



**Statement outlining the Joint Regulatory  
Arrangements for the Single Electricity Market**

**Information Note**

**AIP-SEM-07-565**

**25<sup>th</sup> October 2007**

## Introduction

This statement describes how the Northern Ireland Authority for Utility Regulation (“NIAUR” or “the Authority”) will work together with the Commission for Energy Regulation (“CER” or “the Commission”) in the exercise of their respective statutory functions in relation to the Single Electricity Market (“the SEM”).

This statement is published pursuant to Section 8B(1) of the Electricity Regulation Act 1999<sup>1</sup> (“the Act”) and Article 7(1) of the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 (“the Order”).

## Background

The Act and the Order, in conjunction with the Memorandum of Understanding between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland dated 5<sup>th</sup>/6<sup>th</sup> December 2006, and related secondary legislation establishes the legal framework for the SEM. The statutory functions pertaining to each of NIAUR and CER (“the Regulatory Authorities”) are amended to account for the SEM. In particular, the Act and the Order establishes new functions, powers and duties in relation to the regulation of the SEM and establishes a Single Electricity Market Committee in both Northern Ireland and the Republic of Ireland (“the SEM Committee”).

The Regulatory Authorities have been working to ensure that the necessary organisational structures and operational arrangements are in place in a timely manner to support to effective decision making in the SEM from 1<sup>st</sup> November 2007 onwards (SEM Go-Live).

The SEM Committee is due to be established on or about SEM Go-Live. Upon establishment, the central decision-making rule which shall govern the exercise of regulatory functions shall be that:

- (i) any decision as to the exercise of a relevant function of the Commission in relation to SEM Matter shall be taken on behalf of the Commission by the SEM Committee, and,
- (ii) similarly, any decision as to the exercise of a relevant function of the Authority in relation to SEM Matter shall be taken on behalf of the Authority by the SEM Committee.

In line with the requirements of the Act and the Order, and to give effect to best regulatory practice, the Commission and the Authority are jointly publishing a statement:

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<sup>1</sup> As amended by Section 5 of the Electricity Regulation (Amendment) (Single electricity Market) Act 2007.

- setting out the procedures and working arrangements adopted by the each Regulatory Authority for ensuring compliance with its obligation that decisions on SEM Matters are exercised the SEM Committee; and
- describing how each Regulatory Authority will work together with the other Regulatory Authority in the exercise of their respective statutory functions in relation to the SEM.

In part-performance of this legal obligation, both Regulatory Authorities have approved amendments to their internal Rules of Procedure which confirm the primacy of the SEM Committee for decision-making on SEM matters. Both the Authority's and the Commission's amended Rules of Procedure are attached at Annex A and Annex B to this statement respectively.

This totality of this statement therefore fulfils the legal obligations of both Regulatory Authorities with respect to SEM working arrangements and sets out the high level arrangements which will apply from Go-Live.

These joint working arrangements, known as the joint regulatory arrangements ("JRA") build on the existing joint working arrangements that support decision making by the Regulatory Authorities on the establishment of the SEM. The JRA are designed with the establishment of the SEM Committee in mind, and are mindful of the imperative on both Regulatory Authorities to manage the SEM market on a day to day basis.

In developing the JRA, the Regulatory Authorities have been guided by the need for:

- joint arrangements;
- shared responsibility;
- equal status and voting rights;
- agreed procedures;
- clear lines of responsibility;
- effective management of regulatory workload;
- compatibility with legal obligations on each Regulatory Authority both in the SEM and non-SEM context, and
- best regulatory practice.

## **Joint Regulatory Arrangements**

### ***High Level Governance Arrangements***

As established under the relevant legislation, the SEM Committee<sup>2</sup> will be the decision making authority on all SEM matters. It will be supported by an Oversight Committee, a Secretariat, and a number of Joint Management Units (JMU (s)) which shall supervise and co-ordinate key regulatory work streams.

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<sup>2</sup> which term we refer to in the singular notwithstanding that two SEM Committees, each a mirror of the other, have been established, one in Northern Ireland as a subcommittee of the NIAUR, one in the Republic of Ireland as a subcommittee of the Commission for Energy Regulation.

The high level joint regulatory governance arrangements being put in place by the Regulatory Authorities to support this are outlined below.

