

2007 No. 321

ELECTRICITY

ELECTRICITY REGULATIONS (NORTHERN IRELAND) 2007

Made - - - -

3rd July 2007

The Department of Enterprise, Trade and Investment, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the regulation of the electricity sector(b), in exercise of the powers conferred on it by the said section 2(2), and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART I

INTRODUCTORY

Citation and commencement

1.—(1) These Regulations may be cited as the Electricity Regulations (Northern Ireland) 2007 and, subject to paragraphs (2) and (3) shall come into operation forthwith.

(2) Part II and regulation 61 shall, subject to paragraph (3) come into operation on 1 November 2007.

(3) Article 43B of the 1992 Order (as inserted by regulation 10) shall have effect forthwith insofar as it authorises the Authority to issue a notice under paragraph (1)(b) thereof.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“the Authority” means the Northern Ireland Authority for Utility Regulation;

“the 1992 Order” means the Electricity (Northern Ireland) Order 1992(d);

“the Department” means the Department of Enterprise, Trade and Investment;

“the Energy Order” means the Energy (Northern Ireland) Order 2003(e).

(a) 1972 c. 68

(b) S.I. 1998/745

(c) 1954 c. 33 (N.I.)

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

(e) S.I. 2003/419 (N.I. 6)

PART II

AMENDMENTS TO THE 1992 ORDER

Revocation and replacement

3. The 1992 Order shall be amended as provided by this Part.

Interpretation

4. In Article 3 (Interpretation of Part II) —

- (a) the definition of “authorised area” shall be deleted;
- (b) after the definition of “Directive” there shall be inserted the following definition:
“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;
- (c) after the definition of “electric line” there shall be inserted the following definitions:
“electricity distributor” means any person who is authorised by a licence under Article 10(1)(b) except where he is acting otherwise than for purposes connected with the distribution by him of electricity;
“electricity supplier” means any person who is authorised by a licence under Article 10(1)(c) to supply electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence;
- (d) in the definition of “electrical plant” after “transmission” there shall be inserted “, distribution”;
- (e) the definitions of “private electricity supplier”, “public electricity supplier” and “tariff customer” shall be deleted.

Electricity Supply Code

5.—(1) For Article 27 (Public Electricity Supply Code) there shall be substituted—

“Electricity Supply Code

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

(2) For Schedule 6 (Public Electricity Supply Code) there shall be substituted the Schedule set out in Schedule 1 to these Regulations.

Licences

6.—(1) For Article 10(1)(c) there shall be substituted the following sub-paragraph—

“(c) to supply electricity to any premises.”

(2) For Article 10(2) there shall be substituted the following paragraphs

“(2) A licence under Article 10(1)(c) may authorise the holder to supply electricity—

- (a) to any premises;
- (b) only to premises specified in the licence, or to premises of a description so specified; or
- (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated.

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

(3) In Article 10(3) the words “or extension” shall be deleted.

(4) For Article 10(7) and (8) there shall be substituted

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

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

Licence holders

7. For Article 12 there shall be substituted:

“General duties of electricity distributors and transmission licence holders

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

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

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

- (a) take such steps as are reasonably practicable to—
 - (i) ensure the development and maintenance of an efficient, co-ordinated and economical system of electricity transmission which has the long-term ability to meet reasonable demands for the transmission of electricity; and
 - (ii) contribute to security of supply through adequate transmission capacity and system reliability; and
- (b) facilitate competition in the supply and generation of electricity.”.

8.—(1) For Article 13(1) there shall be substituted the following paragraph—

“(1) Subject to paragraph (2), Schedule 3 (which makes provision with respect to the compulsory acquisition of land) and Schedule 4 (which confers other powers and makes other provision) shall have effect—

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

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

(2) Article 13(4) is repealed.

Duty to connect

9.— For Articles 19 to 26 there shall be substituted the following Articles—

“Duty to connect on request

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.
- (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.

Procedure for requiring a connection

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

- (2) That notice must specify—
 - (a) the premises or distribution system to which a connection to the distributor's system is required;
 - (b) the date on or by which the connection is to be made; and
 - (c) the maximum power at which electricity may be required to be conveyed through the connection.
- (3) The person requiring a connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.
- (4) A request under paragraph (3) shall be made as soon as practicable after the notice under paragraph (1) is given (if not made before that time).
- (5) As soon as practicable after receiving the notice under paragraph (1) and any information requested under paragraph (3) the distributor shall give to the person requiring the connection a notice—
 - (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.

Exceptions from duty to connect

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

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

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

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

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

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

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

Power to recover expenditure

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

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

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

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

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

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

Power to require security

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

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

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

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

Additional terms of connection

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

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

Special agreements with respect to connection

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

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

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

Determination of disputes

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

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

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

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

(3) Where a dispute arising under Articles 19 to 25 between an electricity distributor and a person requiring a connection falls to be determined under this Article, the Authority may give directions as to the circumstances in which, and the terms on which, the distributor is to make or (as the case may be) to maintain a connection pending the determination of the dispute.

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

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

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

(7) An order under this Article—

- (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and
- (b) shall be final and shall be enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the county court.

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

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

Consumer Protection

10. For Articles 42 and 43 there shall be substituted the following Articles—

“Electricity supply and distribution: performance in individual cases.

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

- (a) the activities of electricity suppliers, so far as affecting customers or potential customers of theirs, as in the Authority’s opinion ought to be achieved in individual cases; and
- (b) the activities of electricity distributors, so far as affecting customers or potential customers of electricity suppliers, as in the Authority’s opinion ought to be achieved in individual cases.

- (2) Regulations under paragraph (1)(a) may—
- (a) prescribe circumstances in which electricity suppliers are to inform persons of their rights under this Article;
 - (b) prescribe such standards of performance in relation to any duty arising under 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;
 - (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.

Standards of performance in individual cases: disputes

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

Overall standards of performance: electricity supply

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

- (a) determine such standards of overall performance in connection with the provision of electricity supply services as, in its opinion, ought to be achieved by electricity suppliers; and
- (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.

Overall standards of performance: electricity distributors

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

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

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

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

Procedures for prescribing or determining standards of performance

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

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

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

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

(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.”.

