered by a dwelling or will be so covered on the assumption that any planning permission which is in force is acted on; or
- (b) land which is covered by a building (other than a dwelling) or will be so covered on the assumption that any planning permission which is in force is acted on except—
  - (i) with consent given by or on behalf of the occupier of the land; or
  - (ii) where the occupier has refused his consent, with the consent of the Department.

(4) The power to survey land conferred by this paragraph includes power to search and bore for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—

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- (a) notice of the proposed works is included in the notice given under sub-paragraph (2); and
- (b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, with the consent of the Department.

[<sup>F200</sup>(4A) Where it is proposed to search or bore in pursuance of this paragraph in a street within the meaning of the Street Works (Northern Ireland) Order 1995—

- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works,
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person's apparatus in the street), and
- (c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the searching or boring as if they were street works within the meaning of that Order.]

(5) In this paragraph—

“building”, except in the definition of “dwelling”, includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building;

“dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling;

“statutory undertakers” has the same meaning as in the Planning (Northern Ireland) Order 1991<sup>F201</sup>.

**F200** [1995 NI 19](#)

**F201** [1991 NI 11](#)

### *Provisions supplementary to paragraphs 14 and 15*

**16.**—(1) Any person who intentionally obstructs a person acting in the exercise of any power conferred by or under paragraph 14 or 15 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where in the exercise of any power conferred by or under paragraph 14 or 15 any damage is caused to property the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.

(3) Any question of disputed compensation under sub-paragraph (2) shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982<sup>F202</sup> shall apply to any such determination.

**F202** [1982 NI 9](#)

### *Modification of paragraphs 2 to 9*

**17.** The provisions of paragraphs 2 to 9 may be modified by regulations.

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## SCHEDULE 5

Article 13(5).

## WATER RIGHTS FOR HYDRO-ELECTRIC GENERATING STATIONS

1. Without prejudice to Schedule 6 to the Drainage (Northern Ireland) Order 1973<sup>F203</sup>, a person who holds a licence under Article 10(1)(a) shall not abstract or divert from any waterway and use such water as may be necessary for the purposes of operating a generating station wholly or mainly driven by water unless he has obtained from the Department of the Environment an authorisation to do so.

**F203** 1973 NI 1

2. On the application of such a licence holder the Department of the Environment may authorise him to abstract and divert and use the water as mentioned in paragraph 1; but he shall do as little damage as possible in the exercise of the powers conferred by the authorisation and shall make compensation for any damage done in the exercise of those powers.

3. Where the abstraction, diversion and use will, in the opinion of the Department of the Environment—

- (a) substantially reduce the flow of water in any waterway, that Department shall in the authorisation specify the extent to which and the circumstances in which water may be taken;
- (b) substantially reduce the level of water in any waterway, that Department shall in the authorisation either—
  - (i) specify the extent to which and the circumstances in which water may be taken; or
  - (ii) specify the quantity of compensation water to be provided by the person;
- (c) impound any waterway, that Department shall in the authorisation specify the quantity of compensation water to be provided by the person.

4. In this Schedule, “compensation water” means a flow of water, on such conditions and by such means as the Department of the Environment may specify in the authorisation, for the benefit of riparian owners and other owners of land or fishings affected by the exercise of the powers conferred by the authorisation.

5. In deciding whether to give the authorisation or in specifying the quantity of any compensation water to be provided under the authorisation, the Department of the Environment shall have regard to all the circumstances of the particular case, including—

- (a) the interest of public health;
- (b) the character of the waterway, and the flow, or as the case may be the level, of water in it;
- (c) the extent to which the waterway is, or may in future be, used for industrial purposes or for the purposes of any public undertaking or for fisheries, water supply, agriculture, transport and navigation; and
- (d) the effect on land drainage or on any canal or inland navigation of any alteration in the flow or level of water in the waterway,

and shall secure, so far as practicable, the protection of the rights of riparian owners and of other owners of land or fishings.

6. Any question of disputed compensation under paragraph 2 shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982<sup>F204</sup> shall apply to any such determination.

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**F204** 1982 NI 9

7. An applicant for authorisation under paragraph 2 shall supply to the Department of the Environment such particulars as that Department may require and shall publish once at least in each of 2 successive weeks in one or more newspapers circulating in the area of the proposed abstraction a notice—

- (a) stating the effect of the proposed authorisation;
- (b) indicating the Irish Grid references of the proposed points of abstraction and discharge;
- (c) specifying a place, in or near the said area, where a copy of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice; and
- (d) stating that within the said period any person may by notice to the Department of the Environment object to the application.

8. Not later than the date on which the said notice is first published, the applicant shall serve a copy of the notice upon—

- (a) the Department of Agriculture;
- (b) the Foyle Fisheries Commission where the abstraction is to be made in the Londonderry Area within the meaning of section 2(1) of the Foyle Fisheries Act (Northern Ireland) 1952<sup>F205</sup>;
- (c) the Fisheries Conservancy Board for Northern Ireland where the abstraction is to be made outside that Area;
- (d) any public undertakers known by the applicant to be authorised by any statutory provision to take or use water from any such waterway.

**F205** 1952 c. 5 (NI)

9. The applicant shall also publish in the Belfast Gazette a notice—

- (a) stating that he is about to apply for authorisation under paragraph 2;
- (b) indicating the Irish Grid reference of the proposed points of abstraction and discharge;
- (c) specifying a place where any relevant map or plan may be inspected; and
- (d) giving the name and date of issue of a newspaper in which the notice explaining the effect of the authorisation applied for will be found.

10. If before the expiration of 28 days from the date of the first publication of the notice under paragraph 7 or of 25 days from the publication of the said notice in the Belfast Gazette an objection is received by the Department of the Environment from any person on whom a notice is required to be served under paragraph 8, or from any other person appearing to that Department to be affected by the application, and the objection is not withdrawn, that Department before giving that authorisation, may cause an inquiry to be held by the Water Appeals Commission for Northern Ireland and<sup>F206</sup> consider the report on that inquiry].

**F206** Words in Sch. 5 para. 10 substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), Sch. 12 para. 31(2) (with arts. 8(8), 121(3), 307); S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

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11. The expenses incurred by the Department of the Environment in connection with an authorisation under paragraph 2 shall be paid by the applicant; and that Department may, in a case where there are 2 or more applicants, apportion such expenses between them.

12. In paragraphs 1 to 8 “waterway” has the same meaning as in the<sup>F207</sup> Water (Northern Ireland) Order 1999].

F207 1999 NI 6

VALID FROM 06/02/2015

<sup>F208</sup>SCHEDULE 5A

Article 14C

Procedure for appeals under Article 14B

**F208** Sch. 5A inserted (6.2.2015) by Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (S.R. 2015/1), reg. 4(3), Sch. 2 (with reg. 6)

*Application for permission to bring appeal*

1.—(1) An application for permission to bring an appeal may be made only by sending a notice to the CMA requesting the permission.

(2) Only a person entitled under Article 14B to bring the appeal if permission is granted may apply for permission.

(3) Where the Authority publishes a decision to modify the conditions of any licence under Article 14(8), any application for permission to appeal is not to be made after the end of 20 working days after the day on which the decision is published.

(4) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.

(5) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.

(6) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.

(7) The appellant must send the Authority—

(a) a copy of the application for permission to appeal at the same time as it is sent to the CMA; and

(b) such other information as may be required by appeal rules.

(8) The CMA's decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.

(9) Before the authorised member decides whether to grant permission under this paragraph, the Authority must be given an opportunity of making representations or observations, in accordance with paragraph 3(2).

(10) The CMA's decision on an application for permission must be made—

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- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days after the day on which the application for permission was received.
- (11) The grant of permission may be made subject to conditions, which may include—
- (a) conditions which limit the matters that are to be considered on the appeal in question;
  - (b) conditions for the purpose of expediting the determination of the appeal; and
  - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
- (12) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons—
- (a) to the appellant; and
  - (b) to the Authority.
- (13) A decision of the CMA under this paragraph must be published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made.
- (14) Article 14G(2) applies to the publication of a decision under sub-paragraph (13) as it does to the publication of a decision under Article 14G.

### *Suspension of decision*

- 2.—(1) The CMA may direct that, pending the determination of an appeal against a decision of the Authority—
- (a) the decision is not to have effect; or
  - (b) the decision is not to have effect to such extent as may be specified in the direction.
- (2) The power to give a direction under this paragraph is exercisable only where—
- (a) an application for its exercise has been made by the appellant at the same time the appellant made an application in accordance with paragraph 1(3) for permission to bring an appeal against a decision of the Authority;
  - (b) the Authority has been given an opportunity of making representations or observations, in accordance with paragraph 3(2);
  - (c) the relevant licence holder, the licence holder or consumers whose interests are materially affected mentioned in Article 14B(2) (as the case may be) would incur significant costs if the decision were to have effect before the determination of the appeal; and
  - (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.
- (3) The CMA's decision on an application for a direction under this paragraph must be made—
- (a) where the Authority makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days following the day on which the application under sub-paragraph (2)(a) is received.

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(4) The appellant must send the Authority a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.

(5) The CMA's decision whether to give a direction is to be taken by an authorised member of the CMA.

(6) A direction under this paragraph must be—

- (a) given by an authorised member of the CMA; and
- (b) published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given.

(7) Article 14G(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication of a decision under Article 14G.

#### *Time limit for representations and observations by the Authority*

3.—(1) Sub-paragraph (2) applies where the Authority wishes to make representations or observations to the CMA in relation to—

- (a) an application for permission to bring an appeal under paragraph 1;
- (b) an application for a direction under paragraph 2.

(2) The Authority must make the representations or observations in writing before the end of 10 working days after the day on which it received a copy of the application under paragraph 1(7) or 2(4) as the case may be.

(3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the Authority wishes to make representations or observations to the CMA in relation to—

- (a) the Authority's reasons for the decision in relation to which the appeal is being brought;
- (b) any grounds on which that appeal is being brought against that decision.

(4) The Authority must make the representations or observations in writing before the end of 15 working days after the day on which permission to bring the appeal was granted.

(5) The Authority must send a copy of the representations and observations it makes under this paragraph to the appellant.

#### *Consideration and determination of appeal by group*

4.—(1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under Article 14B must consist of three members of the CMA panel.

(2) A decision of the group is effective if, and only if—

- (a) all the members of the group are present when it is made; and
- (b) at least two members of the group are in favour of the decision.

#### *Matters to be considered on appeal*

5.—(1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by Article 14F, may disregard—

- (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application; and
- (b) any or all matters raised by the Authority that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.



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(2) In this paragraph “relevant application” means an application under paragraph 1 or 2.

### *Production of documents etc.*

6.—(1) For the purposes of this Schedule, the CMA may, by notice, require—

- (a) a person to produce to the CMA the documents specified or otherwise identified in the notice;
- (b) any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.

(2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply—

- (a) at the time and place specified in the notice; and
- (b) in a legible form.

(3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court.

(4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document produced or an estimate, forecast, return or other information supplied under this paragraph.

(5) A notice for the purposes of this paragraph—

- (a) may be issued on the CMA's behalf by an authorised member of the CMA;
- (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

### *Oral hearings*

7.—(1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath—

- (a) by a person considering an application for permission to bring an appeal under paragraph 1;
- (b) by a person considering an application for a direction under paragraph 2; or
- (c) by a group with the function of determining an appeal;

and, for that purpose, such a person or group may administer oaths.

