

**Consultation on proposed changes to
conditions in Northern Ireland Electricity
Licences relating to the Cancellation of
Generator Unit Agreements**

2 April 2007

INTRODUCTION

1.1. General

In order to facilitate the introduction of the Single Electricity Market (or SEM) on 1 November 2007, it is necessary to amend Electricity Licences in Northern Ireland to reflect the new trading arrangements. This consultation is on the necessary amendments to licence conditions in various Electricity Licences which allow the Northern Ireland Authority for Utility Regulation (the Utility Regulator) to direct the cancellation of the various cancellable generating unit agreements which were entered into by Northern Ireland Electricity plc (NIE) and generators in Northern Ireland on privatisation.

This consultation is being undertaken on the basis of Condition 20 of the Generation Licence granted to Kilroot Power Limited. It is intended that changes made to this document will be reflected in all relevant NI Generation Licences and NIE's licence as it relates to Power Procurement.

In this paper references to the "Cancellation Condition" are references to Condition 20 in Kilroot's licence and the equivalent condition in other Electricity Licences.

It is proposed that any modifications made to the Cancellation Condition in the licences will be made under Article 3 of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.¹ The purpose of this paper is to outline the changes to and the rationale behind proposed changes to the Cancellation Condition. A decision on the final form of licence conditions relating to the cancellation of Generator Unit Agreements will be issued not less than two weeks after the deadline for receipt of responses to this consultation.

The Utility Regulator currently proposes to consult separately as part of its preparations for determining whether the requisite arrangements have been developed which satisfy the requirements of paragraph 3 of the Condition.

1.2. Request for Comments

The Utility Regulator therefore request comments from interested parties on the proposed modifications to the Cancellation Condition (shown in the draft condition attached as Appendix A).

¹ <http://www.detini.gov.uk/cgi-bin/downutildoc?id=1779>

The Utility Regulator intends and prefers to publish all comments received, but are prepared to facilitate those respondents who wish certain sections of their submission to remain confidential. Accordingly, respondents that so wish should submit these sections in an appendix that is clearly marked "Confidential".

Comments on the licence should be forwarded, preferably in electronic form, to tadhg.obriain@ofregni.gov.uk or post to;

Tadhg O'Briain
Ofreg
Queens House
14 Queens Street
BELFAST
BT1 6ER

The deadline for receipt of comments is 1700h on 30 April 2007.

2. BACKGROUND

2.1. Structure of NI Electricity Market before Privatisation

Before privatisation, Northern Ireland Electricity was a public sector entity. It owned and operated the NI generating stations and the Transmission and Distribution networks (T&D), and supplied electricity via those networks to end users throughout Northern Ireland. In 1992, the United Kingdom enacted legislation to provide for the reorganisation and privatisation of the electricity supply industry in Northern Ireland, and for subsequent regulation of the electricity sector.²

The model used to restructure the electricity supply industry in Northern Ireland was different to that used in England and Wales where a Pool was established and in Scotland where vertically integrated utilities were established. The Government proposed that the power stations be sold separately to two or more independent companies and that the remainder of the industry be kept within the control of a single company which would be listed on the London Stock Exchange.

2.2. Reasons for the Establishment of Power Purchase Agreements

In 1992, the four principal power stations in Northern Ireland (Ballylumford, Kilroot, Coolkeeragh and Belfast West) were offered for sale to trade buyers. Pursuant to the offer for sale, four power stations were transferred to three buyers. At the same time the remaining assets and undertakings of Northern Ireland electricity were transferred to the newly created Northern Ireland Electricity plc.

As a consequence of this reorganisation, NIE's activities comprised the operation of a number of separate businesses one of which was the Power Procurement Business (PPB).

The PPB involved the purchase of capacity and output from generators to meet consumers' demands for electricity in Northern Ireland. Immediately prior to the industry restructuring NIE concluded, under the Government's direction, long term power purchase agreements ("PPAs") with each of the four major Northern Ireland power stations. The PPAs were designed to provide a commercial basis for the sale of the power stations to provide a secure income stream to allow purchasers of the power stations to finance their long term operation and to provide PPB with secure sources of capacity and output to meet consumer demand in the long term. PPB was also responsible for selling wholesale electricity to suppliers for supply to end users (and continues to do so, albeit now

² the Electricity (Northern Ireland) Order 1992, was made in February 1992 and a new industry structure was introduced on 1 April 1992 with the approval of the European

subject to competition in respect of supply to the eligible sector). For this purpose it currently produces the Bulk Supply Tariff (BST), a transparent published tariff approved by Ofreg.

