

**Statutory Instrument No. 445 of 2000.**

**Regulations**

*entitled*

**European Communities (Internal Market in  
Electricity) Regulations, 2000**

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**Statutory Instrument No. 445 of 2000.**

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## S.I. No. 445 of 2000

### European Communities (Internal Market in Electricity) Regulations, 2000

I, Mary O'Rourke, Minister for Public Enterprise, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving further effect to Directive No. 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity<sup>1[1]</sup>, hereby make the following Regulations:

#### PART 1 - PRELIMINARY AND GENERAL

##### *Citation and commencement.*

1. (1) These Regulations may be cited as the European Communities (Internal Market in Electricity) Regulations, 2000.
- (2)(a) Regulations 1 to 3, 10, 13 to 18, 27, 28, 31, 32 and 34 to 61 and the Schedule shall come into operation on the making of these Regulations.
- (b) Subject to paragraph (a) these Regulations shall have effect from the effective date.

##### *Interpretation.*

2. (1) In these Regulations (including the Schedule), except where the context otherwise requires –

“Act of 1999” means the Electricity Regulation Act, 1999 (No. 23 of 1999) as amended by the Gas (Amendment) Act, 2000 (No. 26 of 2000);

“ancillary services” means all services necessary for the operation of a transmission or distribution system;

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<sup>1[1]</sup>OJ No. L 27 of 30 January 1997.

“associated or affiliated undertaking” means an associated undertaking or an affiliated undertaking within the meaning assigned by subparagraphs (b) and (a), respectively, of Regulation 27(6) but which is not a subsidiary;

“Board” means the Electricity Supply Board;

"Chief Executive" means the chief executive of EirGrid as provided for by Regulation 50;

“Commission” means the Commission for Electricity Regulation established by the Act of 1999;

“commercially sensitive information" means any matter the disclosure of which would materially prejudice the interests of any person;

“development plan” has the meaning assigned by Regulation 8(6)(a);

"Directive" means Directive No. 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity<sup>1</sup>;

“distribution system operator” means the holder of a licence under section 14(1)(g) of the Act of 1999;

“effective date” has the meaning assigned by Regulation 3;

"EirGrid" means the company referred to in Regulation 34;

"function" includes a power and a duty, and a reference to the performance of a function includes a reference to the exercise of a power and the carrying out of a duty;

“infrastructure agreement” has the meaning assigned by Regulation 18;

"integrated electricity undertaking" has the meaning assigned by the Directive;

"interconnectors" means equipment used to link electricity systems of member states of the European Community;

“joint venture” means a joint venture within the meaning assigned by Regulation 32 of the European Communities (Companies: Group Accounts) Regulations, 1992;

“licence holder” means the holder of a licence under section 14 of the Act of 1999;

“Minister” means the Minister for Public Enterprise;

“subsidiary” has the meaning given to it in section 155 of the Companies Act, 1963;

“transfer scheme” means the scheme made or deemed to have been made under Regulation 13;

"transmission system operator" means the holder of a licence under section 14(1)(e) of the Act of 1999;

"transmission system owner" means the holder of a licence under section 14(1)(f) of the Act of 1999.

(2) (a) A word or expression that is used in these Regulations and is also used in the Act of 1999 has, unless the contrary intention appears, the same meaning in these Regulations as it has in that Act.

(b) Where a word or expression is given a meaning in the Act of 1999 or in these Regulations then, except where the context otherwise requires, any cognate word or expression used in these Regulations shall be construed accordingly.

(3) In these Regulations –

(a) a reference to a regulation is a reference to a regulation of these Regulations unless it is indicated that a reference to some other enactment is intended, and

(b) a reference to a paragraph or subparagraph is a reference to a paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

(4) A reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment, including these Regulations.

***Effective date.***

3. (1) As soon as practicable after the making of these Regulations, the Minister shall, after consultation with the Commission, specify a date (in these Regulations referred to as the “effective date”).

(2) The effective date shall be a date-

(a) not later than 6 months after the making of these Regulations,  
or

- (b) such later date as the Minister may agree to specify where the Commission has-
  - (i) requested the setting of a later date, and
  - (ii) set out its reasons in writing to the Minister why in its opinion a later date is considered necessary.
- (3) As soon as practicable after specifying the effective date, the Minister shall cause to be published on the *Iris Oifigiúil* a notice stating that the Minister has specified a date for the purposes of these Regulations and stating what that date is.

## **PART 2 - LICENCES**

### ***Prohibition of unlicensed activity.***

- 4. (1) A person who-
  - (a) generates or supplies electricity,
  - (b) carries out functions of the transmission system operator specified in these Regulations,
  - (c) carries out functions of the transmission system owner specified in these Regulations, or
  - (d) carries out functions of the distribution system operator specified in these Regulations,

without being duly authorised to do so shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.

- (2) Summary proceedings for an offence under this Regulation may be brought and prosecuted by the Commission.

### ***Licensing of transmission system operator.***

- 5. (1) A licence under section 14(1)(e) (inserted by Regulation 32) of the Act of 1999 shall only be granted to the company referred to in Regulation 34.
- (2) A licence under section 14(1)(e) of the Act of 1999 shall be granted with effect from the effective date.

*Licensing of transmission system owner.*

6. (1) For the purposes of these Regulations, only the Board may be issued with a licence under section 14(1)(f) (inserted by Regulation 32) of the Act of 1999.
- (2) A licence under section 14(1)(f) of the Act of 1999 shall be granted with effect from the effective date.

*Licensing of distribution system operator.*

7. (1) For the purposes of these Regulations, only the Board may be issued with a licence under section 14(1)(g) (inserted by Regulation 32) of the Act of 1999.
- (2) A licence under section 14(1)(g) of the Act of 1999 shall be granted with effect from the effective date.

**PART 3 - TRANSMISSION SYSTEM OPERATOR**

*Functions of transmission system operator.*

8. (1) Subject to paragraph (2), the transmission system operator shall have the following exclusive functions:
  - (a) to operate and ensure the maintenance of and, if necessary, develop a safe, secure, reliable, economical and efficient electricity transmission system, and to explore and develop opportunities for interconnection of its system with other systems, in all cases with a view to ensuring that all reasonable demands for electricity are met and having due regard for the environment;
  - (b) to ensure the availability of all ancillary services which are necessary for the transmission system operator to carry out its duty outlined in paragraph (a);
  - (c) to take into account the need to operate a co-ordinated distribution system and transmission system;

- (d) in accordance with-
- (i) the conditions in the licence granted in accordance with section 14(1)(e) of the Act of 1999,
  - (ii) the grid code prepared under section 33 of the Act of 1999, and
  - (iii) any Regulations made by the Commission under section 9(1)(d) of the Act of 1999, including any requirements which the Commission may impose on the transmission system operator in relation to the role of system settlement administrator,

to operate a system of dispatch and use of interconnectors on objective, non-discriminatory, economical and technical criteria, without prejudice to the supply of electricity on the basis of existing contractual obligations;

- (e) to develop, adhere to, maintain and review, modify and publish procedures for the use of interconnectors with other systems;
- (f) to provide to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, co-ordinated development and inter-operability of the interconnected system;
- (g) otherwise to comply with any other regulation or directions applicable to it made by the Commission under these Regulations or under the Act of 1999;
- (h) to charge for the connection to and use of the transmission system in accordance with Section 35 of the Act of 1999 and these Regulations; and
- (i) to offer terms and enter into agreements, where appropriate, for connection to and use of the transmission system with all those using and seeking to use the transmission system.

(2) Any function of the Board under-

- (a) section 3 or 13 of the Shannon Electricity Act, 1925,
- (b) section 19, 20, 27, 28, 44, 47, 51, 58, 59, 62, 84 or 100 of the Electricity (Supply) Act, 1927,
- (c) section 19 or 20 of the Electricity (Supply) (Amendment) (No. 2) Act, 1934,

- (d) section 2 of the Electricity (Supply) (Amendment) Act, 1935,
- (e) section 5, 6 or 7 of the Liffey Reservoir Act, 1936, or
- (f) section 10, 31, 32 or 46 of the Electricity (Supply) (Amendment) Act, 1945,

which is necessary for the discharge of the transmission system operator's functions under these Regulations shall, to that extent, be regarded as a function of the transmission system operator and not of the Board, other than where it is also necessary for the Board to discharge its functions as transmission system owner in which case that function shall be a function of both the Board and the transmission system operator.

(3) In discharging its functions under these Regulations, the transmission system operator shall take into account the objective of minimising the overall costs of the generation, transmission, distribution and supply of electricity to final customers.

(4) For the purposes of paragraph (1)(i) the Commission shall decide on any difference or dispute that may arise between the transmission system operator and any person and the Commission shall issue a direction regarding its decision, and the transmission system operator and any such person shall comply with such direction.

(5) For the purposes of paragraphs (2) and (3), the Commission shall decide on any difference or dispute between the transmission system operator and the transmission system owner and the Commission shall issue a direction regarding its decision, as it sees fit, regarding the matter in dispute and the transmission system operator and the transmission system owner shall comply with such direction.

- (6) (a) Within such time that the Commission may direct, the transmission system operator shall prepare a plan (in these Regulations referred to as the "development plan") for the development of the transmission system in order to guarantee security of supply, which shall relate to a period of 5 calendar years from the date on which the plan is prepared by the transmission system operator.
- (b) The transmission system operator shall, at least once each year, revise the development plan, and the revised plan, which shall relate to a period of 5 calendar years following the date on which the plan is revised, shall be submitted to the Commission for approval.
- (c) The development plan shall take account of
  - (i) existing and planned generation, transmission, distribution and supply,

- (ii) forecast statements prepared under section 38 of the Act of 1999,
  - (iii) interconnections with other systems, and
  - (iv) national and regional Government development objectives.
- (d) The development plan shall indicate the manner in which the transmission system operator shall discharge its functions under paragraph 1.
- (e) The development plan shall be submitted to the Commission for approval.
- (f) The transmission system operator shall-
  - (i) engage in a public consultation process, including any other form of consultation that the Commission may direct, before submitting the development plan to the Commission for approval, and
  - (ii) report in writing to the Commission on the results of that process not later than when submitting the development plan to the Commission for approval.
- (g) The Commission may from time to time give directions to the transmission system operator in respect of -
  - (i) the matters to be specified in the development plan, and
  - (ii) the review and revision by the transmission system operator from time to time of the development plan,and the transmission system operator shall comply with directions given by the Commission under this subparagraph.

