
STATUTORY INSTRUMENTS

1992 No. 231 (N.I. 1)

NORTHERN IRELAND

The Electricity (Northern Ireland) Order 1992

Made - - - - 11th February 1992

Coming into operation in accordance with Article 1(2)

At the Court at Buckingham Palace, the 11th day of February 1992

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Electricity (Northern Ireland) Order 1992.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) An order under paragraph (2) may also appoint a day for the coming into operation of any provision of an order made under section 38(2) of the Northern Ireland Constitution Act 1973 as necessary or expedient in consequence of this Order which appears to the Head of the Department to be consequential on any provision of this Order brought into operation by the order.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

- “the Department” means the Department of Economic Development;
- “the Director” means the Director General of Electricity Supply for Northern Ireland;
- “modifications” includes additions, omissions, amendments and substitutions;
- “prescribed” means prescribed by regulations;
- “regulations”—
- (a) except in Article 42 and Schedule 7, means regulations made by the Department;
 - (b) in Article 42 and Schedule 7, means regulations made by the Director, with the consent of the Department;
- “statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

PART II

ELECTRICITY SUPPLY

Introductory

Interpretation of Part II

3. In this Part—

- “the 1973 Act” means the Fair Trading Act 1973;
- “the 1980 Act” means the Competition Act 1980;
- “authorised area”, in relation to a person authorised by a licence under sub-paragraph (b) or (c) of Article 10(1) to transmit or supply electricity, means so much of the area designated as such in the licence as is not for the time being designated in a subsequent licence under that sub-paragraph;
- “electrical plant” means any plant, equipment, apparatus or appliance used for, or for purposes connected with, the generation, transmission or supply of electricity, other than—
- (a) an electric line;
 - (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or
 - (c) an electrical appliance under the control of a consumer;
- “electric line” means any line which is used for carrying electricity for any purpose and includes—
- (a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;
 - (b) any apparatus connected to any such line for the purpose of carrying electricity; and
 - (c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;
- “exemption” means an exemption under Article 9;
- “extension” in relation to a generating station, includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station;
- “final order” means an order under Article 28 other than a provisional order;

“generating station”, in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station;

“high voltage line” means an electric line of a nominal voltage exceeding 110 kilovolts; and
“low voltage line” shall be construed accordingly;

“information” includes accounts, estimates and returns;

“licence” means a licence granted under Article 10;

“licence holder” means the holder of a licence granted under Article 10;

“line” means any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity;

“the Monopolies Commission” means the Monopolies and Mergers Commission;

“notice” means notice in writing;

“premises” includes any land, building or structure;

“private electricity supplier” means a person, other than a public electricity supplier, who is authorised by a licence or exemption to supply electricity;

“provisional order” means an order under Article 28 which, if not previously confirmed in accordance with paragraph (4) of that Article, will cease to have effect at the end of such period (not exceeding 3 months) as is determined by or under the order;

“public 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 supply of electricity to premises in his authorised area;

“relevant condition”, in relation to a licence holder, means any condition of his licence;

“relevant requirement”, in relation to a licence holder, means any duty or other requirement imposed on him by or under Article 12 or Articles 19 to 26;

“supply”, in relation to electricity, means supply through electric lines otherwise than to premises occupied by a licence holder for the purpose of carrying on the activities which he is authorised by his licence to carry on;

“tariff customer” means a person who requires a supply of electricity under Article 19 and is supplied by the public electricity supplier otherwise than on the terms specified in such an agreement as is mentioned in Article 25(1);

“transferred provision” has the meaning assigned to it by section 1(g) of the Interpretation Act (Northern Ireland) 1954;

“transmit”, in relation to electricity, means transmit by means of a transmission system, that is to say, a system which consists (wholly or mainly) of high voltage lines and electrical plant and is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the Banking and Financial Dealings Act 1971.

General duties of the Department

4.—(1) It shall be the duty of the Department to exercise the functions assigned or transferred to the Department by this Part in accordance with the following provisions of this Article.

(2) It shall be the duty of the Department to exercise the functions assigned or transferred to the Department by this Part in the manner which the Department considers is best calculated—

- (a) to secure that all reasonable demands for electricity are satisfied;
 - (b) to secure that licence holders are able to finance the carrying on of the activities which they are authorised by their licences to carry on; and
 - (c) subject to paragraph (3), to promote competition in the generation and supply of electricity.
- (3) It shall be the duty of the Department to exercise the functions assigned or transferred to the Department by this Part in the manner which the Department considers is best calculated to secure—
- (a) that the prices charged to tariff customers by public electricity suppliers for electricity supplied under Article 19(1) to premises in any area specified in an order made by the Department are in accordance with tariffs which do not distinguish (whether directly or indirectly) between different parts of that area; and
 - (b) that public electricity suppliers are not thereby disadvantaged in competing with persons authorised by a licence or exemption to supply electricity to such premises.
- (4) Subject to paragraphs (2) and (3), it shall be the duty of the Department to exercise the functions assigned or transferred to the Department by this Part in the manner which the Department considers is best calculated—
- (a) to protect the interests of consumers of electricity supplied by persons authorised by licences to supply electricity in respect of—
 - (i) the prices charged and the other terms of supply;
 - (ii) the continuity of supply; and
 - (iii) the quality of the electricity supply services provided;
 - (b) to promote efficiency and economy on the part of persons authorised by licences to supply or transmit electricity and the efficient use of electricity supplied to consumers;
 - (c) to promote research into, and the development and use of, new techniques by or on behalf of persons authorised by a licence to generate, transmit or supply electricity;
 - (d) to protect the public from dangers arising from the generation, transmission or supply of electricity; and
 - (e) to secure the establishment and maintenance of machinery for promoting the health and safety of persons employed in the generation, transmission or supply of electricity;

and a duty to take into account, in exercising those functions, the effect on the physical environment of activities connected with the generation, transmission or supply of electricity.

(5) In performing the duty under paragraph (4)(a)(i), the Department shall take into account, in particular, the protection of the interests of consumers of electricity in rural areas.

(6) In performing the duty under paragraph (4)(a)(iii), the Department shall take into account, in particular, the interests of those who are disabled or of pensionable age.

(7) In this Article references to the functions assigned to the Department by this Part do not include references to functions under Articles 39, 40 or 58 to 60.

The Director General of Electricity Supply for Northern Ireland

5.—(1) The Department shall appoint a person to be known as the Director General of Electricity Supply for Northern Ireland (“the Director”) for the purpose of carrying out the functions assigned or transferred to him by this Order.

(2) An appointment of a person to hold office as the Director shall be for a term not exceeding 5 years; but previous appointment to that office shall not affect eligibility for re-appointment.

(3) The Department may remove any person from office as the Director on the ground of incapacity or misbehaviour.

(4) Subject to paragraphs (2) and (3), the Director shall hold and vacate office as such in accordance with the terms of his appointment.

(5) The provisions of Schedule 1 shall have effect with respect to the Director.

General duties of the Director

6.—(1) It shall be the duty of the Director to exercise the functions assigned or transferred to him by this Part in accordance with paragraphs (2) to (6) of Article 4; and, accordingly, those paragraphs shall apply to the duty imposed by this paragraph on the Director as they apply to the duty imposed by Article 4(1) on the Department as if any reference to the Department, other than the reference in paragraph (3)(a), were a reference to the Director.

(2) In this Article references to the functions assigned to the Director do not include references to functions relating to the determination of disputes.

The Consumer Committee for Electricity

7.—(1) The Director shall establish a Consumer Committee for Electricity (“the consumer committee”) for the purposes of this Part.

(2) The consumer committee shall consist of—

- (a) a chairman appointed by the Director after consultation with the Department; and
- (b) such other members, not being less than 6 or more than 9, as the Director after consultation with the chairman may appoint.

(3) An appointment of a person to hold office as the chairman of the consumer committee shall be for a term not exceeding 4 years.

(4) Subject to paragraph (3), the chairman and other members of the consumer committee shall hold and vacate office in accordance with the terms of the instruments appointing them and shall, on ceasing to hold office, be eligible for re-appointment.

(5) The provisions of Schedule 2 shall have effect with respect to the consumer committee.

Licensing of supply, etc.

Prohibition on unlicensed supply, etc.

8.—(1) A person who—

- (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) transmits electricity for that purpose; or
- (c) supplies electricity to any premises,

shall be guilty of an offence unless he is authorised to do so by a licence or exemption.

(2) A person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(3) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department or the Director.

Exemptions from Article 8

9.—(1) The Department may, after consultation with the Director, by order grant exemption from sub-paragraph (a) or (c) of Article 8(1).

(2) An exemption granted to persons of a particular class shall be published in such manner as the Department considers appropriate for bringing it to the attention of persons of that class.

(3) An exemption, unless previously revoked in accordance with any term contained in the exemption, shall continue in operation for such period as may be specified in or determined by or under the exemption.

(4) The requirement to consult imposed by paragraph (1) shall not apply to the granting of any exemptions which, having regard to the provisions of Article 8, need to be granted before that Article comes into operation.

Licences authorising supply, etc.

10.—(1) The Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department, may grant a licence authorising any person—

- (a) to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
- (b) to transmit electricity for that purpose in that person's authorised area; or
- (c) to supply electricity to any premises in that person's authorised area.

(2) The Department after consultation with the Director, or the Director with the consent of, or in accordance with a general authority given by, the Department, may—

- (a) grant a licence authorising any person to supply electricity to any premises specified or of a description specified in the licence; or
- (b) extend such a licence by adding to the premises or descriptions of premises specified in the licence.

(3) An application for a licence or extension shall be made in the prescribed manner and shall be accompanied by such fee (if any) as may be prescribed; and within 14 days from the making of such an application, the applicant shall publish a copy of the application in the prescribed manner.

(4) Before granting a licence under this Article, the Department or the Director shall give notice—

- (a) stating that the Department or the Director, as the case may require, proposes to grant the licence;
- (b) stating the reasons why it is proposed to grant the licence; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) A notice under paragraph (4) shall be given by publishing the notice in such manner as the Department or the Director considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.

(6) A licence shall be in writing and, unless previously revoked in accordance with any term contained in the licence, shall continue in force for such period as may be specified in or determined by or under the licence.

(7) As soon as practicable after granting a licence, the Department shall send a copy of the licence to the Director and—

- (a) in the case of a licence under paragraph (1)(b), to any licence holder under that sub-paragraph whose authorised area previously included the whole or any part of the area designated in the licence;
- (b) in the case of a licence under paragraph (1)(c), to any public electricity supplier whose authorised area previously included the whole or any part of the area designated in the licence;
- (c) in the case of a licence or extension under paragraph (2), to any public electricity supplier whose authorised area includes any premises specified or described in the licence or extension.

(8) As soon as practicable after granting any licence or extension falling within sub-paragraph (a), (b) or (c) of paragraph (7), the Director shall send a copy of the licence or extension to any such person as is mentioned in that sub-paragraph.

(9) Neither the requirement to consult imposed by paragraph (1) or (2) nor paragraphs (3) and (4) shall apply to the granting of any licences which, having regard to the provisions of Article 8, need to be granted before that Article comes into operation.

(10) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

Conditions of licences

11.—(1) A licence may include—

- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by Articles 4 and 6; and
- (b) conditions requiring the rendering to the grantor of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (1)(a), conditions included in a licence by virtue of that sub-paragraph—

- (a) may require the licence holder to enter into agreements with other persons for the use of any electric lines and electrical plant of his (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
- (b) may include provision for determining the terms on which such agreements are to be entered into.

(3) Conditions included in a licence under paragraph (1)(a) may require the licence holder—

- (a) to comply with any direction given by the Director as to such matters as are specified in the licence or are of a description so specified;
- (b) except in so far as the Director consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
- (c) to refer for determination by the Director such questions arising under the licence as are specified in the licence or are of a description so specified; and
- (d) to refer for approval by the Director such things falling to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified.

(4) Conditions included in a licence under paragraph (1)(a) may—

- (a) instead of specifying or describing any contracts or agreements to which they apply, refer to contracts or agreements designated (whether before or after the imposition of the conditions) by the Department or the Director; and
- (b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.

(5) Conditions included in a licence may contain provision for the conditions to cease to have effect or be modified at such times, in such manner and in such circumstances as may be specified in or determined by or under the conditions.

(6) Any provision included under paragraph (5) in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.

(7) Any sums received by the Director in consequence of any condition of a licence shall be paid into the Consolidated Fund.

General duties of licence holders

12.—(1) It shall be the duty of a public electricity supplier to develop and maintain an efficient, co-ordinated and economical system of electricity supply.

(2) It shall be the duty of the holder of a licence authorising him to transmit electricity—

- (a) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and
- (b) subject to paragraph (3), to facilitate competition in the supply and generation of electricity.

(3) Paragraph (2)(b) shall apply in relation to a person who is also the holder of a licence authorising him to supply or generate electricity as if the duty to facilitate competition in the supply or, as the case may be, the generation of electricity were a duty to make his transmission system available to his competitors on terms which neither prevent nor restrict such competition.

(4) For the purposes of paragraph (3) a person's competitors are any other persons authorised (whether by a licence or exemption) to supply or, as the case may be, generate electricity.

Powers, etc., of licence holders

13.—(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 a public electricity supplier or a person authorised by a licence to transmit electricity; and
- (b) 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) Where any provision of either of the Schedules mentioned in paragraph (1) is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.

(3) A licence under Article 10(1)(a) may provide that Schedule 4 shall have effect in relation to the licence holder as if—

- (a) any reference to any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on included a reference to any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from, and air and water heated by, such heat; and

- (b) any reference to electric lines or electrical plant included a reference to pipes and associated works used or intended to be used for conveying heat so produced, and steam produced from, and air and water heated by, such heat;

and in this paragraph “associated works”, in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as may be prescribed.

(4) A licence under Article 10(1)(b) or (c) may provide that, where any part of the licence holder’s authorised area is designated in a subsequent licence under that sub-paragraph, Schedule 4 shall have effect in relation to the licence holder as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.

(5) The provisions of Schedule 5 (which provides for water rights for hydro-electric stations) shall have effect.

Modification of licences

Modification by agreement

14.—(1) Subject to the following provisions of this Article, the Director may modify the conditions of a licence if the licence holder consents to the modifications.

- (2) Before making modifications under this Article, the Director shall give notice—
 - (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications; and
 - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (3) A notice under paragraph (2) shall be given—
 - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the licence holder.

(4) The Director shall also send a copy of a notice under paragraph (2) to the Department; and if, within the period specified in the notice, the Department directs the Director not to make any modifications, the Director shall comply with the direction.

Modification references to Monopolies Commission

15.—(1) The Director may make to the Monopolies Commission a reference which is so framed as to require the Commission to investigate and report on the questions—

- (a) whether any matters which—
 - (i) relate to the generation, transmission or supply of electricity in pursuance of a licence; and
 - (ii) are specified in the reference,
- operate, or may be expected to operate, against the public interest; and

- (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of the licence.

(2) The Director may, at any time, by notice given to the Monopolies Commission vary a reference under this Article by adding to the matters specified in the reference or by excluding from the reference some or all of the matters so specified; and on receipt of any such notice the Commission shall give effect to the variation.

(3) The Director may specify in a reference under this Article, or a variation of such a reference, for the purpose of assisting the Monopolies Commission in carrying out the investigation on the reference—

- (a) any effects adverse to the public interest which, in his opinion, the matters specified in the reference or variation have or may be expected to have; and
- (b) any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.

(4) As soon as practicable after making a reference under this Article or a variation of such a reference, the Director—

- (a) shall serve a copy of the reference or variation on the licence holder; and
- (b) shall publish particulars of the reference or variation in such manner as he considers appropriate for the purpose of bringing the reference or variation to the attention of persons likely to be affected by it.

(5) The Director shall also send a copy of a reference under this Article, or a variation of such a reference, to the Department; and if, before the end of the period of 28 days from the day on which the Department receives the copy of the reference or variation, the Department directs the Monopolies Commission not to proceed with the reference or, as the case may require, not to give effect to the variation, the Commission shall comply with the direction.

(6) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference under this Article, to give to the Commission—

- (a) any information in his possession which relates to matters falling within the scope of the investigation and—
 - (i) is requested by the Commission for that purpose; or
 - (ii) is information which, in his opinion, it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require, and which it is within his power to give, in relation to any such matters;

and the Commission, for the purpose of carrying out any such investigation, shall take account of any information given to them for that purpose under this paragraph.

(7) In determining for the purposes of this Article whether any particular matter operates, or may be expected to operate, against the public interest, the Monopolies Commission shall have regard to the matters as respects which duties are imposed on the Department and the Director by Articles 4 and 6.

(8) Sections 70 (time limit for report on merger reference), 81 (procedure in carrying out investigations) and 85 (attendance of witnesses and production of documents) of the 1973 Act, Part II of Schedule 3 to that Act (performance of functions of the Monopolies Commission) and section 24 of the 1980 Act (modifications of provisions about performance of such functions) shall apply in relation to references under this Article as if—

- (a) the functions of the Commission in relation to those references were functions under the 1973 Act;

- (b) “merger reference” included in a reference under this Article;
- (c) in the said section 70, references to the Secretary of State were references to the Director and the reference to three months were a reference to six months;
- (d) in paragraph 11 of the said Schedule 3, the reference to section 71 of the 1973 Act were a reference to paragraph (2) of this Article; and
- (e) paragraph 16(2) of that Schedule were omitted.

(9) For the purposes of references under this Article the Secretary of State may appoint additional members of the Monopolies Commission; and if any functions of the Commission in relation to any such reference are performed by a group—

- (a) the chairman of the Commission shall select one, two or three members from any such additional members together with the additional members appointed under section 12(9) of the Electricity Act 1989, to be members of the group; and
- (b) the number of regular members to be selected by him under paragraph 10 of Schedule 3 to the 1973 Act shall be reduced accordingly.

Reports on modification references

16.—(1) In making a report on a reference under Article 15, the Monopolies Commission—

- (a) shall include in the report definite conclusions on the questions comprised in the reference together with such an account of their reasons for those conclusions as in their opinion is expedient for facilitating a proper understanding of those questions and of their conclusions;
- (b) where they conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest, shall specify in the report the effects adverse to the public interest which those matters have or may be expected to have; and
- (c) where they conclude that any adverse effects so specified could be remedied or prevented by modifications of the conditions of the licence, shall specify in the report modifications by which those effects could be remedied or prevented.

(2) Where, on a reference under Article 15, the Monopolies Commission conclude that the licence holder is a party to an agreement to which the Restrictive Trade Practices Act 1976 applies, the Commission, in making their report on that reference, shall exclude from their consideration the question whether the provisions of that agreement, in so far as they are provisions by virtue of which it is an agreement to which that Act applies, operate, or may be expected to operate, against the public interest; and paragraph (1)(b) shall have effect subject to the provisions of this paragraph.

(3) Section 82 of the 1973 Act (general provisions as to reports) shall apply in relation to reports of the Monopolies Commission on references under Article 15 as it applies to reports of the Commission under that Act.

(4) A report of the Monopolies Commission on a reference under Article 15 shall be made to the Director.

(5) Subject to paragraph (6), the Director—

- (a) shall, on receiving such a report, send a copy of it to the licence holder to which the report relates and to the Department; and
- (b) shall, not less than 14 days from the day on which the Department receives that copy, publish the report in such manner as he considers appropriate for bringing the report to the attention of persons likely to be affected by it.

(6) If it appears to the Department that the publication of any matter in such a report would be against the public interest or the commercial interests of any person, the Department may, before

the end of the period of 14 days mentioned in paragraph (5)(b), direct the Director to exclude that matter from every copy of the report to be published under that sub-paragraph.

Modification following report

- 17.—**(1) Where a report of the Monopolies Commission on a reference under Article 15—
- (a) includes conclusions to the effect that any of the matters specified in the reference operate, or may be expected to operate, against the public interest;
 - (b) specifies effects adverse to the public interest which those matters have or may be expected to have;
 - (c) includes conclusions to the effect that those effects could be remedied or prevented by modifications of the conditions of the licence; and
 - (d) specifies modifications by which those effects could be remedied or prevented,

the Director shall, subject to the following provisions of this Article, make such modifications of the conditions of that licence as appear to him requisite for the purpose of remedying or preventing the adverse effects specified in the report.

(2) Before making modifications under this Article, the Director shall have regard to the modifications specified in the report.

- (3) Before making modifications under this Article, the Director shall give notice—
- (a) stating that he proposes to make the modifications and setting out their effect;
 - (b) stating the reasons why he proposes to make the modifications; and
 - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (4) A notice under paragraph (3) shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by the making of the modifications; and
 - (b) by serving a copy of the notice on the licence holder.

Modification by order under other statutory provisions

18.—(1) Where in the circumstances mentioned in paragraph (2) the Secretary of State by order exercises any of the powers specified in—

- (a) Parts I and II of Schedule 8 to the 1973 Act; or
- (b) section 10(2)(a) of the 1980 Act,

the order may also provide for the modification of the conditions of a licence to such extent as may appear to him to be requisite or expedient for the purpose of giving effect to or of taking account of any provision made by the order.

- (2) Paragraph (1) shall have effect where—
- (a) the circumstances are as mentioned in section 56(1) of the 1973 Act (order on report on monopoly reference) and the monopoly situation exists in relation to the generation, transmission or supply of electricity;

- (b) the circumstances are as mentioned in section 73(1) of that Act (order on report on merger reference) and the two or more enterprises which ceased to be distinct enterprises were both engaged in the generation, transmission or supply of electricity; or
- (c) the circumstances are as mentioned in section 10(1) of the 1980 Act (order on report on competition reference) and the anti-competitive practice relates to the generation, transmission or supply of electricity.

(3) In this Article expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

Supply by public electricity suppliers

Duty to supply on request

19.—(1) Subject to the following provisions of this Part and any regulations made under those provisions, a public electricity supplier shall, upon being required to do so by the owner or occupier of any premises—

- (a) give a supply of electricity to those premises; and
- (b) so far as may be necessary for that purpose, provide electric lines or electrical plant or both.

(2) Where any person requires a supply of electricity under paragraph (1), he shall give to the public electricity supplier a notice specifying—

- (a) the premises in respect of which the supply is required;
- (b) the day on which the supply is required to commence;
- (c) the maximum power which may be required at any time; and
- (d) the minimum period for which the supply is required to be given.

(3) Where a public electricity supplier receives from any person a notice under paragraph (2) requiring him to give a supply of electricity to any premises and—

- (a) he has not previously given a supply of electricity to those premises; or
- (b) the giving of the supply requires the provision of electric lines or electrical plant or both; or
- (c) other circumstances exist which make it necessary or expedient for him to do so,

the supplier shall, as soon as practicable after receiving that notice, give to that person a notice under paragraph (4).

(4) A notice under this paragraph shall—

- (a) state the extent to which the proposals specified in the other person's notice under paragraph (2) are acceptable to the supplier and specify any counter proposals made by the supplier;
- (b) state whether the prices to be charged by the supplier will be determined by a tariff under Article 21(1), or a special agreement under Article 25(1), and specify the tariff or the proposed terms of the agreement;
- (c) specify any payment which that person will be required to make under Article 22(1), or under regulations made under Article 22(2);
- (d) specify any security which that person will be required to give under Article 23;
- (e) specify any other terms which that person will be required to accept under Article 24; and
- (f) state the effect of Article 26.

(5) In this Article and Articles 20 to 26—

- (a) any reference to giving a supply of electricity includes a reference to continuing to give such a supply;
- (b) any reference to requiring a supply of electricity includes a reference to requiring such a supply to continue to be given; and
- (c) any reference to the provision of an electric line or an item of electrical plant is a reference to the provision of such a line or item either by the installation of a new one or by the modification of an existing one.

Exceptions from duty to supply

20.—(1) Nothing in Article 19(1) shall be taken as requiring a public electricity supplier to give a supply of electricity to any premises if—

- (a) such a supply is being given to the premises by a private electricity supplier; and
- (b) that supply is given (wholly or partly) through the public electricity supplier's electric lines and electrical plant.

(2) Nothing in Article 19(1) shall be taken as requiring a public electricity supplier to give a supply of electricity to any premises if and to the extent that—

- (a) he is prevented from doing so by circumstances not within his control; or
- (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) it is not reasonable in all the circumstances for him to be required to do so.

(3) Paragraph (2)(c) shall not apply in relation to a supply of electricity which is being given to any premises unless the public electricity supplier gives to the occupier, or to the owner if the premises are not occupied, not less than 7 working days' notice of his intention to discontinue the supply under that sub-paragraph.

Power to recover charges

21.—(1) Subject to the following provisions of this Article, the prices to be charged by a public electricity supplier for the supply of electricity by him under Article 19(1) shall be in accordance with such tariffs (which, subject to any condition included in his licence, may relate to the supply of electricity in different areas, cases and circumstances) as may be fixed by him.

(2) A tariff fixed by a public electricity supplier under paragraph (1)—

- (a) shall be so framed as to show the methods by which and the principles on which the charges are to be made as well as the prices which are to be charged; and
- (b) shall be published in such manner as in the opinion of the supplier will secure adequate publicity for it.

(3) A tariff fixed by a public electricity supplier under paragraph (1) may include—

- (a) a standing charge in addition to the charge for the actual electricity supplied;
- (b) a charge in respect of the availability of a supply of electricity; and
- (c) a rent or other charge in respect of any electricity meter or electrical plant provided by the supplier;

and such a charge as is mentioned in sub-paragraph (b) may vary according to the extent to which the supply is taken up.

(4) In fixing tariffs under paragraph (1), a public electricity supplier shall not show undue preference to any person or class of persons, and shall not exercise any undue discrimination against any person or class of persons.

Power to recover expenditure

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

(2) Regulations made, after consultation with the Director, may make provision for entitling a public electricity supplier to require a person requiring a supply of electricity under Article 19(1) to pay to the supplier, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply, such amount as may be reasonable in all the circumstances if—

- (a) the supply is required within the prescribed period after the provision of the line or plant; and
- (b) a person for the purpose of supplying whom the line or plant was provided (“the initial contributor”) has made a payment to the supplier in respect of those expenses.

(3) Regulations under paragraph (2) may require a public electricity supplier who, under 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 maintaining it, in so far as they will not be recoverable by the supplier as part of the charges made by him for the supply.

Power to require security

23.—(1) Subject to the following provisions of this Article, a public electricity supplier may require any person who requires a supply of electricity under Article 19(1) to give him reasonable security for the payment to him of all money which may become due to him—

- (a) in respect of the supply; or
- (b) where any electric line or electrical plant falls to be provided in pursuance of that paragraph, in respect of the provision of the line or plant;

and if that person fails to give such security, the supplier may if he thinks fit refuse to give the supply, or to provide the line or plant, for so long as the failure continues.

