STATUTORY RULES OF NORTHERN IRELAND

2005 No. 335

ELECTRICITY

Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005

Made - - - -	*11th July 2005*
Coming into operation	*1st August 2005*

The Department of Enterprise, Trade and Investment, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to measures relating to the regulation of the electricity sector(**2**), 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. These Regulations may be cited as the Electricity Order 1992 (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 1st August 2005.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) 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 Energy Regulation;

"the 1992 Order" means the Electricity (Northern Ireland) Order 1992(**4**);

"the Department" means the Department of Enterprise, Trade and Investment; and

(**1**) 1972 c. 68
(**2**) S.I. 1998/745
(**3**) 1954 c. 33 (N.I.)
(**4**) S.I. 1992/231 (N.I.)

"the Energy Order" means the Energy (Northern Ireland) Order 2003(**5**).

PART II

AMENDMENTS TO THE 1992 ORDER

Revocation and replacement

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

Interpretation of Part II of the 1992 Order

4. In Article 3, for the definition of "Directive" there shall be substituted the following definition—

""the Directive" means European Parliament and Council Directive 2003/54/EC concerning common rules for the internal market in electricity and repealing Directive 96/92;".

Conditions of licences

5. For Article 11A there shall be substituted the following Articles—

"**Compliance with Community obligations**

11A.—(1) Without prejudice to the generality of Article 11(1), a licence shall include such conditions as appear to the grantor to be requisite or expedient to ensure any activity authorised by it is carried out in compliance with the relevant requirements and prohibitions laid down by the Directive.

(2) The conditions included in a licence in accordance with paragraph (1) shall, in particular—

(a) require the licence holder to give to the Authority, in each year it is required by the Authority to do so, a report containing such information as the Authority may require in relation to—

(i) the present and likely future balance between supply of and demand for electricity;

(ii) additional generating capacity under construction or being planned;

(iii) the quality and level of maintenance of the generating plant and equipment and of the transmission and supply systems;

(iv) measures taken and planned to ensure that peak demand for electricity is met and to deal with shortfalls in electricity supply;

and to give a copy of that report to the Department;

(b) require the licence holder to keep accounts in accordance with the requirements of Article 19 of the Directive and to have them audited in accordance with those requirements and shall confer on the Department and the Authority a right of access to his accounts for the purpose of ensuring compliance with those requirements; and

(**5**) S.I. 2003/419 (N.I. 6)

(c) ensure that any person who is an eligible customer for the purposes of Article 21 of the Directive can exercise his freedom to purchase electricity from the supplier of his choice within the meaning of that Article.

(3) The conditions referred to in paragraph (1) shall in particular in the case of a transmission licence ensure that the holder does not disclose information contrary to Article 12 or 16 of the Directive and require the holder, as appropriate having regard to the activities authorised by the licence—

(a) to carry out the tasks laid down for him by Articles 9, 11(1) or 14(1) and (7) of the Directive;

(b) where he carries out the tasks laid down by Article 11(1) of the Directive, to do so in accordance with such criteria as may be determined and published by the Authority for the purposes of paragraph (2) of that Article;

(c) where he carries out the tasks laid down by Article 14(1) of the Directive, to act in accordance with paragraph (2) of that Article and to provide the information required by paragraph (3) of that Article;

(d) in relation to any task referred to in Article 11(3) to (5) or 14(4) of the Directive, to follow such rules for priority as may be specified in the conditions for the purposes of those provisions;

(e) to comply with the requirements of Article 11(6) or 14(5) of the Directive in procuring the energy used in the carrying out of his functions;

(f) where he balances electricity inputs to and offtakes from any transmission system used under the licence, to adopt and follow rules which comply with the relevant requirements of Article 11(7) or 14(6) of the Directive;

(g) to comply with the requirements for system access laid down by Article 20 of the Directive.

(4) Subject to paragraph (5), the conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a transmission licence granted to a person forming part of a vertically integrated undertaking (within the meaning of the Directive), as appropriate having regard to the activities authorised by the licence—

(a) require that person to comply with the requirements for independence in terms of his legal form, organisation and decision making laid down by Article 10(1) or 15(1) of the Directive; and

(b) require that person to comply with the requirements for independence in terms of his management and decision making rights laid down by Articles 10(2) or 15(2) of the Directive.

(5) The conditions included in a licence in accordance with paragraph (1) shall, in particular, in the case of a transmission licence granted to a person forming part of a vertically integrated undertaking (within the meaning of the Directive) who carries on the combination of activities to which Article 17 of the Directive applies, as appropriate having regard to the activities authorised by the licence, require that person to—

(a) comply with the requirements laid down by that provision for independence in terms of his legal form, organisation and decision-making in relation to those activities; and

(b) meet the requirements of points (a) to (d) of that Article.

