

2020 No. 307

ELECTRICITY

**The Electricity (Internal Markets) Regulations (Northern
Ireland) 2020**

Made - - - - *4th December 2020*

Coming into operation - *31st December 2020*

The Department for the Economy, is a Northern Ireland Department designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to energy and energy sources(b).

The Department for the Economy in exercise of the powers conferred by section 2(2) of that Act makes the following Regulations.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Electricity (Internal Markets) Regulations (Northern Ireland) 2020 and shall come into operation on 31st December 2020.

Interpretation

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

(a) 1972 c.68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act (c.7). The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)).

(b) S.I. 2010/761

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

PART 2

The Electricity Order

Amendment

3. The Electricity (Northern Ireland) Order 1992(a) is amended as provided in this Part.

Definitions

4. In Article 3

- (a) After the definition of “the Authority” insert—
 ““customer” has the meaning given by Article 2(1) of the Directive;”;
- (b) for the definition of “the Directive” substitute—
 ““the Directive” means Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU(b);”;
- (c) after the definition of “extension” insert—
 ““final customer” has the meaning given by Article 2(3) of the Directive;”;
- (d) after the definition of “high voltage line” insert—
 ““household customer” has the meaning given by Article 2(4) of the Directive;”;
- (e) after the definition of “line” insert—
 ““non-frequency ancillary services” has the meaning given by Article 2(49) of the Directive;”;
- (f) after the definition of “premises” insert—
 ““regional coordination centre” has the meaning given by Article 2(50) of the Directive;
 “supplier” means any person who supplies electricity within the meaning of Article 2(12) of the Directive;” and
- (g) in the definition of “vertically integrated undertaking” for “Article 2(21)” substitute “Article 2(53)”.

Certification

5. In Article 10F—

- (a) in paragraph (4) for “paragraph (9) of Article 9” substitute “Article 43(8)”;
- (b) in paragraph (5)(a) for “Article 13” substitute “Article 44”;
- (c) in paragraph (5)(c)(i) for “paragraphs (1) and (2) of Article 14” substitute “Article 45”;
- (d) in paragraph (8)(a) for “Article 11” substitute “Article 53”; and
- (e) in paragraph (8)(c) for “paragraph (10) of Article 9” substitute “Article 43(9)”.

6. In Article 10H(2) for “Article 10(2)” substitute “Article 52(2)”.

7. In Article 10L(1) in the definition of “control” for “Article 2(34)” substitute “Article 2(56)”.

(a) S.I. 1992 No. 231 (N.I. 1)
(b) OJ L 158, 14.6.2019, p125-199

Compliance with EU obligations

8. For Article 11A substitute—

“Compliance with EU obligations

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

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

- (a) require the licence holder to give to the Authority, in each year it is required by the Authority to do so, a report containing such information as the Authority may require in relation to—
 - (i) the present and likely future balance between supply of and demand for electricity in Northern Ireland and Ireland;
 - (ii) additional generating capacity under construction or being planned in Northern Ireland and Ireland;
 - (iii) the quality and level of maintenance of the generating plant and equipment and of the transmission, distribution and supply systems in Northern Ireland and Ireland;
 - (iv) measures taken and planned to ensure that peak demand for electricity is met and to deal with shortfalls in electricity supply in Northern Ireland and Ireland,and to give a copy of that report to the Department;
- (b) require the licence holder to keep accounts in accordance with the requirements of Article 56 of the Directive and to have them audited in accordance with those requirements and must confer on the Department and the Authority a right of access to the accounts for the purpose of ensuring compliance with those requirements;
- (c) ensure that any customer can, as required by Article 4 of the Directive, exercise their freedom to purchase electricity from the supplier of their choice; and
- (d) ensure that the licence holder does not cross-subsidise between any of the following activities that may be undertaken by the holder, that is to say transmission, distribution or supply activities or other electricity or non-electricity activities.