(2) Where any person has not given such security as is mentioned in paragraph (1), or the security given by any person has become invalid or insufficient—

- (a) the public electricity supplier may by notice require that person, within 7 days from the service of the notice, to give him reasonable security for the payment of all money which may become due to him in respect of the supply; and
- (b) if that person fails to give such security, the supplier may if he thinks fit discontinue the supply for so long as the failure continues;

and any notice under sub-paragraph (a) shall state the effect of Article 26.

(3) Where any money is deposited with a public electricity supplier by way of security under this Article, the supplier shall pay interest, at such rate as may be fixed by the supplier with the approval of the Director, on every sum of 50p so deposited for every 3 months during which it remains in the hands of the supplier.

(4) A public electricity supplier shall not be entitled to require security under paragraph (1)(a) if—

- (a) the person requiring the supply is prepared to take the supply through a pre-payment meter; and
- (b) it is reasonably practicable in all the circumstances (including in particular the risk of loss or damage) for the supplier to provide such a meter.

Additional terms of supply

24. A public electricity supplier may require any person who requires a supply of electricity under Article 19(1) to accept in respect of the supply—

- (a) any restrictions which must be imposed for the purpose of enabling the supplier to comply with regulations under Article 32; and
- (b) any terms restricting any liability of the supplier 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 supply

25.—(1) Notwithstanding anything in Articles 19 to 24, a person who requires a supply of electricity under Article 19(1)—

- (a) may enter into a special agreement with the public electricity supplier for the supply on such terms as may be specified in the agreement; and
- (b) shall enter into such an agreement in any case where—
 - (i) the maximum power to be made available at any time exceeds one megawatt; or
 - (ii) it is otherwise reasonable in all the circumstances for such an agreement to be entered into.

(2) The Department may by order provide that paragraph (1) shall have effect as if for the wattage mentioned in sub-paragraph (b)(i) there were substituted such other wattage as may be specified in the order; but before making such an order, the Department shall consult with public electricity suppliers and with persons or bodies appearing to be representative of persons likely to be affected.

(3) So long as any such agreement as is mentioned in paragraph (1) is effective, the rights and liabilities of the parties to the agreement shall be those arising under the agreement and not those provided for by Articles 19 to 24; but nothing in this paragraph shall prejudice the giving of a notice under Article 19(2) specifying as the day on which the supply is required to commence the day on which such an agreement ceases to be effective.

Determination of disputes

26.—(1) Any dispute arising under Articles 19 to 25 between a public electricity supplier and a person requiring a supply of electricity—

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

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

(2) Where any dispute arising under Articles 19 to 25 between a public electricity supplier and a person requiring a supply of electricity to continue to be given falls to be determined under this Article, the Director may give directions as to the circumstances in which, and the terms on which, the supplier is to continue to give the supply pending the determination of the dispute.

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

(4) Directions under paragraph (2) or (3) may apply either in cases of particular descriptions or in particular cases.

(5) 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 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, as if it were a judgement of the county court.

(6) In including in an order under this Article any such provision as to costs as is mentioned in paragraph (5), the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

The public electricity supply code

27. The provisions of Schedule 6 (which relate to the supply of electricity by public electricity suppliers) shall have effect.

Enforcement of preceding provisions

Orders for securing compliance

28.—(1) Subject to paragraphs (2) and (5) and Article 29, where the Director is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, he shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to paragraph (5), where it appears to the Director—

(a) that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement; and

(b) that it is requisite that a provisional order be made,

he shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition or requirement.

(3) In determining for the purposes of paragraph (2)(b) whether it is requisite that a provisional order be made, the Director shall have regard, in particular—

(a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and

- (b) to the fact that the effect of the provisions of this Article and Article 30 is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.
- (4) Subject to paragraph (5) and Article 29, the Director shall confirm a provisional order, with or without modifications, if—
 - (a) he is satisfied that the licence holder to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and
 - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- (5) The Director shall not make a final order or make or confirm a provisional order in relation to a licence holder if he is satisfied—
 - (a) that the duties imposed on him by Article 6 preclude the making or, as the case may be, the confirmation of the order;
 - (b) that the licence holder has agreed to take and is taking all such steps as it appears to the Director for the time being to be appropriate for the licence holder to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
 - (c) that the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (6) Where the Director is satisfied as mentioned in paragraph (5), he shall—
 - (a) serve notice that he is so satisfied on the licence holder; and
 - (b) publish the notice in such manner as he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (7) A final or provisional order—
 - (a) shall require the licence holder to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
 - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
 - (c) may be revoked at any time by the Director.

Procedural requirements

- 29.**—(1) Before he makes a final order or confirms a provisional order, the Director shall give notice—
- (a) stating that he proposes to make or confirm the order and setting out its effect;
 - (b) setting out—
 - (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
 - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
 - (iii) the other facts which, in his opinion, justify the making or confirmation of the order; and
 - (c) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

- (2) A notice under paragraph (1) shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the licence holder to whom the order relates.
- (3) The Director shall not make a final order with modifications, or confirm a provisional order with modifications, except—
- (a) with the consent to the modifications of the licence holder to whom the order relates; or
 - (b) after complying with the requirements of paragraph (4).
- (4) The requirements mentioned in paragraph (3) are that the Director shall—
- (a) serve on the licence holder to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
 - (b) in that notice specify the period (not being less than 28 days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
 - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the Director shall—
- (a) serve a copy of the order on the licence holder to whom the order relates; and
 - (b) publish the order in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—
- (a) stating that he proposes to revoke the order and setting out its effect; and
 - (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(7) If, after giving a notice under paragraph (6), the Director decides not to revoke the order to which the notice relates, he shall give notice of his decision.

- (8) A notice under paragraph (6) or (7) shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
 - (b) by serving a copy of the notice on the licence holder to whom the order relates.

Validity and effect of orders

30.—(1) If the licence holder to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—

- (a) that its making or confirmation was not within the powers of Article 28; or
- (b) that any of the requirements of Article 29 have not been complied with in relation to it,

he may, within 42 days from the date of service on him of a copy of the order, make an application to the High Court under this Article.

(2) On any such application the High Court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.

(3) Except as provided by this Article, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.

(4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.

(5) Where a duty is owed under paragraph (4) to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(6) In any proceedings brought against a licence holder under paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(7) Without prejudice to any right which any person may have under paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or for any other appropriate relief.

Power to require information, etc.

31.—(1) Where it appears to the Director that a licence holder may be contravening, or may have contravened, any relevant condition or requirement, the Director may, for any purpose connected with such of his functions under Article 28 as are exercisable in relation to that matter, serve a notice under paragraph (2) on any person.

(2) A notice under this paragraph is a notice signed by the Director and—

- (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Director or to any person appointed by the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
- (b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Director such information as may be specified or described in the notice.

(3) No person shall be required under this Article to produce any documents which he could not be compelled to produce in civil proceedings in the High Court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.

(4) A person who without reasonable excuse fails to do anything required of him by notice under paragraph (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) A person who intentionally alters, suppresses or destroys any document which he has been required by any notice under paragraph (2) to produce shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) If a person makes default in complying with a notice under paragraph (2), the High Court may, on the application of the Director, make such order as the Court thinks fit for requiring the default to be made good; and any such order may provide that all the costs of and incidental to the

application shall be borne by the person in default or by any officers of a company or other body or association who are responsible for its default.

Provisions with respect to supply generally

Regulations relating to supply and safety

32.—(1) Regulations may make such provision as the Department thinks fit for the purpose of—

- (a) securing that supplies of electricity are regular and efficient;
- (b) protecting the public from dangers arising from the generation, transmission or supply of electricity, from the use of electricity supplied or from the installation, maintenance or use of any electric line or electrical plant; and
- (c) without prejudice to the generality of sub-paragraph (b), eliminating or reducing the risks of personal injury, or damage to property or interference with its use, arising as mentioned in that sub-paragraph.

(2) Without prejudice to the generality of paragraph (1), regulations under this Article may—

- (a) prohibit the supply or transmission of electricity except by means of a system approved by the Department;
- (b) make provision requiring notice in the prescribed form to be given to the Department, in such cases as may be specified in the regulations, of accidents and of failures of supplies or transmissions of electricity;
- (c) make provision as to the keeping, by persons authorised by a licence or exemption to supply or transmit electricity, of maps, plans and sections and as to their production (on payment, if so required, of a reasonable fee) for inspection or copying;
- (d) make provision for relieving persons authorised by a licence to supply electricity from any obligation to supply in such cases as may be prescribed;
- (e) make provision requiring compliance with notices given by the Department specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer, for the purpose of—
 - (i) preventing or ending a breach of regulations under this Article; or
 - (ii) eliminating or reducing a risk of personal injury or damage to property or interference with its use;
- (f) provide for particular requirements of the regulations to be deemed to be complied with in the case of any electric line or electrical plant complying with specified standards or requirements;
- (g) provide for the granting of exemptions from any requirement of the regulations for such periods as may be determined by or under the regulations;
- (h) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.

(3) Regulations under this Article may provide that any person—

- (a) who contravenes any specified provision of the regulations; or
- (b) who does so in specified circumstances,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; but nothing in this paragraph shall affect any liability of any such person to pay compensation in respect of any damage or injury which may have been caused by the contravention.

(4) No proceedings shall be instituted in respect of an offence under the regulations except by or on behalf of the Department or the Director of Public Prosecutions for Northern Ireland.

Electrical inspectors

33.—(1) The Department may appoint competent and impartial persons to be electrical inspectors under this Part.

(2) The duties of an electrical inspector under this Part shall be as follows—

- (a) to inspect and test, periodically and in special cases, electric lines and electrical plant belonging to persons authorised by a licence or exemption to generate, transmit or supply electricity;
- (b) to examine, periodically and in special cases, the generation, transmission or supply of electricity by such persons;
- (c) to inspect and test, if and when required by any consumer, any such lines and plant on the consumer's premises, for the purpose of determining whether any requirement imposed by or under this Part in respect of the lines or plant or the supply of electricity through or by them has been complied with; and
- (d) such other duties as may be imposed by regulations under this Article or as the Department may determine.

(3) Regulations may—

- (a) prescribe the manner in which and the times at which any duties are to be performed by electrical inspectors;
- (b) require persons authorised by a licence or exemption to generate, transmit or supply electricity—
 - (i) to furnish electrical inspectors with records or other information; and
 - (ii) to allow such inspectors access to premises and the use of electrical plant and other facilities;
- (c) make provision for relieving persons authorised by a licence to supply electricity from any obligation to supply in such cases as may be prescribed; and
- (d) prescribe the amount of the fees which are to be payable to such inspectors.

(4) Any fees received by electrical inspectors shall be paid to the Department.

Use, etc., of meters

34. The provisions of Schedule 7 (which relate to the use, certification, testing and maintenance of electricity meters) shall have effect.

Protection of public interest

Electricity from non-fossil fuel sources

35.—(1) The Department may, after consultation with the Director and with the licence holders concerned, by order require each holder of a licence under Article 10(1)(b) or (c), before a day specified in the order, to make (in so far as he has not already done so) and produce evidence to the Director showing that he has made—

- (a) such arrangements; or
- (b) where a previous order under this paragraph has had effect in relation to him, such additional arrangements,

as will secure the result mentioned in paragraph (2).

(2) The result referred to in paragraph (1) is that, for a period specified in the order, there will be available to the licence holder—

- (a) from non-fossil fuel generating stations; or
- (b) if the order so provides, from non-fossil fuel generating stations of any particular description,

an aggregate amount of generating capacity which is not less than that specified in relation to him in the order.

(3) A holder of a licence under Article 10(1)(b) or (c) who—

- (a) fails to comply with an order under paragraph (1); or
- (b) having complied with such an order, by any act of his prevents the arrangements made by him from securing the result mentioned in paragraph (2),

shall be guilty of an offence and shall be liable on conviction on indictment to a fine.

(4) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

(5) Regulations may—

- (a) make provision as to the method of calculating the capacity of generating stations, and the manner in which such capacity shall be treated as available for the purposes of this Article;
- (b) provide that this Article shall have effect in relation to any non-fossil fuel generating station which is driven by water, wind or solar power with such modifications as may be prescribed; and
- (c) provide that electricity generated outside Northern Ireland shall be treated for the purposes of this Article as generated by a non-fossil fuel generating station in such circumstances and to such extent as may be prescribed.

(6) In this Article—

“coal products” means any substances produced directly or indirectly from coal;

“fossil fuel” means coal, coal products, peat, lignite, crude liquid petroleum or petroleum products;

“non-fossil fuel generating station” means a generating station which is (or may be) fuelled or driven otherwise than by a fossil fuel;

“petroleum products” has the same meaning as in the Energy Act 1976.

(7) In relation to any time before Article 8 comes into operation, any requirement imposed by paragraph (1) to consult with holders of a licence under Article 10(1)(b) or (c) shall be construed as a requirement to consult with Northern Ireland Electricity.

Fossil fuel levy

36. Where the Department has made one or more orders under Article 35 in relation to holders of a licence under Article 10(1)(b) or (c), regulations may provide—

- (a) for the imposition on such licence holders, and on persons authorised by a licence under Article 10(2) to supply electricity within the authorised area of a public electricity supplier, of a levy;
- (b) for the collection of payments in respect of that levy by a prescribed person; and
- (c) for the making by that person of payments out of that levy.

Fuel stocks, etc., at generating stations

37.—(1) This Article applies to any generating station which—

- (a) is of a capacity not less than 10 megawatts; and
- (b) is fuelled otherwise than by waste or manufactured gases;

and in this paragraph “waste” has the same meaning as in Article 36(1) of the Pollution Control and Local Government (Northern Ireland) Order 1978.

(2) The Department may by order provide that paragraph (1) shall have effect as if for the capacity mentioned in that paragraph there were substituted such other capacity (not exceeding 100 megawatts) as may be specified in the order.

(3) In respect of any generating station to which this Article applies, the Department may give a direction requiring the person who operates it—

- (a) to make such arrangements with respect to stocks of fuel and other materials held at or near that generating station for the purposes of its operation as will—
 - (i) enable those stocks to be brought within a specified time to, and thereafter maintained at, a specified level; and
 - (ii) ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by a direction under paragraph (4);
- (b) to create such stocks and make such arrangements with respect to them;

and the amount of any stocks may be specified by reference to the period for which it would enable the generating station to be maintained in operation.

(4) In respect of any generating station to which this Article applies, the Department may give a direction—

- (a) authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station; and
- (b) requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels.

(5) In paragraphs (3) and (4) “specified” means specified by or under the Department’s direction; and a direction may—

- (a) specify the cases and circumstances in which any stocks are to be treated as held at or near any generating station;
- (b) specify the extent to which the direction may be treated as complied with where, under arrangements made or approved by the Department, access can be had to stocks held for the use of a number of consumers;
- (c) specify the manner in which any period mentioned in paragraph (3) or (4) is to be determined;
- (d) require anything falling to be specified under the direction to be specified by such persons and by reference to such matters as may be specified.

(6) A direction under paragraph (3) or (4) which confers on any person the function of specifying anything falling to be specified under the direction may require that person to exercise that function and to do so in such manner as may be specified by the direction.

Provisions supplementary to Article 37

38.—(1) The Department may give a direction requiring any person authorised by a licence to transmit electricity to give to the Department, after consultation with specified persons, any

information or advice which the Department may reasonably require for purposes connected with the exercise of its functions under Article 37.

(2) The Department may give a direction requiring any person authorised by a licence to transmit electricity to operate his transmission system, at any time when a direction under Article 37(4) is in force, either in a specified manner or with a view to achieving specified objectives.

(3) In paragraphs (1) and (2) “specified” means specified by or under the Department’s direction; and a person authorised by a licence to transmit electricity shall give effect to any direction given to him under paragraph (2) notwithstanding any other duty imposed on him by or under this Part.

(4) The Department shall lay before the Assembly a copy of every direction given under Article 37 or this Article unless the Department is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

(5) A person who, without reasonable excuse, contravenes a direction of the Department under Article 37 or this Article shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

(7) Paragraphs 1 to 4, 7 and 8 of Schedule 2 to the Energy Act 1976 (administration of Act and other matters) shall have effect as if—

- (a) Article 37 were contained in that Act;
- (b) the powers of paragraph 1 were exercisable for any purpose connected with securing compliance with a direction under that Article;
- (c) information obtained by virtue of that paragraph could lawfully be disclosed to any person by whom anything falls to be specified under such a direction; and
- (d) the powers conferred by sub-paragraph (1)(c) of that paragraph included power to direct that information and forecasts be furnished to any such person.

Consent required for construction, etc., of generating stations

39.—(1) Subject to paragraphs (2) and (4), a generating station shall not be constructed, extended or operated except in accordance with a consent granted by the Department.

(2) Paragraph (1) shall not apply to a generating station whose capacity—

- (a) does not exceed the permitted capacity, that is to say, 2 megawatts; and
- (b) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended.

(3) The Department may by order provide that paragraph (2) shall have effect as if for the permitted capacity mentioned in sub-paragraph (a) there were substituted such other capacity as may be specified in the order.

(4) The Department may by order direct that paragraph (1) shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.

(5) A consent under this Article—

- (a) may include such conditions (including conditions as to the ownership or operation of the station) as appear to the Department to be appropriate; and
- (b) shall continue in force for such period as may be specified in or determined by or under the consent.

(6) Any person who without reasonable excuse contravenes the provisions of this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

(8) The provisions of Schedule 8 (which relate to consents under this Article and Article 40) shall have effect.

Consent required for overhead lines

40.—(1) Subject to paragraph (2), an electric line shall not be installed or kept installed above ground except in accordance with a consent granted by the Department.

(2) Paragraph (1) shall not apply—

- (a) in relation to an electric line which has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying a single consumer;
- (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
- (c) in such other cases as may be prescribed.

(3) A consent under this Article—

- (a) may include such conditions (including conditions as to the ownership and operation of the line) as appear to the Department to be appropriate;
- (b) may be varied or revoked by the Department at any time after the end of such period as may be specified in the consent; and
- (c) subject to sub-paragraph (b), shall continue in force for such period as may be specified in or determined by or under the consent.

(4) Any person who without reasonable excuse contravenes the provisions of this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) No proceedings shall be instituted in respect of an offence under this Article except by or on behalf of the Department.

Preservation of amenity and fisheries

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

Consumer protection: standards of performance

Electricity supply: performance in individual cases

42.—(1) Regulations may, after consultation with public electricity suppliers and with persons or bodies appearing to the Director to be representative of persons likely to be affected, prescribe such standards of performance in connection with the provision by such suppliers of electricity supply services to tariff customers as, in the opinion of the Director, ought to be achieved in individual cases.

(2) Regulations under this Article may—

- (a) prescribe circumstances in which public 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 Director's opinion, ought to be achieved in all cases; and
- (c) prescribe circumstances in which public electricity suppliers are to be exempted from any requirements of the regulations or this Article.

(3) If a public electricity supplier 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.

(4) The making of compensation under this Article in respect of any failure by a public electricity supplier 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.

(5) Any dispute arising under this Article or regulations made under it—

- (a) may be referred to the Director by either party; and
- (b) on such a reference, shall be determined by order made either by the Director or, if he thinks fit, by the consumer committee or any sub-committee of that committee;

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

(6) An order under paragraph (5) shall be final and shall be enforceable as if it were a judgement of the county court.

Electricity supply: overall performance

43.—(1) The Director may, after consultation with public electricity suppliers and with persons or bodies appearing to him to be representative of persons likely to be affected,—

- (a) determine such standards of overall performance in connection with the provision of electricity supply services as, in his opinion, ought to be achieved by such suppliers; and
- (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.

(2) Different standards may be determined under this Article for different public electricity suppliers.

Promotion of efficient use of electricity

44.—(1) The Director may, after consultation with public electricity suppliers and with persons or bodies appearing to him to be representative of persons likely to be affected,—

- (a) determine such standards of performance in connection with the promotion of the efficient use of electricity by consumers as, in his opinion, ought to be achieved by such suppliers; and
- (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.

(2) Different standards may be determined under this Article for different public electricity suppliers.

Information with respect to levels of performance

45.—(1) The Director shall collect information with respect to—

- (a) the compensation made by public electricity suppliers under Article 42;
- (b) the levels of overall performance achieved by such suppliers in connection with the provision of electricity supply services; and

- (c) the levels of performance achieved by such suppliers in connection with the promotion of the efficient use of electricity by consumers.
- (2) On or before such date in each year as may be specified in a direction given by the Director, each public electricity supplier shall furnish to the Director the following information, namely—
- (a) as respects each standard prescribed by regulations under Article 42, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
 - (b) as respects each standard determined under Article 43 or 44, such information with respect to the level of performance achieved by the supplier as may be so specified.
- (3) A public electricity supplier who without reasonable excuse fails to do anything required of him by paragraph (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The Director shall at least once in every year arrange for the publication, in such form and in such manner as he considers appropriate, of such of the information collected by or furnished to him under this Article as it may appear to him expedient to give to customers or potential customers of public electricity suppliers.
- (5) In arranging for the publication of any such information the Director shall have regard to the need for excluding, so far as that is practicable—
- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that individual; and
 - (b) any matter which relates specifically to the affairs of a particular body of persons, whether corporate or unincorporate, where publication of that matter would or might, in the opinion of the Director, seriously and prejudicially affect the interests of that body.

Consumer protection: miscellaneous

Functions with respect to competition

46.—(1) If and to the extent that he is requested by the Director General of Fair Trading to do so, it shall be the duty of the Director to exercise the functions of that Director under Part III of the 1973 Act (additional functions of Director for protection of consumers) so far as relating to courses of conduct which are or may be detrimental to the interests of consumers of electricity, whether those interests are economic or interests in respect of health, safety or other matters; and references in that Part to that Director shall be construed accordingly.

(2) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading)—

- (a) the functions of that Director under sections 44 (power to require information) and 45 (information with respect to complex monopoly situations) of the 1973 Act; and
- (b) the functions of that Director under sections 50, 52 and 53 (monopoly references) and 86 and 88 (reports of Monopolies Commission) of that Act,

so far as relating to monopoly situations which exist or may exist in relation to commercial activities connected with the generation, transmission or supply of electricity; and references in Part IV and sections 86, 88 and 133 of that Act to that Director shall be construed accordingly.

(3) There are hereby transferred to the Director (so as to be exercisable concurrently with the Director General of Fair Trading) the functions of that Director under sections 2 to 10 (investigation of anti-competitive practice and competition references to Monopolies Commission) and 16 (reports of Monopolies Commission) of the 1980 Act so far as relating to courses of conduct which have or are

intended to have or are likely to have the effect of restricting, distorting, or preventing competition in connection with the generation, transmission or supply of electricity; and references in those sections and in section 19 of that Act (restriction on disclosure of information) to that Director shall be construed accordingly.

(4) Before either Director first exercises in relation to any matter functions transferred by any of the following provisions, namely—

- (a) paragraph (2)(a);
- (b) paragraph (2)(b); and
- (c) paragraph (3),

he shall consult the other Director; and neither Director shall exercise in relation to any matter functions transferred by any of those provisions if functions transferred by that provision have been exercised in relation to that matter by the other Director.

(5) It shall be the duty of the Director, for the purpose of assisting the Monopolies Commission in carrying out an investigation on a reference made to them by the Director by virtue of paragraph (2) or (3), to give to the Commission—

- (a) any information which is in his possession and which relates to matters falling within the scope of the investigation and—
 - (i) is requested by the Commission for that purpose; or
 - (ii) is information which in his opinion it would be appropriate for that purpose to give to the Commission without any such request; and
- (b) any other assistance which the Commission may require and which it is within his power to give, in relation to any such matters,

and the Commission shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this paragraph.

(6) If any question arises as to whether paragraph (2) or (3) applies to any particular case, that question shall be referred to and determined by the Department; and no objection shall be taken to anything done under—

- (a) Part IV or section 86 or 88 of the 1973 Act (reports of Monopolies Commission); or
- (b) sections 2 to 10 of the 1980 Act (investigation of anti-competitive practice and competition references to Monopolies Commission),

by or in relation to the Director on the ground that it should have been done by or in relation to the Director General of Fair Trading.

(7) In this Article expressions which are also used in the 1973 Act or the 1980 Act have the same meanings as in that Act.

Fixing of maximum charges for reselling electricity

47.—(1) This Article applies to electricity supplied to a consumer's premises by an authorised electricity supplier, that is to say, a person who is authorised by a licence or exemption to supply electricity.

(2) The Director may fix maximum prices at which electricity to which this Article applies may be resold, and shall publish any prices so fixed in such manner as in his opinion will secure adequate publicity for them.

(3) Different prices may be fixed under this Article in different classes of cases, which may be defined by reference to areas, tariffs applicable to electricity supplied by the authorised electricity suppliers or any other relevant circumstances.

(4) If any person resells electricity to which this Article applies at a price exceeding the maximum price fixed under this Article and applicable thereto, the amount of the excess shall be recoverable summarily by the person to whom the electricity was resold.

Investigation of complaints

Investigation of enforcement matters

48.—(1) Subject to paragraph (2), it shall be the duty of the Director to investigate any matter which appears to him to be an enforcement matter and which—

- (a) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter; or
- (b) is referred to him by the consumer committee under paragraph (3).

(2) The Director may, if he thinks fit, require the consumer committee to investigate and report to him on any matter falling within paragraph (1) which relates to a person authorised by a licence to supply electricity.

(3) It shall be the duty of the consumer committee to refer to the Director any matter which—

- (a) appears to the committee to be an enforcement matter; and
- (b) is the subject of a representation (other than one appearing to the committee to be frivolous) made to the committee by or on behalf of a person appearing to the committee to have an interest in that matter.

(4) In this Article and Article 49 “enforcement matter” means any matter in respect of which any functions of the Director under Article 28 are or may be exercisable.

Investigation of certain other matters

49.—(1) It shall be the duty of the consumer committee to investigate any matter which appears to the committee to be a relevant matter and which—

- (a) is the subject of a representation (other than one appearing to the committee to be frivolous) made to the committee by or on behalf of a person appearing to the committee to have an interest in that matter; or
- (b) is referred to the committee by the Director under paragraph (2).

(2) Subject to paragraph (3), it shall be the duty of the Director to refer to the consumer committee any matter which—

- (a) appears to the Director to be a relevant matter; and
- (b) is the subject of a representation (other than one appearing to the Director to be frivolous) made to the Director by or on behalf of a person appearing to the Director to have an interest in that matter.

(3) Nothing in paragraph (2) shall require the Director to refer to the consumer committee any matter in respect of which he is already considering exercising functions under this Part.

(4) Where on an investigation under paragraph (1) any matter appears to the consumer committee to be a matter in respect of which it would be appropriate for the Director to exercise any functions under this Part, the committee shall refer that matter to the Director with a view to his exercising those functions with respect to that matter.