(2) The CMA may, by notice, require a person—

- (a) to attend at a time and place specified in the notice; and
- (b) at that time and place, to give evidence to a person or group mentioned in subparagraph (1).

(3) At any oral hearing the person or group conducting the hearing may require—

- (a) the appellant, or the Authority, if present at the hearing to give evidence or to make representations or observations; or
- (b) a person attending the hearing as a representative of the appellant or of the Authority to make representations or observations.

(4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.

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(5) If the appellant, the Authority, or the appellant's or Authority's representative is not present at a hearing—

- (a) there is no requirement to give notice to that person under sub-paragraph (2); and
- (b) the person or group conducting the hearing may determine the application or appeal without hearing that person's evidence, representations or observations.

(6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court.

(7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person's place of residence, an authorised member of the CMA must arrange for that person to be paid the necessary expenses of attendance.

(8) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

#### *Written statements*

**8.**—(1) The CMA may, by notice, require a person to produce a written statement with respect to a matter specified in the notice to—

- (a) a person who is considering, or is to consider, an application for a direction under paragraph 2; or
- (b) a group with the function of determining an appeal.

(2) The power to require the production of a written statement includes power—

- (a) to specify the time and place at which it is to be produced; and
- (b) to require it to be verified by a statement of truth;

and a statement required to be so verified must be disregarded unless it is so verified.

(3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court.

(4) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

#### *Expert advice*

**9.** Where permission to bring an appeal is granted under paragraph 1 the CMA may commission expert advice with respect to any matter raised by a party to that appeal.

#### *Defaults in relation to evidence*

**10.**—(1) If a person (“the defaulter”)—

- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8;
- (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular; or
- (c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,

an authorised member of the CMA may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court.

(2) The High Court may inquire into a matter certified to it under this paragraph; and if, after having heard—

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- (a) any witness against or on behalf of the defaulter; and
- (b) any statement in the defaulter's defence,

it is satisfied that the defaulter did, without reasonable excuse, fail to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.

(3) Where the High Court has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).

(4) A person who wilfully alters, suppresses or destroys a document that a person has been required to produce under paragraph 6 is guilty of an offence and shall be 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.

### *Appeal rules*

**11.—**(1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals under Article 14B.

(2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—

- (a) the taking of evidence at an oral hearing; or
- (b) the making of representations or observations at such a hearing.

(3) The CMA Board must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.

(4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.

(5) Rules under this paragraph may make different provision for different cases.

### *Costs*

**12.—**(1) A group that determines an appeal must make an order requiring the payment to the CMA of the costs incurred by the CMA in connection with the appeal.

(2) An order under sub-paragraph (1) must require those costs to be paid—

- (a) where the appeal is allowed in full, by the Authority;
- (b) where the appeal is dismissed in full, by the appellant; or
- (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.

(3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs reasonably incurred by that other party in connection with the appeal.

(4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.

**Status:** Point in time view as at 06/04/2008. This version of this Order contains provisions that are not valid for this point in time.

**Changes to legislation:** The Electricity (Northern Ireland) Order 1992 is up to date with all changes known to be in force on or before 14 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) shall bear interest at such rate as may be determined in accordance with provision contained in the order.

(6) Any costs payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

### *Interpretation of Schedule*

**13.—**(1) In this Schedule—

“appeal” means an appeal under Article 14B;

“appeal rules” means rules of procedure under paragraph 11;

“authorised member of the CMA”—

(a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;

(b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means—

(i) any member of the CMA Board who is also a member of the CMA panel, or

(ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question;

“CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;

“statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true.

(2) References in this Schedule to a party to an appeal are references to—

(a) the appellant; or

(b) the Authority.]

## [<sup>F209</sup>SCHEDULE 6

Article 27

### The Electricity Supply Code

**F209** Sch. 6 substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 5(2), Sch. 1 (with transitional provisions in Pt. IV)

**1.** An electricity supplier who, for the purpose of meeting the needs of a disabled person—

(a) alters the position of any electricity meter which has been provided by him; or

(b) replaces such a meter with one which has been specially adapted,

shall not make any charge for the alteration or replacement; and Article 26 shall apply in relation to any dispute arising under this sub-paragraph as if it were a dispute arising under Articles 19 to 25.

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2.—(1) Where a customer has not, within the requisite period, paid all charges due from him to an electricity supplier in respect of the supply of electricity to any premises or the provision of an electricity meter, the supplier may, after the expiration of not less than 2 working days notice of his intention—

- (a) cut off the supply to the premises or to any other premises occupied by the customer, by such means as he thinks fit; and
- (b) recover any expenses incurred in so doing from the customer.

(2) The power of a supplier under sub-paragraph (1) shall also be exercisable at any time which, in relation to a customer, is after the effective date for the purposes of Article 343 of the Insolvency (Northern Ireland) Order 1989 (supplies of gas, water, electricity etc. to insolvent companies).

(3) The power of a supplier conferred by sub-paragraph (1) shall not be exercisable as respects any amount which is genuinely in dispute; but there shall be disregarded for this purpose any dispute arising under Article 42 or regulations made under it.

(4) In this paragraph the “requisite period” means—

- (a) in the case of premises which are wholly or mainly used for domestic purposes, the period of 20 working days after the making by the supplier of a demand in writing for payment of the charges due; and
- (b) in any other case, the period of 15 working days after the making of such a demand.

#### *Deemed Contracts*

3.—(1) Where an electricity supplier supplies electricity to any premises otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the occupier (or the owner if the premises are unoccupied) for the supply of electricity as from the time (“the relevant time”) when he began so to supply electricity.

(2) Where—

- (a) the owner or occupier of any premises takes a supply of electricity which has been conveyed to those premises by an electricity distributor;
- (b) that supply is not made by the holder of a licence under Article 10(1)(c) or pursuant to an exemption under Article 9; and
- (c) a supply of electricity so conveyed has been previously made by an electricity supplier,

the owner or occupier shall be deemed to have contracted with the appropriate supplier for the supply of electricity as from the time (“the relevant time”) when he began to take such a supply.

(3) Nothing in sub-paragraph (2) shall be taken to afford a defence in any criminal proceedings.

(4) The Authority shall publish a document containing provision for determining the “appropriate supplier” for the purposes of sub-paragraph (2) and may revise any such document published by it and where it does so it shall publish the revised document.

(5) The express terms and conditions of a contract which, by virtue of sub-paragraph (1) or (2), is deemed to have been made shall be provided for by a scheme made under this paragraph.

(6) Each electricity supplier shall make (and may from time to time revise), a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of sub-paragraph (1) or (2), are to be deemed to have been made.

(7) The terms and conditions so determined may include terms and conditions for enabling the electricity supplier to determine, in any case where the meter is not read immediately before the relevant time, the quantity of electricity which is to be treated as supplied by the supplier to the premises, or taken by the owner or occupier of the premises, during the period beginning with the relevant time and ending with—

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- (a) the time when the meter is first read after the relevant time; or
- (b) the time when the supplier ceases to supply electricity to the premises, or the owner or occupier ceases to take a supply of electricity,

whichever is the earlier.

(8) As soon as practicable after an electricity supplier makes a scheme under this paragraph, or a revision of such a scheme, he shall—

- (a) publish, in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice stating the effect of the scheme or revision;
- (b) send a copy of the scheme or revision to the Authority and to the General Consumer Council for Northern Ireland; and
- (c) if so requested by any other person, send such a copy to that person without charge to him.

(9) A scheme under this paragraph may make different provision for different cases or classes of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme.

### *Supplies of Electricity Illegally Taken*

4.—(1) Where any person takes a supply of electricity which is in the course of being conveyed by an electricity distributor, the distributor shall be entitled to recover from that person the value of the electricity so taken.

(2) Where—

- (a) any person at premises at which a connection has been restored in contravention of paragraph 5(1) takes a supply of electricity which has been conveyed to those premises by an electricity distributor; and
- (b) the supply is taken otherwise than in pursuance of a contract made with the holder of a licence under Article 10(1)(c) or a supplier operating in pursuance of an exemption under Article 9, or of a contract deemed to have been made with an electricity supplier by virtue of paragraph 3 or regulation 42 of the Electricity Regulations (Northern Ireland) 2007,

the distributor shall be entitled to recover from that person the value of the electricity so taken.

(3) Each electricity distributor shall make, and from time to time revise, a scheme providing for the manner in which, and the persons by whom, the quantity of electricity taken in such circumstances as are mentioned in sub-paragraph (1) or (2) is to be determined for the purposes of that sub-paragraph.

(4) Sub-paragraphs (8) and (9) of paragraph 3 shall apply in relation to a scheme under this paragraph as it applies in relation to a scheme under that paragraph.

(5) In this paragraph “value”, in relation to any electricity taken in such circumstances as are mentioned in sub-paragraph (1) or (2), means the amount which, if the electricity had been taken in such circumstances as are mentioned in sub-paragraph (2) of paragraph 3, could reasonably be expected to have been payable in respect of the electricity under a contract deemed to have been made by virtue of that sub-paragraph.

### *Restoration of Connection without Consent*

5.—(1) Where, otherwise than in the exercise of a power conferred by regulations under Article 32, any premises have been disconnected by an electricity supplier or an electricity distributor, a person shall not, without the consent of the supplier or, as the case may be, the distributor restore the connection.

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(2) If any person acts in contravention of sub-paragraph (1), he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and the supplier or, as the case may be, the distributor may again disconnect the premises in question.

#### *Damage to Electrical Plant, etc.*

6.—(1) A person who intentionally or by culpable negligence damages or allows to be damaged—

- (a) any electric line or electrical plant provided by an electricity distributor; or
- (b) any electricity meter provided by an electricity supplier,

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where an offence has been committed under sub-paragraph (1) by the occupier of any premises (or by the owner of the premises if they are unoccupied when the offence is committed) in relation to any electric line or electrical plant provided by an electricity distributor for making or maintaining a connection to the premises, the distributor may disconnect the premises.

(3) Where an offence has been committed under sub-paragraph (1) in relation to an electricity meter provided by an electricity supplier which is situated on any premises, by the occupier (or by the owner of the premises if they are unoccupied when the offence is committed), the supplier may disconnect the premises and may remove the meter.

(4) A meter removed under sub-paragraph (3) shall be kept safely by the supplier until the Authority authorises its destruction or disposal.

#### *Entry During Continuance of Supply*

7.—(1) Any person authorised by an electricity distributor may at all reasonable times enter any premises to which the distributor is maintaining a connection, for the purpose of inspecting any electric line or electrical plant provided by him.

(2) Any person authorised by an electricity supplier may at all reasonable times enter any premises to which electricity is being supplied by him for the purpose of—

- (a) ascertaining the register of any electricity meter and, in the case of a pre-payment meter, removing any money or tokens belonging to the supplier;
- (b) removing, inspecting or re-installing any electricity meter or installing any substitute meter.

(3) A power of entry for the purpose of removing, inspecting or re-installing an electricity meter may not be exercised unless at least two working days' notice has been given to the occupier (or the owner of the premises if they are unoccupied).

#### *Entry on Discontinuance of Supply*

8.—(1) Where an electricity supplier or an electricity distributor is authorised by paragraph 6(2) or (3) or paragraph 12(3) of Schedule 7—

- (a) to disconnect any premises; or
- (b) to remove an electricity meter,

any person authorised by the supplier or distributor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing the meter.

