



Number 12 of 2016

Energy Act 2016



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Number 12 of 2016

ENERGY ACT 2016

An Act to change the name of the Commission for Energy Regulation; to confer on the Commission powers to carry out investigations and impose administrative sanction; to give further effect to Directive No. 2003/54/EC of the European Parliament and of the Council of 26 June 2003¹ concerning common rules for the internal market in electricity and repealing Directive 96/92/EC; to give further effect to Regulation (EC) 714/2009 of the European Parliament and of the Council of 13 July 2009² on conditions for access to the network for cross-border exchanges in electricity and for that purpose to make provision in respect of certain revised arrangements in the State and Northern Ireland relating to the Single Electricity Market; to give further effect to Regulation (EU) No. 1227/2011 of the European Parliament and of the Council of 25 October 2011³ on wholesale energy market integrity and transparency and for that purpose to amend the European Union (Wholesale Energy Market Integrity and Transparency) Regulations 2014 (S.I. No. 480 of 2014); for those and other purposes to amend the Registration of Title Act 1964, the Gas Act 1976, the Electricity Regulation Act 1999, the Gas (Interim) (Regulation) Act 2002, the Sustainable Energy Act 2002 and the National Oil Reserves Agency Act 2007; to amend the Continental Shelf Act 1968; to repeal the Intoxicating Liquor Act 1946; and to provide for related matters. [30th July, 2016]

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 Act 2016.
- (2) This Act, other than *section 7*, comes 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 and different provisions.

1 OJ No. L176, 15.7.2003, p.37

2 OJ No. L211, 14.8.2009, p.15

3 OJ No. L326, 8.12.2011, p.1

Definitions**2.** In this Act—

“Act of 1999” means Electricity Regulation Act 1999;

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

Repeals**3.** The following are repealed:

- (a) the Intoxicating Liquor Act 1946;
- (b) section 27 of the Act of 1999;
- (c) section 13(5) of the Gas (Interim) (Regulation) Act 2002.

PART 2**CHANGE OF NAME OF COMMISSION FOR ENERGY REGULATION****Change of name of Commission for Energy Regulation**

- 4.** The Commission for Energy Regulation (established by section 8 of the Act of 1999) shall, on and from such day as the Minister appoints by order, be known as the Commission for Regulation of Utilities or in the Irish language as An Coimisiún um Rialáil Fóntais and references in this Act or any other Act of the Oireachtas, any instrument made under this Act or any other Act of the Oireachtas, any legal proceedings and any document to the Commission for Energy Regulation shall from that day be read as references to the Commission for Regulation of Utilities.

PART 3**POWER TO CARRY OUT INVESTIGATIONS AND IMPOSE ADMINISTRATIVE SANCTION****Investigations and administrative sanction**

- 5.** The Act of 1999 is amended by inserting after section 54 the following Part:

“PART IX**POWER TO CARRY OUT INVESTIGATIONS AND IMPOSE ADMINISTRATIVE SANCTION****Definitions (Part IX and Schedule 4)**

- 55.** In this Part and Schedule 4—

‘improper conduct’ means—

- (a) failure by the holder of a licence under subsection (1)(b) of section 14 to comply, under subsection (2M)(b) of that section, with such standards of performance as may be specified by the Commission under subsection (2M)(a) of that section in the licence concerned,
- (b) failure by the holder of a licence under section 14(1)(e), (g) or (h), as the case may be, to comply, under Regulation 26(1) of the European Communities (Internal Market in Electricity) Regulations 2005 (S.I. No. 60 of 2005), with such standards of performance as may be specified by the Commission under Regulation 26(2) of those Regulations in the licence concerned,
- (c) failure by an interconnector operator to comply with the determination of the Commission under section 34A(5),
- (d) failure, by the holder of a licence under section 16(1)(a) of the Gas (Interim) (Regulation) Act 2002, under section 16(1F) of that Act, to keep, and make available on a request being made, data relating to transactions in gas supply contracts and gas derivatives with wholesale customers, transmission system operators and storage and LNG operators, or
- (e) failure by the holder of a licence under subsection (1)(a), (c) or (d) of section 16 of the Gas (Interim) (Regulation) Act 2002 to comply, under subsection (4A)(b) of that section, with such standards of performance as may be specified by the Commission under subsection (4A)(a) of that section in the licence concerned;

‘inspector’ means a person appointed under section 56(1) to be an inspector for the purposes of this Part;

‘investigation’ means an investigation under section 57(1);

‘investigation report’, in relation to an investigation, means a report in writing prepared, following the completion of the investigation, by the inspector appointed under section 57(2) to carry out the investigation;

‘major sanction’ means—

- (a) a direction to a specified body that the specified body pay a sum, as specified in the direction, but not exceeding €50,000, to the Commission, being the whole or a part of the cost to the Commission of an investigation of the specified body,
- (b) a direction to a specified body that the specified body pay a sum, as specified in the direction, but not exceeding 10 per cent of the turnover of the specified body, to the Commission by way of a financial penalty for improper conduct, by the specified body, specified in the direction, or
- (c) any combination of the sanctions specified in paragraphs (a) and (b);

‘minor sanction’ means—

(a) the issue, to a specified body, of—

- (i) advice,
- (ii) a caution,
- (iii) a warning, or
- (iv) a reprimand,

or

(b) any combination of any of the sanctions specified in paragraph (a);

‘premises’ includes vessel, aircraft, vehicle and any other means of transport, as well as land and any other fixed or movable structure;

‘specified body’ means a person referred to in any of paragraphs (a) to (e) of the definition in this section of ‘improper conduct’;

‘turnover’ means, in relation to a specified body, the turnover of the body in the financial year of the body ending immediately before the financial year in which the improper conduct took place.