(3) The conditions referred to in paragraph (1) must, in particular, in the case of a transmission licence ensure that the holder does not disclose information contrary to Article 41 of the Directive and must require the holder, as appropriate having regard to the activities authorised by the licence—

- (a) in addition to complying with the obligations under Articles 5, 6, 12 and 13 of the Electricity Regulation, to carry out the tasks laid down for the holder by Article 40(1)(a) to (h) and (j) of the Directive;
- (b) to make available interconnector capacities to the utmost extent pursuant to Article 16 of the Electricity Regulation;
- (c) to comply with the requirements for system access laid down by Article 6(1) and (2) of the Directive;
- (d) where appropriate in a case where refusal takes place in accordance with Article 6(2), to provide relevant information on measures that would be necessary to reinforce the network;

- (e) to submit to the Authority for approval the proposal for a regional coordination centre referred to in Article 35(1) of the Electricity Regulation and in relation to that regional co-ordination centre to also submit to the Authority for approval—
 - (i) an estimate of its costs as referred to in Article 62(1)(b) of the Directive;
 - (ii) a description of its decision making process as referred to in Article 62(1)(c) of the Directive;
 - (iii) a description of its proposed resources as referred to in Article 62(1)(d) of the Directive;
- (f) to provide such information and facilitate such inspections as may be necessary for the purposes of Article 62(2)(b) of the Directive; and
- (g) to use its best endeavours to ensure compliance by the regional coordination centre with the obligations referred to in Article 62(1)(f) of the Directive and any decisions referred to in Article 62(2)(c).

(4) In performing the tasks laid down by Article 40(1)(a) to (h) and (j) of the Directive a transmission licence holder must take into account the recommendations issued by the appropriate regional coordination centre.

(5) The conditions referred to in paragraph (1) must, in particular, in the case of a distribution licence ensure that the holder does not disclose information contrary to Article 37 of the Directive and must require the holder—

- (a) to carry out the tasks laid down for the holder by Article 31(1) the Directive;
- (b) to act in accordance with Article 31(2) of the Directive and to provide the information required by Article 31(3);
- (c) to comply with the requirements of Article 31(5) of the Directive in procuring the energy used in the carrying out of its functions;
- (d) to comply with the requirements for system access laid down by Article 6(1) and (2) of the Directive;
- (e) where appropriate in a case where refusal of access takes place, in accordance with Article 6(2), to provide relevant information on measures that would be necessary to reinforce the network; and
- (f) to facilitate (to the extent within its control) the ability of customers to change suppliers as required by Article 12(1) of the Directive.

(6) The conditions included in a licence in accordance with paragraph (1) must, in particular, in the case of a transmission licence—

- (a) where the licence holder, or a holder of a transmission licence in relation to whom the licence holder is a related transmission licensee (as defined in Article 10L), is certified under the first certification ground in Article 10F, require that the ownership unbundling requirement in Article 10G continues to be met in relation to the licence holder;
- (b) where the licence holder, or a holder of a transmission licence in relation to whom the licence holder is a related transmission licensee, (as defined in Article 10L), is certified under the second certification ground in Article 10F, require the maintenance in force of the arrangements by virtue of which the requirements of Article 43(8) of the Directive were met;
- (c) where the licence holder is certified under the third certification ground in Article 10F or is designated as independent system operator for the purposes of that certification ground—
 - (i) require that the requirements of Article 44(2) and Articles 45(1) and (2) of the Directive which are relevant to the licence holder continue to be met;
 - (ii) require that the requirements of Articles 44(4) and (5) of the Directive which are relevant to the licence holder continue to be met;

- (iii) require the licence holder to submit at least every two years for approval by the Authority an investment plan and the multi-annual network development plan for the purposes of Article 59(5)(c) of the Directive; and
- (d) require the licence holder to notify the Authority if any of the other conditions referred to in this paragraph ceases or is likely to cease to be met.

(7) Subject to paragraph (6), the conditions included in a licence in accordance with paragraph (1) must, in particular, in the case of a distribution licence granted to a person forming part of a vertically integrated undertaking—

- (a) require that person to comply with the requirements for independence in terms of its legal form, organisation and decision-making laid down by Article 35(1) of the Directive;
- (b) require that person to comply with the requirements for independence in terms of its management and decision-making rights laid down by Article 35(2) of the Directive; and
- (c) require that person to comply with the requirements laid down by Article 35(3) of the Directive.

