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## STATUTORY INSTRUMENTS

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# 1992 No. 231

## The Electricity (Northern Ireland) Order 1992

### PART II **N.I.**

#### ELECTRICITY SUPPLY

##### *Introductory*

##### *Interpretation of Part II* **N.I.**

3. In this Part—

“the 1973 Act” means the Fair Trading Act 1973<sup>F1</sup>;

“the 1980 Act” means the Competition Act 1980<sup>F2</sup>;

[<sup>F3</sup>“the 2011 Regulations” means the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011;]

<sup>F4</sup> .....

[<sup>F5</sup>“the Directive” means European Parliament and Council Directive [2009/72/EC](#) concerning common rules for the internal market in electricity and repealing Directive [2003/54/EC](#);

[<sup>F6</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;]

[<sup>F7</sup>“distribution licence” means a licence under Article 10(1)(bb);]

“electrical plant” means any plant, equipment, apparatus or appliance used for, or for purposes connected with, the generation, transmission [<sup>F8</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>F9</sup>“electricity distributor” means any person who is authorised by a licence under Article [<sup>F10</sup>10(1)(bb)]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]

[<sup>F16</sup>“vertically integrated undertaking” has the meaning given in Article 2(21) of the Directive;] “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>F17</sup>.

- F1 1973 c. 41
- F2 1980 c. 2
- F3 Art. 3: definition of "the 2011 Regulations" inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 80(b)**
- F4 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)**
- F5 Art. 3: definition of "the Directive" substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 80(a)**
- F6 Art. 3: definition of "distribute" inserted (1.11.2007) by Electricity Regulations (Northern Ireland) 2007 (S.R. 2007/321), regs. 1(2), **4(b)**
- F7 Art. 3: definition of "distribution licence" inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 16(a)**
- F8 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)**
- F9 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)**
- F10 Words in art. 3 in definition of "electricity distributor" substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 16(b)**
- 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 Art. 3: definition of "vertically integrated undertaking" inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 80(b)**
- F17 1971 c. 80

Arts.4#7 rep. by 2003 NI 6

*Licensing of supply, etc.*

**Prohibition on unlicensed supply, etc.** **N.I.**

8.—(1) A person who—

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- <sup>F18</sup>(a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- [<sup>F19</sup>(b) participates in the transmission of electricity for that purpose; <sup>F20</sup>. . . ]
- [<sup>F21</sup>(bb) distributes electricity for that purpose;]
- <sup>F18</sup>(c) supplies electricity to any premises,[<sup>F22</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;
- (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>F23</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>F24</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.]

**F18** mod. by SR 1999/352

**F19** 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

**F20** 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.

**F21** Art. 8(1)(bb) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 17

**F22** 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.

**F23** 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

**F24** 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.

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**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** **N.I.**

9.—(1) The Department may, after consultation with the Director, by order grant exemption from sub-paragraph (a) [<sup>F25</sup>, [<sup>F26</sup>(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.

[<sup>F27</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;

[<sup>F28</sup>(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.

[<sup>F29</sup>(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.]

- F25** 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.
- F26** 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)**
- F27** 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.
- F28** 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)**
- F29** 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.** **N.I.**

10.—(1) The [<sup>F30</sup>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;

[<sup>F31</sup>(b) to participate in the transmission of electricity for that purpose; <sup>F32</sup>. . . ]

[<sup>F33</sup>(bb) to distribute electricity for that purpose;]

[<sup>F34</sup>(c) to supply electricity to any premises.]

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[<sup>F35</sup>(d) to act as SEM operator.]

[<sup>F36</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 [<sup>F37</sup>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 <sup>F38</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, [<sup>F39</sup>the Authority] shall give notice—

- (a) stating that [<sup>F40</sup>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 [<sup>F41</sup>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.

[<sup>F42</sup>(7) <sup>F43</sup> . . . . .]

(8) As soon as practicable after granting any licence under paragraph (1)(b) [<sup>F44</sup>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.

<b>F30</b>	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
<b>F31</b>	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
<b>F32</b>	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.
<b>F33</b>	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)

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- F34** 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)
- F35** 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.
- F36** 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)
- F37** 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**
- F38** 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)
- F39** 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)**
- F40** 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)**
- F41** 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**
- F42** 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)
- F43** 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**
- F44** 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)**

#### [<sup>F45</sup>Transmission licences **N.I.**

**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.]

- F45** 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

#### [<sup>F46</sup>Distribution licences **N.I.**

**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.]

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**F46** Art. 10AA inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 20**

**[<sup>F47</sup>Electricity transmission: requirement for participants to be certified as independent N.I.]**

**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.

**F47** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

**Application for certification N.I.**

**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.



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(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.

**F47** 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** **N.I.**

**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.

**F47** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

### **Certification** **N.I.**

**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—

**Status:** Point in time view as at 06/02/2015.

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- (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.

