

STATUTORY INSTRUMENTS

1992 No. 231

The Electricity (Northern Ireland) Order 1992

PART II

ELECTRICITY SUPPLY

Licensing of supply, etc.

Prohibition on unlicensed supply, etc.

8.—(1) A person who—

^{F1}(a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;

^{F2}(b) participates in the transmission of electricity for that purpose; ^{F3}. . .]

^{F4}(bb) distributes electricity for that purpose;]

^{F1}(c) supplies electricity to any premises, ^{F5} 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;

(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.

^{F6}(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.]

^{F7}(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.]

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- F1** mod. by SR 1999/352
- F2** 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
- F3** 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.
- F4** Art. 8(1)(bb) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 17](#)
- F5** 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.
- F6** 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
- F7** 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.

Modifications etc. (not altering text)

- C1** Art. 8(1)(bb) restricted (temp. from 15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 31](#)

Exemptions from Article 8

9.—(1) The Department may, after consultation with the Director, by order grant exemption from sub-paragraph (a) [^{F8}, [^{F9}(bb)] (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.

[^{F10}(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;

[^{F11}(aa) may be granted subject to such conditions as appear to the Department to be requisite or expedient to ensure that the activity authorised by the exemption is carried out in compliance with the relevant requirements and prohibitions laid down by the Directive; and]

(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.

[^{F12}(5) If any condition pursuant to paragraph 3(aa) of an exemption granted to persons of a class is not complied with by any person of that class, the Department may give to that person a direction declaring that the exemption is revoked, so far as relating to that person, to such extent and as from such date as may be specified in the direction.]

- F8** 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.

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- F9** Word in art. 9(1) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 18(a)**
- F10** 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.
- F11** Art. 9(3)(aa) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 18(b)**
- F12** Art. 9(5) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 18(c)**

Licences authorising supply, etc.

10.—(1) The [^{F13}Authority] 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;

[^{F14}(b) to participate in the transmission of electricity for that purpose; ^{F15}. . .]

[^{F16}(bb) to distribute electricity for that purpose;]

[^{F17}(c) to supply electricity to any premises.]

[^{F18}(d) to act as SEM operator.]

[^{F19}(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 [^{F20}Authority] 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 ^{F21}. . . 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, [^{F22}the Authority] shall give notice—

(a) stating that [^{F23}the Authority] 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 [^{F24}the Authority] 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.

[^{F25}(7) ^{F26}]

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(8) As soon as practicable after granting any licence under paragraph (1)(b) [^{F27}or (1)(bb)] 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.

- F13** Word in art. 10(1) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 47**
- F14** 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
- F15** 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.
- F16** Art. 10(1)(bb) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 19(a)**
- F17** 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)
- F18** 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.
- F19** 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)
- F20** Word in art. 10(2A) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 48**
- F21** 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)
- F22** Words in art. 10(4) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 49(a)**
- F23** Words in art. 10(4)(a) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 49(b)**
- F24** Words in art. 10(5) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 50**
- F25** 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)
- F26** Art. 10(7) omitted (15.4.2011) by virtue of Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 51**
- F27** Words in art. 10(8) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 19(b)**

^{F28}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—

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- (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.]

F28 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

[^{F29}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.]

F29 Art. 10AA inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 20](#)

[^{F30}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.

F30 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.

F30 Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

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.

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(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.

F30 Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

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.

(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.

F30 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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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.

(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;

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- (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.

F30 Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

The ownership unbundling requirement

[^{F30}**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—

- (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—

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- (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.]

F30 Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

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

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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.

F30 Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

Monitoring and review of certification

[^{F30}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 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.

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(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.]

F30 Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

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.

F30 Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

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.

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(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;
- (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.]

F30 Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

Interpretation

[^{F30}**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;

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“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;

“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

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- (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
 - (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.]