<b>SEM COMMITTEE</b>			
Secretariat			
<b>Oversight Committee</b>			
<b>Key Regulatory Function</b>	<b>Key Regulatory Function</b>	<b>Key Regulatory Function</b>	<b>Key Regulatory Function</b>
<b>Trading &amp; Settlement Code</b>	<b>Market Monitoring</b>	<b>Market Modelling</b>	<b>SMO Regulation</b>

### ***SEM Committee***

The SEM Committee has been established and is due to have its inaugural meeting on or about [18<sup>th</sup>] November 2007. The Minister for Communications, Energy and Natural Resources (the Irish Minister) and the Department of Enterprise, Trade and Industry (DETI) have been tasked with appointing the members of the SEM Committee. Having considered the nominations from CER (which has chosen to nominate two CER members for SEM Committee membership) and the Authority (which has chosen to nominate its Director of Electricity and two Authority members for SEM Committee membership) the Department and the Irish Minister have agreed that the SEM Committee will include:

- One Independent Member (Ignacio Perez Arriaga) and one Deputy Independent Member (José Sierra),
- two CER SEM Committee Members (Tom Reeves and Michael G Tutty), and,
- three NIAUR SEM Committee Members (Dermot MacCann, Iain Osborne and Alan Rainey)

Notwithstanding the balance of CER SEM Committee Members set against NIAUR SEM Committee Members, the legislative framework provides that there shall be an equality of voting between the Regulatory Authorities. This is demonstrable in that the SEM Committee shall consist of three voting blocks only: one vote for the independent voting block (representing the Independent Member or Deputy Independent Member as the case may be), one vote for the CER voting block (representing the two CER SEM Committee

Members) and one vote for the NIAUR voting block (representing the three NIAUR SEM Committee Members).

The exercise of voting rights by each of the three voting blocks and rules governing quorum are further set out in the Act and the Order. It is also open to the SEM Committee to adopt its own Rules of Procedure in due course which will supplement and aid the effective operation of such procedural matters.

A Secretariat will provide administrative support to the SEM Committee and will be responsible for the scheduling of SEM Committee meetings. The Secretariat will also be responsible for the assembly and distribution of papers required for these meetings and minutes of meetings. The Secretariat will be supported by both Regulatory Authorities in equal measure.

### ***Oversight Arrangements***

Oversight arrangements shall be put in place at senior management level and shall be staffed from both Regulatory Authorities. The oversight arrangements will provide for clear lines of responsibility at this level for the management, planning and co-ordination of all work areas directly related to the operation of the SEM.

### **Oversight Committee**

The oversight arrangements include the intended formation of an Oversight Committee that will be a formal subcommittee of the SEM Committee, consisting of senior staff members from both Regulatory Authorities. As part of the SEM Committee's effective governance arrangements, the Oversight Committee is expected to receive delegations of authority from the SEM Committee to carry out certain functions.

The Oversight Committee will be responsible:

- for the management and recommendation of resources across both Regulatory Authorities to ensure both Regulatory Authorities give effect to decisions of the SEM Committee;
- for the co-ordination and development of proposals on SEM Matters for consideration by the SEM Committee;
- the management of key regulatory functions as described below; and
- such other matters as determined by the SEM Committee.

### **Key Regulatory Functions**

The Regulatory Authorities have identified four areas as key SEM regulatory functions for which a designated Manager, overseeing a Joint Management Unit ("JMU"), will be assigned as follows:

- Trading and Settlement Code Management

- Market Monitoring Unit
- Market Modelling Group
- Single Market Operator Regulation

The assigned Manager, drawn from either of the Regulatory Authorities (having had regard to the principle of shared responsibility), will be supported by staff from both the Commission and the Authority.

Each Manager, in respect of his or her particular JMU, will report to the Oversight Committee. Each Manager will have responsibilities for the planning, management and delivery of outputs of the JMU, co-ordinated with the relevant point of contact within the counterpart Regulatory Authority. To this end, agreed internal joint working principles have been developed by the Regulatory Authorities for the operation of the oversight arrangements, the exercise of roles in the management of the JMU, and the exercise of any delegated functions. These internal joint working principles will in due course be reviewed and confirmed as appropriate by the SEM Committee.

## **THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION**

### **RULES OF PROCEDURE**

#### **INTERPRETATION**

1. In these rules –

“Authority” shall mean the Northern Ireland Authority for Utility Regulation.

“Chairman” means the Member of the Authority from time to time occupying the post of Chairman.

“Chief Executive” means the person from time to time occupying the post of Chief Executive,

“clear days” in relation to the period of a notice means a period excluding both the day on which the notice is given and the day for which it is given or on which it is to take effect.