(7) The Commission may direct the transmission system operator to exercise the power to which paragraph (1)(a) relates to explore and develop opportunities for interconnection with other systems.

(8) The transmission system operator shall not engage in the generation, distribution or supply of electricity in the State.

(9) The Commission may direct users of the system to enter into agreements referred to in paragraph (1) (i).

***Independence of transmission system operator.***

9. (1) The transmission system owner shall neither direct nor give any instructions to the transmission system operator in relation to any of the functions conferred on the transmission system operator by these Regulations.

(2) The transmission system owner shall, within such period as shall be specified by direction of the Commission, comply with any requirements considered necessary by the transmission system operator to enable the latter to discharge its functions under these Regulations.

(3) (a) Subject to paragraph (4), the infrastructure agreement made under Regulation 18 shall be the basis of the relationship between the transmission system operator and the transmission system owner.

(b) The transmission system owner shall not exercise its property rights in a manner which would interfere with the obligations on the transmission system operator to operate the transmission system and to the extent that it is possible to do so, the infrastructure agreement shall set out the respective rights of the transmission system owner and the transmission system operator in that regard.

(4) Nothing in paragraph (3) shall be construed as affecting-

(a) any licence conditions in the licences issued to the transmission system operator and the transmission system owner,

(b) the transfer scheme, or

(c) any connection agreements.

(5) For the purposes of this Regulation, the Commission shall decide on any difference or dispute between the transmission system operator and the transmission system owner and the Commission shall issue a direction regarding its decision, as it sees fit, regarding the matter in dispute and the transmission system operator and the transmission system owner shall comply with such direction.

***Transitional allocation of resources to transmission system operator.***

10. (1) As soon as possible after the making of these Regulations and subject to paragraph (2), the Board shall make available to the National Grid Business Unit such resources, including financing, staff and premises, as are necessary for the National Grid Business Unit to discharge its functions until the effective date.

(2) The Commission shall give directions to the Board in respect of the allocation of resources for the purposes of paragraph (1) and the Board shall comply with directions so given.

(3) The arrangements provided for by this Regulation shall continue until such time as all of the transfers envisaged under Regulation 13 have taken effect. Until that time it shall be the duty of the Board and the National Grid Business Unit to ensure that the greatest degree of separation of the business of the National Grid Business Unit from that of the Board which is practicable is maintained at all times.

(4) To the extent that Regulation 5 of the Electricity Regulation Act, 1999 (Trading Arrangements in Electricity) Regulations, 2000 (S.I. No. 49 of 2000) continues to apply, paragraphs (1), (2) and (3) are in addition to, and not in substitution for the said Regulation 5.

***Duty of non-discrimination by transmission system operator.***

11. In carrying out its functions, the transmission system operator shall not discriminate unfairly between persons or classes of persons, or between system users or classes of system users, particularly in favour of its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders.

***Non-disclosure of commercially sensitive information by transmission system operator.***

12. The transmission system operator shall preserve the confidentiality of commercially sensitive information obtained by it in the discharge of its functions under these Regulations unless required to disclose such information in accordance with the law.

***Transfer scheme.***

13. On the effective date, the Board shall, with the agreement of EirGrid, make a scheme in accordance with the Schedule to these Regulations and with Regulations 14 to 16 (in these Regulations referred to as the "transfer scheme"), which shall be subject to the approval of the Commission, for the transfer of assets, contracts, rights, obligations, liabilities, staff, and any other thing to

EirGrid (other than excepted assets, contracts, rights and liabilities) which EirGrid, the Board or the Commission consider necessary for the operation of these Regulations.

***Transfer of staff of Board.***

14. (1) Following consultation with any recognised trade union or staff association concerned, the Board shall, with the agreement of EirGrid, designate in the transfer scheme such and so many of its staff for transfer to the transmission system operator as EirGrid and the Board shall agree.

(2) Every person who, on the day immediately before the effective date, is a member of the staff of the Board and has been designated by the Board under paragraph (1), shall, on the effective date, be transferred to and become a member of the staff of the transmission system operator.

(3) Except in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person who is transferred under this Regulation shall not, while in the service of the transmission system operator to which he or she is transferred, be brought to conditions of service (including conditions in relation to tenure of office, terms of employment, classification for social insurance purposes, superannuation and remuneration) that are less favourable to the person than those to which he or she was subject immediately before the effective date.

(4) Unless the scales of pay and conditions of service of the members of staff of the Board transferred to the transmission system operator under this Regulation are varied by the transmission system operator following consultation and after agreement with such recognised trade unions or staff associations concerned, the scales of pay by reference to which they were remunerated and the conditions of service, restrictions, requirements and obligations to which they were subject immediately before the effective date shall continue to apply to them.

(5) In relation to persons transferred under this Regulation, previous service in the Board shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts, 1967 to 1991, the Minimum Notice and Terms of Employment Acts, 1973 to 1991, the Unfair Dismissals Acts, 1977 to 1993, and the Organisation of Working Time Act, 1997.

***Transfer of assets, etc.***

15. (1) Subject to the provisions of the Schedule to these Regulations, on the effective date all assets, contracts, rights and liabilities to which immediately before that date the Board was entitled or subject (other than excepted assets,

contracts, rights and liabilities) shall become by virtue of the transfer scheme, assets, contracts, rights and liabilities of the transmission system operator to which they are allocated by the transfer scheme.

(2) In this Regulation "excepted assets, contracts, rights and liabilities" means-

- (a) any rights and liabilities with respect to corporation tax (including rights to receive any sums by way of repayment supplement and liabilities to pay any sums by way of interest or penalty);
- (b) any rights and liabilities arising under an agreement which relates to any such assets and liabilities as are mentioned in paragraph (a) and is specified or is of a description specified by the transfer scheme;
- (c) such other assets, contracts, rights and liabilities as the Commission may determine.

(3) The transfer scheme may-

- (a) define the assets, contracts, rights and liabilities to be allocated to the transmission system operator-
  - (i) by specifying or describing the assets, contracts, rights and liabilities in question,
  - (ii) by referring to all the assets and liabilities comprised in a specified part of the Board's undertaking, or
  - (iii) by any combination of the matters referred to in clauses (i) and (ii);
- (b) provide that any rights or liabilities specified or described in the transfer scheme shall be enforceable either by or against either the Board or the transmission system operator, or both;
- (c) impose on either the Board or the transmission system operator an obligation to enter into such written agreements with, or execute such other instruments in favour of the Board or the transmission system operator, as may be specified in the transfer scheme; and
- (d) make such supplemental, incidental and consequential provision as the Board or EirGrid considers appropriate (including provision specifying the order in which any transfers or transactions are to be regarded as taking effect).

(4) An obligation imposed on either the Board or the transmission system operator by a provision included in the transfer scheme under paragraph (3)(c) shall be enforceable by civil proceedings by the other (either the Board or the transmission system operator as the case may be), for an injunction or for any other appropriate relief.

(5) A transaction of any description which is effected under a provision to which paragraph (4) relates shall-

- (a) have effect subject to the provisions of any statutory provision which provides for transactions of that description to be registered in any register established by law; and
  - (b) subject to subparagraph (a), be binding on all other persons notwithstanding that it would, apart from this Regulation, have required the consent or concurrence of any other person.
- (6) Where a lease of any land or property is granted in pursuance of a provision to which paragraph (4) relates, then any right or obligation affecting that land or property shall not become exercisable or enforceable by reason of the grant of the lease but shall have effect as if the lessee were the same person in law as the lessor.

***Functions of Minister and Commission in relation to transfer scheme.***

16. (1) The transfer scheme shall not take effect unless it is approved by the Commission and, before approving it, the Commission may cause such a scheme to be modified in accordance with paragraph (2).

- (2) (a) The Commission may direct the Board to modify or amend the transfer scheme, either before or after it has been made on such terms as the Commission shall determine.
- (b) It shall be the duty of the Board to comply with any direction under subparagraph (a).
- (c) Where the transfer scheme is modified or amended pursuant to this paragraph it shall take effect as if it had included the modification or amendment concerned when the scheme was originally made.

(3) If, in relation to the transfer scheme -

- (a) the Board fails, before the effective date, to submit the scheme for the approval of the Commission, or
- (b) the Commission decides not to approve the scheme that has been submitted to the Commission by the Board (either with or without modifications), or

- (c) where the transfer scheme has been duly made, the Board fails to modify or amend the scheme in accordance with paragraph (2),

then the Commission may decide to submit a proposed transfer scheme, or an amendment or modification of the transfer scheme, to the Minister, who, at the request of the Commission, may make the scheme or the amendment or modification to the scheme, and any such scheme, including a scheme as so amended or modified, shall be deemed to have been made by the Board under Regulation 13.

(4) It shall be the duty of the Board and EirGrid for each of them to provide the Commission with all such information and other assistance as the Commission may require for the purposes of, or in connection with the exercise, in relation to the transfer scheme, of any function conferred on the Commission by paragraph (1), (2) or (3).

(5) The transfer scheme shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the transfer scheme is passed by either such House within the next subsequent 21 days on which that House has sat after the transfer scheme is laid before it, the transfer scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

(6) (a) In the event of a dispute between the transmission system owner and the transmission system operator over the interpretation, meaning, or any other aspect, of the transfer scheme, the matter in dispute shall be submitted to the Commission for decision.

(b) The Commission shall issue directions regarding its decision, as it sees fit, regarding the matter in dispute, and the transmission system owner and the transmission system operator shall comply with such directions.