(8) The conditions included in a licence in accordance with paragraph (1) must, in particular, in the case of a transmission licence granted to a person forming part of a vertically integrated undertaking who carries on the combination of activities to which Article 39 of the Directive applies, as appropriate having regard to the activities authorised by the licence, require that person to comply with the requirements laid down by that provision in relation to those activities.

(9) The conditions referred to in paragraph (1) must, in particular, in the case of a transmission or distribution licence—

- (a) ensure that non-frequency ancillary services are not used by the holder unless the products for, and the processes used in procuring, such services are approved by the Authority; and
- (b) ensure that the holder of the licence complies with the network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of the Electricity Regulation.

(10) The conditions referred to in paragraph (1) must, in particular, in the case of a transmission or distribution licence or a licence under Article 10(1)(c) require that any supply of electricity by the licence holder to a household customer, or (as the case may be) any transmission or distribution by a licence holder in connection with such a supply, meets specified quality standards.

(11) The conditions referred to in paragraph (1) must, in particular, in the case of a licence under Article 10(1)(c)—

- (a) require that any supply of electricity by the licence holder to a household customer is given at competitive, easily and clearly comparable, transparent and non-discriminatory prices as required by Article 27 of the Directive;
- (b) require the introduction and maintenance of safeguards to help any consumers referred to in Article 12(3) of the Energy (Northern Ireland) Order 2003 in particular to avoid disconnection from an electricity supply;
- (c) ensure that final customers of electricity have access to the information required by Annex 1 point 5 to the Directive;
- (d) ensure that household customers are not charged for changing supplier, in compliance with Article 12(2) of the Directive;
- (e) ensure that final customers are able to use procedures which comply with Article 10(9) of the Directive;
- (f) require that information provided to customers of electricity (including information about the contractual terms and conditions offered to such customers) by the holder of such a licence complies with the requirements of Article 28(1) of the Directive;
- (g) make provision for customers wishing to change suppliers to be able to do so as required by Article 12(1) of the Directive;
- (h) ensure that customers have access to information about sources of energy efficiency advice, as required by Article 19(1) and Article 28(2) of the Directive;

- (i) ensure that final customers are offered a wide choice of payment methods, which do not unduly discriminate between customers, as required by Article 10(6) of the Directive;
- (j) make provision for final customers to be protected from unfair or misleading selling methods and practices, as required by Article 10(6) and (8) of the Directive;
- (k) ensure that the terms and conditions of supply contracts offered by the licence holder to final customers comply with the requirements of Article 10(2) and (3)(a) to (h) of the Directive;
- (l) ensure that those terms and conditions are fair and well known in advance and are provided to the customer at least prior to the date the contract is entered into;
- (m) ensure that household customers are provided with the information required by Article 10(11) of the Directive;
- (n) ensure that final customers receive a final bill following changing suppliers within the time frame required by Article 10(12) of the Directive; and
- (o) ensure that the holder of the licence maintains the records required by Article 64 of the Directive.

(12) The conditions referred to in paragraph (1) must, in particular, in the case of a licence under Article 10(1)(c) require that the holder gives a final customer—

- (a) the notice of, and the information relating to, any modification of the terms of the customer's contract (including in particular any adjustment of the supply price) that is required by Article 10(4) of the Directive;
- (b) the right to terminate the contract if the customer does not accept the modification in question; and
- (c) the information (including information about the contractual terms and conditions offered to such customers) required by Article 10(5) of the Directive.

(13) The conditions included in a licence in accordance with paragraph (1) must, in particular, in the case of a licence under Article 10(1)(c) also include such conditions as appear to the Authority to be requisite or expedient to require that the licence holder ensures that any bill or statement of account provided to a customer—

- (a) is accurate, easy to understand, clear, concise, user-friendly and presented in a manner that facilitates comparison by final customers and, on request, contains a clear and understandable explanation of how their bill or statement of account was derived, especially where bills or statements of account are not based on actual consumption;
- (b) contains the information required by Annex I, points 1.1(a), 1.2(a) and 1.3(a) and (b) to the Directive; and
- (c) if the customer so requests is in an electronic format.