Consequential Amendments

- 11.**—(1) The amendments made by Schedule 2 shall have effect.
- (2) In the following Orders, that is to say—
- (a) the Electricity (Non-Fossil Fuel Sources) Order (Northern Ireland) 1994^(a); and
 - (b) the Electricity (Non-Fossil Fuel Sources) Order (Northern Ireland) 1996^(b),
- in relation to any period after this regulation comes into effect any reference to Northern Ireland Electricity plc shall be construed as a reference to NIE Energy Ltd.

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^(c) 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^(d).
- (5) For the purposes of this regulation “supply” and “distribution” have the meanings given to them by Directive 2003/54/EC.

(a) S.R. 1994 No. 132
 (b) S. R. 1996 No. 407
 (c) S.I. 1992/231 (N.I. 1)
 (d) S. I. 1986/1032 (N.I. 6)

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 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.

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.

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.

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.

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.

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^(a) (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.

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;

^(a) 2002 c. 40

- (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.

Supplementary

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

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.

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^(a),

as it considers appropriate.

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.

PART IV

TRANSITIONAL PROVISIONS

Conversion of existing electricity supply licences

41.—(1) In this regulation—

- (a) references to an existing supply licence are to a licence under Article 10(2) of the 1992 Order which is in force immediately before the commencement date; and
- (b) references to the commencement date are to the date on which regulation 6 comes into operation.

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

- (2) An existing supply licence shall have effect on and after the commencement date—
 - (a) as a licence under Article 10(1)(c) of the 1992 Order (as amended by these Regulations); and
 - (b) with such incidental, consequential and supplementary modifications as appear to the Authority to be necessary or expedient.
- (3) Modifications under paragraph (2)(b) may relate to—
 - (a) the terms of a licence; or
 - (b) the conditions of a licence.
- (4) As soon as practicable after the commencement date, the Authority shall publish the text of each licence modified under this regulation.
- (5) Before modifying any licence under paragraph (2)(b), the Authority shall consult the holder of the licence in such manner as it considers appropriate.
- (6) Paragraph (5) may be satisfied by consultation before, as well as by consultation after, the commencement date.

Former Tariff Customers

42.—(1) This regulation applies where immediately before the date regulation 9 comes into operation a public electricity supplier (“the supplier”) is supplying tariff customers with electricity.

(2) The supplier’s supply successor shall be deemed to have contracted with those customers for the supply of electricity as from that date.

(3) The express terms and conditions of a contract which, by virtue of paragraph (2), is deemed to have been made by the supplier shall be provided for by the scheme under this regulation which relates to that supplier.

(4) Before such date as the Authority may direct, the supplier shall make a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of paragraph (2), are to be deemed to have been made by the supplier.

(5) A scheme under this regulation shall not take effect unless it is approved by the Authority; and the Authority may modify such a scheme before approving it.

(6) If, in relation to such a scheme—

- (a) the supplier fails, before the date specified under paragraph (4), to submit the scheme for the approval of the Authority; or
- (b) the Authority decides not to approve the scheme that has been submitted by the supplier (either with or without modifications),

the Authority may itself make the scheme.

(7) It shall be the duty of the supplier to provide the Authority with all such information and other assistance as it may require for the purposes of or in connection with the exercise of any function conferred by paragraph (5) or (6).

(8) The Authority shall not exercise any function conferred by paragraph (5) or (6) except after consultation with the supplier.

(9) A scheme made under this regulation shall be published in the Belfast Gazette before the commencement date and shall come into operation on that date; and conclusive evidence of a scheme so made may be given in all courts of justice and in all legal proceedings whatever by the production of a copy of the Gazette which purports to contain it.

(10) In this regulation expressions which are also used in the 1992 Order as it had effect immediately before the commencement date shall have the same meaning as in that Order and—

“commencement date” means the date on which Part II comes into force; and

“supply successor”, in relation to a public electricity supplier, means the person who becomes an electricity supplier (as defined by Article 3 of the 1992 Order) by virtue of a scheme under regulation 35.

Applications for licences

43.—(1) This regulation applies where—

- (a) before the date regulation 6 comes into operation, an application has been made under Article 10(3) of the 1992 Order for the grant of a licence under Article 10(1)(c) or (2)(a) or the extension of a licence under Article 10(2)(b); and
- (b) the application has not been determined before that date,

and in this regulation such an application shall be referred to as a “continuing application”.

(2) Subject to the following provisions of this regulation, a continuing application shall have effect on and after the date regulation 6 comes into operation as if it were an application made to the Authority for, as the case may be,—

- (a) a licence under 10(1)(c) of the 1992 Order; or
- (b) an extension of a licence to be granted under Article 10(2A) of the 1992 Order,

and in each of sub-paragraphs (a) to (b) the reference to Article 10 of the 1992 Order shall be a reference to that Article as it had effect on or after that date.

Requests to supply and exemptions from duty

44.—(1) This regulation applies where—

- (a) before the date regulation 9 comes into operation (in regulations 44 to 50 referred to as “the relevant date”) a public electricity supplier receives a notice pursuant to Article 19(2) of the 1992 Order (referred to in this regulation as an “Article 19(2) notice”);
- (b) the public electricity supplier has not by that date begun to give a supply of electricity as required by the Article 19(2) notice; and
- (c) before that date none of the exemptions in Article 20 of the 1992 Order apply.

(2) Subject to the following provisions of this regulation, the Article 19(2) notice shall have effect on and after the relevant date as if it were a request for a supply of electricity made to the supply successor and, where there is no connection in place between the premises to which the notice relates and the distribution system of the distribution successor, a request for such a connection made pursuant to Article 19 of the 1992 Order as it had effect on or after that date to the distribution successor.

(3) Where the Article 19(2) notice is treated as a request for a supply made to the supply successor, the supply successor shall give to the person requiring the supply of electricity a notice which shall state—

- (a) the extent to which the person’s proposals are acceptable to the supply successor; and
- (b) details as to the price and terms upon which the supply successor is prepared to give a supply of electricity,

in so far as that information has not already been given to the person by the public electricity supplier before the relevant date.