Appointment of inspectors

56. (1) For the purposes of this Part—

- (a) the Commission may appoint such members of its staff as it thinks fit to be inspectors for such period and subject to such terms as the Commission may determine,
 - (b) the Commission may appoint such other persons as it thinks fit to be inspectors for such period and subject to such terms (including terms as to remuneration and allowances for expenses) as the Commission, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, may determine.
- (2) Each inspector shall, on his or her appointment, be furnished with a certificate of appointment and, when exercising a power conferred on him or her or performing any function imposed by this Part, shall, if requested by any person thereby affected, produce the certificate or a copy of it, to that person for inspection.

Investigation

- 57.** (1) Where the Commission considers it is necessary to do so for the purpose of the performance of any of the functions conferred on it by or under this Act or any other Act of the Oireachtas, the Commission may cause such investigation as it thinks fit to be carried out to identify any improper conduct by a specified body.
- (2) For the purposes of the investigation, the Commission shall appoint an inspector, subject to such terms as it thinks fit—

- (a) to carry out the investigation, and
 - (b) to submit to the Commission an investigation report following the completion of the investigation.
- (3) The terms of appointment of an inspector may define the scope of the investigation to be carried out by the inspector, whether as respects the matters or the period to which it is to extend or otherwise, and in particular may limit the investigation to matters connected with particular circumstances.
- (4) Where more than one inspector has been appointed to carry out an investigation, the investigation report shall be prepared jointly by the inspectors so appointed and this Part shall, with all necessary modifications, be construed accordingly.
- (5) Where the Commission has appointed an inspector to carry out an investigation, the inspector shall, as soon as is practicable after being so appointed—
- (a) give notice in writing to the specified body concerned of the matters to which the investigation relates, and
 - (b) give the specified body—
 - (i) copies of any documents relevant to the investigation, and
 - (ii) a copy of this Part,and
 - (c) without prejudice to the generality of section 58, afford the specified body an opportunity to respond within 30 days from the date on which it received the notice referred to in paragraph (a), or such further period not exceeding 30 days as the inspector allows, to the matter to which the investigation relates.

Powers of inspectors

- 58.** (1) For the purposes of an investigation, an inspector may—
- (a) subject to subsections (13) and (14), at all reasonable times enter, inspect, examine and search any premises at, in or by means of, which any activity of a specified body, authorised by or under any enactment or by any licence or authorisation held by the specified body, is carried on,
 - (b) subject to subsections (13) and (14), at all reasonable times enter, inspect, examine and search any dwelling occupied by—
 - (i) a specified body, or
 - (ii) a director, manager or any member of staff of a specified body, that carries on an activity referred to in paragraph (a), being a dwelling as respects which there are reasonable grounds to believe

records, books, accounts or other documents relating to the carrying on of that activity are being kept in it,

- (c) without prejudice to any other power conferred by this subsection, require any person found in or on any premises referred to in any of the preceding paragraphs or any person in charge of or in control of such premises or directing any activity therein referred to in paragraph (a) to produce any records, books, accounts or other documents which it is necessary for the inspector to see for the purposes of the investigation (and the inspector may inspect, examine and copy any such records, books, accounts or other documents so produced or require any such person to provide a copy of them or of any entries in them to the inspector),
 - (d) require any person referred to in paragraph (c) to afford such facilities and assistance within the person's control or responsibilities as are reasonably necessary to enable the inspector to exercise any of the powers conferred on the inspector under paragraph (a), (b) or (c),
 - (e) require any person by whom or on whose behalf data equipment is, or has been, used in connection with an activity referred to in paragraph (a), or any person having charge of, or otherwise concerned with the operation of, such data equipment or any associated apparatus or material, to afford the inspector all reasonable assistance in respect of its use,
 - (f) require the specified body or the specified body's employee or agent to give such authority in writing addressed to any bank that the inspector requires for the purpose of enabling the inspection of any account or accounts opened, or caused to be opened, by the specified body at such bank (or any documents relating thereto) and to obtain from such bank copies of such documents relating to such account or accounts for such period or periods as the inspector deems necessary to fulfil that purpose, and
 - (g) be accompanied by a member of the Garda Síochána if there is reasonable cause to apprehend any serious obstruction in the performance of any of the inspector's functions under this subsection.
- (2) A requirement under subsection (1)(c), (d), (e) or (f) shall specify a period within which, or a date and time on which, the person the subject of the requirement is to comply with it.
- (3) For the purposes of an investigation, an inspector—
- (a) may require a person who, in the inspector's opinion—
 - (i) possesses information that is relevant to the investigation, or