(14) The conditions included in a licence in accordance with paragraph (1) must, in particular, in the case of a licence under Article 10(1)(c) also include such conditions as appear to the Authority to be requisite or expedient to require that the licence holder ensures that—

- (a) billing of customers takes place on the basis of actual consumption and is provided at such time and is sent with such frequency as is required by Annex 1, point 2 to the Directive;
- (b) a charge is not made in respect of any bill or statement of account sent to a customer or in respect of any information provided to the customer (whether in the bill or statement of account or otherwise) contrary to Article 18(2) of the Directive;
- (c) the customer is offered flexible arrangements for payment in accordance with Article 18(3) of the Directive which comply with the guidance issued by the Authority for the purposes of that paragraph; and

- (d) the information required by Annex I, point 4 to the Directive is provided, where it is available and the customer to whom it relates so requests, to an energy service provider designated by the customer.”.

Licensing and Energy Efficiency

9. In Article 11AB(1) the words “and Article 15(5)(c) of Directive 2012/27/EU” are omitted.

10.—(1) Article 11AC is amended as provided in paragraphs (2) to (5).

(2) Paragraphs (2) to (4) are omitted.

(3) In paragraph (5)—

- (a) in sub-paragraph (b) for “Article 15(5) third indent” substitute “Article 15(5) third sub-paragraph”;
- (b) at the end of sub-paragraph (b) insert “and”;
- (c) at the end of sub-paragraph (c) for the semi-colon substitute a full stop;
- (d) sub-paragraph (d) is omitted.

(4) In paragraph (6)—

- (a) sub-paragraph (a) is omitted;
- (b) in sub-paragraph (c) “Article 15(5) third indent” substitute “Article 15(5) third sub-paragraph”;
- (c) at the end of sub-paragraph (c) insert “and”;
- (d) at the end of sub-paragraph (d) for the semi-colon substitute a full stop; and
- (e) sub-paragraph (e) is omitted.

(5) In paragraph (8) for sub-paragraph (a) substitute—

“(a) the Energy Efficiency Directive” means the European Parliament and Council Directive 2012/27/EU on energy efficiency as amended by European Parliament and Council Directive (EU) 2018/2002 and the Directive;”.

Additional Capacity or Energy Efficiency Matters

11. Article 11B is omitted.

Dispute Resolution

12. In Article 31A(1)(b) after “Directive” insert “or Directive 2009/72/EC of the European Parliament and of the Council of 13th July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC”.

Generating Stations

13. In Article 39(9) for “Article 7(2)” substitute “Article 8(2)”.

Overhead Lines

14. In Article 40(6) for “Article 34(2)” substitute “Article 7(2)”

General Functions

15. For Article 50(3B) substitute—

“(3B) The activities to which paragraph (1) applies include, in particular, the matters specified in the following provisions of the Directive as matters to be monitored—

- (a) Article 35(3);
- (b) Article 59(1)(k), (l), (n), (p), (q), and (u) to (w);
- (c) Article 59(1)(o) except insofar as it relates to the monitoring of —
 - (i) the impact of dynamic electricity price contracts and of the use of smart metering systems; and
 - (ii) the relationship between household and wholesale prices, the evolution of grid tariffs and levies;
- (d) where an independent system operator has been designated under Article 10H of this Order, Article 59(5)(a), (b) and (f); and
- (e) Article 62(1)(g).

(3C) The Authority must, every two years, publish a report in relation to the matters specified in Article 59(1)(l) of the Directive and that report must contain such recommendations in respect of those matters as the Authority shall consider appropriate.

(3D) The Authority must every year make a report to the Agency for the Co-operation of Energy Regulators in respect of the matters monitored under paragraph (3B)(d).”.