(2) Where—

- (a) an electricity distributor is authorised by any provision of this Order (other than one mentioned in sub-paragraph (1)) or of regulations made under it to disconnect any premises;

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- (b) a person occupying premises which are connected to a distribution system of an electricity distributor ceases to require a connection; or
- (c) a person entering into occupation of any premises connected to a distribution system of an electricity distributor does not require such a connection,

any person authorised by the distributor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any electrical plant or electric line provided by the distributor.

(3) Where—

- (a) an electricity supplier is authorised by any provision of this Order (other than one mentioned in sub-paragraph (1)), or of regulations made under it, to disconnect any premises or to discontinue the supply to any premises;
- (b) a person occupying premises which are supplied with electricity by an electricity supplier ceases to require such a supply; or
- (c) a person entering into occupation of any premises previously supplied with electricity by an electricity supplier does not require such a supply,

any person authorised by the supplier may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any electricity meter provided by the supplier.

(4) A power of entry under sub-paragraph (2) or (3) may not be exercised unless at least two working days' notice has been given to the occupier (or to the owner of the premises if they are unoccupied).

#### *Entry For Replacing, Repairing or Altering Lines or Plant*

**9.—**(1) Any person authorised by an electricity distributor may after five working days' notice to the occupier of any premises, or to the owner of any premises which are unoccupied, at all reasonable times enter any premises for the purpose of—

- (a) placing a new electric line or any new electrical plant in the place of or in addition to any existing line or plant which has already been lawfully placed; or
- (b) repairing or altering any such existing line or plant.

(2) In the case of emergency arising from faults in an electric line or any electrical plant entry may be made under sub-paragraph (1) above without the notice required by that sub-paragraph, but notice shall then be given as soon as possible after the occurrence of the emergency.

#### *Exercise of Powers of Entry*

**10.—**(1) A power of entry conferred by this Schedule shall not be exercisable except—

- (a) with consent given by or on behalf of the occupier of the premises; or
- (b) under the authority of a warrant granted under paragraph 11;

so, however, that this sub-paragraph shall not apply where entry is sought in the case of emergency.

(2) Any person exercising powers of entry conferred by this Schedule may be accompanied by such persons as may be necessary or expedient for the purpose for which the entry is made, or for the purposes of paragraph 12(1).

#### *Warrant to Authorise Entry*

**11.—**(1) Where a justice of the peace is satisfied by complaint on oath—

- (a) that admission to premises is reasonably required for the purpose specified in the complaint; and



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- (b) that a person authorised by an electricity supplier or an electricity distributor would, apart from paragraph 10, be entitled for that purpose to exercise in respect of the premises a power of entry conferred by this Schedule; and
- (c) that—
  - (i) in the case of a right of entry under paragraph 8 an application for admission, or the serving of a notice under paragraph 8(2) or (3), would defeat the object of the entry; or
  - (ii) the premises are unoccupied,

he may issue a warrant under his hand authorising any authorised person to enter the premises.

- (2) A warrant granted under this paragraph shall continue in force until—
  - (a) the time when the purpose for which the entry is required is satisfied; or
  - (b) the end of the period of 28 days from the day on which the warrant is granted,

whichever is the earlier.

*Premises to be left secure and damage to be made good*

**12.**—(1) Where, under any powers conferred by this Schedule, entry is made on any premises by any person authorised by an electricity supplier or an electricity distributor—

- (a) he shall ensure that the premises are left no less secure by reason of the entry; and
- (b) the supplier or, as the case may be, the distributor shall make good or pay compensation for any damage to property caused by that person, or by any person accompanying him in entering the premises, in taking any action in the premises authorised by this Schedule or in making the premises secure.

(2) Any question of disputed compensation under this paragraph shall be referred to and determined by the Lands Tribunal.

*Penalty for obstruction*

**13.** Any person who intentionally obstructs a person authorised by an electricity supplier or electricity distributor in exercising a power of entry conferred by this Schedule shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Exemption of electrical plant, etc., for certain processes*

**14.** Any electrical plant, electric line or electricity meter owned by or let for hire or lent to a customer by an electricity supplier or an electricity distributor and marked or impressed with a sufficient mark or brand indicating the supplier or distributor as the owner thereof—

- (a) shall continue to be the property of the supplier or, as the case may be, distributor, notwithstanding that they may be fixed or fastened to any part of the premises in which they may be situated; and
- (b) shall be exempt from seizure under the Judgments Enforcement (Northern Ireland) Order 1981; and
- (c) shall not be taken in execution under proceedings in bankruptcy against the person in whose possession they may be.]

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## SCHEDULE 7

Article 34.

## USE, ETC., OF ELECTRICITY METERS

**Modifications etc. (not altering text)**

**C6** Sch. 7 modified (30.10.2006) by [Measuring Instruments \(Active Electrical Energy Meters\) Regulations 2006 \(S.I. 2006/1679\)](#), regs. 1(3), **29(1)-(4)** (with reg. 27(1)(2))

*Interpretation***1.** In this Schedule—

“agreed margins of error” means any margins of error agreed between the electricity supplier and the customer;

“approved” means approved by or under regulations made under paragraph 3;

“electricity supplier” means a person authorised by a licence or exemption to supply electricity;

“exempt supply” means a supply of electricity to any premises where—

- (a) the premises are not premises used wholly or mainly for domestic purposes; or
- (b) the electricity supplier or the customer is a person authorised by an exemption to supply electricity to those premises;

“prescribed margins of error” means margins of error by reference to which standards may be prescribed as mentioned in paragraph 6(2).

*Consumption to be ascertained by appropriate meter*

**2.—(1)** Where a customer of an electricity supplier is to be charged for his supply wholly or partly by reference to the quantity of electricity supplied, the supply shall be given through, and the quantity of electricity shall be ascertained by, an appropriate meter.

[<sup>F210</sup>(2) If the electricity supplier agrees, the meter may be provided by the customer; but otherwise it shall be provided by the electricity supplier (whether by way of sale, hire or loan).

(2A) [<sup>F211</sup>An electricity supplier] may refuse to allow one of his customers to provide a meter only if there are reasonable grounds for his refusal.]

(3) The meter shall be installed on the customer's premises in a position determined by the electricity supplier, unless in all the circumstances it is more reasonable to place it outside those premises or in some other position.

(4) The electricity supplier may require the replacement of any meter provided and installed in accordance with sub-paragraphs (2) and (3) where its replacement—

- (a) is necessary to secure compliance with this Schedule or any regulations made under it; or
  - (b) is otherwise reasonable in all the circumstances;
- and any replacement meter shall be provided and installed in accordance with those sub-paragraphs.

(5) If the customer refuses or fails to take his supply through an appropriate meter provided and installed in accordance with sub-paragraphs (2) and (3), the supplier may refuse to give or may discontinue the supply.

(6) For the purposes of this paragraph a meter is an appropriate meter for use in connection with any particular supply if it is of a pattern or construction which, having regard to the terms on which the supply is to be charged for, is particularly suitable for such use.

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(7) Article 26 shall apply in relation to any dispute arising under this paragraph between [<sup>F212</sup>an electricity supplier] and a customer as if it were a dispute arising under Articles 19 to 25.

(8) Pending the determination under Article 26 of any dispute arising under this paragraph, the meter and its provision and installation shall be such as the Director may direct; and directions under this sub-paragraph may apply either in cases of particular descriptions or in particular cases.

(9) Part II shall apply as if any duty or other requirement imposed on [<sup>F213</sup>an electricity supplier] by directions under sub-paragraph (8) were imposed by directions under Article 26.

**F210** 1992 NI 13

**F211** Words in Sch. 7 para. 2(2A) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 11(1), Sch. 2 para. 15(1)(a) (with transitional provisions in Pt. IV)

**F212** Words in Sch. 7 para. 2(7) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 11(1), Sch. 2 para. 15(1)(b) (with transitional provisions in Pt. IV)

**F213** Words in Sch. 7 para. 2(9) substituted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), 11(1), Sch. 2 para. 15(1)(b) (with transitional provisions in Pt. IV)

### *Restrictions on use of meters*

**3.—**(1) No meter shall be used for ascertaining the quantity of electricity supplied by an electricity supplier to a customer unless the meter—

- (a) is of an approved pattern or construction and is installed in an approved manner; and
- (b) subject to sub-paragraph (2), is certified under paragraph 6.

(2) Sub-paragraph (1)(b) shall not apply to a meter used in connection with an exempt supply if the electricity supplier and the customer have agreed in writing to dispense with the requirements of that paragraph.

(3) Regulations under this paragraph may provide—

- (a) for determining the fees to be paid in connection with applications for approvals under the regulations;
- (b) for revoking such an approval to any particular pattern or construction of meter and requiring meters of that pattern or construction which have been installed to be replaced with meters of an approved pattern or construction within a prescribed period;
- (c) for revoking such an approval to any particular manner of installation and requiring meters which have been installed in that manner to be installed in an approved manner within such a period.

**4.—**(1) If an electricity supplier supplies electricity through a meter which is used for ascertaining the quantity of electricity supplied and—

- (a) is not of an approved pattern or construction or is not installed in an approved manner; or
  - (b) in the case of a meter to which paragraph 3(1)(b) applies, is not certified under paragraph 6,
- he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where the commission by any person of an offence under this paragraph is due to the act of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence under this sub-paragraph whether or not proceedings are taken against the first-mentioned person.

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(3) In any proceedings in respect of an offence under this paragraph it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) No proceedings shall be instituted in respect of an offence under this paragraph except by or on behalf of the Director.

### *Meter examiners*

5.—(1) The Director shall appoint competent and impartial persons as meter examiners for the purposes of this Schedule.

(2) There shall be paid to meter examiners such remuneration and such allowances as may be determined by the Director with the approval of the Department of Finance and Personnel.

(3) Such pensions as may be so determined may be paid to or in respect of such examiners.

(4) All fees payable in respect of the examination, testing and certification of meters by meter examiners shall be paid to the Director and any sums received by him under this sub-paragraph shall be paid into the Consolidated Fund.

### *Certification of meters*

6.—(1) Subject to sub-paragraph (2), a meter may be certified—

- (a) by a meter examiner appointed under paragraph 5; or
- (b) by a person who is authorised to certify meters of that description by or under regulations made under this paragraph;

and in this paragraph “examiner” means a meter examiner or a person so authorised.

(2) No meter shall be certified unless the examiner is satisfied—

- (a) that the meter is of an approved pattern or construction; and
- (b) that the meter conforms to such standards (including standards framed by reference to margins of error) as may be prescribed.

(3) An examiner may certify any meter submitted to him, notwithstanding that he has not himself examined or tested it, if—

- (a) the meter is submitted to him by [<sup>F214</sup>an electricity supplier] or by a person authorised by the Director for the purposes of this sub-paragraph;
- (b) the meter is accompanied by a report stating that the meter has been examined and tested by the person submitting it and containing such other information as may be prescribed;
- (c) the examiner considers that the report indicates that the meter is entitled to be certified;
- (d) the meter is one of a number submitted at the same time by the same person,

and the examiner has himself examined and tested as many of those meters as he may consider sufficient to provide a reasonable test of all of them.

