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*Number 30 of 2023*

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**Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Act  
2023**

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[2023.]

*Energy (Windfall Gains in the  
Energy Sector) (Cap on Market Revenues) Act 2023.*

[No. 30.]

ACTS REFERRED TO

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)

Companies Act 2014 (No. 38)

Electricity Regulation Act 1999 (No. 23)





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*Number 30 of 2023*

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## **Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Act 2023**

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An Act to give full effect to Articles 6, 7, 8 and 10 of Council Regulation (EU) 2022/1854 of 6 October 2022<sup>1</sup> on an emergency intervention to address high energy prices and for that purpose to make provision for a cap, that is to say the market cap to apply to market revenues from the sale of electricity produced from certain sources for the period beginning on 1 December 2022 and ending on 30 June 2023; to provide for the payment of revenues of producers, intermediaries and traders in excess of the market cap to the collection agent; to provide for the calculation of the amounts payable; to provide for the obligations of producers, intermediaries and traders relating to the market cap and enforcement of certain obligations; to provide for the administration and collection of the amounts payable; to provide for a collection agent; to provide for the establishment and management of a market cap fund; to provide for the making of schemes for disbursement from the market cap fund in accordance with Article 10 of the Council Regulation; and to provide for related matters. [17th November, 2023]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

#### **Short title and commencement**

1. (1) This Act may be cited as the Energy (Windfall Gains in the Energy Sector) (Cap on Market Revenues) Act 2023.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

#### **Interpretation**

2. (1) In this Act—  
“Act of 1999” means the Electricity Regulation Act 1999;

<sup>1</sup> O.J. No. L 261, 7.10.2022 p. 1

“adjusted surplus revenue” shall be construed in accordance with *section 12*;

“affiliated person” means—

- (a) in relation to a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act—
  - (i) any parent company or any wholly owned subsidiary company of the company, or any company that is part of a group of companies with that company within the meaning of section 8 of the Companies Act 2014, or
  - (ii) the spouse or any relative, or the spouse of any relative, of a director, manager, secretary or other officer of the company,and
- (b) in relation to an individual—
  - (i) a relative of the individual,
  - (ii) a person acting on behalf of the individual or of a relative of the individual,
  - (iii) a company or other body of which the individual or relative of the individual, or a nominee of them, is a member,
  - (iv) a partnership in which the individual or a relative of the individual is a partner, or
  - (v) an employer of the individual, or of a relative of the individual;

“balancing market” has the meaning given to it by *section 6*;

“billing period” in relation to a settlement rerun, shall be construed in accordance with section G.2.2.2 of Part B of the Trading and Settlement Code;

“collection agent” means EirGrid, the person licensed as the Single Electricity Market operator under section 14(1)(j) of the Act of 1999;

“competent authority” means the Commission for Regulation of Utilities, being the competent authority designated under the European Union (Risk Preparations) Regulations 2020 (S.I. No. 342 of 2020);

“Council Regulation” means Council Regulation (EU) 2022/1854 of 6 October 2022<sup>2</sup> on an emergency intervention to address high energy prices;

“current account” shall be construed in accordance with *section 25*;

“day ahead market” has the meaning given to it by *section 6*;

“distribution system” shall be construed in accordance with the meaning given to it in the definition of “distribution” in the Act of 1999;

“distribution system operator” means the Electricity Supply Board being the holder of the licence referred to in section 14(1)(g) of the Act of 1999;

“electricity market” means the Single Electricity Market;

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<sup>2</sup> O.J. No. L 261, 7.10.2022 p. 1



“export only supplier” means a market participant—

- (a) who does not sell electricity to wholesale customers (within the meaning of the Act of 1999) or final customers,
- (b) is licensed to supply electricity under section 14(1)(b) of the Act of 1999, and
- (c) who supplies electricity on behalf of more than one producer, each of which producer has a generating unit with installed capacity of less than 10 megawatts;

“*ex-ante* market” has the meaning given to it by *section 6*;

“final customer” has the meaning given to it by the Act of 1999;

“Fund” means the Market Cap Fund established under *section 25*;

“generating unit” means an apparatus that produces electricity, measured in megawatts, for which the maximum electrical output capable of being delivered on a sustained basis without accelerated loss of equipment life at the point where the apparatus is joined to the transmission system or the distribution system, is one or more than one whole megawatt;

“hedging arrangement” shall be construed in accordance with *section 14*;

“imbalance settlement period” means, in relation to each consecutive hour during the relevant period, a 30 minute period beginning at each hour and at 30 minutes past each hour;

“inspector” means an inspector appointed under section 56 of the Act of 1999;

“installed capacity” means the maximum instantaneous power that a generating unit can produce under specific conditions designated by the manufacturer and expressed in megawatts;

“intermediary” shall be construed in accordance with *section 6*;

“intraday market” has the meaning given to it by *section 6*;

“investment account” shall be construed in accordance with *section 25*;

“loss-adjusted metered quantity” shall be construed in accordance with Sections F.2.5 and F.4 of Part B of the Trading and Settlement Code;

“market cap” shall be construed in accordance with *section 8*;

“market index price” has the meaning given to it by *section 9*;

“market participant” has the meaning given to it by the Act of 1999;

“Minister” means the Minister for the Environment, Climate and Communications;

“monthly capped revenue” shall be construed in accordance with *section 10*;

“monthly market revenue” shall be construed in accordance with *section 10*;

“power purchase agreement” has the meaning given to it by *section 10*;

“preliminary surplus revenue” shall be construed in accordance with *section 11*;

“prescribed” means prescribed by regulations or schemes made by the Minister or by regulations made by the competent authority having consulted with the Minister;

“producer” shall be construed in accordance with *section 6*;

“REFIT power purchase agreement” means a REFIT power purchase agreement referred to in the Electricity Regulation Act 1999 (Public Service Obligations) Order 2002 (S.I. No. 217 of 2002);

“relative” means, in relation to an individual, a child, step-child, parent, brother, sister, spouse, civil partner within the meaning of section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, cohabitant, within the meaning of section 172(1) of that Act of 2010, grandparent, or grandchild of the individual or a child of the individual’s civil partner or cohabitant;

“relevant period” has the meaning given to it by *section 8*;

“relevant quantity” has the meaning given to it by *section 10*;

“return” means a return made by a producer, intermediary or trader under *section 15*;

“scheme” means a scheme prescribed by the Minister under *section 28*;

“SEMO” means—

- (a) in relation to the State, the Single Electricity Market operator, and
- (b) in relation to Northern Ireland, the person appointed to perform like functions in Northern Ireland to those performed by the Single Electricity Market operator in the State;

“settlement rerun” means a settlement rerun carried out by the Single Electricity Market operator in the 4th month and 13th month after the end of a billing period, in accordance with Section G.2.9 of Part B of the Trading and Settlement Code, the objective of which is to adjust the financial position of market participants by taking account of matters including updated data relating to metered generation of electricity;

“Single Electricity Market” has the meaning given to it by the Act of 1999;

“Single Electricity Market operator” means EirGrid, being the person licensed as the Single Electricity Market operator under section 14(1)(j) of the Act of 1999;

“trader” shall be construed in accordance with *section 6*;

“Trading and Settlement Code” means the Single Electricity Market Trading and Settlement Code, established under section 9BA(1) of the Act of 1999, concerning rules and procedures for the purchase and sale of wholesale electricity in the Single Electricity Market and in operation during the relevant period including as respects a settlement rerun relating to a billing period occurring during the relevant period;

“transmission system” shall be construed in accordance with the meaning given to it in the definition of “transmission” in the Act of 1999;

“transmission system operator” means a holder of a licence referred to in section 14(1)(e) of the Act of 1999.