**F47** Arts. 10B-10L inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 10**

## Grounds for certification **N.I.**

**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—

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- (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;
  - (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.

**F47** 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 **N.I.**

<sup>F47</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

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- (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—
    - (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

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(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.]

**F47** 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 **N.I.**

**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.

**F47** 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 **N.I.**

<sup>[F47]</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.

*Status: Point in time view as at 06/02/2015.*

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(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.

(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.]

**F47** 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 **N.I.**

**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.

**F47** 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 **N.I.**

**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;
- (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.

*Status: Point in time view as at 06/02/2015.*

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(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.]

**F47** Arts. 10B-10L inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 10**

## Interpretation **N.I.**

[<sup>F47</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;

“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



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- (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
- (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.]

**F47** 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 **N.I.**

**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>F48</sup> Article 12 of the Energy (Northern Ireland) Order 2003]<sup>F49</sup> or Article 9 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007]; and

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- (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>[F50]</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>[F48]</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>[F48]</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>[F48]</sup>(3A) Conditions included in a licence under Article 10(1)(b) <sup>[F51]</sup>, (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 <sup>[F52]</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
- (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>[F48]</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>[F48]</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.]

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[<sup>F53</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.

**F48** 2003 NI 6

**F49** 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.

**F50** 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

**F51** 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**

**F52** 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)

**F53** 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** **N.I.**

[<sup>F54</sup>**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;
    - (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;

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- (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.
- (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

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- (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;
  - (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;

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- (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.]

**F54** Art. 11A substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 14**

**[<sup>F55</sup>Standard conditions of licences **N.I.****

**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), (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.]

**F55** Art. 11AA inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 52**

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**[<sup>F56</sup>Conditions on transmission [<sup>F57</sup>and distribution] licences relating to priority dispatch N.I.]**

**11AB.—**(1) Without prejudice to the generality of Article 11(1), a transmission [<sup>F58</sup>or a distribution] 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](#)<sup>F59</sup> and Article 15(5)(c) of Directive [2012/27/EU](#)] 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 [<sup>F60</sup>Annex II of the Energy Efficiency Directive (as defined in Article 11AC(8))];

“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.]

**F56** Art. 11AB inserted (20.11.2012) by [Electricity \(Priority Dispatch\) Regulations \(Northern Ireland\) 2012](#) (S.R. 2012/385), **reg. 2**

**F57** Words in art. 11AB heading inserted (25.7.2014) by [Energy Efficiency Regulations \(Northern Ireland\) 2014](#) (S.R. 2014/198), **reg. 12(2)**

**F58** Words in art. 11AB(1) inserted (25.7.2014) by [Energy Efficiency Regulations \(Northern Ireland\) 2014](#) (S.R. 2014/198), **reg. 12(3)(a)**

**F59** Words in art. 11AB(1) inserted (25.7.2014) by [Energy Efficiency Regulations \(Northern Ireland\) 2014](#) (S.R. 2014/198), **reg. 12(3)(b)**

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**F60** Art. 11AB(4): words in definition of "high efficiency co-generation" substituted (25.7.2014) by [Energy Efficiency Regulations \(Northern Ireland\) 2014 \(S.R. 2014/198\)](#), **reg. 12(4)**

**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**

**[<sup>F61</sup>Licensing and Energy Efficiency N.I.]**

**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.



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- (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.
- (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

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- (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.]

**F61** Art. 11AC inserted (25.7.2014) by [Energy Efficiency Regulations \(Northern Ireland\) 2014 \(S.R. 2014/198\)](#), [reg. 8](#)

### ***Provision of additional capacity or energy efficiency measures*** **N.I.**

**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 [<sup>F62</sup>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 [<sup>F63</sup>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.

- F62** 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)**
- F63** 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)**

#### <sup>F64</sup>**General duties of electricity distributors and transmission licence holders** **N.I.**

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 [<sup>F65</sup>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.]

- F64** 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)
- F65** 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** **N.I.**

13.—<sup>F66</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—

- <sup>F67</sup>(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.]

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(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>F68</sup> .....

[<sup>F69</sup>(4A) A transmission licence [<sup>F70</sup> 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.

- F66** 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)
- F67** 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)**
- F68** 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)
- F69** 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
- F70** 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)**

### *Modification of licences*

#### <sup>F71</sup>**Modification of conditions of licences** **N.I.**

14.—(1) The Authority may make modifications of—

- (a) the conditions of a particular licence;
- (b) the standard conditions of licences of any type mentioned in Article 10(1).