(4) Regulations under this paragraph may include provision—

- (a) for the termination of certification in the case of meters which no longer conform to the prescribed standards and in such other cases as may be prescribed;
- (b) for determining the fees to be paid for examining, testing and certifying meters, and the persons by whom they are to be paid;
- (c) as to the procedure to be followed in examining, testing and certifying meters;
- (d) for determining the fee to be paid in respect of any authorisation under sub-paragraph (1) or (3);

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- (e) for imposing conditions on any such authorisation; and
- (f) for withdrawing any such authorisation before the end of any period for which it is given if any of those conditions is not satisfied.

**F214** Words in [Sch. 7 para. 6\(3\)\(a\)](#) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), [Sch. 2 para. 15\(2\)\(a\)](#) (with transitional provisions in Pt. IV)

*Apparatus for testing, etc., of meters*

7.—(1) It shall be the duty of a person to whom this paragraph applies, that is to say, [<sup>F215</sup>an electricity supplier] or a person authorised by the Director for the purposes of paragraph 6(3)—

- (a) to provide and maintain such apparatus for the examination, testing and regulation of meters, and such apparatus for the sealing and unsealing of meters, as may be specified by a direction of the Director;
- (b) to use apparatus so provided and maintained to carry out such examination, testing and regulation of meters, or to seal or unseal meters in such circumstances, as may be so specified; and
- (c) to keep such records and make such reports of things done under head (b) as may be so specified.

(2) It shall also be the duty of a person to whom this paragraph applies to afford to meter examiners, acting in the exercise of their functions under this Schedule, all necessary facilities for the use of apparatus provided and maintained under sub-paragraph (1).

(3) If the Director considers that any person to whom this paragraph applies has made satisfactory arrangements whereby apparatus provided by some other person is available for the examination, testing or regulation of the first mentioned person's meters, the Director may direct that this paragraph shall not apply to that person to such extent as may be specified in the direction.

(4) Any 2 or more persons to whom this paragraph applies may with the approval of the Director enter and carry into effect arrangements whereby apparatus provided by one or more of the parties is to be available to all or any of them for the purposes of fulfilling their obligations under this paragraph.

(5) <sup>F216</sup> .....

**F215** Words in [Sch. 7 para. 7\(1\)](#) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), [Sch. 2 para. 15\(2\)\(a\)](#) (with transitional provisions in Pt. IV)

**F216** [Sch. 7 para. 7\(5\)](#) repealed (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), 11(1), [Sch. 2 para. 15\(2\)\(b\)](#) (with transitional provisions in Pt. IV)

*Testing, etc., of meters*

8.—(1) It shall be the duty of a meter examiner, on being required to do so by any person and after giving notice to such persons as may be prescribed—

- (a) to examine and test any meter used or intended to be used for ascertaining the quantity of electricity supplied to any premises;
- (b) to determine whether it is of an approved pattern or construction and, if it is installed for use, whether it is installed in an approved manner;
- (c) to determine whether it is in proper order for ascertaining the quantity of electricity supplied within the prescribed margins of error and, if it has been in use and there is a

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dispute as to whether it registered correctly at any time, to determine if possible whether it registered within those margins at that time; and

(d) to make a written report of his conclusions as to the matters mentioned in heads (b) and (c).

(2) If a meter examiner determines that a meter is, or was at any time, operating outside the prescribed margins of error, he shall if possible give an opinion as to—

(a) any period for which the meter has or may have been so operating; and

(b) the accuracy (if any) with which it was or may have been operating for any such period.

(3) Regulations under this paragraph may make provision for determining the fees to be paid for examining and testing meters, and the persons by whom and the circumstances in which they are to be paid.

(4) In relation to a meter used or intended to be used in connection with an exempt supply, this paragraph shall have effect as if any reference to the prescribed margins of error included a reference to any margins of error agreed between the electricity supplier and the customer.

**9.—**(1) This paragraph applies where there is a genuine dispute as to the accuracy of a meter used for ascertaining the quantity of electricity supplied to any premises and notice of the dispute—

(a) is given to the electricity supplier by the customer, or to the customer by the electricity supplier; or

(b) is given to the electricity supplier and to the customer by any other person interested.

(2) Except with the approval of a meter examiner and, if he so requires, under his supervision, the meter shall not be removed or altered by the supplier or the customer until after the dispute is resolved by agreement or the meter is examined and tested under paragraph 8, whichever first occurs.

(3) If the supplier or the customer removes or alters the meter in contravention of subparagraph (2), he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### *Presumptions and evidence*

**10.—**(1) This paragraph applies to meters used for ascertaining the quantity of electricity supplied to any premises.

(2) The register of a meter to which this paragraph applies shall be admissible in any proceedings as evidence of the quantity of electricity supplied through it.

(3) Where electricity has been supplied for any period through such a meter which is of an approved pattern or construction and is installed in an approved manner, the register of the meter shall be presumed to have been registering for that period—

(a) within the prescribed margins of error; and

(b) in the case of a meter used in connection with an exempt supply, within any agreed margins of error,

unless the contrary is proved.

(4) Where a meter to which this paragraph applies has been operating for any period—

(a) within the prescribed margins of error; and

(b) in the case of a meter used in connection with an exempt supply, within any agreed margins of error,

the meter shall be conclusively presumed to have been correctly registering for that period the quantity of electricity supplied through it.

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(5) The report of a meter examiner on any question relating to such a meter shall be admissible in evidence in any proceedings in which that question is raised; and any conclusions in the report as to the accuracy of the meter when it was tested shall be presumed to be correct unless the contrary is proved.

### *Meters to be kept in proper order*

**11.—**(1) A customer of an electricity supplier shall at all times, at his own expense, keep any meter belonging to him in proper order for correctly registering the quantity of electricity supplied to him; and in default of his doing so the supplier may discontinue the supply of electricity through that meter.

(2) An electricity supplier shall at all times, at his own expense, keep any meter let for hire or lent by him to any customer in proper order for correctly registering the quantity of electricity supplied and, in the case of pre-payment meters, for operating properly on receipt of the necessary payment.

(3) An electricity supplier may remove, inspect and re-install any meter by which the quantity of electricity supplied by him to a customer is registered, and shall, while any such meter is removed, fix a substituted meter on the premises; and the cost of removing, inspecting and re-installing a meter and of fixing a substituted meter shall be defrayed by the supplier.

(4) Sub-paragraphs (2) and (3) are without prejudice to any remedy the supplier may have against the customer for failure to take proper care of the meter.

### *Interference with meters*

**12.—**(1) If any person intentionally or by culpable negligence—

(a) alters the register of any meter used for measuring the quantity of electricity supplied to any premises by an electricity supplier; or

(b) prevents any such meter from duly registering the quantity of electricity supplied, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where any person is prosecuted for an offence under sub-paragraph (1), the possession by him of artificial means for causing an alteration of the register of the meter or, as the case may be, the prevention of the meter from duly registering shall, if the meter was in his custody or under his control, be prima facie evidence that the alteration or prevention was intentionally caused by him.

(3) Where an offence under sub-paragraph (1) has been committed, the supplier may discontinue the supply of electricity to the premises until the matter has been remedied and remove the meter in respect of which the offence was committed.

(4) Where an electricity supplier removes a meter under sub-paragraph (3), he shall keep it safely until the Director authorises him to destroy or otherwise dispose of it.

### *Special provision for pre-payment meters*

**13.—**(1) A customer of an electricity supplier who takes his supply through a pre-payment meter or other device shall be under a duty to take all reasonable precautions for the safekeeping of any money or tokens which are inserted into that meter or device.

(2) A pre-payment meter or other device shall not be used to recover any sum owing to an electricity supplier<sup>F217</sup> otherwise than in respect of—

(a) the supply of electricity;

(b) the provision of—

(i) an electric line or electrical plant; or

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- (ii) the meter or device in question; or
- (c) the provision of any goods or services which—
  - (i) are intended or designed to secure or promote the efficient use of electricity; and
  - (ii) are of a description prescribed for the purposes of this sub#paragraph.]

**F217** 1997 NI 22

## SCHEDULE 8

Article 39(8).

### CONSENTS UNDER ARTICLES 39 AND 40

#### *Applications for consent*

**1.—**(1) An application for a consent under Article 39 or 40 shall be in writing and shall describe by reference to a map the land to which the application relates, that is, the land—

- (a) on which the generating station is proposed to be constructed, extended or operated; or
- (b) across which the electric line is proposed to be installed or kept installed.

(2) An application for a consent under Article 40 shall also state—

- (a) the length of the proposed line and its nominal voltage; and
- (b) whether all wayleaves have been agreed with owners and occupiers of land proposed to be crossed by the line,

and shall be supplemented, if the Department so directs, by such additional information as may be specified in the direction.

(3) Regulations may make provision for determining the fees to be paid on applications for consent under Article 39 or 40, and the circumstances in which they are to be paid.

PROSPECTIVE

#### *<sup>F218</sup>Objections*

**F218** Sch. 8 paras. 1A-1C and preceding cross heading inserted (prosp.) by Electricity Consents (Planning) (Northern Ireland) Order 2006 (S.I. 2006/2955 (N.I. 19), arts. 1(2), 2(3))

**1A.—**(1) Regulations shall make provision for securing—

- (a) that notice of any application for consent under Article 39 or 40 is, in such circumstances as may be prescribed, published in such manner as may be prescribed;
- (b) that notice of any such application is served—
  - (i) by the Department on the Department of the Environment;
  - (ii) on such district council or councils as the Department may direct; and
  - (iii) in such circumstances as may be prescribed or where the Department so directs, on such other persons as may be prescribed or, as the case may be, specified in the direction;



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- (c) that every notice published or served in pursuance of the regulations states the period (not being less than such minimum period as may be prescribed) within which, and the manner in which, objections to the application may be made to the Department.
- (2) In relation to applications for consent under Article 39 to the extension of a generating station or to the operation of such a station in a different manner, regulations under this paragraph may include provision for enabling the Department to give directions dispensing with the requirements of the regulations in such cases as it thinks fit.
- (3) Where in the case of an application for consent under Article 39 or 40 objections have been sent to the Department in pursuance of regulations made under this paragraph, the Department shall—
- (a) consider those objections, together with all other material considerations; and
  - (b) determine whether an inquiry should be held with respect to the application.
- (4) If the Department thinks it appropriate to do so, the Department shall (in exercise of its powers under Article 66), cause an inquiry to be held.
- (5) If the Planning Appeals Commission is appointed to conduct the inquiry, the inquiry shall be conducted—
- (a) if rules under Article 66(2) so provide, in accordance with such rules;
  - (b) in any other case, in accordance with [F219section 204(5) of the Planning Act(Northern Ireland) 2011].
- (6) Before determining whether to grant any consent under Article 39 or 40 the Department shall consider—
- (a) any objections which have been sent to the Department in pursuance of regulations made under this paragraph; and
  - (b) where an inquiry has been held in respect of the application for the consent, the report of the inquiry.