- (ii) has any records, books, accounts or other documents within that person's possession or control or within that person's procurement that are relevant to the investigation,
to provide that information or those records, books, accounts or other documents, as the case may be, to the inspector, and
 - (b) where the inspector thinks fit, may require that person to attend before the inspector for the purpose of so providing that information or those records, books, accounts or other documents, as the case may be,
and the person shall comply with the requirement.
- (4) A requirement under subsection (3) shall specify—
 - (a) a period within which, or a date and time on which, the person the subject of the requirement is to comply with it, and
 - (b) as the inspector concerned thinks fit—
 - (i) the place at which the person shall attend to give the information concerned or to which the person shall deliver the records, books, accounts or other documents concerned, or
 - (ii) the place to which the person shall send the information or the records, books, accounts or other documents concerned.
- (5) A person required to attend before an inspector under subsection (3)—
 - (a) is also required to answer fully and truthfully any question put to the person by the inspector, and
 - (b) if so required by the inspector, shall answer any such question under oath.
- (6) Where it appears to an inspector that a person has failed to comply or fully comply with a requirement under subsection (1), (3) or (5), the inspector may, on notice to that person and with the consent of the Commission, apply in a summary manner to the Circuit Court for an order under subsection (7).
- (7) Where satisfied after hearing the application about the person's failure to comply or fully comply with the requirement in question, the Circuit Court may, subject to subsection (10), make an order requiring that person to comply or fully comply, as the case may be, with the requirement within a period specified by the Court.
- (8) An application under subsection (6) to the Circuit Court shall be made to a judge of that Court for the circuit in which the person the subject of the application ordinarily resides or carries on any profession, business or occupation.

- (9) The administration of an oath referred to in subsection (5)(b) by an inspector is hereby authorised.
- (10) A person the subject of a requirement under subsection (1), (3) or (5) shall be entitled to the same immunities and privileges in respect of compliance with such requirement as if the person were a witness before the High Court.
- (11) Any statement or admission made by a person pursuant to a requirement under subsection (1), (3) or (5) is not admissible against that person in criminal proceedings other than criminal proceedings for an offence under subsection (17), and this shall be explained to the person in ordinary language by the inspector concerned.
- (12) Nothing in this section shall be taken to compel the production by any person of any records, books, accounts or other documents which he or she would be exempt from producing in proceedings in a court on the ground of legal professional privilege.
- (13) An inspector shall not, other than with the consent of the occupier, enter a private dwelling without a warrant issued under subsection (14) authorising the entry.
- (14) A judge of the District Court, if satisfied on the sworn information of an inspector that—
- (a) (i) there are reasonable grounds for suspecting that any information is, or records, books, accounts or other documents required by an inspector under this section are, held on any premises or any part of any premises, and
 - (ii) an inspector, in the performance of functions under subsection (1), has been prevented from entering the premises or any part thereof,
- or
- (b) it is necessary that the inspector enter a private dwelling and exercise therein any of his or her powers under this section,
- may issue a warrant authorising the inspector, accompanied if necessary by other persons, at any time or times within 30 days from the date of issue of the warrant and on production if so requested of the warrant, to enter, if need be by reasonable force, the premises or part of the premises concerned and perform all or any such functions and exercise all or any such powers.
- (15) For the purposes of an investigation, an inspector may, if he or she thinks it proper to do so, of his or her own volition or at the request of the specified body to whom the investigation relates, conduct an oral hearing.

- (16) Part 1 of Schedule 4 shall have effect for the purposes of an oral hearing referred to in subsection (15).
- (17) Subject to subsection (12), a person who—
- (a) withholds, destroys, conceals or refuses to provide any information or records, books, accounts or other documents required for the purposes of an investigation,
 - (b) fails or refuses to comply with any requirement of an inspector under this section, or
 - (c) otherwise obstructs or hinders an inspector in the performance of functions conferred by or under this Part,
- commits an offence and is liable—
- (i) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
 - (ii) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.
- (18) Subject to subsection (19), where a specified body is convicted summarily of an offence under subsection (17), the court may, after having regard to the nature of the offence and the circumstances in which it was committed, order that any licence or authorisation held by the specified body be revoked and that the former holder be prohibited (which may be a permanent prohibition, a prohibition for a specified period or a prohibition subject to specified conditions) from applying for any new licence or authorisation or a particular class of new licence or authorisation.
- (19) An order under subsection (18) shall not take effect until—
- (a) the ordinary time for bringing an appeal against the conviction concerned or the order has expired without any such appeal having been brought,
 - (b) such appeal has been withdrawn or abandoned, or
 - (c) on any such appeal, the conviction or order, as the case may be, is upheld.
- (20) Subject to subsection (21), where a specified body is convicted on indictment of an offence under subsection (17), the court shall order that all licences and authorisations held by the specified body be revoked and that the former holder be permanently prohibited from applying for any new licence or authorisation.
- (21) An order under subsection (20) shall not take effect until—

- (a) the ordinary time for bringing an appeal against the conviction concerned has expired without any such appeal having been brought,
 - (b) any such appeal has been withdrawn or abandoned, or
 - (c) on any such appeal, the conviction is upheld.
- (22) In this section, ‘records, books, accounts or other documents’ includes copies of records, books, accounts or other documents.
- (23) In this section where records, books, accounts or other documents are held or maintained in electronic form, the obligation to produce or provide records, books, accounts or other documents includes an obligation to provide those records, books, accounts or other documents in a legible and comprehensible printed form.

Actions to be taken by inspector upon completion of investigation

- 59.** (1) Subject to subsection (3), where an inspector has completed an investigation, the inspector shall, as soon as is practicable after having considered, in so far as they are relevant to the investigation, any information or records, books, accounts or other documents provided to the inspector pursuant to any requirement under section 58 or any statement or admission made by any person pursuant to any requirement under that section, any submissions made and any evidence presented (whether at an oral hearing referred to in section 58(15) or otherwise)—
- (a) prepare a draft of the investigation report, and
 - (b) give to the specified body to whom the investigation relates—
 - (i) a copy of the draft of the investigation report,
 - (ii) a copy of this section, and
 - (iii) a notice in writing stating that the specified body may, not later than 30 days from the date on which it received the notice, or such further period not exceeding 30 days as the inspector allows, make submissions in writing to the inspector on the draft of the investigation report.
- (2) Subject to subsection (3), an inspector who has complied with subsection (1) following the completion of an investigation shall, as soon as is practicable after—
- (a) the expiration of the period referred to in subsection (1)(b)(iii), and
 - (b) having—
 - (i) considered the submissions (if any) referred to in subsection (1)(b)(iii) made before the expiration of that period on the draft of the investigation report concerned, and

- (ii) made any revisions to the draft of the investigation report which, in the opinion of the inspector are warranted following such consideration,

prepare the final form of the investigation report and submit it to the Commission along with any such submissions annexed to the report.