***Superannuation scheme for transmission system operator.***

17. (1) The transmission system operator shall prepare and submit to the Minister for approval, given with the consent of the Minister for Finance, a scheme or schemes for the granting of superannuation benefits to or in respect of persons in the employment of the transmission system operator as it may think fit and the scheme or schemes may make different provisions in respect of different classes of such persons.

(2) Any scheme prepared under this Regulation shall, with regard to staff of the Board transferred to the transmission system operator under Regulation 13,

make such provision as will ensure that the terms and conditions relating to superannuation benefits shall not be less favourable to those persons than those to which they were entitled immediately before their transfer, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned or an agreement negotiated with the said persons. =

(3) Every scheme under this Regulation shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

(4) Any scheme under this Regulation may be amended or revoked by a subsequent scheme submitted and approved under this Regulation.

(5) A scheme submitted by the transmission system operator under this Regulation, shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the transmission system operator in accordance with its terms.

(6) Superannuation benefits shall not be granted by the transmission system operator nor shall any other arrangements be entered into by them for the provision of such benefits to or in respect of a person in their employment otherwise than-

- (a) in accordance with a scheme or schemes under this Regulation, or
- (b) as may be approved of by the Minister with the consent of the Minister for Finance.

(7) If any dispute arises as to the eligibility of a person who applies for membership of any scheme or schemes under this Regulation or the claim of any person to, or the amount of any superannuation benefit payable in pursuance of such scheme or schemes, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her.

(8) The transmission system operator may, subject to paragraph (10), establish a fund administered by trustees who shall be appointed by the transmission system operator from which superannuation benefits payable under any scheme or schemes under this Regulation shall be paid.

(9) A scheme under this Regulation shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

- (10) (a) A scheme under this Regulation shall, in respect of members of the staff of the Board transferred to the transmission system operator under Regulation 13, provide that the superannuation benefits and the contributions payable under it shall, in respect of each such member of staff and subject to paragraph (8) and this paragraph, be paid out of or into as the case may be the fund established by a superannuation scheme under the Act of 1942 into which that member was, before such transfer, paying superannuation contributions.
- (b) The transmission system operator shall give notice, in writing, within one month of the date of the establishment of a fund under paragraph (8), to the members of the staff of the Board who have transferred to the transmission system operator under Regulation 13, of-
- (i) the date of the establishment of such a fund, and
  - (ii) the option to each such member to elect to have his or her superannuation benefits and contributions payable out of or into, as the case may be, such a fund, within 6 months of receipt of notice of the date of the establishment of that fund specified in clause (i).
- (c) Subparagraph (a), in respect of a member of staff to whom it relates, shall remain applicable unless, within 6 months of receipt of the notice given by the transmission system operator under subparagraph (b) of the date of the establishment of a fund, he or she gives a notice in writing to the transmission system operator of his or her election to have his or her superannuation benefits and contributions payable out of or into, as the case may be, a fund established under paragraph (8).
- (d) The transmission system operator shall, within 8 months of the date of the establishment of the fund specified in the notice given by it in subparagraph (b), in writing, notify the trustees of the superannuation scheme under the Act of 1942 into which members of staff who have given notice under subparagraph (c) were, before transfer, paying superannuation contributions, of those members who have given such a notice.
- (e) In respect of the members of staff of the Board transferred to the transmission system operator under Regulation 13, the Act of 1942 shall be construed so as to give effect to this paragraph.

(11) Any period of service by a member of staff of the Board transferred to the transmission system operator under Regulation 13, which was a period of reckonable service for the purposes of a superannuation scheme under the Act of 1942 shall be regarded as a period of reckonable service for the purposes of a scheme made under this Regulation.

(12) The Trustees of any scheme under the Act of 1942 shall, with the approval of the Minister, given with the consent of the Minister for Finance, make such

amendments to such schemes under the Act of 1942 as they deem necessary arising out of the operation of this Regulation.

(13) A scheme under this Regulation shall provide, in respect of members of the staff of the Board, transferred to the transmission system operator under Regulation 13, who give a notice under paragraph (10)(c), that-

- (a) an amount bearing the same proportion to the assets of a superannuation scheme under the Act of 1942 into which that member was, before transfer, paying superannuation contributions as, in the opinion of the trustees of such a scheme, after taking the advice of the actuary of such a scheme, the liabilities under such a scheme, in respect of those members who have given such a notice under paragraph (10)(c), bear to the total liabilities under such a scheme shall be transferred by the said trustees from the old fund to the new fund, and
- (b) the amount referred to in subparagraph (a) shall be subject to the approval of the Minister, given with the consent of the Minister for Finance.

(14) Subject to paragraph (10), a member of staff of the Board transferred to the transmission system operator under Regulation 13, shall on the date of transfer cease to be a member of a scheme under the Act of 1942.

(15) In this Regulation-

“Act of 1942” means the Electricity Supply Board (Superannuation) Act, 1942;

“superannuation benefit” means a pension, gratuity, or other allowance payable on resignation, retirement, or death.

***Infrastructure agreement.***

- 18. (1) (a)** EirGrid and the Board shall, no later than the effective date and subject to the approval of the Commission, enter into an agreement (in these Regulations referred to as the “infrastructure agreement”) for the purpose of enabling the transmission system operator to discharge its functions under these Regulations.
- (b) Where the infrastructure agreement is not made by the effective date the Commission shall, as soon as may be, direct EirGrid and the Board to reach agreement so as to comply with industry requirements as duly specified by the Commission (in this paragraph referred to as “Commission industry requirements”).

- (c) When, in the opinion of the Commission, the infrastructure agreement should be amended to reflect Commission industry requirements, the Commission shall direct the transmission system operator and the transmission system owner to agree such an amendment as will comply with such requirements.
  - (d) The Commission may, for the purposes of exercising its power to approve the infrastructure agreement, referred to in subparagraph (a), consult with the Competition Authority.
- (2) The Commission shall, in particular, ensure that the infrastructure agreement incorporates terms and conditions which, in the opinion of the Commission-
- (a) enables the transmission system operator fully and effectively to discharge its functions under these Regulations, and
  - (b) ensures that the transmission system owner will facilitate the discharge by the transmission system operator of its functions and ensure the performance of the transmission system owner's own obligations, in accordance with its own duties.
- (3) (a) The infrastructure agreement shall provide for the Board, as asset owner, to maintain the transmission system and carry out construction work in accordance with the transmission system operator's development plan, using its own resources and outsourcing to contractors.
- (b) The outsourcing contractors shall be duly selected in accordance with the law relating to public procurement and, without prejudice to such law, shall be on a list agreed between the Board and the transmission system operator.
- (c) The Commission shall decide on any dispute with regard to the content of the list referred to in paragraph (b).
- (4) (a) The infrastructure agreement shall provide for a system of payments, which shall be subject to the approval of the Commission, to the transmission system owner by the transmission system operator.
- (b) The aggregate of payments under paragraph (a) to be made in any year to the transmission system owner by the transmission system operator shall be consistent with the revenues allowed to the transmission system owner (in this paragraph referred to as the "transmission system owner's allowed revenue") in that year by the Commission.
- (c) The transmission system owner's allowed revenue for its transmission business shall be determined solely by the Commission and shall relate to-

- (i) the reasonable costs anticipated to be incurred by the transmission system owner in performance of its functions under the infrastructure agreement and the licence granted to it under paragraph (f) of section 14(1) of the Act of 1999,
- (ii) the transmission system owner's transmission business costs,
- (iii) depreciation of the transmission system assets, being the assets constituting the transmission system and specified under paragraph (d)(i),
- (iv) a rate of return on existing assets and on agreed additions to the asset base, and
- (iv) any over or under recovery of allowed revenue from a previous period,

and shall provide such incentives as the Commission considers appropriate so that costs are incurred efficiently.

(d) The infrastructure agreement shall include in such form as shall be approved by the Commission-

- (i) a specification of which assets of the transmission system owner shall constitute the transmission system, including-
  - (I) the technical operating limits of such assets, and
  - (II) how this specification may change over time,

the specification and the change process to be determined based on the functional nature of the assets,

- (ii) provisions for maintenance and development of the transmission system,
- (iii) provisions regarding construction, connection to and use of the transmission system by third parties,
- (iv) arrangements for the transfer of information between the transmission system owner and the transmission system operator in relation to the development plan, its implementation and costs thereof,

- (v) provisions regarding rights and responsibilities for de-energisation and disconnection,
  - (vi) the allocation of risk, for insurance or other purposes considered appropriate by the Commission, between the transmission system operator and the transmission system owner,
  - (vii) provisions regarding the term, termination and renewal of the infrastructure agreement,
  - (viii) provisions regarding review of the infrastructure agreement and each party's performance under that agreement.
- (5) (a) The Commission shall monitor the operation of the infrastructure agreement, including the specific measures provided for in paragraph (4).
- (b) Where the Commission is of the opinion that either the transmission system operator or the transmission system owner is systematically failing to comply with the terms of the infrastructure agreement, or with these Regulations, in a way which is likely to materially affect the public interest, or is in fundamental breach of the agreement in a way which is likely to materially affect the public interest, the Commission may issue a direction which-
- (i) requires the transmission system operator or the transmission system owner, as appropriate, to comply with the infrastructure agreement or with these Regulations, and
  - (ii) prescribes the manner in which the transmission system operator or the transmission system owner, as appropriate, shall comply with the direction so issued.
- (6) In case of delay or default by the transmission system owner, the transmission system operator shall have rapid step-in rights to arrange for work to be undertaken by a contractor approved under paragraph (3)(b), by direction of the Commission. The costs of such work to be undertaken shall be borne by the transmission system owner.
- (7) (a) Where, in the opinion of the transmission system operator, an emergency occurs where the safety or security of persons, apparatus, or installations or system security is threatened, the transmission system operator may take whatever safeguarding or remedial measures it thinks fit to remedy the emergency, and shall inform the Commission and the transmission system owner forthwith of the nature of the emergency and the action taken or proposed to be taken.