2.3. Cancellation Provisions

At the time of privatisation and the establishment of the PPAs it was recognised that there remained substantial scope to increase the levels of competition in the generation and supply of electricity in Northern Ireland in the future. Government considered that when it became feasible to implement a competitive wholesale electricity trading system, the power purchase agreements between PPB and the major generators should not be allowed to pose an obstacle to the implementation of such arrangements. The cancellable generating unit agreements therefore provided for their early cancellation in circumstances where each party to the relevant agreement had received a notice from the Director General of Electricity Supply for Northern Ireland (now the Utility Regulator) pursuant to the conditions in its licence directing it to do so. The entitlement of the Utility Regulator in the licences to issue a notice directing cancellation was framed in the context of a competitive market being put in place through agreements and arrangements being implemented around the time of privatisation (for example the Supply Competition Code, the Grid Code and the Northern Ireland Fuel Security Code).

2.4. The Single Electricity Market

Creation of the Single Electricity Market flows from work underway since 1999 to enhance energy cooperation between Northern Ireland and the Republic of Ireland wherever cooperation can bring mutual economic benefits. The policy aims were set out in an All-island Energy Market Development Framework in 2004. Cooperation is firmly set in the context of the creation of liberalised EU-wide Internal Markets for Electricity and Gas, including the development of regional electricity markets.

The aim is to create a single competitive, sustainable and reliable all-island market that covers Northern Ireland and the Republic of Ireland and which will bring a range of operational and wider strategic benefits at the minimum cost necessary. The first step proposed by the development framework was the introduction of a unified electricity market which was considered to require the establishment of a single market for the sale by electricity generators in NI and ROI and PPB to suppliers of electricity ("wholesale electricity") in NI and ROI, and measures to ensure effective and co-ordinated regulation of the market.

Work to date has demonstrated that a larger all-island wholesale electricity market has the potential to deliver a range of efficiency savings, in particular, capital and fuel savings, better use of the North South interconnector, reductions

in the security margin and transmission cost savings. It should also deliver dynamic benefits such as increased competition between electricity generating companies, and economies of scale, as well as enhanced security and diversity of supply.

The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 provides for the legislative underpinning in Northern Ireland of the SEM in accordance with the proposals for the reform of the wholesale electricity market in NI and ROI, as set out in a Memorandum of Understanding (the “MOU”) between the United Kingdom Government and the Government of Ireland. Article 3 of the Order provides the power for the Department for Enterprise, Trade and Investment (Department) (after consultation with the Utility Regulator) or the Utility Regulator (with the consent of the Department) to modify the conditions of Electricity Licences in Northern Ireland where it considers it necessary or expedient to do so for the purposes of implementing, or facilitating the operation of, the SEM or in consequence or for giving full effect to it.

3. DISCUSSION

3.1. Assumptions

In Northern Ireland it is proposed that modifications to the Cancellation Condition in Electricity Licences will be made by the Department using the powers contained in Article 3 of the Electricity (Single Electricity Market) Order 2007.

3.2. Powers of Cancellation

Under the Cancellation Condition the Utility Regulator has the ability to serve upon each of the parties to a cancellable Generating Unit Agreement a notice directing them to terminate that agreement under the relevant provision in the agreement. . However, in order to exercise its power to serve a notice directing cancellation the Utility Regulator must first have determined that requisite arrangements (as described in paragraph 2 of the Cancellation Condition) have been developed and that they satisfy the requirements of paragraph 3 of the Cancellation Condition. Once the Utility Regulator has determined that to be the case, it is entitled (but not obliged) to serve a notice but cannot do so earlier than the earliest cancellation date relating to the relevant cancellable generating unit agreement set out in the relevant licences.

The requirements of paragraph 3 are set out in paragraph 3 of the Cancellation Condition at Appendix B but in summary they require an electricity trading system which satisfies certain requirements:

- calculation and settlement of payments due for:

- the provision of available generating capacity; and
 - the delivery or supply of electricity;
- adequate arrangements for, and proper remuneration, of System Support Services;
- a technically viable despatch system;
- adequate incentives for generators to satisfy reasonable demands for electricity in Northern Ireland;
- compliance with the provisions of the Northern Ireland Fuel Security Code;
- PPB is recompensed for the purchase of electricity under legacy contracts which have not been cancelled;
- not requiring any generator to breach any obligation under Large Combustion Plants (Control of Emissions) Regulations (Northern Ireland) 1991 in relation to emissions;
- not worsen the financial position of generators with cancellable generating unit agreement because of the operation of Clause 7.3.2 (which relates to NO_x and SO_x) of the power station agreements;
- the costs of Land Bank are appropriately shared between suppliers; and
- not cause NIE to be unable to finance its licenced activities.