“Council” means the General Consumer Council for Northern Ireland.

“DETI” means the Department of Enterprise, Trade and Investment.

“DFP” means the Department of Finance and Personnel.

“Deputy Chief Executive” means the one or more persons from time to time occupying the post of deputy to the Chief Executive, for as long as such post is retained and considered necessary by the Chief Executive.

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

“Member” means any person appointed to the board of the Authority.

“Reserved Function” has the meaning given to that phrase in paragraph 34.

“SEM Committee” means the committee of the Authority established under Article 6(1) of the SEM Order, and having the membership and being subject to the rules of procedure that are determined under or in accordance with Schedule 2 to the SEM Order

“SEM Function” means one of those relevant functions of the Authority which relates to a SEM Matter (as defined in the SEM Order) the exercise of which is determined by the SEM Committee as materially affecting or being likely materially to affect the single wholesale electricity market.

“SEM Order” means the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007.

“Senior Staff” means those employees of the Authority holding the post of director, or those other senior members of the Authority staff whose names appear on a list maintained for that purpose by the Chief Executive.

“simple majority” means that a resolution shall be carried where voted for by a majority of such members as are entitled to vote on that resolution and are present at the relevant meeting.



“Water Order” means the Water and Sewerage Services (Northern Ireland) Order 2006.

2. *In these Rules, a reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time modified or re-enacted.*

### **THE AUTHORITY**

3. The Authority shall take collective responsibility for all decisions made by it and for their effective and accurate representation to the public and to stakeholders. No Member may make any public statement which expresses or implies personal dissent from Authority decisions.

### **MEMBERS**

4. From 1st April 2007, Members shall be appointed (and may be removed) by DFP in accordance with the Energy Order and shall hold and vacate office as such in accordance with the terms of their respective appointments.
5. Matters relating to the terms of appointment of any Member shall be regarded as matters within the exclusive jurisdiction of DFP, which is solely entitled to appoint and remove Members from 1st April 2007 and to vary their terms of appointment in accordance with its lawful authority.
6. The validity of anything done by the Authority is not affected by a vacancy among its Members or by a defect in the appointment of a Member.

### **MEETINGS**

7. The Authority shall hold a formal meeting once each month, or at such other frequency as it may from time to time determine.
8. The Chairman, or any three other Members upon making a request in writing to the Chairman, may call a meeting of the Authority in accordance with the provisions for notice of meetings below.

9. Meetings may take place other than at the Authority's usual place of business.
10. The Chairman may invite any person to attend all or part of a meeting. It shall be the norm for the Chairman to invite the Deputy Chief Executive to attend.
11. The Chief Executive shall report to each meeting of the Authority on the business of and matters dealt with by the Authority in the preceding period.
12. The Authority shall ensure that minutes are made and retained in relation to all meetings of the Authority or committees thereof and of the attendees of such meetings and business transacted at such meetings.
13. The Authority is entitled in its discretion to determine the form and content of all minutes made and retained in accordance with these Rules. Such minutes shall normally record all of the key points and conclusions of discussion, but shall not generally attribute comments to specific persons. Matters relating to the employment of Authority staff, matters of finance and administration, and other restricted matters as provided for at law, shall not in the ordinary course serve as matters for inclusion into the minutes.
14. In the interests of best regulatory practice, and having regard to the Better Regulation Executive's Five Principles of Good Regulation, the Authority shall endeavour to publish a set of summary minutes for each formal meeting it holds.

#### ***NOTICE OF MEETINGS***

15. The Chairman, or the three other Members, convening a meeting shall give no less than seven clear days' notice of any meeting of the Authority to each Member.
16. A meeting may if necessary be called on less than seven clear days' notice. Such shorter notice shall be treated as valid only if it is ratified at the meeting called on short notice by a simple majority of the Authority.

17. Notice of a meeting shall be given to Members in writing (by any appropriate means including transmission of a notice by facsimile or electronic mail) and such notice shall contain details of the meeting.

