

**Licensing Scheme  
And  
Changes to Terms of Revocation  
Of all  
Northern Ireland Supply Licences**

**Response to Comments Received**

**23<sup>rd</sup> October 2007**

On 4<sup>th</sup> September 2007 the Northern Ireland Authority for Utility Regulation (the **Authority**) published a consultation paper entitled “Consultation by NIAUR on a Licensing Scheme made pursuant to Regulation 35 of the Electricity Regulations (Northern Ireland) 2007 in respect of the licences granted to Northern Ireland Electricity plc under Article 10(1)(b) and Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 and on changes to the Terms of Revocation of all Northern Ireland Supply Licences”.

This consultation paper set out the proposed text of a Licensing Scheme providing for amendment of the terms of revocation of NIE plc’s PES Licence and Transmission Licence. In particular, the Authority proposed to reduce the notification period required for revocation of NIE plc’s PES Licence from 30 days to 24 hours in the event of insolvency. The Licensing Scheme also provided for NIE plc’s PES Licence to have effect as a supply licence granted to NIE Energy Limited under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 as amended by Regulation 6 of the Electricity Regulations (Northern Ireland) Order 2007.

Separately, the consultation paper included an opportunity to comment on the Authority’s proposal to make the same amendments to the terms of revocation of all Northern Ireland supply licences as to NIE plc’s PES Licence, including provision for a 24 hour notice period for revocation in the event of insolvency.

The Authority received comments on its proposals from the Department of Enterprise, Trade and Investment (**DETI**) and Airtricity.

The Authority’s responses to the specific points raised are as follows.

## Licensing Scheme Comments

Comment	Response
Clarification is sought as to why the Authority proposes to remove the provision from NIE's Transmission Licence which removes from its authorised area any area in which another operator is authorised to participate in transmission.	The introduction of the two licences to participate in transmission (one for owning the system and one for operating the system) required the removal of this prohibition.
Annex 2 to the Licensing Scheme incorrectly refers to NIE Energy Limited.	This reference has been amended so as to refer to NIE plc.
The draft Licensing Scheme does not propose to replace the grant with new text for each licence setting out its effect. This is out of step with the approach taken in GB for the unbundling of the GB PESSs.	The Authority considers that the grants are historical documents which should not be rewritten (although they may be supplemented). Rather, when read together with the Licensing Scheme, they will provide a clear picture of the development of the licences over time. To assist readers, the Authority will produce simplified grants as part of a consolidated version of the licences to be published on its website in due course.

## Terms of Revocation Comments

Comment	Response
The Authority is proposing that it, rather than DETI, should have the power to revoke the NIE supply licence and all second tier supply licences.	This change is designed to ensure that the same regulatory body which grants a licence has the power to revoke it, consistent with good regulatory practice.
The Authority is proposing to standardise revocation provisions across all supply licences (for instance, not all licences currently have paragraph 1(e)(vi) or 1(g) of the proposed provisions).	The changes are designed to ensure that licence provisions are aligned wherever possible and to provide a consistency of approach. They are made pursuant to Article 3(1) of the Electricity Directive, which provides that Member States must not discriminate between electricity undertakings as regards either rights or obligations.
The Authority proposes to update references to UK competition legislation in the supply licences (which in certain circumstances currently refer to obsolete legislation).	These changes are part of a general updating of legislative references to ensure the effective operation of the licences.
Reference should be made to the Secretary of State's order making powers in relation to special mergers and public interest interventions under Sections 66 and 147 of the Enterprise Act 2002.	The Secretary of State's order making powers are already reflected in the Licensing Scheme. The order making power in respect of decisions made under Section 66 can be found at paragraph 11 of Schedule 7 to the Enterprise Act 2002 and the order making power in respect of decisions made under Section 147 can be found at Section 161 of the Enterprise Act 2002.
The reference to Section 188 of the Enterprise Act 2002 would appear to be incorrect. This would allow revocation if the licensee committed the cartel offence under UK law. However, this offence can only be committed by individuals, not companies.	The point in relation to Section 188 of the Enterprise Act 2002 is noted and the draft has been clarified to reflect the application of the cartel offence to individuals rather than corporate licence holders.