(4) Any connection made by a distribution successor on or after the relevant date as a result of an Article 19(2) notice given to a public electricity supplier shall be a connection made in pursuance of Article 19 of the 1992 Order as it had effect on or after that date.

(5) In this regulation and the following provisions of this Part—

“supply successor” has the meaning given by regulation 42(10); and

“distribution successor” in relation to a supply successor means the nominating licensee within the meaning of regulation 13(1).

Duty to supply

45.—(1) This regulation applies where immediately before the relevant date a public electricity supplier, in response to a request made pursuant to Article 19(2) of the 1992 Order, provides, and is required to continue to provide, electric lines, electrical plant or both in respect of any premises.

(2) On and after the relevant date the continuing provision of such electric lines or electrical plant shall be regarded as a connection made pursuant to Article 19 of the 1992 Order as substituted by regulation 9 and the provisions of Article 19 and Part II of the 1992 Order as amended by these Regulations shall apply accordingly.

46.—(1) This regulation applies where immediately before the relevant date a public electricity supplier, in pursuance of a special agreement made under Article 25 of the 1992 Order, provides, and is required to continue to provide, electric lines, electrical plant or both in respect of any premises.

(2) On and after the relevant date the continuing provision of such electric lines or electrical plant shall be regarded as a connection made pursuant to Article 25 of the 1992 Order as substituted by regulation 9 and the provisions of Article 19 and Part II of the 1992 Order as amended by these Regulations shall apply accordingly.

47. On and after the relevant date in paragraphs 1(1) and 3(1) of Schedule 9 to the 1992 Order for “generate and supply electricity” there shall be substituted “generate, transmit, distribute or supply electricity”.

Special arrangements with respect to supply

48.—(1) This regulation applies where—

- (a) before the relevant date a public electricity supplier and a person who has requested the said supplier to provide a connection to any premises have agreed to enter into an agreement as mentioned in Article 25 of the 1992 Order; and
- (b) the parties have not by that date entered into an agreement.

(2) On and after the relevant date the distribution successor and the person requesting the connection shall be deemed to have agreed to enter into a special connection agreement as mentioned in Article 25(1) of the 1992 Order as it had effect on or after that date.

(3) Any connection made by a distribution successor as a result of the application of paragraph (2) shall be a connection made in pursuance of Article 22 of the 1992 Order as it had effect after the relevant date.

Determination of disputes

49.—(1) This regulation applies where—

- (a) before the relevant date a dispute has arisen under paragraph 2 of Schedule 7 to the 1992 Order between a public electricity supplier and a customer; and
- (b) that dispute has not been referred to the Authority as provided for in Article 26(1) of the 1992 Order or has been so referred but has not been determined,

and in this regulation such a dispute shall be referred to as a “continuing dispute”.

(2) On and after the relevant date a continuing dispute shall have effect as a dispute between the supply successor and the customer and Article 26 of the 1992 Order as it has effect on and after that date shall apply accordingly.

50.—(1) This regulation applies where—

- (a) before the relevant date a dispute has arisen under Article 19 to 25 of the 1992 Order between a public electricity supplier and a person requiring a supply of electricity (referred to in this regulation as “the customer”);
- (b) the dispute relates to a connection between premises and the distribution system of the public electricity supplier (referred to in this regulation as “the connection”); and
- (c) that dispute has not been referred to the Authority as provided for in Article 26(1)(a) of the 1992 Order^(a) or has been so referred but has not been determined,

and in this regulation such a dispute shall be referred to as a “continuing dispute”.

(2) On and after the relevant date a continuing dispute shall have effect, in so far as it relates to the connection, as a dispute between the customer and the distribution successor and Article 26 of the 1992 Order as it has effect on and after that date shall apply accordingly.

51.—(1) This regulation applies where—

- (a) before the date regulation 5 and Schedule 1 come into operation a dispute has arisen under paragraph 1 of Schedule 6 to the 1992 Order between a public electricity supplier and a customer; and
- (b) that dispute has not been referred to the Authority as provided for in Article 26(1) of the 1992 Order or has been so referred but has not been determined,

and in this regulation such a dispute shall be referred to as a “continuing dispute”.

(2) On and after the date regulation 5 and Schedule 1 come into operation a continuing dispute shall have effect as a dispute between the supply successor and the customer and Article 26 of the 1992 Order as it has effect on or after that date shall apply accordingly.

Compensation

52.—(1) This regulation applies where—

- (a) before the date regulation 10 comes into operation, a public electricity supplier has failed to meet any standard prescribed in regulations made pursuant to Article 42 of the 1992 Order; and
- (b) such compensation as he may be required to make has not been paid as provided for in Article 42(3) of the 1992 Order.

(2) On and after the date regulation 10 comes into operation—

- (a) the failure of a public electricity supplier to meet any standard relating to supply activities shall be regarded as a failure of the supply successor and the obligation to make compensation in such a case shall be regarded as an obligation of the supply successor; and
- (b) the failure of a public electricity supplier to meet any standard relating to distribution activities shall be regarded as a failure of the distribution successor and the obligation to make compensation in such a case shall be regarded as an obligation of the distribution successor.

(3) Subject to the provisions of paragraph (2), on and after the date regulation 10 comes into operation, Article 42 of the 1992 Order as it had effect immediately before that date shall continue to apply to the obligation to make compensation, and any dispute in respect thereof as if, these Regulations had not been made.

Standard of overall performance

53.—(1) This regulation applies where before the date regulation 10 comes into operation, a public electricity supplier has failed to meet any standard of overall performance determined by the Authority pursuant to Article 43 of the 1992 Order as it then had effect.

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

(2) On and after the date regulation 10 comes into operation—

- (a) the failure of any public electricity supplier to meet any standard of overall performance relating to supply activities shall be regarded as a failure of the supply successor; and
- (b) the failure of any public electricity supplier to meet any standard of overall performance relating to distribution activities shall be regarded as a failure of the distribution successor.

54.—(1) Subject to paragraphs (2) and (3), on and after the date regulation 11 and Schedule 2 come into operation, Article 45A of the 1992 Order as it had effect immediately before that date shall continue to apply in respect of any standards of overall performance determined by the Authority pursuant to Article 43 of the 1992 Order before that date as if these Regulations had not been made.