- (b) Where, in the opinion of the transmission system owner, an emergency occurs where the physical safety or security of persons is threatened, the transmission system owner shall, subject to such arrangements or conditions as may be provided for in the infrastructure agreement, take whatever safeguarding or remedial measures it thinks fit to remedy the emergency, and shall inform the Commission and the transmission system operator forthwith of the nature of the emergency and the action taken.
  - (c) When, in the opinion of the Commission, the emergency referred to in paragraph (a) or (b) has been remedied to the Commission's satisfaction, the Commission may direct the transmission system operator to cease the safeguarding or remedial measures it is taking, and to make such arrangements as are provided for in these Regulations for any further maintenance, development or other work on the transmission system as may be necessary.
- (8) For the purpose of this Regulation, the Commission shall decide on any difference or dispute between the transmission system operator and the transmission system owner and the Commission shall issue a direction regarding its decision, as it sees fit, regarding the matter in dispute and the transmission system operator and the transmission system owner shall comply with such direction.

#### **PART 4 - TRANSMISSION SYSTEM OWNER**

##### ***Functions of transmission system owner.***

19. The transmission system owner shall-
- (a) as asset owner, maintain the transmission system and carry out construction work in accordance with the transmission system operator's development plan, subject to the provisions of Regulation 18(3),
  - (b) in accordance with the infrastructure agreement with the transmission system operator under Regulation 18 implement any other works required under the development plan, and carry out any other requirement applicable to it under these Regulations, having due regard for the environment,
  - (c) provide to the transmission system operator such information as the transmission system operator requires to ensure the secure and efficient operation, development and maintenance of the transmission system or otherwise in order to discharge its functions under these Regulations,
  - (d) have a duty to indicate to the transmission system operator and the Commission, within such period as shall be specified by direction of

the Commission, the measures which it proposes to take to implement the development plan in accordance with the infrastructure agreement,

- (e) have a duty not to dispose of any assets constituting part of the transmission system or to create any encumbrance over the transmission system without prior notification, in writing, to the transmission system operator and the Commission.
- (f) have a duty not to dispose of to an extent considered material by the Commission, any assets constituting part of the transmission system or create to an extent considered material by the Commission, any encumbrance over the transmission system, without the prior written consent of the transmission system operator and the Commission,
- (g) comply with any regulations or directions applicable to it made by the Commission under these Regulations or under the Act of 1999, and
- (h) otherwise comply with the licence issued under section 14(1)(f) of the Act of 1999.

***Duty of non-discrimination by transmission system owner.***

- 20.** In carrying out its functions, the transmission system owner shall not discriminate unfairly between persons or classes of persons, or between system users or classes of system users, particularly in favour of its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders.

***Non-disclosure of commercially sensitive information by transmission system owner.***

- 21.** The transmission system owner shall preserve the confidentiality of commercially sensitive information obtained by it in the discharge of its functions under these Regulations unless required to disclose such information in accordance with the law.

**PART 5 - DISTRIBUTION SYSTEM OPERATOR**

***Establishment and functions of distribution system operator.***

- 22.** (1)(a) The Board shall designate a division of the Board, to be approved by the Commission, to exercise the functions of the licence issued under section 14(1)(g) of the Act of 1999.

(b) The Board shall provide the division designated under paragraph (a) with sufficient resources, including a managing director and staff, as shall be necessary for the performance of its functions under these Regulations and as shall be approved by the Commission.

(2) The distribution system operator shall-

- (a) operate and ensure the maintenance of and develop, as necessary, a safe, secure, reliable, economical and efficient electricity distribution system, taking into account exchanges with other interconnected systems, with a view to ensuring that all reasonable demands for electricity are met and having due regard for the environment,
- (b) take into account the need to operate co-ordinated transmission and distribution systems,
- (c) comply with the licence issued under section 14(1)(g) of the Act of 1999,
- (d) otherwise comply with any other regulations or directions applicable to it made by the Commission under these Regulations or under the Act of 1999,
- (e) charge for the connection to and use of the distribution system in accordance with section 35 of the Act of 1999 and these Regulations, and
- (f) offer terms and enter into agreements, where appropriate, for connection to and use of the distribution system with all those using and seeking to use the distribution system.

(3) Charges for connection to and use of the distribution system shall be subject to the approval of the Commission.

(4) The Commission may direct users of the system to enter into agreements referred to in paragraph (2)(f).

(5) For the purposes of paragraph (2)(f) the Commission shall decide on any difference or dispute that may arise between the distribution system operator and any person and the Commission shall issue a direction regarding its decision, and the distribution system operator and any such person shall comply with such direction.

***Duty of non-discrimination by distribution system operator.***

23. In carrying out its functions, the distribution system operator shall not discriminate unfairly as between persons or classes of persons, or between system users or classes of system users, particularly in favour of its subsidiaries, associated or affiliated undertakings, joint ventures or shareholders.

***Non-disclosure of commercially sensitive information by distribution system operator.***

24. The distribution system operator shall preserve the confidentiality of commercially sensitive information obtained by it in the discharge of its functions under these Regulations unless required to disclose such information in accordance with the law.

**PART 6 - GRID CODE AND DISTRIBUTION CODE**

***Grid code and distribution code.***

25. (1) For the purposes of Part V of the Act of 1999-
- (a) any existing duty, obligation or requirement on the Board in respect of the transmission system which relates to functions conferred on the transmission system operator by or under these Regulations shall be regarded as a duty, obligation or requirement on the transmission system operator, and not on the Board,
  - (b) any existing duty, obligation or requirement on the Board in relation to the operation of the distribution system which is transferred to the distribution system operator by or under these Regulations shall be regarded as a duty, obligation or requirement on the distribution system operator, licensed under section 14(1)(g) of the Act of 1999, and
  - (c) any existing duty, obligation or requirement on the Board in relation to the ownership of the transmission system which is transferred to the transmission system owner by or under these Regulations shall be regarded as a duty, obligation or requirement on the transmission system owner, licensed under section 14(1)(f) of the Act of 1999,

and Part V of the Act of 1999 shall be construed accordingly.

- (2) Any work commenced or being carried out by the Board for the purposes of any duty, obligation or requirement on the Board under Part V of the Act of 1999 in relation to transmission, distribution or ownership of the transmission system shall, by agreement of the parties, be continued and carried out by the transmission system operator in the case of work in relation to transmission, by the distribution system operator in the case of work in relation to distribution, and by the transmission system owner in the case of work in relation to ownership of the transmission system.

- (3) (a) In the event of a dispute between the transmission system owner, the transmission system operator or the distribution system operator over which duties, obligations or rights are to be exercisable by which party, the matter in dispute shall be submitted to the Commission for decision.
- (b) The Commission shall issue directions regarding its decision on the matter in dispute submitted to it pursuant to subparagraph (a), as it sees fit, and the transmission system owner, the transmission system operator and the distribution system operator shall comply with such directions.
- (4) Section 2 of the Act of 1999 is amended in subsection (1)-
- (a) by the substitution for the words "the Board" by "the distribution system operator" in the definition of "distribution code",
- (b) by the insertion of the following after the definition of "distribution code":
- "distribution system operator" means the holder of a licence under section 14(1)(g);",
- (c) by the substitution for the words "the Board" by "the transmission system operator" in the definition of "grid code", and
- (d) by the insertion of the following after the definition of "transmission":
- "transmission system operator" means the holder of a licence under section 14(1)(e);".

## **PART 7 - PUBLIC SERVICE OBLIGATIONS**

### ***Public service obligations.***

26. (1) For the purposes of an order made under section 39 of the Act of 1999 any obligation which the Commission is directed by the Minister to impose on the Board in relation to any functions assigned by virtue of these Regulations to:
- (a) the transmission system operator,
- (b) the distribution system operator, or
- (c) the transmission system owner,

shall be regarded-

- (i) in the case of subparagraph (a), as an obligation on the transmission system operator and not the Board,
  - (ii) in the case of subparagraph (b) as an obligation on the distribution system operator licensed under section 14(1)(g) of the Act of 1999, and.
  - (iii) in the case of subparagraph (c) as an obligation on the transmission system owner licensed under section 14(1)(f) of the Act of 1999.
- (2)(a) In the event of a dispute between any of the transmission system owner, the transmission system operator or the distribution system operator over which obligation is to be exercisable by which party, the matter in dispute shall be submitted to the Commission for decision.
- (b) The Commission shall issue directions regarding its decision on the matter in dispute submitted to it pursuant to subparagraph (a), as it sees fit, and the transmission system owner, the transmission system operator and the distribution system operator shall comply with such directions.
- (3) Section 39 of the Act of 1999 is amended by the substitution of the following for paragraph (b) of subsection (5):

“(b) the collection of payments in that respect from the final customers by the Board or a holder of a licence or an authorisation and the further collection of payments from the Board or such holders of a licence or an authorisation by the transmission system operator;”.

## **PART 8- UNBUNDLING OF ACCOUNTS**

### ***Unbundling of accounts of electricity undertakings.***

27. (1)(a) Electricity undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit and publish their annual accounts in accordance with the requirements of the Companies Acts 1963 to 1999.
- (b) Electricity undertakings which are not legally obliged to publish their annual accounts shall keep a copy of them available for inspection by the public at their head office in the State.
- (2) Integrated electricity undertakings shall, in their internal accounting, keep separate accounts for their generation, transmission, distribution and supply activities, and where appropriate, consolidated accounts for other, non-electricity activities, as they would be required to do if the activities in question were

carried out by separate companies, and with a view to avoiding discrimination, cross-subsidisation and distortion of competition.

(3) In addition to the requirements at paragraph (2), the Board shall, in its internal accounting keep separate accounts for each separate business, licensed under section 14(1) of the Act of 1999.

(4) In preparing the accounts referred to in paragraph (2), integrated electricity undertakings shall include a balance sheet and a profit and loss account for each activity referred to in paragraphs (2) and (3), in notes to their accounts.

(5) (a) Integrated electricity undertakings shall specify in notes to the annual accounts the rules for the allocation of assets and liabilities and expenditure and income which they follow in drawing up the separate accounts referred to in paragraphs (2), (3) and (4).