N.B. Please refer to Appendix B for a full description of the requirements.

3.3. Rationale for amending licences

As noted above the original conditions were developed to facilitate the privatisation of the Electricity industry in 1992 and did not contemplate the electricity trading system to which they refer taking the form of a gross mandatory pool applying across the island of Ireland. In view of the implementation of the SEM they therefore need to be modified to ensure that the ability on the part of the Utility Regulator to issue a notice directing cancellation of the cancellable generating unit agreements is retained.

3.4. Proposed changes to licence conditions

The majority of proposed changes to the conditions relating to cancellation involve updating to reflect the fact that the SEM encompasses the Island of Ireland rather than just Northern Ireland as originally envisaged when the condition was written and that it is being introduced (in whole or in part) under or by virtue of powers contained in the Electricity (Single Wholesale Market) (Northern Ireland) order 2007.

Changes have also been made to Paragraph 3 (A) (vi) reflect the nature of the SEM as a gross mandatory pool. These changes allow NIE's power procurement business to recover the cost of electricity purchased under legacy contracts through the pool and other indirect arrangements – such as a PSO type mechanism applying to all suppliers as is currently envisaged in the context of the SEM.

Where the new arrangements involve or may in the future involve new codes and arrangements these have been incorporated in the proposed changes to this condition:

- Paragraph 3(A) (v) recognises that the Northern Ireland Fuel Security Code may be superseded.
- Paragraph 8 relates to the power of the Utility Regulator to make changes to the new trading arrangements after it has determined that they meet the tests set out. The proposed amendments to this paragraph reflect the fact that the new arrangements (primarily the proposed Trading and Settlement Code) themselves include modification arrangements.
- Paragraph 9 includes a reference to changes made under the Electricity (Single Wholesale Market) Northern Ireland Order 2007.

There are also some proposed definitional changes in paragraph 12 including changes recognising that both as part of SEM implementation and compliance with the IME Directive it is intended that the current power procurement business activity will be undertaken by a different entity within the NIE group to that which currently undertakes it and, as a consequence, the concept of a power procurement manager as currently reflected in NIE's licence is unlikely to remain relevant.

3. CONCLUSION

Next steps

The Utility Regulator requests comment from interested parties on the matters referred to in paragraph 1.2 above.

Comments should be forwarded, preferably in electronic form, to tadhg.obriain@ofregni.gov.uk or post to;

Tadhg O'Briain
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Queens House
14 Queens Street
BELFAST
BT1 6ER

The deadline for receipt of comments is 1700h on 30 April 2007.

Appendix A: Proposed Condition relating to the cancellation of Generator Unit Agreements in generators' licences.

Condition 20: Modification of Supply Competition Code and cancellation of contracts

1. When the Authority shall have determined that the requisite arrangements have been developed and that they satisfy the requirements of paragraph 3, it shall be entitled to exercise the powers specified in paragraph 4, provided that the procedural requirements of paragraph 6 have been followed.
2. The requisite arrangements are arrangements which, if implemented by means of the making of modifications of the Supply Competition Code, the Grid Code and the Northern Ireland Fuel Security Code, or otherwise implemented (in whole or in part) under or by virtue of the powers contained in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, would facilitate an increase in competition in the generation of electricity available for supply in Northern Ireland or the supply of electricity in Northern Ireland for the benefit of consumers of electricity in Northern Ireland in respect of the prices charged and the other terms of supply, the continuity of supply and the quality of the electricity supply services provided.
3. The requirements of this paragraph are:
 - (A) that there is available for immediate establishment an electricity trading system by which (except as provided in paragraph 7) the power procurement manager and all licence holders will be bound and which, in the opinion of the Authority, will:
 - (i) constitute proper and adequate arrangements for the trading of electricity and the calculation and settlement of payments due for the provision of available generating capacity and the delivery or supply of electricity;
 - (ii) ensure that adequate arrangements are in place for the provision by relevant generators of all necessary System Support Services and the proper remuneration of those services;

