



Number 17 of 2022

EirGrid, Electricity and Turf (Amendment) Act 2022



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[No. 17.]

EirGrid, Electricity and Turf (Amendment) Act 2022.

[2022.]

ACTS REFERRED TO

Companies Act 2014 (No. 38)

Electricity Regulation (Amendment) (EirGrid) Act 2008 (No. 11)

Electricity Regulation Act 1999 (No. 23)

European Communities Act 1972 (No. 27)

Turf Development Act 1998 (No. 26)



Number 17 of 2022

EIRGRID, ELECTRICITY AND TURF (AMENDMENT) ACT 2022

An Act to provide for certain measures that may be taken pursuant to a direction of the Commission for Regulation of Utilities to provide for emergency measures for the purpose of ensuring and protecting security of supply of electricity; to provide for the giving of financial support by the Minister for the Environment, Climate and Communications to EirGrid to enable EirGrid to take certain measures, including acquiring electricity generation plant pursuant to a direction; to provide for the purchase by EirGrid of electricity generation plant; to provide for EirGrid entering into agreements with electricity generators in relation to electricity generation plant; to increase the amount of money that EirGrid may borrow and for that purpose to amend the Electricity Regulation (Amendment) (Eirgrid) Act 2008; to amend the Electricity Regulation Act 1999 to provide for payments to final customers of certain benefits relating to compliance with a public service obligation; to increase the amount of money that Bord na Móna may borrow and for that purpose to amend the Turf Development Act 1998; and to provide for related matters. [7th July, 2022]

Be it enacted by the Oireachtas as follows:

Interpretation

1. (1) In this Act—

“Act of 1999” means the Electricity Regulation Act 1999;

“Commission” means the Commission for Regulation of Utilities;

“direction” means a direction of the Commission for the specified purpose, whether given before, on or after the coming into operation of this Act;

“EirGrid” means the public limited company incorporated pursuant to Regulation 34 of the Regulations of 2000;

“electricity generation plant” means any plant, apparatus or appliance used for, or for purposes connected with, the generation of electricity other than an appliance under the control of a consumer;

“electricity generator” means a person selected by EirGrid, with approval of the Commission, to operate electricity generation plant for the specified purpose in accordance with a licence granted under section 14(1)(a) of the Act of 1999;

“enactment” means—

- (a) an Act of the Oireachtas,
- (b) a statute that was in force in Saorstát Éireann immediately before the date of coming into operation of the Constitution and that continued in force by virtue of Article 50 of the Constitution, or
- (c) an instrument made under an Act of the Oireachtas or a statute referred to in *paragraph (b)*;

“financial support” means a grant or any other kind of financial accommodation or support;

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

“public electricity supplier” means the holder of a licence under section 14(1)(h) of the Act of 1999;

“Regulations of 2000” means the European Communities (Internal Market in Electricity) Regulations 2000 (S.I. No. 445 of 2000);

“specified purpose” means taking measures required to address the temporary electricity emergency identified by the Commission, including but not limited to acquiring electricity generation plant and entering into agreements for that purpose;

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

- (2) This Act shall apply to a subsidiary of EirGrid as it applies to EirGrid, with any necessary modifications, and a reference in this Act to EirGrid shall include a reference to a subsidiary of EirGrid.

Expenses

- 2. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Urgent measures taken pursuant to direction of Commission

- 3. (1) EirGrid shall take all necessary measures in accordance with a direction, within the period specified and in a manner approved by the Commission, including but not limited to—
 - (a) acquiring electricity generation plant or any rights or interest in or in relation thereto,
 - (b) selling and transferring in accordance with *section 4* any electricity generation plant to an electricity generator, and
 - (c) entering into an agreement with an electricity generator for the emergency operation of the electricity generation plant.

- (2) Subject to *section 10*, the emergency operation of electricity generation plant in accordance with a direction shall cease as soon as possible on fulfilment of the specified purpose, and no later than 31 March 2027.
- (3) Electricity generation plant shall be dispatched only in the circumstances and the manner set out in the risk preparedness plan adopted by the Commission under and in accordance with Article 10 of Regulation (EU) 2019/941¹.