### **AGENDAS & PAPERS**

18. Full written particulars, including supporting documentation where relevant, of any business expected to be conducted at a meeting shall normally be given to Members (by any appropriate means including transmission by facsimile or electronic mail) no later than 5 clear days prior to the date of the meeting. However, where it is not reasonably practicable to make them available to Members by that time – for reasons of emergency, unavoidable delay, the late availability of information being provided by third parties or any other case of exceptionality arising in all of the circumstances – the relevant papers shall be given to Members as soon as they become available and may be given at any time up to and including the day of the meeting.
19. Papers not given to Members in advance of a meeting of the Authority may be tabled at that meeting with the permission of the Chairman.
20. The failure of a Member to receive notice of a meeting, or any papers relating to the meeting, shall not invalidate that meeting or any business transacted at that meeting.
21. Members shall treat all papers given to them in respect of a meeting of the Authority as confidential to them and shall not disclose the content of those papers to any person other than another Member or a member of Authority staff, unless that disclosure has been agreed in advance with the Chairman or Chief Executive (having had regard to any relevant legal restrictions on disclosure). If any such information is disclosed to any person other than to another Member or to a member of Authority staff, (such as, a consultant or adviser of the Authority) the disclosing Member must ensure that each person to whom the information is disclosed has been requested and has agreed (or otherwise has a professional duty) to treat the information as confidential.

## ***PROCEEDINGS OF MEMBERS***

22. The quorum for a meeting of the Authority shall be four Members present.
23. Members may attend meetings of the Authority by telephone or video conferencing facility. Members attending meetings by telephone or video conferencing facility shall be deemed present at that meeting. Such a meeting shall be deemed to take place at the location at which the largest group of Members participating is assembled or, if there is no such group, where the Chairman then is.
24. All decisions of the Authority shall be made by simple majority voting. Only Members present at a meeting may vote (to the extent each Member is free from conflicting interests in accordance with paragraph 49).
25. Written comments on agenda items submitted by any Member who is not present when a particular agenda item is discussed may be circulated to those Members who are present, and read out, if deemed appropriate by the Chairman.
26. If the Chairman is not present at a meeting of the Authority, those Members present shall appoint one of their number to act as chairman of that meeting (the "Acting Chairman").
27. The Chairman, or in his absence the Acting Chairman, shall be entitled to brief Members or ask the Chief Executive for a briefing on the content of the papers circulated in respect of any particular matter for discussion at a meeting of the Authority. (In the case of particular urgency) where no papers have been made available to Members in respect of a particular matter upon which the Authority must make a decision, it shall be a permissible exception for the Chairman, or in his absence the Acting Chairman, to brief Members present as to the background facts of the matter in question, with contributions from the Chief Executive as appropriate.
28. In the case of an equality of votes on any matter, the Chairman, or in his absence the Acting Chairman, shall have a second or casting vote.

29. Any decision capable of being made by the Authority at a meeting may be made instead by written agreement by a majority of all the Members of the Authority. Once affirmed by a majority of all Members, a written agreement (which may be recorded in the form of e-mail communication) shall be deemed passed. Each Member's agreement does not need to be recorded on a single document.
30. Unless otherwise agreed by the Authority, the Chief Executive shall be tasked with implementing, executing and delivering (as the case may be) the actions needed to give effect to each decision made by the Authority. He shall do so at the earliest practicable opportunity or by such later date as the Authority may determine (where appropriate by use of sub-delegation to the Deputy Chief Executive, Senior Staff, and other members of Authority staff).
31. Unless otherwise provided for in this paragraph, the Chief Executive shall be tasked with implementing, executing and delivering (as the case may be) the actions needed to give effect to each decision made by the SEM Committee on behalf of the Authority. He shall do so at the earliest practicable opportunity or by such later date as the SEM Committee may determine (where appropriate by the use of sub-delegation to the Deputy Chief Executive, Senior Staff and other members of Authority staff). It shall remain open to the SEM Committee (subject to the consent of the Chief Executive in cases where Authority staff are concerned) to seek to give effect to the kinds of decisions described in this paragraph by alternatively allocating such responsibility to either:
- any member of the SEM Committee who is authorised for that purpose by the SEM Committee, either generally or specifically;
  - any sub-committee of the SEM Committee which is so authorised; or,
  - any member of the staff of the Authority or the Commission for Energy Regulation who is so authorised.