(2) Where any overall standards of performance referred to in paragraph (1) relate to supply activities, for “public electricity supplier” in Article 45A(1) of the 1992 Order there shall be substituted “the supply successor of a former public electricity supplier”, and for “his” there shall be substituted “the public electricity supplier’s former”, and after “performance” in each place where it occurs there shall be inserted “relating to supply activities”.

(3) Where any overall standards of performance referred to in paragraph (1) relate to distribution activities, for “public electricity supplier” there shall be substituted “the distribution successor of the former public electricity supplier”, for “his” there shall be substituted “the public electricity supplier’s former”, and after “performance” in each place where it occurs there shall be inserted “relating to distribution activities”.

Compliance Orders

55.—(1) This regulation applies where, before the date regulation 6 comes into operation, the Authority has given notice under Article 43(1) of the Energy Order of its intention to make a final order or to confirm a provisional order against a public electricity supplier but the Authority has not before that date made or confirmed such an order.

(2) On and after the date regulation 6 comes into operation the Authority may exercise its powers under Article 42 of the Energy Order to make a final order or confirm a provisional order in respect of the supply successor (where the relevant condition or requirement set out in a notice given under Article 43(1) of that Order relates to supply activities) or the distribution successor (where the relevant condition or requirement so referred to relates to distribution activities).

Financial Penalties

56.—(1) This regulation applies where, before the date regulation 6 comes into operation, the Authority was satisfied that a public electricity supplier had contravened or was contravening any relevant condition or requirement or any provision of the Community Regulation (within the meaning of Article 45 of the Energy Order).

(2) On and after the date regulation 6 comes into operation the Authority may, impose on the

- (a) supply successor where the condition or requirement related to supply; or
- (b) distribution successor where the condition or requirement related to distribution,

a penalty of such amount as is reasonable in all the circumstances of the case and Articles 45 to 50 of the Energy Order shall apply in relation to such an imposition as if for any reference to a licence holder therein there were a reference to the supply successor or distribution successor as appropriate.

57.—(1) This regulation applies where, before the date regulation 6 comes into operation, the Authority has served a notice under Article 51(1) of the Energy Order on a public electricity supplier and the public electricity supplier has not satisfied the requirements set out in the notice.

(2) On and after the date regulation 6 comes into operation the person on whom the notice is to be regarded as served shall be the supply successor (where the documents or information specified or described relate to supply) or the distribution successor (where the documents or information

specified or described relate to distribution) or both the supply successor and distribution successor where the documents or information relate to both distribution and supply.

Right to recover charges

58.—(1) Paragraphs (2) and (3) of this regulation apply where, before the date regulation 5 and Schedule 1 come into operation a public electricity supplier has not completed the exercise of his right under paragraph 1(1) of Schedule 6 to the 1992 Order to recover from a tariff customer any charges (other than the charges referred to in Article 22(4) of the 1992 Order as it had effect immediately before that date) due to him in respect of the supply of electricity or the provision of any electricity meter, electric line or electrical plant.

(2) On and after the date regulation 5 and Schedule 1 come into operation any charges due to the public electricity supplier in respect of the matters referred to in paragraph (1) shall be regarded—

- (a) as being due to the supply successor; and
- (b) as being charges to which paragraph 2 of Schedule 6 to the 1992 Order (as it has effect on or after the date regulation 5 and Schedule 1 come into operation) applies.

(3) In the circumstances to which paragraph (2) applies, the “requisite period” referred to in paragraph 2(4) of Schedule 6 to the 1992 Order (as it has such effect) shall mean the period of 28 days after the making by the public electricity supplier of a demand in writing for the payment of the charges due, or, where such a demand has not been made, the period of 28 days after the making of such a demand by his supply successor.

(4) Paragraph (5) applies where, before the date regulation 5 and Schedule 1 come into operation, a public electricity supplier has not completed the exercise of his right under paragraph 1(1) of Schedule 6 to the 1992 Order to recover from a tariff customer any charges of the type referred to in Article 22(4) of the 1992 Order (as it had effect immediately before that date) in respect of the provision of any electric line or electrical plant.

(5) On and after the appointed day any charges due to the public electricity supplier in respect of the matters referred to in paragraph (4) shall be regarded as being due to the distribution successor.

Relevant changes in law

59.—(1) This regulation applies in relation to an agreement in force between the holder of a licence under Article 10(1)(a) of the 1992 Order and any other holder of a licence under Article 10 of that Order which—

- (a) contains (in whatever terms) provisions which apply where there is a relevant change in law (as defined in the agreement); but
- (b) also contains provision which excludes from the definition of a relevant change in law any change in law which provides that it should not be a relevant change in law.

(2) For the purposes of any such agreement none of the following that is to say—

- (a) these Regulations,
- (b) the coming into operation of any provision of them,
- (c) any scheme made under Part III of these Regulations, nor
- (d) the coming into operation of any such scheme

shall be a relevant change in law.

Power to modify licence conditions

60.—(1) The Department after consultation with the Authority, or the Authority with the consent of the Department, may, in accordance with this regulation, modify the conditions of a particular licence where it considers it necessary or expedient to do so for the purpose of—

- (a) implementing any obligations of the United Kingdom under Directive 2003/54/EC or enabling any such obligations to be implemented; or