(5) In this Article “relevant matter”, in relation to the consumer committee, means any matter (other than an enforcement matter)—

- (a) in respect of which any functions of the Director under this Part are or may be exercisable; and
- (b) which relates to a public electricity supplier or to any other person authorised by a licence to supply electricity.

Other functions of Director

General functions

50.—(1) It shall be the duty of the Director, so far as it appears to him practicable to do so—

- (a) to keep under review the carrying on both in Northern Ireland and elsewhere of activities to which this paragraph applies; and
- (b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his functions under this Part;

and this paragraph applies to any activities connected with the generation, transmission and supply of electricity, including in particular activities connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat.

(2) The Department may give general directions indicating—

- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under paragraph (1)(a) or (b); and
- (b) considerations to which, in cases where it appears to the Director that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.

(3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Department or the Director General of Fair Trading to do so, to give information, advice and assistance to the Department or that Director with respect to any matter in respect of which any function of the Director under this Part is exercisable.

(4) It shall be the duty of the Director to make such arrangements as he considers appropriate for the provision of information by him to the consumer committee.

Publication of information and advice

51.—(1) The Director may arrange for the publication, in such form and in such manner as he considers appropriate, of such information and advice as it may appear to him expedient to give to customers or potential customers of persons authorised by a licence to supply electricity.

(2) In arranging for the publication of any such information or advice the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5) (a) and (b).

(3) The Director General of Fair Trading shall consult the Director before publishing under section 124 of the 1973 Act (publication of information and advice) any information or advice which may be published by the Director under this Article.

Keeping of register

52.—(1) The Director shall, at such premises and in such form as he may determine, maintain a register for the purposes of this Part.

(2) Subject to paragraph (3) and to any direction given under paragraph (4), the Director shall cause to be entered in the register the provisions of—

- (a) every licence and every exemption granted to a particular person;
- (b) every modification or revocation of a licence;
- (c) every direction or consent given or determination made under a licence; and
- (d) every final or provisional order, every confirmation of a provisional order, every revocation of such an order and every notice under Article 28(6).

(3) In entering any provision in the register, the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5)(a) and (b).

(4) If it appears to the Department that the entry of any provision in the register would be against the public interest or the commercial interests of any person, the Department may direct the Director not to enter that provision in the register.

(5) The contents of the register shall be available for inspection by the public during such hours and subject to the payment of such fee as may be specified in an order made by the Department.

(6) Any person may, on the payment of such fee as may be specified in an order so made, require the Director to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.

(7) Any sums received by the Director under this Article shall be paid into the Consolidated Fund.

Annual and other reports

53.—(1) The Director shall, as soon as practicable after the end of each calendar year—

- (a) make to the Department a report on—
 - (i) his activities during that year; and
 - (ii) the Monopolies Commission's activities during that year so far as relating to references made by him; and
- (b) send a copy of that report to the chairman of the consumer committee.

(2) Every such report shall—

- (a) include a general survey of developments, during the year to which it relates, in respect of matters falling within the scope of the Director's functions;
- (b) set out any final or provisional orders made, and provisional orders confirmed, by the Director during that year;
- (c) set out any general directions given to the Director during that year under Article 50(2); and
- (d) include a general survey of the activities during that year of the consumer committee and a summary of any reports made to him by the committee under Article 55.

(3) The Department shall lay a copy of every report made by the Director under paragraph (1) before the Assembly and shall arrange for copies of every such report to be published in such manner as the Department considers appropriate.

(4) The Director shall also make to the Department—

- (a) such reports with respect to the matters mentioned in paragraph (2)(a) as the Department may require; and
- (b) such other reports with respect to those matters as may appear to him to be expedient;

and the Director shall, if the Department so directs, arrange for copies of any report made under this paragraph to be published in such manner as is specified in the direction.

(5) In making or preparing any report under this Article the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5)(a) and (b).

(6) Section 125(1) of the 1973 Act (annual and other reports) shall not apply to activities of the Monopolies Commission on which the Director is required to report by this Article.

Provisions with respect to the consumer committee

General duty of the consumer committee to advise Director, etc.

54. It shall be the duty of the consumer committee—

- (a) to make representations to and consult with each public electricity supplier about all such matters as appear to the committee to affect the interests of customers or potential customers of that supplier;
- (b) to keep under review matters affecting the interests of consumers of electricity supplied to premises; and
- (c) to advise the Director on any matter relating to the supply of electricity on which the committee considers it should offer advice or which is referred to the committee by the Director.

Periodical and other reports of the consumer committee

55.—(1) The consumer committee—

- (a) shall make a report to the Director on any such matter as he may require; and
- (b) may make a report to the Director concerning any matter which appears to the committee to affect the interests of customers or potential customers of public electricity suppliers.

(2) The consumer committee shall at least once in every year, and whenever directed to do so by the Director, make a report to him on its activities; and every such report shall include a statement of the matters on which, during the period to which it relates, the committee has advised the Director under Article 54.

(3) The Director may arrange for a report made to him under this Article to be published in such manner as he considers appropriate.

(4) In publishing any report under this Article the Director shall have regard to the need for excluding, so far as that is practicable, the matters specified in Article 45(5)(a) and (b).

Provisions with respect to the General Consumer Council

Abolition of the General Consumer Council's functions in relation to electricity

56. Article 6 of the General Consumer Council (Northern Ireland) Order 1984 (which confers functions on the General Consumer Council for Northern Ireland in relation to the supply of electricity) shall cease to have effect.

Continuity of employment of employees of the General Consumer Council

57.—(1) This Article applies to any person who—

- (a) immediately before the date on which Article 56 comes into operation is an employee of the General Consumer Council (in this Article referred to as his “former employer”); and
- (b) within 4 weeks from that date, is employed by the Director (in this Article referred to as his “new employer”) in pursuance of an offer made before that date.

(2) A person to whom this Article applies shall not, by reason of the termination of his employment with his former employer, be entitled to receive any redundancy payment under Part II of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 or be eligible for any compensation benefit in respect of that redundancy payable under any scheme made under Article 3 of the Superannuation (Northern Ireland) Order 1972.

(3) Schedule 1 to the said Act of 1965 (computation of period of employment) shall have effect in relation to a person to whom this Article applies as if it included the following provisions, that is to say—

- (a) the period of his employment with his former employer shall count as a period of employment with his new employer; and
- (b) the change of employer shall not break the continuity of the period of employment.

(4) Where this Article applies to a person, the period of his employment with his former employer shall count as a period of employment with his new employer for the purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.

(5) In this Article references to employees of the General Consumer Council include employees who are also office holders but exclude office holders who are not also employees.

Miscellaneous

Directions for preserving security of electricity supplies, etc.

58.—(1) The Department may, after consultation with a person to whom this Article applies, give to that person such directions of a general character as appear to the Department to be requisite or expedient for the purpose of—

- (a) preserving the security of buildings or installations used for, or for purposes connected with, the generation, transmission or supply of electricity; or
- (b) mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Department to be requisite or expedient to do so for any such purpose as is mentioned in paragraph (1), the Department may, after consultation with a person to whom this Article applies, give to that person a direction requiring him (according to the circumstances of the case) to do, or not to do, a particular thing specified in the direction.

(3) A person to whom this Article applies shall give effect to any direction given to him by the Department under this Article notwithstanding any other duty imposed on him by or under this Order.

(4) A copy of every direction given under this Article shall be laid before the Assembly unless the Department is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.

(5) A person shall not disclose, or be required under any statutory provision or otherwise to disclose, anything done by virtue of this Article if the Department has notified him that the Department is of the opinion that disclosure of that thing is against the interests of national security or the commercial interests of some other person.

(6) This Article applies to any licence holder and any person authorised by an exemption to generate or supply electricity.

(7) In this Article “civil emergency” means any natural disaster or other emergency which, in the opinion of the Department, is or may be likely to disrupt electricity supplies.

Provision of statistical information

59.—(1) The Department may, if the Department considers it expedient for the purpose of obtaining statistical information relating to the generation, transmission or supply of electricity, serve a notice under this Article on any licence holder or any person who is authorised by an exemption to generate or supply electricity.

(2) A notice under this Article may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Department such statistical information about that person's business as may be so specified.

(3) Subject to paragraphs (4) and (5), no information with respect to any particular business which—

- (a) has been obtained under this Article; and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be published or otherwise disclosed without the consent of that individual or the person for the time being carrying on that business.

(4) Paragraph (3) does not apply in relation to any disclosure which is made after consultation with the individual concerned, or the person for the time being carrying on the business concerned, and is of information relating to—

- (a) the quantities of electricity generated by particular methods or by the use of particular fuels;
- (b) the quantities of particular fuels used for the generation of electricity;
- (c) the quantities of electricity transferred between Northern Ireland and countries or territories outside Northern Ireland; or
- (d) the quantities of electricity supplied in Northern Ireland either generally or to persons of any particular class or description.

(5) Paragraph (3) does not apply in relation to any disclosure which is made to any Northern Ireland department or any department of the Government of the United Kingdom or for the purposes of any proceedings under this Article.

(6) The Department may, after consultation with persons or bodies appearing to the Department to be representative of persons likely to be affected, by order amend paragraph (4) so as to add other descriptions of information which may be disclosed notwithstanding that it may relate to a particular person or business.

(7) Any person who without reasonable excuse fails to furnish information in compliance with a requirement under this Article shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(8) Any person who publishes or discloses any information in contravention of paragraph (3) or, in purported compliance with a requirement under this Article, knowingly or recklessly furnishes any information which is false in any material particular shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(9) In this Article “information” does not include estimates as to future matters.

Promotion of new techniques in national interest

60.—(1) The Secretary of State shall exercise the power conferred on him by section 5 of the Science and Technology Act 1965 (expenditure on research and development in science or technology) for the purpose of promoting such research into, and such development of, new techniques relating to the generation, transmission or supply of electricity as appears to him to be necessary in the national interest.

(2) The Secretary of State may, if he considers it expedient for purposes connected with the performance of his duty under this Article, serve notice under this paragraph on any licence holder or any person who is authorised by an exemption to generate or supply electricity.

(3) A notice under paragraph (2) may require the person on whom it is served to furnish, at a time and place specified in the notice, to the Secretary of State such information about that person's business as may be so specified.

(4) Paragraphs (3), (5) and (7) to (9) of Article 59 shall apply for the purposes of this Article as they apply for the purposes of that Article.

General restrictions on disclosure of information

61.—(1) Subject to the following provisions of this Article, no information with respect to any particular business which—

- (a) has been obtained under any of the provisions of this Part (other than Article 59); and
- (b) relates to the affairs of any individual or to any particular business,

shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Paragraph (1) does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the carrying out by the Department, the Director or the Monopolies Commission of any of its, his or their, as the case may require, functions under this Part;
- (b) for the purpose of facilitating the carrying out by—
 - (i) any Minister of the Crown;
 - (ii) any Northern Ireland department;
 - (iii) the Director General of Fair Trading;
 - (iv) the Monopolies Commission;
 - (v) the Comptroller and Auditor General for Northern Ireland;
 - (vi) the Director General of Telecommunications;
 - (vii) the Director General of Gas Supply;
 - (viii) the Director General of Water Services;
 - (ix) the Director General of Electricity Supply;
 - (x) the Water Appeals Commission for Northern Ireland; or
 - (xi) the Civil Aviation Authority;

of any of its, his or their, as the case may require, functions under any of the statutory provisions specified in paragraph (3);

- (c) for the purpose of enabling or assisting the Secretary of State to exercise any powers conferred on him by the Financial Services Act 1986 or by the statutory provisions relating to insurance companies;

- (d) for the purpose of enabling or assisting the Department or the Department of Finance and Personnel to exercise any powers conferred on that Department by the statutory provisions relating to companies or insolvency or for the purpose of enabling or assisting any inspector appointed by the Department under the statutory provisions relating to companies to carry out his functions;
 - (e) for the purpose of enabling or assisting the official receiver for Northern Ireland to carry out his functions under the statutory provisions relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of Article 350 of the Insolvency (Northern Ireland) Order 1989 to carry out its functions as such;
 - (f) for the purpose of facilitating the carrying out by the Health and Safety Agency of any of its functions under any statutory provision;
 - (g) for the purpose of facilitating the carrying out by any district council of its functions under the Consumer Protection Act 1987;
 - (h) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
 - (i) for the purposes of any civil proceedings brought under this Part or any of the statutory provisions specified in paragraph (3); or
 - (j) in pursuance of a Community obligation.
- (3) The statutory provisions referred to in paragraph (2) are—
- (a) the Trade Descriptions Act 1968;
 - (b) the Water Act (Northern Ireland) 1972;
 - (c) the 1973 Act;
 - (d) the Water and Sewerage Services (Northern Ireland) Order 1973;
 - (e) the Consumer Credit Act 1974;
 - (f) the Restrictive Trade Practices Act 1976;
 - (g) the Resale Prices Act 1976;
 - (h) the Gas (Northern Ireland) Order 1977;
 - (i) the Estate Agents Act 1979;
 - (j) the 1980 Act;
 - (k) the Telecommunications Act 1984;
 - (l) the Airports Act 1986;
 - (m) the Gas Act 1986;
 - (n) the Audit (Northern Ireland) Order 1987;
 - (o) the Consumer Protection Act 1987;
 - (p) the Consumer Protection (Northern Ireland) Order 1987;
 - (q) the Water Act 1989;
 - (r) the Electricity Act 1989;
 - (s) the Control of Misleading Advertisement Regulations 1988.
- (4) The Department may by order provide that paragraphs (2) and (3) shall have effect subject to such modifications as are specified in the order.
- (5) Nothing in paragraph (1) shall be construed—

- (a) as limiting the matters which may be published under Article 45 or 51 or may be included in, or made public as part of, a report of the Director, the Monopolies Commission or the consumer committee under any provision of this Part; or
 - (b) as applying to any information which has been so published or has been made public as part of such a report.
- (6) Any person who discloses any information in contravention of this Article shall be guilty of an offence and shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

Directions restricting the use of certain information

62.—(1) The Department may give to any person who is authorised by a licence to transmit electricity (“the authorised person”) such directions as appear to the Department to be requisite or expedient for the purpose of securing that, in any case where paragraph (2) applies, neither the person by whom the information mentioned in that paragraph is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.

(2) This paragraph applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to generate, transmit or supply electricity, the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.

(3) As soon as practicable after giving any directions under paragraph (1), the Department shall publish a copy of the directions in such manner as the Department considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.

(4) The obligation to comply with any directions under paragraph (1) is a duty owed to any person who may be affected by a contravention of them.

(5) Where a duty is owed under paragraph (4) to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(6) In any proceedings brought against any person under paragraph (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions.

(7) Without prejudice to any right which any person may have by virtue of paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under this Article, compliance with any such directions shall be enforceable by civil proceedings by the Department for an injunction or for any other appropriate relief.

(8) In this Article—

“dealings” includes dealings entered into otherwise than for purposes connected with the transmission of electricity;

“outside person”, in relation to any person, means any person who is not an associate of his;

and for the purposes of this Article a person is an associate of another if he and that other are connected with each other within the meaning of section 839 of the Income and Corporation Taxes Act 1988.

Making of false statements, etc.

63.—(1) If any person, in giving any information or making any application under or for the purposes of any provision of this Part, or of any regulations made under this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) Any person who seeks to obtain entry to any premises by falsely pretending to be—

- (a) an employee of a public electricity supplier;
- (b) an electrical inspector; or
- (c) a meter examiner,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) No proceedings shall be instituted in respect of an offence under paragraph (1) except by or with the consent of the Department or the Director of Public Prosecutions for Northern Ireland.

Supplemental

Powers to make regulations

64.—(1) Regulations made under any provision of this Part may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—

- (a) as to the mode of proof of any matter;
- (b) as to parties and their representation;
- (c) for the right to appear before and be heard by the Department, the Director and other authorities; and
- (d) as to awarding costs of proceedings for the determination of such questions, including the amount of the costs and the enforcement of the awards.

(2) Regulations made under any provision of this Part which prescribe a period within which things are to be done may provide for extending the period so prescribed.

(3) Regulations made under any provision of this Part may—

- (a) provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed;
- (b) make such supplemental, consequential and transitional provision as the Department or, as the case may be, the Director considers appropriate.

Concurrent proceedings

65.—(1) Where an application or a reference is made by a licence holder under this Part in connection with any matter, the proceedings which—

- (a) are required under this Part to be taken in relation to that application or reference; and

(b) if applicable, are required by Articles 20 to 24 of the Planning (Northern Ireland) Order 1991 to be taken for the purpose of planning permission; may, where the Department concerned so directs, be taken concurrently (so far as practicable).

(2) In this Article “the Department concerned” means the Department, or where the matter to which the application or reference relates is a function of some other Department, the Department and that other Department acting jointly.

Public inquiries

66.—(1) The Department may cause an inquiry to be held in any case where the Department considers it advisable to do so in connection with any matter arising under this Part other than a matter in respect of which any functions of the Director under Article 28 are or may be exercisable.

(2) Without prejudice to section 23 of the Interpretation Act (Northern Ireland) 1954, the Department may make rules regulating the procedure to be followed in connection with inquiries held by or on behalf of the Department under this Part.

(3) Where—

- (a) an inquiry is to be held under this Part in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Part or by any other statutory provision) to be the subject of an inquiry (“the other inquiry”), it appears to the Department concerned that the matters are so far cognate that they should be considered together,

the Department concerned may direct that the 2 inquiries be held concurrently or combined as one inquiry.

(4) In paragraph (3) “the Department concerned” means the Department, or where causing the other inquiry to be held is a function of some other Department, the Department and that other Department acting jointly.

Application to Crown land

67.—(1) Subject to paragraphs (2) to (4), the provisions of this Part shall have effect in relation to Crown land as they have effect in relation to land which is not Crown land.

(2) The powers conferred by or under Schedule 3 shall not be exercisable in relation to Crown land, to the extent of the estate therein held by or on behalf of the Crown.

(3) The powers conferred by or under—

- (a) Schedules 3 and 4; and
- (b) subject to paragraph (4), Schedule 6,

shall not, except with the consent of the appropriate authority, be exercisable in relation to Crown land.

(4) The powers conferred by or under Schedule 6 shall, without the consent of the appropriate authority, be exercisable in relation to Crown land, to the extent of any estate therein for the time being held otherwise than by or on behalf of the Crown.

(5) For the purposes of paragraph (1) a Northern Ireland department may dispose of land vested in that department on such financial and other conditions as that department may consider appropriate.

(6) In this Article any reference to the Crown includes a reference to Her Majesty’s Government in Northern Ireland.

(7) In this Article—

“the appropriate authority”, in relation to any land, means—

- (a) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, the Crown Estate Commissioners;
- (b) in the case of any other land belonging to Her Majesty in right of the Crown, the government department having the management of that land;
- (c) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, that government department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Department of Finance and Personnel or, as the case may be, the Treasury, whose decision shall be final;

“Crown estate” means an estate—

- (a) belonging to Her Majesty in right of the Crown; or
- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown land” means land in which there is a Crown estate;

“government department” includes a department of the Government of the United Kingdom.

(8) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this Article as having an estate in land.

PART III

REORGANISATION OF THE INDUSTRY

Introductory

Interpretation of Part III

68.—(1) In this Part

“debentures” includes debenture stock;

“generating company” means a company designated as such by the Department;

“securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;

“shares” includes stock;

“successor company” means a company nominated under Article 69(2) for the purposes of Article 69(1);

“the transfer date” means the day appointed under Article 69(3) for the purposes of Article 69(4);

“transferee”, in relation to any transfer of assets and liabilities effected or proposed to be effected under this Part, means the person to whom they are or are to be so transferred;

“transfer scheme” means a scheme under Article 69(1);

“transitional period”, in relation to Northern Ireland Electricity, means the period of Northern Ireland Electricity’s continued existence under Article 86(2) after the transfer date and until it is dissolved under Article 86(4);

“transmission and supply company” means the company designated as such by the Department.

(2) Subject to Article 70(5), in this Part any reference to the Crown is a reference to the Crown in right of Her Majesty's Government in Northern Ireland.

(3) A company shall be regarded for the purposes of this Part as wholly owned by the Crown at any time when none of the issued shares in the company is held otherwise than—

- (a) by, or by a nominee of, the Department or the Department of Finance and Personnel; or
- (b) by a company which is itself wholly owned by the Crown.

(4) References in this Part to assets and liabilities of Northern Ireland Electricity are references to all such assets and liabilities, whether or not capable of being transferred or assigned by Northern Ireland Electricity.

(5) It is hereby declared for the avoidance of doubt that any reference in this Part to assets and liabilities of Northern Ireland Electricity—

- (a) in relation to assets which consist of property of Northern Ireland Electricity, is a reference to property whether situated in Northern Ireland or elsewhere; and
- (b) in relation to assets which consist of other rights and to liabilities of Northern Ireland Electricity is a reference to rights to which Northern Ireland Electricity is entitled, or (as the case may be) liabilities to which Northern Ireland Electricity is subject, whether under the law of Northern Ireland or under the law of any country or territory outside Northern Ireland.

Transfers to successor companies

Transfer of assets, etc., of Northern Ireland Electricity

69.—(1) Before such date as the Department may direct, Northern Ireland Electricity shall make a scheme (a “transfer scheme”) for the division of all its assets and liabilities (other than excepted rights and liabilities) between 2 or more companies nominated by the Department for the purposes of this paragraph; and of the companies so nominated—

- (a) one shall be designated as a generating company; and
- (b) one shall be designated as a transmission and supply company.

(2) Subject to paragraph (3), the Department may, after consultation with Northern Ireland Electricity, by order nominate for the purposes of paragraph (1) any company formed and registered under the Companies (Northern Ireland) Order 1986 (a “successor company”).

(3) On such day as the Department may by order appoint for the purposes of paragraph (4) (the “transfer date”) each successor company must be a company limited by shares which is wholly owned by the Crown.

(4) Subject to the provisions of Article 72, on the transfer date all assets and liabilities to which immediately before that date Northern Ireland Electricity was entitled or subject (other than excepted rights and liabilities) shall become by virtue of this paragraph, assets and liabilities of the successor company to which they are allocated by a scheme under paragraph (1).

(5) The Department shall not exercise any power conferred by this Article or Article 70 or 71 except with the consent of the Department of Finance and Personnel.

(6) In this Article “excepted rights and liabilities” means—

- (a) any rights and liabilities with respect to corporation tax (including rights to receive any sums by way of repayment supplement and liabilities to pay any sums by way of interest or penalty);

- (b) any rights and liabilities arising under an agreement which relates to any such assets and liabilities as are mentioned in sub-paragraph (a) and is specified or is of a description specified by the transfer scheme;
- (c) any rights and liabilities transferred by Article 90; and
- (d) such other rights and liabilities as the Department may determine.

Transfer schemes under Article 69

70.—(1) A transfer scheme may—

- (a) define the assets and liabilities to be allocated to a particular successor company—
 - (i) by specifying or describing the assets and liabilities in question;
 - (ii) by referring to all the assets and liabilities comprised in a specified part of Northern Ireland Electricity’s undertaking; or
 - (iii) partly in the one way and partly in the other;
- (b) provide that any assets or liabilities specified or described in the scheme shall be enforceable either by or against either or any, or by or against both or all, of 2 or more successor companies;
- (c) impose on any successor company an obligation to enter into such written agreements with, or execute such other instruments in favour of, any other successor company as may be specified in the scheme; and
- (d) make such supplemental, incidental and consequential provision as Northern Ireland Electricity considers appropriate (including provision specifying the order in which any transfers or transactions are to be regarded as taking effect).

(2) An obligation imposed by a provision included in a transfer scheme under paragraph (1)(c) shall be enforceable by civil proceedings by the other successor company for an injunction or for any other appropriate relief.

(3) A transaction of any description which is effected under such a provision as is mentioned in paragraph (2)—

- (a) 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; but
- (b) subject to that, shall be binding on all other persons, notwithstanding that it would, apart from this paragraph, have required the consent or concurrence of any other person.

(4) Where a lease of any land is granted in pursuance of such a provision as is mentioned in paragraph (2), any right or obligation affecting that land—

- (a) shall not become exercisable or enforceable by reason of the grant of the lease; but
- (b) shall have effect as if the lessee were the same person in law as the lessor.

(5) It is hereby declared that the provisions of a transfer scheme in so far as they relate to any asset or liability of Northern Ireland Electricity in which there is a Crown interest bind the Crown, including the Crown in right of Her Majesty’s Government in the United Kingdom to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

Functions of the Department in relation to transfer schemes

71.—(1) A transfer scheme shall not take effect unless it is approved by the Department; and the Department may modify such a scheme before approving it.

(2) If, in relation to a transfer scheme—

- (a) Northern Ireland Electricity fails, before the date specified in the Department's direction under Article 69(1), to submit the scheme for the approval of the Department; or
- (b) the Department decides not to approve the scheme that has been submitted to the Department by Northern Ireland Electricity (either with or without modifications),

the Department may make the scheme.

(3) It shall be the duty of Northern Ireland Electricity to provide the Department with all such information and other assistance as the Department may require for the purposes of or in connection with the exercise, in relation to a transfer scheme, of any power conferred on the Department by paragraph (1) or (2).

(4) The Department shall not exercise any power conferred on the Department by paragraph (1) or (2) except after consultation with Northern Ireland Electricity.

Supplementary provisions as to transfers under Article 69

72. The provisions of Schedule 10 shall apply, to the extent there mentioned, to any transfer which is effected by Article 69(4); and that paragraph shall have effect subject to the provisions of that Schedule.

Ownership of successor companies

Initial Government holding in the companies

73.—(1) As a consequence of the vesting in a successor company of any assets and liabilities, the company shall issue such securities of the company as the Department may direct—

- (a) to the Department or the Department of Finance and Personnel; or
- (b) to any person entitled to require the issue of the securities following their initial allotment to the Department or the Department of Finance and Personnel.

(2) The Department shall not give a direction under paragraph (1) in relation to a successor company at a time when the company has ceased to be wholly owned by the Crown.

(3) Securities required to be issued under this Article shall be issued or allotted at such time or times and on such terms as the Department may direct.

(4) Shares in a company which are issued under this Article—

- (a) shall be of such nominal value as the Department may direct; and
- (b) shall be issued as fully paid and treated for the purposes of the Companies (Northern Ireland) Order 1986 as if they had been paid up by virtue of the payment to the company of their nominal value in cash.

(5) The Department shall not exercise any power conferred by this Article, or dispose of any securities issued or of any rights to securities initially allotted to the Department under this Article, without the consent of the Department of Finance and Personnel.

(6) For the purposes of the Companies (Northern Ireland) Order 1986, Part II of the Companies (Northern Ireland) Order 1989 and the Insolvency (Northern Ireland) Order 1989 the Crown is not to be treated as a shadow director of any successor company by reason that the company is wholly owned by the Crown or that the directors of that company are accustomed to act in accordance with the Crown's directions or instructions.