(2) Before making any modifications under this Article, the Authority must give notice—

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

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- (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (3) The time specified by virtue of paragraph (2)(d) may not be less than 28 days from the date of the publication of the notice.
- (4) A notice under paragraph (2) must be given—
- (a) by publishing the notice in such manner as the Authority 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 sending a copy of the notice to—
    - (i) each relevant licence holder,
    - (ii) the Department, and
    - (iii) the General Consumer Council for Northern Ireland.
- (5) The Authority must consider any representations which are duly made.
- (6) If, within the time specified by virtue of paragraph (2)(d), the Department directs the Authority not to make any modification, the Authority shall comply with the direction.
- (7) Paragraphs (8) to (10) apply where, having complied with paragraphs (2) to (5), the Authority decides to proceed with the making of modifications of the conditions of any licence under this Article.
- (8) The Authority must—
- (a) publish the decision and 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;
  - (b) state the effect of the modifications;
  - (c) state how it has taken account of any representations duly made; and
  - (d) state the reason for any differences between the modifications and those set out in the notice by virtue of paragraph (2)(b).
- (9) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 5A).
- (10) The date specified by virtue of paragraph (9) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this Article.
- (11) In this Article “relevant licence holder”—
- (a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
    - (i) which is to be modified by the inclusion of any new standard condition, or
    - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of paragraph (2)(d); or
  - (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.]

**F71** 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)

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

**C3** Art. 14(2) applied (6.2.2015) by [Gas and Electricity Licence Modification and Appeals Regulations \(Northern Ireland\) 2015 \(S.R. 2015/1\)](#), **reg. 6(3)(a)** (with reg. 6)

**Status:** Point in time view as at 06/02/2015.

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**[<sup>F72</sup>Modification of conditions under Article 14: supplementary N.I.]**

**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.]

**F72** 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**)

**Modification references to [<sup>F73</sup>CMA] N.I.]**

**15.** <sup>F74</sup> .....

**F73** Word in [art. 15 heading](#) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), ss. 26(4), 103(3), **Sch. 6 para. 151(11)**; S.I. 2014/416, **art. 2(1)(d)** (with **Sch.**)

**F74** Arts. 15-17A omitted (6.2.2015) by virtue of [Gas and Electricity Licence Modification and Appeals Regulations \(Northern Ireland\) 2015 \(S.R. 2015/1\)](#), **reg. 4(2)** (with **reg. 6**)

**[<sup>F75</sup>References under Article 15: time limits N.I.]**

**15A** <sup>F76</sup> .....

**F75** 2002 c. 40

**F76** Arts. 15-17A omitted (6.2.2015) by virtue of [Gas and Electricity Licence Modification and Appeals Regulations \(Northern Ireland\) 2015 \(S.R. 2015/1\)](#), **reg. 4(2)** (with **reg. 6**)

**References under Article 15: powers of investigation N.I.]**

**15B** <sup>F77</sup> .....

**F77** Arts. 15-17A omitted (6.2.2015) by virtue of [Gas and Electricity Licence Modification and Appeals Regulations \(Northern Ireland\) 2015 \(S.R. 2015/1\)](#), **reg. 4(2)** (with **reg. 6**)

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## Reports on modification references **N.I.**

### 16. <sup>F78</sup> .....

**F78** Arts. 15-17A omitted (6.2.2015) by virtue of Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (S.R. 2015/1), **reg. 4(2)** (with reg. 6)

## Modification following report **N.I.**

### 17. <sup>F79</sup> .....

**F79** Arts. 15-17A omitted (6.2.2015) by virtue of Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (S.R. 2015/1), **reg. 4(2)** (with reg. 6)

## [<sup>F80</sup>[<sup>F81</sup>CMA's] power to veto modifications following report **N.I.**

### 17A. <sup>F82</sup> .....

**F80** 2003 NI 6

**F81** Word in art. 17A heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 26(4), 103(3), **Sch. 6 para. 155(4)**; S.I. 2014/416, **art. 2(1)(d)** (with Sch.)

**F82** Arts. 15-17A omitted (6.2.2015) by virtue of Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (S.R. 2015/1), **reg. 4(2)** (with reg. 6)

## Modification by order under other statutory provisions **N.I.**

**18** <sup>F83</sup>.—(1) Where the [<sup>F84</sup>CMA] 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

(b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [<sup>F85</sup>or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission [<sup>F86</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.

**F83** mod. by SI 2003/1592

**Status:** Point in time view as at 06/02/2015.

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- F84** Word in art. 18(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 26(4), 103(3), **Sch. 6 para. 156**; S.I. 2014/416, **art. 2(1)(d)** (with Sch.)
- F85** Words in art. 18(2)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 215** (with art. 3)
- F86** 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

### <sup>F87</sup> Appeal from decisions of the Authority

- F87** 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 **N.I.**

**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.

(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 **N.I.**

**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>F88</sup>.

**F88** 2013 c.24

### **Determination by CMA of appeal** **N.I.**

**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>F89</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.

**F89** S.I. 2007/913(N.I.7)

### **CMA's powers on allowing appeal** **N.I.**

**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.

*Status: Point in time view as at 06/02/2015.*

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(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** **N.I.**

**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.

(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** **N.I.**

- 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>F90</sup> Duty to connect on request** **N.I.**

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

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(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.]