Sale and transfer by EirGrid of electricity generation plant to electricity generators for specified purpose

4. (1) EirGrid shall not operate any electricity generation plant acquired by it pursuant to a direction and shall deal with it solely in accordance with a direction.
- (2) Where EirGrid acquires electricity generation plant and enters into an agreement with an electricity generator, the agreement may include a term in relation to deferred payment for the electricity generation plant and may provide for—
 - (a) the sale or transfer of the electricity generation plant to the electricity generator,
 - (b) the emergency operation of the electricity generation plant, and
 - (c) any further arrangements necessary for achieving the specified purpose.
- (3) Upon the sale or transfer of the electricity generation plant pursuant to an agreement referred to in *subsection (2)*, the title to or any relevant rights or interest in the electricity generation plant shall, subject to the limitations and rights provided for in this section, transfer to the electricity generator.
- (4) On the termination of an agreement referred to in *subsection (2)*, in accordance with its terms or otherwise, the electricity generator shall dispose of the electricity generation plant in an arm's length transaction in accordance with any direction of the Commission.
- (5) An agreement referred to in *subsection (2)* shall ensure that in all circumstances EirGrid shall be paid the full price of the electricity generating plant and any profit received on a sale of the plant by the electricity generator.
- (6) An electricity generator shall not obtain any benefit in respect of obligations undertaken pursuant to an agreement referred to in *subsection (2)* other than reimbursement of such reasonable costs incurred by the electricity generator, including a reasonable return, as may be approved by the Commission.

Consequences of measures taken pursuant to direction of Commission

5. (1) Any measures taken by EirGrid in order to comply with a direction or for the specified purpose shall be taken not to affect the independence of EirGrid as transmission system operator under the Regulations of 2000 or any other functions of EirGrid under any enactment.

¹ OJ L 158 14.6.2019 p. 1

- (2) Any measures taken by EirGrid pursuant to a direction shall be taken solely for the benefit of the State and in order to achieve the specified purpose and no remuneration shall be obtained by EirGrid in connection with such measures other than reimbursement of such reasonable costs incurred by EirGrid, including a reasonable return, as may be approved by the Commission.
- (3) EirGrid, shall, notwithstanding any limitation in its constitution (within the meaning of section 2 of the Companies Act 2014) have such powers as may be necessary to enable it to comply with any direction.
- (4) Any action taken by a director of EirGrid in order to comply with a direction shall not constitute a breach of section 227 or 228 of the Companies Act 2014.
- (5) Where a direction is given to a person the person shall, within the period specified in the direction, and in any event as soon as practicable, comply with the direction.

State aid

6. (1) Functions conferred on the Minister or the Commission under this Act shall be performed by the Minister and, as the case may be, the Commission in compliance with—
 - (a) an enactment or rule of law,
 - (b) a provision of the treaties governing the European Union, or
 - (c) an act adopted by an institution of the European Union, an institution of the European Communities or any other body competent under those treaties,relating to State aid.
- (2) In *subsection (1)*, “European Communities”, “European Union” and “treaties governing the European Union” have the same meanings, respectively, as in the European Communities Act 1972.

Financial support for specified purpose

7. (1) The Minister may, with the consent of the Minister for Public Expenditure and Reform, out of monies provided by the Oireachtas, provide such financial support to EirGrid as the Minister considers to be necessary to achieve the specified purpose.
- (2) Financial support under *subsection (1)* may be provided in such form and manner and on such terms and conditions as may be agreed between the Minister and EirGrid with the consent of the Minister for Public Expenditure and Reform.
- (3) EirGrid shall only use financial support provided to it under *subsection (1)* for the specified purpose.
- (4) Any income or revenue received by EirGrid in connection with electricity generation plant or an agreement referred to in *section 4(2)* shall only be used for the specified purpose or for the making of distributions (within the meaning of section 123 of the Companies Act 2014) to the shareholders of EirGrid as determined by the directors of EirGrid in accordance with law.

- (5) Any amount received by the Minister from EirGrid in accordance with *subsection (4)* shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister may direct, with the prior approval of the Minister for Public Expenditure and Reform.

Reporting by EirGrid to Commission

8. EirGrid shall provide a report to the Commission on a quarterly basis, or more frequently as the Commission may require, in such form and manner and containing such information as the Commission may specify, in relation to measures taken by it pursuant to a direction and the performance of its functions under this Act.