Government investment in securities of the companies

74.—(1) The Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, the Department may at any time acquire—

- (a) securities of a successor company; or
- (b) rights to subscribe for any such securities.

(2) The Department shall not dispose of any securities or rights acquired under this Article without the consent of the Department of Finance and Personnel.

Exercise of functions through nominees

75.—(1) The Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, the Department may, for the purposes of Article 73, 74 or 82, appoint any person to act as the nominee, or one of the nominees, of the Department of Finance and Personnel or the Department; and—

- (a) securities of a successor company may be issued under Article 73 to any nominee of the Department or the Department of Finance and Personnel appointed for the purposes of that Article or to any person entitled to require the issue of the securities following their initial allotment to any such nominee; and
- (b) any such nominee appointed for the purposes of Article 74 may acquire securities or rights under that Article,

in accordance with directions given by the Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, by the Department.

(2) Any person holding any securities or rights as a nominee of the Department or the Department of Finance and Personnel under paragraph (1) shall hold and deal with them (or any of them) on such terms and in such manner as the Department of Finance and Personnel or, with the consent of the Department of Finance and Personnel, the Department may direct.

Target investment limit for Government shareholding

76.—(1) As soon as the Department considers expedient and, in any case, not later than 6 months after any successor company ceases to be wholly owned by the Crown, the Department shall by order fix a target investment limit in relation to the shares for the time being held in that company by virtue of any provision of this Part by the Department, the Department of Finance and Personnel and their respective nominees (“the Government shareholding”).

(2) The target investment limit for the Government shareholding in a successor company shall be expressed as a proportion of the voting rights which are exercisable in all circumstances at general meetings of the company (“the ordinary voting rights”).

(3) The first target investment limit fixed under this Article for the Government shareholding in a particular company shall not exceed, by more than 0.5 per cent. of the ordinary voting rights, the proportion of those rights which is in fact carried by the Government shareholding in that company at the time when the order fixing the limit is made.

(4) The Department may by order fix a new target investment limit for the Government shareholding in a successor company in place of the one previously in force under this Article; but—

- (a) any new limit must be lower than the one it replaces; and
- (b) an order under this Article may, notwithstanding section 17(2) of the Interpretation Act (Northern Ireland) 1954, only be revoked by an order fixing a new limit.

(5) It shall be the duty of the Department and of the Department of Finance and Personnel so to exercise—

- (a) their powers under Article 74 and any power to dispose of any shares held under any provision of this Part; and
- (b) their power to give directions to their respective nominees,

as to secure in relation to each successor company that the Government shareholding in that company does not carry a proportion of the ordinary voting rights exceeding any target investment limit for the time being in force under this Article in relation to that company.

(6) Notwithstanding paragraph (5) but subject to paragraph (7), the Department or the Department of Finance and Personnel may take up, or direct any nominee of the Department or of the Department of Finance and Personnel to take up, any rights which are for the time being available to them, or to the nominee, either—

- (a) as an existing holder of shares or other securities of a successor company; or
- (b) by reason of the rescission of any contracts for the sale of such shares or securities.

(7) If, as a result of anything done under paragraph (6), the proportion of the ordinary voting rights carried by the Government shareholding in a successor company at any time exceeds the target investment limit for the time being in force under this Article in relation to that company, it shall be the duty of the Department or, as the case may be, the Department of Finance and Personnel to comply with paragraph (5) as soon after that time as is reasonably practicable.

(8) For the purposes of this Article the temporary suspension of any of the ordinary voting rights shall be disregarded.

(9) The Department shall not exercise any power conferred on it by this Article except with the consent of the Department of Finance and Personnel.

Finances of successor companies

Statutory reserves

77.—(1) If the Department with the approval of the Department of Finance and Personnel so directs at any time before a successor company ceases to be wholly owned by the Crown, such sum as may be specified in the direction but not exceeding such proportion of the accumulated realised profits of Northern Ireland Electricity as is determined by or under the transfer scheme shall be carried by the company to a reserve (“the statutory reserve”).

(2) A company having a statutory reserve shall not apply it except in paying up unissued shares of the company to be allotted to members of the company as fully paid bonus shares.

(3) Notwithstanding paragraph (2), the statutory reserve of a company shall not count as an undistributable reserve of the company for the purposes of Article 272(3)(d) of the Companies (Northern Ireland) Order 1986; but for the purpose of determining under that Article whether a company with a statutory reserve may make a distribution at any time any amount for the time being standing to the credit of the reserve shall be treated for the purposes of Article 272(3)(c) of that Order as if it were unrealised profits of the company.

Statutory accounts

78.—(1) The following provisions of this Article shall have effect for the purposes of any statutory accounts of a successor company, that is to say, any accounts prepared by such a company for the purpose of any provision of the Companies (Northern Ireland) Order 1986 (including group accounts).

(2) The vesting in the company effected under this Part shall be taken to have been effected immediately after the end of the last complete accounting year of Northern Ireland Electricity to end on or before the transfer date and to have been a vesting of such of the assets and liabilities to which

Northern Ireland Electricity was entitled or subject immediately before the end of the year as are determined by or under the transfer scheme.

(3) The value of any asset and the amount of any liability which is taken under paragraph (2) to have been vested in the company shall be taken to have been—

- (a) the value or amount assigned to the asset or liability for the purposes of the corresponding statement of accounts prepared by Northern Ireland Electricity in respect of the last complete accounting year of Northern Ireland Electricity to end before the transfer date; or
- (b) if the asset or liability is part only of an asset or liability to which a value or amount is so assigned, so much of that value or amount as may be determined by or under the transfer scheme.

(4) The amount to be included in respect of any item shall be determined as if—

- (a) anything done by Northern Ireland Electricity (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise); or
- (b) so much of anything so done as may be determined by or under the transfer scheme,

had been done by the company.

(5) Without prejudice to the generality of the preceding provisions, the amount to be included in any reserves of the company as representing the company's accumulated realised profits or, as the case may be, losses shall be determined as if such proportion of—

- (a) any profits realised and retained; or
- (b) any losses realised; or
- (c) any other provision made,

by Northern Ireland Electricity as is determined by or under the transfer scheme, had been realised and retained, realised or made, as the case may require, by the company.

(6) In this Article “complete accounting year”, in relation to Northern Ireland Electricity, means an accounting year of Northern Ireland Electricity ending on 31st March.

Temporary restrictions on borrowings, etc.

79.—(1) If articles of association of a successor company confer on the Department powers exercisable with the consent of the Department of Finance and Personnel for, or in connection with, restricting the sums of money which may be borrowed or raised by the group during any period, those powers shall be exercisable in the public interest notwithstanding any rule of law and any statutory provision.

(2) For the purposes of this Article an alteration of the articles of association of a successor company shall be disregarded if the alteration—

- (a) has the effect of conferring or extending any such power as is mentioned in paragraph (1); and
- (b) is made at a time when that company has ceased to be wholly owned by the Crown.

(3) In this Article—

“group”, in relation to a company, means that company and all of its subsidiaries taken together; “subsidiary” has the meaning given by Article 4 of the Companies (Northern Ireland) Order 1986.

Government lending to the companies

80.—(1) Subject to Article 83, the Department may, with the approval of the Department of Finance and Personnel, make loans of such amounts and on such terms and conditions, including terms and conditions as to security, as the Department thinks fit to any successor company which is for the time being wholly owned by the Crown.

(2) Subject to Article 82, any loans which the Department makes under this Article shall be repaid to the Department at such times and by such methods, and interest thereon shall be paid to the Department at such rates and at such times, as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) Expenditure incurred or to be incurred by the Department in making loans under this Article shall be defrayed by means of sums charged on and issued out of the Consolidated Fund.

Government guarantees for loans made to the companies

81.—(1) Subject to Article 83, the Department may guarantee, in such manner and on such terms as the Department, with the approval of the Department of Finance and Personnel, may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sums which are borrowed from a person other than the Department by any successor company which is for the time being wholly owned by the Crown.

(2) Immediately after a guarantee is given under this Article, the Department shall lay a statement of the guarantee before the Assembly; and immediately after any sum is issued for fulfilling a guarantee so given, the Department shall so lay a statement relating to that sum.

(3) Any sums required by the Department for fulfilling a guarantee under this Article shall be charged on and issued out of the Consolidated Fund.

(4) The Department of Finance and Personnel may borrow money for the purpose of providing for issues out of the Consolidated Fund under paragraph (3).

(5) If any sums are issued in fulfilment of a guarantee given under this Article the company whose obligations are so fulfilled shall make to the Department, at such times and in such manner as the Department may direct,—

- (a) payments of such amounts as the Department may so direct in or towards repayment of the sums so issued; and
- (b) payments of interest on what is outstanding for the time being in respect of sums so issued at such rate as the Department may so direct.

Conversion or discharge of certain loans or advances, etc.

82.—(1) The Department may by order extinguish all or any of the liabilities of Northern Ireland Electricity or, as the case may be, a successor company in respect of the principal of such relevant loans as may be specified in the order.

(2) Where the Department has made an order under paragraph (1) and the Department considers it appropriate to do so, the Department may give a direction under this paragraph to Northern Ireland Electricity or, as the case may be, the successor company whose liabilities are extinguished by the order; and Northern Ireland Electricity or that company as the case may require shall, as a consequence of the making of the order, issue such securities as may be specified or described in the direction—

- (a) to the Department or to the Department of Finance and Personnel; or
- (b) to any person entitled to require the issue of the securities following their initial allotment to the Department or the Department of Finance and Personnel.

(3) For the purposes of any statutory accounts of a successor company, the value at the time of its issue of any such security shall be taken—

- (a) in the case of a share, to have been equal to its nominal value; and
- (b) in the case of a debenture, to have been equal to the principal sum payable under the debenture,

and such nominal value or principal sum shall be taken in those accounts to be accumulated realised profits.

(4) In paragraph (3) “statutory accounts of a company” means any accounts prepared by the company for the purpose of any provision of the Companies (Northern Ireland) Order 1986 (including group accounts).

(5) The Department shall not—

- (a) make an order under paragraph (1) extinguishing the liability of any successor company; or
- (b) give a direction under paragraph (2) for the issue of securities,

except at a time when the company is wholly owned by the Crown.

(6) Except as may be agreed between the Department and Northern Ireland Electricity or, as the case may be, a successor company which is directed to issue debentures under this Article,—

- (a) the aggregate of the principal sums payable under the debentures to which the direction relates shall be equal to the aggregate of the sums the liability to repay which is extinguished by the order; and
- (b) the terms as to the payment of the principal sums payable on the debentures to which the direction relates, and as to the payment of interest thereon, shall be the same as the corresponding terms of the loans specified in the order.

(7) For the purposes of paragraph (6) any express or implied terms of a loan shall be disregarded in so far as they relate to the early discharge of liabilities to make repayments of principal and payments of interest.

(8) The Department may direct Northern Ireland Electricity to do anything specified in the direction which is requisite or expedient for the purpose of securing, on such terms as the Department, with the approval of the Department of Finance and Personnel, thinks fit, the discharge, or the transfer to the Department, of Northern Ireland Electricity’s liabilities in respect of any foreign currency loan made to Northern Ireland Electricity.

(9) Paragraphs (3) to (5) of Article 73 shall apply for the purposes of this Article as they apply for the purposes of that Article.

(10) In this Article—

“foreign currency” means a currency other than sterling;

“foreign currency loan” means a loan made wholly or mainly in a foreign currency;

“relevant loan” means—

- (a) any loan made, or deemed to have been made, by the Department or from the Consolidated Fund the liability to repay which vests or will vest in the successor company by virtue of Article 69(4);
- (b) any loan made to that company by the Department under Article 80; and
- (c) any sums payable under debentures issued as a consequence of the making of an order under this Article.

Financial limits on borrowings, etc.

83. The aggregate of any amounts outstanding by way of principal in respect of—

- (a) sums issued under Article 81 in fulfilment of guarantees given in respect of loans made to such companies; and
 - (b) relevant loans within the meaning of Article 82,
- shall not exceed £750 million.

Provisions with respect to floatation

Responsibility for composite listing particulars

84.—(1) Where—

- (a) the same document contains listing particulars for securities of 2 or more successor companies; and
- (b) any person’s responsibility for any information included in the document is stated in the document to be confined to its inclusion as part of the listing particulars for securities of any one of those companies,

that person shall not be treated as responsible for that information in so far as it is stated in the document to form part of the listing particulars for securities of any other of those companies.

(2) In this Article—

“the 1986 Act” means the Financial Services Act 1986;

“listing particulars” means any listing particulars or supplementary listing particulars within the meaning of the 1986 Act;

“responsible” means responsible for the purposes of Part IV of the 1986 Act.

Application of Trustee Investments Act 1961 in relation to investment in successor companies

85.—(1) Paragraph (2) shall have effect for the purpose of applying paragraph 3(b) of Part IV of Schedule 1 to the Trustee Investments Act 1961 as applied in Northern Ireland by virtue of any transferred provision (which provides that shares and debentures of a company shall not count as wider-range and narrower-range investments respectively within the meaning of that Act unless the company has paid dividends in each of the 5 years immediately preceding that in which the investment is made) in relation to investment in shares or debentures of a successor company during the calendar year in which the transfer date falls (“the first investment year”) or during any year following that year.

(2) The company shall be deemed to have paid a dividend as mentioned in the said paragraph 3(b)—

- (a) in every year preceding the first investment year which is included in the relevant 5 years; and
- (b) in the first investment year, if that year is included in the relevant 5 years and that company does not in fact pay such a dividend in that year.

(3) In paragraph (2) “the relevant 5 years” means the 5 years immediately preceding the year in which the investment in question is made or proposed to be made.

Provisions with respect to Northern Ireland Electricity

Dissolution, etc., of Northern Ireland Electricity

86.—(1) Any person who, immediately before the transfer date, holds office as Chairman or other member of Northern Ireland Electricity, shall cease to hold office on that date.

(2) Northern Ireland Electricity shall continue in existence after the transfer date until it is dissolved under paragraph (4).

(3) During the transitional period, Northern Ireland Electricity—

(a) shall consist of a chairman appointed by the Department and such one or more other persons as may be so appointed; and

(b) shall prepare such statements of accounts as the Department may direct;

and a direction under this paragraph may require the auditing of any such statements of accounts by such person as may be specified in the direction.

(4) The Department may by order, after consulting Northern Ireland Electricity and its successor company or companies, dissolve Northern Ireland Electricity on a day specified in the order, as soon as the Department is satisfied that nothing further remains to be done by Northern Ireland Electricity (whether under Schedule 13 or otherwise).

(5) An order under paragraph (4) may provide—

(a) for the transfer of any remaining functions, assets and liabilities of Northern Ireland Electricity to the Department;

(b) for the preparation by such persons as may be specified in the order of a statement of accounts for the period from the end of that dealt with in the last statement of accounts prepared under paragraph (3) by Northern Ireland Electricity down to the dissolution of Northern Ireland Electricity; and

(c) for the auditing of any such statement of accounts by such person as may be so specified;

and the Department may, with the approval of the Department of Finance and Personnel, pay to any person on whom duties are imposed by such an order such remuneration, and such travelling and other allowances, as the Department, with the approval of the Department of Finance and Personnel, may determine.

Compensation to members and employees of Northern Ireland Electricity

87.—(1) The Department may pay to any person who, immediately before the transfer date, is the Chairman or other member of Northern Ireland Electricity such sums by way of compensation for loss of office, or loss or diminution of pension rights, as the Department may with the approval of the Department of Finance and Personnel determine.

(2) The Department may also pay to persons who, immediately before the transfer date, are employees of Northern Ireland Electricity such sums by way of compensation for loss of employment, or loss or diminution of remuneration or pension rights, as the Department may, with the approval of the Department of Finance and Personnel, determine.

Grants towards expenditure during transitional period

88.—(1) The Department may, with the approval of the Department of Finance and Personnel, make grants to Northern Ireland Electricity of such amounts as the Department thinks fit towards such expenditure incurred by Northern Ireland Electricity during its transitional period as is not met under Schedule 13 by such of its successor companies as may be designated by or under the transfer scheme.

(2) Grants under this Article may be made subject to such conditions as the Department, with the approval of the Department of Finance and Personnel, may determine.

Amendment of pension scheme, etc.

89. The provisions of Schedule 11 (which provide for pensions and for amending the Northern Ireland Electricity Superannuation Scheme and for giving special protection to certain persons who have or may acquire rights under that scheme) shall have effect.

*Miscellaneous**Northern Ireland Electricity Stock*

90.—(1) On the transfer date all the rights and liabilities to which Northern Ireland Electricity was entitled or subject immediately before that date under the terms of issue of Northern Ireland Electricity Stock shall become by virtue of this Article rights and liabilities of the Department of Finance and Personnel.

(2) Before the transfer date Northern Ireland Electricity shall pay to such bank as the Department of Finance and Personnel may direct a sum equal to the amounts accruing in respect of unclaimed interest or redemption money on Northern Ireland Electricity Stock before that date but excluding any amounts represented by money in the hands of that bank.

(3) In this Article “Northern Ireland Electricity Stock” means any stock created and issued under Article 20 of the Electricity Supply (Northern Ireland) Order 1972 or under section 28 of the Electricity (Supply) Act (Northern Ireland) 1931.

Assembly disqualification

91. In the Northern Ireland Assembly Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices) there shall be inserted (at the appropriate place) the following entry—

“Director of a successor company (within the meaning of Part III of the Electricity (Northern Ireland) Order 1992), being a director nominated or appointed by a Northern Ireland department or by a person acting on behalf of a Northern Ireland department”.

PART IV

SUPPLEMENTAL

Repayment of fees

92.—(1) Regulations under this Order which prescribe any fee for the purpose of any provision of this Order may make provision for the repayment of any such fee paid or purported to be paid, in pursuance of that provision of this Order, including provision—

- (a) that repayment shall be made only if a specified person is satisfied that specified conditions are met or in other circumstances;
- (b) that repayment shall be made in part only;
- (c) that, in the case of partial repayment, the amount repaid shall be a specified sum or determined in a specified manner; and
- (d) for repayment of different amounts in different circumstances.

(2) In this Article “specified” means specified in the regulations.

Regulations and orders

93.—(1) Any regulations or orders made by the Department under this Order (other than orders made under Article 69(2) or paragraph 14(6) of Schedule 4) shall be subject to negative resolution.

(2) Any regulations made by the Director under this Order shall be laid before the Assembly by the Department and shall be subject to negative resolution.

Directions

94.—(1) It shall be the duty of any person to whom a direction is given under this Order to give effect to that direction.

(2) Any power conferred by this Order to give a direction shall include power to vary or revoke the direction.

(3) Any direction given under this Order shall be in writing.

Amendments, transitional provisions, savings and repeals

95.—(1) The statutory provisions set out in Schedule 12 shall have effect subject to the amendments specified in that Schedule (being amendments consequential on this Order).

(2) Without prejudice to section 17(2) of the Interpretation Act (Northern Ireland) 1954, the Department may by order make such modifications of instruments made under statutory provisions as appear to the Department necessary or expedient in consequence of the provisions of this Order; and in this paragraph “instrument” has the meaning assigned to it by section 1(c) of that Act of 1954.

(3) The transitional provisions and savings contained in Schedule 13 shall have effect.

(4) The statutory provisions set out in Schedule 14 are hereby repealed to the extent specified in column 3 of that Schedule.

G. I. de Deney
Clerk of the Privy Council

SCHEDULES

SCHEDULE 1

Article 5(5).

THE DIRECTOR GENERAL OF ELECTRICITY SUPPLY FOR NORTHERN IRELAND

Remuneration, pensions, etc.

1.—(1) There shall be paid to the Director such remuneration, and such travelling and other allowances, as the Department may determine.

(2) In the case of any such holder of the office of the Director as may be determined by the Department, there shall be paid such pension, allowance or gratuity to or in respect of him, or such contributions or payments towards provision for such a pension, allowance or gratuity, as may be so determined.

(3) If, when any person ceases to hold office as the Director, the Department determines that there are special circumstances which make it right that he should receive compensation, there may be paid to him a sum by way of compensation of such amount as may be determined by the Department.

(4) The approval of the Department of Finance and Personnel shall be required for the making of a determination under this paragraph.

Staff

2. The Director may, with the approval of the Department of Finance and Personnel as to numbers, terms and conditions of service, remuneration and other allowances (if any) appoint such staff as he may determine.

Expenses of the Director and his staff

3. There shall be paid out of money appropriated by Measure—
- (a) the remuneration of, and any travelling or other allowances payable under this Order to, the Director and any staff of the Director;
 - (b) any sums payable under this Order to or in respect of the Director; and
 - (c) any expenses duly incurred by the Director or by any of his staff in consequence of the provisions of this Order.

Official seal

4. The Director shall have an official seal for the authentication of documents required for the purposes of his functions.

Performance of functions

5. Anything authorised or required by or under this Order or any other statutory provision to be done by the Director, other than the making of a statutory instrument, may be done by any member of the staff of the Director who is authorised generally or specially in that behalf by the Director.

Rule-making authority

6. In the Statutory Rules (Northern Ireland) Order 1979, in Schedule 1 (authorities who are rule-making authorities), in the Part headed “Other authorities” there shall be inserted (at the appropriate place) the following entry—

“The Director General of Electricity Supply for Northern Ireland.”.

The Northern Ireland Parliamentary Commissioner

7. In the Parliamentary Commissioner Act (Northern Ireland) 1969, in Schedule 1 (departments and authorities subject to investigation), at the end there shall be added the following entry—

“Office of the Director General of Electricity Supply for Northern Ireland.”.

Assembly disqualification

8. In the Northern Ireland Assembly Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—

“Director General of Electricity Supply for Northern Ireland.”.

SCHEDULE 2

Article 7(5).

THE CONSUMER COMMITTEE FOR ELECTRICITY

Remuneration, pensions, etc., of chairman

1.—(1) There shall be paid to the chairman of the consumer committee such remuneration, and such travelling and other allowances, as the Director may determine.

(2) There shall be paid such pension, allowance or gratuity to or in respect of a person who has held or holds office as chairman of the consumer committee, or such contributions or payments towards provision for such a pension, allowance or gratuity to or in respect of such a person, as the Director may determine.

(3) If, when any person ceases to hold office as the chairman of the consumer committee, the Director determines that there are special circumstances which make it right that that person should receive compensation, there may be paid to him a sum by way of compensation of such amount as the Director may determine.

(4) The approval of the Department of Finance and Personnel shall be required for the making of a determination under this paragraph.

Allowances for other members

2. There shall be paid to members of the consumer committee other than the chairman such travelling and other allowances as the Director with the approval of the Department of Finance and Personnel may determine.

Status: This is the original version (as it was originally made).

Administration, etc.

3. The Director may make arrangements for the consumer committee to be provided with office accommodation and with such services as he considers appropriate to enable it to carry out its functions.

Proceedings

4. The validity of any proceedings of the consumer committee shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

5.—(1) Subject to sub-paragraphs (2) and (3), meetings of the consumer committee shall be open to the public.

(2) The public shall be excluded during any item of business where—

- (a) it is likely, were members of the public to be present during that item, that information furnished in confidence to the consumer committee by the Director would be disclosed in breach of the obligation of confidence; or
- (b) the consumer committee has resolved that, by reason of the confidential nature of the item or for other special reasons stated in the resolution, it is desirable in the public interest that the public be excluded; or
- (c) the item relates to a proposal to refer any matter to the Director in pursuance of Article 48(3) or 49(1)(a) or (4).

(3) Except to the extent that the Director otherwise directs (whether generally or in relation to the particular case), the public shall be excluded during any item of business which relates to—

- (a) the determination of any dispute referred to the consumer committee under Article 42(5); or
- (b) the investigation by the consumer committee of any matter in pursuance of Article 48(2) or 49(1)(b).

(4) The consumer committee shall give such notice—

- (a) of any meeting of the consumer committee which is open to the public; and
- (b) of the business to be taken at that meeting (other than items during which the public is to be excluded),

as it considers appropriate for the purpose of bringing the meeting to the attention of interested members of the public.

Sub-committees

6.—(1) The consumer committee may, with the approval of the Director—

- (a) establish local and other sub-committees through which the consumer committee may carry out such of its functions as it may determine;
- (b) appoint such persons (including persons who are not members of the consumer committee) to be members of any such sub-committee as it may determine; and
- (c) regulate the procedure of any such sub-committee.

(2) Persons appointed under sub-paragraph (1) who are not members of the consumer committee may be reimbursed for their travelling expenses and such of their out-of-pocket expenses as do not relate to loss of remuneration.

Financial provisions

7.—(1) There shall be paid by the Director out of money appropriated by Measure—

- (a) any sums payable to or in respect of any person under paragraph 1, 2 or 6; and
- (b) any expenses incurred by the consumer committee in accordance with any statement approved under sub-paragraph (3).

(2) The consumer committee shall prepare and send to the Director before the beginning of each financial year a statement of the expenses which it expects to incur in respect of that year for the purposes of, or in connection with, the carrying out of its functions.

(3) The Director shall consider any statement sent to him under sub-paragraph (2) and shall either approve the statement or approve it with such modifications as he considers appropriate.

Assembly disqualification

8. In the Northern Ireland Assembly Disqualification Act 1975, in Part III of Schedule 1 (other disqualifying offices), there shall be inserted (at the appropriate place) the following entry—

“Chairman of the Consumer Committee for Electricity appointed under Article 7 of the Electricity (Northern Ireland) Order 1992.”.

SCHEDULE 3

Article 13(1).

COMPULSORY ACQUISITION OF LAND

PART I

COMPULSORY ACQUISITION OF LAND BY LICENCE HOLDERS

1.—(1) Where a licence holder proposes to acquire, otherwise than by agreement, any land required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, he may apply to the Department for an order vesting that land in him and the Department shall have power to make a vesting order.

(2) The power of acquiring land compulsorily under this paragraph includes power to acquire, by the creation of a new right, an easement or other right over land.

2.—(1) No application shall be made under paragraph 1 for a vesting order in respect of land belonging to another licence holder except with the consent of the Director.

(2) The Director shall not give his consent under this paragraph if—

- (a) the land is being used by the licence holder to whom it belongs for the purposes of an installation necessary for the carrying on of the activities which he is authorised by his licence to carry on; or
- (b) it appears to the Director that the land will be so used and that the use will commence, or any necessary planning permission under Part IV of the Planning (Northern Ireland) Order 1991 will be applied for, within the period of 5 years from the date of the application for his consent.

Status: This is the original version (as it was originally made).

(3) The Department may, by order, provide that sub-paragraph (2) shall have effect as if for the period mentioned in head (b) there were substituted such other period as may be specified in the order.

(4) A consent under this paragraph which is not acted on within the period of 6 months from the day on which it is granted shall cease to have effect at the end of that period.