**F90** 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>F91</sup> Procedure for requiring a connection **N.I.**

**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—

- (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.]

**F91** 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>F92</sup> **Exceptions from duty to connect** **N.I.**

**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.]

**F92** 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>F93</sup> **Power to recover expenditure** **N.I.**

**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

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- (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.]

**F93** 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>F94</sup> **Power to require security** **N.I.**

**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.]

**F94** 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>F95</sup> **Additional terms of connection** **N.I.**

**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

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- (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.]

**F95** 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>F96</sup> Special agreements with respect to connection N.I.]**

**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.]

**F96** 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>F97</sup> Determination of disputes N.I.]**

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

[<sup>F98</sup>(a) may be referred to the Authority by either party, and such a reference shall be accompanied by such information as is necessary or expedient to allow a determination to be made in relation to the dispute; 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,

[<sup>F99</sup>and, subject to paragraph (1A), the practice and procedure] to be followed in connection with any such determination shall be such as the Authority may consider appropriate.

[<sup>F100</sup>(1A) The procedures established under paragraph (1) shall provide for the determination of the dispute to be notified to the party making the reference within the requisite period or such longer period as the Authority may agree with that person.

(1B) For the purposes of paragraph (1A), 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 sent to the Authority under paragraph (1)(a) was in its opinion insufficient to enable it to make a determination, the period of 4 months from the date when the dispute was referred to the Authority.]

(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 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.

**Status:** Point in time view as at 06/02/2015.

**Changes to legislation:** The Electricity (Northern Ireland) Order 1992, PART II is up to date with all changes known to be in force on or before 08 July 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)

(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.]

- F97** 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)
- F98** Art. 26(1)(a) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 5(2)(a)**
- F99** Words in art. 26(1) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 5(2)(b)**
- F100** Art. 26(1A)(1B) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 5(3)**

## [<sup>F101</sup> **Electricity Supply Code** **N.I.**

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

- F101** 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.** **N.I.**

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>F102</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>F102</sup> . . . [<sup>F103</sup><sup>F102</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



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documents which are specified or described in the notice and are in that person's custody or under his control; or

- (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.

F102 2003 NI 6  
F103 1992 NI 13

### <sup>F104</sup>Dispute resolution **N.I.**

**31A.**—<sup>F105</sup>(1) Any person may make a complaint under this Article (hereinafter referred to as “a complaint”) if—

- (a) the subject matter of the complaint constitutes a dispute between the complainant and—
- (i) the holder of a transmission licence;
  - (ii) the holder of a distribution licence; <sup>F106</sup> . . .
  - (iii) a distribution exemption holder; [<sup>F107</sup>or]
  - [<sup>F108</sup>(iv) a supply exemption holder;]
- (b) it is wholly or mainly a complaint against that holder regarding an obligation imposed upon him pursuant to the Directive; and
- (c) the subject matter of the complaint—
- (i) does not fall to be dealt with under Article 26 or Article 42A; and
  - (ii) is not capable of being determined pursuant to any other provision of this Order.]

(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.

**Status:** Point in time view as at 06/02/2015.

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(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.

<sup>F109</sup>(5A) Where the Authority makes a determination under this Article, it may include in the determination an order requiring any party to the dispute to pay such sum in respect of the costs or expenses incurred by the Authority in making the determination as the Authority considers appropriate and this order shall be final and shall be enforceable as if it were a judgement of the county court.

(5B) In making an order under paragraph (5A), the Authority shall have regard to the conduct and means of the parties and other relevant circumstances.]

(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.

<sup>F110</sup>(7) In this Article—

- (a) “distribution exemption holder” means a person who carries on the activity referred to in Article 8(1)(bb) under the authority of an exemption granted pursuant to Article 9; and
- (b) “supply exemption holder” means a person who carries on the activity referred to in Article 8(1)(c) under the authority of an exemption granted pursuant to Article 9.]]

**F104** SR 2005/335

**F105** Art. 31A(1) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 55**

**F106** Word in art. 31A(1)(a)(ii) omitted (29.4.2013) by virtue of [Electricity \(Dispute Resolution\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/94\)](#), **reg. 3(2)(a)**

**F107** Word in art. 31A(1)(a)(iii) inserted (29.4.2013) by [Electricity \(Dispute Resolution\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/94\)](#), **reg. 3(2)(b)**

**F108** Art. 31A(1)(a)(iv) inserted (29.4.2013) by [Electricity \(Dispute Resolution\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/94\)](#), **reg. 3(2)(b)**

**F109** Art. 31A(5A)(5B) inserted (29.4.2013) by [Electricity \(Dispute Resolution\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/94\)](#), **reg. 3(3)**

**F110** Art. 31A(7) inserted (29.4.2013) by [Electricity \(Dispute Resolution\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/94\)](#), **reg. 3(4)**

### *Provisions with respect to supply generally*

#### **Regulations relating to supply and safety** **N.I.**

**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;

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- (b) protecting the public from dangers arising from the generation, transmission [<sup>F111</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>F112</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>F113</sup>in the distribution or transmission] of electricity;
  - (c) [<sup>F114</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>F115</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,

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.