- (3) Where an inspector states, whether in a draft of the investigation report or in the final form of the investigation report, that he or she is satisfied that improper conduct by the specified body to whom the investigation relates has occurred or is occurring, the inspector shall not make any recommendation, or express any opinion, in the report as to any major sanction or any minor sanction, as the case may be, that he or she thinks ought to be imposed on the specified body in respect of such improper conduct in the event that the Commission is also satisfied that improper conduct by the specified body has occurred or is occurring.

Actions to be taken by Commission on receipt of investigation report

- 60.** (1) On receipt of an investigation report submitted to it by an inspector in accordance with section 59(2), the Commission shall consider the report and any submissions annexed to it.
- (2) Subject to subsection (3), where the Commission has considered an investigation report (and any submissions annexed to it) under subsection (1), the Commission—
- (a) if it is satisfied that improper conduct by the specified body to whom the investigation relates has occurred or is occurring, shall, subject to subsection (6) and section 61—
 - (i) impose a minor sanction on the specified body, or
 - (ii) impose a major sanction on the specified body, as it thinks fit in the circumstances of the case,
 - (b) if it is not satisfied that improper conduct has occurred or is occurring but is of the opinion that a further investigation of the specified body is warranted, shall cause the further investigation to be carried out pursuant to its powers under section 57, or
 - (c) if it is not satisfied that improper conduct has occurred or is occurring and is not of the opinion that a further investigation of the specified body is warranted, shall take no further action.
- (3) Where the Commission has considered an investigation report (and any submissions annexed to it) in accordance with subsection (1), the Commission may, if it considers it proper to do so for the purposes of assisting it to make a decision under subsection (2), or for the purposes of observing fair procedures, for those purposes—
- (a) conduct an oral hearing, or

- (b) give to the specified body to whom the investigation concerned relates—
 - (i) a copy of the investigation report, and
 - (ii) a notice in writing stating that the specified body may, not later than 30 days from the date it received the notice, or such further period not exceeding 30 days as the Commission allows, make submissions in writing to the Commission on the investigation report.
- (4) Part 2 of Schedule 4 shall have effect for the purposes of an oral hearing referred to in subsection (3)(a).
- (5) The Commission shall, as soon as is practicable after making a decision under subsection (2), give notice in writing of the decision and the reasons for the decision to the specified body to whom the investigation concerned relates and, if subsection (2)(a) applies in the case of that specified body, set out in that notice—
 - (a) the minor sanction or major sanction imposed on the specified body for the improper conduct specified in the notice in respect of which the Commission is satisfied as referred to in that subsection, and
 - (b) the reasons for the imposition of such minor sanction or major sanction, as the case may be.
- (6) Where subsection (2)(a) applies in the case of a specified body the Commission shall, in deciding the sanction to be imposed on the specified body, take into consideration the matters referred to in section 65.
- (7) The Commission may publish particulars, in such form and manner and for such period as it thinks fit, of any imposition of any major sanction or any minor sanction, as the case may be, on a specified body pursuant to a decision confirmed or given under section 62 or 63, as the case may be.

Confirmation of High Court required before decision to impose sanction takes effect

- 61.** A decision under section 60(2) to impose a major sanction on a specified body shall not take effect unless the decision is confirmed by the High Court under section 62 or 63, as the case may be.

Appeal to High Court against decision to impose major sanction

- 62.** (1) A specified body, the subject of a decision under section 60(2)(a) to impose a major sanction, may, not later than 30 days from the date the specified body received the notice under section 60(5), appeal to the High Court against the decision.
- (2) The High Court may, on the hearing of an appeal by a specified body under subsection (1), consider any evidence adduced or argument

made, whether or not adduced or made to an inspector or the Commission.

- (3) Subject to subsection (4), the High Court may, on the hearing of an appeal by a specified body under subsection (1)—
- (a) either—
- (i) confirm the decision the subject of the appeal, or
- (ii) cancel that decision and replace it with such other decision as the Court considers appropriate, which may be a decision—
- (I) to do either or both of the following:
- (A) impose a different major sanction on the specified body;
- (B) impose a minor sanction on the specified body,
- or
- (II) to impose neither a major sanction nor a minor sanction on the specified body,
- and
- (b) whether paragraph (a)(i) or (ii) is applicable, make such order as to costs as it thinks fit in respect of the appeal.
- (4) The High Court shall, for the purposes of subsection (3)(a)(i) or (ii)(I), take into consideration the matters referred to in section 65.

Application to High Court to confirm decision to impose major sanction

- 63.** (1) Where a specified body does not, within the period allowed under section 62(1), appeal to the High Court against a decision under section 60(2)(a) to impose a major sanction on the specified body, the Commission shall, as soon as is practicable after the expiration of that period by motion on notice to the specified body make an application in a summary manner to the High Court for confirmation of the decision.
- (2) The High Court shall, on the hearing of an application under subsection (1), confirm the decision under section 60(2)(a) unless the Court considers that there is good reason not to do so.