- (2) In this Act a word or expression which is used in this Act and which is also used in the Council Regulation has, unless the context otherwise requires, the same meaning in this Act as it has in the Council Regulation.

### **Regulations and schemes**

3. (1) The Minister may by regulations provide for any matter referred to in *section 33* as prescribed or to be so prescribed.
- (2) The Minister may make a scheme to provide for any matter referred to in *section 28* as prescribed or to be so prescribed.
- (3) The competent authority, having consulted with the Minister, may by regulations provide for any matter referred to in *section 15* or *20* as prescribed or to be so prescribed.
- (4) Without prejudice to any provision of this Act, regulations or schemes under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister or the competent authority having consulted with the Minister, as the case may be, to be necessary or expedient for the purposes of the regulations.
- (5) Every regulation or scheme under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or scheme is passed by either such House within the next 21 days on which that House has sat after the regulation or scheme is laid before it, the regulation or scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### **Expenses**

4. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be approved by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of moneys provided by the Oireachtas.

### **Service of notices**

5. (1) A notice or other document that is required to be served on or given to a person under this Act shall be in writing addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:
- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;

- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;
  - (d) by electronic means in a case in which the person has given notice in writing to the person giving the notice concerned of his or her consent to the notice (or notices of a class to which the notice belongs) being given to him or her in that manner.
- (2) For the purpose of this section, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

## PART 2

### CALCULATION, RETURN, PAYMENT AND RECOVERY

#### CHAPTER 1

##### *Calculation*

#### **Application of Act to certain persons**

6. (1) Each of the following persons shall be liable, subject to this Act, to make a payment referred to in *section 8*:
- (a) a person (in this Act referred to as a “producer”) who holds a licence under section 14(1)(a) of the Act of 1999, in respect of a generating unit with installed capacity of one or more than one megawatt which produces electricity from a source specified in *section 7*;
  - (b) a person (in this Act referred to as an “intermediary”) appointed and authorised, under and in accordance with Section B.11 of Part B of the Trading and Settlement Code, by a producer to be an intermediary on behalf of the producer;
  - (c) a person (in this Act referred to as a “trader”) appointed and authorised under and in accordance with Section B.7 of Part B of the Trading and Settlement Code, by a producer or an intermediary to sell electricity in accordance with the SEMOpX rules on behalf of the producer or intermediary, in the *ex-ante* market or the balancing market.
- (2) In this section—
- “balancing market” means the market operated by SEMO to continuously balance generation of and demand for electricity in order to maintain stable and secure operation of the transmission system;

“day ahead market” means a part of the electricity market operated by SEMOpx where market participants submit their offers and bids for electricity supply and demand, respectively, for the immediately following day which facilitates the efficient scheduling and dispatch of electricity generation resources based on anticipated supply and demand conditions wherein the market-clearing price is determined based on the intersection of the offers and bids, and which establishes the price of electricity for the day ahead;

“*ex-ante* market” means a day-ahead market or an intraday market;

“intraday market” means a part of the electricity market operated by SEMOpx where market participants may trade electricity closer to real-time, after the day ahead market has concluded, and adjust and optimise their positions or meet unforeseen changes in electricity supply or demand, and manage imbalances between scheduled and actual electricity flows, in a timely manner;

“SEMOpx” is the nominated electricity market operator (NEMO) designated by the SEMO under and in accordance with Commission Regulation (EU 2015/1222) of 24 July 2015<sup>3</sup> and Title VIII of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community of the one part and the United Kingdom of Great Britain and Northern Ireland of the other part, done at Brussels and London on 30 December 2020<sup>4</sup> to operate the *ex-ante* market under and in accordance with that Regulation and Agreement.

#### **Application of Act to certain fuel sources**

7. This Act applies to market revenue obtained in the State each month during the relevant period by a producer, intermediary or trader from the sale of electricity produced from any or all of the following fuel sources:
- (a) wind energy;
  - (b) solar energy (solar thermal and solar photovoltaic);
  - (c) geothermal energy;
  - (d) hydropower (with or without reservoir);
  - (e) biomass fuel (solid or gaseous biomass fuels), excluding biomethane;
  - (f) waste;
  - (g) nuclear energy;
  - (h) lignite;
  - (i) crude petroleum products;
  - (j) peat;
  - (k) hard coal.

3 O.J. No. L 197, 25.7.2015 p. 24

4 O.J. No. L 444, 31.12.2020 p. 14

**Market cap**

8. (1) A producer, intermediary or trader shall each be liable to make a payment, calculated in accordance with this Act, in respect of the market revenue, obtained in the State by the producer, intermediary or trader each month during the relevant period from the sale of electricity produced from a class of fuel source referred to in *section 7*, that exceeds the amount specified in *subsection (2)* in relation to that class of source (in this section referred to as the “market cap”).
- (2) Subject to *subsection (3)*, the market cap shall be—
- (a) €120 per megawatt hour for electricity produced from the source referred to in *paragraph (a), (b) or (d) of section 7*,
  - (b) €180 per megawatt hour for electricity produced from the source referred to in *paragraph (c), (f), (g) or (h) of section 7*, and
  - (c) for electricity produced from the source referred to in *paragraph (e), (i), (j) or (k) of section 7*, a cap per megawatt hour of the greater of—
    - (i) €180 per megawatt hour, or
    - (ii) the allowable cost of production for that calendar month plus an allowable margin of—
      - (I) €15 per megawatt hour for electricity produced from the source referred to in *paragraph (e) or (j) of section 7*,
      - (II) €120 per megawatt hour for electricity produced from the source referred to in *paragraph (i) of section 7*, and
      - (III) €35 per megawatt hour for electricity produced from the source referred to in *paragraph (k) of section 7*.
- (3) Where electricity is produced in a generating unit from more than one class of fuel source referred to in *section 7*, the producer, intermediary or trader concerned shall be liable to make a payment in relation to the market cap applying to the greatest percentage of the fuel source used in the production of electricity in the unit in a month which shall, in that month, be the market cap applying to the sale of all the electricity produced in that unit.
- (4) In this section—
- “allowable cost of production” shall be calculated by the producer by applying the unit complex bids to the relevant quantity for the generating unit for the month concerned in megawatt hours, then dividing the resulting amount, stated in euros, by the relevant quantity for the generating unit for the month concerned in megawatt hours, to give an amount stated in euros per megawatt hour;
- “incremental and decremental priced quality pairs” shall be construed in accordance with Section D.4.4 of Part B of the Trading and Settlement Code;
- “no load costs” shall be construed in accordance with Section D.4.3 of Part B of the Trading and Settlement Code;

“relevant period” means the period beginning on 1 December 2022 and ending on 30 June 2023;

“start up costs” shall be construed in accordance with Section D.4.3 of Part B of the Trading and Settlement Code;

“unit complex bids” means complex bid offer data submitted, by or on behalf of a producer, under Section D.4 of Part B of the Trading and Settlement Code, to the SEMO in respect of a generating unit.