**F111** 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)

**F112** 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)

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- F113** 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)
- F114** 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)
- F115** 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 **N.I.**

**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, [F116 supply [F117, distribute] or participate in the transmission of] electricity;
- (b) to examine, periodically and in special cases, the generation, transmission [F118, 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 [F119 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, [F120 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;

[F121(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.

- F116** 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
- F117** Words in art. 33(2)(a) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 24**
- F118** 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)
- F119** 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)
- F120** 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

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**F121** 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* **N.I.**

**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>F122</sup>*Electricity from non-fossil fuel sources* **N.I.**

**35.**—(1) The Department may, after consultation with the Director and with the licence holders concerned, by order require<sup>F123</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;
- (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;

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“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>F124</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.

**F122** prosp. rep. with saving by 2003 NI 6

**F123** 2003 NI 6

**F124** 1976 c. 76

### **Fossil fuel levy** **N.I.**

**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>F125</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.

**F125** 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** **N.I.**

**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>F126</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—

- (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.

F126 1978 NI 19

### *Provisions supplementary to Article 37* **N.I.**

**38.**—<sup>F127</sup>(1) The Department may give a direction requiring the holder of a transmission licence <sup>F128</sup>or a distribution 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 <sup>F129</sup>distribute or] 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.]

(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.

**Status:** Point in time view as at 06/02/2015.

**Changes to legislation:** The Electricity (Northern Ireland) Order 1992, PART II is up to date with all changes known to be in force on or before 08 July 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)

(7) Paragraphs 1 to 4, 7 and 8 of Schedule 2 to the Energy Act 1976<sup>F130</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.

**F127** 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

**F128** Words in art. 38(1) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 25(a)

**F129** Words in art. 38(2) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 25(b)

**F130** 1976 c. 76

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

**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>F131</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>F132</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.

(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.



**Changes to legislation:** The Electricity (Northern Ireland) Order 1992, PART II is up to date with all changes known to be in force on or before 08 July 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)

(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>F132</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 [<sup>F133</sup>Article 7(2)] of the Directive and published by it.]

**F131** SR 1994/180

**F132** SR 2005/335

**F133** Words in art. 39(9) substituted (1.8.2011) by Electricity (Published Criteria for Generating Station) Regulations (Northern Ireland) 2011 (S.R. 2011/247), **reg. 3**

**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** **N.I.**

**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>F134</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
- (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.

**Status:** Point in time view as at 06/02/2015.

**Changes to legislation:** The Electricity (Northern Ireland) Order 1992, PART II is up to date with all changes known to be in force on or before 08 July 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)

(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>F134</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 [<sup>F135</sup>Article 34(2)] of the Directive and published by it.]

**F134** SR 2005/335

**F135** Words in art. 40(6) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), reg. 82

### **Preservation of amenity and fisheries** **N.I.**

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

### *Consumer protection: standards of performance*

### **[<sup>F136</sup> Electricity supply and distribution: performance in individual cases.** **N.I.**

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 subparagraph (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 subparagraph (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.]

**F136** 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>F137</sup>**Standards of performance in individual cases: disputes** **N.I.**

- 42A.**—(1) Any dispute arising under Article 42 or regulations made under that Article—
- [<sup>F138</sup>(a) may be referred to the Authority by either party or, with the agreement of either party, by the General Consumer Council, and such a reference shall be accompanied by such information as is necessary or expedient to allow a determination to be made in relation to the dispute; 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) [<sup>F139</sup>Subject to paragraph (3A), the practice and procedure] to be followed in connection with any such determination shall be such as may be prescribed.
- [
- [<sup>F140</sup>(3A) The procedures established under paragraph (3) shall provide for the determination of the dispute to be notified to the person making the reference within the requisite period or such longer period as the Authority may agree with that person.
- (3B) For the purposes of paragraph (3A), 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 sent to the Authority under paragraph (1)(a) was in its opinion insufficient to enable it to make a determination, the period of 4 months from the date when the dispute was referred to the Authority.]

**Status:** Point in time view as at 06/02/2015.

**Changes to legislation:** The Electricity (Northern Ireland) Order 1992, PART II is up to date with all changes known to be in force on or before 08 July 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)

(4) An order under paragraph (1) shall be final and shall be enforceable as if it were a judgment of a county court.]