(b) The rules referred to in subparagraph (a) may be amended only with the approval of the Commission and such amendments shall be mentioned in the notes and shall be duly substantiated.

(6) The annual accounts of electricity undertakings shall indicate in notes to their annual accounts any transaction of a certain size (being of a size which, in the opinion of the Commission, would have a commercial impact) conducted with-

(a) affiliated undertakings, within the meaning of Article 41 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54 (3)(g) of the Treaty on consolidated accounts<sup>2[2]</sup> (as implemented by the European Communities (Companies: Group Accounts) Regulations, 1992, S.I. No. 201 of 1992), or

(b) associated undertakings within the meaning assigned by Regulation 34 of the European Communities (Companies: Group Accounts) Regulations, 1992, or

(c) undertakings which belong to the same shareholders.

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<sup>2[2]</sup> OJ No. L 193 of 18 July 1983.

[Background to the making of European Communities \(Internal Market in Electricity\) Regulations, 2000.](#)

[Comments received in Response to the Public consultation on draft European Communities \(Internal Market in Electricity\) Regulations, 2000.](#)

[Outcome of Public Consultation Process](#)

[Review of all comments received on the European Communities \(Internal Market\) in Electricity Regulations, 2000.](#)

(7) For the purpose of the Directive, the Commission shall be the competent authority and shall have the right to require the preparation of and to have access to the accounts of-

(a) the Board in relation to generation, transmission, distribution or supply, and

(b) EirGrid,

in whatever form may be required to discharge its functions.

## **PART 9 - General Provisions**

### ***General provisions.***

28. These Regulations shall apply to the Board notwithstanding the provisions of any previous enactment.

### ***Application of certain functions.***

29. (1) Any duty, obligation, or requirement on the Board under Part VII and Part VIII of the Act of 1999 necessary for the discharge of the transmission system operator's functions under these Regulations, shall also be regarded as a duty, obligation or requirement on the transmission system operator.

(2) Any power conferred on the Board under Part VII and Part VIII of the Act of 1999 necessary for the discharge of the transmission system operator's functions under these Regulations shall, to that extent, be regarded as a power conferred on the transmission system operator and not on the Board, other than where it is also necessary for the Board to discharge its functions as transmission system owner in which case that power shall be a power conferred on both the Board and the transmission system operator.

(3) Any work commenced or being carried out by the Board for the purposes of any duty, obligation or requirement on the Board or in exercise of any power conferred on the Board under Part VII and Part VIII of the Act of 1999 necessary for the discharge of the transmission system operator's functions under these Regulations, shall be continued and carried out by the transmission system operator.

(4) In the event of a dispute between the transmission system owner and the transmission system operator over any matter in paragraph (1), (2) or (3), the

matter in dispute shall be submitted to the Commission for decision. The Commission shall issue directions regarding its decision, as it sees fit, regarding the matter in dispute, and the transmission system owner and the transmission system operator shall comply with such directions.

***Compliance with directions of Commission.***

30. (1) Where the Commission is of the opinion that the transmission system operator, the transmission system owner, the distribution system operator or the Board is not complying with any direction made by the Commission under these Regulations, the Commission may apply in a summary manner on notice to the High Court for an order requiring the transmission system operator, the transmission system owner, the distribution system operator or the Board, as the case may be, to comply with the direction made by the Commission.
- (2) For the purposes of this Regulation the High Court may make such order as it thinks fit and may confirm, revoke or vary a direction given by the Commission.

**PART 10 – Miscellaneous AMENDMENTS TO ACT OF 1999, ETC.**

***Functions of Commission.***

31. Section 9 of the Act of 1999 is amended-
- (a) in subsection (1) by the deletion of “and” where it last occurs in paragraph (d) and the insertion of the following after that paragraph:
- “ (da) to facilitate arrangements, to apply until 19 February 2005, approved of by the Commission, which have the effect of securing that the Board is able to satisfy demand for electricity from final customers, who are not supplied in accordance with a licence issued under paragraph (b), (c) or (d) of section 14(1), in the first instance from generation stations currently owned by the Board.
- (db) to examine charges, and the costs underlying such charges, or any proposals to alter such charges, for electricity supplied by the Board in accordance with paragraph (da) to final consumers who are not being supplied in accordance with a licence issued under paragraph (b), (c) or (d) of section 14(1),

- (dc) following an examination pursuant to paragraph (db) and where the Commission considers it necessary, to issue directions to the Board in relation to either or both the nature and the amount of any charge or proposed charge referred to in paragraph (db), and”,

and

- (b) by the insertion of the following after subsection (1):

“(1A) For the purposes of this Act, the functions of the Commission under the *European Communities (Internal Market in Electricity) Regulations, 2000*, shall be deemed to be functions of the Commission under this Act.”.

***Licences to generate and supply electricity.***

**32.** (1) Section 14 of the Act of 1999 is amended-

- (a) in subsection (1), by the deletion of “or” where it last occurs in paragraph (c) and the insertion of the following after paragraph (d):

“(e) to discharge the functions of the transmission system operator in accordance with the *European Communities (Internal Market in Electricity) Regulations, 2000*,

(f) to discharge the functions of the transmission system owner in accordance with the *European Communities (Internal Market in Electricity) Regulations, 2000*, or

(g) to discharge the functions of the distribution system operator in accordance with the *European Communities (Internal Market in Electricity) Regulations, 2000*,”

and the said subsection (1), as so amended, is set out in the Table to this Regulation,

- (b) by the substitution of the following for subsection (8):

“(8)(a) The holder of a licence granted under paragraph (a) of subsection (1) may supply electricity to the holder of a licence granted under paragraph (b), (c) or (d) of that subsection or to the Board.

(b) The holder of a licence under paragraph (a) of subsection (1) may supply an amount of electricity to its own premises or to its own subsidiary, or subsidiaries, whether or not eligible, which does not exceed the

amount of electricity produced by the holder of the licence or electricity which is purchased, in place of such electricity, in accordance with the trading arrangements provided for in any Regulations made by the Commission under section 9(1)(d).",

and

(c) by the insertion of the following after subsection (12):

"(13) (a) Subject to such arrangements as the Commission may approve in the interest of economic efficiency in relation to the discharge by the holders of licences of their functions under paragraphs (f) and (g) of section 14(1), the Commission shall ensure that the licence granted pursuant to the said paragraph (f) shall contain provisions which-

- (i) secure the complete and effective separation of that part of the business of the licensee as relates to any of the ownership, maintenance and construction of the transmission system (or any part thereof) from all other parts of its business, and
- (ii) require the preparation of separate accounts in respect of that part of the licensee's business which relates to the ownership, maintenance and construction of the transmission system (or any part thereof).

(b) Subject to such arrangements as the Commission may approve in the interest of economic efficiency in relation to the discharge by the holders of licences of their functions under paragraphs (f) and (g) of section 14(1), the Commission shall ensure that the licence granted pursuant to the said paragraph (g) shall contain provisions which-

- (i) secure the complete and effective separation of that part of the business of the licensee as relates to any of the operation, maintenance and development of the distribution system (or any part thereof) from all other parts of its business, and
- (ii) require the preparation of separate accounts in respect of that part of the licensee's business which relates to the operation, maintenance

and development of the distribution system (or any part thereof).”.

(2) A licence shall not be granted pursuant to paragraph (e), (f) or (g) of section 14(1) of the Act of 1999 so as to have effect before the effective date.

## TABLE

(1) The Commission may grant or may refuse to grant to any person a licence—

- (a) to generate electricity,
- (b) to supply electricity to eligible customers,
- (c) subject to section 28, to supply electricity to final customers which in aggregate does not exceed the amount of electricity which is available to the supplier and which is produced using renewable, sustainable or alternative forms of energy or electricity purchased, in place of such electricity, in accordance with the trading arrangements provided for in any Regulations made by the Commission under section 9(1)(d),
- (d) to supply to the single premises of the main heat customer electricity which is produced using combined heat and power at the generating station from which that main heat customer is supplied with heat, or electricity purchased, in place of such electricity, in accordance with the trading arrangements provided for in any Regulations made by the Commission under section 9(1)(d),
- (e) to discharge the functions of the transmission system operator in accordance with the *European Communities (Internal Market in Electricity) Regulations, 2000*,
- (f) to discharge the functions of the transmission system owner in accordance with the *European Communities (Internal Market in Electricity) Regulations, 2000*, or
- (g) to discharge the functions of the distribution system operator in accordance with the *European Communities (Internal Market in Electricity) Regulations, 2000*,

on such terms and conditions as may be specified in the licence.

***Construction of connections.***

33. Section 34 of the Act of 1999 is amended by the addition of the following after subsection (1):

"(1A) An offer under subsection (1) may, on request of the applicant, be on the basis that the applicant constructs, or that either or both the applicant and the transmission system operator arranges to have constructed, the connection to the transmission system, and any such connection constructed or arranged to be constructed by the applicant shall be the property of the person with whom the agreement is made, and shall, for the purposes of section 37, be deemed to be a direct line."

## **PART 11 - Establishment of Transmission System Operator Company**

### ***Formation of company.***

34. (1) The Minister shall cause to be incorporated under the Companies Acts, 1963 to 1999, a public limited company for the purposes of this Part of these Regulations and conforming to the conditions laid down in these Regulations.

(2) The company referred to in paragraph (1) shall, upon the grant to it of a licence under section 14(1)(e) of the Act of 1999 be the transmission system operator for the purposes of these Regulations and the Directive.

### ***Name and capital formation of company.***

35. (1) The company referred to in Regulation 34 shall be known as EirGrid or, in the Irish language, as Oibritheoir Eangach Leictreachais na hÉireann.

(2) Section 6(1)(a) of the Companies Act, 1963, shall not apply to EirGrid.

(3) The authorised share capital of EirGrid shall be £30,000 or such other amount as may be determined from time to time by the Minister for Finance, after consultation with the Minister.

(4) EirGrid may, with the consent of the Minister for Finance given after consultation with the Minister, divide its shares into ordinary shares of £1 each.