**F219** Words in Sch. 8 para. 1A(5)(b) substituted (13.2.2015 for certain purposes otherwise 1.4.2015) by Planning Act (Northern Ireland) 2011 (c. 25), ss. 252, 254(1), Sch. 6 para. 63(a) (with s. 211); S.R. 2015/49, arts 2, 3, Sch. 1 (with transitional provisions in Sch. 2) (but this amendment cannot take effect until the commencement of S.I. 1992/231 (N.I. 1), Sch. 8 para. 1A)

PROSPECTIVE

### *Inquiries*

- 1B.—**(1) Where in accordance with paragraph 1A(4) an inquiry is to be held in respect of an application for consent under Article 39 or 40, the Department shall inform the applicant accordingly.
- (2) The applicant shall in two successive weeks publish a notice stating—
- (a) the fact that the application has been made, and the purpose of it, together with a description of the place to which it relates;
  - (b) a place in the vicinity where a copy of the application, and of the map referred to in it, can be inspected; and
  - (c) the place, date and time of the inquiry.

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(3) A notice under sub-paragraph (2) shall be published in at least two newspapers circulating among persons likely to be affected if the consent applied for is given.

(4) If it appears to the Department that, in addition to the publication of a notice in accordance with sub-paragraphs (2) and (3), further notification of the inquiry should be given (either by the service of notices, or by advertisement, or in any other way) in order to secure that the information specified in sub-paragraph (2)(a) to (c) is sufficiently made known to persons likely to be affected if the consent applied for is given, the Department may direct the applicant to take such further steps for that purpose as may be specified in the direction.

(5) Where in accordance with paragraph 1A(4) an inquiry is to be held in respect of an application for consent under Article 40 and the Department is proceeding concurrently as mentioned in Article 65(4), the inquiry shall extend to all the matters arising in the concurrent proceedings, and any notice of the inquiry (in addition to any other matters required to be stated in it) shall indicate the extent of the inquiry accordingly.

PROSPECTIVE

### *Additional inspectors*

**1C.—**(1) This paragraph applies in the case where a single individual (“the lead inspector”) is appointed to conduct—

- (a) an inquiry by virtue of paragraph 1A(4); or
  - (b) an inquiry which is a combination under Article 66(3) into one inquiry—
    - (i) of two or more such inquiries; or
    - (ii) of one or more such inquiries and one or more other inquiries.
- (2) At any time after appointing that individual, the Department may direct him—
- (a) to consider such matters relating to the conduct of the inquiry as are specified in the direction; and
  - (b) to make recommendations to the Department about those matters.
- (3) After considering the recommendations of the lead inspector, the Department may—
- (a) appoint for the purposes of the inquiry such number of additional inspectors as it thinks appropriate; and
  - (b) direct that each additional inspector shall consider such of the matters to which the inquiry relates as are allocated to him by the lead inspector.
- (4) An additional inspector shall—
- (a) comply with every direction as to procedural matters given to him by the lead inspector; and
  - (b) report to the lead inspector on every matter allocated to him.
- (5) It is to be for the lead inspector to report to the Department on the consideration of both—
- (a) the matters which he considered himself; and
  - (b) the matters the consideration of which was allocated to additional inspectors.
- (6) The power of the Department to give directions to the lead inspector may be exercised on one or more different occasions after the appointment of the lead inspector.
- (7) Accordingly—

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- (a) the recommendations that may be made by the lead inspector following such a direction include, in particular, a recommendation for varying the number of additional inspectors; and
- (b) the power of the Department to appoint an additional inspector includes power to revoke such an appointment.

(8) In the case of a lead inspector appointed as mentioned in sub-paragraph (1)(b)(ii), references in this paragraph to the Department are to be read as references to the Department concerned within the meaning of Article 66(4).]

### *Special provisions as to consents under Article 40*

2.—(1) Where an application for consent under Article 40 states that all wayleaves have not been agreed with owners and occupiers of land proposed to be crossed by the electric line, the Department may—

- (a) give notice to the applicant that the Department does not intend to proceed with the application until the Department is satisfied, with respect to all the land over which wayleaves have not been agreed, that the applicant has applied to the Department for consent under paragraph 10 (acquisition of wayleaves) of Schedule 4; or
- (b) grant consent subject to the condition (either in respect of the whole of the line or in respect of any part of it specified in the consent) that the work is not to proceed until the Department has given permission.

(2) In determining at any time whether to give permission for any work to proceed, either generally or in respect of any part of the line, the Department—

- (a) shall have regard to the extent to which the wayleaves have been agreed by that time; and
- (b) in so far as any such wayleaves have not then been agreed in respect of any part of the line, shall take into account any prejudicial effect which, in the opinion of the Department, the giving of permission (whether in respect of that part or of any adjacent part of the line) might have on any subsequent proceedings relating to the outstanding wayleaves.

PROSPECTIVE

### *[<sup>F220</sup>Deemed planning permission, etc.*

**F220** Sch. 8 para. 3 added (prosp.) by Electricity Consents (Planning) (Northern Ireland) Order 2006 (S.I. 2006/2955 (N.I. 19), arts. 1(2), 2(4))

3.—(1) On granting a consent under Article 39 or 40 in respect of any operation or change of use that constitutes development, the Department may direct that planning permission for that development and any ancillary development shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.

(2) The provisions of the [<sup>F221</sup>Planning Act (Northern Ireland) 2011 (except section 58] (appeals)) shall apply in relation to any planning permission deemed to be granted by virtue of a direction under this paragraph as if it had been granted by [<sup>F222</sup>a council on an application under that Act].

(3) On granting a consent under Article 39 in respect of any operation or change of use that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Department may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions (if any) as may be specified in the direction.

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- (4) Before giving a direction under sub-paragraph (3) the Department shall consult—
- (a) the Department of the Environment; and
  - (b) the Health and Safety Executive for Northern Ireland.
- (5) The provisions of the [<sup>F223</sup>Planning Act (Northern Ireland) 2011 (except section 115] (appeals)) shall apply in relation to any hazardous substances consent deemed to be granted by virtue of a direction under this paragraph as if it had been granted by [<sup>F224</sup>a council on an application under that Act].
- (6) [<sup>F225</sup>Section 242 of the Planning Act (Northern Ireland) 2011] shall have effect as if planning permissions and hazardous substances consents deemed to be granted by virtue of a direction under this paragraph were included in the list of matters in paragraph (1) of [<sup>F226</sup>that Act].
- (7) In this paragraph —
- (a) “ancillary development”, in relation to development consisting of the extension of a generating station, does not include any development which is not directly related to the generation of electricity by that station;
  - (b) expressions which are also used in the Planning (Northern Ireland) Order 1991 have the same meanings as in that Order.]

**F221** Words in Sch. 8 para. 3(2) substituted (13.2.2015 for certain purposes otherwise 1.4.2015) by Planning Act (Northern Ireland) 2011 (c. 25), ss. 252, 254(1), Sch. 6 para. 63(b)(i) (with s. 211); S.R. 2015/49, arts 2, 3, Sch. 1 (with transitional provisions in Sch. 2) (but this amendment cannot take effect until the commencement of S.I. 1992/231 (N.I. 1), Sch. 8 para. 3)

**F222** Words in Sch. 8 para. 3(2) substituted (13.2.2015 for certain purposes otherwise 1.4.2015) by Planning Act (Northern Ireland) 2011 (c. 25), ss. 252, 254(1), Sch. 6 para. 63(b)(ii) (with s. 211); S.R. 2015/49, arts 2, 3, Sch. 1 (with transitional provisions in Sch. 2) (but this amendment cannot take effect until the commencement of S.I. 1992/231 (N.I. 1), Sch. 8 para. 3)

**F223** Words in Sch. 8 para. 3(5) substituted (13.2.2015 for certain purposes otherwise 1.4.2015) by Planning Act (Northern Ireland) 2011 (c. 25), ss. 252, 254(1), Sch. 6 para. 63(c)(i) (with s. 211); S.R. 2015/49, arts 2, 3, Sch. 1 (with transitional provisions in Sch. 2) (but this amendment cannot take effect until the commencement of S.I. 1992/231 (N.I. 1), Sch. 8 para. 3)

**F224** Words in Sch. 8 para. 3(5) substituted (13.2.2015 for certain purposes otherwise 1.4.2015) by Planning Act (Northern Ireland) 2011 (c. 25), ss. 252, 254(1), Sch. 6 para. 63(c)(ii) (with s. 211); S.R. 2015/49, arts 2, 3, Sch. 1 (with transitional provisions in Sch. 2) (but this amendment cannot take effect until the commencement of S.I. 1992/231 (N.I. 1), Sch. 8 para. 3)

**F225** Words in Sch. 8 para. 3(6) substituted (13.2.2015 for certain purposes otherwise 1.4.2015) by Planning Act (Northern Ireland) 2011 (c. 25), ss. 252, 254(1), Sch. 6 para. 63(d)(i) (with s. 211); S.R. 2015/49, arts 2, 3, Sch. 1 (with transitional provisions in Sch. 2) (but this amendment cannot take effect until the commencement of S.I. 1992/231 (N.I. 1), Sch. 8 para. 3)

**F226** Words in Sch. 8 para. 3(6) substituted (13.2.2015 for certain purposes otherwise 1.4.2015) by Planning Act (Northern Ireland) 2011 (c. 25), ss. 252, 254(1), Sch. 6 para. 63(d)(ii) (with s. 211); S.R. 2015/49, arts 2, 3, Sch. 1 (with transitional provisions in Sch. 2) (but this amendment cannot take effect until the commencement of S.I. 1992/231 (N.I. 1), Sch. 8 para. 3)

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## SCHEDULE 9

Article 41.

### PRESERVATION OF AMENITY AND FISHERIES

1.—(1) In formulating any relevant proposals, a licence holder or a person authorised by exemption to generate or supply electricity—

- (a) shall have regard to the need to conserve the natural beauty and amenity of the countryside and the need to protect (so far as reasonably practicable) flora, fauna and geological and physiographical features of the countryside and the need to protect sites, buildings and objects of architectural, historic or archaeological interest from any harmful effects which might result from such proposals; and
- (b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

(2) In considering any relevant proposals for which its consent is required under Article 39 or 40, the Department shall have regard to—

- (a) the matters mentioned in sub-paragraph (1)(a); and
- (b) the extent to which the person by whom the proposals were formulated has complied with his duty under sub-paragraph (1)(b).

(3) Without prejudice to sub-paragraphs (1) and (2), in exercising any functions under this Order each of the following, namely, a licence holder, a person authorised by an exemption to generate or supply electricity and the Department shall avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

(4) In this paragraph—

“building” includes structure;

“relevant proposals” means any proposals—

- (a) for the construction or extension of a generating station of a capacity not less than 10 megawatts, or for the operation of such a station in a different manner;
- (b) for the installation (whether above or below ground) of an electric line; or
- (c) for the execution of any other works for or in connection with the transmission or supply of electricity.

(5) The Department may by order provide that sub-paragraph (4) shall have effect as if for the capacity mentioned in head (a) there were substituted such other capacity as may be specified in the order.

2.—(1) A licence holder shall within 12 months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 1(1), including in particular the consultation procedures which he intends to follow.

(2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult with the Department of the Environment, the Department of Agriculture, the Fisheries Conservancy Board for Northern Ireland and the Foyle Fisheries Commission.

(3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement as so prepared or so modified in such manner as he considers appropriate.

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## SCHEDULE 10

Article 72.

### TRANSFERS UNDER ARTICLE 69

#### *Interpretation*

1. Any reference in this Schedule to a transfer effected under a transfer scheme is a reference to a transfer effected by this Order under such a scheme.

#### *Allocation of assets and liabilities: general*

2.—(1) The provisions of this paragraph shall apply where the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity's undertaking, but shall not apply to any such assets, being rights, or to any such liabilities under a contract of employment.

