



STATUTORY INSTRUMENTS

S.I. No. 280 of 2008

EUROPEAN COMMUNITIES (INTERNAL MARKET IN
ELECTRICITY) (ELECTRICITY SUPPLY BOARD) REGULATIONS
2008

(Prn. A8/1065)

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I, EAMON RYAN, Minister for Communications, Energy and Natural Resources, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), as amended by the European Communities (Amendment) Act 1993 (No. 25 of 1993), and for the purpose of giving further effect to Directive 2003/54/EC¹ of the European Parliament and of the Council of 26 June 2003, 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) (Electricity Supply Board) Regulations 2008.

(2) The European Communities (Internal Market in Electricity) Regulations 2000 and 2005 and these Regulations may be cited together as the European Communities (Internal Market in Electricity) Regulations 2000 to 2008 and shall be construed together as one.

(3) Part 5 comes into operation on the transfer date.

Interpretation

2. (1) In these Regulations, except where the context otherwise requires—

“Act of 1999” means Electricity Regulation Act 1999 (No. 23 of 1999);

“assets” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents;

“Board” means Electricity Supply Board;

“Commission” means Commission for Energy Regulation;

“distribution system” means a system of the Board which consists of electric lines, electric plant, transformers and switchgear and which is used for conveying electricity to final customers;

¹O.J L176/57 of 15 July 2003

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 22nd July, 2008.*

“Electricity Market Directive” means Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity, and repealing Directive 96/92/EC²;

“financial plan” includes any document in the nature of a financial plan, whether called a financial plan or not;

“liabilities” means liabilities, debts or obligations (whether present or future and whether vested or contingent);

“Minister” means Minister for Communications, Energy and Natural Resources;

“operate” includes maintain and develop;

“ownership”, in relation to an asset, includes proprietary rights arising under a lease, licence or bailment of the asset;

“publish” includes publish on the Internet;

“rights” means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent);

“subsidiary company”, in relation to the Board, means the company established or required to be established by the Board in accordance with Regulation 3;

“trade union” means a trade union that holds a negotiation licence under Part II of the Trade Union Act 1941 (No. 22 of 1941);

“transfer”, in relation to an employee of the Board, includes the secondment of such an employee;

“transfer date” means the date fixed by the Minister under Regulation 8;

(2) A word or expression used in these Regulations and in the Electricity Market Directive has, unless the contrary intention appears, the same meaning in these Regulations as in the Electricity Market Directive.

PART 2

SEPARATION OF FUNCTIONS OF BOARD

Board to form and register subsidiary company

3. (1) As soon as practicable after the coming into operation of this Regulation or not later than a date fixed by the Minister, the Board shall form a company that complies with this Regulation.

(2) The company formed under paragraph (1) shall be a private company limited by shares. At least one of the members of the company shall be the Board.

²O.J. L176, 15.7.2003, p. 37

(3) The members of the company are to have such shares in the company as are specified in the company's memorandum of association, but the Board is required to hold more than half in nominal value of the equity share capital of the company.

(4) The Board shall ensure—

(a) that the memorandum of association of the company specifies that the objects of the company are, or include, responsibility for operating the distribution system in a manner consistent with the provisions of the Electricity Market Directive,

(b) that either the memorandum of association or the articles of association of the company provides for the basis of the relationship between the company and the Board and between the company and the Minister in a manner consistent with those provisions, and

(c) that the articles of association of the company provide for the appointment of no fewer than 4 directors of the company.

(5) As soon as practicable after the company has been formed, the Board shall arrange for the company to be registered under the Companies Acts.

(6) The memorandum and articles of association of the company may not be lodged for registration under the Companies Acts unless they have been approved by the Minister, with the concurrence of the Minister for Finance.

(7) In relation to the company formed pursuant to this Regulation, section 2 of the Electricity (Supply) Amendment Act 1988 (No. 17 of 1988) shall have effect subject to these Regulations.

(8) In this Regulation, "equity share capital" has the same meaning as in section 155 of the Companies Act 1963 (No. 33 of 1963).

Alteration of memorandum or articles not to have effect until approved by Minister

4. Notwithstanding anything contained in the Companies Acts, an alteration of the memorandum or articles of association of the subsidiary company does not take effect until it is approved by the Minister, with the concurrence of the Minister for Finance.