F30 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^{F31} Article 12 of the Energy (Northern Ireland) Order 2003^{F32} 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^{F33} 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) ^{F31}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^{F31}, 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.
- ^{F31}(3A) Conditions included in a licence under Article 10(1)(b) ^{F34}, (bb)] 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 ^{F35}, 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—

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- (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
- (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.

[^{F31}(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.

[^{F31}(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.]

[^{F36}(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.

F31 2003 NI 6

F32 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.

F33 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

F34 Words in art. 11(3A) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 21**

F35 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)

F36 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.

Compliance with Community obligations

[^{F37}**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 in Northern Ireland and Ireland;
 - (ii) additional generating capacity under construction or being planned in Northern Ireland and Ireland;

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- (iii) the quality and level of maintenance of the generating plant and equipment and of the transmission, distribution and supply systems 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 in Northern Ireland and Ireland,

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 31 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 33 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 16 of the Directive and shall 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 Article 12 or 15(1) of the Directive;
- (b) where he carries out the tasks laid down by Article 15(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) in relation to any task referred to in Article 15(3) to (5) of the Directive, to follow such rules for priority as may be specified in the conditions for the purposes of those provisions;
- (d) to comply with the requirements of Article 15(6) of the Directive in procuring the energy used in the carrying out of his functions;
- (e) 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 15(7) of the Directive; and
- (f) to comply with the requirements for system access laid down by Article 32 of the Directive.

(4) The conditions referred to in paragraph (1) shall, in particular, in the case of a distribution licence ensure that the holder does not disclose information contrary to Article 27 of the Directive and shall require the holder—

- (a) to carry out the tasks laid down for him by Articles 25(1) and (7) of the Directive;
- (b) to act in accordance with paragraph (2) of Article 25 of the Directive and to provide the information required by paragraph (3) of that Article;
- (c) in relation to any task referred to in Article 25(4) of the Directive, to follow such rules for priority as may be specified in the conditions for the purposes of those provisions;
- (d) to comply with the requirements of Article 25(5) of the Directive in procuring the energy used in the carrying out of his functions;
- (e) where he balances electricity inputs to and offtakes from any distribution system used under the licence, to adopt and follow rules which comply with the relevant requirements of Article 25(6) of the Directive;
- (f) to comply with the requirements for system access laid down by Article 32 of the Directive;
- (g) to facilitate (to the extent within his control) the ability of customers to change suppliers within 3 weeks, as required by Article 3(5)(a) of the Directive; and
- (h) to facilitate (to the extent within his control) the ability of customers to have access to consumption data, as required by Article 3(5)(b) of, and items (h) and (i) of paragraph 1 of Annex I to, the Directive.

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(5) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a transmission licence—

- (a) where the holder, or a holder of a transmission licence in relation to whom the holder is a related transmission licensee, is certified under the first certification ground in Article 10F, require that the ownership unbundling requirement in Article 10G continues to be met in relation to the holder;
- (b) where the holder, or a holder of a transmission licence in relation to whom the holder is a related transmission licensee, is certified under the second certification ground in Article 10F, require the maintenance in force of the arrangements by virtue of which the requirements of Article 9(9) of the Directive were met;
- (c) where the holder is certified under the third certification ground in Article 10F or is designated as independent system operator for the purposes of that certification ground—
 - (i) require that the requirements of Articles 13(2) and 14(1) and (2) of the Directive which are relevant to the holder continue to be met; and
 - (ii) require that the requirements of Article 13(4) or 13(5) of the Directive which are relevant to the holder continue to be met; and
- (d) require the holder to notify the Authority if any of the other conditions referred to in this paragraph ceases or is likely to cease to be met.

(6) Subject to paragraph (5), the conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a distribution licence granted to a person forming part of a vertically integrated undertaking—

- (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 26(1) of the Directive;
- (b) require that person to comply with the requirements for independence in terms of his management and decision-making rights laid down by Article 26(2) of the Directive; and
- (c) require that person to comply with the requirements laid down by Article 26(3) of the Directive.

