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STATUTORY RULES OF NORTHERN IRELAND

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**2007 No. 321**

**Electricity Regulations (Northern Ireland) 2007**

**PART III**

**TRANSFER SCHEMES ETC.**

**Existing supply licence holders**

**12.**—(1) This regulation applies to any person

- (a) who holds an existing supply licence, that is to say a licence under Article 10(1)(c) of the 1992 Order<sup>(1)</sup> which had effect immediately before the coming into operation of this Part; and
- (b) who holds an existing transmission licence, that is to say a licence under Article 10(1)(b) of that Order which had effect immediately before the coming into operation of this Part; and
- (c) whose activities, immediately before the coming into operation of this Part, include the supply and distribution of electricity.

(2) This Part has effect for the purpose of enabling the existing supply licence held by such a licence holder (“an existing licence holder”) to have effect as if it were a licence under Article 10(1)(c) of the 1992 Order as it is to be amended by regulation 6 granted to a different person.

(3) That person must be an associate of the existing licence holder nominated by him for the purpose of holding the licence.

(4) In this Part “associate” in relation to any holder of a licence under Article 10 of the 1992 Order means an undertaking which is an associated undertaking of that holder within the meaning of paragraph 20 of Schedule 4A to the Companies (Northern Ireland) Order 1986<sup>(2)</sup>.

(5) For the purposes of this regulation “supply” and “distribution” have the meanings given to them by Directive [2003/54/EC](#).

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**Commencement Information**

**II** Reg. 12 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**Nominations**

**13.**—(1) Within 28 days of the coming into operation of this regulation or such later date as the Authority may direct, a person to whom regulation 12(1) applies shall make a nomination for the purposes of regulation 12(3) and apply to the Authority for a scheme for the division of all his property, rights and liabilities between himself and the associate so nominated and in this Part the

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(1) S.I.1992/231 (N.I. 1)

(2) S. I. 1986/1032 (N.I. 6)

person who applies for any such scheme is referred to as “the nominating licensee” and the other person referred to in this paragraph as the nominated associate.

(2) The requirement to make a nomination under paragraph (1) shall be a relevant requirement for the purposes of Article 41 of the Energy Order.

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**Commencement Information**

**I2** Reg. 13 in operation at 3.7.2007, see **reg. 1(1)**

**Property Arrangements Schemes**

**14.**—(1) The Authority may, on application made under regulation 13, make a scheme providing for—

- (a) the transfer to a nominated associate of, or
- (b) the creation in favour of the nominated associate of

any rights in relation to, property, rights or liabilities of, the nominating licensee.

(2) A scheme under sub-paragraph (1) (“a property arrangements scheme”) may also contain—

- (a) provision for the creation, in relation to property which the scheme transfers, of an interest in or right over the property in favour of the nominating licensee;
- (b) provision for the creation of any rights or liabilities as between the nominating licensee and the nominated associate;
- (c) provision for imposing on the nominating licensee or any nominated associate an obligation to enter into a written agreement with, or to execute an instrument of another kind in favour of, the other;
- (d) supplemental, incidental and consequential provisions.

(3) The property, rights or liabilities which may be transferred by a property arrangements scheme include property, rights or liabilities which would not otherwise be capable of being transferred.

(4) If a property arrangements scheme provides for the division of an estate in land and any rent is—

- (a) payable in respect of the estate under a lease, or
- (b) charged on the estate,

the scheme may contain provision for apportionment or division so that one part is payable in respect of, or charged on, only one part of the estate and the other part is payable in respect of, or charged on, only the other part of the estate.

(5) A property arrangements scheme that contains provision which adversely affects a third party may also contain provision requiring the nominating licensee or the nominated associate to pay the third party compensation.

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**Commencement Information**

**I3** Reg. 14 in operation at 3.7.2007, see **reg. 1(1)**

## Applications for schemes

15. An application for a property arrangements scheme shall specify the property, rights or liabilities in relation to which provision of a kind mentioned in regulation 14(1) is proposed to be included in the scheme.

### Commencement Information

**I4** Reg. 15 in operation at 3.7.2007, see **reg. 1(1)**

## The Authority's functions in relation to applications

16.—(1) On an application for the making of a property arrangements scheme, the Authority shall, in relation to any property, rights or liabilities in respect of which the application proposes provision of a kind mentioned in regulation 14 determine whether provision of such a kind is, in relation to that property, or those rights or liabilities, necessary or expedient for compliance purposes.