- (iii) be based upon a system of despatch of generation sets which is technically viable and will not prejudice the security and stability of the total system or any part of it;
- (iv) ensure that there are adequate incentives for relevant generators to make available such generation capacity as will in aggregate be sufficient to ensure that all reasonable demands for electricity in Northern Ireland are satisfied;
- (v) ensure that all generators and relevant licensed suppliers are contractually bound to comply with the provisions of the Northern Ireland Fuel Security Code or, to the extent superseded by any other code or arrangement, such other code or arrangement;
- (vi) ensure that either
 - (a) relevant suppliers shall contract for or acquire, in aggregate, amounts of generation capacity and quantities of electricity from the power procurement manager which are not less than the amounts of generation capacity and quantities of electricity for which the power procurement manager is committed to pay under:
 - A. the power purchase agreements to which the power procurement manager is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and
 - B. the power purchase agreements to which the power procurement manager is a party and which are not liable to be cancelled;

or:

- (b) arrangements are in place pursuant to which the power procurement manager is entitled to recover monies equal to

the shortfall (if any) between the sums it pays for amounts of generation capacity and quantities of electricity under:

- A. the power purchase agreements to which the power procurement manager is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and
- B. any power purchase agreements to which the power procurement manager is a party and which are not liable to be cancelled;

and the amounts it recovers for the provision of such generation capacity and the sale of such quantities of electricity.

- (vii) not in its operation require any generator to breach any obligation incumbent upon it under the Large Combustion Plants (Control of Emissions) Regulations (Northern Ireland) 1991 in relation to emissions;
 - (viii) contain arrangements which will ensure that each generator which shall be a party to a cancellable generating unit agreement, for so long as such agreement shall not have been cancelled, shall be in no worse a financial position in respect of its rights under that cancellable generating unit agreement by reason of the operation of Clause 7.3.2 of each power station agreement;
 - (ix) ensure that an appropriate share of the costs of the Land Bank Business shall be borne by each relevant supplier;
 - (x) not, in its operation, cause the licensee to be unable to finance the carrying on of the activities which it is authorised by this licence to carry on; and
- (B) that each generator which shall have applied for a licence under Article 10(2) of the Order to have effect from the date upon which any cancellable

generating unit agreement to which it is a party is to be cancelled, shall have been granted such a licence, provided -

- (a) the Authority shall at the relevant time have power under Article 10 of the Order to grant such a licence;
 - (b) the criteria for the grant of such a licence shall otherwise have been satisfied at the date of the application and the date upon which it is first to have effect; and
 - (c) there shall have been no material change in the circumstances of the applicant in any relevant respect between the date of the application and the date upon which the licence is to have effect.
4. The powers referred to in paragraph 1 are powers to serve upon the power procurement manager and the generator under a cancellable generating unit agreement a notice directing them to terminate the cancellable generating unit agreement pursuant to Clause 9.3 thereof upon such date or the happening of such event as shall be specified in the notice. The licensee shall comply with such a direction addressed to him.
5. The powers specified in paragraph 4 may not be exercised in relation to any cancellable generating unit agreement in the table appearing in Schedule 2 earlier than the date appearing opposite that cancellable generating unit agreement in that table. The Authority may, in relation to any cancellable generating unit agreement and upon the application of either party to that cancellable generating unit agreement, modify the table appearing in Schedule 2 by substituting a later date for the date appearing opposite that agreement in that table.
6. The procedural requirements which require to have been followed for the purposes of paragraph 1 are:
 - (a) in its preparations for the making of the determination referred to in paragraph 1, the Authority shall have consulted with the Department, all licence holders, the power procurement manager, the General Consumer Council and such other persons as the Authority shall consider likely to be materially affected in

relation to the steps that it believes require to be taken and the documentation and other obligations which it believes require to be entered into, imposed or assumed in order to satisfy the requirements of paragraph 3 and to create and implement the requisite arrangements;

- (b) in the consultations referred to in sub-paragraph (a) above, the Authority shall have made available to each person so consulted such drafts of the documentation in question and of the instruments or other means by which the obligations in question are to be imposed or assumed, as it shall consider are necessary so as properly to inform such persons of the detail of its proposals;
- (c) the Authority shall have given each person so consulted the opportunity to make representations in relation to the relevant steps and the relevant documentation and shall have taken into consideration all such representations (other than those which are frivolous or trivial) in making the determination;
- (d) the Authority shall have published its conclusions as to the relevant steps and the relevant documentation (including drafts of the relevant documentation) and its reasons for those conclusions;
- (e) the Authority shall, before exercising any power under paragraph 4, have given not less than 180 days' notice to the Department, the power procurement manager, every person who at the time it gives the notice is a licence holder, and the General Consumer Council that it intends to do so; and
- (f) the Authority shall, in publishing any statement of proposals or the reasons for them, have treated as confidential any representation (including any submission of any written material) which (and to the extent that) the person making the representation shall, by notice in writing to the Authority or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.