- (b) dealing with any matters arising out of or related to such obligations.
- (2) The power to modify licence conditions under this regulation includes power—
 - (a) to make modifications relating to the operation or ownership of transmission systems or other systems for the conveyance of electricity; and
 - (b) to make incidental, consequential or transitional modifications.
- (3) Conditions included in a licence by virtue of the power conferred by this regulation—
 - (a) need not relate to the activity authorised by the licence;
 - (b) may require the licence holder—
 - (i) to carry out, or procure the carrying out by a subsidiary company of, any activity specified in the licence;
 - (ii) to apply for, or cause a subsidiary company to apply for, a licence of a kind so specified;
 - (c) may do any of the things authorised by Article 11(2) to (6B) of the 1992 Order;
 - (d) may require the licence holder to enter into such new agreements or arrangements, or new agreements or arrangements for such purposes or of such description, as may be specified in or determined by or under the conditions;
 - (e) may include provision for determining the terms on which such new agreements or arrangements are to be entered into;
 - (f) may require the licence holder to amend or terminate, or agree to the amendment or termination of, such existing agreements or arrangements, or existing agreements or arrangements of such description, as may be specified in or determined by or under the conditions.
- (4) Before making modifications under this regulation, the Department or the Authority shall consult—
 - (a) the holder of any licence being modified; and
 - (b) such other persons as it considers appropriate.
- (5) The requirements of paragraphs (1) and (4) as to consultation may be satisfied by consultation before, as well as by consultation after, the coming into operation of this regulation.
- (6) Where the Department or the Authority makes any modifications under this regulation, it shall publish those modifications in such manner as it considers appropriate.
- (7) The power to make modifications under this regulation may not be exercised after the end of the period of 24 months beginning with the day on which this regulation comes into operation.
- (8) Article 38(1) of the Energy Order applies in relation to the power to modify a licence under this regulation as it applies in relation to a power to amend a licence under the 1992 Order.
- (9) Nothing in this regulation prejudices the generality of any other power to modify a licence; and nothing in paragraph (2) or (3) prejudices the generality of paragraph (1).
- (10) In this regulation “subsidiary”, in relation to a company, has the same meaning as in the Companies (Northern Ireland) Order 1986 (NI 6)(a).

The Energy Order

- 61.**—(1) The amendments to the Energy Order set out in Schedule 3 shall have effect.
- (2) The General Consumer Council for Northern Ireland may publish in accordance with Article 20 of the Energy Order complaints made by consumers about any matter relating to the activities of the holder of a licence under Article 10(2) of the 1992 Order at any time before paragraph (1) comes into operation as if that paragraph had not been made.

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

Interpretation

62. In this Part expressions which are also used in the 1992 Order as it had effect before the coming into operation of regulation 4 shall have the same meaning as in that Order.

63.—(1) References in any statutory provision to public electricity suppliers shall have effect after the coming into operation of regulation 4 as if they were references to—

- (a) electricity suppliers;
- (b) electricity distributors; or
- (c) both electricity suppliers and electricity distributors,

within the meaning of the 1992 Order according to the nature of the activities carried on by the persons to whom they referred before that time.

(2) References in any statutory provision to the supply of electricity shall have effect after the coming into operation of regulation 4 as if they were references to—

- (a) the supply of electricity;
- (b) the distribution of electricity; or
- (c) both the supply and distribution of electricity,

within the meaning of the 1992 Order according to the nature of the activities to which they referred before that time.

(3) References in any statutory provision to the holder of a licence under Article 10(2) of the 1992 Order shall have effect after the coming into operation of regulation 4 as if they were references to an electricity supplier within the meaning of the 1992 Order.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment
on 3rd July 2007.



Jenny Pyper
A senior officer of the
Department of Enterprise Trade and Investment

“SCHEDULE 6

Article 27

The Electricity Supply Code

1. An electricity supplier who, for the purpose of meeting the needs of a disabled person—

- (a) alters the position of any electricity meter which has been provided by him; or
- (b) replaces such a meter with one which has been specially adapted,

shall not make any charge for the alteration or replacement; and Article 26 shall apply in relation to any dispute arising under this sub-paragraph as if it were a dispute arising under Articles 19 to 25.

2.—(1) Where a customer has not, within the requisite period, paid all charges due from him to an electricity supplier in respect of the supply of electricity to any premises or the provision of an electricity meter, the supplier may, after the expiration of not less than 2 working days notice of his intention—

- (a) cut off the supply to the premises or to any other premises occupied by the customer, by such means as he thinks fit; and
- (b) recover any expenses incurred in so doing from the customer.

(2) The power of a supplier under sub-paragraph (1) shall also be exercisable at any time which, in relation to a customer, is after the effective date for the purposes of Article 343 of the Insolvency (Northern Ireland) Order 1989^(a) (supplies of gas, water, electricity etc. to insolvent companies).

(3) The power of a supplier conferred by sub-paragraph (1) shall not be exercisable as respects any amount which is genuinely in dispute; but there shall be disregarded for this purpose any dispute arising under Article 42 or regulations made under it.

(4) In this paragraph the “requisite period” means—

- (a) in the case of premises which are wholly or mainly used for domestic purposes, the period of 20 working days after the making by the supplier of a demand in writing for payment of the charges due; and
- (b) in any other case, the period of 15 working days after the making of such a demand.

Deemed Contracts

3.—(1) Where an electricity supplier supplies electricity to any premises otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the occupier (or the owner if the premises are unoccupied) for the supply of electricity as from the time (“the relevant time”) when he began so to supply electricity.

(2) Where—

- (a) the owner or occupier of any premises takes a supply of electricity which has been conveyed to those premises by an electricity distributor;
- (b) that supply is not made by the holder of a licence under Article 10(1)(c) or pursuant to an exemption under Article 9; and

(a) S.I. 1989/2405 (N.I. 19)

- (c) a supply of electricity so conveyed has been previously made by an electricity supplier,

the owner or occupier shall be deemed to have contracted with the appropriate supplier for the supply of electricity as from the time (“the relevant time”) when he began to take such a supply.

(3) Nothing in sub-paragraph (2) shall be taken to afford a defence in any criminal proceedings.

(4) The Authority shall publish a document containing provision for determining the “appropriate supplier” for the purposes of sub-paragraph (2) and may revise any such document published by it and where it does so it shall publish the revised document.

(5) The express terms and conditions of a contract which, by virtue of sub-paragraph (1) or (2), is deemed to have been made shall be provided for by a scheme made under this paragraph.

(6) Each electricity supplier shall make (and may from time to time revise), a scheme for determining the terms and conditions which are to be incorporated in the contracts which, by virtue of sub-paragraph (1) or (2), are to be deemed to have been made.