Appointment and termination of appointment of directors of subsidiary company to be subject to the approval of the Minister

5. Notwithstanding anything contained in the Companies Acts, the appointment of a person as a director of the subsidiary company and the termination of such an appointment do not take effect until approved by the Minister, with the concurrence of the Minister for Finance.

Board and subsidiary company to enter into agreements

6. (1) As soon as practicable after the formation and registration of the subsidiary company in accordance with Regulation 3, the Board and the subsidiary

company shall enter into negotiations in good faith with a view to entering into one or more agreements providing for the following matters:

- (a) the terms on which each of them will fulfil its functions with respect to the distribution system;
 - (b) the terms on which the Board will provide the subsidiary company with the resources (including financial resources) and services necessary to enable that company to fulfil its responsibility with respect to the operation of the distribution system.
- (2) An agreement made between the Board and the subsidiary company under paragraph (1) is subject to approval by the Commission.
- (3) An agreement entered into, or taken to have been entered into, under this Regulation shall take effect from the transfer date.
- (4) The Board and the subsidiary company may, from time to time, and subject to the approval of the Commission, vary an agreement entered into, or taken to have been entered into, under this Regulation.
- (5) (a) A variation of an agreement entered into, or taken to have been entered into, under this Regulation may provide for the variation, or any particular provisions of the variation, to take effect from a specified date (which may be the transfer date).
- (b) A specific date referred to in subparagraph (a) does not take effect unless approved by the Commission, which may substitute another date if it considers it appropriate to do so.
- (6) If either the Board or the subsidiary company wishes to vary an agreement entered into, or taken to have been entered into, under this Regulation, the party whose agreement has been sought shall enter into negotiations in good faith with a view to concluding such a variation.
- (7) An agreement entered into, or taken to have been entered into, under this Regulation (or the agreement as varied under paragraph 4) shall have effect only as far as it is consistent with the provisions of the Electricity Market Directive.
- (8) In this Regulation, “vary”, in relation to an agreement, includes substituting the agreement with another agreement that deals with the same matters.

Board to prepare plan for transfer of assets and staff to subsidiary company

7. (1) As soon as practicable after the registration of the subsidiary company under the Companies Acts, the Board shall, subject to paragraphs (3) and (4), prepare and submit to the Commission for approval a plan for the transfer to the subsidiary company of—

- (a) such assets, rights and liabilities of the Board specified in the plan, and

(b) such employees of the Board designated in the plan,

as are necessary to enable the subsidiary company to carry out its responsibilities for the operation of the Board's distribution system as set out in the agreement entered into, or taken to have been entered into, under Regulation 6.

(2) If the Commission considers that the plan—

(a) includes information other than that specified in paragraph (1), or

(b) is not adequate to enable the subsidiary company to carry out its responsibilities,

the Commission shall specify the changes that need to be made before the plan will be approved. On being notified of those changes, the Board shall revise the plan to give effect to those changes.

(3) The transfer plan shall clearly designate—

(a) those assets of the Board the ownership of which is to be transferred to the subsidiary company, and

(b) that part or those parts of the distribution system owned by the Board the operation of which will be the responsibility of the subsidiary company.

(4) Nothing in these Regulations or in any document made under these Regulations requires the Board to transfer to the subsidiary company any part of any distribution system owned by the Board.

(5) The Board may designate employees for transfer to the subsidiary company only after consultation with relevant trade unions and with the concurrence of the employees concerned.

Minister to make declaration implementing transfer plan

8. (1) As soon as practicable after the transfer plan has been approved by the Commission in accordance with Regulation 7, the Minister shall by declaration, notice of which is published in the *Iris Oifigiúil*, fix a transfer date for the plan to be implemented.

(2) A declaration under paragraph (1) is subject to such terms and conditions as are specified in the declaration.

(3) Terms and conditions specified under paragraph (2) are valid only in so far as they are consistent with the provisions of the Electricity Market Directive.

Transfer to subsidiary company of operation of distribution system

9. (1) With effect from the transfer date, responsibility for the operation of the distribution system in accordance with these Regulations shall be vested in the subsidiary company.