7. The rules of the electricity trading system referred to in paragraph 3(A) contained in the Supply Competition Code as modified by the Authority in the exercise of its powers under paragraph 4 of Condition 19 or in any instrument code, agreement or other document having effect (in whole or in part) under or by virtue of the powers

contained in the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007, may provide that they are to apply to all licence holders except if and to the extent that:

- (a) they permit the Authority to relieve the licence holder in question from compliance with them or any of them; or
- (b) they make provision that they are to apply to particular licence holders or classes of licence holder differently from the way or ways in which they apply to other licence holders.

8. Notwithstanding paragraph 6, the Authority shall be entitled, after having carried out the consultations referred to in paragraph 6 and published its conclusions, both before and after it shall have given any notice of the kind referred to in sub-paragraph (e) of paragraph 6, to make any modification of the relevant documentation which either:

- (a) is, in its opinion, necessary or desirable in order to refine the requisite arrangements;
- (b) involves only a change of a technical nature in the requisite arrangements; and
- (c) will not increase the liability or decrease the rights of any person bound or to be bound by the Supply Competition Code beyond what may be regarded as reasonable in relation to that person;

provided it gives due notice of such amendment or variation to such persons as appear to it to be likely to be affected thereby.

or

is made in accordance with the provisions of the relevant documentation being modified.

9. The implementation of the requisite arrangements may be secured (in whole or in part) either

- (a) by the exercise by the Authority of its powers:
- (i) under paragraph 4 of Condition 19 (to make modifications of the Supply Competition Code);
 - (ii) referred to in paragraph 4 of Condition 4 (to direct the transmission licensee to revise the Grid Code);
 - (iii) under paragraph 12 of Condition 3 of Part III of the transmission licence granted to Northern Ireland Electricity plc (to direct the transmission licensee to alter the form of the bulk supply tariff);
 - (iv) under paragraph 9 of Condition 6 of Part IV of the transmission licence granted to Northern Ireland Electricity plc (to direct that the economic purchasing obligation of Northern Ireland Electricity plc as public electricity supplier shall come into force); and
 - (v) under Clause 2.01(F) of Part 2 of the Northern Ireland Fuel Security Code (to make amendments to that Code);

or

- (b) by the exercise of powers under or by virtue of the Electricity (Single Market) Northern Ireland Order 2007.

10. The licensee shall afford the Authority such co-operation as it shall in directions issued to the licensee for the purposes of this Condition request in developing and testing its proposals for the establishment of the requisite arrangements and the electricity trading system referred to in paragraph 3(A).
11. The licensee's reasonable direct costs of complying with a request made under paragraph 10 (incurred prior to the date upon which the Authority shall have first exercised its cancellation powers and for which an invoice shall have been submitted by the licensee to the transmission licensee not later than 2 months prior to the date upon which the first cancellation direction shall take effect) shall be audited in such

manner as the Authority shall from time to time require and shall be recoverable from the transmission licensee.

12. In this Condition:

“power procurement manager” shall:

(a) whilst Condition 1 of this licence contains a definition of that term, have the meaning given to that term in that condition; and

(b) where Condition 1 of this licence does not contain a definition of that term, shall mean the Power Procurement Business.

“Land Bank Business” has the meaning given to that expression in the transmission licence granted to Northern Ireland Electricity plc on 31 March 1992;

“relevant documentation” means the documentation and other obligations referred to in sub-paragraph (a) of paragraph 6;

“relevant generator” means a generator and/or a person granted a licence pursuant to [reference to Republic of Ireland legislation] to engage in the generation of electricity;

“relevant steps” means the steps referred to in sub-paragraph (a) of paragraph 6; and

“requisite arrangements” means the arrangements referred to as such in paragraph 2.