Regional coordination centres

16. After Article 53 insert—

“Regional coordination centres

53A—(1) For the purposes of Article 62(1) of the Directive the Authority may—

- (a) request from a relevant person such documents or other information as the Authority may specify or describe in writing; and
- (b) enter and inspect, at any reasonable time, any premises owned or occupied by a regional coordination centre.

(2) The relevant person must comply with any request under paragraph (1)(a) within such period as the Authority may specify in writing.

(3) The regional coordination centre must facilitate any inspection under paragraph (1)(b).

(4) A regional coordination centre must comply with any decisions referred to in Article 62(2)(c) of the Directive and with any other obligations or decisions referred to in Article 62(3) of the Directive.

(5) For the purposes of this Article a relevant person means—

- (a) any regional coordination centre; or
- (b) any licence holder who, in pursuance of a licence condition, has submitted information to the Authority in relation to a regional coordination centre.”.

PART 3

The Energy Order

Amendment

17. The Energy (Northern Ireland) Order 2003(a) is amended as provided in this Part.

Interpretation

18. In Article 2(2)—

- (a) after the definition of “2009 Agency Regulation” insert—

““the 2009 Electricity Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC;”;
- (b) in the definition of “designated regulatory authority” for “Article 35” substitute “Article 57(3)”;
- (c) for the definition of “the Electricity Directive” substitute—

““the Electricity Directive” means Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU;”;

and
- (d) for the definition of “the Energy Efficiency Directive” substitute—

““the Energy Efficiency Directive” means the European Parliament and Council Directive 2012/27/EU on energy efficiency as amended by European Parliament and Council Directive (EU) 2018/2002 and the Electricity Directive;”.

Functions as Regulatory Authority for Northern Ireland

19. In Article 3A—

- (a) in paragraph (1) for “Article 35(3)” substitute “Article 57(3)”;
- (b) after paragraph (3) insert—

“(4) The Authority must provide the European Commission with such information as it may reasonably request in order to comply with its duty under paragraph (7) of Article 57 of the Electricity Directive to report on compliance by and in relation to the Authority with the principle of independence set out in that Article.”.

20. In Article 6A(2) for “Article 37” substitute “Articles 59 and 60”.

Decisions of the Agency and the Commission

21. In Article 6B after “made under” insert “the 2009 Electricity Directive,”.

Publication of Advice and Information

22. In Article 7—

- (a) in paragraph (5)(a) the words “and electricity” and “Article 3(16) of the Electricity Directive and” are omitted; and
- (b) paragraph (6) is omitted.

(a) S.I. 2003 No. 419 (N.I. 6)

External Matters

23. In Article 8—

- (a) immediately before paragraph (2) insert—

“(1B) The Authority may, in relation to electricity, liaise, co-operate and enter into arrangements with relevant persons in any member State.

(1C) The Authority may in particular enter into arrangements with the designated regulatory authority of any member State for the purpose of issuing joint binding decisions as referred to in Article 62(2)(c) of the Electricity Directive.”;

- (b) In paragraph (2) for “paragraph (1)” substitute “paragraphs (1) and (1B).”.

24. In Article 8A—

- (a) in paragraph (2) after “co-operate with” insert “the Agency and”; and

- (b) immediately before paragraph (3) insert—

“(2C) In meeting its duty under paragraph (1) the Authority must, wherever it thinks fit, co-operate with the designated regulatory authorities of member States with a view to ensuring compliance by the ENTSO for electricity and the EU DSO entity with the obligations mentioned in Article 59(1)(c) of the Electricity Directive.

(2D) For the purposes of paragraph (2C) “the ENTSO for electricity” and “the EU DSO entity” have the same meaning as in the Electricity Directive.

(2E) Without prejudice to paragraph (2) the Authority must, in particular, to the extent it considers necessary, consider whether there is a need to enter into arrangements with the designated regulatory authorities of member States—

- (a) for the purposes laid down in Articles 59(1)(b), (c) and (f) and 61(2) of the Electricity Directive; and
- (b) for carrying out the functions referred to in Article 62(1) and (2) of the Electricity Directive.

(2F) In exercising its functions under paragraphs (2) and (2E)(a), the Authority must have due regard to any guidelines adopted under Article 61(5) of the Electricity Directive.”.