(2) Where the subsidiary company determines that, for the purpose of ensuring its continued efficient and effective operation of the distribution system, specified works need to be carried out, then the subsidiary company shall, in writing, require the Board to have those works carried out.

(3) The Board shall comply with a requirement under paragraph (2).

(4) Subject to the transfer plan, on the transfer date—

(a) Schedule 1 shall apply with respect to the transfer of assets, rights and liabilities of the Board, and

(b) Schedule 2 shall have effect with respect to the transfer of employees of the Board to the subsidiary company.

Subsidiary company to be independent of Board in certain respects

10. (1) The subsidiary company shall be independent of the Board as regards its legal form, organisation, and its power to make decisions with respect to carrying out its responsibility for operating the distribution system.

(2) The subsidiary company may make decisions with respect to the operation of the distribution system independently of the Board.

(3) The Board shall not—

(a) engage in any conduct that interferes with or is likely to prejudice the subsidiary company as regards its responsibility for the day-to-day operation of the distribution system, or

(b) make any individual decision about the construction or improvement of the distribution system that is within the ambit of the annual financial plan prepared or approved by the Board.

(4) The subsidiary company shall take appropriate measures to ensure that those persons responsible for its management are capable of acting in a manner consistent with maintaining the independence of that company.

(5) A person responsible for the management of the subsidiary company may not participate, directly or indirectly, in the day-to-day operation of the businesses of the Board relating to supply or generation of electricity.

(6) Nothing in this Regulation affects the right of the Board to do all or any of the following in relation to the subsidiary company:

(a) take appropriate steps to ensure protection of the economic and management supervision rights of the Board with respect to securing a return on assets, whether owned by the Board or that company;

(b) require that company to comply with an annual financial plan prepared or approved by the Board;

- (c) impose global limits on the amount of debt that that company may incur at any specified time or during any specified period;
- (d) subject to Regulation 5, appoint persons as directors of that company so long as they are not involved, directly or indirectly, in the day-to-day operation of the businesses of the Board relating to supply or generation of electricity.

Obligation of subsidiary company to establish and comply with compliance programme

11. (1) The subsidiary company shall prepare and submit to the Commission a draft compliance programme within such period as the Commission specifies in writing to the company.

(2) A draft compliance programme shall—

- (a) specify measures designed to ensure that the subsidiary company does not engage in discriminatory behaviour,
- (b) specify the obligations of those persons concerned in the management of, or employed by, the subsidiary company that will ensure that that company does not engage in discriminatory behaviour, and
- (c) include provisions designed to ensure that the professional interests of persons who are concerned in the management of the subsidiary company are taken into account in a way that is consistent with maintaining the independence of that company.

(3) As soon as practicable after a draft compliance programme is submitted to it in accordance with paragraph (1), the Commission shall consider the programme and shall then either—

- (a) approve the programme, or
- (b) approve the programme with such modifications as it considers appropriate.

(4) As soon as the subsidiary company has been notified by the Commission that it has approved the draft compliance programme, the programme shall become the subsidiary company's compliance programme.

(5) While a compliance programme remains in force, the subsidiary company shall comply with the requirements of the programme and as far as reasonably practicable ensure that those persons who are concerned in the management, or are employees, of that company observe those requirements.

(6) The Commission may, from time to time, by notice given to the subsidiary company, require it—

- (a) to modify its compliance programme to such extent as it considers appropriate, or

(b) to substitute for its compliance programme a new compliance programme.

(7) If the Commission gives a notice to the subsidiary company in accordance with paragraph (6), that company shall comply with the requirement within such period as is specified in the notice, or within such extended period as the Commission may allow.

Subsidiary company to report annually to Commission

12. (1) Within 3 months after the date of each anniversary on which it was established, the subsidiary company shall prepare a compliance report about the implementation of its compliance programme during the 12 months ending on that date and shall submit the report to the Commission for its approval.

(2) On receiving the subsidiary company's compliance report, the Commission shall consider the report and either approve the report or remit the report to the company with such comments and suggestions as the Commission considers appropriate, in which case the company shall revise the report, taking account of the comments and suggestions of the Commission, and resubmit the revised report to the Commission for its approval.

(3) Paragraph (2) applies to a revised report in the same way as it applies to the original report.