## **DELEGATION AND COMMITTEES**

32. In accordance with the Energy Order, the Authority may establish committees and any committee of the Authority may establish sub-committees.
33. Committees created by the Authority (as distinct from committees created under statute) may be standing committees or ad-hoc committees and shall be subject to such provisions as to their scope of activity and such rules of procedure as the Authority in its absolute discretion may from time to time impose.
34. The Authority may in its discretion create a General Purposes Committee and delegate to it the exercise of all of its functions (save for SEM Functions) and the power to make all decisions that may be made by the Authority (including in respect of those matters which would be reserved exclusively to the Authority (the “Reserved Functions”)) in order to prevent the Authority from becoming incapable of performing its functions. Such committee would **only** become operational if for whatever reason the total number of Members holding office at any one time is less than four.
35. The Authority may create advisory bodies to assist its committees, Members, and Authority staff for any purpose whatsoever which is connected to the Authority’s continued performance of its functions.
36. There shall be a committee of the Authority known as the Audit and Risk Committee. The Authority may refer questions relating to risk management and internal financial control to the Audit and Risk Committee for investigation and advice. The membership and terms of reference of the Audit and Risk Committee are contained in a document created for that purpose and held within the office of Chief Executive.
37. Save for any committee established pursuant to the performance of SEM Functions, committees shall normally consist solely of Members of the Authority. Such committees in the normal course shall consist of members appointed by a simple majority of the Authority for a term of not more than three years. A member of a committee may be appointed as a member of that committee for more than one term so long as that person continues at all times to be a Member of the Authority.

38. In accordance with Article 6 (1) of the SEM Order, there shall be a committee of the Authority known as the SEM Committee. Any decision as to the exercise of a SEM Function shall be taken on behalf of the Authority by the SEM Committee. Where the Authority is in doubt as to whether or not a decision will entail an exercise of a SEM Function, the Authority will refer the decision in question to the SEM Committee for determination unless the SEM Committee has already determined that the decision is one which would neither materially affect nor be likely materially to affect the single wholesale electricity market.
39. Except at any time at which a General Purposes Committee is operational in accordance with these Rules, any decisions as to the exercise of the Reserved Functions shall be exclusively reserved to the Authority.
40. All functions of the Authority which are neither Reserved Functions nor SEM Functions and which have not been delegated to any committee shall be exercisable by the Chairman on behalf of the Authority. The Chairman may delegate the performance of those functions to any Member or Members or to the Chief Executive as he determines to be appropriate. Any such delegation shall be deemed to be given by the Authority.
41. Any function delegated to the Chief Executive in accordance with paragraph 40 may not be further delegated by him to one or more Senior Staff unless and until the consent of the Authority has first been obtained. A list of such delegations (including a Scheme of Financial Delegation) shall be kept by the Chief Executive so that it is at all times accurate and up-to-date.
42. Subject to any provision within Schedule 1, the Chairman and the Chief Executive shall be authorised to sign contracts or other documents on behalf of the Authority. Such authorisation cannot be further delegated to one or more Senior Staff unless and until the consent of the Authority has first been obtained.
43. It shall at all times remain open to the Authority to decide to exercise itself any function (other than a SEM Function) that would otherwise be delegated to any committee or individual, to delegate any such function to another committee or

individual, or to direct any committee or individual to whom such a function has been delegated as to the manner in which it or he should exercise that delegated authority.

44. For the avoidance of doubt, the Authority, acting through its Chairman as the case may be, shall be deemed to be the “Qualified Person” for the purposes of certain exemptions under the Freedom of Information Act 2000.

### **FUNCTIONS, CONSULTATIONS AND ADVISORS**

45. The Authority shall carry out its functions in accordance with and shall comply with all relevant provisions of the Energy Order (and the Water Order and any other relevant legislation as the case may be).
46. The Authority shall meet and consult with representatives of the Council regularly in accordance with the terms of the memorandum entered into in accordance with Article 11(2) of the Energy Order (which memorandum may be amended from time to time).
47. The Authority and/or the Chairman may at any time engage and consult with such professional and other advisers as it/he considers appropriate to further the objectives and functions of the Authority.
48. The Authority and/or the Chairman may at any time consult with any advisory bodies, consumer and industry groups and other stakeholders as it/he considers appropriate in relation to the business of the Authority.

### ***CONFLICTS OF INTEREST***

49. If a Member has directly or indirectly an interest or duty which is material and which is relevant or may be relevant to any matter being considered by the Authority or any committee of the Authority he shall declare that interest or duty (i) before that matter is discussed at each relevant meeting of the Authority or of a committee of the Authority, and (ii) upon appointment to the Authority by way of submission to the



register of conflicts (to the extent such material interest or duty exists at the time of appointment).