(7) The terms and conditions so determined may include terms and conditions for enabling the electricity supplier to determine, in any case where the meter is not read immediately before the relevant time, the quantity of electricity which is to be treated as supplied by the supplier to the premises, or taken by the owner or occupier of the premises, during the period beginning with the relevant time and ending with—

- (a) the time when the meter is first read after the relevant time; or
- (b) the time when the supplier ceases to supply electricity to the premises, or the owner or occupier ceases to take a supply of electricity,

whichever is the earlier.

(8) As soon as practicable after an electricity supplier makes a scheme under this paragraph, or a revision of such a scheme, he shall—

- (a) publish, in such manner as he considers appropriate for bringing it to the attention of persons likely to be affected by it, a notice stating the effect of the scheme or revision;
- (b) send a copy of the scheme or revision to the Authority and to the General Consumer Council for Northern Ireland; and
- (c) if so requested by any other person, send such a copy to that person without charge to him.

(9) A scheme under this paragraph may make different provision for different cases or classes of cases, or for different areas, determined by, or in accordance with, the provisions of the scheme.

Supplies of Electricity Illegally Taken

4.—(1) Where any person takes a supply of electricity which is in the course of being conveyed by an electricity distributor, the distributor shall be entitled to recover from that person the value of the electricity so taken.

(2) Where—

- (a) any person at premises at which a connection has been restored in contravention of paragraph 5(1) takes a supply of electricity which has been conveyed to those premises by an electricity distributor; and
- (b) the supply is taken otherwise than in pursuance of a contract made with the holder of a licence under Article 10(1)(c) or a supplier operating in pursuance of an exemption under Article 9, or of a contract deemed to have been made with an electricity supplier by virtue of paragraph 3 or regulation 42 of the Electricity Regulations (Northern Ireland) 2007,

the distributor shall be entitled to recover from that person the value of the electricity so taken.

(3) Each electricity distributor shall make, and from time to time revise, a scheme providing for the manner in which, and the persons by whom, the quantity of electricity taken in such circumstances as are mentioned in sub-paragraph (1) or (2) is to be determined for the purposes of that sub-paragraph.

(4) Sub-paragraphs (8) and (9) of paragraph 3 shall apply in relation to a scheme under this paragraph as it applies in relation to a scheme under that paragraph.

(5) In this paragraph “value”, in relation to any electricity taken in such circumstances as are mentioned in sub-paragraph (1) or (2), means the amount which, if the electricity had been taken in such circumstances as are mentioned in sub-paragraph (2) of paragraph 3, could reasonably be expected to have been payable in respect of the electricity under a contract deemed to have been made by virtue of that sub-paragraph.

Restoration of Connection without Consent

5.—(1) Where, otherwise than in the exercise of a power conferred by regulations under Article 32, any premises have been disconnected by an electricity supplier or an electricity distributor, a person shall not, without the consent of the supplier or, as the case may be, the distributor restore the connection.

(2) If any person acts in contravention of sub-paragraph (1), he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and the supplier or, as the case may be, the distributor may again disconnect the premises in question.

Damage to Electrical Plant, etc.

6.—(1) A person who intentionally or by culpable negligence damages or allows to be damaged—

- (a) any electric line or electrical plant provided by an electricity distributor; or
- (b) any electricity meter provided by an electricity supplier,

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where an offence has been committed under sub-paragraph (1) by the occupier of any premises (or by the owner of the premises if they are unoccupied when the offence is committed) in relation to any electric line or electrical plant provided by an electricity distributor for making or maintaining a connection to the premises, the distributor may disconnect the premises.

(3) Where an offence has been committed under sub-paragraph (1) in relation to an electricity meter provided by an electricity supplier which is situated on any premises, by the occupier (or by the owner of the premises if they are unoccupied when the offence is committed), the supplier may disconnect the premises and may remove the meter.

(4) A meter removed under sub-paragraph (3) shall be kept safely by the supplier until the Authority authorises its destruction or disposal.

Entry During Continuance of Supply

7.—(1) Any person authorised by an electricity distributor may at all reasonable times enter any premises to which the distributor is maintaining a connection, for the purpose of inspecting any electric line or electrical plant provided by him.

(2) Any person authorised by an electricity supplier may at all reasonable times enter any premises to which electricity is being supplied by him for the purpose of—

- (a) ascertaining the register of any electricity meter and, in the case of a pre-payment meter, removing any money or tokens belonging to the supplier;

- (b) removing, inspecting or re-installing any electricity meter or installing any substitute meter.

(3) A power of entry for the purpose of removing, inspecting or re-installing an electricity meter may not be exercised unless at least two working days' notice has been given to the occupier (or the owner of the premises if they are unoccupied).

Entry on Discontinuance of Supply

8.—(1) Where an electricity supplier or an electricity distributor is authorised by paragraph 6(2) or (3) or paragraph 12(3) of Schedule 7—

- (a) to disconnect any premises; or
- (b) to remove an electricity meter,

any person authorised by the supplier or distributor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing the meter.

(2) Where—

- (a) an electricity distributor is authorised by any provision of this Order (other than one mentioned in sub-paragraph (1)) or of regulations made under it to disconnect any premises;
- (b) a person occupying premises which are connected to a distribution system of an electricity distributor ceases to require a connection; or
- (c) a person entering into occupation of any premises connected to a distribution system of an electricity distributor does not require such a connection,

any person authorised by the distributor may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any electrical plant or electric line provided by the distributor.

(3) Where—

- (a) an electricity supplier is authorised by any provision of this Order (other than one mentioned in sub-paragraph (1)), or of regulations made under it, to disconnect any premises or to discontinue the supply to any premises;
- (b) a person occupying premises which are supplied with electricity by an electricity supplier ceases to require such a supply; or
- (c) a person entering into occupation of any premises previously supplied with electricity by an electricity supplier does not require such a supply,

any person authorised by the supplier may at all reasonable times enter the premises for the purpose of disconnecting the premises or removing any electricity meter provided by the supplier.

(4) A power of entry under sub-paragraph (2) or (3) may not be exercised unless at least two working days' notice has been given to the occupier (or to the owner of the premises if they are unoccupied).