3.—(1) The power to make a vesting order under paragraph 1 in respect of land—

(a) which is the property of any public body which has power under any transferred provision to acquire land compulsorily; or

(b) which is declared by or under any transferred provision to be inalienable;

shall not, where representations objecting to the proposal for making the order have been duly made by the owner of the land and have not been withdrawn, be exercised in relation to that land unless the proposal for making the order has been approved by a resolution of the Assembly.

(2) In this paragraph “public body” means a body established by or under any transferred provision.

4.—(1) Nothing in this Schedule shall authorise the acquisition, without the consent of the Department of the Environment, of any land on or in which there is, to the knowledge of the Department, any historic monument or archaeological object.

(2) In this paragraph “historic monument” and “archaeological object” have the same meanings as in the Historic Monuments Act (Northern Ireland) 1971.

5.—(1) Where a licence holder has acquired any land under paragraph 1, he shall not dispose of it except with the consent of the Director.

(2) A consent under this paragraph may be subject to such conditions as appear to the Director to be requisite or expedient.

6. Schedule 6 to the Local Government Act (Northern Ireland) 1972 shall apply for the purposes of the acquisition of land by means of a vesting order made under paragraph 1 in the same manner as it applies to the acquisition of land by means of a vesting order made under that Act subject to the following modifications—

(a) for any reference to the council there shall be substituted a reference to the licence holder;

(b) for any reference to the Department concerned there shall be substituted a reference to the Department;

(c) for any reference to that Act there shall be substituted a reference to this Order;

(d) in paragraph 6(2) for the words from “the fund” onwards there shall be substituted “funds of the licence holder (in this Schedule referred to as “the compensation fund”), and shall be discharged by payments made by the licence holder”; and

(e) in paragraph 12(2) for “the clerk of the council” there shall be substituted “such person as may be designated for the purposes of this Schedule by the licence holder”.

PART II

LICENCE HOLDERS' LAND EXCLUDED FROM COMPULSORY ACQUISITION

7. Where an application for a vesting order is made by a person with power to acquire land otherwise than by agreement (other than a licence holder) in respect of land which includes land belonging to a licence holder and used for any purpose connected with the carrying on of the activities

which he is authorised by his licence to carry on and that licence holder has made a representation to the Department concerned before the expiration of one month from the date of the last publication of the notice mentioned in paragraph 2(a) of Schedule 6 to the Local Government Act (Northern Ireland) 1972, the Department concerned shall not make the vesting order unless the Department has certified—

- (a) that the land can be purchased and not replaced without serious detriment to the carrying on of those activities; or
- (b) that, if purchased, the land can be replaced by other land belonging to, or available for acquisition by, the licence holder without serious detriment to the carrying on of those activities.

SCHEDULE 4

Article 13(1).

OTHER POWERS, ETC., OF LICENCE HOLDERS

Interpretation

1.—(1) In this Schedule—

“controlled works” means any such works as are mentioned in paragraph 2(1) being works done under the right conferred by that paragraph;

“emergency works” means—

- (a) in relation to a licence holder, work arising from faults in any electric lines or electrical plant;
- (b) in relation to a government department for the purpose of paragraph 4 or 6, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause
 - (i) danger to persons or property, or
 - (ii) interference with the exercise of any functions conferred on that department;
- (c) in relation to a public telecommunications operator for the purpose of paragraph 4 or 6, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause
 - (i) danger to persons or property, or
 - (ii) the interruption of any service provided by the telecommunication system of the operator;

“plan” includes section;

“planning permission” means planning permission under Part IV of the Planning (Northern Ireland) Order 1991;

“public telecommunications operator” has the same meaning as in the Telecommunications Act 1984;

“road” has the same meaning as in the Roads (Northern Ireland) Order 1980;

“sewer” means a sewer as defined in the Water and Sewerage Services (Northern Ireland) Order 1973;

“telecommunication apparatus” and “telecommunication system” have the same meaning as in the Telecommunications Act 1984;

Status: This is the original version (as it was originally made).

“telecommunications code” means the code contained in Schedule 2 to the Telecommunications Act 1984.

(2) In this Schedule, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.

(3) For the purposes of paragraphs 2 to 7 and 9(4), “the arbitrator” means the arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.

Works involving breaking up roads, etc.

2.—(1) Subject to Article 15 of the Roads (Northern Ireland) Order 1980 and to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

- (a) the following kinds of works, that is to say, installing under, over, in, on, along or across any road and inspecting, maintaining, adjusting, repairing or altering—
 - (i) any electric lines or electrical plant; and
 - (ii) any structures for housing or covering any such lines or plant; and
- (b) any works requisite for or incidental to the purposes of any works falling within head (a), including for those purposes—
 - (i) opening or breaking up any road or any sewers, drains or tunnels within or under any road;
 - (ii) tunnelling or boring under any road; and
 - (iii) removing or using all earth and materials in or under any road.

(2) Nothing in this paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land not dedicated to the public use without the consent of the owners and occupiers thereof, so, however that a licence holder may alter any existing line or works in or under any land where the line or work has been placed under this Order or any other statutory provisions.

(3) Before commencing to execute any controlled works, the licence holder shall serve notice of not less than 7 working days of his intention to do so on the appropriate department, unless the works are emergency works.

(4) Where any controlled works will involve the installation of any electric lines or electrical plant or structures for housing or covering such lines or plant (not being works consisting solely of the installation of overhead electric lines to be flown from existing poles), one month or, in the case of electric lines, 7 working days before commencing to execute the works the licence holder shall—

- (a) serve a notice on the Department of the Environment of his intention to do so; and
- (b) give any further information required by that Department;

and the notice mentioned in head (a) shall be in addition to the notice required to be served under sub-paragraph (3).

(5) Where any controlled works will involve the closure of any road and the diversion of traffic from that road onto other roads, 2 months before commencing to execute the works the licence holder shall—

- (a) serve a notice on the Department of the Environment of his intention to do so; and
- (b) give any further information required by that Department;

and the notice in head (a) shall be in addition to the notices required to be served under sub-paragraphs (3) and (4).

(6) Subject to sub-paragraph (8), the licence holder shall not, unless the works are emergency works, execute any controlled works except—

- (a) under the superintendence of the appropriate department; and
- (b) in accordance with a plan—
 - (i) approved by the appropriate department or, as the case may be, the Department of the Environment; or
 - (ii) where any question respecting the plan has arisen and has not been agreed, determined by arbitration,

and the arbitrator may, on the application of that department, require the licence holder to make such temporary or other works as that department thinks necessary for guarding against any interruption of the drainage during the execution of any works which interfere with the sewer or drain.

(7) If the licence holder contravenes any provision of sub-paragraph (6), he shall make full compensation to the appropriate department or, as the case may be, the Department of the Environment for any loss or damage incurred by that department in consequence of that contravention.

(8) If the appropriate department on which notice is served under sub-paragraph (3) or, as the case may be, the Department of the Environment on which notice is served under sub-paragraph (4)—

- (a) fails to attend at the time fixed for the execution of the controlled works, after service of that notice; or
- (b) fails to approve the plan within 7 working days or fails to serve notice within that period on the licence holder requiring him to agree to the appointment of an arbitrator by whom any question which has arisen may be determined; or
- (c) refuses or neglects to superintend the operation,

the plan shall be deemed to have been approved or the licence holder may carry out the work specified in the notice without the superintendence of that department, as the case may require.

(9) When a licence holder opens or breaks up any road, sewer, drain or tunnel he shall with all convenient speed—

- (a) complete the work;
- (b) fill in the ground;
- (c) reinstate or make good the road, sewer, drain or tunnel; and
- (d) carry away the rubbish occasioned thereby,

and, without prejudice to Article 124 of the Road Traffic (Northern Ireland) Order 1981, shall at all times, whilst any road is opened or broken up—

- (i) cause it to be fenced or guarded; and
- (ii) cause a light sufficient for the warning of vehicles and pedestrians to be set up and maintained at night against or near it; and
- (iii) keep it in good repair for 12 months after replacing or making it good.

(10) If a licence holder delays or omits to carry out any work as mentioned in sub-paragraph (9), the appropriate department may cause to be executed the work so delayed or omitted, and the expense of executing that work shall be a debt recoverable summarily by that department from the licence holder.

(11) A licence holder shall do as little damage as possible in the exercise of the powers conferred by this paragraph and shall make compensation for any damage done in the exercise of those powers.

Status: This is the original version (as it was originally made).

(12) If a licence holder commences the execution of any works in contravention of sub-paragraph (3) or (4), 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.

(13) In this paragraph “appropriate department” means—

- (a) where any controlled works are to be executed in a road or to a sewer, the Department of the Environment;
- (b) where any controlled works are to be executed to a drain under the jurisdiction or control of the Department of Agriculture, that Department.

Alteration of apparatus, etc., under roads

3.—(1) Subject to sub-paragraph (2), a licence holder may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of—

- (a) any electric line or electrical plant under the control of another licence holder; or
- (b) any telecommunication apparatus used for the purposes of a telecommunication system which is operated by a person to whom the telecommunications code applies; or
- (c) any other apparatus (except any pipe forming part of any sewer);

under any road which interferes with the exercise of his powers under this Schedule.

(2) In the case of an alteration under this paragraph of any telecommunication apparatus installed for the purposes of a telecommunication system which is operated by a person to whom the telecommunications code applies, paragraph 23 of the telecommunications code will apply instead of sub-paragraphs (3) to (14).

(3) One month before commencing the alterations, except where the alterations are emergency works, the licence holder shall—

- (a) serve a notice on the person for the time being entitled to the electric lines or electrical plant or apparatus (in this paragraph referred to as “the owners”) describing the proposed alterations; and
- (b) give any further information required by the owners.

(4) The notice mentioned in sub-paragraph (3) shall contain a plan showing the manner in which it is intended that the alterations shall be made.

(5) Within 3 weeks from the service of the notice mentioned in sub-paragraph (3) upon any owners, the owners may require, by requisition served on the licence holder, that any question arising upon the notice as to the works, or to compensation in respect thereof, or any other question shall, in default of agreement, be determined by arbitration.

(6) Where—

- (a) no requisition is served on the licence holder; or
- (b) after any requisition has been served, any question required to be determined by arbitration has been so determined;

the licence holder may, upon paying or securing any compensation which he may be required to pay or secure, carry out the alterations specified in the notice, but subject in all respects to the provisions of this Schedule, and only in accordance with the notice served by him or such modifications thereof respectively as may have been determined by arbitration, or as may be agreed upon between the parties.

(7) At any time before the licence holder is entitled to commence any such alterations, the owners may serve a notice on the licence holder, stating that they desire to execute the alterations, and

where any such notice has been served on the licence holder, he shall not be entitled to execute the alterations, except—

- (a) where the licence holder has required the owners to execute the alterations, and the owners have refused or neglected to comply; or
- (b) where the alterations are emergency works.

(8) Where a notice such as is mentioned in sub-paragraph (7) has been served on the licence holder, he shall, not more than 48 hours and not less than 24 hours before the execution of the alterations is required to be commenced, serve on the owners a requisition stating the time when the alterations are required to be commenced, and the manner in which the alterations are required to be made.

(9) Upon receipt of any requisition, the owners may execute the alterations as required by the licence holder, subject to the restrictions and conditions, so far as they are applicable, to which the licence holder would be subject in executing the alterations.

(10) If the owners decline or, for 24 hours after the time when any such alterations are required to be commenced, neglect to comply with the requisition, the licence holder may execute the alterations in like manner as he might have done if notice had not been served on him under sub-paragraph (7) by the owners.

(11) Where any alterations are emergency works the licence holder may execute them without serving any requisition on the owners; but in that case the licence holder shall, within 24 hours after commencing to execute the alterations, give information thereof in writing to the owners.

(12) All expenses properly incurred by any owners in complying with any requisition of the licence holder under sub-paragraph (8) shall be a debt recoverable summarily by them from the licence holder.

(13) A licence holder shall do as little damage as possible in the exercise of the powers conferred by sub-paragraph (1) and shall make compensation for any damage done in the exercise of those powers.

(14) If the licence holder commences the execution of any work in contravention of sub-paragraph (3)(a), 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.

Alteration of electric lines or electrical plant under roads

4.—(1) A government department, public telecommunications operator, or other person (not being another licence holder) authorised under any statutory provision to exercise functions in relation to a road may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of any electric line or electrical plant under the control of a licence holder under that road which interferes with the exercise of those functions.

(2) Sub-paragraphs (3) to (13) of paragraph 3 shall apply for the purposes of sub-paragraph (1) of this paragraph as if—

- (a) any reference to the licence holder were a reference to the government department, public telecommunications operator or other person, as the case may require; and
- (b) any reference to the owners were a reference to the licence holder.

(3) If the public telecommunications operator or, as the case may be, the other person commences the execution of any work in contravention of paragraph 3(3)(a) as applied by sub-paragraph (2) of this paragraph, 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.

Status: This is the original version (as it was originally made).

Controlled works in a road near to apparatus

5.—(1) The following provisions of this paragraph apply where a licence holder requires to carry out any controlled works in a road near to—

- (a) any electric lines or electrical plant of any other licence holder; or
- (b) any telecommunication apparatus which is operated by a person to whom the telecommunications code applies; and
- (c) any other apparatus belonging to or under the jurisdiction or control of a government department or other person (not being a licence holder).

(2) The licence holder shall, unless it is otherwise agreed between the parties or the works are emergency works, serve on the other licence holder, the person to whom the telecommunications code applies, the government department or the other person, as the case may require, (in this paragraph referred to as “the owners”) not less than 7 working days' notice before commencing the works and the owners shall be entitled to superintend the work.

(3) The licence holder shall—

- (a) comply with any reasonable requirements made by the owners—
 - (i) for protecting from damage; and
 - (ii) for securing access to,
the owners' electric lines, electrical plant, telecommunication apparatus or other apparatus; and
- (b) if required by the owners, repair any damage that may be done.

(4) Where the licence holder finds it necessary to undermine but not alter the position of any owners' electric line, electrical plant, telecommunication apparatus or other apparatus he shall temporarily support it in position during the execution of the works, and before completion provide a suitable and proper foundation for it where so undermined.

(5) Where a licence holder lays any electric line crossing or liable to touch any apparatus belonging to the Department of the Environment or to any gas undertaking, the conducting portion of the electric line shall be effectively insulated in a manner approved by the Department, and the licence holder shall not, except with the consent of the Department of the Environment or, as the case may be, the gas undertaking, and of the Department—

- (a) lay the electric lines so as to come into contact with the apparatus; or
- (b) use the apparatus in connection with the supply of electricity.

(6) Any question arising under this paragraph shall, in default of agreement, be determined by arbitration.

(7) A licence holder shall do as little damage as possible in the exercise of the powers conferred by this paragraph and shall make compensation for any damage done in the exercise of those powers.

(8) If the licence holder commences the execution of any works in contravention of sub-paragraph (2), 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.

Works in a road near to electric lines or electrical plant

6.—(1) The following provisions of this paragraph apply where a government department, public telecommunications operator or other person (not being a licence holder) requires to carry out any works in a road for laying down or constructing any telecommunication apparatus or other apparatus near to any electric lines or electrical plant of a licence holder.

(2) Sub-paragraphs (2) to (7) of paragraph 5 shall apply for the purposes of sub-paragraph (1) of this paragraph as if—

- (a) any reference to the licence holder were a reference to the government department, public telecommunications operator or other person, as the case may require; and
- (b) any reference to the owners were a reference to the licence holder.

(3) If the public telecommunications operator or, as the case may be, the other person commences the execution of any works in contravention of paragraph 5(2) as applied by sub-paragraph (2) of this paragraph, 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.

Protection of railway undertaking and canal companies

7.—(1) In the execution of any controlled works, a licence holder shall not in any way cause damage to the railways, tunnels, arches, works or conveniences belonging to any railway undertaking or government department exercising jurisdiction or control over any canal (in this paragraph referred to as a “canal undertaking”), nor obstruct or interfere with the working of the traffic passing along any railway or canal.

(2) Where a licence holder proposes to open or break up any road which—

- (a) forms a level crossing; or
- (b) crosses over or under any works of a railway or canal undertaking,

the licence holder shall, unless the works are emergency works—

- (i) in addition to the notice which he is required to serve under paragraph 2(3), serve a like notice on the undertaking; and
- (ii) if and so far as the proposed works are likely to affect the structure of any bridge or other works which are vested in the undertaking, execute the works under the superintendence of the undertaking and in accordance with a plan approved by it.

(3) Any question respecting the plan mentioned in sub-paragraph 2(b)(ii) shall, in default of agreement, be determined by arbitration.

(4) If the undertaking mentioned in sub-paragraph (2)—

- (a) fails to attend at the time fixed for the execution of the proposed works, after the notice is served on it as so mentioned;
- (b) fails to approve the plan within 7 working days or fails to serve notice within that period on the licence holder requiring him to agree to the appointment of an arbitrator by whom any question which has arisen may be determined; or
- (c) refuses or neglects to superintend the operation,

the licence holder may carry out the work specified in the notice without the superintendence of that undertaking.

(5) If the licence holder executes any works in contravention of sub-paragraph (2)(i), 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.

(6) A licence holder shall do as little damage as possible in the exercise of the powers conferred by this paragraph and shall make compensation for any damage done in the exercise of those powers.

(7) In this paragraph “railway undertaking” means the Northern Ireland Railways Company Ltd.

Status: This is the original version (as it was originally made).

Emergency works

8.—(1) Where any person would be required to serve any notice in respect of any works under paragraphs 2 to 7 if the works were not emergency works, that person shall serve a notice in respect of the emergency works as soon as practicable after commencing the works.

(2) Failure to serve the notice required by sub-paragraph (1) shall be treated as a contravention of a requirement of the paragraph under which a notice would be required if the works were not emergency works.

Protection from interference

9.—(1) Subject to sub-paragraph (2), a licence holder who installs or alters, or changes the mode of operation of, any electric line or electrical plant shall take all reasonable precautions for securing that the operation of that line or plant does not interfere with the operation of any telecommunication apparatus which—

- (a) is under the control of a person to whom the telecommunications code applies; and
- (b) is not unusually sensitive to interference with its operation.

(2) In the case of any telecommunication apparatus which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (1) shall not apply in relation to—

- (a) any momentary interference with its operation; or
- (b) where it is installed in unreasonably close proximity to the electric line or electrical plant, any other interference with its operation.

(3) Sub-paragraphs (1) and (2) shall be read as also applying in the converse case of a person to whom the telecommunications code applies who installs or alters, or changes the mode of operation of, any telecommunication apparatus, and in such a case shall have effect as if—

- (a) any reference to the licence holder were a reference to that person;
- (b) any reference to an electric line or electrical plant were a reference to such apparatus; and
- (c) any reference to such apparatus under the control of a person to whom that code applies were a reference to such a line or such plant under the control of a licence holder.

(4) Any difference arising under this paragraph between a licence holder and a person to whom the telecommunications code applies shall be determined by arbitration.

(5) In this paragraph “momentary interference” means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

Acquisition of wayleaves

10.—(1) This paragraph applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to install and keep installed an electric line on, under or over any land; and
- (b) the owner or occupier of the land, having been given a notice under sub-paragraph (3),—
 - (i) has failed to give the wayleave before the end of that period; or
 - (ii) has given the wayleave subject to terms and conditions to which the licence holder objects;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to install and keep installed the electric line on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the electric line.

(2) This paragraph also applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep an electric line installed on, under or over any land; and
- (b) the owner or occupier of the land has given notice to the licence holder under paragraph 12(2) requiring him to remove the electric line;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to keep the electric line installed on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the electric line.

(3) The notice referred to in sub-paragraph (1)(b) shall—

- (a) state the licence holder’s intention to install an electric line;
- (b) give a description of the nature of the line and of the position and manner in which it is intended to be installed; and
- (c) require the owner or occupier of the land to give the necessary wayleave within a period (not being less than 21 days) specified in the notice.

(4) Subject to sub-paragraphs (5) to (7), the Department may, on the application of the licence holder, grant the necessary wayleave subject to such terms and conditions as the Department thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(5) Subject to sub-paragraph (6), the Department shall not grant a wayleave under sub-paragraph (4) in any case where—

- (a) the land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and
- (b) the line is to be installed on or over the land.

(6) Sub-paragraph (5) shall not apply to any land in respect of which a wayleave has been given before the coming into operation of that sub-paragraph.

(7) Before granting a necessary wayleave, the Department shall afford—

- (a) the occupier of the land; and
- (b) where the occupier is not also the owner of the land, the owner,

an opportunity of being heard by a person appointed by the Department.

(8) A necessary wayleave granted under this paragraph shall bind any person who is at any time the owner or occupier of the land.

(9) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, he shall be deemed to have an estate in that land for the purposes of section 40 of the Mineral Development Act (Northern Ireland) 1969.

(10) In this paragraph “dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part.

Status: This is the original version (as it was originally made).

Provisions supplementary to paragraph 10

- 11.**—(1) Where a wayleave is granted to a licence holder under paragraph 10—
- (a) the occupier of the land; and
 - (b) where the occupier is not also the owner of the land, the owner,
- may recover from the licence holder compensation in respect of the grant.
- (2) Where in the exercise of any right conferred by such a wayleave any damage is caused to property, the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.
- (3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.
- (4) Any question of disputed compensation under this paragraph shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply to any such determination.

Temporary continuation of wayleaves

- 12.**—(1) This paragraph applies where at any time such a wayleave as is mentioned in paragraph 10 (whether granted under that paragraph or by agreement between the parties)—
- (a) is determined by the expiration of a period specified in the wayleave;
 - (b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave; or
 - (c) by reason of a change in the ownership or occupation of the land after the granting of the wayleave, ceases to be binding on the owner or occupier of the land.
- (2) The owner or occupier of the land may—
- (a) in a case falling within sub-paragraph (1)(a), at any time after or within 3 months before the end of the period specified in the wayleave;
 - (b) in a case falling within sub-paragraph (1)(b), at any time after the wayleave has been terminated by him; or
 - (c) in a case falling within sub-paragraph (1)(c), at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that sub-paragraph,
- give to the licence holder a notice requiring him to remove the electric line from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.
- (3) Where within the period of 3 months from the date of the notice under sub-paragraph (2) the licence holder makes neither—
- (a) an application for the grant of the necessary wayleave under paragraph 10; nor
 - (b) an application for a vesting order under paragraph 1 of Schedule 3 in respect of the land,
- the licence holder shall comply with the notice at the end of that period.
- (4) Where—
- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for the grant of the necessary wayleave under paragraph 10; and
 - (b) that application is refused by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

(5) Where—

- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for a vesting order under paragraph 1 of Schedule 3 in respect of the land; and
- (b) that order is not made by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

Substations

13.—(1) This paragraph applies where—

- (a) under an agreement made before 1 April 1982, a transformer substation or a switching substation not exceeding 33 kilovolts nominal capacity was installed and kept installed on any land; and
- (b) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep that substation installed on that land; and
- (c) the agreement—
 - (i) is determined by the expiration of the period specified in the agreement;
 - (ii) is terminated by the owner or occupier of the land in accordance with a term contained in the agreement; or
 - (iii) by reason of a change in the ownership or occupation of the land after the granting of the agreement, ceases to be binding on the owner or occupier of the land.

(2) The owner or occupier of the land may—

- (a) in a case falling within sub-paragraph (1)(c)(i), at any time after or within 3 months before the end of the period specified in the agreement;
- (b) in a case falling within sub-paragraph (1)(c)(ii), at any time after the agreement has been terminated by him; or
- (c) in a case falling within sub-paragraph (1)(c)(iii), at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that sub-paragraph,

give to the licence holder a notice requiring him to remove the substation from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.

(3) Where—

- (a) within the period of 3 months from the date of the notice under sub-paragraph (2) the licence holder makes an application for a vesting order under paragraph 1 of Schedule 3 in respect of the land; and
- (b) that order is not made by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

Status: This is the original version (as it was originally made).

(4) Where in compliance with a notice under this paragraph any damage is caused to property by the removal of any substation, the licence holder shall make good or pay compensation in respect of that damage.

(5) Any question of disputed compensation under this paragraph shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply to any such determination.

Felling and lopping of trees, etc.

14.—(1) This paragraph applies where any tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by a licence holder as—

- (a) to obstruct or interfere with the installation, maintenance or working of the line or plant; or
- (b) to constitute an unacceptable source of danger (whether to children or to other persons);

and in this paragraph “the land” means the land on which the tree is growing.

(2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned in sub-paragraph (1) (a) or (b), subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.

(3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) shall also be served on the owner.

(4) If within 21 days from the giving of a notice under sub-paragraph (2)—

- (a) the requirements of the notice are not complied with; and
- (b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5),

the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b).

(5) If, within 21 days from the giving of a notice under sub-paragraph (2), the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Department.

(6) On a reference under sub-paragraph (5), the Department, after giving the parties an opportunity of being heard by a person appointed by the Department, may make such order as the Department thinks just, and any such order—

- (a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b); and
- (b) may determine any question as to what expenses (if any) are to be paid.

(7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6), he shall—

- (a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;
- (b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier.

(8) In this paragraph “tree” includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

Entry on land for purposes of exploration

15.—(1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on, a person authorised in writing by a licence holder may, at any reasonable time, enter the land for the purpose of survey and valuation.

(2) A person authorised to enter upon any land under this paragraph shall not demand to do so as of right unless—

- (a) 14 days' notice of the intended entry has been given to the occupier; and
- (b) if required to do so, he has produced evidence of his authority.

(3) The powers conferred by this paragraph shall not be exercisable in relation to—

- (a) land which is covered by a dwelling or will be so covered on the assumption that any planning permission which is in force is acted on; or
- (b) land which is covered by a building (other than a dwelling) or will be so covered on the assumption that any planning permission which is in force is acted on except—
 - (i) with consent given by or on behalf of the occupier of the land; or
 - (ii) where the occupier has refused his consent, with the consent of the Department.

(4) The power to survey land conferred by this paragraph includes power to search and bore for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—

- (a) notice of the proposed works is included in the notice given under sub-paragraph (2); and
- (b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, with the consent of the Department.

(5) In this paragraph—

“building”, except in the definition of “dwelling”, includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building;

“dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling;

“statutory undertakers” has the same meaning as in the Planning (Northern Ireland) Order 1991.

Provisions supplementary to paragraphs 14 and 15

16.—(1) Any person who intentionally obstructs a person acting in the exercise of any power conferred by or under paragraph 14 or 15 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where in the exercise of any power conferred by or under paragraph 14 or 15 any damage is caused to property the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.

(3) Any question of disputed compensation under sub-paragraph (2) shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply to any such determination.

Modification of paragraphs 2 to 9

17. The provisions of paragraphs 2 to 9 may be modified by regulations.

SCHEDULE 5

Article 13(5).