<p>Clarification is sought as to whether suppliers, other than NIE, will have paragraph 1(i) of the terms of revocation applied.</p>	<p>The Authority confirms that paragraph 1(i) (relating to the carrying on of PPB) will only apply to the NIE supply licence.</p>
<p>It is unclear how the Licensing Scheme gives effect to the amendments proposed for all Second Tier Suppliers.</p>	<p>The consultation paper made clear that the Authority's consultation covered two separate but related areas. The first was the proposed text of the Licensing Scheme to apply to NIE's PES Licence and Transmission Licence. The second was the proposed change in the terms of revocation of all Northern Ireland supply licences.</p> <p>The Licensing Scheme is wholly separate to the amendments proposed for all second tier suppliers, which will be made pursuant to Regulation 41 of the Electricity Regulations (Northern Ireland) 2007.</p>
<p>The change to 24 hours' notice is totally unreasonable having regard to the historical reality of 30 days' notice. Whilst the justification given for the need to reduce the 30 days' notice period is accepted, including the fact that the timings reflect notice periods in GB and the necessity to accommodate the process of Supplier of Last Resort and to prevent a delay with same, the period selected is unacceptable. There is too great a disparity between what previously applied – 30 days - and what will now apply. The solution/measure proposed (24 hours) is disproportionate to the aim sought in the case of Second Tier Suppliers. For Second Tier Suppliers the notice period in the case of an act of insolvency should be no less than 15 days. This is balanced and reasonable having regard to precedent and the 30 day period for other events leading to revocation. The situation is different concerning NIE as too many customers would suffer in the event that NIE Energy Ltd stops trading. 24 hours is therefore justified for NIE Energy given the scale of any potential problem. Smaller suppliers, on the other hand, should be given a longer grace period.</p>	<p>The proposed change to the notice period for revocation applies only in the event of insolvency (as set out in paragraph 1(e)). The existing notice period of 30 days will continue in respect of all other events (set out in paragraph 1(a) to (d) and (f) onwards). The rationale for the change was set out in the consultation paper and is accepted in the response, namely that the reduction in notice period is consistent with the position in GB and thought necessary to accommodate the Supplier of Last Resort process. The Authority does not consider that the argument for two different notice periods - one for NIE and one for other suppliers - is compelling. The Authority considers that the procedure to accommodate the Supplier of Last Resort process should be universal and can see no reason to prejudice customers of other suppliers.</p>
<p>Specific changes were proposed as follows:</p>	
<p>1(e)(iv) the insertion of the words "which consent shall not be unreasonably withheld or delayed" after the word "Authority".</p>	<p>The Authority considers that this change is unnecessary on the basis that it is under a public law duty to act reasonably, fairly and in accordance with due process in any event.</p>
<p>1(b) "sixteenth day" should be replaced by "twentieth day" in the fourth line of this sub clause.</p>	<p>No rationale was provided for this proposed change and the Authority can see no reason for such an extension.</p>
<p>1(c) insert word "reasonable" before "satisfaction" on the eighth line of this sub clause.</p>	<p>The Authority considers that this change is unnecessary on the basis that it is under a public law duty to act reasonably, fairly and in accordance with due process in any event.</p>

**Conclusion and way forward**

Having taken into account the comments received in response to its consultation, the Authority has made the amendments noted above and will make the Licensing Scheme in the terms set out in Appendix 1.

The terms of revocation in respect of other Northern Ireland supply licences will be amended as set out in Appendix 2 with effect from the same day as implementation of the Licensing Scheme.

## **APPENDIX 1 – Licensing Scheme**

# **NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION**

## **LICENSING SCHEME**

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**A Scheme made pursuant to Regulation 35 of the Electricity Regulations  
(Northern Ireland) 2007 in respect of the licences granted to Northern  
Ireland Electricity plc under Article 10(1)(b) and Article 10(1)(c) of the  
Electricity (Northern Ireland) Order 1992**

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Made on [●] October 2007

## CONTENTS

<b>Clause</b>	<b>Heading</b>	<b>Page</b>
1	Interpretation	4
2	Supply Licence	5
3	Transmission Licence	5
4	Operational Time	5
5	Continuing Effect	5
Annex 1	Schedules to Electricity Supply Licence	7
Annex 2	Schedules to Electricity Transmission Licence	9



**BY:**

**THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION** (the **Authority**) pursuant to Regulation 35 of the Electricity Regulations (Northern Ireland) 2007 (the **Electricity Regulations**) and it shall come into operation when any Property Arrangements Scheme for the transfer of property, rights and liabilities from Northern Ireland Electricity plc (**NIE**) to NIE Energy Limited (**NIE Energy**) made by the Authority pursuant to Regulation 14 of the Electricity Regulations takes effect (the **Operational Time**).