(4) As soon as practicable after being notified that the Commission has approved its annual report, the subsidiary company shall publish the report by such means as the Commission specifies.

Variation of transfers by agreement

13. (1) At any time before the third anniversary of the transfer date, the Board may, with the approval of the Commission, enter into an agreement with the subsidiary company providing for assets and liabilities specified in the agreement, or employees designated by the agreement to be transferred from one of them to the other.

(2) The agreement shall—

(a) be in writing, and

(b) take effect on the date on which it is approved by the Commission or on such later date as is specified in, or determined in accordance with, the agreement.

(3) The agreement does not affect the rights and liabilities arising under a contract of employment unless the employee concerned is a party to the agreement.

(4) Assets or liabilities specified in the agreement shall stand transferred and vested in accordance with the agreement.

(5) This Regulation has effect as if a reference to a transfer or vesting under the transfer plan included a reference to a transfer or vesting under an agreement entered into under this Regulation.

Transfer of additional staff to subsidiary company

14. (1) Not later than 12 months after the transfer date, the subsidiary company shall, with the agreement of the Commission, identify additional employees of the Board, if any, to be transferred from the Board as are necessary to enable the subsidiary company to effectively carry out its responsibilities for the operation of the Board's distribution system.

(2) A transfer under paragraph (1) shall be carried out under an agreement pursuant to Regulation 13.

(3) Where the subsidiary company is unable to meet the resource requirements identified through transfer of employees from the Board, the subsidiary company shall take such steps as necessary to meet such requirements.

Proof of title by certificate

15. A certificate issued by the Board or the subsidiary company, with the concurrence of the other, stating that—

(a) any asset specified in the certificate, or any interest in, or right over, any such asset, or

(b) any liability so specified,

is by virtue of these Regulations vested in the issuer of the certificate is, in the absence of evidence to the contrary, proof of that fact.

PART 3

FUNCTIONS OF COMMISSION

Specific responsibilities of Commission with respect to Board

16. The Commission shall take all reasonably practicable steps to ensure that the Board complies with the requirements of this Part.

Commission to carry out periodic reviews of operations of subsidiary company

17. (1) The Commission shall carry out periodic reviews of the operations of the subsidiary company in accordance with this Regulation.

(2) The first periodic review shall be carried out within one year after the transfer date.

(3) Each subsequent periodic review shall be carried out within such period not more than 5 years after the previous periodic review as notified in writing to the subsidiary company.

(4) In carrying out a periodic review, the Commission shall ascertain—

- (a) the extent to which the subsidiary company is conducting its operations in a manner consistent with Regulation 10,
- (b) whether or not the subsidiary company engages in discriminatory behaviour, in particular as regards other entities that are part of, or are related to, the Board, and
- (c) whether or not the subsidiary company is sufficiently resourced to discharge its functions as Distribution System Operator.

(5) As soon as practicable after carrying out a periodic review, the Commission shall publish by such means as it thinks appropriate its conclusions on the review. If the conclusions are based on judgements formed by it, the Commission shall include in its conclusions a statement setting out how those judgements were arrived at.

(6) If, in consequence of carrying out a periodic review, the Commission forms the opinion that the subsidiary company—

- (a) is not conducting its operations in a manner consistent with Regulation 10, or
- (b) is engaging in discriminatory behaviour,

the Commission shall, by notice in writing given to the subsidiary company, require it to take such measures to rectify the situation as the Commission specifies in the notice.

(7) A notice under paragraph (6) may include a requirement directing the subsidiary company to modify its compliance programme to such extent, and in such respects, as are specified in the relevant notice.

(8) The subsidiary company shall comply with a requirement imposed on it in accordance with paragraph (6).

- (9) (a) If, in consequence of carrying out a periodic review, the Commission forms the opinion that the subsidiary company is not sufficiently resourced to discharge its functions as Distribution System Operator, the Commission shall, by notice in writing given to the subsidiary company, request it to propose measures to address the concerns identified in the review.
- (b) The subsidiary company shall respond to a notice under subparagraph (a) within 3 months and shall propose measures to address the concerns identified in the review to the Commission.
- (c) If the Commission is satisfied with the measures proposed under subparagraph (b), it shall direct the subsidiary company to implement those measures. A direction under this subparagraph may include a requirement directing the subsidiary company to modify its compliance programme.