### **Market index price**

9. (1) The collection agent shall establish and maintain a website whereby it shall, on or after the commencement of this section, continue to publish the market index price which was calculated and published by the collection agent before the said commencement.
- (2) In this section, “market index price” in relation to each month of the relevant period, means the weighted average price of the prices associated with each quantity of electricity traded in the day-ahead market and each quantity of electricity traded in the intraday market by all generating units in each imbalance settlement period in that month.

### **Monthly market revenue and monthly capped revenue**

10. (1) The amount of monthly market revenue in respect of which a payment referred to in *section 8(1)* is liable to be made shall be calculated, in accordance with *subsection (2)*, by the producer, intermediary or trader for each month of the relevant period in respect of the revenue obtained by the producer, intermediary or trader, as the case may be, from the sale of electricity in that month (in this Act referred to as “monthly market revenue”).
- (2) Monthly market revenue—
- (a) in relation to a producer—
- (i) who does not participate directly in the electricity market but enters a contract with a person (other than an export only supplier) to participate in the electricity market on the producer’s behalf, shall be calculated for each generating unit as the total revenue (whether or not payable during the month concerned) obtained by the producer pursuant to the contract for each imbalance settlement period in that month,
- (ii) who participates directly in the electricity market as or through an export only supplier, established by the producer for the purpose of sale of electricity produced by the producer, shall be calculated for each generating unit as the sum of the relevant quantity in each imbalance settlement period in the month concerned multiplied by the market index price for each imbalance settlement period in that month, or

- (iii) who participates directly in the electricity market other than as or through an export only supplier, shall be calculated for each generating unit as the sum of the relevant quantity in each imbalance settlement period in the month concerned multiplied by the market index price for each imbalance settlement period in that month,
  - (b) in relation to an intermediary, shall be calculated for each generating unit in respect of which the intermediary participates in the electricity market on behalf of a producer, as the sum of the relevant quantity in each imbalance settlement period in the month concerned multiplied by the market index price for each imbalance settlement period in that month, and
  - (c) in relation to a trader—
    - (i) who sells electricity on behalf of a producer or intermediary in the *ex-ante* market, shall be calculated for each generating unit in respect of which the trader sells electricity in the *ex-ante* market on behalf of the producer or intermediary, as the sum of the *ex-ante* quantity of the generating unit in each imbalance settlement period in the month concerned multiplied by the market index price for each imbalance settlement period in that month, or
    - (ii) who sells electricity on behalf of a producer or intermediary in the balancing market, shall be calculated for each generating unit in respect of which the trader sells in the balancing market on behalf of the producer or intermediary, as the sum of the loss-adjusted metered quantity of the generating unit in each imbalance settlement period in the month concerned multiplied by the market index price for each imbalance period in that month.
- (3) The amount of monthly capped revenue in respect of which a payment referred to in *section 8(1)* is liable to be made shall be calculated, in accordance with *subsection (4)*, by the producer, intermediary or trader for each month of the relevant period in respect of the revenue obtained from the sale of electricity in that month (in this Act referred to as “monthly capped revenue”).
- (4) Monthly capped revenue—
  - (a) in relation to a producer—
    - (i) referred to in *subparagraph (i)* of *subsection (2)(a)*, shall be calculated, for each generating unit as the sum of the relevant quantity of electricity for which the contract referred to in that subparagraph provides, produced in each imbalance settlement period in the month concerned, multiplied by the amount of the cap applying to the electricity under *section 8(2)*,
    - (ii) referred to in *subparagraph (ii)* of *subsection (2)(a)*, shall be calculated, for each generating unit as the sum of the loss-adjusted metered quantity of electricity produced in each imbalance settlement period in the month concerned, multiplied by the amount of the cap applying to the electricity under *section 8(2)*, and



- (iii) referred to in *subparagraph (iii) of subsection (2)(a)*, shall be calculated, for each generating unit as the sum of the relevant quantity of electricity produced in each imbalance settlement period in the month concerned, multiplied by the amount of the cap applying to the electricity under *section 8(2)*,
- (b) in relation to an intermediary, shall be calculated, for each generating unit in respect of which the intermediary participates in the electricity market on behalf of a producer, as the sum of the relevant quantity of electricity produced in each imbalance settlement period in the month concerned multiplied by the amount of the cap applying to the electricity under *section 8(2)*, and
- (c) in relation to a trader—
- (i) referred to in *subparagraph (i) of subsection (2)(c)*, shall be calculated, for each generating unit in respect of which the trader sells electricity in the *ex-ante* market on behalf of the producer or intermediary, as the sum of the *ex-ante* quantity produced in each imbalance settlement period in the month concerned multiplied by the amount of the cap applying to the electricity under *section 8(2)*, or
- (ii) referred to in *subparagraph (ii) of subsection (2)(c)*, shall be calculated, for each generating unit in respect of which the trader sells in the balancing market on behalf of the producer or intermediary, as the sum of the loss-adjusted metered quantity produced in each imbalance settlement period in the month concerned multiplied by the amount of the cap applying to the electricity under *section 8(2)*.
- (5) In this section, “relevant quantity” means the relevant quantity for an imbalance settlement period for a generating unit which shall be calculated according to the following formula:

$$\text{relevant quantity}_{uy} = \text{QMLF}_{uy} - \sum_o \sum_i (\text{QABLF}_{uio\gamma} - \text{Min}(\text{QABBIAS}_{uio\gamma}, \text{QABUNDEL}_{uio\gamma}, \text{QABNFLF}_{uio\gamma}, \text{QABCURLLF}_{uio\gamma}))$$

where—

U refers to a generating unit,

O refers to bid offer acceptance,

i refers to a band,

$\gamma$  refers to an imbalance settlement period,

QMLF<sub>uy</sub> is the loss-adjusted metered quantity,

$\sum_o$  is a summation over all bid offer acceptances,

$\sum_i$  is a summation over all bands,

QABLF<sub>uio $\gamma$</sub>  is the loss-adjusted accepted bid quantity,

QABBIAS<sub>uio $\gamma$</sub>  is the biased accepted bid quantity,

QABUNDEL<sub>uoiy</sub> is the undelivered accepted bid quantity,

QABNFLF<sub>uoiy</sub> is the loss-adjusted non-firm accepted bid quantity,

QABCURLLF<sub>uoiy</sub> is the loss-adjusted curtailment accepted bid quantity.