Provisions supplemental to decisions of High Court

- 64.** (1) The decision of the High Court on an appeal under section 62 or an application made under section 63 is final except that the Commission or the specified body the subject of the decision may, by leave of the Court or the Court of Appeal, appeal against the decision to the Court of Appeal on a specified question of law.
- (2) Where the High Court confirms or gives a decision under section 62(3) or 63(2), the Commission shall, as soon as is practicable after the decision is confirmed or given, as the case may be, give notice in

writing of the decision to the specified body the subject of the decision.

- (3) Any amount specified in paragraph (a) or (b) of the definition of ‘major sanction’ in section 55 due to the Commission pursuant to a decision confirmed or given under section 62(3) or 63(2), as the case may be, by the High Court shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.
- (4) The Commission may recover, as a simple contract debt in any court of competent jurisdiction, from the person by whom it is payable any amount due and owing to the Commission pursuant to a decision confirmed or given under section 62(3) or 63(2), as the case may be, by the High Court.

Matters to be considered in determining sanction to be imposed

65. The Commission or the High Court, as appropriate, in considering—

- (a) the minor sanction or major sanction to be imposed on a specified body pursuant to section 60(2)(a), or
- (b) the minor sanction or major sanction (if any) to be imposed on a specified body pursuant to a decision confirmed or given under section 62(3) or 63(2), as the case may be,

shall take into account the circumstances of the improper conduct concerned (including the factors occasioning it) and, without prejudice to the generality of the foregoing, may have regard to—

- (i) the need to ensure that any sanction imposed—
 - (I) is appropriate and proportionate to the improper conduct, and
 - (II) if applicable, will act as a sufficient incentive to ensure that any like improper conduct will not occur in the future,
- (ii) the seriousness of the improper conduct,
- (iii) the turnover of the specified body in the financial year of the body ending in the year immediately before the financial year in which the improper conduct last occurred,
- (iv) the extent of any failure by the specified body to co-operate with the investigation concerned of the specified body,
- (v) any excuse or explanation by the specified body for the improper conduct or failure to co-operate with the investigation concerned,
- (vi) any gain (financial or otherwise) made by the specified body or by any person in which the specified body has a financial interest as a consequence of the improper conduct,

- (vii) the amount of any loss suffered or costs incurred as a result of the improper conduct,
- (viii) the duration of the improper conduct,
- (ix) the repeated occurrence of improper conduct by the specified body,
- (x) if applicable, the continuation of the improper conduct after the specified body was notified of the investigation concerned,
- (xi) if applicable, the absence, ineffectiveness or repeated failure of internal mechanisms or procedures of the specified body intended to prevent improper conduct from occurring,
- (xii) if applicable, the extent and timeliness of any steps taken to end the improper conduct and any steps taken for remedying the consequences of the improper conduct,
- (xiii) whether a sanction in respect of like improper conduct has already been imposed on the specified body by a court, the Commission or another person, and
- (xiv) any precedents set by a court, the Commission or another person in respect of previous improper conduct.

Powers of Commission

- 66.** The powers conferred on the Commission by this Part are without prejudice to the powers conferred on it by or under this Act or any other Act of the Oireachtas.”.

Oral hearings conducted by inspector or by Commission

- 6.** The Act of 1999 is amended by inserting after Schedule 3 the following:

“SCHEDULE 4
PROVISIONS APPLICABLE TO ORAL HEARINGS CONDUCTED PURSUANT TO SECTION 58 OR 60

Part 1

ORAL HEARING CONDUCTED BY INSPECTOR PURSUANT TO SECTION 58(15)

1. The inspector conducting the oral hearing for the purposes of an investigation may take evidence on oath, and the administration of such an oath by the inspector is authorised.
2. The inspector may by notice in writing require any person to attend the oral hearing at such time and place as is specified in the notice to give evidence in respect of any matter in issue in the investigation or to produce any relevant documents within his or her possession or control or within his or her procurement.

3. Subject to paragraph 4, a person referred to in paragraph 2 may be examined and cross-examined at the oral hearing.
4. A person referred to in paragraph 2 shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court.
5. Where a person referred to in paragraph 2 does not comply or fully comply with a requirement referred to in that paragraph, the inspector may apply by way of motion on notice to the Circuit Court, for an order requiring the person to comply or fully comply, as the case may be, with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order.
6. The jurisdiction conferred on the Circuit Court by paragraph 5 may be exercised by the judge of that Court for the circuit in which the person concerned ordinarily resides or carries on any profession, business or occupation.
7. The oral hearing shall be held otherwise than in public.
8. The reasonable travelling and subsistence expenses of any person attending before the inspector in accordance with paragraph 2 shall be paid out of moneys provided by the Commission.

Part 2

ORAL HEARING CONDUCTED BY COMMISSION PURSUANT TO SECTION 60(3)

1. The Commission, in conducting the oral hearing for the purposes of assisting it to make a decision under section 60(2) or for the purposes of observing fair procedures, may take evidence on oath, and the administration of such an oath by any member of the Commission is authorised.
2. The Commission may by notice in writing require any person to attend the oral hearing at such time and place as is specified in the notice to give evidence in respect of any matter in issue in the making of the decision under section 60(2) or to produce any relevant documents within his or her possession or control or within his or her procurement.
3. Subject to paragraph 4, a person referred to in paragraph 2 may be examined and cross-examined at the oral hearing.
4. A person referred to in paragraph 2 shall be entitled to the same immunities and privileges in respect of compliance with any requirement referred to in that paragraph as if the person were a witness before the High Court.