50. A Member shall not vote at a meeting of the Authority or of a committee of the Authority on any matter in which he has, directly or indirectly, an interest or duty which is material and which is relevant or may be relevant to the business of the Authority.
51. A Member shall not be counted for the purpose of determining a meeting quorate in relation to a particular matter on which he is not entitled to vote. Nothing in this paragraph or paragraph 50 shall affect the validity of anything done by the Authority.
52. The Authority may (notwithstanding that no notice was given of the same) by simple majority voting suspend or relax to any extent, either generally or in respect of any particular matter, any provision of these Rules prohibiting a Member from voting at a meeting of the Authority or of a committee of the Authority.
53. Any question which arises in respect of a meeting of the Authority or of a committee of the Authority as to the right of a Member to vote on a particular matter shall be referred to the Chairman, or in his absence the Acting Chairman, whose determination shall be final.

#### ***THE SEAL***

54. The Authority is entitled to use a seal, and keep it with the Chairman or with such other person as he may nominate.
55. Any Member of the Authority, and any person who is authorised by or under paragraph 42 to sign any document on behalf of the Authority, is authorised to authenticate the application of the seal to that document.
56. As a practical alternative to the use of the seal, any Member of the Authority, and any person who is authorised by or under paragraph 42 to sign any document on behalf of the Authority may duly execute documents by way of signature.

# THE NORTHERN IRELAND AUTHORITY FOR UTILITY REGULATION

## RULES OF PROCEDURE

### SCHEDULE ONE

Decisions in respect of each of the following matters (the Reserved Functions) are – except in any case in which they would amount to decisions in respect of SEM Functions – reserved exclusively to the Authority, and may not be delegated other than to the General Purposes Committee during any period in which it is operational.

#### *Reserved Management Matters*

1. Any changes to the Authority's Rules of Procedure as set out in the document to which this is the Schedule.
2. The approval of Authority strategy, any forward work programme or other business plan, and any annual report (the latter of which may provide for the annual review of the board of the Authority's performance).
3. Any change to the name, status or structure of the Authority, insofar as the Authority is legally empowered to take a decision on same.
4. The appointment of persons to the office of Chief Executive, which may become vacant from time to time.
5. The approval of annual pay awards for certain senior members of Authority staff (those at director level and above)
6. The terms of reference, any changes thereto, and membership of any committee of the Authority.
7. The undertaking of any major capital projects (those costing in excess of £200,000).

8. The approval of decisions regarding major legal disputes (including decisions to commence, defend or appeal litigation)
9. The entering into of any material contracts (those which involve a liability exceeding, or a potential liability which would exceed, £200,000).
10. The approval of any Scheme of Financial Delegation to the Chief Executive, and any changes thereto.

## **Reserved Regulatory Matters**

### **Licence Modifications**

11. Decisions to approve proposals that will have the effect of significantly modifying a condition of a gas or electricity licence, or of an Instrument of Appointment held by an undertaker of water or sewerage services (a water licence)

(For the avoidance of doubt such decisions shall include modifications of any control or limit applied to the charges or revenue of the licence holder)

(Article 14 of the Electricity (Northern Ireland) Order 1992, Article 14 of the Gas (Northern Ireland) Order 1996, and Article 20 of the Water Order)

### **References to the Competition Commission**

12. The making (or varying) of any reference to the Competition Commission in respect of any matter which the Authority has the power to refer to that body.

(Articles 15 and 46 of the Electricity (Northern Ireland) Order 1992, Articles 15 and 23 of the Gas (Northern Ireland) Order 1996, Schedule 2 (3) to the Energy Order , Articles 21 and 29 of the Water Order and various relevant conditions within the water licence.)

### **Enforcement Orders**

13. The giving of a notice to make a final order or to confirm a provisional order that a gas, electricity, or water licence holder is in contravention of the terms of its licence or of another relevant requirement.

(Articles 42 and 43 of the Energy Order, and Articles 30 and 32 of the Water Order.)

14. The revocation of a final order or the decision not to confirm a provisional order that a gas, electricity, or water licence holder is in contravention of the terms of its licence.

(Articles 42 and 43 of the Energy Order, and Articles 30 and 32 of the Water Order.)

## **Separate Enforcement – Consumer Protection Law**

15. The decision to exercise enforcement powers under Part 8 of the Enterprise Act 2002 in relation to certain consumer legislation.