(6) The conditions referred to in paragraph (1) shall in particular in the case of a licence under Article 10(1)(b) or (c) or a licence under Article 10(2) require that any supply of electricity by the licence holder to a household customer, or (as the case may be) any

transmission by a licence holder in connection with such a supply, meets specified quality standards.

(7) The conditions referred to in paragraph (1) shall in particular in the case of a licence under Article 10(1)(c) or a licence under Article 10(2) granted after 1st July 2007—

(a) require that any supply of electricity by the licence holder to a household customer is given at reasonable, easily and clearly comparable and transparent prices;

(b) require the introduction and maintenance of safeguards to help any consumers referred to in Article 12(3) of the Energy (Northern Ireland) Order 2003 in particular to avoid disconnection from an electricity supply.

(8) The conditions referred to in paragraph (1) shall in particular in the case of a licence under Article 10(1)(c) or a licence under Article 10(2)—

(a) ensure that consumers of electricity have access to the information required by Article 3(6) of the Directive;

(b) ensure that household customers are not charged for changing supplier and are able to use procedures which comply with item (f) of Annex A to the Directive; and

(c) require that information provided to consumers of electricity (including information about the contractual terms and conditions offered to such consumers) by the holder of such a licence complies with the requirements of Article 3(5) of the Directive.

Provision of additional capacity or energy efficiency measures

11B.—(1) Where it appears to the Department, on the basis of a report given in pursuance of a condition included in a licence under Article 11A(2)(a) or otherwise, that there is insufficient capacity existing, under construction or planned to meet the projected demand for electricity at any time in the future, it may itself invite tenders for, or may direct the Authority to invite tenders for—

(a) such further generating capacity; or

(b) the provision of such energy efficiency or demand-side management measures (within the meaning of Article 7 of the Directive),

as, in its opinion, will meet any such projected shortfall in supply.

(2) Where the Department has invited tenders under paragraph (1) it may enter into such arrangements as it considers necessary or expedient to ensure that any capacity or measures tendered for are used to meet the projected shortfall in supply.

(3) Where the Authority has invited tenders in pursuance of a direction under paragraph (1) in relation to any generating capacity or energy efficiency or demand-side management measures, the Department may by further direction require it to enter into such arrangements as may be specified therein to ensure that the capacity or measures tendered for are provided and used to meet the projected shortfall in supply.

(4) A direction under paragraph (3) may include in particular provision for ensuring adequate finance for the provision and use of any capacity or measures to which it relates.

(5) Where the Department invites tenders under paragraph (1), or the Authority invited tenders in pursuance of a direction under that paragraph, each shall do so in accordance with such procedures as may be specified by the Department and which comply with the requirements of Article 7 of the Directive and shall select the successful tenderer on the basis of criteria determined and published by the Department in accordance with and for the purposes of that Article.”.

General duties of holders of transmission licences

6. For Article 12(2) to (4) there shall be substituted the following paragraph—

"(2) It shall be the duty of the holder of a licence authorising him to transmit electricity as appropriate having regard to the activities authorised by the licence—

(a) to 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) to facilitate competition in the supply and generation of electricity.".

Duty of public electricity supplier

7. In Article 20(2) for sub-paragraph (c) there shall be substituted the following sub-paragraph—

"(c) there is a lack of capacity or there are exceptional circumstances which render it impracticable for him to do so.".

Dispute resolution

8. After Article 31 there shall be inserted the following Article—

"**Dispute resolution**

31A.—(1) Any person adversely affected by any decision, act or failure to act by a licence holder in relation to any matter falling within Article 23(1), (2) or (4) of the Directive (other than a matter falling to be dealt with under Article 26) may make a complaint under this Article (hereinafter referred to as "a complaint").

(2) A complaint shall be made in writing to the Authority and shall be accompanied by such information as is necessary or expedient to allow the Authority to make a determination in relation to the complaint.

(3) The Authority shall establish and publish such procedures as it thinks appropriate for the determination by it of a complaint.

(4) The procedures established under paragraph (3) shall provide for the determination of the complaint to be notified to the complainant within the requisite period or such longer period as the Authority may agree with the complainant.

(5) For the purposes of paragraph (4) the requisite period in any case means—

(a) the period of two months from the date when the complaint was received by the Authority; or

(b) where the information sent to the Authority under paragraph (2) was in its opinion insufficient to enable it to make a determination, the period of four months from the date the complaint was received by the Authority.

(6) For the purposes of this Article "determination" in relation to any complaint means a determination about the exercise of any power or duty conferred or imposed on the Authority in relation to electricity under this Order or the Energy (Northern Ireland) Order 2003 insofar as that power or duty relates to the subject matter of the complaint.".