### ***Form of memorandum of association.***

36. The memorandum of association of EirGrid shall be in such form consistent with these Regulations as may be approved of by the Minister from time to time, with the consent of the Minister for Finance.

***Objects to be stated in memorandum.***

37. The principal objects of EirGrid shall be stated in its memorandum of association.

***Articles of association.***

38. The articles of association of EirGrid shall be in such form consistent with these Regulations as may be approved of by the Minister with the consent of the Minister for Finance.

***Restriction on alteration of memorandum or articles of association.***

39. Notwithstanding anything contained in the Companies Acts, 1963 to 1999, an alteration in the memorandum of association or articles of association of EirGrid shall not be valid or effective unless made with the prior written approval of the Minister given with the consent of the Minister for Finance.

***Issue of shares to Minister for Finance.***

40. EirGrid shall issue to the Minister for Finance such number of shares in the share capital of EirGrid as may be agreed upon by the Minister and the Minister for Finance and may from time to time thereafter issue to the Minister for Finance such number of shares of EirGrid as may be so agreed upon.

***Issue of share to Minister.***

41. (1) EirGrid shall issue to the Minister one share in the share capital of EirGrid.
- (2) The Minister may exercise in respect of his or her share in the share capital of EirGrid all the rights and powers of a holder of such shares and, where a right or power is exercisable by attorney, exercise it by his or her attorney.
- (3) The Minister shall not transfer or alienate his or her share in the share capital of EirGrid.

***Issue of shares to subscribers to memorandum of association of company.***

42. EirGrid shall issue one share in the share capital of EirGrid to each of the subscribers to the memorandum of association of EirGrid.

***Exercise of powers by Minister for Finance in respect of shares.***

43. The Minister for Finance may, subject to these Regulations, exercise in respect of the shares of EirGrid held by him or her all the rights and powers of a holder of such shares and, where a right or power is exercisable by attorney, exercise it by his or her attorney.

***Transfer by Minister for Finance of shares.***

44. (1) The Minister for Finance may, from time to time as occasion requires, for the purpose of compliance with so much of the Companies Acts, 1963 to 1999, as requires that there shall always be a minimum number of shareholders of EirGrid, transfer to any person one of his or her shares in the share capital of EirGrid.

(2) Except as provided by paragraph (1), the Minister for Finance shall not transfer or alienate his or her shares in the share capital of EirGrid.

***Obligation of certain shareholders to hold shares in trust.***

45. (1) A person to whom a share in the share capital of EirGrid is issued under Regulation 42 or transferred to him or her under Regulation 44(1) shall hold that share in trust for the Minister for Finance and, accordingly, shall be bound to pay all dividends and other money which he or she receives in respect of the share to that Minister for the benefit of the Exchequer and to transfer, as and when required by that Minister, the share to him or her or to a person nominated in that behalf by him or her.

(2) Except as provided by paragraph (1), a shareholder in EirGrid shall not transfer or alienate his or her share in the share capital of EirGrid.

(3) Where a person ceases to be a member of the Board of EirGrid, any share in the share capital of EirGrid held by such person shall, without the necessity for a transfer, vest in the Minister for Finance.

***Payment of dividends, etc., into Exchequer.***

46. All amounts representing dividends or other money received by the Minister for Finance in respect of shares held by him or her in the share capital of EirGrid and all amounts representing repayment of or interest on repayable advances received or recovered by him or her from EirGrid shall be paid into or disposed of for the benefit of the Exchequer in such manner as he or she may direct.

*Accounts and audits.*

47. (1) Without prejudice to the requirements of the Companies Acts, 1963 to 1999, in relation to balance sheets and accounts, and without prejudice to Regulation 27, EirGrid shall keep, in such form as may be approved of by the Minister with the consent of the Minister for Finance, all proper and usual accounts of all money received by or expended by it, including a profit and loss account, an account showing the derivation of the funds of EirGrid and the purposes to which they are applied (referred to in paragraph (2) as the "cash flow statement") and a balance sheet, and shall also keep in such form as aforesaid all such special accounts as the Minister may from time to time direct.

(2) Accounts kept in pursuance of this Regulation shall be submitted annually by EirGrid to an auditor for audit and, as soon as may be after the audit, a copy of the profit and loss account, the cash flow statement, the balance sheet and such other (if any) of the accounts kept by EirGrid as the Minister may direct and a copy of the auditor's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

(3) (a) A person shall be appointed by EirGrid to be its auditor on the basis of a competitive tender.

(b) The appointment shall be subject to the prior written approval of the Minister, with the consent of the Minister for Finance.

*Annual report and furnishing of information to Minister.*

48. (1) Not later than 6 months after the end of each accounting year, EirGrid shall submit a report in writing to the Minister of its activities and those of its subsidiaries during that year and, not later than 3 months after such submission, the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(2) A report of EirGrid under this Regulation shall include information, in such form as the Minister may direct after consultation with EirGrid and with the consent of the Minister for Finance, regarding the operations, cost-effectiveness and financial targets of EirGrid.

(3) EirGrid shall, if so required by the Minister, furnish to him or her such information as he or she may require in respect of any balance sheet or other

account or any report of EirGrid or any subsidiaries or in relation to the policy and operations (other than day-to-day operations) of EirGrid.

***Prohibition on unauthorised disclosure of information.***

49. (1) A person shall not disclose commercially sensitive information obtained by him or her while performing duties as a director or member of the staff of, or an adviser or consultant to, EirGrid unless he or she is duly authorised by EirGrid to do so.

(2) A person who contravenes paragraph (1) shall be guilty of an offence.

(3) In this Regulation "duly authorised" means authorised by EirGrid or by a person authorised in that behalf by EirGrid.

***Chief Executive.***

50. (1) (a) There shall be a chief executive of EirGrid who shall be known as and is referred to in these Regulations as the "Chief Executive".

(b) The Chief Executive shall, as such, be a director of EirGrid.

(2) (a) The first Chief Executive shall, if willing, be the person who was the Managing Director of the Board's National Grid Business Unit immediately before the incorporation of EirGrid.

(b) The first Chief Executive shall be appointed by the Minister.

(c) The first Chief Executive shall not serve in that position for a total more than 7 years, unless the Directors of EirGrid and the Minister consider that there are exceptional circumstances which warrant a limited extension of that period and furthermore the first Chief Executive may be removed from office by the Minister during that period.

(3) Each subsequent Chief Executive shall be appointed by the Directors and may not serve in that position for a total of more than 7 years, unless the Directors of EirGrid and the Minister consider that there are exceptional circumstances which warrant a limited extension of that period and furthermore each subsequent Chief Executive may be removed from office by the Directors of EirGrid during that period.

(4) The functions of the Chief Executive shall be—

(a) to carry on, manage and control generally the administration of EirGrid,

- (b) to advise the directors of EirGrid on any matter relating to or affecting the technical or safety standards specified under these Regulations or the safety of the electricity transmission system, and
- (c) to advise the directors of EirGrid in relation to the performance of the other functions of EirGrid and, in particular, but without prejudice to the generality of the foregoing, in relation to the making of orders and Regulations, and the giving of directions, by EirGrid, subject to the lawful directions of the directors of EirGrid.

(5) Subject to paragraph (2)(c), the Chief Executive shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration, superannuation and allowances) as may be determined by the directors with the consent of the Minister and the Minister for Finance.

***Chairperson.***

**51.** (1) The chairperson of EirGrid-

- (a) shall be appointed from among the directors by the Minister with the consent of the Minister for Finance,
- (b) may be removed from office by the Minister with the consent of the Minister for Finance, and
- (c) shall hold office as chairperson for such period not exceeding 5 years as may be determined by the Minister with the consent of the Minister for Finance at the time of his or her appointment.

(2) A person who holds or has held the office of chairperson of EirGrid shall, subject to paragraph (4) of Regulation 53, be eligible for re-appointment to that office.

(3) A person who ceases to hold the office of chairperson of EirGrid may, subject to paragraph (4) of Regulation 53, if the Minister with the consent of the Minister for Finance, so determines, continue to hold the office of director and he or she shall be eligible for re-appointment as a director.

***Chairperson's report.***

**52.** (1) The chairperson of EirGrid shall, immediately after an audit referred to in Regulation 47(2), make a report in writing to the Minister of the company's activities during that year, separate from the report required under Regulation 48.

(2) A report under this Regulation shall include -

- (a) a statement of all significant developments involving the company which occurred in that year (including the acquisition of shares or establishment of subsidiaries by the company),
- (b) a description of the matters the chairperson anticipates will arise in the accounting year next following the said year (or, where the chairperson considers it appropriate in any particular case, any subsequent accounting year) which may affect the company to any significant extent,
- (c) a statement, to the best of the chairperson's knowledge or belief, as to whether each of the following, as respects the company, has been complied with or adhered to, that is to say -
  - (i) the requirements of these Regulations or of any other enactment in relation to the accounts of the company and statements as to the financial affairs of the company,
  - (ii) guidelines issued by the Government, the Minister or the Minister for Finance in relation to the accounts of State enterprises or statements in respect of the financial affairs of the company,
  - (iii) any requirements under Regulation 55,
  - (iv) any code of conduct for the directors or members of staff of State enterprises issued by the Government, the Minister or the Minister for Finance,
  - (v) any requirements under or by virtue of an act of the European Communities,
  - (vi) any guidelines issued by the Government, the Minister or the Minister for Finance, in relation to the entering by a public authority into a contract with any person for the provision of goods or services by that person to such authority,
  - (vii) any guidelines issued by the Government, the Minister or the Minister for Finance in relation to the remuneration to be paid by State enterprises to their chief executives,
- (d) where anything referred to in paragraph (c) is stated not to have been complied with, an explanation (in so far as the chairperson is in a position to give one) as to why there was a failure to comply with it

and, where he or she is not in a position to give an explanation, a statement to that effect.