Appendix B: Existing condition 20 “Electricity Generation Licence in favour of Kilroot Power Limited”

Condition 20: Modification of Supply Competition Code and cancellation of contracts

1. When the Director shall have determined that the requisite arrangements have been developed and that they satisfy the requirements of paragraph 3, he shall be entitled to exercise the powers specified in paragraph 4, provided that the procedural requirements of paragraph 6 have been followed.
2. The requisite arrangements are arrangements which, if implemented by means of the making of modifications of the Supply Competition Code, the Grid Code and the Northern Ireland Fuel Security Code, would facilitate an increase in competition in the generation or supply of electricity in Northern Ireland for the benefit of consumers of electricity in Northern Ireland in respect of the prices charged and the other terms of supply, the continuity of supply and the quality of the electricity supply services provided.
3. The requirements of this paragraph are:
 - (A) that there is available for immediate establishment an electricity trading system by which (except as provided in paragraph 7) the power procurement manager and all licence holders will be bound and which, in the opinion of the Director, will:
 - (i) constitute proper and adequate arrangements for the trading of electricity and the calculation and settlement of payments due for the provision of available generating capacity and the delivery or supply of electricity;
 - (ii) ensure that adequate arrangements are in place for the provision by generators of all necessary System Support Services and the proper remuneration of those services;

- (iii) be based upon a system of despatch of generation sets which is technically viable and will not prejudice the security and stability of the total system or any part of it;
- (iv) ensure that there are adequate incentives for all generators to make available such generation capacity as will in aggregate be sufficient to ensure that all reasonable demands for electricity are satisfied;
- (v) ensure that all generators and relevant licensed suppliers are contractually bound to comply with the provisions of the Northern Ireland Fuel Security Code;
- (vi) ensure that relevant suppliers shall contract for or acquire, in aggregate, amounts of generation capacity and quantities of electricity from the power procurement manager which are not less than the amounts of generation capacity and quantities of electricity for which the power procurement manager is committed to pay under -
 - (a) the power purchase agreements to which the power procurement manager is a party and which are cancellable generating unit agreements which at all relevant times have not been cancelled; and
 - (b) the power purchase agreements to which the power procurement manager is a party and which are not liable to be cancelled;
- (vii) not in its operation require any generator to breach any obligation incumbent upon it under the Large Combustion Plants (Control of Emissions) Regulations (Northern Ireland) 1991 in relation to emissions;
- (viii) contain arrangements which will ensure that each generator which shall be a party to a cancellable generating unit agreement, for so long as such agreement shall not have been cancelled, shall be in no worse a financial position in respect of its rights under that

cancellable generating unit agreement by reason of the operation of Clause 7.3.2 of each power station agreement;

(ix) ensure that an appropriate share of the costs of the Land Bank Business shall be borne by each relevant supplier;

(x) not, in its operation, cause the licensee to be unable to finance the carrying on of the activities which it is authorised by this licence to carry on; and

(B) that each generator which shall have applied for a licence under Article 10(2) of the Order to have effect from the date upon which any cancellable generating unit agreement to which it is a party is to be cancelled, shall have been granted such a licence, provided -

(a) the Director shall at the relevant time have power under Article 10 of the Order to grant such a licence;

(b) the criteria for the grant of such a licence shall otherwise have been satisfied at the date of the application and the date upon which it is first to have effect; and

(c) there shall have been no material change in the circumstances of the applicant in any relevant respect between the date of the application and the date upon which the licence is to have effect.

4. The powers referred to in paragraph 1 are powers to serve upon the power procurement manager and the generator under a cancellable generating unit agreement a notice directing them to terminate the cancellable generating unit agreement pursuant to Clause 9.3 thereof upon such date or the happening of such event as shall be specified in the notice. The licensee shall comply with such a direction addressed to him.

5. The powers specified in paragraph 4 may not be exercised in relation to any cancellable generating unit agreement in the table appearing in Schedule 2 earlier than the date appearing opposite that cancellable generating unit agreement in that table.

The Director may, in relation to any cancellable generating unit agreement and upon the application of either party to that cancellable generating unit agreement, modify the table appearing in Schedule 2 by substituting a later date for the date appearing opposite that agreement in that table.