Entry For Replacing, Repairing or Altering Lines or Plant

9.—(1) Any person authorised by an electricity distributor may after five working days' notice to the occupier of any premises, or to the owner of any premises which are unoccupied, at all reasonable times enter any premises for the purpose of—

- (a) placing a new electric line or any new electrical plant in the place of or in addition to any existing line or plant which has already been lawfully placed; or
- (b) repairing or altering any such existing line or plant.

(2) In the case of emergency arising from faults in an electric line or any electrical plant entry may be made under sub-paragraph (1) above without the notice required by that sub-

paragraph, but notice shall then be given as soon as possible after the occurrence of the emergency.

Exercise of Powers of Entry

10.—(1) A power of entry conferred by this Schedule shall not be exercisable except—

- (a) with consent given by or on behalf of the occupier of the premises; or
- (b) under the authority of a warrant granted under paragraph 11;

so, however, that this sub-paragraph shall not apply where entry is sought in the case of emergency.

(2) Any person exercising powers of entry conferred by this Schedule may be accompanied by such persons as may be necessary or expedient for the purpose for which the entry is made, or for the purposes of paragraph 12(1).

Warrant to Authorise Entry

11.—(1) Where a justice of the peace is satisfied by complaint on oath—

- (a) that admission to premises is reasonably required for the purpose specified in the complaint; and
- (b) that a person authorised by an electricity supplier or an electricity distributor would, apart from paragraph 10, be entitled for that purpose to exercise in respect of the premises a power of entry conferred by this Schedule; and
- (c) that—
 - (i) in the case of a right of entry under paragraph 8 an application for admission, or the serving of a notice under paragraph 8(2) or (3), would defeat the object of the entry; or
 - (ii) the premises are unoccupied,

he may issue a warrant under his hand authorising any authorised person to enter the premises.

(2) A warrant granted under this paragraph shall continue in force until—

- (a) the time when the purpose for which the entry is required is satisfied; or
- (b) the end of the period of 28 days from the day on which the warrant is granted,

whichever is the earlier.

Premises to be left secure and damage to be made good

12.—(1) Where, under any powers conferred by this Schedule, entry is made on any premises by any person authorised by an electricity supplier or an electricity distributor—

- (a) he shall ensure that the premises are left no less secure by reason of the entry; and
- (b) the supplier or, as the case may be, the distributor shall make good or pay compensation for any damage to property caused by that person, or by any person accompanying him in entering the premises, in taking any action in the premises authorised by this Schedule or in making the premises secure.

(2) Any question of disputed compensation under this paragraph shall be referred to and determined by the Lands Tribunal.

Penalty for obstruction

13. Any person who intentionally obstructs a person authorised by an electricity supplier or electricity distributor in exercising a power of entry conferred by this Schedule shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Exemption of electrical plant, etc., for certain processes

14. Any electrical plant, electric line or electricity meter owned by or let for hire or lent to a customer by an electricity supplier or an electricity distributor and marked or impressed with a sufficient mark or brand indicating the supplier or distributor as the owner thereof—

- (a) shall continue to be the property of the supplier or, as the case may be, distributor, notwithstanding that they may be fixed or fastened to any part of the premises in which they may be situated; and
- (b) shall be exempt from seizure under the Judgments Enforcement (Northern Ireland) Order 1981^(a); and
- (c) shall not be taken in execution under proceedings in bankruptcy against the person in whose possession they may be.”.

SCHEDULE 2

Regulation 11

Amendments to the 1992 Order

1. In Article 3, in the definition of “high voltage line” after “nominal voltage” there shall be inserted “of or”.

2. In Article 11(3A) after “transmission” there shall be inserted “, distribution”.

3. In Article 11A, in paragraphs (6) to (8) there shall be deleted “or a licence under Article 10(2)” in each place where the words occur.

4. In Article 18(2)(b) after “transmission” there shall be inserted “, distribution”.

5. In Article 32—

- (a) in paragraph (1)(b) after “transmission” there shall be inserted “, distribution”;
- (b) in paragraph (2)(a) for “supply” there shall be substituted “distribution”;
- (c) in paragraph (2)(b) for “supplies or transmission” there shall be substituted “in the distribution or transmission”;
- (d) in paragraph (2)(c) there shall be substituted:

“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;” and

- (e) for paragraph (2)(d) there shall be substituted:

“(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;”.

6. In Article 33—

- (a) in paragraph (2)(b) after transmission there shall be inserted “, distribution”;
- (b) in paragraph (2)(c) for supply there shall be substituted “conveyance”; and
- (c) for paragraph (3)(c) there shall be substituted:

“(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;”.

^(a) S.I. 1981/226 (N.I. 6)

7. In Article 36, for paragraph (a) there shall be substituted:

“(a) for the imposition on such licence holders, and on other persons authorised by a licence under Article 10(1)(c), of a levy;”.

8. In Article 44—

- (a) in paragraphs (1) and (2) for “public electricity suppliers” in both places where the words occur there shall be substituted “electricity suppliers”;
- (b) in paragraph (3) for “public electricity supplier” there shall be substituted “electricity supplier”; and
- (c) in paragraph (3) for “the Director” there shall be substituted “the Authority”.

9. In Article 45—

- (a) in paragraphs (1), (4) and (5) for “the Director” in each place where the words occur there shall be substituted “the Authority”;
- (b) in paragraph (1) for “public electricity suppliers” there shall be substituted “electricity suppliers and electricity distributors”;
- (c) in paragraph (2) for “public electricity supplier” there shall be substituted “electricity supplier”;
- (d) after paragraph (2) there shall be inserted:

“(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.”;
- (e) in paragraph (3) for “A public electricity supplier” there shall be substituted “An electricity supplier” and after “paragraph (2)” there shall be inserted “and any electricity distributor who without reasonable excuse fails to do anything required of him by paragraph (2A) or (2C)”;
- (f) in paragraph (4) for “public electricity suppliers” there shall be substituted “electricity suppliers or electricity distributors”.

10. In Article 45A(1)—

- (a) for “public electricity supplier” there shall be substituted “electricity supplier and each electricity distributor”;
- (b) for “his customers” there shall be substituted “customers of electricity suppliers”;
- (c) after “Article 43” there shall be inserted “or, as the case may be Article 43A”;
- (d) after “that supplier” there shall be inserted “or distributor”; and

(e) after “that supplier’s” there shall be inserted “or that distributor’s”.