5. Where a person referred to in paragraph 2 does not comply or fully comply with a requirement referred to in that paragraph, the Commission may apply by way of motion on notice to the Circuit Court, for an order requiring the person to comply or fully comply, as the case may be, with the requirement within a period to be specified by the Court, and the Court may make the order sought or such other order as it thinks fit or refuse to make any order.
6. The jurisdiction conferred on the Circuit Court by paragraph 5 may be exercised by the judge of that Court for the circuit in which the person concerned ordinarily resides or carries on any profession, business or occupation.
7. The oral hearing shall be held otherwise than in public unless—
 - (a) the specified body to whom the investigation concerned relates makes a request in writing to the Commission that the hearing (or a part thereof) be held in public and states in the request the reasons for the request, and
 - (b) the Commission, after considering the request (in particular, the reasons for the request), is satisfied that it would be appropriate to comply with the request.
8. The reasonable travelling and subsistence expenses of any person attending before the Commission in accordance with paragraph 2 shall be paid out of moneys provided by the Commission.”.

PART 4

MISCELLANEOUS AMENDMENTS TO ACT OF 1999

Single Electricity Market: provision in respect of revised arrangements in the State and Northern Ireland

7. (1) In this section—

“authorisation”, “licence”, “Memorandum of Understanding” and “Single Electricity Market” have the same meanings, respectively, as in the Act of 1999;

“Electricity Market Regulation” means Regulation (EC) 714/2009 of the European Parliament and of the Council of 13 July 2009⁴ on conditions for access to the network for cross-border exchanges in electricity;

“interim period” means the period beginning with the day on which this section comes into operation and ending immediately before the coming into operation of *section 8*;

“revised arrangements in the State and Northern Ireland” means the arrangements in the State and Northern Ireland—

4 OJ No. L211, 14.8.2009, p.15

- (a) initially described in the Memorandum of Understanding,
 - (b) designed to promote the establishment and operation of a single competitive wholesale electricity market in the State and Northern Ireland, and
 - (c) which allow for the efficient application of the European Union rules for cross-border trade in electricity contained within or adopted pursuant to the Electricity Market Regulation as amended from time to time and as supplemented by—
 - (i) network codes established under Article 6 of that Regulation, and
 - (ii) guidelines adopted under Article 18 of that Regulation.
- (2) During the interim period section 9BA of the Act of 1999 shall have effect as if references to the Single Electricity Market included references to the revised arrangements in the State and Northern Ireland.
- (3) (a) During the interim period the Commission for Energy Regulation may modify the conditions of a licence or authorisation where the Commission considers it necessary or expedient to do so—
 - (i) for the purpose of implementing, or facilitating the operation of, the revised arrangements in the State and Northern Ireland, or
 - (ii) in consequence of, or for giving full effect to, those arrangements.
- (b) The power to modify the conditions of a licence or authorisation under this subsection includes the power to make incidental, consequential or transitional modifications.
- (c) Where a licence or authorisation is modified under this subsection, sections 19 to 22 and 29 to 32 of the Act of 1999 shall apply in relation to any such modification.
- (d) Sections 20(4)(a) and (9), 21(2)(a) and 22(3)(b) of the Act of 1999 shall, for the purposes of this subsection, have effect as if references to the Single Electricity Market included references to the revised arrangements in the State and Northern Ireland.

Amendment of section 2 of Act of 1999

8. The Act of 1999 is amended in section 2 by substituting the following for the definition of “the Single Electricity Market”:

“ ‘the Single Electricity Market’ means the arrangements in the State and Northern Ireland—

- (a) initially described in the Memorandum of Understanding,
- (b) designed to promote the establishment and operation of a single competitive wholesale electricity market in the State and Northern Ireland, and
- (c) which allow for the efficient application of the European Union rules for cross-border trade in electricity contained within or

adopted pursuant to the Electricity Market Regulation as amended from time to time and as supplemented by—

- (i) network codes established under Article 6 of that Regulation, and
- (ii) guidelines adopted under Article 18 of that Regulation;”.

Service of notices

9. The following section is substituted for section 4 of the Act of 1999:

- “4. (1) Any notice required to be served or given by or under this Act shall be addressed to the person concerned and served or given in one of the following ways:
- (a) by addressing it to the person by name and delivering it to him or her;
 - (b) by leaving it at the address at which the person ordinarily resides or carries on any profession, business or occupation;
 - (c) by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides or carries on any profession, business or occupation;
 - (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by prepaid registered post addressed to him or her to, that address;
 - (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the addressee concerned carries on any profession, business or occupation or, if an address for the service of a notice has been furnished by the energy undertaking concerned, that address, but only if—
 - (i) the recipient’s facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
 - (ii) the sender’s facsimile machine generates a message confirming successful delivery of the total number of pages of the notice,and it is also given in one of the other ways mentioned in any of the preceding paragraphs;
 - (f) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and notice is required to be served on, or given to, him or her in respect of any premises, by delivering it to a person over the age of 16 years resident in or employed on the premises, or by affixing it in a conspicuous position on or near the premises.