Objectives of regulation

25. In Article 12—

- (a) in paragraph (1A) for “Article 36(a) to (h)” substitute “Article 58(a) to (c), (d) (except insofar as it relates to heat) and (e) to (h)”;
- (b) in paragraph (5A) omit sub-paragraph (b) and the “and” immediately before it.

26. In Article 13(1B) for “Article 36(a) to (h)” substitute “Article 58(a) to (c), (d) (except insofar as it relates to heat) and (e) to (h)”.

Enforcement

27. In Article 41(2) in the definition of “regulated person”—

- (a) omit the “or” at the end of sub-paragraph (a); and
- (b) at the end of sub-paragraph (b) for the semi-colon substitute “;or” and add—
“ (c) a regional co-ordination centre;”.

28. In Article 41A—

- (a) in paragraph (6)—
 - (i) omit the “and” at the end of sub-paragraph (b); and
 - (ii) at the end of sub-paragraph (c) for the comma substitute “; and” and add—
“ (d) Article 53A(2) of the Electricity Order insofar as it applies to that person;” and—
- (b) after paragraph (6) insert—
“(6A) In respect of a regional co-ordination centre,
 - (a) Article 53A(2) of the Electricity Order insofar as it applies to that person; and
 - (b) Article 53A(3) and (4) of the Electricity Order (regional coordination centres),are specified for the purposes of paragraph (1).”

29. In Article 45(9)(b) after “the Electricity Directive” insert “or the 2009 Electricity Directive”.

Reasons for decision

30. In Article 62 after paragraph (2) insert—

“(2A) In meeting its duty under paragraph (2) the Authority must, in the case of a decision relating to transmission and distribution tariffs as referred to in Article 60(3) of the Electricity Directive include in the notice of reasons the information required by Article 59(9) of that Directive while preserving the confidentiality of commercially sensitive information.”.

Authority members

31. In Schedule 1

- (a) in paragraph 2A—
 - (i) at the end of sub-paragraph (a) omit “or”; and
 - (ii) for the full stop at the end of sub-paragraph (b) substitute “;or” and add—
“ (c) disclose information which is subject to a duty of confidentiality either while holding office or after holding office.”;
- (b) after paragraph 3(1) insert—
“(1A) No person shall be appointed to hold office as chairman or other member except—
 - (a) in accordance with the code and such other guidance as may be published from time to time under Article 3(2) of the Commissioner for Public Appointments (Northern Ireland) Order 1995; and
 - (b) on the basis of the application of objective, transparent and published criteria which ensures that the candidate has the necessary skills and experience for the relevant position.”.

PART 4

The Single Wholesale Market Order

Amendment

32. The Electricity (Single Wholesale Market) (Northern Ireland) Order 2007(a) is amended as provided in this Part.

Principal objective and duties

33. In Article 9—

- (a) in paragraph (5)(b) for “energy from renewable energy sources” substitute “renewable energy within the meaning of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU;”; and
- (b) in paragraph (8)—
omit the definition of “renewable energy sources” and the “and” immediately before that definition.

SEM Committee members

34. In Schedule 2—

- (a) in paragraph 1(3A)—
 - (i) omit the “or” at the end of sub-paragraph (a); and
 - (ii) at the end of sub-paragraph (b) for the full stop substitute “;or” and add—
“(c) disclose information which is subject to a duty of confidentiality either while holding office or after holding office.”.
- (b) after paragraph 3(1B) insert—
“(1C) No person shall be appointed as member except—
 - (a) in accordance with the code and such other guidance as may be published from time to time under Article 3(2) of the Commissioner for Public Appointments (Northern Ireland) Order 1995; and
 - (b) on the basis of the application of objective, transparent and published criteria which ensures that the candidate has the necessary skills and experience for the relevant position.”.

Sealed with the Official Seal of the Department for the Economy on 4th day of December 2020.