(Sections 210-236 of the Enterprise Act 2002, as supplemented by various provisions including but not limited to: Sale of Goods Act 1979, Control of Misleading Advertising Regulations 1988, Supply of Goods and Services Act 1982, Consumer Protection (Northern Ireland) Order 1987 (Part III only))

## **Prosecutions**

16. The decision that the Authority will bring a prosecution where it is entitled to do so under the law.

(Including but not limited to: Sections 42, 43 and 44 of the Competition Act 1998, Section 245 of the Enterprise Act 2002, and Article 51 (4) – 51 (6) of the Energy (Northern Ireland) Order 2003)

## **Disqualification of Directors**

17. The decision to apply to court seeking an order for the disqualification of a director (or directors) of a company which has infringed either or both of the Chapter 1 / Chapter 2 prohibitions of the Competition Act 1998 and/or the prohibitions under Article 81 / Article 82 of the EC Treaty.

(Section 204 of the Enterprise Act 2002)

## **Undertakings**

18. The acceptance of undertakings from a water or sewerage undertaker in lieu of taking steps toward the making of a provisional or final enforcement order, which undertakings may be subject to such conditions as may be prescribed, and which appear to the Authority for the time being, appropriate to achieve compliance with the terms of the water licence or other relevant requirement.

(Article 31 of the Water Order)

### **Financial Penalties**

19. The imposition of a financial penalty upon a gas, electricity, or water licence holder where that person is or has been in contravention of the terms of their licence.

(Article 45 of the Energy Order, and Article 35 of the Water Order)

20. The publication of a statement of policy with respect to the imposition of financial penalties and the determination of their amount.

(Article 46 of the Energy Order and Article 36 of the Water Order.)

### **Anti-Competitive Conduct**

21. The giving of directions in relation to agreements and the exercise of concurrent powers in relation to conduct which either: (a) may affect trade within the United Kingdom and have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom; or (b) amounts to the abuse of a dominant position in a market which may affect trade within the United Kingdom.

(Sections 25-29 and 32-33 of the Competition Act 1998.)

22. The making of decisions following investigation, the making of an application to court concerning the enforcement of directions made pursuant to the exercise of the powers described in paragraph 21, and the imposition of penalties as a result of a breach of either of the two types of prohibition as described in a) and b) of paragraph 21.

(Sections 31, 34, 36 of the Competition Act 1998).

### **Statutory Instruments**

23. The making of any rule or order or other statutory instrument that the Authority may from time to time be empowered to make.

### **External Co-operation Arrangements**

24. The entering into of any material business arrangements with other regulators, governmental bodies, any type of organisation or association, or gas or electricity companies located in any other parts of the United Kingdom, in the European Union or in any other country that is (directly or indirectly) connected to Northern Ireland by an electricity transmission system or gas pipeline.

(Article 8 of the Energy Order and Article 11 of the Water Order)

### **Alteration of Licensable Activities**

25. The application by the Authority for an order providing for certain activities to require a gas or an electricity licence or to cease to require a gas or electricity licence.

(Schedule 2 to the Energy (Northern Ireland) Order 2003, paragraphs 2 and 7).

### **Delegation of Certain Functions**

26. The revocation or material amendment of arrangements with the Gas and Electricity Markets Authority in Great Britain in relation to the exercise of functions on behalf of the Authority by the Gas and Electricity Markets Authority in relation to the Northern Ireland renewables obligation, gas meters, active electrical energy meters or non-prescribed measuring instruments.

(Section 121 of the Energy Act 2004, Regulation 25 of the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006, Regulation 25 of the Measuring Instruments (Gas Meters) Regulations 2006 and Regulation 4 of the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006.)

### **Special Administration Orders**

27. Any decision, with the consent of the Department for Regional Development, to make an application to the Court for a special administration order to be made in relation to the holder of a water licence.

(Article 42 of the Water Order.)

### **Approval of Charges Scheme**

28. Any decision to approve a charges scheme made by a person holding a water licence in relation to water and/or sewerage charges.

(Article 201(7) of the Water Order.)





## **Commission Rules and Procedures**

### **1.1 Meetings**

1. The Commission shall meet once a week unless otherwise agreed in particular cases. Usually the meetings shall take place on Wednesday mornings commencing at 9.30am.
2. At each meeting the date of the next meeting will be agreed. There shall be a minimum of one week's notice under normal circumstances. However, meetings can be held at shorter notice if all Commissioners are consulted and a majority of Commissioners so decide, particularly to discuss urgent issues.
3. Two members of the Commission shall form a quorum. The Chairperson of the Commission shall chair the meetings. In the absence of the Chairperson one of the other members, on a rotating basis, shall act as chairperson of the meeting.
4. Directors shall attend and participate in Commission meetings. In exceptional circumstances the Commission may discuss particular issues in closed session. Managers as a group may be invited to the meetings from time to time and individual staff may be invited for discussions on particular items.
5. Papers shall be with Commission through the Chairperson's Office no later than 3.00pm three working days prior to the relevant meeting, unless later circulation is justified by exceptional circumstances.
6. A covering note/memorandum must accompany each paper being submitted to the Commission for decision.