- (2) Where the name of the person concerned cannot be ascertained by reasonable inquiry, a notice under this Act may be addressed to ‘the occupier’, ‘the owner’ or ‘the person in charge’, as the case may be.
- (3) For the purposes of this section, a company within the meaning of the Companies Acts or the Companies Act 2014, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.
- (4) For the purpose of this section, an EEA company within the meaning of Part 21 of the Companies Act 2014 that establishes a branch in the State shall be deemed to be ordinarily resident at the address of the branch notified under section 1302 of that Act.
- (5) A person shall not at any time during the period of 3 months after a notice is affixed under subsection (1)(f) remove, damage or deface the notice without lawful authority and a person who contravenes this subsection commits an offence.
- (6) A person who commits an offence under subsection (5) is liable on summary conviction to a class A fine.”.

Prosecution of offences

10. Section 6 of the Act of 1999 is amended—

- (a) in subsection (2) by substituting “2 years” for “12 months”, and
- (b) by inserting the following subsections after subsection (3):

- “(4) Where a person is convicted of an offence in proceedings brought by the Commission 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 Commission the costs and expenses, measured by the court, incurred by the Commission in relation to the investigation, detection and prosecution of the offence.
- (5) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence in proceedings brought by the Commission, it shall, on the application of the Commission (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Commission.”.

Amendment of section 9 of Act of 1999

11. Section 9 of the Act of 1999 is amended in subsection (1) by substituting the following paragraphs for (m) and (n):

- “(m) to carry out investigations into the functioning of the electricity and gas markets,

- (n) to decide upon and impose effective and proportionate measures to promote effective competition,
- (o) to have regard to the benefits of developing demand-side participation in electricity markets, including through energy efficiency, demand-response, distributed generation, energy storage and the use of digital technologies,
- (p) to have regard to the facilitation of consumers to provide, consume and trade electricity that they have generated,
- (q) to have regard to the need to provide for flexibility in the trading of electricity to facilitate trading close to real time in order to better integrate renewable electricity and provide accurate price signals to the market,
- (r) to have regard to the use of energy storage technologies in participating in the balancing of electricity demand and supply, and
- (s) to have regard to the need to ensure that grid connection policy takes account of renewable energy policy, including any such policy in relation to community energy projects.”.

Functions of Commission for Energy Regulation

12. Section 9 of the Act of 1999 is amended by inserting the following subsection after subsection (1F):

“(1FA) For the purposes of subsection (1F) ‘final customer’—

- (a) in the case of an electricity undertaking, has the meaning given to it by section 2, and
- (b) in the case of a natural gas undertaking, has the meaning given to it by section 2 of the Gas (Interim) (Regulation) Act 2002.”.

Increase of penalties

13. The Act of 1999 is amended—

- (a) in section 9D(26)(b) by substituting “€50,000” for “€15,000”,
- (b) in section 9F(25)(b) by substituting “€50,000” for “€15,000”,
- (c) in section 13(2) by substituting “class A fine” for “fine not exceeding £1,500”,
and
- (d) in section 30(4) by substituting “class A fine” for “fine not exceeding £1,500”.

Authorised officers

14. Section 11 of the Act of 1999 is amended—

- (a) by inserting after subsection (3) the following—

“(3A) An appointment under this section as an authorised officer shall cease—

- (a) on the revocation by the Commission of the appointment,
- (b) if the appointment is for a fixed period, on the expiry of that period, or
- (c) if the person appointed ceases to be a member of staff of the Commission, on the date on which he or she so ceases.”,

and

- (b) in subsection (6) by substituting “to a class A fine” for “to a fine not exceeding £1,500 or imprisonment for a period not exceeding 12 months or, at the discretion of the District Court, to both such fine and imprisonment.”.

Licences to generate and supply electricity

15. Section 14 of the Act of 1999 is amended by inserting the following subsection after subsection (2L):

- “(2M) (a) The Commission may, in carrying out its function under section 9(1F), in a licence under subsection (1)(b), specify such standards of performance and quality in connection with the supply of electricity to final customers as the Commission determines ought to be achieved.
- (b) The holder of a licence referred to in paragraph (a) shall comply with such standards of performance as may be specified by the Commission in the licence concerned.”.

Issue of notice by Commission concerning contraventions, etc.

16. Section 24 of the Act of 1999 is amended—

- (a) in subsection (1) by inserting “has contravened,” before “may be contravening”,
- (b) in subsection (2)(a)—
 - (i) in subparagraph (i) by inserting “has contravened,” before “may be contravening”, and
 - (ii) in subparagraph (ii) by inserting “constitute,” before “may constitute”,
- (c) by substituting the following for subsection (4):

“(4) On consideration of any representations or objections, the Commission may give a direction to the holder of a licence or an authorisation—

 - (a) to take such measures as are necessary to cease the contravention or to prevent a future contravention, and

- (b) where there has been a contravention, to undertake such remedial actions as are necessary to rectify the situation and to prevent a re-occurrence of the contravention concerned.”,

and

- (d) in subsection (10)(a) by substituting “(where the direction or revocation concerned relates to the Single Electricity Market)” for “(where the proposed modification relates to the Single Electricity Market)”.

Determination by Commission of specified breach

17. Section 25 of the Act of 1999 is amended in subsection (2)(a) by substituting “(where the determination relates to the Single Electricity Market)” for “(where the proposed modification relates to the Single Electricity Market)”.

Closure of carbon levy account

18. Section 40M of the Act of 1999 is amended by inserting the following subsection after subsection (6):

“(7) (a) The Minister may give a direction to the Commission to close the account referred to in subsection (1).

(b) The Commission shall—

- (i) close the account not later than 45 days after the date of the direction given under paragraph (a), and
- (ii) pay moneys (if any) standing to the credit of the account as the Minister may direct under subsection (3).”.