(2) Any asset or liability comprised partly in the specified part of Northern Ireland Electricity's undertaking and partly in some other part or parts of that undertaking shall, where the nature of the asset or liability permits, be divided or apportioned between the transferee of the specified part (“transferee A”) and the transferee of the other part or each of the other parts (“transferee B”) in such proportions as may be appropriate.

(3) Where any estate in land falls to be so divided—

- (a) any rent payable under a lease in respect of that estate; and
- (b) any rent charged on that estate,

shall be correspondingly apportioned or divided so that the 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.

(4) For the purposes of sub-paragraph (3), any fee farm grant creating the relation of landlord and tenant shall be treated as a lease.

(5) Any asset or liability comprised as mentioned in sub-paragraph (2) the nature of which does not permit its division or apportionment as so mentioned shall be transferred to transferee A or transferee B according to—

- (a) in the case of an estate in land, whether on the transfer date transferee A or transferee B appears to be in greater need of the security afforded by that estate or, where neither appears to be in greater need of that security, whether on that date transferee A or transferee B appears likely to make use of the land to the greater extent;
- (b) in the case of any other asset or liability, whether on the transfer date transferee A or transferee B appears likely to make use of, or as the case may be, to be affected by, the asset or liability, to the greater extent,

subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.

3.—(1) The provisions of this paragraph shall apply where the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity's undertaking, but shall not apply to any such assets, being rights, or to any such liabilities under a contract of employment.

(2) It shall be the duty of the transferee of the specified part of Northern Ireland Electricity's undertaking (“transferee A”) and each of the other transferees (“transferee B”), whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the assets and liabilities transferred to transferee A or transferee B and as will—

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- (a) afford to transferee A and transferee B as against one another such rights and safeguards as they may require for the carrying on of their respective undertakings; and
  - (b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of Northern Ireland Electricity's undertaking as will best serve the carrying on of the respective undertakings of transferee A and transferee B.
- (3) Any such agreement shall provide so far as it is expedient—
- (a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to an estate in land or not, and whether involving the surrender of any existing estate or the creation of a new estate or not;
  - (b) for the granting of indemnities in connection with the severance of leases and other matters; and
  - (c) for responsibility for registration of any matter in any statutory register.
- (4) If transferee A or transferee B represents to the Department, or if it appears to the Department without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (2) that such agreement will be reached, the Department, whether before or after the transfer date, may—
- (a) give a direction determining that matter; and
  - (b) include in the direction any provision which might have been included in an agreement under sub-paragraph (2).
- (5) Any assets or liabilities required by a direction under sub-paragraph (4) to be transferred to transferee A or transferee B shall be regarded as having been transferred by this Order to, and by virtue thereof vested in, that transferee accordingly.

#### *Allocation of assets and liabilities: contracts of employment*

- 4.—(1) The provisions of this paragraph shall apply where—
- (a) the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity's undertaking; and
  - (b) it falls to be determined whether the assets and liabilities transferred to the transferee of that part (“transferee A”) include rights and liabilities under a particular contract of employment.
- (2) Rights and liabilities under the contract of employment shall be transferred to transferee A only if immediately before the transfer date the employee is employed wholly or mainly for the purposes of the specified part of Northern Ireland Electricity's undertaking.
- (3) The employee, transferee A or any of the other transferees may apply to the Department to determine whether or not rights and liabilities in respect of the employee's services under the contract of employment are transferred to transferee A, and the decision of the Department on the application shall be final.

#### *Variation of transfers by agreement*

- 5.—(1) The provisions of this paragraph shall apply where the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity's undertaking.
- (2) At any time before the end of the period of 12 months from the transfer date the transferee of the specified part and the transferee of any assets and liabilities comprised in some other part of Northern Ireland Electricity's undertaking may, with the approval of the Department, agree in writing that—

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- (a) as from such date as may be specified in or determined under the agreement; and
- (b) in such circumstances (if any) as may be so specified,

there shall be transferred from the one transferee to, and vested in, the other transferee any assets and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.

(3) Subject to sub-paragraph (4), in the case of an agreement under sub-paragraph (2), the assets and liabilities in question shall on the date of the coming into force of the agreement be transferred, and by virtue of the agreement vest, in accordance with the agreement.

(4) The following provisions of this Schedule shall have effect as if—

- (a) any reference to a transfer effected under a transfer scheme included a reference to a transfer effected under an agreement under sub-paragraph (2);
- (b) any reference to a transaction effected under paragraph 3(2) or of a direction under paragraph 3(4) included a reference to such an agreement; and
- (c) any reference to a vesting by virtue of this Order included a reference to a vesting by virtue of such an agreement.

#### *Right to production of documents of title*

6. Where the transferee under a transfer effected under a transfer scheme ( “transferee A”) is entitled to possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee under some other transfer effected under that scheme ( “transferee B”)—

- (a) transferee A shall be deemed to have given to transferee B an acknowledgement in writing of the right of transferee B to production of the document and to delivery of copies thereof; and
- (b) section 9 of the Conveyancing Act 1881<sup>F227</sup> shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

F227 1881 c. 41

#### *Proof of title by certificate*

7.—(1) Where 2 or more transfers are effected under a transfer scheme, a certificate issued by either or any of the transferees ( “transferee A”) with the concurrence of the other or others of them that—

- (a) any asset specified in the certificate;
- (b) any such interest in or right over any such asset as may be so specified; or
- (c) any liability so specified,

is by virtue of this Order for the time being vested in transferee A shall be conclusive evidence for all purposes of that fact.

(2) If, on the expiration of one month from a request from either or any of the transferees ( “transferee A”) for the other or one of the others of them ( “transferee B”) to concur in the issue of such a certificate, transferee B has failed so to concur—

- (a) transferee A may refer the matter to the Department; and
- (b) the Department may direct transferee B to concur in the issue of a certificate prepared in such terms as are specified in the direction.



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### *Restrictions on dealing with certain land*

8.—(1) Where 2 or more transfers are effected under a transfer scheme and the Department is satisfied, on the representation of either or any of the transferees (“transferee A”), that—

- (a) in consequence of those transfers, different estates in land, whether the same or different land, are held by transferee A and by the other or one of the other transferees (“transferee B”); and
- (b) the circumstances are such that the provisions of this paragraph should have effect,

the Department may direct that those provisions shall apply to such of that land as may be specified in the direction; and while the direction remains in force, those provisions shall have effect accordingly.

(2) Neither transferee A nor transferee B shall dispose of any estate to which they may respectively be entitled in any of the specified land except with the consent of the Department.

(3) If, in connection with any proposal to dispose of any estate of either transferee A or transferee B in any of the specified land, it appears to the Department to be necessary or expedient for the protection of either of them, the Department may—

- (a) require either transferee A or transferee B to dispose of any estate to which it may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;
- (b) require either transferee A or transferee B to acquire from the other any estate in any of the specified land to which that other is entitled; or
- (c) consent to the proposed disposal subject to compliance with such conditions as the Department may see fit to impose.

(4) A person other than transferee A and transferee B dealing with, or with a person claiming under, either transferee A or transferee B shall not be concerned to see or enquire—

- (a) whether this paragraph applies or has applied in relation to any land to which the dealing relates; or
- (b) whether the provisions of this paragraph have been complied with in connection with that or any other dealing with that land,

and no transaction between persons other than transferee A and transferee B shall be invalid by reason of any failure to comply with those provisions.

### *Third parties affected by vesting provisions*

9.—(1) A transaction of any description which, under paragraph 3(2) or a direction under paragraph 3(4), is effected between transferee A and transferee B—

- (a) 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; but
- (b) subject to that, shall be binding on all persons notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

(2) If any transaction is effected under paragraph 3(2) or a direction under paragraph 3(4), transferee A and transferee B shall notify any person who has rights or liabilities which thereby become enforceable as to part by or against transferee A and as to part by or against transferee B.

(3) If, within 28 days from being notified, such a person as is mentioned in sub-paragraph (2) applies to, and satisfies, the Department that the transaction operated unfairly against him, the Department may give such directions to transferee A and transferee B as appear to the Department appropriate for varying the transaction.

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10.—(1) If in consequence of 2 or more transfers effected under a transfer scheme or anything done under the provisions of this Schedule—

- (a) the rights or liabilities of any person other than Northern Ireland Electricity and the transferees which were enforceable against or by Northern Ireland Electricity become enforceable as to part against or by one transferee and as to part against or by another transferee; and
- (b) the value of any property or interest of that person is thereby diminished,

such compensation as may be just shall be paid to that person by one or more of the transferees.

(2) Any dispute as to whether, and if so how much, compensation is payable under subparagraph (1), or as to the person to or by whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Department.

## SCHEDULE 11

Article 89.

### PENSIONS

#### *Interpretation*

1.—(1) In this Schedule—

“employer”, in relation to a person employed by a company which is a wholly-owned subsidiary of another company, includes that other company;

“existing employee” means any person who, immediately before the transfer date, is employed by Northern Ireland Electricity;

“former participant” means any person who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme by virtue of his having been such a participant;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

“pension rights”, in relation to any person, includes—

- (a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and
- (b) any expectation of the accruer of a pension to or in respect of him;

and includes a right of allocation in respect of the present or future payment of a pension;

“the relevant statutory provisions” means Chapter I of Part XIV of the Income and Corporation Taxes Act 1988<sup>F228</sup> (retirement benefit schemes) and Part IV of the Social Security Pensions (Northern Ireland) Order 1975<sup>F229</sup> (contracting-out);

“relevant scheme” has the meaning given by paragraph 4(1);

“the scheme” means the Northern Ireland Electricity Superannuation Scheme;

“wholly-owned subsidiary” has the same meaning as in the Companies (Northern Ireland) Order 1986<sup>F230</sup>.

(2) For the purposes of this Schedule, a company is wholly owned by one or more other companies if it has no members except—

- (a) that other or those others and its or their nominees; and

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(b) wholly-owned subsidiaries of that other or those others and their nominees.

(3) Subject to sub-paragraph (1), expressions used in this Schedule which are also used in Part II or III have the same meanings as in that Part.

**F228** 1988 c. 1

**F229** 1975 NI 15

**F230** 1986 NI 6

### *Power to amend scheme*

2.—(1) Regulations may make provision amending—

- (a) the trust deed of the scheme for the purpose of enabling the trustees to amend any provision of that trust deed, subject to such consents and conditions as may be prescribed;
- (b) the scheme for the efficient and proper beneficial operation and management of the scheme.

(2) Without prejudice to the generality of sub-paragraph (1) (b), regulations under this paragraph may amend the scheme for any of the following purposes, namely—

- (a) for enabling persons whose participation in the scheme will not prejudice its approval for the purposes of the relevant statutory provisions, and employees of such persons, to participate in or acquire pension rights under the scheme on such terms and conditions as may be prescribed;
- (b) for enabling the scheme to be extended on such terms and conditions as may be prescribed to persons with pension rights other than under the scheme in so far as any such extension of the scheme will not prejudice its approval for the purposes of the relevant statutory provisions;
- (c) for requiring any persons (including persons not participating in the scheme) to make payments to the trustees of the scheme in such circumstances as may be prescribed;
- (d) for requiring or enabling any functions exercisable under the scheme by Northern Ireland Electricity to be exercisable by such persons, and in such circumstances, as may be prescribed;
- (e) for enabling the scheme to be wound up (in whole or in part) in such circumstances as may be prescribed; and
- (f) for securing that the scheme continues to be approved for the purposes of the relevant statutory provisions, notwithstanding the transfers made by this Order and the repeal of paragraph 10 of Schedule 1 to the Electricity Supply (Northern Ireland) Order 1972<sup>F231</sup> by Article 95(4) and Schedule 14.