- F137** 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)
- F138** Art. 42A(1)(a) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), reg. **6(2)**
- F139** Words in art. 42A(3) substituted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), reg. **6(3)**
- F140** Art. 42A(3A)(3B) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), reg. **6(4)**

**[<sup>F141</sup> Overall standards of performance: electricity supply **N.I.****

**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
- (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.]

- F141** 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>F142</sup> Overall standards of performance: electricity distributors **N.I.****

**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.]

- F142** 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>F143</sup>**Procedures for prescribing or determining standards of performance** **N.I.**

**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.

(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.]

**F143** 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** **N.I.**

**44.**—(1) The Director may, after consultation with [<sup>F144</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>F144</sup>electricity suppliers].

**Status:** Point in time view as at 06/02/2015.

**Changes to legislation:** The Electricity (Northern Ireland) Order 1992, PART II is up to date with all changes known to be in force on or before 08 July 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)

[<sup>F145</sup>(3) Each [<sup>F146</sup>electricity supplier] shall, in such form and manner and with such frequency as [<sup>F147</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.]

**F144** 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)

**F145** 1992 NI 13

**F146** 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)

**F147** 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** **N.I.**

45.—(1) [<sup>F148</sup>the Authority] shall collect information with respect to—

- (a) the compensation made by [<sup>F149</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>F150</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>F151</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.]

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(3) [<sup>F152</sup>An electricity supplier] who without reasonable excuse fails to do anything required of him by paragraph (2) [<sup>F153</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>F148</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>F154</sup>electricity suppliers or electricity distributors].

(5) In arranging for the publication of any such information [<sup>F148</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>F148</sup>the Authority], seriously and prejudicially affect the interests of that individual; and
- (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>F148</sup>the Authority], seriously and prejudicially affect the interests of that body.

**F148** 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)

**F149** 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)

**F150** 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)

**F151** 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)

**F152** 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)

**F153** 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)

**F154** 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>F155</sup>**Information to be given to customers about overall performance** **N.I.**

**45A.**—(1) Each [<sup>F156</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>F157</sup>customers of electricity suppliers] of—

- (a) the standards of overall performance determined under Article 43 [<sup>F158</sup>or, as the case may be Article 43A] which are applicable to that supplier [<sup>F159</sup>or distributor]; and
- (b) that supplier's [<sup>F160</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.]

**F155** 1992 NI 13

**F156** 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)

**Status:** Point in time view as at 06/02/2015.

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- F157** 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)
- F158** 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)
- F159** 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)
- F160** 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)

#### [<sup>F161</sup>Procedures for dealing with complaints] **N.I.**

**45B.—**(1) Each [<sup>F162</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>F163</sup> General Consumer Council]; and
- (b) the proposed procedure or modification has been approved by [<sup>F164</sup>the Authority].

(3) The supplier shall—

- (a) publicise the procedure in such manner as may be approved by [<sup>F164</sup>the Authority]; and
- (b) send a description of the procedure, free of charge, to any person who asks for one.

(4) [<sup>F164</sup>the Authority] may give a direction to any [<sup>F165</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>F164</sup>the Authority].

(6) Where [<sup>F164</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).]

**F161** 1992 NI 13

**F162** 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)

**F163** 2003 NI 6

**F164** 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)



**F165** 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** **N.I.**

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

[<sup>F166</sup>(2) The functions to which paragraph (2A) applies shall be concurrent functions of the Director and the [<sup>F167</sup>CMA].

(2A) This paragraph applies to the functions of the [<sup>F168</sup>CMA] under Part 4 of the Enterprise Act 2002 (other than sections 166 [<sup>F169</sup>, 171 and 174E]) so far as [<sup>F170</sup>those functions—

- (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
- (b) relate to] commercial activities connected with the generation, transmission [<sup>F171</sup>, distribution] or supply of electricity.

(2B) So far as necessary for the purposes of, or in connection with, paragraphs [<sup>F172</sup>(2) and (2A)—

- (a) references] in Part 4 of the Act of 2002 to the [<sup>F173</sup>CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to the Director (except in sections 166 [<sup>F174</sup>, 171 and 174E] of that Act and in any other provision of that Act where the context otherwise [<sup>F175</sup>requires);
- (b) references in that Part to section 5 of the Act of 2002 are to be construed as including references to Article 50(1) of this Order.]]

[<sup>F176</sup>(2C) Section 130A of the Enterprise Act 2002 is to have effect in its application to the Authority by virtue of paragraphs (2) and (2A)—

- (a) as if for subsection (1) of that section there were substituted—
  - “(1) Where the Northern Ireland Authority for Utility Regulation—
  - (a) is proposing to carry out its functions under Article 50(1) of the Electricity (Northern Ireland) Order 1992 in relation to a matter for the purposes mentioned in subsection (2), and
  - (b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,the Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and
- (b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with the generation, transmission, distribution or supply of electricity ”.]