Further measures for specified purpose

9. (1) Without prejudice to its functions under any other enactment, the Commission may, with the consent of the Minister, direct EirGrid, the public electricity supplier or an electricity generator, as appropriate, to undertake all or any measures as the Commission considers necessary, including financial arrangements, relating to security of supply in a manner approved by the Commission and consistent with its designation as the competent authority under the European Union (Risk Preparations) Regulations 2020 (S.I. No. 342 of 2020), including in particular the giving of directions in order to achieve the specified purpose.
- (2) Where the Commission is of the opinion that EirGrid, the public electricity supplier or an electricity generator is not complying with a direction, the Commission may apply in a summary manner on notice to the High Court for an order requiring EirGrid, the public electricity supplier or the electricity generator to comply with the direction and for the purpose of this subsection, the High Court may make such order as it thinks fit and may confirm, revoke or vary a direction.

Order to extend effect of direction or measure

10. (1) The date referred to in *section 3(2)* may, by order of the Minister, be extended to 31 March 2028.
- (2) An order under *subsection (1)* shall be made by the Minister where he or she is satisfied that, having considered the report of the Commission under *subsection (3)*, it is required for the specified purpose.
- (3) The Commission shall provide a report to the Minister, in such form and manner and containing such information as the Minister may specify, not later than 31 October 2026 on the progress under this Act in achieving the specified purpose and shall provide its view whether an order under *subsection (1)* is required to be made and shall give reasons for such view.
- (4) An order under this section shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.

Amendment of section 6 of Electricity Regulation (Amendment) (EirGrid) Act 2008

11. Section 6 of the Electricity Regulation (Amendment) (EirGrid) Act 2008 is amended by the substitution of the following subsection for subsection (2):

“(2) Subject to subsection (3), the aggregate at any time of borrowings (including any previous borrowing by virtue of Regulation 60 of the Principal Regulations) by EirGrid under subsection (1) shall not exceed €3,000,000,000.”.

Amendment of Act of 1999

12. The Act of 1999 is amended—

(a) in section 39—

(i) by the substitution of the following subsection for subsection (5):

“(5) Subject to subsections (6), (6A) and (7), an order under this section shall provide, following a calculation by the Commission of whether any additional costs are incurred or additional benefits are received by the Board or holders of a licence or an authorisation or holders of a permit under section 37 of the Principal Act in complying with an order under this section, including any such costs incurred or benefits received after the variation or revocation of such an order—

(a) (i) where it is calculated that there are additional costs incurred, for the recovery, by way of a levy on final customers of the additional costs, including a reasonable rate of return on the capital represented by such costs where appropriate,

(ii) where it is calculated that there are additional benefits received, for the making of a payment to final customers representing the additional benefits,

(b) in relation to a calculation under paragraph (a)(i), for the collection and recovery of payments in respect of the levy—

(i) from final customers by the Board or the holder of a licence or an authorisation or the holder of a permit under section 37 of the Principal Act,

(ii) from the Board or such holders of a licence, authorisation or permit by the distribution system operator or the transmission system operator, and

(iii) from the distribution system operator by the transmission system operator,

(bb) in relation to a calculation under paragraph (a)(ii), for the collection and recovery of amounts in respect of the payments under that paragraph—

- (i) from the Board or the holder of a licence or an authorisation or the holder of a permit under section 37 of the Principal Act by the distribution system operator or the transmission system operator, and
- (ii) from the distribution system operator by the transmission system operator,
- (c) for the making, out of payments collected under paragraph (b), of payments to the Board and holders of licences or authorisations, or holders of permits under section 37 of the Principal Act as appropriate, and
- (d) for the making, out of payments collected under paragraph (bb), of payments—
 - (i) to the distribution system operator by the transmission system operator,
 - (ii) to the Board, the holder of a licence or an authorisation or the holder of a permit under section 37 of the Principal Act by the distribution system operator or the transmission system operator, and
 - (iii) to final customers by the Board or holders of a licence or an authorisation or holders of a permit under section 37 of the Principal Act.”,
- (ii) in subsection (5A)—
 - (I) by the substitution of the following paragraph for paragraph (a):
 - “(a) The levy referred to in paragraph (a)(i) of subsection (5) shall be imposed on final customers in respect of a levy period and the payment referred to in paragraph (a)(ii) of subsection (5) shall be made to final customers in respect of a payment period in such a manner that—
 - (i) the levy or payment is apportioned between each category of electricity accounts specified in paragraph 1 of Schedule 2 on the basis of the maximum demand attributable to that category of accounts as a proportion of the aggregate of the maximum demand attributable to each of the three categories of accounts, and
 - (ii) each holder of an electricity account who is a final customer is charged and liable to pay the levy in respect of each electricity account on the basis set out in paragraph 2 of Schedule 2.”,
 - (II) in paragraph (b), by the insertion of “or payment period” after “each levy period”, and
 - (III) by the substitution of the following paragraph for paragraph (c):