WATER RIGHTS FOR HYDRO-ELECTRIC GENERATING STATIONS

1. Without prejudice to Schedule 6 to the Drainage (Northern Ireland) Order 1973, a person who holds a licence under Article 10(1)(a) shall not abstract or divert from any waterway and use such water as may be necessary for the purposes of operating a generating station wholly or mainly driven by water unless he has obtained from the Department of the Environment an authorisation to do so.

2. On the application of such a licence holder the Department of the Environment may authorise him to abstract and divert and use the water as mentioned in paragraph 1; but he shall do as little damage as possible in the exercise of the powers conferred by the authorisation and shall make compensation for any damage done in the exercise of those powers.

3. Where the abstraction, diversion and use will, in the opinion of the Department of the Environment—

- (a) substantially reduce the flow of water in any waterway, that Department shall in the authorisation specify the extent to which and the circumstances in which water may be taken;
- (b) substantially reduce the level of water in any waterway, that Department shall in the authorisation either—
 - (i) specify the extent to which and the circumstances in which water may be taken; or
 - (ii) specify the quantity of compensation water to be provided by the person;
- (c) impound any waterway, that Department shall in the authorisation specify the quantity of compensation water to be provided by the person.

4. In this Schedule, “compensation water” means a flow of water, on such conditions and by such means as the Department of the Environment may specify in the authorisation, for the benefit of riparian owners and other owners of land or fishings affected by the exercise of the powers conferred by the authorisation.

5. In deciding whether to give the authorisation or in specifying the quantity of any compensation water to be provided under the authorisation, the Department of the Environment shall have regard to all the circumstances of the particular case, including—

- (a) the interest of public health;
- (b) the character of the waterway, and the flow, or as the case may be the level, of water in it;
- (c) the extent to which the waterway is, or may in future be, used for industrial purposes or for the purposes of any public undertaking or for fisheries, water supply, agriculture, transport and navigation; and
- (d) the effect on land drainage or on any canal or inland navigation of any alteration in the flow or level of water in the waterway,

and shall secure, so far as practicable, the protection of the rights of riparian owners and of other owners of land or fishings.

6. Any question of disputed compensation under paragraph 2 shall be referred to and determined by the Lands Tribunal; and Articles 4 and 5 of the Land Compensation (Northern Ireland) Order 1982 shall apply to any such determination.

7. An applicant for authorisation under paragraph 2 shall supply to the Department of the Environment such particulars as that Department may require and shall publish once at least in each of 2 successive weeks in one or more newspapers circulating in the area of the proposed abstraction a notice—

- (a) stating the effect of the proposed authorisation;
- (b) indicating the Irish Grid references of the proposed points of abstraction and discharge;
- (c) specifying a place, in or near the said area, where a copy of any relevant map or plan may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice; and
- (d) stating that within the said period any person may by notice to the Department of the Environment object to the application.

8. Not later than the date on which the said notice is first published, the applicant shall serve a copy of the notice upon—

- (a) the Department of Agriculture;
- (b) the Foyle Fisheries Commission where the abstraction is to be made in the Londonderry Area within the meaning of section 2(1) of the Foyle Fisheries Act (Northern Ireland) 1952;
- (c) the Fisheries Conservancy Board for Northern Ireland where the abstraction is to be made outside that Area;
- (d) any public undertakers known by the applicant to be authorised by any statutory provision to take or use water from any such waterway.

9. The applicant shall also publish in the Belfast Gazette a notice—

- (a) stating that he is about to apply for authorisation under paragraph 2;
- (b) indicating the Irish Grid reference of the proposed points of abstraction and discharge;
- (c) specifying a place where any relevant map or plan may be inspected; and
- (d) giving the name and date of issue of a newspaper in which the notice explaining the effect of the authorisation applied for will be found.

10. If before the expiration of 28 days from the date of the first publication of the notice under paragraph 7 or of 25 days from the publication of the said notice in the Belfast Gazette an objection is received by the Department of the Environment from any person on whom a notice is required to be served under paragraph 8, or from any other person appearing to that Department to be affected by the application, and the objection is not withdrawn, that Department before giving that authorisation, may cause an inquiry to be held by the Water Appeals Commission for Northern Ireland and where that Department causes such an inquiry to be held, the power under Article 8(4) of the Water and Sewerage Services (Northern Ireland) Order 1973 to substitute a new decision or vary the decision of the Water Appeals Commission may be exercised by that Department.

11. The expenses incurred by the Department of the Environment in connection with an authorisation under paragraph 2 shall be paid by the applicant; and that Department may, in a case where there are 2 or more applicants, apportion such expenses between them.

12. In paragraphs 1 to 8 “waterway” has the same meaning as in the Water Act (Northern Ireland) 1972.

SCHEDULE 6

Article 27.

THE PUBLIC ELECTRICITY SUPPLY CODE

Recovery of electricity charges, etc.

1.—(1) Subject to sub-paragraph (2), a public electricity supplier may recover from a tariff customer any charges due to him in respect of the supply of electricity, or in respect of the provision of any electricity meter, electric line or electrical plant.

(2) A public 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.

(3) If a tariff customer quits any premises at which electricity has been supplied to him by a public electricity supplier without giving notice thereof to the supplier so that it is received by the supplier at least 2 working days before he quits the premises, he shall be liable to pay the supplier all charges in respect of the supply of electricity to the premises accruing due up to whichever of the following first occurs, namely—

- (a) the second working day after he gives such notice to the supplier;
- (b) the next day on which the register of any meter falls to be ascertained; or
- (c) the day from which any subsequent occupier of the premises requires the supplier to supply electricity to the premises.

(4) Sub-paragraph (3), or a statement of the effect thereof, shall be endorsed upon every demand note for electricity charges payable to a public electricity supplier by a tariff customer.

(5) If a tariff customer quits any premises at which electricity has been supplied to him by a public electricity supplier without paying all charges due from him in respect of the supply, or the provision of any electricity meter, electric line or electrical plant for the purposes of the supply, the supplier—

- (a) may refuse to furnish him with a supply of electricity at any other premises until he pays the amount due; but
- (b) shall not be entitled to require payment of that amount from the next occupier of the premises.

(6) If a tariff customer has not, within the requisite period, paid all charges due from him to a public electricity supplier in respect of the supply of electricity to any premises, or the provision of any electricity meter, electric line or electrical plant for the purposes of that supply, the supplier, after the expiration of not less than 2 working days' notice of his intention, may—

- (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.

(7) In sub-paragraph (6) “the requisite period” means—

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

(8) The powers conferred by sub-paragraph (6) shall also be exercisable at any time which, in relation to a tariff customer, is after the effective date for the purposes of Article 343 of the Insolvency (Northern Ireland) Order 1989 (supplies of gas, water, electricity etc. to insolvent companies).

(9) The powers conferred by sub-paragraph (6) 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.

(10) In this paragraph a reference to the provision of any electric line or item of electrical plant is a reference to the provision of such a line or item by the installation of a new one or by the modification of an existing one.

Restoration of supply by supplier

2.—(1) Where a public electricity supplier has cut off the supply of electricity to any premises in consequence of any default on the part of a tariff customer, the supplier shall be under an obligation to resume the supply of electricity before the end of the period of 2 working days from the day on which the requirements of sub-paragraph (2) are satisfied.

(2) The requirements of this sub-paragraph are that the customer in default—

- (a) has made good the default;
- (b) has paid the reasonable expenses of disconnecting and re-connecting the supply; and
- (c) has given such security as is mentioned in Article 23(1).

(3) The obligation imposed by sub-paragraph (1) shall be a duty owed to any person who may be affected by a failure to comply with the obligation.

(4) Where a duty is owed under sub-paragraph (3) to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit of that person.

(5) In any proceedings brought against a public electricity supplier under sub-paragraph (4), it shall be a defence for the supplier to prove that he took all reasonable steps and exercised all due diligence to avoid failing to comply with the obligation imposed by sub-paragraph (1).

(6) Without prejudice to any right which any person may have under sub-paragraph (4) to bring civil proceedings in respect of any failure to comply with the obligation imposed by sub-paragraph (1), compliance with that obligation shall be enforceable by civil proceedings by the Director for an injunction or for any other appropriate relief.

Restoration of supply without consent

3.—(1) Where a supply of electricity to any premises has been cut off by a public electricity supplier otherwise than in the exercise of a power conferred by regulations under Article 32, no person shall, without the consent of the supplier, restore the supply.

(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 may again cut off the supply.

Damage to electrical plant, etc.

4.—(1) If any person intentionally or by culpable negligence damages or allows to be damaged—

- (a) any electrical plant or electric line belonging to a public electricity supplier; or
- (b) any electricity meter so belonging,

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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.

(2) Where an offence has been committed under sub-paragraph (1)(a), the supplier may discontinue the supply of electricity to the person so offending until the matter has been remedied.

(3) Where an offence has been committed under sub-paragraph (1)(b), the supplier—

(a) may discontinue the supply of electricity to that person so offending until the matter has been remedied; and

(b) remove the meter as respects which the offence was committed.

(4) Where a public electricity supplier removes a meter under sub-paragraph (3), he shall keep it safely until the Director authorises him to destroy or otherwise dispose of it.

Entry during continuance of supply

5.—(1) Any person authorised by a public electricity supplier may at all reasonable times, on the production of some duly authenticated document showing his authority, enter any premises to which a supply of electricity is being given by the public electricity supplier, or by a private electricity supplier (wholly or partly) through the public electricity supplier's electric lines and electrical plant, for any of the following purposes, namely—

(a) inspecting any electric line or electrical plant belonging to the supplier;

(b) 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;

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

(2) Except where a supply of electricity is being given to the premises by a private electricity supplier (wholly or partly) through the public electricity supplier's electric lines and electrical plant, sub-paragraph (1)(a) and (b) does not apply if—

(a) the customer has applied in writing to the supplier for the supplier to cease to supply electricity to the premises; and

(b) the supplier has failed to do so within a reasonable time.

(3) Sub-paragraph (1)(c) does not apply in relation to the removal of a meter unless 2 working days' notice is given to the occupier, or the owner of the premises if they are unoccupied.

Entry on discontinuance of supply

6.—(1) Where a public electricity supplier is authorised by paragraph 4(3) of this Schedule or 12(3) of Schedule 7—

(a) to discontinue the supply of electricity to any premises; and

(b) to remove the electricity meter as respects which the offence under that paragraph was committed,

any person authorised by the supplier may at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of disconnecting the supply and removing the meter.

(2) Where—

(a) a public electricity supplier is authorised by any other provision of this Order or of regulations made under it (including any such provision as applied by such an agreement

as is mentioned in Article 25(1)) to cut off or discontinue the supply of electricity to any premises;

- (b) a person occupying premises supplied with electricity by a public electricity supplier, or by a private electricity supplier (wholly or partly) through a public electricity supplier's electric lines and electrical plant, ceases to require such a supply;
- (c) a person entering into occupation of any premises previously supplied with electricity by a public electricity supplier, or by a private electricity supplier (wholly or partly) through a public electricity supplier's electric lines and electrical plant, does not require such a supply; or
- (d) a person entering into occupation of any premises previously supplied with electricity through a meter belonging to a public electricity supplier does not hire or borrow that meter,

any person authorised by the supplier, after one working day's notice to the occupier, or to the owner of the premises if they are unoccupied, may at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of disconnecting the supply or removing any electrical plant, electric line or electricity meter.

Entry for replacing, repairing or altering lines or plant

7.—(1) Any person authorised by a public electricity supplier, after 5 working days' notice to the occupier of any premises, or to the owner of any premises which are unoccupied, may at all reasonable times, on production of some duly authenticated document showing his authority, enter the premises for the purpose of—

- (a) placing a new electric line or 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 any electric line or electrical plant entry may be made under sub-paragraph (1) without the notice required to be given by that sub-paragraph, but the notice shall then be given as soon as possible after the occurrence of the emergency.

Exercise of powers of entry

8.—(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 9;

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 10(1).

Warrant to authorise entry

9.—(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

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- (b) that a person authorised by a public electricity supplier would, apart from paragraph 8, 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 6 an application for admission, or the serving of a notice under paragraph 6(2), 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

- 10.**—(1) Where, under any powers conferred by this Schedule, entry is made on any premises by a person authorised by a public electricity supplier—
- (a) he shall ensure that the premises are left no less secure by reason of the entry, and
 - (b) the supplier 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

- 11.** Any person who intentionally obstructs a person authorised by a public electricity supplier 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

- 12.** Any electrical plant, electric line or electricity meter owned by or let for hire or lent to a customer by a public electricity supplier and marked or impressed with a sufficient mark or brand indicating the supplier as the owner thereof—
- (a) shall continue to be the property of the supplier 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; and
 - (c) shall not be taken in execution under proceedings in bankruptcy against the person in whose possession they may be.

SCHEDULE 7

Article 34.

USE, ETC., OF ELECTRICITY METERS

Interpretation

1. In this Schedule—

“agreed margins of error” means any margins of error agreed between the electricity supplier and the customer;

“approved” means approved by or under regulations made under paragraph 3;

“electricity supplier” means a person authorised by a licence or exemption to supply electricity;

“exempt supply” means a supply of electricity to any premises where—

- (a) the premises are not premises used wholly or mainly for domestic purposes; or
- (b) the electricity supplier or the customer is a person authorised by an exemption to supply electricity to those premises;

“prescribed margins of error” means margins of error by reference to which standards may be prescribed as mentioned in paragraph 6(2).

Consumption to be ascertained by appropriate meter

2.—(1) Where a customer of an electricity supplier is to be charged for his supply wholly or partly by reference to the quantity of electricity supplied, the supply shall be given through, and the quantity of electricity shall be ascertained by, an appropriate meter.

(2) The meter shall be provided—

- (a) by the electricity supplier, whether by way of sale, hire or loan; or
- (b) if agreed by the parties in the case of a meter used or intended to be used in connection with an exempt supply, by the customer.

(3) The meter shall be installed on the customer’s premises in a position determined by the electricity supplier, unless in all the circumstances it is more reasonable to place it outside those premises or in some other position.

(4) The electricity supplier may require the replacement of any meter provided and installed in accordance with sub-paragraphs (2) and (3) where its replacement—

- (a) is necessary to secure compliance with this Schedule or any regulations made under it; or
- (b) is otherwise reasonable in all the circumstances;

and any replacement meter shall be provided and installed in accordance with those sub-paragraphs.

(5) If the customer refuses or fails to take his supply through an appropriate meter provided and installed in accordance with sub-paragraphs (2) and (3), the supplier may refuse to give or may discontinue the supply.

(6) For the purposes of this paragraph a meter is an appropriate meter for use in connection with any particular supply if it is of a pattern or construction which, having regard to the terms on which the supply is to be charged for, is particularly suitable for such use.

(7) Article 26 shall apply in relation to any dispute arising under this paragraph between a public electricity supplier and a customer as if it were a dispute arising under Articles 19 to 25.

(8) Pending the determination under Article 26 of any dispute arising under this paragraph, the meter and its provision and installation shall be such as the Director may direct; and directions under this sub-paragraph may apply either in cases of particular descriptions or in particular cases.

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(9) Part II shall apply as if any duty or other requirement imposed on a public electricity supplier by directions under sub-paragraph (8) were imposed by directions under Article 26.

Restrictions on use of meters

3.—(1) No meter shall be used for ascertaining the quantity of electricity supplied by an electricity supplier to a customer unless the meter—

- (a) is of an approved pattern or construction and is installed in an approved manner; and
- (b) subject to sub-paragraph (2), is certified under paragraph 6.

(2) Sub-paragraph (1)(b) shall not apply to a meter used in connection with an exempt supply if the electricity supplier and the customer have agreed in writing to dispense with the requirements of that paragraph.

(3) Regulations under this paragraph may provide—

- (a) for determining the fees to be paid in connection with applications for approvals under the regulations;
- (b) for revoking such an approval to any particular pattern or construction of meter and requiring meters of that pattern or construction which have been installed to be replaced with meters of an approved pattern or construction within a prescribed period;
- (c) for revoking such an approval to any particular manner of installation and requiring meters which have been installed in that manner to be installed in an approved manner within such a period.

4.—(1) If an electricity supplier supplies electricity through a meter which is used for ascertaining the quantity of electricity supplied and—

- (a) is not of an approved pattern or construction or is not installed in an approved manner; or
- (b) in the case of a meter to which paragraph 3(1)(b) applies, is not certified under paragraph 6,

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.

(2) Where the commission by any person of an offence under this paragraph is due to the act of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence under this sub-paragraph whether or not proceedings are taken against the first-mentioned person.

(3) In any proceedings in respect of an offence under this paragraph it shall be a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) No proceedings shall be instituted in respect of an offence under this paragraph except by or on behalf of the Director.

Meter examiners

5.—(1) The Director shall appoint competent and impartial persons as meter examiners for the purposes of this Schedule.

(2) There shall be paid to meter examiners such remuneration and such allowances as may be determined by the Director with the approval of the Department of Finance and Personnel.

(3) Such pensions as may be so determined may be paid to or in respect of such examiners.

(4) All fees payable in respect of the examination, testing and certification of meters by meter examiners shall be paid to the Director and any sums received by him under this sub-paragraph shall be paid into the Consolidated Fund.

Certification of meters

6.—(1) Subject to sub-paragraph (2), a meter may be certified—

- (a) by a meter examiner appointed under paragraph 5; or
- (b) by a person who is authorised to certify meters of that description by or under regulations made under this paragraph;

and in this paragraph “examiner” means a meter examiner or a person so authorised.

(2) No meter shall be certified unless the examiner is satisfied—

- (a) that the meter is of an approved pattern or construction; and
- (b) that the meter conforms to such standards (including standards framed by reference to margins of error) as may be prescribed.

(3) An examiner may certify any meter submitted to him, notwithstanding that he has not himself examined or tested it, if—

- (a) the meter is submitted to him by a public electricity supplier or by a person authorised by the Director for the purposes of this sub-paragraph;
- (b) the meter is accompanied by a report stating that the meter has been examined and tested by the person submitting it and containing such other information as may be prescribed;
- (c) the examiner considers that the report indicates that the meter is entitled to be certified;
- (d) the meter is one of a number submitted at the same time by the same person,

and the examiner has himself examined and tested as many of those meters as he may consider sufficient to provide a reasonable test of all of them.

(4) Regulations under this paragraph may include provision—

- (a) for the termination of certification in the case of meters which no longer conform to the prescribed standards and in such other cases as may be prescribed;
- (b) for determining the fees to be paid for examining, testing and certifying meters, and the persons by whom they are to be paid;
- (c) as to the procedure to be followed in examining, testing and certifying meters;
- (d) for determining the fee to be paid in respect of any authorisation under sub-paragraph (1) or (3);
- (e) for imposing conditions on any such authorisation; and
- (f) for withdrawing any such authorisation before the end of any period for which it is given if any of those conditions is not satisfied.

Apparatus for testing, etc., of meters

7.—(1) It shall be the duty of a person to whom this paragraph applies, that is to say, a public electricity supplier or a person authorised by the Director for the purposes of paragraph 6(3)—

- (a) to provide and maintain such apparatus for the examination, testing and regulation of meters, and such apparatus for the sealing and unsealing of meters, as may be specified by a direction of the Director;

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- (b) to use apparatus so provided and maintained to carry out such examination, testing and regulation of meters, or to seal or unseal meters in such circumstances, as may be so specified; and
- (c) to keep such records and make such reports of things done under head (b) as may be so specified.

(2) It shall also be the duty of a person to whom this paragraph applies to afford to meter examiners, acting in the exercise of their functions under this Schedule, all necessary facilities for the use of apparatus provided and maintained under sub-paragraph (1).

(3) If the Director considers that any person to whom this paragraph applies has made satisfactory arrangements whereby apparatus provided by some other person is available for the examination, testing or regulation of the first mentioned person's meters, the Director may direct that this paragraph shall not apply to that person to such extent as may be specified in the direction.

(4) Any 2 or more persons to whom this paragraph applies may with the approval of the Director enter and carry into effect arrangements whereby apparatus provided by one or more of the parties is to be available to all or any of them for the purposes of fulfilling their obligations under this paragraph.

(5) Any public electricity supplier who provides apparatus under such arrangements as are mentioned in sub-paragraph (4) shall be under the same obligation under this paragraph, in relation to the meters of any public electricity supplier for whose benefit the apparatus is so made available, as he is or would be under in relation to meters measuring electricity supplied by him.

Testing, etc., of meters

8.—(1) It shall be the duty of a meter examiner, on being required to do so by any person and after giving notice to such persons as may be prescribed—

- (a) to examine and test any meter used or intended to be used for ascertaining the quantity of electricity supplied to any premises;
- (b) to determine whether it is of an approved pattern or construction and, if it is installed for use, whether it is installed in an approved manner;
- (c) to determine whether it is in proper order for ascertaining the quantity of electricity supplied within the prescribed margins of error and, if it has been in use and there is a dispute as to whether it registered correctly at any time, to determine if possible whether it registered within those margins at that time; and
- (d) to make a written report of his conclusions as to the matters mentioned in heads (b) and (c).

(2) If a meter examiner determines that a meter is, or was at any time, operating outside the prescribed margins of error, he shall if possible give an opinion as to—

- (a) any period for which the meter has or may have been so operating; and
- (b) the accuracy (if any) with which it was or may have been operating for any such period.

(3) Regulations under this paragraph may make provision for determining the fees to be paid for examining and testing meters, and the persons by whom and the circumstances in which they are to be paid.

(4) In relation to a meter used or intended to be used in connection with an exempt supply, this paragraph shall have effect as if any reference to the prescribed margins of error included a reference to any margins of error agreed between the electricity supplier and the customer.

9.—(1) This paragraph applies where there is a genuine dispute as to the accuracy of a meter used for ascertaining the quantity of electricity supplied to any premises and notice of the dispute—

- (a) is given to the electricity supplier by the customer, or to the customer by the electricity supplier; or
 - (b) is given to the electricity supplier and to the customer by any other person interested.
- (2) Except with the approval of a meter examiner and, if he so requires, under his supervision, the meter shall not be removed or altered by the supplier or the customer until after the dispute is resolved by agreement or the meter is examined and tested under paragraph 8, whichever first occurs.
- (3) If the supplier or the customer removes or alters the meter in contravention of subparagraph (2), he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Presumptions and evidence

10.—(1) This paragraph applies to meters used for ascertaining the quantity of electricity supplied to any premises.

(2) The register of a meter to which this paragraph applies shall be admissible in any proceedings as evidence of the quantity of electricity supplied through it.

(3) Where electricity has been supplied for any period through such a meter which is of an approved pattern or construction and is installed in an approved manner, the register of the meter shall be presumed to have been registering for that period—

- (a) within the prescribed margins of error; and
- (b) in the case of a meter used in connection with an exempt supply, within any agreed margins of error,

unless the contrary is proved.

(4) Where a meter to which this paragraph applies has been operating for any period—

- (a) within the prescribed margins of error; and
- (b) in the case of a meter used in connection with an exempt supply, within any agreed margins of error,

the meter shall be conclusively presumed to have been correctly registering for that period the quantity of electricity supplied through it.

(5) The report of a meter examiner on any question relating to such a meter shall be admissible in evidence in any proceedings in which that question is raised; and any conclusions in the report as to the accuracy of the meter when it was tested shall be presumed to be correct unless the contrary is proved.

Meters to be kept in proper order

11.—(1) A customer of an electricity supplier shall at all times, at his own expense, keep any meter belonging to him in proper order for correctly registering the quantity of electricity supplied to him; and in default of his doing so the supplier may discontinue the supply of electricity through that meter.

(2) An electricity supplier shall at all times, at his own expense, keep any meter let for hire or lent by him to any customer in proper order for correctly registering the quantity of electricity supplied and, in the case of pre-payment meters, for operating properly on receipt of the necessary payment.

(3) An electricity supplier may remove, inspect and re-install any meter by which the quantity of electricity supplied by him to a customer is registered, and shall, while any such meter is removed, fix a substituted meter on the premises; and the cost of removing, inspecting and re-installing a meter and of fixing a substituted meter shall be defrayed by the supplier.

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(4) Sub-paragraphs (2) and (3) are without prejudice to any remedy the supplier may have against the customer for failure to take proper care of the meter.

Interference with meters

12.—(1) If any person intentionally or by culpable negligence—

- (a) alters the register of any meter used for measuring the quantity of electricity supplied to any premises by an electricity supplier; or
- (b) prevents any such meter from duly registering the quantity of electricity supplied,

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.

(2) Where any person is prosecuted for an offence under sub-paragraph (1), the possession by him of artificial means for causing an alteration of the register of the meter or, as the case may be, the prevention of the meter from duly registering shall, if the meter was in his custody or under his control, be prima facie evidence that the alteration or prevention was intentionally caused by him.

(3) Where an offence under sub-paragraph (1) has been committed, the supplier may discontinue the supply of electricity to the premises until the matter has been remedied and remove the meter in respect of which the offence was committed.

(4) Where an electricity supplier removes a meter under sub-paragraph (3), he shall keep it safely until the Director authorises him to destroy or otherwise dispose of it.

Special provision for pre-payment meters

13.—(1) A customer of an electricity supplier who takes his supply through a pre-payment meter or other device shall be under a duty to take all reasonable precautions for the safekeeping of any money or tokens which are inserted into that meter or device.

(2) A pre-payment meter or other device shall not be used to recover any sum owing to an electricity supplier otherwise than in respect of the supply of electricity, the provision of an electric line or electrical plant or the provision of the meter or device.

SCHEDULE 8

Article 39(8).

CONSENTS UNDER ARTICLES 39 AND 40

Applications for consent

1.—(1) An application for a consent under Article 39 or 40 shall be in writing and shall describe by reference to a map the land to which the application relates, that is, the land—

- (a) on which the generating station is proposed to be constructed, extended or operated; or
- (b) across which the electric line is proposed to be installed or kept installed.

(2) An application for a consent under Article 40 shall also state—

- (a) the length of the proposed line and its nominal voltage; and
- (b) whether all wayleaves have been agreed with owners and occupiers of land proposed to be crossed by the line,

and shall be supplemented, if the Department so directs, by such additional information as may be specified in the direction.

(3) Regulations may make provision for determining the fees to be paid on applications for consent under Article 39 or 40, and the circumstances in which they are to be paid.

Special provisions as to consents under Article 40

2.—(1) Where an application for consent under Article 40 states that all wayleaves have not been agreed with owners and occupiers of land proposed to be crossed by the electric line, the Department may—

- (a) give notice to the applicant that the Department does not intend to proceed with the application until the Department is satisfied, with respect to all the land over which wayleaves have not been agreed, that the applicant has applied to the Department for consent under paragraph 10 (acquisition of wayleaves) of Schedule 4; or
- (b) grant consent subject to the condition (either in respect of the whole of the line or in respect of any part of it specified in the consent) that the work is not to proceed until the Department has given permission.