[<sup>F177</sup>  
<sup>F178</sup>(3) The Director shall be entitled to exercise, concurrently with the [<sup>F179</sup>CMA], the functions of the [<sup>F179</sup>CMA] under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) [<sup>F180</sup>, 40B(1) to (4)] and 51),so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,

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- (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 [<sup>F171</sup>, distribution] 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>F181</sup> the CMA] are to be read as including a reference to the Director ([<sup>F178</sup> except in sections 31D(1) to (6), 38(1) to (6)][<sup>F182</sup>, 40B(1) to (4)], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

[<sup>F166</sup>(4) Before the [<sup>F183</sup>CMA] 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 [<sup>F184</sup>CMA] 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 [<sup>F185</sup> a CMA group] in carrying out an investigation on a [<sup>F186</sup>market investigation reference made by the Authority (under section 131 of the Act of 2002)] by virtue of paragraph (2)<sup>F177</sup>. . . , to give to the [<sup>F187</sup>group]—

- (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 [<sup>F187</sup>group] for that purpose; or
  - (ii) is information which in his opinion it would be appropriate for that purpose to give to the [<sup>F187</sup>group] without any such request; and
- (b) any other assistance which the [<sup>F187</sup>group] may require and which it is within his power to give, in relation to any such matters,

and the [<sup>F187</sup>group] shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this paragraph.

[<sup>F188</sup>(5A) In paragraph (5) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

(6) [<sup>F189</sup>If any question arises as to whether paragraph (2) or (3) applies to any particular case]<sup>F190</sup>. . . <sup>F191</sup>. . . , that question shall be referred to and determined by the Department; and no objection shall be taken to anything done under—

- (a) [<sup>F166</sup>Part 4 of the Enterprise Act 2002] ([<sup>F192</sup> market investigations]); or

[<sup>F177</sup>(b) Part I of the Competition Act 1998 ([<sup>F178</sup> other than sections 31D(1) to (6), 38(1) to (6)][<sup>F193</sup>, 40B(1) to (4)] and 51),]

by or in relation to the Director on the ground that it should have been done by or in relation to [<sup>F194</sup> the CMA].

[<sup>F166</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 [<sup>F195</sup>CMA] included references to the Director.]

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

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- F166** 2002 c. 40
- F167** Word in art. 46(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(2)** (with art. 3)
- F168** Word in art. 46(2A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(3)(b)** (with art. 3)
- F169** Words in art. 46(2A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(3)(a)** (with art. 3)
- F170** Words in art. 46(2A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(3)(c)** (with art. 3)
- F171** Word in art. 46(2A)(3) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 26**
- F172** Words in art. 46(2B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(4)(a)** (with art. 3)
- F173** Word in art. 46(2B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(4)(b)** (with art. 3)
- F174** Words in art. 46(2B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(4)(c)** (with art. 3)
- F175** Words in art. 46(2B) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(4)(d)** (with art. 3)
- F176** Art. 46(2C) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(5)** (with art. 3)
- F177** 1998 c.41
- F178** SI 2004/1261
- F179** Word in art. 46(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(6)** (with art. 3)
- F180** Words in art. 46(3) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 57, 103(3), **Sch. 15 para. 53**; S.I. 2014/416, **art. 2(1)(f)** (with Sch.)
- F181** Words in art. 46(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(7)** (with art. 3)
- F182** Words in art. 46(3A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 57, 103(3), **Sch. 15 para. 53**; S.I. 2014/416, **art. 2(1)(f)** (with Sch.)
- F183** Word in art. 46(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(6)** (with art. 3)
- F184** Word in art. 46(4A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(6)** (with art. 3)
- F185** Words in art. 46(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(8)(a)(i)** (with art. 3)

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- F186** Words in art. 46(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(8)(a)(ii)** (with art. 3)
- F187** Word in art. 46(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(8)(b)** (with art. 3)
- F188** Art. 46(5A) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(9)** (with art. 3)
- F189** Words in art. 46(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 51(5), 103(3), **Sch. 14 para. 23**; S.I. 2014/416, **art. 2(1)(e)** (with Sch.)
- F190** 2002 c. 40
- F191** 1994 c.40
- F192** Words in art. 46(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(10)(a)** (with art. 3)
- F193** Words in art. 46(6)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 57, 103(3), **Sch. 15 para. 53**; S.I. 2014/416, **art. 2(1)(f)** (with Sch.)
- F194** Words in art. 46(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(10)(b)** (with art. 3)
- F195** Word in art. 46(6A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(6)** (with art. 3)

### **Fixing of maximum charges for reselling electricity** **N.I.**

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.

### **[<sup>F196</sup>Billing disputes** **N.I.**

<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.

(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)**

**Status:** Point in time view as at 06/02/2015.

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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\(3\)](#).