(6) In this section—

“band” shall be construed in accordance with the Glossary to Part B of the Trading and Settlement Code;

“biased accepted bid quantity” shall be construed in accordance with Section F.6.7.10 of Part B of the Trading and Settlement Code;

“bid offer acceptance” shall be construed in accordance with the Glossary to Part B of the Trading and Settlement Code;

“cap applying to the electricity” means the market cap applying to the fuel source from which the electricity is produced;

“contract” includes—

- (a) a contract under which electricity generated by a generating unit is subtracted, by a party to the contract other than the producer, from the electricity demand a producer or generating unit would otherwise have in the electricity market,
- (b) a REFIT power purchase agreement, and
- (c) a power purchase agreement;

“*ex-ante* quantity” means, in relation to a producer, intermediary or trader concerned in respect of a generating unit, the amount of electricity in megawatt hours notified to the producer, intermediary or trader by SEMO, in advance of an imbalance settlement period, that the generating unit is required to generate in the imbalance settlement period;

“loss-adjusted accepted bid quantity” shall be construed in accordance with Section F.6.2 of Part B of the Trading and Settlement Code;

“loss-adjusted curtailment accepted bid quantity” shall be construed in accordance with Section F.8.1 of Part B of the Trading and Settlement Code;

“loss-adjusted non-firm accepted bid quantity” shall be construed in accordance with Section F.6.5 of Part B of the Trading and Settlement Code;

“power purchase agreement” means a power purchase agreement between a producer and a buyer for the sale or purchase of electricity pursuant to the terms and conditions of the agreement which shall include terms and conditions related to the price and quantity of electricity sold and purchased and the period during which the electricity shall be supplied by the producer;

“undelivered accepted bid quantities” shall be construed in accordance with Section F.6.6.6 of Part B of the Trading and Settlement Code.

**Preliminary surplus revenue**

11. (1) Preliminary surplus revenue shall be calculated in accordance with this section by a producer, intermediary or trader for each month of the relevant period.
- (2) Preliminary surplus revenue—
- (a) in relation to a producer referred to in *subparagraph (i) of section 10(2)(a)*, shall be the monthly market revenue calculated under that subparagraph less the monthly capped revenue calculated under *section 10(4)(a)(i)*,
  - (b) in relation to a producer referred to in *subparagraph (ii) of section 10(2)(a)*, shall be the monthly market revenue calculated under that subparagraph less the monthly capped revenue calculated under *section 10(4)(a)(ii)*,
  - (c) in relation to a producer referred to in *subparagraph (iii) of section 10(2)(a)*, shall be the monthly market revenue calculated under that subparagraph less the monthly capped revenue calculated under *section 10(4)(a)(iii)*,
  - (d) in relation to an intermediary, shall be the monthly market revenue calculated under *section 10(2)(b)* less the monthly capped revenue calculated under *section 10(4)(b)*,
  - (e) in relation to a trader referred to in *subparagraph (i) of section 10(2)(c)*, shall be the monthly market revenue calculated under that subparagraph less the monthly capped revenue calculated under *section 10(4)(c)(i)*, and
  - (f) in relation to a trader referred to in *subparagraph (ii) of section 10(2)(c)*, shall be the monthly market revenue calculated under that subparagraph less the monthly capped revenue calculated under *section 10(4)(c)(ii)*.

**Adjusted surplus revenue**

12. (1) Adjusted surplus revenue means the amount liable, subject to *sections 13 and 14*, to be paid by a producer, intermediary or trader in respect of the market cap and shall be calculated by the producer, intermediary or trader in accordance with this section for each month of the relevant period (in this Act referred to as “adjusted surplus revenue”).
- (2) Adjusted surplus revenue shall be calculated by adjusting the preliminary surplus revenue as follows:
- (a) in relation to a producer—
    - (i) gains earned by the producer from hedging arrangements in respect of a generating unit shall be added,
    - (ii) difference charges, other than non-performance difference charges, paid by the producer in respect of a generating unit shall be deducted,
    - (iii) losses incurred by the producer from hedging arrangements in respect of a generating unit shall be deducted, and

- (iv) any monies liable to be paid by the producer to a trader who is not, in relation to the producer, an affiliated person shall be deducted;
- (b) in relation to an intermediary—
  - (i) gains earned by the intermediary from hedging arrangements in respect of a generating unit shall be added,
  - (ii) difference charges, other than non-performance difference charges, paid by the intermediary in respect of a generating unit shall be deducted,
  - (iii) losses incurred by the intermediary from hedging arrangements in respect of a generating unit shall be deducted,
  - (iv) any monies liable to be paid by the intermediary to—
    - (I) a trader who is not, in relation to the intermediary, an affiliated person, or
    - (II) a producer who is not, in relation to the intermediary, an affiliated person,shall be deducted, and
  - (v) any monies which exceed the intermediary's monthly capped revenue and which are liable to be paid by the intermediary to a producer who is, in relation to the intermediary, an affiliated person shall be deducted;
- (c) in relation to a trader—
  - (i) gains earned by the trader from hedging arrangements in respect of a generating unit shall be added,
  - (ii) difference charges, other than non-performance difference charges, paid by the trader in respect of a generating unit shall be deducted,
  - (iii) losses incurred by the trader from hedging arrangements in respect of a generating unit shall be deducted,
  - (iv) any monies liable to be paid to the trader by a producer or an intermediary shall be added,
  - (v) any monies liable to be paid by the trader to—
    - (I) a producer who is not, in relation to the trader, an affiliated person, or
    - (II) an intermediary who is not, in relation to the trader, an affiliated person,shall be deducted, and
  - (vi) any monies which exceed the trader's monthly capped revenue and which are liable to be paid by the trader to—
    - (I) a producer who is, in relation to the trader, an affiliated person, or
    - (II) an intermediary who is, in relation to the trader, an affiliated person,

shall be deducted.

- (3) Where adjusted surplus revenue, calculated in accordance with this section, is negative for a month during the relevant period it should be treated as if it were calculated to be nil for that month.
- (4) In this section—
- “difference charges” means financial incentives related to reliable production of electricity calculated in accordance with Section F.18 of Part B of the Trading and Settlement Code;
- “non-performance difference charges” means difference charges calculated in accordance with Section F.18.7 of Part B of the Trading and Settlement Code.