“(c) In this subsection and in Schedule 2—

‘levy period’ means a calendar year or such shorter period as may be specified in the order;

‘payment period’ means a calendar year or such shorter period as may be specified in the order.”,

(iii) in subsection (6)—

(I) by the substitution of “in accordance with subparagraph (i) of subsection (5)(a)” for “in accordance with subsection (5)”, and

(II) by the substitution of “that subparagraph” for “that subsection”,

(iv) by the insertion of the following subsection after subsection (6):

“(6A) An order made under this section which, in accordance with subparagraph (ii) of subsection (5)(a), provides for a payment referred to in that subparagraph shall provide that such payment shall be made in respect of a specified period and that the amount to be paid in respect of each year or part of a year by the Board or holders of a licence or an authorisation or holders of a permit under section 37 of the Principal Act to a final customer shall be the amount of the additional benefits certified by the Commission as having been received by the Board or holders of a licence or an authorisation or holders of a permit under section 37 of the Principal Act in accordance with the order.”,

(v) in subsection (7)—

(I) in paragraph (a), by the insertion of “, the transmission system operator, the distribution system operator” after “the Board”,

(II) by the substitution of the following paragraph for paragraph (b):

“(b) provide for the times at which any payments under subsection (5) are to be made,”,

(III) in paragraph (c), by the substitution of “that person,” for “that person.”, and

(IV) by the insertion of the following paragraphs after paragraph (c):

“(d) without prejudice to the generality of paragraph (c)—

(i) provide for estimated and actual additional costs to be included in the calculation of additional costs and estimated and actual additional benefits to be included in the calculation of additional benefits,

(ii) provide for adjustment in the calculation of additional costs or additional benefits to account for—

(I) over recovery or under recovery of additional costs, or

- (II) over recovery or under recovery of additional benefits,
arising in a previous payment period or levy period (within the
meaning of subsection (5A)),
and
- (e) provide that payments referred to in subsection (5)(d)(iii) may be
made to a final customer by way of credit given for purchase of
electricity.”,
- (vi) in subsection (8)—
 - (I) by the substitution of “payments pursuant to subsection (5)” for “the
levy”,
 - (II) by the substitution of “collection of the payments” for “collection of the
levy”, and
 - (III) by the insertion of “, the distribution system operator and final
customers” after “of the Principal Act” in the second place where it
occurs,
and
- (vii) in subsection (9), by the insertion of “or additional benefits” after “additional
costs”,
and
- (b) in Schedule 2—
 - (i) in paragraph 2—
 - (I) by the insertion of “or payment to be made in respect of” after “levy to
be imposed on”,
 - (II) by the insertion of “or payment period,” after “levy period”, and
 - (III) by the substitution of “levy or payment attributed to” for “levy attributed
to” in each place where it occurs,
and
 - (ii) in paragraph 3—
 - (I) by the insertion of “or payment payable to” after “levy payable by”, and
 - (II) by the substitution of “levy or payment attributable to” for “levy
attributable to”.

Amendment of section 22(1) of Turf Development Act 1998

- 13.** Section 22(1) of the Turf Development Act 1998 is amended by the substitution of the following paragraph for paragraph (b):

“(b) Subject to subsection (2), the aggregate at any time of borrowings under paragraph (a) (other than borrowings from the Company or a subsidiary) shall not exceed €650,000,000.”.

Short title, commencement and collective citation

- 14.** (1) This Act may be cited as the EirGrid, Electricity and Turf (Amendment) Act 2022.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.