- (d) If the Commission is not satisfied with the measures proposed under subparagraph (b), it shall request the subsidiary company to propose revised measures taking account of such matters as the Commission shall identify as requiring attention.
- (e) A request by the Commission under subparagraph (d) shall have effect as if it were a request under subparagraph (a).
- (f) Where the Commission forms the opinion that the subsidiary company's lack of sufficient resources is impacting negatively on its ability to act independently and in a non-discriminatory manner, the Commission may issue a notice pursuant to paragraph 6.

(10) Where—

- (a) a requirement imposed by the Commission under paragraph (6), or
- (b) the measures proposed by the subsidiary company and agreed by the Commission under paragraph (9),

require action on the part of the Board, the Commission may, by notice in writing given to the Board, require the Board to adopt appropriate measures to rectify the situation.

(11) The Board shall comply with a requirement imposed on it in accordance with paragraph (10).

Commission to resolve disputes between Board and the subsidiary company

18. (1) If, after a reasonable time, the Board and the subsidiary company fail to enter into an agreement or agreements in accordance with Regulation 6(1) or, after entering into such an agreement or agreements, are in dispute with respect to—

- (a) the operation of Part 2 (including in particular the effect or implementation of the agreement or agreements), or
- (b) the transfer to the subsidiary company of any assets, rights or liabilities,

either the Board or the subsidiary company may request the Commission to make a determination with respect to the matters referred to in Regulation 6(1), or the matters in dispute. Such a request shall be in writing.

(2) On receiving a request under paragraph (1), the Commission shall in the first instance attempt to resolve the dispute by conciliation. However, if the attempt is unsuccessful, the Commission shall, after giving each party an opportunity to state its case, make a determination in respect of the dispute and notify the parties in writing of its determination. The Commission may include in such a determination such directions as it considers appropriate for resolving the dispute.

(3) For the purposes of these Regulations, a determination made by the Commission under paragraph (1) with respect to the matters referred to in Regulation 6(1) is taken to be an agreement entered into under Regulation 6.

(4) A determination made under paragraph (2) is binding on the Board and the subsidiary company and the Board and the subsidiary company shall comply with the directions (if any) contained in the determination.

PART 4

ENFORCEMENT OF THESE REGULATIONS

Application

19. This Part applies to and in respect of the following:

- (a) the Board;
- (b) the subsidiary company; and
- (c) a person concerned in the direction or management of the Board or the subsidiary company.

Commission may apply to High Court for compliance order.

20. (1) If the Commission is of the opinion that a person to whom this Part applies has contravened, is contravening or is about to contravene, or has failed, is failing or is about to fail to comply with—

- (a) a provision of these Regulations, or
- (b) a requirement or direction imposed or given under such a provision,

it may apply to the High Court for a compliance order against the person.

(2) An application under this Regulation shall be in writing and shall specify—

- (a) the provision, requirement or direction that has been, is being or is about to be contravened or has not been, is not being or is about not to be complied with, and
- (b) the acts or omissions that, in the Commission's opinion, constitute or would constitute the contravention or failure to comply.

(3) An application under this Regulation may not be heard unless the High Court is satisfied that the person concerned has been served with a copy of the application. On being served with a copy of the application, that person becomes the respondent to the application and is entitled to appear and be heard at the hearing of the application.

Powers of High Court on hearing of application

21. (1) If, on hearing an application made under Regulation 20, the High Court is satisfied that the application is substantiated, it may make a compliance order directing the respondent to take such measures as are necessary to—

- (a) prevent a repetition of the contravention or failure to comply,
- (b) cease the contravention or failure to comply, or
- (c) prevent the contravention or failure to comply from occurring.

(2) If the High Court decides to make an order under paragraph (1), it may make such ancillary or consequential orders as it considers appropriate.

(3) The High Court may vary or revoke an order made under this Regulation if it considers it appropriate to do so.