#### **Further provision relating to adjusted surplus revenue**

13. (1) Where adjusted surplus revenue is nil in respect of a generating unit for a month during the relevant period, the producer, intermediary or trader shall not be liable, for that generating unit, to make any payment in respect of the market cap for that month.
- (2) Adjusted surplus revenue in respect of a generating unit for a month during the relevant period shall be calculated, under *section 12*, subject to any calculation required on foot of a settlement rerun applying in respect of the generating unit.
- (3) Where an intermediary pays directly to final customers an amount from what would, but for this subsection be any or all of the adjusted surplus revenue of the intermediary then the intermediary shall not be liable to pay the market cap in respect of the amount so paid to final customers.
- (4) For the purposes of *subsection (3)*, “pays directly to final customers” means—
- (a) the intermediary shall be taken to have so paid directly where, during the relevant period, the difference in revenue gained by the intermediary from sales of electricity by the intermediary to final customers and the wholesale cost to the intermediary of purchasing that electricity and the network charges incurred by the intermediary, divided by the total volume of electricity sold by the intermediary, is no greater than the historical average of the fiscal years 2018 to 2021 for the intermediary, or
- (b) the intermediary has paid out monetary benefits to final electricity customers out of what would, but for *subsection (3)*, be its adjusted surplus revenue.

#### **Further provision relating to hedging arrangements**

14. (1) Subject to *subsection (3)*, all losses and gains incurred or earned from every hedging arrangement, applying during or in relation to all or part of the relevant period, entered into by a producer, intermediary or trader shall be taken into account in accordance with *section 12*.
- (2) Where a hedging arrangement of a producer is not related to a specific identifiable generating unit of the producer then all losses and gains incurred or gained under the

hedging arrangement in any imbalance settlement period shall be applied to all generating units of the producer in that imbalance settlement period.

- (3) A hedging arrangement shall be taken into account for the purpose of a calculation referred to in *section 12* where all of the following conditions are met:
- (a) the hedging arrangement is directly related to hedging fluctuations in Single Electricity Market wholesale electricity prices and directly associated with the sale and delivery of electricity in the Single Electricity Market during the relevant period;
  - (b) the arrangement is made with a person other than the producer, intermediary or trader concerned and it provides for price, volume, duration and terms of settlement;
  - (c) the hedging arrangement is associated with specific megawatt per hour quantities in each imbalance settlement period and has, subject to *subsection (2)*, been allocated over all generating units referred to in the hedging arrangement;
  - (d) the loss assigned by the hedging arrangement to a generating unit in an imbalance settlement period is based on a quantity of energy that is less than or equal to the electricity produced by that generating unit in that imbalance settlement period;
  - (e) the hedging arrangement represents an arm's length transaction at the market price at the time of entry into the arrangement and the producer, intermediary or trader who has entered into the arrangement and the other party to the arrangement are not affiliated persons;
  - (f) the hedging arrangement has not been unwound or counter balanced by another transaction conducted by the producer, intermediary or trader or any affiliated person of that person;
  - (g) there is no separate arrangement to provide a benefit to any person as a result of the hedging arrangement, between the producer, intermediary or trader and the other party to the hedging arrangement or with any affiliated person of a party to the hedging arrangement.
- (4) A hedging arrangement referred to in this section may include but need not be limited to the sale of electricity pursuant to—
- (a) a contract for differences,
  - (b) contracts for fuel and carbon contracts that are proxies for electricity contracts, or
  - (c) a directed contract.
- (5) In this section—

“contract for differences” means an agreement through which parties agree the price of a commodity by reference to the difference between a fixed contract price and the market price, which is paid after the trading period;

“directed contract” means a contract for difference where the contract price and volume are directed by the SEM Committee;

“SEM Committee” means the committee referred to in section 8A of the Act of 1999.

CHAPTER 2

*Return*

**Return**

- 15.** (1) A producer, intermediary or trader shall, not later than 31 December 2023, make a return in respect of the relevant period to the competent authority which return shall—
- (a) be in such form as may be prescribed,
  - (b) contain such information as may be prescribed, including information in relation to—
    - (i) the fuel source referred to in *section 7* from which the electricity is produced,
    - (ii) whether electricity is produced from more than one class of fuel source and the amount of each fuel used,
    - (iii) allowable cost of production within the meaning of *section 8*,
    - (iv) monthly market revenue,
    - (v) the level of market cap,
    - (vi) preliminary surplus revenue,
    - (vii) adjusted surplus revenue,
    - (viii) any affiliated person in relation to the person making the return,
    - (ix) any hedging arrangements,
    - (x) in relation to an intermediary, any amount referred to in *section 13* paid directly to final customers, and
    - (xi) any settlement rerun,
  - (c) attach such particulars and documents as may be prescribed, and
  - (d) contain the producer’s, intermediary’s or trader’s assessment of the adjusted surplus revenue, for each generating unit, calculated in accordance with *section 12* in respect of each month of the relevant period, that the producer, intermediary or trader is liable to pay to the collection agent.
- (2) A producer, intermediary or trader shall, within such periods or by such dates as may be prescribed, make a return to the competent authority which return shall—
- (a) be in such form as may be prescribed,
  - (b) contain such information as may be prescribed, and
  - (c) attach such particulars and documents as may be prescribed—

- (i) relating to any adjustment of information contained in the return referred to in *subsection (1)* necessitated by a settlement rerun, a hedging arrangement or a power purchase agreement, and
- (ii) containing the person's assessment of the amount which, due to a settlement rerun, a hedging arrangement or a power purchase agreement—
  - (I) the producer, intermediary or trader is liable to pay to the collection agent, or
  - (II) the producer, intermediary or trader has overpaid and is liable to be repaid by the collection agent.

#### **Direction to make a return under *section 15***

- 16.** (1) Where the competent authority makes a determination that a person has failed to make a return under *subsection (1)* or *(2)* of *section 15* the competent authority may give a direction to the person requiring the person to make the return.
- (2) Where the competent authority proposes to make a determination under *subsection (1)* it shall give notice to the person to whom it proposes to give the direction that the person may, within 30 days after the date of the notice, give notice to the competent authority objecting to the proposed determination under *subsection (1)* and stating the reason for the objection.
- (3) On or after the expiry of the period of 30 days referred to in *subsection (2)*, the competent authority, having considered any objection made to it under *subsection (2)* shall make whatever determination it considers appropriate and shall give notice to the person of its determination, the main reasons for that determination and, if appropriate, a direction requiring the person to make a return under *subsection (1)* or *(2)* of *section 15* as the case may be.
- (4) Where a notice under *subsection (3)* is given, the date by which the return is required to be made shall be the date to which the notice refers and not the date specified in *section 15(1)* or prescribed under *section 15(2)*.
- (5) Subject to *section 19*, a person who is given a notice under *subsection (3)* requiring the person to make a return shall make the return to the competent authority not later than 30 days after the date of the notice.
- (6) A person referred to in *subsection (5)* who, without reasonable excuse, fails to make a return within the period specified in that subsection shall be guilty of an offence.

#### **Notice requiring further information**

- 17.** (1) The competent authority may give notice to a person who makes a return under *subsection (1)* or *(2)* of *section 15*, requiring the person to submit, within the period specified in the notice or such further period as may be agreed in writing by the competent authority, any further information that the competent authority considers necessary for the purpose of the calculation of the adjusted surplus revenue.