The covering note/memorandum shall contain the following:

1. The decision requested
  2. The reason for the decision
  3. Who has been consulted both within and without the CER
  4. A brief summary of the contents of the paper
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7. The Chairperson shall decide on the agenda and circulate it no later than 3.00pm three days prior to the date of the relevant meeting.
  8. Decisions shall be taken by simple majority. A member of the Commission who is unable to attend a meeting may cast his/her vote in writing in advance of the meeting on any issue or may if he/she so wishes attend the meeting by telephone or video link as appropriate. Where only one Commissioner is available and it is not possible to obtain the vote of one or more other Commissioners, the single Commissioner may take a decision to publish a consultation paper where the matter is urgent and consultation is considered essential within a short period of time.
  9. Where only two members of the Commission are in attendance or voting on an issue, the Chairperson shall have a casting vote. In the absence of the Chairperson the member appointed chairperson of the meeting may not exercise the right of the casting vote.
  10. If there is a tied vote the decision shall be postponed until the next meeting unless the Commission considers the matter to be urgent. On the second occasion the Chairperson may exercise his right to use the casting vote if he so wishes where there continues to be a tied vote.
  11. Each meeting agenda shall include a standing item where Commissioners and Directors update each other on significant developments since the previous meeting.
  12. Minutes of the meetings will be taken and will be available no later than the day following the meeting. They will be taken as the first item on the agenda of the next meeting and if approved will be signed by the Chairperson or the Commissioner acting as chairperson pursuant to Clause 3 above.
  13. The Commission shall, in line with these Rules and Procedures, consider and adopt a position with respect to any SEM Matter including consideration of relevant papers, memos, or other material. Any decision as to the exercise of a relevant function of the Commission in relation to SEM Matters, as defined under Section 8A

of the Electricity Regulation Act of 1999 as amended, shall be taken on behalf of the Commission by the SEM Committee.

### **1.1.1 Approvals**

14. The following items in particular will require the approval of the Commission:

- a. The right to go to bid and finally approve all services and/or supplies contracts above the EU Threshold.
- b. All items of capital and operating expenditure which do not have a budget provision in any particular year.
- c. The annual budget, annual report and accounts and levy orders.
- d. The signing of Compulsory Acquisition Orders for gas pipeline wayleaves.
- e. Delegation of the performance of Commission functions in accordance with Paragraph 11 of the Schedule to the Act of 1999.
- f. All decisions except those delegated from time to time pursuant to Paragraph 11 of the Schedule to the Act of 1999.
- g. Promotions and recruitment of staff.

#### **1.1.1.1 General**

15. The Commission shall establish an Audit Committee which shall report regularly to the Commission.

16. The Management Accounts shall be presented every quarter by the Management Accountant.

17. The Commission seal shall be kept by the Chairperson or such other person as he may nominate.

Pursuant to Section 8(5) of the Act of 1999 the seal of the Commission shall, under normal circumstances, be authenticated by the signature of the Chairperson on Authorisations to Construct and on Generating Licences and by the signature of another Commissioner and a

member of staff authorised by the Commission to act in that behalf on Licences to Supply and/or Ship, Licences to Transmit or Distribute Gas and Consents to construct gas pipelines. In the absence of the Chairperson another Commissioner may authenticate the seal in accordance with the provisions of Section 8(5).

18. In the absence or unavailability of the Commissioners the provisions of Paragraph 12 of the Schedule to the Act of 1999 in relation to the powers of the Deputy Member of the Commission will apply and shall be exercised in accordance with the terms of the Warrant of Appointment of the Deputy Member of the Commission.
19. Commissioners shall at all times keep the Chairperson fully informed of the business and affairs of the Commission, including those of the SEM Committee, and of all circumstances material to or likely to be material to the business of the Commission.
20. The Commission may amend these Rules and Procedures from time to time. Clauses 7, 8 and 9 above shall apply to any proposed amendments.
21. Approved by the Commission on 24<sup>th</sup> day of October, 2007.