(2) If the Authority determines under paragraph (1) that provision of a kind mentioned in regulation 14 is not, in relation to any property, rights or liabilities, necessary or expedient for compliance purposes, it shall refuse the application in relation to that property, or those rights or liabilities.

(3) If the Authority determines under paragraph (1) that provision of a kind mentioned in regulation 14 is, in relation to any property, rights or liabilities, necessary or expedient for compliance purposes, the Authority shall, subject to regulation 17(2), make a property arrangements scheme in relation to that property, or those rights or liabilities.

(4) If the Authority determines that provision of a kind mentioned in regulation 14 is, in relation to any property, rights or liabilities of the nominating licensee which are not referred to in paragraph (1), necessary or expedient for compliance purposes, the Authority shall, subject to regulation 17(2), also make a property arrangements scheme in relation to that property, or those rights or liabilities.

17.—(1) Subject to regulation 16 and the following provisions of this regulation, where the Authority makes a property arrangements scheme, the terms of the scheme shall be such as are proposed in the application under regulation 13 relating thereto.

(2) The Authority may not include in a property arrangements scheme provision which would adversely affect a third party unless it determines that it is necessary or expedient for compliance purposes for the provision to be made.

(3) Where the Authority does include in a property arrangements scheme provision which would adversely affect a third party, the Authority shall determine whether the scheme should include provision for compensation and, if so, what that provision should be.

(4) The Authority may make provision in a property arrangements scheme for different terms than are proposed in the application under regulation 13 relating thereto—

(a) for the purpose of securing that the scheme makes such provision as it determines to be necessary or expedient for compliance purposes, and

(b) as to the date on which it determines the scheme shall take effect.

(5) The Authority shall publish any application under regulation 13 and the terms of any property arrangements scheme in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the scheme.

18.—(1) A determination under regulation 17, so far as relating to any financial matter, shall be made on the basis of what is just in all the circumstances of the case.

(2) A determination under regulation 17, so far as relating to any other matter, shall be made on the basis of what appears to the Authority to be appropriate in all the circumstances of the case having regard, in particular, to what is necessary or expedient for compliance purposes.

**19.** The Authority may require any of the following persons to give it information and assistance in connection with the making of a determination under this Part—

- (a) the nominating licensee,
- (b) the nominated associate, and
- (c) any person who makes representations to the Authority about the application to which the determination relates.

**20.** The Authority may engage such consultants as it thinks fit for the purpose of advising it in relation to the making of a determination under this Part.

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**Commencement Information**

- I5** Reg. 16 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I6** Reg. 17 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I7** Reg. 18 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I8** Reg. 19 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I9** Reg. 20 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**Effect of property arrangements scheme**

**21.** A property arrangements scheme shall, by virtue of this regulation, have effect according to its terms.

**22.—(1)** A transaction of any description effected by or under a property arrangements scheme shall have effect subject to the provisions of any statutory provision which provides for transactions of that description to be registered in any statutory register.

(2) Subject to paragraph (1), a transaction of any description effected by or under a property arrangements scheme shall be binding on all persons, notwithstanding that it would, apart from this provision, have required the consent or concurrence of any person.

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**Commencement Information**

- I10** Reg. 21 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I11** Reg. 22 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**Review of determinations**

**23.—(1)** Any person aggrieved by a determination of the Authority under this Part may apply to the Competition Appeal Tribunal for a review of the determination.

(2) Subject to paragraph (3), no application under paragraph (1) may be made after the end of the period of 14 days beginning with the later of the publication of the application and the publication of the scheme in accordance with regulation 17(5).

- (3) On an application under paragraph (1), the Competition Appeal Tribunal may—
- (a) dismiss the application, or
  - (b) make an order substituting its own determination.

**24.**—(1) This regulation applies where—

- (a) the Competition Appeal Tribunal makes an order under regulation 23(3)(b), and
- (b) the Authority has not made a property arrangements scheme in relation to the property, rights or liabilities concerned.

(2) The Tribunal may include in the order provision requiring the Authority to make a property arrangements scheme in relation to that property, or those rights or liabilities.