- (2) A person who, without reasonable excuse, fails to comply with a notice under *subsection (1)* within the period specified in the notice or such further period as may be agreed in writing by the competent authority shall be guilty of an offence.

### Requirement to revise assessment

18. (1) The competent authority, where it appears to it that an assessment referred to in *section 15(1)(d)* or *section 15(2)(c)(ii)* is not correct, may make a determination that a revised assessment is required.
- (2) Where the competent authority proposes to make a determination under *subsection (1)* it shall give notice to the person who made the return under *subsection (1)* or (2) of *section 15* of the authority's proposed determination, and that the person may, within 30 days after the date of the notice, to give a notice to the competent authority objecting to the proposed determination under *subsection (1)* and stating the reason for the objection.
- (3) On or after the expiry of the period of 30 days referred to in *subsection (2)*, the competent authority, having considered any objections made to it under *subsection (2)*, shall make whatever determination it considers appropriate, including substituting its own assessment, and shall give notice to the person of its determination, the main reasons for that determination, and, if appropriate, requiring the person to make a new return under *subsection (1)* or (2) of *section 15*, as the case may be, to the competent authority, containing a revised assessment.
- (4) Subject to *section 19*, a person who is given a notice under *subsection (3)* requiring the person to make a new return containing a revised assessment shall make the new return to the competent authority not later than 30 days after the date of the notice and not the date specified in *section 15(1)* or prescribed under *section 15(2)*.
- (5) A person referred to in *subsection (4)* who, without reasonable excuse, fails to make a new return within the period specified in that subsection shall be guilty of an offence.

### Appeal

19. (1) A person who receives a notice under *section 16(3)* or *18(3)* may, within 8 weeks after the date of the notice appeal to the High Court against the determination.
- (2) The bringing of an appeal against a notice under *section 16(3)* or *18(3)* shall not have the effect of suspending the operation of the notice unless upon an application to the High Court, the Court makes an order staying or otherwise affecting the operation of the notice pending the hearing of the appeal.
- (3) The High Court shall hear and determine an appeal under this section and may make such order as it considers appropriate.
- (4) Without prejudice to the generality of the forgoing, following the consideration of an appeal under this section, the High Court may—
- (a) confirm the determination of the competent authority,

- (b) set aside the determination of the competent authority,
  - (c) set aside the determination of the competent authority and replace it with such other decision as the Court considers just or appropriate to make, or
  - (d) remit the determination for review by the competent authority, subject to such directions as the Court considers appropriate.
- (5) Where the High Court makes an order remitting the determination of the competent authority under *subsection (4)(d)*, the competent authority shall review the determination in accordance with any directions of the Court.

## CHAPTER 3

*Payment and recovery***Obligation to pay**

20. (1) A producer, intermediary or trader shall pay to the collection agent, on or before 31 January 2024, an amount equal to the adjusted surplus revenue that the producer, intermediary or trader is liable under this Act to pay.
- (2) A producer, intermediary or trader shall pay to the collection agent, on or before 31 August 2024, any balance of the adjusted surplus revenue the producer, intermediary or trader is liable to pay due to a settlement rerun.
- (3) The collection agent shall repay to a producer, intermediary or trader, on or before 31 August 2024, any overpayment of the adjusted surplus revenue made by the producer, intermediary or trader that the collection agent is liable to repay due to a settlement rerun.
- (4) A producer, intermediary or trader shall pay to the collection agent, not more than 30 days after a date as may be prescribed, any balance of the adjusted surplus revenue that the producer, intermediary or trader is liable to pay due to a hedging arrangement or a power purchase agreement.
- (5) The collection agent shall, not more than 30 days after a date as may be prescribed, repay to a producer, intermediary or trader any overpayment of the adjusted surplus revenue made by the producer, intermediary or trader that the collection agent is liable to repay due to a hedging arrangement or a power purchase agreement.
- (6) A payment, relating to an amount otherwise required to be paid under *subsection (1), (2) or (4)* shall, where a person is required under *section 18(3)* to make a new return containing a revised assessment, be made on or before the later of—
- (a) the date referred to in *subsection (1), (2) or (4)*, or
  - (b) 60 days after the giving of a notice under *section 18(3)*.
- (7) The adjusted surplus revenue payable to the collection agent under *subsection (1), (2) or (4)* shall be recoverable by the collection agent from a producer, intermediary or trader concerned as a simple contract debt in any court of competent jurisdiction.

**Surcharge for late return**

21. (1) Where a producer, intermediary or trader fails to make a return on or before the specified date, the adjusted surplus revenue that would have been payable to the collection agent if such a return had been made on or before that date shall be increased by an amount (in this section referred to as the “surcharge”), equal to the percentage, specified in *column (2)* of the Table to this section, opposite the timing of the delivery of the return relative to the specified date, specified in *column (1)* of the Table.
- (2) Where *subsection (1)* applies, the amount of the surcharge shall not exceed—
- (a) €12,695, where the surcharge applicable is 5 per cent, or
- (b) €63,485, where the surcharge applicable is 10 per cent.
- (3) Interest is payable under *section 22* on any surcharge as if the surcharge were an amount of adjusted surplus revenue, and the surcharge and any interest on that surcharge is chargeable and recoverable as if the surcharge and that interest were an amount of adjusted surplus revenue payable under *section 20*.
- (4) For the purposes of *subsection (1)*—
- (a) where a producer, intermediary or trader deliberately or carelessly makes an incorrect return on or before the specified date, that producer, trader or intermediary shall be deemed to have failed to have made the return on or before that date unless the error in the return is remedied by the making of a correct return on or before that date,
- (b) where a producer, intermediary or trader makes an incorrect return on or before the specified date, but does so neither deliberately nor carelessly and it comes to the attention of the producer, intermediary or trader that it is incorrect, the producer, intermediary or trader shall be deemed to have failed to have made the return on or before the specified date unless the error in the return is remedied by the making of a correct return without unreasonable delay, and
- (c) where a producer, intermediary or trader makes a return on or before the specified date, and the competent authority gives notice under *section 17* requiring further information, the producer, intermediary or trader shall be deemed to have failed to have made the return on or before the specified date unless the producer, intermediary or trader delivers that further information within the period specified in the notice.
- (5) An amount payable to the collection agent in respect of surcharge under this section may be recovered by the collection agent from the producer, intermediary or trader concerned as a simple contract debt in any court of competent jurisdiction.
- (6) In this section—
- “carelessly” means failure to take reasonable care;
- “specified date”—

- (a) in relation to a return under *section 15(1)*, means not later than 31 December 2023, or if applicable, the date immediately following the expiry of the period referred to in *section 16(5)*,
- (b) in relation to a return under *section 15(2)*, means a date as may be prescribed under *section 15(2)*, and
- (c) in relation to a return containing a revised assessment under *section 18(3)*, means the date immediately following the expiry of the period referred to in *section 18(4)*.