PART 5

CONSEQUENTIAL AMENDMENTS TO ELECTRICITY LEGISLATION

Amendment of Section 14 of Electricity Regulation Act 1999

22. Section 14 of the Act of 1999 is amended—

(a) in subsection (1) (as amended by section 12 of the Electricity Regulation (Amendment) (Single Electricity Market) Act 2007 (No. 5 of 2007))—

(i) in paragraph (i) by substituting “maintain an interconnector,” for “maintain an interconnector, or”,

(ii) in paragraph (j) by substituting “Single Electricity Market operator, or” for “Single Electricity Market operator,”, and

(iii) by inserting the following paragraph after paragraph (j):

“(k) to discharge the functions of Distribution System Owner.”

and

(b) by inserting the following subsection after subsection (2D) (inserted by Regulation 16 of the European Communities (Internal Market in Electricity) Regulations 2005 (S.I. No. 60 of 2005)):

“(2DA) A licence under paragraph (k), of subsection (1) shall—

(a) only be granted to the Board, and

(b) not take effect prior to the transfer date fixed under the European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2007.”.

Amendment of European Communities (Internal Market in Electricity) Regulations 2000 (S.I. No. 445 of 2000)

23. The European Communities (Internal Market in Electricity) Regulations 2000 are amended—

(a) by substituting the following Regulation for Regulation 4:

“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,
- (d) carries out functions of the distribution system operator specified in these Regulations, or
- (e) carries out the activities of the distribution system owner,

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 €5,000 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.”.

(b) in Regulation 22—

(i) in paragraph (1), by substituting the following subparagraph for subparagraph (c) (inserted by Regulation 10(a) of the European Communities (Internal Market in Electricity) Regulations 2005):

“(c) The designation made under subparagraph (a) shall cease to have effect on the transfer date fixed pursuant to the European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2007.”,

and

(ii) by inserting the following paragraph after paragraph (1B) (inserted by Regulation 10(b) of the European Communities (Internal Market in Electricity) Regulations 2005):

“(1C) Paragraphs (1A) and (1B) shall cease to have effect on the transfer date fixed pursuant to the European Communities (Internal Market in Electricity) (Electricity Supply Board) Regulations 2007.”,

and

- (c) in Regulation 23, by revoking paragraphs (2), (3) and (4) (inserted by Regulation 11 of the European Communities (Internal Market in Electricity) Regulations 2005).

Certain functions of the Board to be regarded as functions of the Distribution System Operator

24. Any function of the Board under—

- (a) section 3 or 13 of the Shannon Electricity Act 1925 (No. 26 of 1925),
- (b) section 19, 20, 27, 28, 44, 47, 51, 58, 59, 62, 84 or 100 of the Electricity (Supply) Act 1927 (No. 27 of 1927),
- (c) section 19 or 20 of the Electricity (Supply) (Amendment) (No. 2) Act 1934 (No. 38 of 1934),
- (d) section 2 of the Electricity (Supply) (Amendment) Act 1935 (No. 20 of 1935),
- (e) section 5, 6 or 7 of the Liffey Reservoir Act 1936 (No. 54 of 1936), or
- (f) section 10, 31, 32 or 46 of the Electricity (Supply) (Amendment) Act 1945 (No. 12 of 1945),

which is necessary for the discharge of the Distribution System Operator's functions under the Act of 1999 or the European Communities (Internal Market in Electricity) Regulations 2000 to 2007 shall, to that extent, be regarded as a function of the Distribution System Operator and not of the Board, other than where it is also necessary for the Board to discharge its functions as Distribution System Owner in which case that function shall be a function of both the Board and the Distribution System Operator.

SCHEDULE 1

TRANSFER OF ASSETS, RIGHTS AND LIABILITIES OF BOARD

Transfer of Board licence to subsidiary company

1. The licence issued to the Board under section 14 of the Act of 1999 to operate a distribution system is transferred to the subsidiary company.

Transfer of ownership of certain assets of Board to subsidiary company

2. (1) The assets of the Board referred to in Regulation 7(3)(a) become the assets of the subsidiary company without the need for any conveyance, transfer, assignment or assurance.

(2) All legal proceedings relating to those assets begun before the transfer date by or against the Board and pending immediately before that date are taken to be legal proceedings pending by or against the subsidiary company.

(3) Any act, matter or thing done or omitted to be done in relation to those assets before the transfer date by, to or in respect of the Board is (to the extent that that act, matter or thing has any effect) taken to have been done or omitted by, to or in respect of the subsidiary company.