**WHEREAS:**

- (A) NIE will immediately prior to the Operational Time:
  - (i) hold a public electricity supply licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (the **Electricity Order**); and
  - (ii) hold an electricity transmission licence under Article 10(1)(b) of the Electricity Order; and
  - (iii) undertake activities which include the supply and distribution of electricity.
- (B) Regulation 12 of the Electricity Regulations applies to NIE as holder of the licences and undertaker of the activities referred to in Recital (A) above.
- (C) Pursuant to Regulation 13 of the Electricity Regulations and the Authority's direction of 26 July 2007 specifying 14 August 2007 as the date by which such nomination and application must be made, NIE has:
  - (i) nominated NIE Energy as its associate (as defined in Regulation 12(4) of the Electricity Regulations) which will from the Operational Time hold NIE's public electricity supply licence as if it were a licence granted to it under Article 10(1)(c) of the Electricity Order as it is to be amended by Regulation 6 of the Electricity Regulations; and
  - (ii) applied to the Authority for a Property Arrangements Scheme for the transfer of property, rights and liabilities from itself to NIE Energy.
- (D) Pursuant to Regulation 16 of the Electricity Regulations, the Authority must make a Property Arrangements Scheme in relation to any provisions proposed by NIE which it determines are necessary or expedient for the purposes of implementing Article 15 of European Parliament and Council Directive 2003/54/EC concerning common rules for the internal market in electricity. Regulation 35 of the Electricity Regulations will then apply to NIE as a "nominating licensee" to whom a Property Arrangements Scheme applies.
- (E) Regulation 35 of the Electricity Regulations provides that, as soon as practicable after the date specified in the Authority's direction under Regulation 13 of the Electricity Regulations, the Authority must make a Licensing Scheme providing for NIE's public electricity supply licence to have effect as set out in Regulation 12(2) of the Electricity Regulations and for NIE's transmission licence to have effect with such

modifications as may be made pursuant to Regulation 36 of the Electricity Regulations. In making a Licensing Scheme, the Authority must have regard to the provisions of the Property Arrangements Scheme.

- (F) The purpose of this Licensing Scheme is to provide for:
- (i) NIE’s public electricity supply licence to be amended so as to conform with the provisions of this Licensing Scheme and to have effect on and after the Operational Time as a supply licence granted to NIE Energy under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Electricity Regulations; and
  - (ii) NIE’s transmission licence to be amended so as to conform to the provisions of this Licensing Scheme.
- (G) The Authority has consulted with the Department of Enterprise, Trade and Investment, NIE Energy and such licence holders as it considers appropriate on this Licensing Scheme, in accordance with Regulation 39 of the Electricity Regulations.

**THIS LICENSING SCHEME PROVIDES** as follows:

**1 Interpretation**

1.1 In this Licensing Scheme, unless the context otherwise requires, the following expressions shall have the meanings ascribed to them below:

Authority	means the Northern Ireland Authority for Utility Regulation established under Article 3 Part II of the Energy (Northern Ireland) Order 2003 as amended by Article 3 of the Water and Sewerage Services (Northern Ireland) Order 2006
Electricity Order	means the Electricity (Northern Ireland) Order 1992
Electricity Regulations	means the Electricity Regulations (Northern Ireland) 2007
NIE	means Northern Ireland Electricity plc, a company with registration number NI026041 whose registered office is at 120 Malone Road, Belfast BT9 5HT
NIE Energy	means NIE Energy Limited, a company with registration number NI027394 whose registered office is at 120 Malone Road, Belfast BT9 5HT
Operational Time	means the date and time at which any Property Arrangements Scheme made by the Authority pursuant to Regulation 14 of the

Electricity Regulations takes effect

Property Arrangements Scheme	means a Property Arrangements Scheme for the transfer of property, rights and liabilities from NIE to NIE Energy within the meaning of Regulation 14 of the Electricity Regulations
Supply Licence	means the public electricity supply licence granted to NIE on 31 March 1992 under Article 10(1)(c) of the Electricity Order
Transmission Licence	means the electricity transmission licence granted to NIE on 31 March 1992 under Article 10(1)(b) of the Electricity Order

- 1.2 This Licensing Scheme shall be interpreted as if it were an enactment to which the Interpretation Act (Northern Ireland) 1954 applied.
- 1.3 Except where the context otherwise requires, words and expressions used in Part II of the Electricity Order (as the context requires, in force before or after the Operational Time) or in the Electricity Regulations shall have the same meaning when used in this Licensing Scheme.
- 1.4 The Annexes to this Licensing Scheme form part of this Licensing Scheme and reference to this Licensing Scheme includes reference to its Annexes.