(3) Regulations under this paragraph may be made so as to have effect from a date prior to their making, so however that so much of any regulations as provides that any provision of regulations shall have effect from a date prior to their making shall not place any person other than Northern Ireland Electricity, or its successor companies, in a worse position than he would have been in if the regulations had been made to have effect only from the date of their making.

(4) Regulations under this paragraph shall not be made at any time after any successor company has ceased to be wholly owned by the Crown.

**F231** 1972 NI 9

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### *Transfer to successor companies' schemes*

3.—(1) Regulations may make provision, in respect of such persons, or class of persons, formerly employed by Northern Ireland Electricity or employed or to be employed by successor companies, for securing the transfer of accrued rights and other liabilities under the scheme and such of the assets of the scheme calculated on such basis as may be prescribed, to such superannuation fund or other scheme as may be specified in the regulations.

(2) Paragraph 2(4) shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

### *Protection for certain persons*

4.—(1) Regulations may make provision for the purpose of securing that—

- (a) no person to whom paragraph 5(1) or (2) applies is placed in any worse position by reason of—
  - (i) any winding up, in whole or in part, of a relevant scheme, that is to say, the scheme, a scheme provided by a successor company or any other scheme which is provided or amended in pursuance of the regulations; or
  - (ii) any amendment of a relevant scheme which results in benefits under that scheme being reduced, or contributions by employees being increased, and is made otherwise than in such circumstances as may be prescribed;
- (b) no person to whom paragraph 5(1) applies is prevented from continuing to participate in or acquire pension rights under a relevant scheme by reason of any change of employer—
  - (i) which does not affect his continuity of employment and is made otherwise than in such circumstances as may be prescribed; and
  - (ii) in the case of which his new employer either is a participant in a relevant scheme or is wholly owned by one or more companies which or each of which is such a participant; and
- (c) no person to whom paragraph 5(1) applies is placed in any worse position by reason of any change of employer which does not affect his continuity of employment but prevents him from continuing to participate in or acquire pension rights under a relevant scheme;

and the references in heads (a) and (c) to any worse position shall be construed, in relation to a person to whom paragraph 5(1) applies who, after the transfer date, ceases to participate in or acquire pension rights under the scheme, as references to a position which is any worse than his position immediately before he so ceases.

(2) Regulations under this paragraph may impose duties (whether as to the amendment of the scheme, the provision or amendment of other schemes, the purchase of annuities, the making of payments or otherwise) on persons who are or have been employers of persons to whom paragraph 5(1) or (2) applies; and duties so imposed on any person may include duties owed to persons of whom he is not and has not been an employer.

(3) Regulations under this paragraph may also provide for any dispute arising under them to be referred to arbitration.

(4) Paragraph 2(4) shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

5.—(1) Subject to sub-paragraph (3), this sub-paragraph applies to—

- (a) any existing employee who, immediately before the transfer date, is a participant in the scheme;

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- (b) any existing employee who, after that date, participates in a relevant scheme within 3 months of his attaining the minimum age for such participation; and
- (c) any former participant who, after that date, participates in or acquires pension rights under a relevant scheme in such circumstances as may be prescribed by regulations under paragraph 4.

(2) Subject to sub-paragraph (3), this sub-paragraph applies to—

- (a) any person not falling within sub paragraph (1)(c) who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme; and
- (b) any person who, after that date, acquires pension rights under a relevant scheme by reason of the death of a person falling within sub-paragraph (1) or head (a),

but only as respects the pension rights by virtue of which he falls within head (a) or (b).

(3) Any person to whom sub-paragraph (1) or (2) applies may elect in such manner as may be prescribed by regulations under paragraph 4 that that sub-paragraph shall cease to apply to him; and if any person to whom sub-paragraph (1) applies—

- (a) ceases to be in continuous employment; or
- (b) voluntarily withdraws from a relevant scheme,

otherwise than in such circumstances as may be so prescribed, that sub-paragraph shall cease to apply to him except as respects pension rights which have accrued to him before that time.

**6.—(1)** So much of Schedule 1 to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965<sup>F232</sup> as has effect for the purpose of ascertaining whether any employment is continuous shall apply for the purposes of paragraphs 4 and 5 as if—

- (a) those paragraphs were contained in that Act; and
- (b) in that Schedule “associated employer”, in relation to a company participating in a relevant scheme, included any other company participating in such a scheme and any other company of which a company so participating has control, or 2 or more companies so participating together have control;

but regulations under paragraph 4 may provide that no account shall be taken for those purposes of any person ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed by the regulations.

(2) For the purposes of sub-paragraph (1), a company has control, or 2 or more companies together have control, of another company (“the other company”) if—

- (a) that company, or each of those companies, is a member of the other company and that company controls, or those companies together control, the composition of the other company's board of directors;
- (b) that company holds, or those companies together hold, more than half in nominal value of the other company's equity share capital;
- (c) a company of which the company has control, or those companies together have control, has control of the other company; or
- (d) 2 or more companies of which that company has control, or those companies together have control, together have control of the other company;

and Article 4(2) to (4) of the Companies (Northern Ireland) Order 1986<sup>F233</sup> (as originally made and not as substituted by Article 62(1) of the Companies (No. 2) (Northern Ireland) Order 1990<sup>F234</sup>) shall, with any necessary modifications, apply for the purposes of this sub-paragraph as it applies for purposes of paragraph (1) of that Article.

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**F232** 1965 c. 19 (NI)

**F233** 1986 NI 6

**F234** 1990 NI 10

### *Other pensions*

7. Regulations may make provision for requiring successor companies—
- (a) to make payments by way of re-imbusement to any persons who, on behalf of the successor companies, have made payments to any persons with pension rights acquired other than under the scheme; and
  - (b) to make payments to any persons with pension rights acquired other than under the scheme in such circumstances as may be prescribed.

### *Supplemental*

8. Regulations under paragraphs 2, 3, 4 and 7 may contain such supplemental, consequential and transitional provisions as the Department considers appropriate.

### *Schedule 12#Amendments*

## SCHEDULE 13

Article 95(3).

### TRANSITIONAL PROVISIONS AND SAVINGS

## PART I

### PROVISIONS AND SAVINGS FOR PART II OF ORDER

1. In this Part—

“day appointed” means the day appointed under Article 1(2);

“the 1972 Order” means the Electricity Supply (Northern Ireland) Order 1972<sup>F235</sup>;

and expressions which are used in Part II of this Order have the same meanings as in that Part.

**F235** 1972 NI 9

2. In so far as any requisition made under paragraph 8 of Schedule 3 to the 1972 Order or otherwise under that Order which is effective on the day appointed for the coming into operation of Article 19 requires electricity to be supplied, it shall have effect as if made under Article 19(1); and the provisions of Part II of this Order shall apply accordingly.

3. Any tariff fixed under Article 26 of the 1972 Order which is effective on the day appointed for the coming into operation of Article 21 of this Order shall have effect as if fixed under paragraph (1) of the said Article 21; and the provisions of Part II of this Order shall apply accordingly.

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4. Any regulations made under Article 36 of the 1972 Order which are effective on the day appointed for the coming into operation of Article 32 of this Order shall have effect as if they were made under the said Article 32; and the provisions of Part II of this Order shall apply accordingly.

5.—(1) Where any application made under Article 33 of the 1972 Order is effective on the day appointed for the coming into operation of Article 39 of this Order—

- (a) the application shall have effect as if made under the said Article 39;
- (b) anything done before that day in relation to the application shall have effect as if done under the corresponding provisions of Schedule 8 to this Order; and
- (c) the provisions of Part II of this Order shall apply accordingly.

(2) Article 39 of this Order shall not apply in relation to—

- (a) the construction of a generating station, or its application as constructed; or
- (b) the extension of a generating station, or its operation as extended,

if its construction or, as the case may be, extension is authorised by a consent given or having effect as if given under Article 33 of the 1972 Order, before the day appointed for the coming into operation of the said Article 39.

6.—(1) Where any application made under Article 39 of the 1972 Order is effective on the day appointed for the coming into operation of Article 40 of this Order—

- (a) the application shall have effect as if made under the said Article 40;
- (b) anything done before that day in relation to the application shall have effect as if done under the corresponding provisions of Schedule 8 to this Order; and
- (c) the provisions of Part II of this Order shall apply accordingly.

(2) Article 40 of this Order shall not apply in relation to an electric line if its installation is authorised by a consent given under Article 39 of the 1972 Order before the day appointed for the coming into operation of the said Article 40.

7. Any maximum charge fixed by Northern Ireland Electricity under paragraph 17 of Schedule 3 to the 1972 Order for the resale of electricity supplied by it which is effective on the day appointed for the coming into operation of Article 47 shall have effect as a maximum price fixed by the Director under Article 47 for the resale of electricity so supplied.

8. Where any representation or reference made under, or in such circumstances as are mentioned in, any of the following statutory provisions, namely—

- (a) Articles 26(1) and 27(2), (3), (4) and (5) of the 1972 Order, and
- (b) Article 6 of the General Consumer Council (Northern Ireland) Order 1984<sup>F236</sup>,

is effective on the day appointed for the coming into operation of the repeal of that statutory provision by Article 95(4) and Schedule 14, the representation or reference shall have effect as if it were a representation made to the Director; and the provisions of Part II of this Order shall apply accordingly.

**F236** 1984 NI 12

9.—(1) Any land which has been compulsorily acquired under Article 8 of the 1972 Order before the day appointed for the coming into operation of Part I of Schedule 3 to this Order shall be treated for the purposes of that Part as compulsorily acquired under that Part.

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(2) Any vesting order made by the Department under Article 8(2) of the 1972 Order before the day appointed for the coming into operation of Part I of Schedule 3 to this Order shall have effect as if made under paragraph 1 of that Part; and the provisions of that Schedule shall apply accordingly.

**10.** Any consent given under Article 38(4) and (6) of the 1972 Order which is effective on the day appointed for the coming into operation of Schedule 4 to this Order shall have effect as if granted under paragraph 10(4) of that Schedule; anything done before that day with a view to, or otherwise in connection with, the giving of a consent under, the said Article 38(4) and (6) shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part II of this Order shall apply accordingly.

**11.** Any order made under Article 40 of the 1972 Order which is effective on the day appointed for the coming into operation of Schedule 4 to this Order shall have effect as if made under paragraph 14(6) of that Schedule; anything done under that Article before that day with a view to, or otherwise in connection with, the making of an order under the said Article 40 shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part II of this Order shall apply accordingly.

**12.—**(1) Paragraph 3(1)(a) and (b) of Schedule 7 shall not apply in relation to a meter installed before (and not moved since) the day appointed for the coming into operation of that Schedule until, in the case of sub-paragraph (b)—

- (a) electricity is supplied through the meter in pursuance of a notice given under Article 19(2) more than 12 months after that day; or
- (b) the period of 10 years beginning with the date of that day expires,

whichever first occurs.