(2) In determining at any time whether to give permission for any work to proceed, either generally or in respect of any part of the line, the Department—

- (a) shall have regard to the extent to which the wayleaves have been agreed by that time; and
- (b) in so far as any such wayleaves have not then been agreed in respect of any part of the line, shall take into account any prejudicial effect which, in the opinion of the Department, the giving of permission (whether in respect of that part or of any adjacent part of the line) might have on any subsequent proceedings relating to the outstanding wayleaves.

SCHEDULE 9

Article 41.

PRESERVATION OF AMENITY AND FISHERIES

1.—(1) In formulating any relevant proposals, a licence holder or a person authorised by exemption to generate or supply electricity—

- (a) shall have regard to the need to conserve the natural beauty and amenity of the countryside and the need to protect (so far as reasonably practicable) flora, fauna and geological and physiographical features of the countryside and the need to protect sites, buildings and objects of architectural, historic or archaeological interest from any harmful effects which might result from such proposals; and
- (b) shall do what he reasonably can to mitigate any effect which the proposals would have on the natural beauty of the countryside or on any such flora, fauna, features, sites, buildings or objects.

(2) In considering any relevant proposals for which its consent is required under Article 39 or 40, the Department shall have regard to—

- (a) the matters mentioned in sub-paragraph (1)(a); and
- (b) the extent to which the person by whom the proposals were formulated has complied with his duty under sub-paragraph (1)(b).

(3) Without prejudice to sub-paragraphs (1) and (2), in exercising any functions under this Order each of the following, namely, a licence holder, a person authorised by an exemption to generate or

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supply electricity and the Department shall avoid, so far as possible, causing injury to fisheries or to the stock of fish in any waters.

(4) In this paragraph—

“building” includes structure;

“relevant proposals” means any proposals—

- (a) for the construction or extension of a generating station of a capacity not less than 10 megawatts, or for the operation of such a station in a different manner;
- (b) for the installation (whether above or below ground) of an electric line; or
- (c) for the execution of any other works for or in connection with the transmission or supply of electricity.

(5) The Department may by order provide that sub-paragraph (4) shall have effect as if for the capacity mentioned in head (a) there were substituted such other capacity as may be specified in the order.

2.—(1) A licence holder shall within 12 months from the grant of his licence prepare, and from time to time modify, a statement setting out the manner in which he proposes to perform his duty under paragraph 1(1), including in particular the consultation procedures which he intends to follow.

(2) Before preparing or modifying a statement under this paragraph, a licence holder shall consult with the Department of the Environment, the Department of Agriculture, the Fisheries Conservancy Board for Northern Ireland and the Foyle Fisheries Commission.

(3) As soon as practicable after preparing or modifying a statement under this paragraph, the licence holder shall publish the statement as so prepared or so modified in such manner as he considers appropriate.

SCHEDULE 10

Article 72.

TRANSFERS UNDER ARTICLE 69

Interpretation

1. Any reference in this Schedule to a transfer effected under a transfer scheme is a reference to a transfer effected by this Order under such a scheme.

Allocation of assets and liabilities: general

2.—(1) The provisions of this paragraph shall apply where the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity’s undertaking, but shall not apply to any such assets, being rights, or to any such liabilities under a contract of employment.

(2) Any asset or liability comprised partly in the specified part of Northern Ireland Electricity’s undertaking and partly in some other part or parts of that undertaking shall, where the nature of the asset or liability permits, be divided or apportioned between the transferee of the specified part (“transferee A”) and the transferee of the other part or each of the other parts (“transferee B”) in such proportions as may be appropriate.

(3) Where any estate in land falls to be so divided—

- (a) any rent payable under a lease in respect of that estate; and

(b) any rent charged on that estate,

shall be correspondingly apportioned or divided so that the 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.

(4) For the purposes of sub-paragraph (3), any fee farm grant creating the relation of landlord and tenant shall be treated as a lease.

(5) Any asset or liability comprised as mentioned in sub-paragraph (2) the nature of which does not permit its division or apportionment as so mentioned shall be transferred to transferee A or transferee B according to—

(a) in the case of an estate in land, whether on the transfer date transferee A or transferee B appears to be in greater need of the security afforded by that estate or, where neither appears to be in greater need of that security, whether on that date transferee A or transferee B appears likely to make use of the land to the greater extent;

(b) in the case of any other asset or liability, whether on the transfer date transferee A or transferee B appears likely to make use of, or as the case may be, to be affected by, the asset or liability, to the greater extent,

subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.

3.—(1) The provisions of this paragraph shall apply where the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity's undertaking, but shall not apply to any such assets, being rights, or to any such liabilities under a contract of employment.

(2) It shall be the duty of the transferee of the specified part of Northern Ireland Electricity's undertaking ("transferee A") and each of the other transferees ("transferee B"), whether before or after the transfer date, so far as practicable to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the assets and liabilities transferred to transferee A or transferee B and as will—

(a) afford to transferee A and transferee B as against one another such rights and safeguards as they may require for the carrying on of their respective undertakings; and

(b) make as from such date, not being earlier than the transfer date, as may be specified in the agreement or instrument such clarification and modifications of the division of Northern Ireland Electricity's undertaking as will best serve the carrying on of the respective undertakings of transferee A and transferee B.

(3) Any such agreement shall provide so far as it is expedient—

(a) for the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to an estate in land or not, and whether involving the surrender of any existing estate or the creation of a new estate or not;

(b) for the granting of indemnities in connection with the severance of leases and other matters; and

(c) for responsibility for registration of any matter in any statutory register.

(4) If transferee A or transferee B represents to the Department, or if it appears to the Department without such a representation, that it is unlikely in the case of any matter on which agreement is required under sub-paragraph (2) that such agreement will be reached, the Department, whether before or after the transfer date, may—

(a) give a direction determining that matter; and

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(b) include in the direction any provision which might have been included in an agreement under sub-paragraph (2).

(5) Any assets or liabilities required by a direction under sub-paragraph (4) to be transferred to transferee A or transferee B shall be regarded as having been transferred by this Order to, and by virtue thereof vested in, that transferee accordingly.

Allocation of assets and liabilities: contracts of employment

4.—(1) The provisions of this paragraph shall apply where—

- (a) the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity’s undertaking; and
- (b) it falls to be determined whether the assets and liabilities transferred to the transferee of that part (“transferee A”) include rights and liabilities under a particular contract of employment.

(2) Rights and liabilities under the contract of employment shall be transferred to transferee A only if immediately before the transfer date the employee is employed wholly or mainly for the purposes of the specified part of Northern Ireland Electricity’s undertaking.

(3) The employee, transferee A or any of the other transferees may apply to the Department to determine whether or not rights and liabilities in respect of the employee’s services under the contract of employment are transferred to transferee A, and the decision of the Department on the application shall be final.

Variation of transfers by agreement

5.—(1) The provisions of this paragraph shall apply where the transfers effected under a transfer scheme include a transfer of all assets and liabilities comprised in a specified part of Northern Ireland Electricity’s undertaking.

(2) At any time before the end of the period of 12 months from the transfer date the transferee of the specified part and the transferee of any assets and liabilities comprised in some other part of Northern Ireland Electricity’s undertaking may, with the approval of the Department, agree in writing that—

- (a) as from such date as may be specified in or determined under the agreement; and
- (b) in such circumstances (if any) as may be so specified,

there shall be transferred from the one transferee to, and vested in, the other transferee any assets and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.

(3) Subject to sub-paragraph (4), in the case of an agreement under sub-paragraph (2), the assets and liabilities in question shall on the date of the coming into force of the agreement be transferred, and by virtue of the agreement vest, in accordance with the agreement.

(4) The following provisions of this Schedule shall have effect as if—

- (a) any reference to a transfer effected under a transfer scheme included a reference to a transfer effected under an agreement under sub-paragraph (2);
- (b) any reference to a transaction effected under paragraph 3(2) or of a direction under paragraph 3(4) included a reference to such an agreement; and
- (c) any reference to a vesting by virtue of this Order included a reference to a vesting by virtue of such an agreement.

Right to production of documents of title

6. Where the transferee under a transfer effected under a transfer scheme (“transferee A”) is entitled to possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the transferee under some other transfer effected under that scheme (“transferee B”)—

- (a) transferee A shall be deemed to have given to transferee B an acknowledgement in writing of the right of transferee B to production of the document and to delivery of copies thereof; and
- (b) section 9 of the Conveyancing Act 1881 shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

Proof of title by certificate

7.—(1) Where 2 or more transfers are effected under a transfer scheme, a certificate issued by either or any of the transferees (“transferee A”) with the concurrence of the other or others of them that—

- (a) any asset specified in the certificate;
- (b) any such interest in or right over any such asset as may be so specified; or
- (c) any liability so specified,

is by virtue of this Order for the time being vested in transferee A shall be conclusive evidence for all purposes of that fact.

(2) If, on the expiration of one month from a request from either or any of the transferees (“transferee A”) for the other or one of the others of them (“transferee B”) to concur in the issue of such a certificate, transferee B has failed so to concur—

- (a) transferee A may refer the matter to the Department; and
- (b) the Department may direct transferee B to concur in the issue of a certificate prepared in such terms as are specified in the direction.

Restrictions on dealing with certain land

8.—(1) Where 2 or more transfers are effected under a transfer scheme and the Department is satisfied, on the representation of either or any of the transferees (“transferee A”), that—

- (a) in consequence of those transfers, different estates in land, whether the same or different land, are held by transferee A and by the other or one of the other transferees (“transferee B”); and
- (b) the circumstances are such that the provisions of this paragraph should have effect,

the Department may direct that those provisions shall apply to such of that land as may be specified in the direction; and while the direction remains in force, those provisions shall have effect accordingly.

(2) Neither transferee A nor transferee B shall dispose of any estate to which they may respectively be entitled in any of the specified land except with the consent of the Department.

(3) If, in connection with any proposal to dispose of any estate of either transferee A or transferee B in any of the specified land, it appears to the Department to be necessary or expedient for the protection of either of them, the Department may—

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- (a) require either transferee A or transferee B to dispose of any estate to which it may be entitled in any of the specified land to such person and in such manner as may be specified in the requirement;
 - (b) require either transferee A or transferee B to acquire from the other any estate in any of the specified land to which that other is entitled; or
 - (c) consent to the proposed disposal subject to compliance with such conditions as the Department may see fit to impose.
- (4) A person other than transferee A and transferee B dealing with, or with a person claiming under, either transferee A or transferee B shall not be concerned to see or enquire—
- (a) whether this paragraph applies or has applied in relation to any land to which the dealing relates; or
 - (b) whether the provisions of this paragraph have been complied with in connection with that or any other dealing with that land,

and no transaction between persons other than transferee A and transferee B shall be invalid by reason of any failure to comply with those provisions.

Third parties affected by vesting provisions

9.—(1) A transaction of any description which, under paragraph 3(2) or a direction under paragraph 3(4), is effected between transferee A and transferee B—

- (a) 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; but
- (b) subject to that, shall be binding on all persons notwithstanding that it would, apart from this sub-paragraph, have required the consent or concurrence of any other person.

(2) If any transaction is effected under paragraph 3(2) or a direction under paragraph 3(4), transferee A and transferee B shall notify any person who has rights or liabilities which thereby become enforceable as to part by or against transferee A and as to part by or against transferee B.

(3) If, within 28 days from being notified, such a person as is mentioned in sub-paragraph (2) applies to, and satisfies, the Department that the transaction operated unfairly against him, the Department may give such directions to transferee A and transferee B as appear to the Department appropriate for varying the transaction.

10.—(1) If in consequence of 2 or more transfers effected under a transfer scheme or anything done under the provisions of this Schedule—

- (a) the rights or liabilities of any person other than Northern Ireland Electricity and the transferees which were enforceable against or by Northern Ireland Electricity become enforceable as to part against or by one transferee and as to part against or by another transferee; and
- (b) the value of any property or interest of that person is thereby diminished,

such compensation as may be just shall be paid to that person by one or more of the transferees.

(2) Any dispute as to whether, and if so how much, compensation is payable under sub-paragraph (1), or as to the person to or by whom it shall be paid, shall be referred to and determined by an arbitrator appointed by the Department.

SCHEDULE 11

Article 89.

PENSIONS

Interpretation

1.—(1) In this Schedule—

“employer”, in relation to a person employed by a company which is a wholly-owned subsidiary of another company, includes that other company;

“existing employee” means any person who, immediately before the transfer date, is employed by Northern Ireland Electricity;

“former participant” means any person who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme by virtue of his having been such a participant;

“pension”, in relation to any person, means a pension of any kind payable to or in respect of him, and includes a lump sum, allowance or gratuity so payable and a return of contributions, with or without interest or any other addition;

“pension rights”, in relation to any person, includes—

(a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him; and

(b) any expectation of the accruer of a pension to or in respect of him;

and includes a right of allocation in respect of the present or future payment of a pension;

“the relevant statutory provisions” means Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 (retirement benefit schemes) and Part IV of the Social Security Pensions (Northern Ireland) Order 1975 (contracting-out);

“relevant scheme” has the meaning given by paragraph 4(1);

“the scheme” means the Northern Ireland Electricity Superannuation Scheme;

“wholly-owned subsidiary” has the same meaning as in the Companies (Northern Ireland) Order 1986.

(2) For the purposes of this Schedule, a company is wholly owned by one or more other companies if it has no members except—

(a) that other or those others and its or their nominees; and

(b) wholly-owned subsidiaries of that other or those others and their nominees.

(3) Subject to sub-paragraph (1), expressions used in this Schedule which are also used in Part II or III have the same meanings as in that Part.

Power to amend scheme

2.—(1) Regulations may make provision amending—

(a) the trust deed of the scheme for the purpose of enabling the trustees to amend any provision of that trust deed, subject to such consents and conditions as may be prescribed;

(b) the scheme for the efficient and proper beneficial operation and management of the scheme.

(2) Without prejudice to the generality of sub-paragraph (1) (b), regulations under this paragraph may amend the scheme for any of the following purposes, namely—

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- (a) for enabling persons whose participation in the scheme will not prejudice its approval for the purposes of the relevant statutory provisions, and employees of such persons, to participate in or acquire pension rights under the scheme on such terms and conditions as may be prescribed;
- (b) for enabling the scheme to be extended on such terms and conditions as may be prescribed to persons with pension rights other than under the scheme in so far as any such extension of the scheme will not prejudice its approval for the purposes of the relevant statutory provisions;
- (c) for requiring any persons (including persons not participating in the scheme) to make payments to the trustees of the scheme in such circumstances as may be prescribed;
- (d) for requiring or enabling any functions exercisable under the scheme by Northern Ireland Electricity to be exercisable by such persons, and in such circumstances, as may be prescribed;
- (e) for enabling the scheme to be wound up (in whole or in part) in such circumstances as may be prescribed; and
- (f) for securing that the scheme continues to be approved for the purposes of the relevant statutory provisions, notwithstanding the transfers made by this Order and the repeal of paragraph 10 of Schedule 1 to the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14.

(3) Regulations under this paragraph may be made so as to have effect from a date prior to their making, so however that so much of any regulations as provides that any provision of regulations shall have effect from a date prior to their making shall not place any person other than Northern Ireland Electricity, or its successor companies, in a worse position than he would have been in if the regulations had been made to have effect only from the date of their making.

(4) Regulations under this paragraph shall not be made at any time after any successor company has ceased to be wholly owned by the Crown.

Transfer to successor companies' schemes

3.—(1) Regulations may make provision, in respect of such persons, or class of persons, formerly employed by Northern Ireland Electricity or employed or to be employed by successor companies, for securing the transfer of accrued rights and other liabilities under the scheme and such of the assets of the scheme calculated on such basis as may be prescribed, to such superannuation fund or other scheme as may be specified in the regulations.

(2) Paragraph 2(4) shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

Protection for certain persons

4.—(1) Regulations may make provision for the purpose of securing that—

- (a) no person to whom paragraph 5(1) or (2) applies is placed in any worse position by reason of—
 - (i) any winding up, in whole or in part, of a relevant scheme, that is to say, the scheme, a scheme provided by a successor company or any other scheme which is provided or amended in pursuance of the regulations; or
 - (ii) any amendment of a relevant scheme which results in benefits under that scheme being reduced, or contributions by employees being increased, and is made otherwise than in such circumstances as may be prescribed;

(b) no person to whom paragraph 5(1) applies is prevented from continuing to participate in or acquire pension rights under a relevant scheme by reason of any change of employer—

- (i) which does not affect his continuity of employment and is made otherwise than in such circumstances as may be prescribed; and
- (ii) in the case of which his new employer either is a participant in a relevant scheme or is wholly owned by one or more companies which or each of which is such a participant; and

(c) no person to whom paragraph 5(1) applies is placed in any worse position by reason of any change of employer which does not affect his continuity of employment but prevents him from continuing to participate in or acquire pension rights under a relevant scheme; and the references in heads (a) and (c) to any worse position shall be construed, in relation to a person to whom paragraph 5(1) applies who, after the transfer date, ceases to participate in or acquire pension rights under the scheme, as references to a position which is any worse than his position immediately before he so ceases.

(2) Regulations under this paragraph may impose duties (whether as to the amendment of the scheme, the provision or amendment of other schemes, the purchase of annuities, the making of payments or otherwise) on persons who are or have been employers of persons to whom paragraph 5(1) or (2) applies; and duties so imposed on any person may include duties owed to persons of whom he is not and has not been an employer.

(3) Regulations under this paragraph may also provide for any dispute arising under them to be referred to arbitration.

(4) Paragraph 2(4) shall apply for the purposes of this paragraph as it applies for the purposes of that paragraph.

5.—(1) Subject to sub-paragraph (3), this sub-paragraph applies to—

- (a) any existing employee who, immediately before the transfer date, is a participant in the scheme;
- (b) any existing employee who, after that date, participates in a relevant scheme within 3 months of his attaining the minimum age for such participation; and
- (c) any former participant who, after that date, participates in or acquires pension rights under a relevant scheme in such circumstances as may be prescribed by regulations under paragraph 4.

(2) Subject to sub-paragraph (3), this sub-paragraph applies to—

- (a) any person not falling within sub paragraph (1)(c) who, immediately before the transfer date, is not a participant in the scheme but has pension rights under the scheme; and
- (b) any person who, after that date, acquires pension rights under a relevant scheme by reason of the death of a person falling within sub-paragraph (1) or head (a),

but only as respects the pension rights by virtue of which he falls within head (a) or (b).

(3) Any person to whom sub-paragraph (1) or (2) applies may elect in such manner as may be prescribed by regulations under paragraph 4 that that sub-paragraph shall cease to apply to him; and if any person to whom sub-paragraph (1) applies—

- (a) ceases to be in continuous employment; or
- (b) voluntarily withdraws from a relevant scheme,

otherwise than in such circumstances as may be so prescribed, that sub-paragraph shall cease to apply to him except as respects pension rights which have accrued to him before that time.

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6.—(1) So much of Schedule 1 to the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 as has effect for the purpose of ascertaining whether any employment is continuous shall apply for the purposes of paragraphs 4 and 5 as if—

- (a) those paragraphs were contained in that Act; and
- (b) in that Schedule “associated employer”, in relation to a company participating in a relevant scheme, included any other company participating in such a scheme and any other company of which a company so participating has control, or 2 or more companies so participating together have control;

but regulations under paragraph 4 may provide that no account shall be taken for those purposes of any person ceasing to be in continuous employment for such periods and in such circumstances as may be prescribed by the regulations.

(2) For the purposes of sub-paragraph (1), a company has control, or 2 or more companies together have control, of another company (“the other company”) if—

- (a) that company, or each of those companies, is a member of the other company and that company controls, or those companies together control, the composition of the other company’s board of directors;
- (b) that company holds, or those companies together hold, more than half in nominal value of the other company’s equity share capital;
- (c) a company of which the company has control, or those companies together have control, has control of the other company; or
- (d) 2 or more companies of which that company has control, or those companies together have control, together have control of the other company;

and Article 4(2) to (4) of the Companies (Northern Ireland) Order 1986 (as originally made and not as substituted by Article 62(1) of the Companies (No. 2) (Northern Ireland) Order 1990) shall, with any necessary modifications, apply for the purposes of this sub-paragraph as it applies for purposes of paragraph (1) of that Article.

Other pensions

7. Regulations may make provision for requiring successor companies—

- (a) to make payments by way of re-imbusement to any persons who, on behalf of the successor companies, have made payments to any persons with pension rights acquired other than under the scheme; and
- (b) to make payments to any persons with pension rights acquired other than under the scheme in such circumstances as may be prescribed.

Supplemental

8. Regulations under paragraphs 2, 3, 4 and 7 may contain such supplemental, consequential and transitional provisions as the Department considers appropriate.

SCHEDULE 12

Article 95(1).

AMENDMENTS

Amendments relating to statutory undertakers, etc.

1. In the Civil Defence Act (Northern Ireland) 1939 references to public utility undertakers shall be construed as including references to a person who is carrying on activities which he is authorised by a licence or exemption to carry on and references to an electricity undertaking shall be construed as references to the undertaking carried on by any such person.

2. The holder of a licence under Article 10(1) shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking for the purposes of section 4 of the Requisitioned Land and War Works Act 1948.

3. In the Civil Aviation Act 1982—

- (a) for the purposes of sections 47 and 49, a licence holder shall be deemed to be a statutory undertaker and his undertaking a statutory undertaking;
- (b) the reference in section 48(6) to an electricity undertaker shall be construed as a reference to a licence holder who is entitled to exercise any power conferred by Schedule 4.

4. A licence holder who is entitled to exercise any power conferred by Schedule 3 or 4 shall be deemed to be a statutory undertaker for the purposes of Article 4 of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985.

The Business Tenancies Act (Northern Ireland) 1964 (c. 36)

5. In section 2—

(a) in subsection (1) at the end insert—

“(n) to a tenancy granted by a landlord who is the holder of a licence under Part II of the Electricity (Northern Ireland) Order 1992 on the date of the commencement of the tenancy, or who becomes the holder of such a licence after that date, to a tenant who is the holder of such a licence on that date, or who becomes the holder of such a licence after that date”;

(b) in subsection (2) at the end insert “and any holder of a licence under Part II of the Electricity (Northern Ireland) Order 1992”.

The Nuclear Installations Act 1965 (c. 57)

6. In section 3(4) (nuclear site licences) for “Article 33 of the Electricity Supply (Northern Ireland) Order 1972” substitute “Article 39 of the Electricity (Northern Ireland) Order 1992”.

The Post Office Act 1969 (c. 48)

7. In section 7(1A) of the Post Office Act 1969 (powers of Post Office), after paragraph (cb) insert—

“(cc) a public electricity supplier (within the meaning of Part II of the Electricity (Northern Ireland) Order 1992);”.

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The Public Utilities (Emergency Powers) Act (Northern Ireland) 1972 (c. 2)

8. In section 1(2) (authority to gas and electricity undertakers to exercise certain emergency powers) for “the Northern Ireland Electricity Service” substitute “a public electricity supplier (within the meaning of Part II of the Electricity (Northern Ireland) Order 1992);”.

The Fair Trading Act 1973 (c. 41)

9. In section 16 (restriction on references under section 14 in respect of certain goods and services)—

(a) in subsection (1)(c) after “1989” insert “or Part II of the Electricity (Northern Ireland) Order 1992”;

(b) after subsection (2A) insert—

“(2B) In this section “the appropriate Minister” in relation to a licence holder within the meaning of Part II of the Electricity (Northern Ireland) Order 1992, means the Department of Economic Development.”.

10. In section 133(2)(a) (exceptions to general restrictions on disclosure of information)—

(a) after “the Director General of Electricity Supply” insert “the Director General of Electricity Supply for Northern Ireland”;

(b) after “the Electricity Act 1989” insert “or the Electricity (Northern Ireland) Order 1992”.

11. In Schedule 5 (goods and services referred to in section 16) paragraph 3 (electricity) shall cease to have effect.

The Drainage (Northern Ireland) Order 1973 (NI 1)

12. In Article 33(3) (control of dams and sluices) for “the Northern Ireland Electricity Service” substitute “any licence holder within the meaning of Part II of the Electricity (Northern Ireland) Order 1992”.

The Water and Sewerage Services (Northern Ireland) Order 1973 (NI2)

13. In Article 57A(3) (civil liability of Department for escapes of water)—

(a) in sub-paragraph (a) omit the words “electricity or”;

(b) after sub-paragraph (b) insert—

“(bb) any holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992”.

The Consumer Credit Act 1974 (c. 39)

14. In section 174(3)(a) (exceptions to restrictions on disclosure of information)—

(a) after “Electricity Act 1989” insert “or the Electricity (Northern Ireland) Order 1992”;

(b) after “the Director General of Electricity Supply” insert “or the Director General of Electricity Supply for Northern Ireland”.

15. In section 189(1) (definitions), in the definition of “electric line”, for “the Electricity Supply (Northern Ireland) Order 1972” substitute “the Electricity (Northern Ireland) Order 1992”.

The Restrictive Trade Practices Act 1976 (c. 34)

16. In section 41(1)(a) (disclosure of information)—

- (a) after “the Director General of Electricity Supply” insert “the Director General of Electricity Supply for Northern Ireland”;
- (b) after “Electricity Act 1989” insert “or the Electricity (Northern Ireland) Order 1992”.

The Rates (Northern Ireland) Order 1977 (NI 28)

17. After Article 39B insert—

“Rating of electricity licence holders

39C.—(1) For the purposes of any valuation list in force on or after the transfer date within the meaning of Article 68 of the Electricity (Northern Ireland) Order 1992, the Department may, by order, either—

- (a) determine the net annual value of the hereditaments occupied by a holder of a licence or an exemption under Part II of that Order of 1992; or
- (b) make provision for the manner in which the net annual value of such hereditaments is to be, or may be, estimated.

(2) An order under paragraph (1) may make provision with respect to the apportionment of the aggregate amount of the net annual value determined or estimated under the order among the districts of district councils.

(3) An order under paragraph (1)—

- (a) may modify or repeal any provision of this Order;
- (b) may contain such incidental, supplementary or consequential provisions as the Department considers necessary or expedient for the purposes of the Order;
- (c) shall be made only after consultation with holders of such licences or exemptions, associations of district councils and district councils as the Department considers appropriate; and
- (d) shall be subject to affirmative resolution,

and an order providing for the method by which the net annual value of any hereditament is to be determined may provide for determining that value by the application of different methods of valuation to different parts of the hereditament.

(4) In relation to any time before Article 8 of that Order of 1992 comes into operation, any requirement imposed by paragraph (3)(c) to consult with holders of licences or exemptions shall be construed as a requirement to consult with Northern Ireland Electricity.”.

The Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19)

18. In Article 24 (production of heat and electricity from waste)—

(a) in paragraph (1)—

- (i) for “paragraphs (2) and (3)” substitute “paragraph (2)”;
- (ii) after “use, sell or otherwise dispose of any heat” insert “or electricity”;

(b) for paragraphs (2) and (3) substitute—

“(2) Nothing in paragraph (1) shall be construed as exempting a district council from the requirements of Part II of the Electricity (Northern Ireland) Order 1992.”;

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- (c) in paragraph (6) the words “(except the restrictions imposed by paragraphs (2) and (3))” shall be omitted.

19. In Article 53 (interpretation of Part III)—

- (a) insert the following definition—

““electricity undertaker” means a holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992”;

- (b) in the definition of “statutory undertakers” for “electricity or gas” substitute “gas, or an electricity undertaker”.

The Estate Agents Act 1979 (c. 38)

20. In section 10(3)(a) (exceptions to restrictions on disclosure of information)—

- (a) after “Electricity Act 1989” insert “or the Electricity (Northern Ireland) Order 1992”;
- (b) after “the Director General of Electricity Supply” insert “the Director General of Electricity Supply for Northern Ireland”.

The Competition Act 1980 (c. 21)

21. In section 19 (exceptions to restrictions on disclosure of information)—

- (a) in subsection (2)(a) after “Director General of Electricity Supply” insert “the Director General of Electricity Supply for Northern Ireland”;
- (b) in subsection (3) after paragraph (m) insert—
 - “(n) the Electricity (Northern Ireland) Order 1992”.

The Roads (Northern Ireland) Order 1980 (NI 11)

22. In Article 2(2) (interpretation) in the definition of “statutory undertakers” the word “electricity” shall be omitted.

23. In Article 11(3)(c) (which relates to statutory provisions in relation to bridges for the benefit or protection of statutory undertakers), after “telecommunications code system” insert “or the holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992”.

24. In Article 15(1) (restriction on laying of mains, etc., in special roads) after “undertakers” insert “or on the holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992”.

25. After Article 42(2)(d) (exceptions from requirement of consent) insert

“or

- (e) it is done in relation to a road which is not a special road by the holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992 in pursuance of any right conferred by or in accordance with Schedule 4 to that Order of 1992”.

26. In Article 45(4) (restriction on placing rails, etc., not to apply to works or apparatus belonging to a statutory undertaker) at the end insert “or to any works executed or electric lines or electrical plant kept installed for the purposes of the activities which a licence holder is authorised by his licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992 to carry on.”.

The Access to the Countryside (Northern Ireland) Order 1983 (NI 18)

27. In Article 2(2) (interpretation)—

- (a) insert the following definition—
 - ““electricity undertaker” means a holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992;”;
- (b) in the definition of “statutory undertakers”
 - (i) omit the word “electricity”;
 - (ii) after “Post Office” insert “, an electricity undertaker”.

The Telecommunications Act 1984 (c. 12)

- 28.** In section 98(9) (use of certain conduits for telecommunications purposes)—
 - (a) in the definition of “electric line”, in paragraph (b) for “Electricity Supply (Northern Ireland) Order 1972” substitute “Electricity (Northern Ireland) Order 1992”; and
 - (b) in the definition of “electricity authority” for “the Northern Ireland Electricity Service” substitute “a person authorised by a licence under Part II of the Electricity (Northern Ireland) Order 1992 to transmit or supply electricity”.
- 29.** In section 101 (general restrictions on disclosure of information)—
 - (a) in subsection (2)(b) after “the Director General of Electricity Supply” insert “the Director General of Electricity Supply for Northern Ireland”; and
 - (b) after subsection (3)(k) insert—
 - “(l) the Electricity (Northern Ireland) Order 1992.”.

The Airports Act 1986 (c. 31)

- 30.** In section 74 (restrictions on disclosure of information)—
 - (a) in subsection (2)(a) after “the Director General of Electricity Supply” insert “the Director General of Electricity Supply for Northern Ireland”; and
 - (b) after subsection (3)(l) insert—
 - “(m) the Electricity (Northern Ireland) Order 1992”.

The Consumer Protection Act 1987 (c. 43)

- 31.** In section 38 (restrictions on disclosure of information)—
 - (a) after subsection (3)(m) insert—
 - “(n) the Electricity (Northern Ireland) Order 1992”; and
 - (b) in subsection (6)(b) after “the Director General of Electricity Supply” insert “or the Director General of Electricity Supply for Northern Ireland”.

The Consumer Protection (Northern Ireland) Order 1987 (NI 20)

- 32.** In Article 29 (restrictions on disclosure of information)—
 - (a) after paragraph (3)(l) insert—
 - “(m) the Electricity (Northern Ireland) Order 1992”; and
 - (b) in paragraph (6)(b) at the end add “or the Director General of Electricity Supply for Northern Ireland.”.

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The Insolvency (Northern Ireland) Order 1989 (NI 19)

33. In Article 197(3)(a) (supplies of water, electricity, etc.) for “Northern Ireland Electricity” substitute “a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992”.

34. In Article 343(4)(a) (supplies of water, electricity, etc.) for “Northern Ireland Electricity” substitute “a public electricity supplier within the meaning of Part II of the Electricity (Northern Ireland) Order 1992”.

The Planning (Northern Ireland) Order 1991 (1991 NI 11)

35. In Article 2(2) (interpretation)—

(a) insert the following definition—

““electricity undertaker” means a holder of a licence under Article 10(1) of the Electricity (Northern Ireland) Order 1992;”;

(b) in the definition of “statutory undertaker” for “electricity or gas” substitute “gas, or an electricity undertaker”.

36. In Article 22(2)(b) (notification of applications) for “the Northern Ireland Electricity Service” substitute “an electricity undertaker”.

SCHEDULE 13

Article 95(3).

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

PROVISIONS AND SAVINGS FOR PART II OF ORDER

1. In this Part—

“day appointed” means the day appointed under Article 1(2);

“the 1972 Order” means the Electricity Supply (Northern Ireland) Order 1972;

and expressions which are used in Part II of this Order have the same meanings as in that Part.

2. In so far as any requisition made under paragraph 8 of Schedule 3 to the 1972 Order or otherwise under that Order which is effective on the day appointed for the coming into operation of Article 19 requires electricity to be supplied, it shall have effect as if made under Article 19(1); and the provisions of Part II of this Order shall apply accordingly.

3. Any tariff fixed under Article 26 of the 1972 Order which is effective on the day appointed for the coming into operation of Article 21 of this Order shall have effect as if fixed under paragraph (1) of the said Article 21; and the provisions of Part II of this Order shall apply accordingly.

4. Any regulations made under Article 36 of the 1972 Order which are effective on the day appointed for the coming into operation of Article 32 of this Order shall have effect as if they were made under the said Article 32; and the provisions of Part II of this Order shall apply accordingly.

5.—(1) Where any application made under Article 33 of the 1972 Order is effective on the day appointed for the coming into operation of Article 39 of this Order—

(a) the application shall have effect as if made under the said Article 39;

(b) anything done before that day in relation to the application shall have effect as if done under the corresponding provisions of Schedule 8 to this Order; and

(c) the provisions of Part II of this Order shall apply accordingly.

(2) Article 39 of this Order shall not apply in relation to—

(a) the construction of a generating station, or its application as constructed; or

(b) the extension of a generating station, or its operation as extended,

if its construction or, as the case may be, extension is authorised by a consent given or having effect as if given under Article 33 of the 1972 Order, before the day appointed for the coming into operation of the said Article 39.

6.—(1) Where any application made under Article 39 of the 1972 Order is effective on the day appointed for the coming into operation of Article 40 of this Order—

(a) the application shall have effect as if made under the said Article 40;

(b) anything done before that day in relation to the application shall have effect as if done under the corresponding provisions of Schedule 8 to this Order; and

(c) the provisions of Part II of this Order shall apply accordingly.

(2) Article 40 of this Order shall not apply in relation to an electric line if its installation is authorised by a consent given under Article 39 of the 1972 Order before the day appointed for the coming into operation of the said Article 40.

7. Any maximum charge fixed by Northern Ireland Electricity under paragraph 17 of Schedule 3 to the 1972 Order for the resale of electricity supplied by it which is effective on the day appointed for the coming into operation of Article 47 shall have effect as a maximum price fixed by the Director under Article 47 for the resale of electricity so supplied.

8. Where any representation or reference made under, or in such circumstances as are mentioned in, any of the following statutory provisions, namely—

(a) Articles 26(1) and 27(2), (3), (4) and (5) of the 1972 Order, and

(b) Article 6 of the General Consumer Council (Northern Ireland) Order 1984,

is effective on the day appointed for the coming into operation of the repeal of that statutory provision by Article 95(4) and Schedule 14, the representation or reference shall have effect as if it were a representation made to the Director; and the provisions of Part II of this Order shall apply accordingly.

9.—(1) Any land which has been compulsorily acquired under Article 8 of the 1972 Order before the day appointed for the coming into operation of Part I of Schedule 3 to this Order shall be treated for the purposes of that Part as compulsorily acquired under that Part.

(2) Any vesting order made by the Department under Article 8(2) of the 1972 Order before the day appointed for the coming into operation of Part I of Schedule 3 to this Order shall have effect as if made under paragraph 1 of that Part; and the provisions of that Schedule shall apply accordingly.

10. Any consent given under Article 38(4) and (6) of the 1972 Order which is effective on the day appointed for the coming into operation of Schedule 4 to this Order shall have effect as if granted under paragraph 10(4) of that Schedule; anything done before that day with a view to, or otherwise in connection with, the giving of a consent under, the said Article 38(4) and (6) shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part II of this Order shall apply accordingly.

11. Any order made under Article 40 of the 1972 Order which is effective on the day appointed for the coming into operation of Schedule 4 to this Order shall have effect as if made under paragraph

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14(6) of that Schedule; anything done under that Article before that day with a view to, or otherwise in connection with, the making of an order under the said Article 40 shall have effect as if done under the corresponding provisions of that Schedule; and the provisions of Part II of this Order shall apply accordingly.

12.—(1) Paragraph 3(1)(a) and (b) of Schedule 7 shall not apply in relation to a meter installed before (and not moved since) the day appointed for the coming into operation of that Schedule until, in the case of sub-paragraph (b)—

- (a) electricity is supplied through the meter in pursuance of a notice given under Article 19(2) more than 12 months after that day; or
- (b) the period of 10 years beginning with the date of that day expires,

whichever first occurs.

(2) Paragraph 13(2) of Schedule 7 shall not prevent a pre-payment meter from being used as mentioned in that sub-paragraph under an agreement made before the day appointed for the coming into operation of that Schedule.

13.—(1) Where—

- (a) any sum was deposited with Northern Ireland Electricity by way of security under any provision of the 1972 Order; and
- (b) on and after the day appointed for the coming into operation of any provision of Part II of this Order that sum is treated by the appropriate successor company as deposited under that provision of that Part,

any period beginning 6 months or less before that day, being a period during which the sum was deposited with Northern Ireland Electricity, shall be treated for the purposes of the payment of interest on that sum as a period during which the sum was deposited under that provision of that Part.

(2) In this paragraph “successor company” has the same meaning as in Part III of this Order.

14.—(1) Where immediately before the day appointed for the coming into operation of any provision of Part II of this Order there is in force an agreement which—

- (a) confers or imposes on Northern Ireland Electricity any rights or liabilities; and
- (b) refers (in whatever terms and whether expressly or by implication) to any provision of the 1972 Order, to Northern Ireland Electricity’s statutory electricity undertaking or to statutory purposes,

the agreement shall have effect, in relation to anything falling to be done on or after that day, as if that reference included or, as the case may require, were a reference to the corresponding provision of this Order, to Northern Ireland Electricity’s undertaking as a person authorised by a licence to generate, transmit or supply electricity or to purposes connected with the generation, transmission or supply of electricity.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

PART II

PROVISIONS AND SAVINGS FOR PART III OF ORDER

15. In this Part expressions which are used in Part III of this Order have the same meanings as in that Part.

16. Any licence granted under Article 10 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if granted to the appropriate successor company.

17. Any tariff fixed, or having effect as if fixed, under Article 21 by Northern Ireland Electricity which is effective on the transfer date shall have effect as if fixed by or in relation to the appropriate successor company.

18. Any consent given under Article 39 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

19. Any consent given under Article 40 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

20. Any maximum price fixed, or having effect as if fixed, under Article 47 for the resale of electricity supplied by Northern Ireland Electricity which is effective on the transfer date shall have effect as if fixed for the resale of electricity by the appropriate successor company.

21. A direction given under Article 58 to Northern Ireland Electricity which is effective on the transfer date shall have effect as if given to the appropriate successor company.

22. Any land compulsorily acquired by Northern Ireland Electricity before the transfer date which was so acquired under Part I of Schedule 3, or is treated as so acquired for the purposes of that Part, shall be treated for those purposes as so acquired by a successor company.

23.—(1) Where immediately before the transfer date there is in force an agreement which—

- (a) confers or imposes on Northern Ireland Electricity any rights or liabilities which vest in the appropriate successor company under this Order; and
- (b) refers (in whatever terms and whether expressly or by implication) to a member or officer of Northern Ireland Electricity,

the agreement shall have effect, in relation to anything falling to be done on or after that date, as if for that reference there were substituted a reference to such person as that company may appoint or, in default of appointment, to the officer of that company who corresponds as nearly as may be to the member or officer of Northern Ireland Electricity.

(2) References in this paragraph to an agreement include references to a deed, bond or other instrument.

24.—(1) Any agreement made, transaction effected or other thing done by, to or in relation to Northern Ireland Electricity which is in force or effective immediately before the transfer date shall have effect as if made, effected or done by, to or in relation to the appropriate successor company, in all respects as if that company were the same person in law as Northern Ireland Electricity; and accordingly references to Northern Ireland Electricity—

- (a) in any agreement (whether or not in writing) and in any deed, bond or instrument;
- (b) in any process or other document issued, prepared or employed for the purposes of any proceeding before any court or other tribunal or authority; and
- (c) in any other document whatsoever (other than a statutory provision) relating to or affecting any assets or liability of Northern Ireland Electricity which is transferred by this Order,

shall be taken as referring to the appropriate successor company.

(2) Nothing in sub-paragraph (1) shall be taken as applying in relation to any agreement made, transaction effected or other thing done with respect to, or any document relating to or affecting, any rights and liabilities which are excepted rights and liabilities within the meaning of Article 69.

25. It is hereby declared for the avoidance of doubt that—

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- (a) the effect of Part III of this Order in relation to any contract of employment with Northern Ireland Electricity which is in force immediately before the transfer date is merely to modify the contract by substituting the appropriate successor company as the employer (and not to terminate the contract or vary it in any other way); and
- (b) that Part is effective to vest the rights and liabilities of Northern Ireland Electricity under any agreement or arrangement for the payment of pensions, allowances or gratuities in the appropriate successor company along with all other rights and liabilities of Northern Ireland Electricity;

and accordingly any period of employment with Northern Ireland Electricity or a wholly owned subsidiary of Northern Ireland Electricity, shall count for all purposes as a period of employment with the appropriate successor company or (as the case may be), a wholly owned subsidiary of the appropriate successor company.

26. Any agreement made under paragraph 12 of Schedule 1 to the Electricity Supply (Northern Ireland) Order 1972 (machinery for settling terms and conditions of employment) which is effective on the transfer date shall have effect as if—

- (a) the parties to the agreement on the employers' side were the successor companies and not Northern Ireland Electricity; and
- (b) each of the parties to the agreement were entitled to withdraw from it on giving the other parties 12 months' notice in writing.

27.—(1) It shall be the duty of Northern Ireland Electricity and the appropriate successor company to take, as and when during the transitional period that company considers appropriate, all such steps as may be requisite to secure that the vesting in that company by virtue of Part III of this Order or this paragraph of any foreign asset or liability is effective under the relevant foreign law.

(2) During the transitional period, until the vesting in a successor company by virtue of Part III of this Order or this paragraph of any foreign asset or liability is effective under the relevant foreign law, it shall be the duty of Northern Ireland Electricity to hold that asset for the benefit of, or to discharge that liability on behalf of, the successor company.

(3) Nothing in sub-paragraphs (1) and (2) shall be taken as prejudicing the effect under the law of Northern Ireland of the vesting in a successor company by virtue of Part III of this Order or this paragraph of any foreign asset or liability.

(4) Northern Ireland Electricity shall have all such powers as may be requisite for the performance of its duty under this paragraph, but—

- (a) it shall be the duty of the appropriate successor company during the transitional period to act on behalf of Northern Ireland Electricity (so far as possible) in performing the duty imposed on Northern Ireland Electricity by this paragraph; and
- (b) any foreign assets and liabilities acquired or incurred by Northern Ireland Electricity during that period shall immediately become assets and liabilities of the appropriate successor company.

(5) References in this paragraph to any foreign asset or liability are references to any asset or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

(6) Any expenses incurred by Northern Ireland Electricity under this paragraph shall be met by the appropriate successor company.

28.—(1) Notwithstanding the repeal of Articles 23 and 24 of the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14, it shall be the duty of Northern Ireland

Electricity to prepare statements of accounts in accordance with the said Articles 23 and 24 in respect of each financial year ending before the transfer date, and the said Articles 23 and 24 shall continue to apply during the transitional period in relation to those statements and the auditing of those statements.

(2) Notwithstanding the repeal of Article 12 of the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14, it shall be the duty of Northern Ireland Electricity to make a report to the Department in accordance with the said Article 12 in respect of each financial year ending before the transfer date.

(3) Any expenses incurred by Northern Ireland Electricity under this paragraph shall be met by the appropriate successor company.

29.—(1) Where by virtue of anything done before the transfer date, any statutory provision amended by Schedule 12 has effect in relation to Northern Ireland Electricity that statutory provision shall have effect in relation to the appropriate successor company as if that company were the same person, in law, as Northern Ireland Electricity.

(2) Until the Department of Finance and Personnel makes an order under Article 39C of the Rates (Northern Ireland) Order 1977 the provisions of that Order which, immediately before the transfer date, have effect in relation to Northern Ireland Electricity shall, after that date, have effect in relation to the appropriate successor company as if that company were the same person, in law, as Northern Ireland Electricity.

30. Without prejudice to the powers conferred by Article 95(2), every provision contained in subordinate legislation, which is in operation immediately before the transfer date and then applicable to Northern Ireland Electricity shall have effect as if—

- (a) for references to Northern Ireland Electricity there were substituted references to the appropriate successor company; and
- (b) for any reference (however worded and whether expressly or by implication) to the undertaking or business, or any part of the undertaking or business, of Northern Ireland Electricity there were substituted a reference to the undertaking or business, or the corresponding part of the undertaking or business, of the appropriate successor company.

31.—(1) Anything which, immediately before the transfer date, is in process of being done under the provisions relating to street works in Schedule 3 to the Electricity Supply (Northern Ireland) Order 1972 by or in relation to Northern Ireland Electricity (including, in particular, any legal proceedings to which it is a party) may be continued by, or in relation to, the appropriate successor company.

(2) Any notice or direction given or other thing whatsoever done under the said provisions of that Schedule by Northern Ireland Electricity shall, if effective at the transfer date, continue in force and have effect as if similarly given or done by the appropriate successor company.

32.—(1) An application or claim by Northern Ireland Electricity for hazardous substances consent which is effective on the transfer date shall have effect as if made by the appropriate successor company.

(2) A hazardous substances consent granted or deemed to be granted to Northern Ireland Electricity which is effective on the transfer date shall have effect as if it had been granted to the appropriate successor company.

33.—(1) Where a distribution is proposed to be declared during the accounting reference period of a successor company which includes the transfer date or before any accounts are laid or filed in respect of that period, Articles 278 to 284 of the Companies (Northern Ireland) Order 1986 (accounts relevant for determining whether a distribution may be made by a company) shall have effect as if—

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(a) references in Article 278 to the company's accounts or to accounts relevant under that Article; and
(b) references in Article 281 to initial accounts,
included references to such accounts as, on the assumptions stated in sub-paragraph (2), would have been prepared under Article 234 of that Order of 1986 in respect of the relevant year.

(2) The said assumptions are—

- (a) that the relevant year had been a financial year of the successor company;
- (b) that the vesting effected by Part III of this Order had been a vesting of all the assets and liabilities to which Northern Ireland Electricity was entitled or subject immediately before the beginning of the relevant year and had been effected immediately after the beginning of that year;
- (c) that the value of any asset and the amount of any liabilities of Northern Ireland Electricity vested in the successor company by virtue of the said Article 234 had been the value or (as the case may be) the amount assigned to that asset or liability for the purposes of the statement of accounts prepared by Northern Ireland Electricity in respect of the financial year immediately preceding the relevant year;
- (d) that any securities of the successor company issued or allotted before the declaration of the distribution had been issued or allotted before the end of the relevant year; and
- (e) such other assumptions (if any) as may appear to the directors of the successor company to be necessary or expedient for the purposes of this paragraph.

(3) For the purposes of the said accounts the amount to be included in respect of any item shall be determined as if anything done by Northern Ireland Electricity (whether by way of acquiring, revaluing or disposing of any asset or incurring, revaluing or discharging any liability, or by carrying any amount to any provision or reserve, or otherwise) had been done by the successor company.

Accordingly (but without prejudice to the generality of the preceding provision) the amount to be included in any reserves of the successor company as representing its accumulated realised profits shall be determined as if any profits realised and retained by Northern Ireland Electricity had been realised and retained by the successor company.

(4) The said accounts shall not be regarded as statutory accounts for the purposes of Article 78 of this Order.

(5) In this paragraph "the relevant year" means the last complete financial year ending before the transfer date.

PART III

OTHER SAVINGS

34. An order by the Department of Finance and Personnel under paragraph 18(2) of Schedule 6 to the Local Government Act (Northern Ireland) 1972 prescribing the rate of interest payable under that paragraph shall apply to the rate of interest payable upon any outstanding compensation under the Electricity (Supply) Act (Northern Ireland) 1948 as if the interest were payable under that paragraph.

35. Notwithstanding the repeal of the Electricity Supply (Northern Ireland) Order 1972 by Article 95(4) and Schedule 14, paragraphs 1 to 6 of Schedule 3 to that Order of 1972 shall continue to have effect for the purpose of any order under section 11(1) of the Telecommunications Act 1984.

36. The provisions of this Schedule shall have effect without prejudice to sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954.

SCHEDULE 14

Article 95(4)

REPEALS

Chapter or Number	Short Title	Extent of repeal
1939 c. 15 (N.I.)	The Civil Defence Act (Northern Ireland) 1939.	In Section 75(1), the definition of "electricity undertakers"; in the definition of "public utility undertakers" the word "electricity".
1968 c 30 (N.I.)	The Local Government and Roads Act (Northern Ireland) 1968.	In section 1(8), in the definition of "public utility undertaking" the word "electricity".
1969 c. 25 (N.I.)	The Commissioner for Complaints Act (Northern Ireland) 1969.	In Schedule 1, in Part II the entry relating to the Northern Ireland Electricity Service.
1970 c. 1 (N.I.)	The Harbours Act (Northern Ireland) 1970.	In section 26(5), in the definition of "public utility undertaking" the word "electricity".
1972 NI 9.	The Electricity Supply (Northern Ireland) Order 1972.	The whole Order.
1973 c. 41.	The Fair Trading Act 1973.	In Schedule 5, paragraph 3.
1973 NI 2.	The Water and Sewerage Services (Northern Ireland) Order 1973.	In Article 57A(3)(a) the words "electricity or".
1975 c. 25.	The Northern Ireland Assembly Disqualification Act 1975.	In Schedule 1, in Part II the entry relating to the Northern Ireland Electricity Service.
1976 NI 21.	The Financial Provisions (Northern Ireland) Order 1976.	Article 7.
1977 NI 3.	The Electricity and Gas Undertakings (Financial Provisions) (Northern Ireland) Order 1977.	The Whole Order.
1977 NI 7.	The Gas (Northern Ireland) Order 1977.	In Schedule 2 the entry relating to the Electricity and Gas Undertakings (Financial Provisions) (Northern Ireland) Order 1977.
1978 NI 19.	The Pollution Control and Local Government (Northern Ireland) Order 1978.	In Article 24(6) the words "(except the restrictions imposed by paragraphs (2) and (3))".

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Chapter or Number	Short Title	Extent of repeal
1980 NI 11.	The Roads (Northern Ireland) Order 1980.	In Article 2(2), in the definition of “statutory undertakers” the word “electricity”.
1980 NI 17.	The Financial Provisions (Northern Ireland) Order 1980.	Article 8.
1981 NI 4.	The Clean Air (Northern Ireland) Order 1981.	In Article 15(10) the words from “not being a furnace” onwards.
1981 NI 6.	The Judgments Enforcement (Northern Ireland) Order 1981.	In Schedule 2, paragraph 21.
1982 c. 41.	The Stock Transfer Act 1982.	In section 1(3)(c) the words “or Article 20 of the Electricity Supply (Northern Ireland) Order 1972”.
1982 NI 1.	The Electricity Service (Finance) (Northern Ireland) Order 1982.	The whole Order.
1983 NI 15.	The Housing (Northern Ireland) Order 1983.	In Schedule 1A, paragraph 9(2)(g).
1983 NI 18.	The Access to the Countryside (Northern Ireland) Order 1983.	In Article 2(2), in the definition of “statutory undertakers” the word “electricity”.
1984 c. 12.	The Telecommunications Act 1984.	In Schedule 4, in paragraph 55, sub-paragraphs (2) to (6) and (8) to (11).
1984 NI 12.	The General Consumer Council Council (Northern Ireland) Order 1984.	In Article 4(1)(b) the number “6”. Article 6. In Schedule 1, paragraph 10(1)(c). In Schedule 2, Part II.
1986 NI 9.	The Companies Consolidation (Consequential Provisions) (Northern Ireland) Order 1986	In Schedule 1, in Part I the entry relating to the Electricity Supply (Northern Ireland) Order 1972.
1987 NI 5.	The Audit (Northern Ireland) Order 1987.	Article 9(4)(a).
1987 NI 12.	The Electricity Supply (Amendment) (Northern Ireland) Order 1987.	The whole Order.

Chapter or Number	Short Title	Extent of repeal
1988 c. 1.	The Income and Corporation Taxes Act 1988.	Section 511(4) and (5).
1989 NI 7.	The Financial Provisions (Northern Ireland) Order 1989.	Article 6.
1990 NI 1.	The Electricity Supply (Amendment) (Northern Ireland) Order 1990.	The whole Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order—

- (a) provides for the appointment and functions of a Director General of Electricity Supply for Northern Ireland and of a Consumer Committee for Electricity;
- (b) makes new provision with respect to the supply of electricity through electric lines and the generation and transmission of electricity for such supply;
- (c) abolishes the General Consumer Council's functions in relation to electricity; and
- (d) provides for the vesting of the assets and liabilities of Northern Ireland Electricity in companies nominated by the Department and the subsequent dissolution of Northern Ireland Electricity.