Transfer of responsibility for the operation of certain assets of the Board to subsidiary company

3. The responsibility for the operation of those assets of the Board designated in the transfer plan in accordance with Regulation 7(3)(b), but not their ownership is, by virtue of this paragraph, vested in the subsidiary company.

Transfer of certain rights and liabilities of Board to subsidiary company

4. (1) The rights and liabilities of the Board specified in the transfer plan under Regulation 7(1)(a) become the rights and liabilities of the subsidiary company.

(2) All legal proceedings relating to those rights or liabilities begun before the transfer date by or against the Board and pending immediately before that date are taken to be legal proceedings pending by or against the subsidiary company.

(3) Any act, matter or thing done or omitted to be done in relation to those rights or liabilities before the transfer date by, to or in respect of the Board is (to the extent that that act, matter or thing has any effect) taken to have been done or omitted by, to or in respect of the subsidiary company.

Certain references to Board to be treated as references to subsidiary company

5. A reference in any Act, statutory instrument or other document to the Board, to the extent that it relates to assets, rights or liabilities that are vested in, or transferred to, the subsidiary company by the operation of Regulation 7 and this Schedule, is to be read as, or including, a reference to the subsidiary company.

Change of ownership of asset not to be regarded as giving rise to remedy

6. A change in the legal or beneficial ownership of any asset, right or liability because of the operation of Regulation 7 and this Schedule becomes binding on all persons even if, apart from these Regulations, the consent or concurrence of any other person would have been required. Such a change is not to be regarded as giving rise to any remedy by a party to any document.

No attornment required in respect of certain leased land

7. If the Board is the lessor under any lease of land that becomes vested in the subsidiary company by virtue of this Schedule, the lessee is not required to attorn to the subsidiary company.

SCHEDULE 2

TRANSFER OF CERTAIN BOARD EMPLOYEES TO SUBSIDIARY
COMPANY**Certain Board employees transferred to subsidiary company on transfer date**

1. The employment of those employees of the Board who are designated in the transfer plan is transferred to the subsidiary company by virtue of this Schedule.

This Schedule not to affect certain matters relating to staff members

2. (1) Subject to this Schedule, each person whose employment is transferred in accordance with paragraph (1) is employed by the subsidiary company on terms and conditions no less favourable to that person than those on which the person was employed by the Board immediately before the transfer date (including conditions in relation to tenure of office, terms of employment, classification for social insurance purposes, superannuation and remuneration).

(2) Unless the scales of pay and conditions of service of the members of staff of the Board transferred to the Distribution System Operator under this Regulation are varied by the Distribution 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.

(3) If an officer or servant of the Board whose employment is transferred in accordance with paragraph 1 was, immediately before the transfer, a member of a pension scheme established for officers or servants of the Board, the officer or servant is entitled to continue to be a member of the scheme in accordance with its terms as in force from time to time.

(4) 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 2007, the Minimum Notice and Terms of Employment Acts 1973 to 1991, the Unfair Dismissals Acts 1977 to 2007, and the Organisation of Working Time Act 1997(No. 20 of 1997).

(5) Nothing in this Schedule has the effect of breaking a person's contract of employment or continuity of employment for the purpose of applying to the person any other law relating to employment that would, apart from this Schedule, apply to the person. In particular, this Schedule does not affect any accrued right that the person had immediately before the transfer date in respect of any kind of leave.

Variation of terms and conditions of transferred employees

3. (1) It is a term of employment of each transferred employee that the terms and conditions of that employment may be varied to the extent to which, and

in the manner in which, the terms and conditions of the employee's employment could, immediately before the transfer date, be lawfully varied.

(2) Nothing in this Schedule prevents the terms and conditions of a transferred employee's employment after the transfer date from being varied—

(a) in accordance with those terms and conditions, or

(b) by or under an applicable law or agreement.

(3) In this paragraph—

“terms and conditions” includes a term existing because of paragraph (1);

“vary”, in relation to terms and conditions, includes vary by—

(a) omitting any of those terms and conditions,

(b) adding to those terms and conditions, or

(c) substituting new terms or conditions for any of the first-mentioned terms and conditions.



GIVEN under my Official Seal,
18 July 2008

EAMONN RYAN

Minister for Communications, Energy and Natural Resources.

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