Joe Reynolds
A senior officer of the
Department for the Economy

(a) S.I. 2007 No. 913 (N.I. 7)

EXPLANATORY NOTE

(This note is not part of the Regulations)

Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (“the Electricity Directive”) repealed and replaced with amendments

- (a) Directive 2009/72/EC of the European Parliament and of the Council (“the IME3 Directive”); and
- (b) certain provisions of Directive 2012/27/EU of the European Parliament and of the Council (“the Energy Efficiency Directive”) which related to the electricity metering and billing.

These regulations amend the Electricity (Northern Ireland) Order 1992 (“the Electricity Order”), the Energy (Northern Ireland) Order 2003 (“the Energy Order”), and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (“the SEM Order”) to ensure that they conform to the requirements of Articles 57 to 62 of the Electricity Directive and to update references in domestic legislation to other provisions of the IME 3 Directive and to the provisions of the Energy Efficiency Directive which the Electricity Directive replaced.

Part 1 of the Regulations contains introductory provisions.

Part 2 of the Regulations amends the Electricity Order. It consolidates Article 11A of that Order which requires the Authority to include in licences, conditions which ensure that the licence holder complies with certain requirements of the IME3 Directive. It also repeals parts of Article 11AC of that Order which requires the Authority to include in licences, conditions which ensure that the licence holder complies with certain requirements of the Energy Efficiency Directive.

Apart from replacing references in those and other provisions of the Electricity Order to the repealed provisions in the IME3 Directive and the Energy Efficiency Directive, with references to the corresponding provisions in the Electricity Directive, the Regulations make the following changes.

Regulation (EU) 2019/943 establishes Regional Coordination Centres (RCCs) to carry out certain tasks for the purpose of coordinating the activities of Transmission System Operators (TSOs). New Article 11A of the Electricity Order introduces new functions of the Northern Ireland Authority for Utility Regulations (“the Authority”) in relation to these RCCs. In particular it provides for TSOs to submit to the Authority for approval, the proposals for the RCC, including costs, resources and decision making processes for Northern Ireland and to provide information and in general assist it in relation to enforcement of the obligations on the RCC.

Article 11A of the Electricity Order also—

- (a) introduces a new duty for the Authority to approve products and procurement process for non-frequency ancillary services;
- (b) introduces a new duty to implement network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/943;
- (c) adds in a new duty for the Authority to ensure that transmission system operators make available interconnector capacities to the utmost extent pursuant to Article 16 of Regulation (EU) 2019/943; and
- (d) provides for duties on the Authority to ensure that there is no cross-subsidisation between transmission, distribution and supply activities or other electricity or non-electricity activities.

Article 11B of the Electricity Order (which dealt with the provision of additional capacity or additional energy efficiency measures where insufficient capacity existed) is repealed as the obligations relating to this under the IME3 Directive has been repealed without replacement.

Changes to other provisions in the Electricity Order include widening the range of duties of the authority to monitor certain matters. These include monitoring and reporting on the development of a smart grid that promotes energy efficiency and monitoring and reporting on the performance of the system for the co-ordination of TSOs. The Authority is also required to monitor the integration of renewable sources of energy. The Electricity Order is also amended to provide the Authority with powers to require information about and carry out inspections of the premises of RCCs.

Part 3 of the Regulations amends the Energy Order. In particular it—

- (a) strengthens the safeguards for the independence of the Authority and requires the Authority to provide the European Commission with information so that it can report to the European Parliament in relation to its compliance with that principle of independence;
- (b) provides the Authority with the powers to co-operate with the Agency for the Co-operation of Energy Regulators and other regulatory bodies within the European Union in order to ensure that it and they can carry out their functions in accordance with the requirements; and
- (c) requires the Authority to make publically available the detailed methodology and underlying costs used for the calculation of the relevant network tariffs, while preserving the confidentiality of commercially sensitive information.

The Regulations also amend the scope of the enforcement powers under Part VI of the Energy Order so that it applies in relation to the enforcement of the duties of the RCCs and the TSOs in relation to them.

Part 4 of the Regulations amends the SEM Order to strengthen the safeguards for the independence of the Single Electricity Market Committee of the Authority. These changes parallel those made in relation to the Authority in the Energy Order.

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