(3) In this Regulation-

"public authority" means—

- ( a ) a Minister of the Government,
- ( b ) the Commissioners of Public Works in Ireland,
- ( c ) a board or other body established (but not including a company) by or under statute,
- ( d ) a company in which all the shares are held by, or on behalf of, or by directors appointed by, a Minister of the Government, or
- ( e ) a company in which all the shares are held by a board, other body or company referred to in paragraph (c) or (d);

"State enterprise" means a company (within the meaning of the Companies Acts) one or more shares in the shareholding of which is held by a Minister of the Government and the principal objects of which (as stated in its memorandum of association) are prescribed in whole or in part by statute.

***Directors.***

53. (1) The number of directors including the chairperson shall not exceed 8.
- (2) Subject to paragraph (3), the directors (other than the second and subsequent Chief Executives) shall be appointed and may be removed from office by the Minister with the consent of the Minister for Finance.
- (3) A person who holds the office of director shall be eligible for re-appointment to that office.
- (4) Subject to paragraphs (2) and (3), the directors (other than the Chief Executive and directors appointed in accordance with paragraph (5)) shall hold office for such period not exceeding 5 years as may be determined by the Minister with the consent of the Minister for Finance at the time of their appointment.
- (5) Of the first directors, other than the chairperson and the Chief Executive, the following shall apply:
- (a) 2, who shall be selected by lot at the first meeting of the directors, shall hold office for a period of 3 years,
  - (b) 2, who shall be selected as aforesaid, shall hold office for a period of 4 years, and

(c) 2, who shall be selected as aforesaid, shall hold office for a period of 5 years.

(6) The directors may act notwithstanding one or more vacancies in their number.

(7) The remuneration and allowances for expenses of the chairperson and other directors shall be determined by the Minister with the consent of the Minister for Finance.

(8) A director may at any time resign his or her office as a director by letter addressed and given or sent to the Minister and the resignation shall take effect on and from the date (which shall be the date of, or a date later than the date of, the letter) specified in the letter for that purpose.

(9) If at any time it appears to the Minister that the removal from office of all or any of the directors (other than the Chief Executive) is necessary in the interests of the effective and economical performance of the functions of EirGrid, the Minister may remove from office all or so many of the directors of EirGrid as the Minister considers necessary in the interest aforesaid.

(10) The Minister may at any time remove from office any director (other than the Chief Executive) who has become incapable through ill-health of performing efficiently his or her duties as such director or who has (otherwise than for a reason considered by the Minister to be sufficient) been absent from all meetings of EirGrid during a period of 6 months.

(11) If and when the Minister removes from office under this Regulation any director of EirGrid, the Minister shall lay before each House of the Oireachtas a statement in writing of the fact of the removal from office of such director and of the reasons for such removal.

(12) In making the appointments under paragraph (2) (other than directors appointed in accordance with paragraph (5)) the Minister shall have regard to the need for appointees to have particular skills and knowledge which are deemed of benefit to the commercial well being of EirGrid.

(13) A person who-

(a) is a member of the Commission, or

(b) ceased to be a member of the Commission within the immediately preceding 12 months,

shall not be appointed to the Board.

***Terms and conditions of office of chairperson and other directors.***

54. The remuneration (including allowances for expenses) of the chairperson and the other directors of EirGrid and the other terms and conditions upon and subject to which they hold their respective offices shall be determined by the Minister with the consent of the Minister for Finance.

*Disclosure by directors of certain interests.*

55. (1) Where at a meeting of the directors of EirGrid any of the following matters arises, namely—
- (a) an arrangement to which EirGrid is a party or a proposed such arrangement,
  - (b) a contract or other agreement with EirGrid or a proposed such contract or other agreement,
  - (c) the giving, grant or renewal by EirGrid of any instrument of approval, or
  - (d) the revocation, cancellation, withdrawal, suspension or endorsement by EirGrid of any instrument of approval, given or granted—
    - (i) by EirGrid, or
    - (ii) by the Minister under a provision of, or made under, any enactment,

then, any director of EirGrid present at the meeting who otherwise than in his or her capacity as such a director is in any way, whether directly or indirectly, interested in the matter—

- (I) shall at the meeting disclose to EirGrid the fact of such interest and the nature thereof,
- (II) shall absent himself or herself from the meeting or that part of the meeting during which the matter is discussed,
- (III) shall take no part in any deliberations of the directors relating to the matter, and
- (IV) shall not vote on a decision relating to the matter.

(2) Where an interest is disclosed pursuant to this Regulation, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the director by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the directors of EirGrid a question arises as to whether or not a course of conduct, if pursued by a director of EirGrid, would constitute a failure by him or her to comply with the requirements of paragraph (1), the question may be determined by the person chairing the meeting whose decision shall be final and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where the Minister is satisfied that a director has contravened paragraph (1), he or she may, if he or she thinks fit, and with the consent of the Minister for Finance, remove that director from office and, in case a person is removed from office pursuant to this paragraph, he or she shall thenceforth be disqualified from being a director of EirGrid.

(5) A person who fails to comply with this Regulation shall be guilty of an offence.

(6) Nothing in this Regulation shall be taken to prejudice the operation of any rule of law restricting directors of a company from having any interest in contracts with EirGrid.

#### ***Disqualification of directors.***

**56.** (1) The office of the director shall be vacated if -

- (a) he or she is adjudicated bankrupt in the State or elsewhere or makes any arrangement or composition with his or her creditors generally,
- (b) he or she becomes prohibited from being a director by reason of any order made under section 184 of the Companies Act, 1963,
- (c) he or she becomes of unsound mind,
- (d) he or she resigns his or her office by notice in writing to EirGrid and to the Minister,
- (e) his or her term of office as a director expires,
- (f) he or she is convicted of an indictable offence (other than an offence under the Road Traffic Act, 1961, or any Act amending it), or any offence under the Act of 1999 or these Regulations,
- (g) he or she is for more than 6 months absent without permission of the Board of Directors from meetings of the directors held during that period,
- (h) he or she is removed from office by the Minister, with the consent of the Minister for Finance, under these Regulations,

- (i) he or she is-
  - (i) nominated as a member of Seanad Éireann,
  - (ii) elected as a member of either House of the Oireachtas or to the European Parliament, or
  - (iii) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Election Act, 1997, as having been elected to such Parliament to fill a vacancy,
- (j) after appointment to that office, he or she is elected, re-elected or otherwise becomes a director, employee or consultant of another electricity undertaking without the prior consent of the Commission,
- (k) on or prior to appointment to that office, he or she fails to notify and seek the consent of the Commission to continue in any position held as a director, employee or consultant of another electricity undertaking.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the Assembly of the European Communities shall, while he or she is so entitled or is such a member, be disqualified from becoming a director of EirGrid.

### ***Code of conduct***

**57.** (1) EirGrid shall prepare a code of conduct, for approval by the Commission, which shall apply to every director of EirGrid and to every person employed by EirGrid under a contract of employment.

(2) The code of conduct shall be consistent with these Regulations, in particular, with the requirements in relation to preserving the confidentiality of commercially sensitive information.

(3) The code of conduct shall be included as part of every contract of employment with EirGrid.

### ***Notification of certain interests to Minister.***

**58.** (1) Where a director of EirGrid acquires, either directly or indirectly, any interest in another electricity undertaking, he or she shall forthwith inform the Minister in writing of that acquisition.

(2) Where the Minister is satisfied that an acquisition to which paragraph (1) relates would, in the opinion of the Minister, create a conflict of interest between the director concerned and EirGrid, the Minister may, if he or she thinks fit, and with the consent of the Minister for Finance, remove that director from office.

***Formation of subsidiaries.***

59. EirGrid may not, without the approval of the Minister given with the consent of the Minister for Finance, acquire, establish or dispose of subsidiaries or invest in other undertakings.

***Borrowings by EirGrid.***

60. (1)(a) Subject to the consent of the Minister and the Minister for Finance, EirGrid may borrow money (including money in a currency other than the currency of the State) by any means it considers appropriate and on such terms and conditions as it may determine for any purposes arising in the performance of its objects or duties.
- (b) Subject to paragraph (2), the aggregate at any time of borrowings by EirGrid under subparagraph (a) shall not exceed £125,000,000.

(2) For the purposes of this Regulation moneys borrowed in a currency other than the currency of the State shall be deemed to be the equivalent in the currency of the State of the actual moneys borrowed, such equivalent being calculated according to the rate of exchange at the time of such borrowing for that currency and the currency of the State.

***Capital expenditure by EirGrid.***

61. (1) EirGrid shall not incur any expenditure for capital purposes without the approval of the Minister.
- (2) The total expenditure of EirGrid for capital purposes shall not exceed such sum as may stand specified from time to time by the Minister.

*Regulations 13 to 16.*

**SCHEDULE**

**Transfer Scheme**

1. (1) On the effective date, the Board shall, for the purposes of Regulations 13 to 16, enter into an agreement with EirGrid, to be known in this Schedule as the transfer scheme, which shall be subject to the approval of the Commission, for the transfer of assets, contracts, rights, obligations, liabilities, staff, and any other thing to EirGrid, which EirGrid, the Board or the Commission consider necessary for the operation of these Regulations.
- (2) Any reference in this Schedule to a transfer effected under the transfer scheme is a reference to a transfer effected by these Regulations under such transfer scheme.

**Allocation of assets and liabilities: general**

2. (1) The provisions of this paragraph shall apply where the transfers effected under the transfer scheme include a transfer of all assets, contracts, rights and liabilities comprised in the National Grid Business Unit of the Board's undertaking but shall not apply to any such assets, being rights, or to any such liabilities under a contract of employment, or to the assets of the Board which constitute the transmission system, other than by agreement.
- (2) Any asset, contract, right or liability comprised partly in the National Grid Business Unit of the Board's undertaking and partly in some other part or parts of that undertaking shall, where the nature of the asset, contract, right or liability permits, be divided or apportioned between the transmission system operator and the Board in such proportions as may be appropriate.
- (3) Where any estate or interest in land falls to be divided or apportioned by virtue of subparagraph (2)-
  - (a) any rent payable under a lease in respect of that estate or interest, and
  - (b) any rent charged on that estate or interest,

shall be correspondingly apportioned or divided so that the one part is payable in respect of, or charged on, only one part of the estate or interest

and the other part is payable in respect of, or charged on, only the other part of the estate or interest.