TABLE

Timing of delivery of return relative to specified date (1)	Surcharge (2)
Return delivered between 3 and 6 months from the specified date	5 per cent
Return not delivered within 6 months from the specified date	10 per cent

### Recovery of interest in respect of overdue amount

22. (1) Where a producer, intermediary or trader fails to pay to the collection agent the amount of adjusted surplus revenue the producer, intermediary or trader is liable to pay under *subsection (1), (2) or (4) of section 20* by the date referred to in *subsection (1), (2), (4) or (6) of section 20*, the producer, intermediary or trader shall be liable to pay interest thereon to the collection agent, and the amount of that interest shall be determined in accordance with *subsection (2)*.
- (2) The interest referred to in *subsection (1)* shall be determined by the following formula—
- $$A \times D \times R$$
- where—
- A is the adjusted surplus revenue which remains unpaid,
- D is the number of days (including part of a day) in the period during which the adjusted surplus revenue remains unpaid, and
- R is the rate of 0.0219 per cent.
- (3) An amount payable to the collection agent under this section may be recovered by the collection agent from the producer, intermediary or trader concerned as a simple contract debt in any court of competent jurisdiction.

**Obligation to keep certain records**

23. (1) A producer, intermediary or trader shall retain, or cause to be retained on its behalf, such records as are required to enable a full and true return to be made for the purposes of this Act.
- (2) Without prejudice to the generality of *subsection (1)*, the records required to be retained under that subsection shall include, but are not limited to, books, accounts, documents, and any other data relating to—
- (a) a return under *Chapter 2*, and
  - (b) the calculation by the producer, intermediary or trader of the amount of adjusted surplus revenue liable to be paid by it under this Act.
- (3) Records required to be retained under this section shall be retained in an official language of the State—
- (a) in written form, or
  - (b) by electronic, photographic, digital or other means such that they may be made legible as required.
- (4) Notwithstanding any other law, records to be retained under this section shall, subject to *subsection (5)*, be retained by or on behalf of the producer, intermediary or trader for the longer of the following periods:
- (a) the period ending on the day that performance of his or her functions under *section 24*, in relation to the records, by an inspector is treated as completed by the inspector;
  - (b) the period of 6 years commencing from the later of the dates referred to in *subsection (1), (2), (4)* or, as the case may be, *(6)*, of *section 20* as may apply to the producer, intermediary or trader.
- (5) For the purposes of this section, where the producer, intermediary or trader being a company—
- (a) is wound up, the liquidator, or
  - (b) is dissolved without the appointment of a liquidator, the last directors, including any person occupying the position of director by whatever name called, of the company,
- shall retain the records required to be retained under this section for a period of 5 years from the date from which the company is wound up or dissolved.
- (6) A producer, intermediary or trader who fails to comply with this section shall be guilty of an offence.

**Inspection**

24. (1) For the purpose of this Act, the competent authority may request an inspector to perform the functions specified in *subsection (3)*.

- (2) When exercising a power conferred on an inspector under this Act, the inspector shall, on request by a person thereby affected, produce the certificate of his or her appointment under section 56 of the Act of 1999, or a copy of it, and a form of personal identification to that person for inspection.
- (3) An inspector may—
- (a) subject to *subsection (4)*, at all reasonable times, and if necessary by use of reasonable force, enter any premises of a producer, intermediary or trader which the inspector has reasonable grounds to believe are being or have been used in the production or sale of electricity or in which the inspector has reasonable grounds to believe that records relating to the production or sale of electricity are kept,
  - (b) at such premises inspect and take copies of any books, records, other documents (including documents stored in non-legible form) or extracts therefrom that he or she finds in the course of his or her inspection,
  - (c) remove any such books, records or documents, from such premises and retain them for such period as he or she reasonably considers to be necessary for the purpose of this Act,
  - (d) require any person at the premises, the owner or person in charge of the premises or any person employed therein to—
    - (i) give to the inspector such assistance and information, and
    - (ii) produce to the inspector such books, records or other documents (and in the case of records or documents stored in non-legible form, a legible reproduction thereof), that are in that person's possession or procurement, as the inspector requires for the purpose of this Act,
  - (e) require any person at the premises (including the owner, person in charge of the premises and any person employed therein) to answer such questions as the inspector may ask relative to any matter in connection with compliance with this Act, or
  - (f) take possession of, remove from the premises and retain (for such period as he or she considers reasonably necessary for the purposes of his or her functions under this Act) anything referred to in *paragraph (b)* found at the premises.
- (4) An inspector shall not enter a dwelling otherwise than pursuant to a warrant under *subsection (5)*.
- (5) Upon the sworn information of an inspector, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that information, books, records or other documents (including information, books, records or documents stored in non-legible form) relating to the production or sale of electricity are kept at a dwelling, issue a warrant authorising a named inspector, accompanied by such other inspector or member of the Garda Síochána as the judge considers necessary to—
- (a) enter the dwelling (if necessary by the use of reasonable force),

- (b) inspect the dwelling, and
  - (c) exercise all or any of the powers of an inspector under *subsection (3)*.
- (6) Where an inspector, in the exercise of his or her powers under *subsection (3)*—
- (a) is prevented, or otherwise refused permission, from entering any premises, or
  - (b) has reason to believe that evidence related to a suspected offence under this Act may be present in the premises and that evidence may be removed therefrom or destroyed,
- the inspector may apply to the District Court for a warrant authorising the entry by the inspector onto the premises.
- (7) If, on application to him or her under *subsection (6)*, a judge of the District Court is satisfied on the sworn information of the inspector that he or she—
- (a) has been prevented, or otherwise refused, from entering a premises,
  - (b) has reason to believe that evidence related to a suspected offence under this Act may be present in the premises and that evidence may be removed therefrom or destroyed,
- the Court may issue a warrant authorising that person, accompanied by another inspector or member of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so requested, to enter, if need be by reasonable force, the premises concerned and exercise all or any of the powers conferred on an inspector under *subsection (3)*.
- (8) A person who—
- (a) obstructs or interferes with an inspector or a member of the Garda Síochána in the course of exercising a power conferred on him or her under *subsection (3)* or a warrant under *subsection (5)* or *(7)* or impedes the exercise by the inspector or member of such power, or
  - (b) fails or refuses to comply with a requirement of an inspector pursuant to *paragraph (d)* or *(e)* of *subsection (3)* or in purported compliance with such requirement gives information or makes a declaration to the inspector that he or she knows to be false or misleading in any material respect,
- shall be guilty of an offence.
- (9) A statement or admission made by a person pursuant to a requirement under *paragraph (d)* or *(e)* of *subsection (3)* shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under *subsection (8)*).
- (10) An inspector may be accompanied by such and so many members of the Garda Síochána as he or she considers necessary when exercising a power under this section.
- (11) In this section, “person in charge” means, in relation to a premises—

- (a) the person under whose direction and control any activities at that premises are being conducted, or
- (b) the person whom the inspector reasonably believes to be directing and controlling any activities taking place at that premises.