**F196** 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 **N.I.**

**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>F197</sup> electricity functions];

and this paragraph applies to any activities connected with the generation, transmission <sup>F198</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 <sup>F199</sup>issue guidance] 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>F197</sup> electricity functions] are exercisable, he should have particular regard in determining whether to exercise those functions.

<sup>F200</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>F201</sup> the CMA] to do so, to give information, advice and assistance to the Department or<sup>F201</sup> the CMA] with respect to any matter in respect of which any<sup>F197</sup> of the electricity functions of the Authority] is exercisable.

<sup>F197</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>F202</sup> and
- (c) functions under the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.]]

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[<sup>F203</sup>(3B) the activities to which paragraph (1) applies include, in particular, the matters specified in the following provisions of the Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 37(1)(g) to (k), (m) and (q) to (t); and
- (c) where an independent system operator has been designated under Article 10H of this Order, Article 37(3)(a), (b) and (f).]

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

**F197** 2003 NI 6

**F198** 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)

**F199** Words in art. 50(2) substituted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 56**

**F200** 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

**F201** Words in art. 50(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 2, **Sch. 1 para. 216(11)** (with art. 3)

**F202** 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.

**F203** Art. 50(3B) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), **reg. 57**

*Art. 51 rep. by 2003 NI 6*

### **Keeping of register** **N.I.**

**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>F204</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.

Status: Point in time view as at 06/02/2015.

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(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.

F204 2003 NI 6

Annual and other reports **N.I.**

53.—(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
  - <sup>F205</sup>(ii) the CMA's activities during that year so far as relating to appeals under Article 14B;
- (b) send a copy of that report to the chairman of the consumer committee.

(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.

(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

(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).

(6) <sup>F206</sup> .....

**F205** Art. 53(1)(a)(ii) substituted (6.2.2015) by Gas and Electricity Licence Modification and Appeals Regulations (Northern Ireland) 2015 (S.R. 2015/1), **reg. 10** (with **reg. 6**)

**F206** Art. 53(6) omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), ss. 26(4), 103(3), **Sch. 6 para. 157(3)**; S.I. 2014/416, **art. 2(1)(d)** (with **Sch.**)

Arts. 54#57 rep. by 2003 NI 6

Miscellaneous

Directions for preserving security of electricity supplies, etc. **N.I.**

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 [<sup>F207</sup>, distribution] 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.

(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 [<sup>F208</sup>, distribute] 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.

**F207** Word in art. 58(1)(a) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), reg. 27(a)

**F208** Word in art. 58(6) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), reg. 27(b)

### **Provision of statistical information** **N.I.**

59.—(1) The Department may, if the Department considers it expedient for the purpose of obtaining statistical information relating to the generation, transmission [<sup>F209</sup>, distribution] 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 [<sup>F210</sup>, distribute] 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;

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- (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 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.

**F209** Word in art. 59(1) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 28(a)**

**F210** Word in art. 59(1) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 28(b)**

### **Promotion of new techniques in national interest** **N.I.**

**60.**—(1) The Secretary of State shall exercise the power conferred on him by section 5 of the Science and Technology Act 1965<sup>F211</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 [<sup>F212</sup>, distribution] 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 [<sup>F213</sup>, distribute] 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.

**F211** 1965 c. 4

**F212** Word in art. 60(1) inserted (15.4.2011) by [Gas and Electricity \(Internal Markets\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/155\)](#), **reg. 29(a)**

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**F213** Word in art. 60(2) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 29(b)

Art. 61 rep. by 2003 NI 6

### **Directions restricting the use of certain information** **N.I.**

**62.**—(1) The Department may give to<sup>[F214]</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>[F215]</sup>supply <sup>[F216]</sup>, distribute]or participate in the transmission of] electricity <sup>[F217]</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.

(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 <sup>[F218]</sup>section 1122 of the Corporation Tax Act 2010].

**F214** 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

**F215** 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

**F216** Word in art. 62(2) inserted (15.4.2011) by Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.R. 2011/155), reg. 30

**F217** 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.

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**F218** Words in art. 62(8) substituted (1.4.2010 with effect as mentioned in s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), ss. 1177, 1184(1), **Sch. 1 para. 271** (subject to Sch. 2)

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

**63.**—(1) If any person, in giving any information or making any application under or for the purposes of any<sup>[F219]</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>[F219]</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>[F220]</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.

**F219** 2003 NI 6

**F220** 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** **N.I.**

**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.

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- (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 **N.I.**

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>F221</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.

**F221** 1991 NI 11

### Public inquiries **N.I.**

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>F222</sup>(a) any matter arising under this Part or the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007; or
- (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>F223</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.

**F222** 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.

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**F223** 1954 c. 33 (NI)

**Application to Crown land** **N.I.**

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;
- (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.

**Status:**

Point in time view as at 06/02/2015.

**Changes to legislation:**

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