(3) Where regulation 17 applies because of provision under this regulation, anything the Tribunal has determined shall be treated for the purposes of that regulation as determined by the Authority.

**25.**—(1) This regulation applies where—

- (a) the Competition Appeal Tribunal makes an order under regulation 23(3)(b),
- (b) the Authority has made a property arrangements scheme in relation to the property, rights or liabilities concerned, and
- (c) the scheme has not come into operation.

(2) Where the Tribunal's determination is that provision of the kind mentioned in regulation 14 is not, in relation to the property, rights or liabilities concerned, necessary or expedient for compliance purposes, it may include in the order provision quashing the scheme.

(3) In any other case, the Tribunal may include in the order—

- (a) provision for the scheme to have effect with such amendments with respect to any matter dealt with by the Authority's determination as it thinks fit, and
- (b) to the extent that the Authority's determination dealt with any financial matter, provision requiring the Authority to redetermine the matter in accordance with the order and to amend the scheme accordingly.

**26.**—(1) This regulation applies where—

- (a) the Competition Appeal Tribunal makes an order under regulation 23(3)(b),
- (b) the Authority has made a property arrangements scheme in relation to the property, rights or liabilities concerned, and
- (c) the scheme has come into operation.

(2) The Tribunal may include in the order such provision as it thinks fit for the purpose of doing justice between—

- (a) the nominating licensee,
- (b) the nominated associate, and
- (c) any third party adversely affected by the scheme,

in the light of its determination.

(3) Without prejudice to the generality of paragraph (2), the Tribunal may include in the order—

- (a) provision for retransfer,
- (b) provision for the surrender or extinction of rights, and
- (c) provision for the payment of compensation.

**27.** An order under regulation 23(3)(b) may include provision for the award of interest at such rate and for such period as the Competition Appeal Tribunal thinks fit.

**28.** Section 120(6) to (8) of the Enterprise Act 2002(3) (appeal with leave on point of law from decision of Competition Appeal Tribunal to Court of Appeal) shall apply in relation to decisions of the Tribunal under this Part as they apply in relation to decisions under that section.

**Commencement Information**

- I12** Reg. 23 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I13** Reg. 24 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I14** Reg. 25 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I15** Reg. 26 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I16** Reg. 27 in operation at 3.7.2007, see [reg. 1\(1\)](#)
- I17** Reg. 28 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**Interim arrangements pending review of determination**

**29.**—(1) This regulation applies where—

- (a) a person makes an application under regulation 23(1) for the review of a determination, and
- (b) the Authority has not made a property arrangements scheme in relation to the property, rights or liabilities to which the determination relates.

(2) The Competition Appeal Tribunal may on application by the nominating licensee or the nominated associate make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.

(3) Without prejudice to the generality of paragraph (2), the power under that sub-paragraph includes, in particular, power to make provision for the nominated associate to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the Tribunal thinks fit.

(4) No application under sub-paragraph (2) may be made after the end of the period of 14 days beginning with the day on which the relevant application under regulation 23(1) is made.

**30.**—(1) This regulation applies where—

- (a) a person makes an application under regulation 23(1) for the review of a determination, and
- (b) the Authority has made a property arrangements scheme in relation to the property, rights or liabilities to which the determination relates.

(2) The Competition Appeal Tribunal may on application by—

- (a) the nominating licensee,
- (b) the nominated associate, or
- (c) any third party who is adversely affected by any provision of the scheme,

make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.

(3) Without prejudice to the generality of paragraph (2), the power under that paragraph includes, in particular, power—

- (a) to make provision postponing or suspending the operation of any provision of the scheme for such period, and on such terms, as the Tribunal thinks fit;

(b) to make provision for the nominated associate to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the Tribunal thinks fit.

(4) No application under paragraph (2) may be made after the end of the period of 7 days beginning with the day on which the application under regulation 23(1) is made.

**31.** In exercising its powers under regulation 29 or 30, the Competition Appeal Tribunal shall have regard, in particular, to what is necessary or expedient for compliance purposes.

**32.** Regulations 29 and 30 are without prejudice to any powers of the Competition Appeal Tribunal to make orders on an interim basis under rules under section 15 of the Enterprise Act 2002.

**33.—(1)** If an order under regulation 29 or 30 is registered in the High Court, it shall be enforceable as an order of the High Court.