## **2 Supply Licence**

- 2.1 The Schedules to the Supply Licence shall with effect from the Operational Time be amended as set out in Annex 1 hereto and the Supply Licence shall thereafter be held by NIE Energy as if it were a licence granted to NIE Energy under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Electricity Regulations.

## **3 Transmission Licence**

- 3.1 The Schedules to the Transmission Licence shall with effect from the Operational Time be amended as set out in Annex 2 hereto.

## **4 Operational Time**

- 4.1 This Licensing Scheme shall take effect at the Operational Time.
- 4.2 If the Authority makes a Property Arrangements Scheme but it does not take effect, this Licensing Scheme will have no effect.

**5 Continuing Effect**

5.1 Anything done under or by virtue of the Supply Licence or the Transmission Licence which is in effect immediately before the Operational Time shall have continuing effect after the Operational Time.

5.2 Without prejudice to the generality of sub-clause 5.1 above:

- (a) every statement, code or other document prepared pursuant to an obligation in the Supply Licence, which in each case is in effect immediately before the Operational Time, shall have continuing effect after the Operational Time as though it had been prepared pursuant to an obligation in a licence granted to NIE Energy under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Electricity Regulations; and
- (b) every direction, consent, approval, determination, designation or other instrument made by the Department of Enterprise, Trade and Investment or the Authority under the Supply Licence, which in each case is in effect immediately before the Operational Time, shall have continuing effect after the Operational Time as though such direction, consent, approval, determination, designation or other instrument had been issued under a licence granted to NIE Energy under Article 10(1)(c) of the Electricity Order as amended by Regulation 6 of the Electricity Regulations.

**THIS LICENSING SCHEME** is made on the day and date first before written

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A person duly authorised to act  
on behalf of the Northern Ireland  
Authority for Utility Regulation

**ANNEX 1**

**THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992  
SECTION 10(1)(C)**

**SCHEDULES TO THE  
ELECTRICITY SUPPLY LICENCE  
FOR  
NIE ENERGY LIMITED**

## **Schedule 1 Specified Premises**

The Licensee is authorised to supply electricity to all premises in Northern Ireland.

## **Schedule 2 Terms as to Revocation**

- 1 The Authority may at any time revoke the Licence by not less than 30 days' notice (24 hours' notice in the case of revocation under sub-paragraph 1(e)) in writing to the Licensee:
- (a) if the Licensee agrees in writing with the Authority that the Licence should be revoked;
  - (b) if any licence fee required to be paid under the Licence is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
  - (c) if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of any of the Conditions or of any relevant requirement (as defined in Article 41(2)(a) of the Energy Order) imposed on the Licensee in its capacity as holder of the Licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
  - (d) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or any partner, director,

member, secretary or manager of the Licensee is found guilty of an offence under section 188 or 201 of the Enterprise Act 2002;

- (e) if the Licensee:
  - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 3 of this Schedule) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
  - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed;
  - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it;
  - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority;
  - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
  - (vi) shall suffer any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident;
- (f) if the Licensee is convicted of having committed an offence under Article 63 of the Order or under Article 46 of the Gas (Northern Ireland) Order 1996;
- (g) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a Condition or of a “relevant requirement” as defined in Article 41(2)(a) of the Energy Order by the due date for such payment and



such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;

- (h) if none of the premises specified, or of the description specified, in Schedule 1 shall have been supplied with electricity by the Licensee at any time during any period of 5 years; or
- (i) if the Licensee ceases to carry on the Power Procurement Business other than with the consent of the Authority.

2 For the purposes of paragraph 1(e)(i) of this Schedule Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for "£750" there was substituted "£250,000" or such higher figure as the Authority may from time to time determine by notice in writing to the Licensee.

3 The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) of this Schedule if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 of this Schedule.

**ANNEX 2**

**THE ELECTRICITY (NORTHERN IRELAND) ORDER 1992  
SECTION 10(1)(B)**

**SCHEDULES TO THE  
ELECTRICITY TRANSMISSION LICENCE  
FOR  
NORTHERN IRELAND ELECTRICITY PLC**

## **Schedule 1    Authorised Transmission Area**

1. The authorised transmission area shall comprise Northern Ireland.

## **Schedule 2    Terms as to Revocation**

- 1    The Authority may at any time revoke the Licence by not less than 30 days' notice in writing to the Licensee:
- (a)    if the Licensee agrees in writing with the Authority that the Licence should be revoked;
  - (b)    if any licence fee required to be paid under the Licence is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
  - (c)    if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of a Condition or of a relevant requirement as defined in Article 41(2)(a) of the Energy Order imposed on the Licensee in its capacity as holder of the Licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;