(7) 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 who carries on the combination of activities to which Article 29 of the Directive applies, as appropriate having regard to the activities authorised by the licence, require that person to comply with the requirements laid down by that provision in relation to those activities.

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

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

- (a) require that any supply of electricity by the licence holder to a household customer is given at reasonable, easily and clearly comparable, transparent and non-discriminatory prices as required by Article 3(3) of the Directive;
- (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;
- (c) ensure that consumers of electricity have access to the information required by Article 3(9) of the Directive;

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- (d) ensure that household customers are not charged for changing supplier, in compliance with paragraph 1(e) of Annex I to the Directive, and are able to use procedures which comply with paragraph 1(f) of Annex I to the Directive;
- (e) 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(7) of the Directive;
- (f) make provision for customers wishing to change suppliers to be able to do so within 3 weeks, as required by Articles 3(5)(a) and 3(7) of the Directive;
- (g) ensure that customers have consumption data at their disposal and are able to give access to that data to other suppliers, as required by Article 3(5)(b) and items (h) and (i) of paragraph 1 of Annex I to the Directive;
- (h) ensure that customers have access to information about sources of energy efficiency advice, as required by Articles 3(8) and 3(11) of the Directive;
- (i) require that the holder of the licence provides its customers with a copy of the guidance, which is to be published by the Authority pursuant to Article 7(5) of the Energy (Northern Ireland) Order 2003, as required by Article 3(16) of the Directive;
- (j) ensure that household customers are offered a wide choice of payment methods, which do not unduly discriminate between customers, as required by paragraph 1(d) of Annex I to the Directive;
- (k) ensure that the terms and conditions of supply contracts offered by the licence holder to household customers comply with items (a) and (d) of paragraph 1 of Annex I to the Directive;
- (l) make provision for customers to be protected from unfair or misleading selling methods, as required by paragraph 1(d) of Annex I to the Directive;
- (m) ensure that household customers receive a final bill following changing suppliers within the time frame required by paragraph 1(j) of Annex I to the Directive; and
- (n) ensure that the holder of the licence maintains the records required by Article 40 of the Directive.]

F37 Art. 11A substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 14**

[^{F38}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

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(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), (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.]

F38 Art. 11AA inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), [reg. 52](#)

Conditions on transmission licences relating to priority dispatch

[^{F39}**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](#);

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

“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.]

F39 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)

C2 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

[^{F40}**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

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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.]

F40 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 [F41 Article 8] 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 [F42 Article 8] 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.

F41 Words in art. 11B(1)(b) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 81(a)**

F42 Words in art. 11B(5) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 81(b)**

[F43 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 [F44 which has the long-term ability to meet reasonable demands for the distribution of electricity] ; 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.]

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- F43** 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)
- F44** Words in art. 12(1)(a) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 22**

Powers, etc., of licence holders

13.—^{F45}(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—

- ^{F46}(a) in relation to the holder of a licence under Article 10(1)(b);
- (b) in relation to the holder of a licence under Article 10(1)(bb) to the extent that his licence so provides; 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) ^{F47}

^{F48}(4A) A transmission licence ^{F49}[or a distribution 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.

- F45** Art. 13(1) substituted (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), **8(1)** (with transitional provisions in Pt. IV)
- F46** Art. 13(1)(a)(b) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 23(a)**
- F47** Art. 13(4) repealed (1.11.2007) by [Electricity Regulations \(Northern Ireland\) 2007 \(S.R. 2007/321\)](#), regs. 1(2), **8(2)** (with transitional provisions in Pt. IV)

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- F48** Art. 13(4A) inserted (3.7.2007) by Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)), arts. 1(2), 65, Sch. 3 para. 6(3); S.R. 2007/320, **art. 2**, Sch. 1
- F49** Words in art. 13(4A) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 23(b)**

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