(2) An order under regulation 29 or 30 may be registered by a person entitled to any right under the interim arrangements for which the order makes provision.

(3) Paragraphs (1) and (2) have effect subject to any provision made by rules of court.

(4) Paragraphs (1) and (2) apply to an order on an interim basis made under rules under section 15 of the Enterprise Act 2002 in connection with an application under paragraph 23(1) as they apply to an order under regulation 29 or 30.

**Commencement Information**

**I18** Reg. 29 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**I19** Reg. 30 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**I20** Reg. 31 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**I21** Reg. 32 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**I22** Reg. 33 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**Supplementary**

**34.** An application under the forgoing provisions of this Part shall not be made orally.

**Commencement Information**

**I23** Reg. 34 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**Licensing Schemes**

**35.—(1)** This regulation applies to any nominating licensee to whom a property arrangements scheme applies.

(2) As soon as practicable after the date specified in the Authority's direction under regulation 13, the Authority shall make a scheme providing for the licensee's existing supply licence to have effect as mentioned in regulation 12(2) and for the licensee's existing transmission licence to have effect with such modifications as may be made pursuant to regulation 36.

(3) In making a scheme under this regulation, the Authority shall have regard to the provisions of the nominating licensee's transfer scheme.

(4) A scheme under this regulation shall have no effect in relation to the nominating licensee's licences under Article 10(1)(c) of the 1992 Order if the property arrangements scheme relating to the holder does not take effect.

**36.**—(1) A scheme under regulation 35 may provide that the licences to which the scheme relates (including both the terms and conditions of those licences) shall have effect with—

- (a) such incidental, consequential and supplementary amendments as appear to the Authority to be necessary or expedient;
- (b) such amendments relating to the revocation of the licence as the Authority thinks fit; and
- (c) such other amendments (if any) as may be agreed between the Authority and the holder of the existing supply licence from which the licence is derived.

(2) Such a scheme may—

- (a) include such transitional provision as appears to the Authority to be necessary or expedient; and
- (b) make different provision for different cases or classes of cases determined by, or in accordance with, the provisions of the scheme.

(3) As soon as practicable after making such a scheme the Authority shall publish, as respects each different case or class of case the text of each licence which is to be treated as a licence granted or modified by virtue of the scheme; and any text so published shall be treated as authoritative unless the contrary is shown.

**37.** On the day on which a scheme under regulation 35 comes into operation, the licences to which it relates shall have effect as provided for by the scheme.

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**Commencement Information**

**I24** Reg. 35 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**I25** Reg. 36 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**I26** Reg. 37 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**Provision of Information**

**38.** It shall be the duty of each holder of a licence under Article 10 of the 1992 Order and any person who is a nominated associate to provide the Authority with all such information and other assistance as he may require for the purposes of or in connection with the exercise of any function conferred on it by regulation 35 or 36 in relation to such licences.

**39.** The Authority shall not exercise any function conferred on it by regulation 35 or 36 except after consultation with—

- (a) the Department;
- (b) the nominated associate; and
- (c) such holders of licences under Article 10 of the 1992 Order<sup>(4)</sup>,

as it considers appropriate.

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**Commencement Information**

**I27** Reg. 38 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**I28** Reg. 39 in operation at 3.7.2007, see [reg. 1\(1\)](#)

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(4) S.I. 1992/231 (N.I. 1)



### Interpretation of Part III

**40.—(1)** In this Part—

“compliance purposes” means the purposes of implementing Article 15 of European Parliament and Council Directive [2003/54/EC](#) concerning common rules for the internal market in electricity and repealing Directive 96/92;

“existing supply licence” shall be construed in accordance with regulation 12(1);

“nominated associate” and “nominating licensee” shall be construed in accordance with regulation 13;

“property arrangements scheme” has the meaning given by regulation 14(2);

“third party”, in relation to a property arrangements scheme, means a person other than the nominating licensee or any nominated associate.

(2) For the purposes of this Part, a provision of a property arrangements scheme adversely affects a third party if—

- (a) his consent or concurrence would be required to the making of the provision otherwise than by means of the scheme; and
- (b) he does not consent to the making of the provision by means of the scheme.

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#### Commencement Information

**I29** Reg. 40 in operation at 3.7.2007, see [reg. 1\(1\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Electricity Regulations (Northern Ireland) 2007, PART III.