11. In Article 45B—

- (a) in paragraphs (1) and (4) in both places where the words occur for “public electricity supplier” there shall be substituted “electricity supplier”; and
- (b) in paragraphs (2) to (6) for “the Director” in each place where the words occur there shall be substituted “the Authority”.

12. In Article 47A—

- (a) in paragraphs (1), (3), (4), (6), (7) and (9) for “the Director” in each place where the words occur there shall be substituted “the Authority”;
- (b) in paragraphs (2) and (8) the word “tariff” in each place where it occurs shall be omitted;
- (c) in paragraph (2) for “a public electricity supplier” there shall be substituted “an electricity supplier”; and
- (d) in paragraph (8) for “public electricity supplier” there shall be substituted “electricity supplier”.

13. In Article 50(1) after “transmission” there shall be inserted “, distribution”.

14. In Article 63(2) for sub-paragraph (a) there shall be substituted—

“(a) an employee of, or other person acting on behalf of, an electricity supplier or electricity distributor;”.

15.—(1) In paragraph 2 of Schedule 7—

- (a) in paragraph (2A) for “A public electricity supplier” there shall be substituted “An electricity supplier”;
- (b) in paragraphs (7) and (9) for “a public electricity supplier” in each place where the words occur there shall be substituted “an electricity supplier”.

(2) In Schedule 7—

- (a) in paragraphs 6(3)(a) and 7(1) for “a public electricity supplier” there shall be substituted “an electricity supplier”; and
- (b) paragraph 7(5) is repealed.

SCHEDULE 3

Regulation 61

Amendments to Energy Order

1. In Article 12(2) for the “; and” at the end of sub-paragraph (b) there shall be substituted a full stop and sub-paragraph (c) shall be repealed.

2. In Article 20(1)(a) there shall be omitted “or (2)”.

3. In Article 41—

- (a) in paragraph (1) at the end of sub-paragraph (a) there shall be added “and”, at the end of sub-paragraph (b) for “; and” there shall be substituted a full stop and sub-paragraph (c) shall be repealed.
- (b) in paragraph (2) after “26,” there shall be inserted “43A”.

4. In Article 52(3) there shall be omitted “or (2)”.

5. In paragraph 1(1) of Schedule 3 there shall be omitted the words from “in the definition” to “and” where it first occurs.

6. In Schedule 5 in the entry relating to Article 3 of the 1992 Order there shall be omitted the words from “and in the definition of” to the end.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations inter alia amend the Electricity (Northern Ireland) Order 1992 (“the 1992 Order”) to ensure that it conforms with the requirements of Directive 2003/54/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity (“the Directive”).

The 1992 Order provides for there to be a single holder of a supply licence Public Electricity Supplier (“PES”) for any given area. The PES is required to supply electricity to customers in that area on request and to recover charges for such a supply under a tariff and thereby act as supplier of last resort. Such customers are known as tariff customers. Any other supplier may only be licensed on more limited terms and there is no legislative provision enabling them to act as supplier of last resort. Such suppliers are known as second tier suppliers. Under the Directive, customers in Northern Ireland must be free to purchase electricity from the supplier of their choice. Moreover, all household customers must enjoy a universal service. And for that purpose the Directive allows for the appointment of a Supplier of Last Resort on the basis of a fair, reasonable and non-discriminatory process and criteria. Accordingly, Part II of these Regulations abolishes the separate categories of PES and private electricity supplier (regulations 4 and 6) and replaces these with a single licence category of electricity supplier. It also replaces the current arrangements for a Supplier of Last Resort, as provided for in the duty of the PES to supply electricity under Article 19 to 26 of the 1992 Order, with new arrangements for the provision of a universal service which complies with the requirements of the Directive (regulation 9). This includes provision for any holder of a supply licence to act as Supplier of Last Resort if it so chose.

The Directive also requires the legal and functional separation of distribution system activities from those of supply and generation. Part III of the regulations facilitates the restructuring of those PES licence holders whose corporate structure is incompatible with this restriction. It does so by providing for a property arrangement scheme and a complementary licensing scheme. The latter enables current PES licences to have effect as if it were a supply licence under the new provisions granted to an associate nominated by the former PES (regulation 35 to 38). The former enables the Northern Ireland Authority for Utility Regulation, on application by the holder of both a PES licence and a licence to participate in transmission (the nominating licensee), to transfer to the holder of the new supply licence of any property, rights and liabilities held by the nominating licensee or the creation of rights or liabilities in favour of such a new licence holder (regulations 12 to 34).

Consequential upon the abolition of the separate categories of suppliers and the restructuring of former PESs into separate supply and distribution businesses, Part II and Schedule 2 also make changes to other provisions of the 1992 Order. In particular-

- (a) New Article 12 establishes a code which sets out the general duties of electricity distributors and transmission licence holders in place of a code for the PES (regulation 7).
- (b) New Article 27 and Schedule 1 provides for a code in relation to the distribution and supply of electricity generally and not just supply by the PES (regulation 5).
- (c) New Article 42 enables regulations to govern the standards of performance of all electricity suppliers and distributors in individual cases (regulation 10).
- (d) New Article 42A provides for the resolution of disputes in such cases (regulation 10).
- (e) New Articles 43, 43A and 43B provide for the determination of overall standards of performance for all electricity suppliers and distributors (regulation 10).

Part IV contains transitional provisions. In particular it provides for the conversion of former tariff customers supplied by the PES to customers supplied under contract by the holder of a supply licence. It also provides for the conversion of supply licences authorising supply of electricity within an authorised area or to specified premises to general supply licences (regulation

41). Current rights and obligations relating to PES are changed so as to apply, as appropriate, to electricity suppliers and distributors (regulations 42 to 58). The Department is given a general power to further modify licence conditions imposed under the 1992 Order where it is necessary or expedient to comply with the requirements of the Directive. Finally provision is made so that the enforcement regime under Part VI of the Energy (Northern Ireland) Order 2003 applies to the rights and obligations created or imposed under these Regulations (regulations 59, 61 and Schedule 3).