(2) Paragraph 13(2) of Schedule 7 shall not prevent a pre-payment meter from being used as mentioned in that sub-paragraph under an agreement made before the day appointed for the coming into operation of that Schedule.

**13.—**(1) Where—

- (a) any sum was deposited with Northern Ireland Electricity by way of security under any provision of the 1972 Order; and
- (b) on and after the day appointed for the coming into operation of any provision of Part II of this Order that sum is treated by the appropriate successor company as deposited under that provision of that Part,

any period beginning 6 months or less before that day, being a period during which the sum was deposited with Northern Ireland Electricity, shall be treated for the purposes of the payment of interest on that sum as a period during which the sum was deposited under that provision of that Part.

(2) In this paragraph “successor company” has the same meaning as in Part III of this Order.

**14.—**(1) Where immediately before the day appointed for the coming into operation of any provision of Part II of this Order there is in force an agreement which—

- (a) confers or imposes on Northern Ireland Electricity any rights or liabilities; and
- (b) refers (in whatever terms and whether expressly or by implication) to any provision of the 1972 Order, to Northern Ireland Electricity's statutory electricity undertaking or to statutory purposes,

the agreement shall have effect, in relation to anything falling to be done on or after that day, as if that reference included or, as the case may require, were a reference to the corresponding provision of this Order, to Northern Ireland Electricity's undertaking as a person authorised by a licence to



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generate, transmit or supply electricity or to purposes connected with the generation, transmission or supply of electricity.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

## PART II

### PROVISIONS AND SAVINGS FOR PART III OF ORDER

15. In this Part expressions which are used in Part III of this Order have the same meanings as in that Part.

16. Any licence granted under Article 10 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if granted to the appropriate successor company.

17. Any tariff fixed, or having effect as if fixed, under Article 21 by Northern Ireland Electricity which is effective on the transfer date shall have effect as if fixed by or in relation to the appropriate successor company.

18. Any consent given under Article 39 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

19. Any consent given under Article 40 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

20. Any maximum price fixed, or having effect as if fixed, under Article 47 for the resale of electricity supplied by Northern Ireland Electricity which is effective on the transfer date shall have effect as if fixed for the resale of electricity by the appropriate successor company.

21. A direction given under Article 58 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

22. Any land compulsorily acquired by Northern Ireland Electricity before the transfer date which was so acquired under Part I of Schedule 3, or is treated as so acquired for the purposes of that Part, shall be treated for those purposes as so acquired by a successor company.

23.—(1) Where immediately before the transfer date there is in force an agreement which—

- (a) confers or imposes on Northern Ireland Electricity any rights or liabilities which vest in the appropriate successor company under this Order; and
- (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of Northern Ireland Electricity,

the agreement shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of Northern Ireland Electricity.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

24.—(1) Any agreement made, transaction effected or other thing done by, to or in relation to Northern Ireland Electricity which is in force or effective immediately before the transfer date shall have effect as if made, effected or done by, to or in relation to the appropriate successor company, in all respects as if that company were the same person in law as Northern Ireland Electricity; and accordingly references to Northern Ireland Electricity—

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument;

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- (b) in any process or other document issued, prepared or employed for the purposes of any proceeding before any court or other tribunal or authority; and
  - (c) in any other document whatsoever (other than a statutory provision) relating to or affecting any assets or liability of Northern Ireland Electricity which is transferred by this Order,
- shall be taken as referring to the appropriate successor company.

(2) Nothing in sub-paragraph (1) shall be taken as applying in relation to any agreement made, transaction effected or other thing done with respect to, or any document relating to or affecting, any rights and liabilities which are excepted rights and liabilities within the meaning of Article 69.

**25.** It is hereby declared for the avoidance of doubt that—

- (a) the effect of Part III of this Order in relation to any contract of employment with Northern Ireland Electricity which is in force immediately before the transfer date is merely to modify the contract by substituting the appropriate successor company as the employer (and not to terminate the contract or vary it in any other way); and
- (b) that Part is effective to vest the rights and liabilities of Northern Ireland Electricity under any agreement or arrangement for the payment of pensions, allowances or gratuities in the appropriate successor company along with all other rights and liabilities of Northern Ireland Electricity;

and accordingly any period of employment with Northern Ireland Electricity or a wholly owned subsidiary of Northern Ireland Electricity, shall count for all purposes as a period of employment with the appropriate successor company or (as the case may be), a wholly owned subsidiary of the appropriate successor company.

**26.** Any agreement made under paragraph 12 of Schedule 1 to the Electricity Supply (Northern Ireland) Order 1972<sup>F237</sup> (machinery for settling terms and conditions of employment) which is effective on the transfer date shall have effect as if—

- (a) the parties to the agreement on the employers' side were the successor companies and not Northern Ireland Electricity; and
- (b) each of the parties to the agreement were entitled to withdraw from it on giving the other parties 12 months' notice in writing.

**F237** 1972 NI 9

**27.—(1)** It shall be the duty of Northern Ireland Electricity and the appropriate successor company to take, as and when during the transitional period that company considers appropriate, all such steps as may be requisite to secure that the vesting in that company by virtue of Part III of this Order or this paragraph of any foreign asset or liability is effective under the relevant foreign law.

(2) During the transitional period, until the vesting in a successor company by virtue of Part III of this Order or this paragraph of any foreign asset or liability is effective under the relevant foreign law, it shall be the duty of Northern Ireland Electricity to hold that asset for the benefit of, or to discharge that liability on behalf of, the successor company.

(3) Nothing in sub-paragraphs (1) and (2) shall be taken as prejudicing the effect under the law of Northern Ireland of the vesting in a successor company by virtue of Part III of this Order or this paragraph of any foreign asset or liability.

(4) Northern Ireland Electricity shall have all such powers as may be requisite for the performance of its duty under this paragraph, but—

- (a) it shall be the duty of the appropriate successor company during the transitional period to act on behalf of Northern Ireland Electricity (so far as possible) in performing the duty imposed on Northern Ireland Electricity by this paragraph; and

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(b) any foreign assets and liabilities acquired or incurred by Northern Ireland Electricity during that period shall immediately become assets and liabilities of the appropriate successor company.

(5) References in this paragraph to any foreign asset or liability are references to any asset or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

(6) Any expenses incurred by Northern Ireland Electricity under this paragraph shall be met by the appropriate successor company.

**28.**—(1) Notwithstanding the repeal of Articles 23 and 24 of the Electricity Supply (Northern Ireland) Order 1972<sup>F238</sup> by Article 95(4) and Schedule 14, it shall be the duty of Northern Ireland Electricity to prepare statements of accounts in accordance with the said Articles 23 and 24 in respect of each financial year ending before the transfer date, and the said Articles 23 and 24 shall continue to apply during the transitional period in relation to those statements and the auditing of those statements.

(2) Notwithstanding the repeal of Article 12 of the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14, it shall be the duty of Northern Ireland Electricity to make a report to the Department in accordance with the said Article 12 in respect of each financial year ending before the transfer date.

(3) Any expenses incurred by Northern Ireland Electricity under this paragraph shall be met by the appropriate successor company.

**F238** 1972 NI 9

**29.**—(1) Where by virtue of anything done before the transfer date, any statutory provision amended by Schedule 12 has effect in relation to Northern Ireland Electricity that statutory provision shall have effect in relation to the appropriate successor company as if that company were the same person, in law, as Northern Ireland Electricity.

(2) Until the Department of Finance and Personnel makes an order under Article 39C of the Rates (Northern Ireland) Order 1977<sup>F239</sup> the provisions of that Order which, immediately before the transfer date, have effect in relation to Northern Ireland Electricity shall, after that date, have effect in relation to the appropriate successor company as if that company were the same person, in law, as Northern Ireland Electricity.

**F239** 1977 NI 28

**30.** Without prejudice to the powers conferred by Article 95(2), every provision contained in subordinate legislation, which is in operation immediately before the transfer date and then applicable to Northern Ireland Electricity shall have effect as if—

- (a) for references to Northern Ireland Electricity there were substituted references to the appropriate successor company; and
- (b) for any reference (however worded and whether expressly or by implication) to the undertaking or business, or any part of the undertaking or business, of Northern Ireland Electricity there were substituted a reference to the undertaking or business, or the corresponding part of the undertaking or business, of the appropriate successor company.

**31.**—(1) Anything which, immediately before the transfer date, is in process of being done under the provisions relating to street works in Schedule 3 to the Electricity Supply (Northern Ireland)

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Order 1972<sup>F240</sup> by or in relation to Northern Ireland Electricity (including, in particular, any legal proceedings to which it is a party) may be continued by, or in relation to, the appropriate successor company.

(2) Any notice or direction given or other thing whatsoever done under the said provisions of that Schedule by Northern Ireland Electricity shall, if effective at the transfer date, continue in force and have effect as if similarly given or done by the appropriate successor company.

**F240** 1972 NI 9

**32.—**(1) An application or claim by Northern Ireland Electricity for hazardous substances consent which is effective on the transfer date shall have effect as if made by the appropriate successor company.

(2) A hazardous substances consent granted or deemed to be granted to Northern Ireland Electricity which is effective on the transfer date shall have effect as if it had been granted to the appropriate successor company.

**33.—**(1) Where a distribution is proposed to be declared during the accounting reference period of a successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, Articles 278 to 284 of the Companies (Northern Ireland) Order 1986<sup>F241</sup> (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—

- (a) references in Article 278 to the company's accounts or to accounts relevant under that Article; and
- (b) references in Article 281 to initial accounts,

included references to such accounts as, on the assumptions stated in sub-paragraph (2), would have been prepared under Article 234 of that Order of 1986 in respect of the relevant year.

(2) The said assumptions are—

- (a) that the relevant year had been a financial year of the successor company;
- (b) that the vesting effected by Part III of this Order had been a vesting of all the assets and liabilities to which Northern Ireland Electricity was entitled or subject immediately before the beginning of the relevant year and had been effected immediately after the beginning of that year;
- (c) that the value of any asset and the amount of any liabilities of Northern Ireland Electricity vested in the successor company by virtue of the said Article 234 had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by Northern Ireland Electricity in respect of the financial year immediately preceding the relevant year;
- (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
- (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.

(3) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by Northern Ireland Electricity (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included in any reserves of the successor company as representing its accumulated realised profits

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shall be determined as if any profits realised and retained by Northern Ireland Electricity had been realised and retained by the successor company.

(4) The said accounts shall not be regarded as statutory accounts for the purposes of Article 78 of this Order.

(5) In this paragraph “the relevant year” means the last complete financial year ending before the transfer date.

**F241** 1986 NI 6

### PART III

#### OTHER SAVINGS

**34.** An order by the Department of Finance and Personnel under paragraph 18(2) of Schedule 6 to the Local Government Act (Northern Ireland) 1972<sup>F242</sup> prescribing the rate of interest payable under that paragraph shall apply to the rate of interest payable upon any outstanding compensation under the Electricity (Supply) Act (Northern Ireland) 1948<sup>F243</sup> as if the interest were payable under that paragraph.

**F242** 1972 c. 9 (NI)

**F243** 1948 c. 18 (NI)

*Para. 35 rep. by 1995 NI 19*

**36.** The provisions of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954<sup>F244</sup>.

**F244** 1954 c. 33 (NI)

*Schedule 14#Repeals*

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