6. The procedural requirements which require to have been followed for the purposes of paragraph 1 are:
 - (a) in his preparations for the making of the determination referred to in paragraph 1, the Director shall have consulted with the Department, all licence holders, the power procurement manager, the consumer committee and such other persons as the Director shall consider likely to be materially affected in relation to the steps that he believes require to be taken and the documentation and other obligations which he believes require to be entered into, imposed or assumed in order to satisfy the requirements of paragraph 3 and to create and implement the requisite arrangements;
 - (b) in the consultations referred to in sub-paragraph (a) above, the Director shall have made available to each person so consulted such drafts of the documentation in question and of the instruments or other means by which the obligations in question are to be imposed or assumed, as he shall consider are necessary so as properly to inform such persons of the detail of his proposals;
 - (c) the Director shall have given each person so consulted the opportunity to make representations in relation to the relevant steps and relevant documentation and shall have taken into consideration all such representations (other than those which are frivolous or trivial) in making the determination;
 - (d) the Director shall have published his conclusions as to the relevant steps and relevant documentation (including drafts of the relevant documentation) and his reasons for those conclusions;
 - (e) the Director shall, before exercising any power under paragraph 4, have given not less than 180 days' notice to the Department, the power procurement manager, every person who at the time he gives the notice is a licence holder, and the consumer committee that he intends to do so; and

- (f) the Director shall, in publishing any statement of proposals or the reasons for them, have treated as confidential any representation (including any submission of any written material) which (and to the extent that) the person making the representation shall, by notice in writing to the Director or by endorsement on the representation of words indicating the confidential nature of such representation, have specified as confidential information.
7. The rules of the electricity trading system referred to in paragraph 3(A) contained in the Supply Competition Code as modified by the Director in the exercise of his powers under paragraph 4 of Condition 19, may provide that they are to apply to all licence holders except if and to the extent that:
- (a) they permit the Director to relieve the licence holder in question from compliance with them or any of them; or
 - (b) they make provision that they are to apply to particular licence holders or classes of licence holder differently from the way or ways in which they apply to other licence holders.
8. Notwithstanding paragraph 6, the Director shall be entitled, after having carried out the consultations referred to in paragraph 6 and published his conclusions, both before and after he shall have given any notice of the kind referred to in subparagraph (e) of paragraph 6, to make any modification of the relevant documentation which:
- (a) is, in his opinion, necessary or desirable in order to refine the requisite arrangements;
 - (b) involves only a change of a technical nature in the requisite arrangements; and
 - (c) will not increase the liability or decrease the rights of any person bound or to be bound by the Supply Competition Code beyond what may be regarded as reasonable in relation to that person;

- provided he gives due notice of such amendment or variation to such persons as appear to him to be likely to be affected thereby.
9. The implementation of the requisite arrangements may be secured by the exercise by the Director of his powers:
 - (a) under paragraph 4 of Condition 19 (to make modifications of the Supply Competition Code);
 - (b) referred to in paragraph 4 of Condition 4 (to direct the transmission licensee to revise the Grid Code);
 - (c) under paragraph 12 of Condition 3 of Part III of the transmission licence granted to Northern Ireland Electricity plc (to direct the transmission licensee to alter the form of the bulk supply tariff);
 - (d) under paragraph 9 of Condition 6 of Part IV of the transmission licence granted to Northern Ireland Electricity plc (to direct that the economic purchasing obligation of Northern Ireland Electricity plc as public electricity supplier shall come into force); and
 - (e) under Clause 2.01(F) of Part 2 of the Northern Ireland Fuel Security Code (to make amendments to that Code).
 10. The licensee shall afford the Director such co-operation as he shall in directions issued to the licensee for the purposes of this Condition request in developing and testing his proposals for the establishment of the requisite arrangements and the electricity trading system referred to in paragraph 3(A).
 11. The licensee's reasonable direct costs of complying with a request made under paragraph 10 (incurred prior to the date upon which the Director shall have first exercised his cancellation powers and for which an invoice shall have been submitted by the licensee to the transmission licensee not later than 2 months prior to the date upon which the first cancellation direction shall take effect) shall be audited in such manner as the Director shall from time to time require and shall be recoverable from the transmission licensee.

12. In this Condition:

“Land Bank Business” means the business of Northern Ireland Electricity plc in the discharge of its obligations under Condition 17 of Part III of its transmission licence;

“relevant documentation” means the documentation and other obligations referred to in sub-paragraph (a) of paragraph 6;

“relevant steps” means the steps referred to in sub-paragraph (a) of paragraph 6; and

“requisite arrangements” means the arrangements referred to as such in paragraph 2.