- (d) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or any partner, director, member, secretary or manager of the Licensee is found guilty of an offence under section 188 or 201 of the Enterprise Act 2002;
- (e) if the Licensee:
  - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 3 of this Schedule) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
  - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed;
  - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it;
  - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
  - (v) becomes subject to an order for winding-up by a court of competent jurisdiction;
- (f) if the Licensee is convicted of having committed an offence under Article 63 of the Order or under Article 46 of the Gas (Northern Ireland) Order 1996;
- (g) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention or apprehended contravention of a Condition or of a “relevant requirement” as defined in

Article 41(2)(a) of the Energy Order by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined; or

(h) if the Licensee ceases to carry on the Distribution Business or the Transmission Owner Business other than with the consent of the Authority.

- 2 For the purposes of paragraph 1(e)(i) of this Schedule, Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for "£750" there was substituted "£250,000" or such higher figure as the Authority may from time to time determine by notice in writing to the Authority and the Licensee.
- 3 The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) of this Schedule if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 of this Schedule.

**Schedule 3 Not used**

## **Schedule 4 Plans Of Land Comprising The Land Bank**

The land for the purposes of identification shown edged red on the plans on the following six pages.



## **APPENDIX 2 – Changes to the Terms of Revocation of all other Supply Licences**

## **Schedule 2 Terms as to Revocation**

1. The Authority may at any time revoke the Licence by not less than 30 days' notice (24 hours' notice in the case of revocation under sub-paragraph 1(e)) in writing to the Licensee:
  - (a) if the Licensee agrees in writing with the Authority that the Licence should be revoked;
  - (b) if any licence fee required to be paid under the Licence is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the Licensee notice that the payment is overdue provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
  - (c) if the Licensee fails to comply with a final order (within the meaning of Article 42 of the Energy Order) or with a provisional order (within the meaning of Article 42 of the Energy Order) which has been confirmed under Article 42 of the Energy Order and which (in either case) has been made in respect of a contravention or apprehended contravention of any of the Conditions or of any relevant requirement (as defined in Article 41(2)(a) of the Energy Order) imposed on the Licensee in its capacity as holder of the Licence and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 44 of the Energy Order could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined;
  - (d) if the Licensee fails to comply with an order made by a court under section 34 of the Competition Act 1998; or fails to comply with an order made under section 72, 75, 76, 81, 83, 84, 158, 160 or 161 of, or under paragraph 2, 5, 6, 10 or 11 of schedule 7 to, the Enterprise Act 2002; or any partner, director, member, secretary or manager of the

Licensee is found guilty of an offence under section 188 or 201 of the Enterprise Act 2002;

- (e) if the Licensee:
  - (i) is unable to pay its debts (within the meaning of Article 103(1) or (2) of the Insolvency (Northern Ireland) Order 1989, but subject to paragraph 3 of this Schedule) or if any voluntary arrangement is proposed in relation to it under Article 14 of that Order, or if it enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
  - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of Article 5(1) of the Insolvency (Northern Ireland) Order 1989) of the whole or any material part of its assets or undertaking appointed;
  - (iii) has an administration order under Article 21 of the Insolvency (Northern Ireland) Order 1989 made in relation to it;
  - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority;
  - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
  - (vi) shall suffer any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident;
- (f) if the Licensee is convicted of having committed an offence under Article 63 of the Order or under Article 46 of the Gas (Northern Ireland) Order 1996;
- (g) if the Licensee fails to pay any financial penalty (within the meaning of Article 45 of the Energy Order) imposed in respect of a contravention

or apprehended contravention of a Condition or of a “relevant requirement” as defined in Article 41(2)(a) of the Energy Order by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the Licensee, provided that no such notice shall be given by the Authority before the expiration of the period within which an application under Article 49 of the Energy Order could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;

- (h) if none of the premises specified, or of the description specified, in Schedule 1 shall have been supplied with electricity by the Licensee at any time during any period of 5 years; or
2. For the purposes of paragraph 1(e)(i) of this Schedule Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 shall have effect as if for “£750” there was substituted “£250,000” or such higher figure as the Authority may from time to time determine by notice in writing to the Licensee.
  3. The Licensee shall not be deemed to be unable to pay its debts for the purposes of paragraph 1(e)(i) of this Schedule if any such demand as is mentioned in Article 103(1)(a) of the Insolvency (Northern Ireland) Order 1989 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1 of this Schedule.