### PART 3

#### MARKET CAP FUND

##### **Establishment of Fund**

- 25.** (1) The collection agent shall establish, administer and maintain a fund to be known as the Market Cap Fund (in this Act referred to as the “Fund”).
- (2) The collection agent shall open and maintain—
- (a) subject to *paragraph (b)*, an account (in this Act referred to as a “current account”) for all moneys paid into the Fund, and
  - (b) an account (in this Act referred to as an “investment account”) for such moneys (if any) that are not immediately required for the purposes of the current account.
- (3) The National Treasury Management Agency may, at the request in writing of the collection agent and on the collection agent’s behalf, invest moneys (if any) held in the investment account and any income, capital or other benefit received in respect of moneys invested under this subsection shall be paid into the investment account or invested under this subsection as directed by the collection agent.
- (4) All amounts paid to the collection agent under *section 20, 21 or 22* shall be paid into the Fund.

##### **Accounts of Fund**

- 26.** (1) The collection agent shall, subject to such conditions as the Minister considers appropriate having consulted with the Minister for Public Expenditure, National Development Plan Delivery and Reform, manage and control the current account and investment account for the purpose of maintaining an amount of moneys in the current account of the Fund that is sufficient to meet the sums payable from that current account.
- (2) Whenever the moneys in the current account of the Fund are insufficient to meet the sums payable from that account there shall be paid into that account from the investment account of the Fund the moneys necessary to meet those sums payable.
- (3) The collection agent shall keep all proper and usual accounts of all moneys paid into the Fund and disbursements from the Fund, including—
- (a) an income and expenditure account,
  - (b) a cash-flow statement, and



- (c) a balance sheet.
- (4) As soon as may be after the end of each financial year of the collection agent, the collection agent shall submit—
  - (a) the accounts of the Fund to the Comptroller and Auditor General for audit, and
  - (b) a copy of an abstract of the accounts as so audited together with a copy of the report of the Comptroller and Auditor General thereon to the Minister.
- (5) The National Treasury Management Agency may, at the request of the collection agent and on the collection agent's behalf, perform the functions conferred on the collection agent under this section.
- (6) The Minister shall cause copies of the documents referred to in *subsection (4)(b)* to be laid before each House of the Oireachtas as soon as may be after the documents are submitted to him or her by the collection agent.

### **Disbursements from Fund**

27. The following amounts shall be paid out of the Fund—
- (a) such amounts, as may be payable under *subsection (3)* or *(5)* of *section 20* by the collection agent to a producer, intermediary or trader, and
  - (b) such amounts payable under and in accordance with a scheme prescribed by the Minister.

### **Schemes**

28. (1) The Minister shall, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, prescribe one or more than one scheme for the due disbursement of amounts from the Fund for the purposes of, and in accordance with, Article 10 of the Council Regulation.
- (2) A scheme under this section may provide for—
- (a) the purpose for which amounts may be paid from the Fund,
  - (b) the person or body who shall administer the scheme on behalf of the Minister,
  - (c) the persons who may qualify for a payment under the scheme,
  - (d) obligations to be complied with by a person who receives a payment under the scheme,
  - (e) the duration of the scheme,
  - (f) conditions applying in respect of a payment under the scheme, including maximum and minimum amounts that may be paid,
  - (g) matters of procedure relating to an application for payment including information and verifying documents to be furnished,

- (h) matters of procedure relating to compliance with any relevant policy of the Government or a Minister of the Government concerning public expenditure, and
  - (i) arrangements for carrying out a review of the effectiveness of payments under the scheme.
- (3) It shall be an offence to breach a provision of a scheme that is declared in the scheme to be a penal provision.

## PART 4

### OFFENCES, PENALTIES AND INFORMATION SHARING

#### **False or misleading information**

29. A person who, in purported compliance with this Act or regulations or a scheme under this Act, knowingly or recklessly provides information which is false or misleading in a material particular to—
- (a) the competent authority,
  - (b) the collection agent, or
  - (c) any person who administers a scheme,
- shall be guilty of an offence.

#### **Offences**

30. A person guilty of an offence under *section 16(6), 17(2), 18(5), 23(6), 24(8), 28(3) or 29* shall be liable—
- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months or both, or
  - (b) on conviction on indictment, to a fine not exceeding €126,970 or imprisonment for a term not exceeding 5 years or both.

#### **Prosecution by competent authority**

31. (1) Summary proceedings for an offence under *section 16(6), 17(2), 18(5), 23(6), 24(8)(b) or 29* may be brought and prosecuted by the competent authority.
- (2) Where a person is convicted of an offence in proceedings brought by the competent authority the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the competent authority the costs and expenses, measured by the court, incurred by the competent authority in relation to the investigation, detection and prosecution of the offence.
- (3) Where a court imposes a fine on a person convicted of an offence referred to in *subsection (1)* brought and prosecuted by the competent authority it shall, on the

application of the competent authority (made before the time of such imposition), provide by order for the payment of the amount of the fine to the competent authority as if the payment were due to the competent authority on foot of an order made by the court in civil proceedings.

- (4) The amount of any fine paid to, or recovered by the competent authority under *subsection (3)* shall be disposed of by the competent authority in such manner as the Minister for Finance directs.

### **Offence by body corporate**

32. Where an offence under this Act is committed by a body corporate and it is proved that the offence was committed with the consent, connivance or approval of, or was attributable to any wilful neglect on the part of any director, manager, secretary or other officer of the body corporate, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

### **Information sharing**

33. (1) The competent authority and the collection agent may each share information with each other and with a relevant body and enter into a data sharing arrangement with each other or that relevant body where it is necessary and proportionate for the purpose of the performance of a function of the competent authority or the collection agent under this Act.
- (2) The information referred to in *subsection (1)* may—
- (a) include the name, address and contact details of a producer, intermediary or trader,
  - (b) identify the nature of the participation in the electricity market of that producer, intermediary or trader,
  - (c) be data, metered by the distribution system operator relating to connection to the distribution system by a producer, intermediary or trader,
  - (d) be data, metered by the transmission system operator relating to connection to the transmission system by a producer, intermediary or trader,
  - (e) be commercial information relating to a producer, intermediary or trader including relating to hedging arrangements entered into by that person, and
  - (f) include such other information as may be prescribed by the Minister for the purposes of *subsection (1)*.
- (3) The Minister may prescribe—
- (a) the relevant bodies with which the information may be shared, and

(b) such conditions as the Minister considers appropriate, on the sharing of the information including, subject to the General Data Protection Regulation, personal data.

(4) In this section—

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>5</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“personal data” has the same meaning as it has in the General Data Protection Regulation;

“relevant body” means—

- (a) the Minister,
- (b) any other Minister of the Government who in the opinion of the Minister performs functions which are relevant to the purpose referred to in *subsection (1)*,
- (c) the distribution system operator,
- (d) the Single Electricity Market operator, and
- (e) the transmission system operator.

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5 O.J. No. L 119, 4.5.2016 p. 1-88