(5) Any asset or liability to which subparagraph (2) relates, the nature of which does not permit its division or apportionment, may be transferred to the transmission system operator according to-

- (a) in the case of an estate or interest in land, whether on the effective date the transmission system operator or the Board appears to be in greater need of the security afforded by that estate or interest or, where neither appears to be in greater need of that security, whether on that date the transmission system operator or the Board appears likely to make use of the land to the greater extent;
- (b) in the case of any other asset or liability (including choses-in-action), whether on the effective date the transmission system operator or the Board appears likely to make use of, or as the case may be, to be affected by, the asset or liability, to the greater extent, subject (in either case) to such arrangements for the protection of the other of them as may be agreed between them.

3. (1) The provisions of this paragraph shall apply where the transfers effected under the transfer scheme include a transfer of all assets and liabilities comprised in the National Grid Business Unit of the Board's undertaking, but shall not apply to any such assets, being rights, or to any such liabilities under a contract of employment.

(2) It shall be the duty of EirGrid and the Board whether on or after the effective date, so far as practicable, to arrive at such written agreements and to execute such other instruments as are necessary or expedient to identify or define the assets and liabilities transferred to the transmission system operator as will-

- (a) afford to the transmission system operator and the Board as against one another such rights and safeguards as they may require for the carrying on of their respective undertakings, and
- (b) make as from such date, not being earlier than the effective date, as may be specified in the agreement or instrument such clarification and modifications of the division of the Board's undertaking as will best serve the carrying on of the respective undertakings of the transmission system operator and the Board.

(3) Any agreement under subparagraph (2) shall, so far as it is expedient, provide for-

- (a) the granting of leases and for the creation of other liabilities and rights over land whether amounting in law to an estate in land or not, and whether involving the surrender of any existing estate or the creation of a new estate or not,
- (b) the granting of indemnities in connection with the severance of leases and other matters, and
- (c) responsibility for registration of any matter in any statutory register.

(4) If EirGrid or the Board represents to the Commission, or if it appears to the Commission without such a representation, that it is unlikely in the case of any matter on which agreement is required under subparagraph (2) that such agreement will be reached, the Commission may-

- (a) give a direction determining that matter, and
- (b) include in the direction any provision which might have been included in an agreement under subparagraph (2).

(5) Any assets or liabilities required by a direction under subparagraph (4) to be transferred to the transmission system operator shall be regarded as having been transferred by these Regulations to, and by virtue thereof, vested in EirGrid accordingly.

#### **Allocations of assets and liabilities: contracts of employment**

4. (1) The provisions of this paragraph shall apply where-

- (a) the transfers effected under the transfer scheme include a transfer of all assets and liabilities comprised in a specified part of the Board's undertaking, and
- (b) it falls to be determined whether the assets and liabilities transferred to the transmission system operator include rights and liabilities under a particular contract of employment.

(2) Any rights and liabilities under the contract of employment shall be transferred to the transmission system operator only if immediately before the effective date the employee is a member of the staff of the Board designated for transfer.

(3)(a) The employee, EirGrid or the Board may apply to the Commission to determine whether or not rights and liabilities in respect of the employee's services under the contract of employment are

transferred to the transmission system operator and the decision of the Commission on the application shall be final.

- (b) The Commission shall issue directions regarding its decision, as it sees fit, and any such direction shall be complied with by the persons concerned.

### **Variation of transfers by agreement**

5. (1) At any time before the end of the period of 12 months from the effective date the transmission system operator and the Board may, with the approval of the Commission, agree in writing that-

- (a) as from such date as may be specified in or determined under the agreement, and
- (b) in such circumstances (if any) as may be so specified,

there shall be transferred from one company to, and vested in, the other company any assets and liabilities specified in the agreement; but no such agreement shall have effect in relation to rights and liabilities under a contract of employment unless the employee concerned is a party to the agreement.

(2) Subject to subparagraph (3), in the case of an agreement under subparagraph (1), the assets and liabilities in question shall on the date of the coming into force of the agreement be transferred, and by virtue of the agreement vest, in accordance with the agreement.

(3) The following provisions of this Schedule shall have effect as if-

- (a) any reference to a transfer effected under the transfer scheme included a reference to a transfer effected under an agreement under subparagraph (1),
- (b) any reference to a transaction effected under paragraph 3(2) or of a direction under paragraph 3(4) included a reference to such an agreement, and
- (c) any reference to a vesting by virtue of these Regulations included a reference to a vesting by virtue of such an agreement.

### **Right to production of documents of title**

6. Where either the transmission system operator or the Board under a transfer effected under the transfer scheme is entitled to possession of any document relating in part to the title to, or to the management of, any land or other property transferred to the other party, either the transmission system operator or the Board as appropriate, under some other transfer effected under that scheme, then-
- (a) the transmission system operator or the Board, as appropriate, shall be deemed to have given to the other party an acknowledgement in writing of the right of that other party to production of the document and to delivery of copies thereof, and
  - (b) section 9 of the Conveyancing Act, 1881, shall have effect accordingly, and on the basis that the acknowledgement did not contain any such expression of contrary intention as is mentioned in that section.

#### **Proof of title by certificate**

7. (1) Where 2 or more transfers are effected under the transfer scheme, a certificate issued by either EirGrid or the Board with the concurrence of the other company that-
- (a) any asset specified in the certificate,
  - (b) any such interest in or right over any such asset as may be so specified, or
  - (c) any liability so specified,

is by virtue of these Regulations for the time being vested in the company which issues the certificate shall be conclusive evidence for all purposes of that fact.

(2) If, on the expiration of one month from a request from either EirGrid or the Board for the other company to concur in the issue of such a certificate, the company to whom the request was made has failed so to concur-

- (a) the company which made the request may refer the matter to the Commission, and
- (b) the Commission may direct the party to whom the request was made to concur in the issue of a certificate prepared in such terms as are specified in the direction.

### **Restrictions on dealing with certain land.**

8. (1) Where 2 or more transfers are effected under the transfer scheme and the Commission is satisfied, on the representation of either the transmission system operator or the Board, that-

- (a) in consequence of those transfers, different estates in land, whether the same or different land, are held by both the transmission system operator or the Board, and
- (b) the circumstances are such that this paragraph should have effect to any transfer concerned,

then the Commission may direct that this paragraph shall apply to such of that land as may be specified in the direction. While the direction remains in force this paragraph shall have effect accordingly.

(2) Neither the transmission system operator nor the Board shall dispose of any estate to which they may respectively be entitled in any of the specified land except with the consent of the Commission.

(3) If, in connection with any proposal to dispose of any estate of either the transmission system operator or the Board in any of the specified land, it appears to the Commission to be necessary or expedient for the protection of either of them, the Commission may-

- (a) direct either the transmission system operator or the Board to dispose of any estate to which it may be entitled in any of the specified land to such person and in such manner as may be specified in the direction,
- (b) direct either the transmission system operator or the Board to acquire from the other party any estate in any of the specified lands to which that other is entitled, or
- (c) consent to the proposed disposal subject to compliance with such conditions as the Commission may see fit to impose.

(4) A person, other than the transmission system operator or the Board, dealing with either the transmission system operator or the Board, shall be under no obligation to see or to enquire into-

- (a) whether or not this paragraph applies or has applied in relation to any land to which the dealing relates, or

- (b) whether or not the provisions of this paragraph have been complied with in connection with that or any other dealing with that land,

and no transaction between persons, other than between the transmission system operator and the Board, shall be invalid by reason of any failure to comply with those provisions.

### **Third Parties affected by vesting provisions**

9. (1) A transaction of any description which, under paragraph 3(2) or a direction under paragraph 3(4), is effected between EirGrid and the Board -

- (a) shall have effect subject to any statutory provision which provides for transactions of that description to be registered in any statutory register, but

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

(2) If any transaction is effected under paragraph 3(2) or a direction under paragraph 3(4), EirGrid and the Board shall notify any person who has rights or liabilities which thereby become enforceable as to part by or against EirGrid and as to part by or against the Board.

(3) If, within 28 days from being notified, such a person as is mentioned in paragraph (2) applies to, and satisfies the Commission that the transaction operated unfairly against him or her, the Commission may give such directions to EirGrid and the Board as appear to the Commission appropriate for varying the transaction.

10. (1) If in consequence of 2 or more transfers effected under the transfer scheme or anything done under the provisions of this paragraph-

- (a) the rights or liabilities of any person other than the transmission system operator and the Board which were enforceable against or by the Board become enforceable as to part against or by either the transmission system operator or the Board and as to part against or by the other company, and

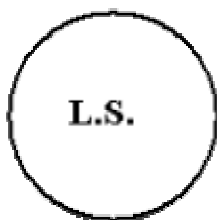
(b) the value of any property or interest of that person is thereby diminished,

such compensation as may be just shall be paid to that person by one or both of the transmission system operator and the Board as appropriate.

(2) Any dispute as to whether, and if so how much, compensation is payable under subparagraph (1), or as to the person to or by whom it shall be paid, shall be referred to the Commission. The Commission shall issue directions regarding its decision, as it sees fit, regarding the matter in dispute, and the Board and the transmission system operator shall comply with such directions.

Given under my Official Seal,

this 20<sup>th</sup> day of December, 2000.



A handwritten signature in cursive script that reads "Mary O'Rourke".

MARY O'ROURKE, T.D.,

Minister for Public Enterprise.

### **EXPLANATORY NOTE**

(This note is not a part of the Instrument and does not purport to be a legal interpretation)

These Regulations give legal effect to Directive No. 96/92/EC of the European Parliament and of the Council of 19th December 1996, concerning common rules for the internal market in electricity, not already implemented by the Electricity Regulation Act, 1999, by providing for the designation of a Transmission System Operator, the designation of a Distribution System Operator, and the unbundling of the accounts of electricity undertakings, and other matters.