Energy strategy statement

19. Schedule 1 (amended by section 44 of the Water Services (No. 2) Act 2013) to the Act of 1999 is amended by inserting the following paragraph after paragraph 25:

“25A. (1) The Commission shall—

- (a) not later than 6 months after the coming into operation of *section 19* of the *Energy Act 2016*, prepare and submit to the Minister an energy strategy statement in respect of the period of 3 years immediately following the year in which the energy strategy statement is so submitted, and
- (b) not later than 3 months before each third anniversary of the submission to the Minister in accordance with this subparagraph of the energy strategy statement for the time being in effect, prepare and submit to the Minister an energy strategy statement in respect of the period of 3 years immediately following the year in which it is so submitted.
- (2) The Minister shall, as soon as is practicable after an energy

strategy statement has been submitted to him or her under subparagraph (1), cause a copy thereof to be laid before each House of the Oireachtas.

- (3) The Commission shall, as soon as is practicable after copies of an energy strategy statement are laid before both Houses of the Oireachtas in accordance with subparagraph (2), arrange for the energy strategy statement to be published on the internet.
- (4) In this section ‘energy strategy statement’ means a statement that—
 - (a) specifies the key objectives, outputs and related strategies, including use of resources, of the Commission in relation to the performance of its energy and safety functions and those functions not covered by section 41 of the Water Services (No. 2) Act 2013,
 - (b) except for the first energy strategy statement, includes a review of the outcomes and effectiveness of the previous energy strategy statement, and
 - (c) is prepared in a form and manner that is in accordance with any directions issued from time to time by the Minister.
- (5) When preparing an energy strategy statement the Commission may consult such persons or bodies of persons that it considers appropriate.”.

PART 5

AMENDMENTS TO GAS (INTERIM) (REGULATION) ACT 2002

Definition (*Part 5*)

- 20.** In this Part “Act of 2002” means Gas (Interim) (Regulation) Act 2002.

Amendment of section 13(1) of Act of 2002

- 21.** Section 13(1) of the Act of 2002 is amended by substituting “section 16(1)(c) and (d)” for “section 16(1)(a)(iii), (iv), (v) and (vi)”.

Amendment of section 16 of Act of 2002

- 22.** Section 16 of the Act of 2002 is amended by inserting the following subsection after subsection (4):

“(4A) (a) The Commission may, in carrying out its function under section 9(1F) of the Act of 1999, in a licence under subsection (1)(a), (c) or (d), specify such standards of performance and quality in

connection with the supply of natural gas to final customers as the Commission determines ought to be achieved.

- (b) The holder of a licence referred to in paragraph (a) shall comply with such standards of performance as may be specified by the Commission in the licence concerned.”.

PART 6

WHOLESALE ENERGY MARKET INTEGRITY AND TRANSPARENCY

Amendment of European Union (Wholesale Energy Market Integrity and Transparency) Regulations 2014: penalties

- 23.** (1) In this section “Regulations of 2014” means the European Union (Wholesale Energy Market Integrity and Transparency) Regulations 2014 (S.I. No. 480 of 2014).
- (2) A person who commits an offence under Regulation 4 or 5 of the Regulations of 2014 is liable—
- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment—
- (i) in case the person is an individual, to a fine not exceeding €250,000, or
- (ii) in case the person is a body corporate, to a fine not exceeding 10 per cent of turnover.
- (3) A market participant (within the meaning of the Regulations of 2014) or other person who commits an offence under Regulation 7 of the Regulations of 2014 is liable—
- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €250,000.
- (4) The Regulations of 2014 are amended—
- (a) by deleting Regulation 6, and
- (b) by substituting the following for Regulation 7:
- “7. A market participant or other person mentioned in Article 8 of the EU Regulation who fails to comply with that Article or with Article 9 of the EU Regulation commits an offence.”.

PART 7

AMENDMENTS TO SUSTAINABLE ENERGY ACT 2002

Definition (*Part 7*)

24. In this Part “Act of 2002” means Sustainable Energy Act 2002.

Amendment of section 10 of Act of 2002

25. Section 10 of the Act of 2002 is amended—

(a) in subsection (3) by substituting the following paragraph for paragraph (c):

“(c) environmental matters, including climate change and environmental sustainability, in the person’s capacity as a representative of the commercial or not-for-profit sector or otherwise, as the case may be;”,

(b) by substituting the following subsection for subsection (9):

“(9) Each member of the Board shall be appointed for a period not exceeding 5 years.”,

(c) by substituting the following subsection for subsection (10):

“(10) The Minister in setting a term of appointment under subsection (8) shall consider the need for continuity of membership of the Board.”,

(d) by deleting subsections (11) and (12), and

(e) in subsection (17) by deleting “consecutive”.

Amendment of section 24 of Act of 2002

26. Section 24 of the Act of 2002 is amended by substituting the following subsection for subsection (1):

“(1) The Authority shall submit to the Minister, not later than 30 June in each year, in such form as the Minister may direct, a report of its activities during the immediately preceding financial year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.”.

PART 8

AMENDMENTS TO NATIONAL OIL RESERVES AGENCY ACT 2007

Definition (*Part 8*)

27. In this Part “Act of 2007” means National Oil Reserves Agency Act 2007.

Exchange of information

28. The Act of 2007 is amended by inserting the following section after section 43:

“43A.(1) Notwithstanding any obligation to maintain secrecy or any other restriction on the disclosure or production of taxpayer information obtained by or furnished to the Revenue Commissioners for the purposes of the Acts, the Revenue Commissioners may transfer to the Minister taxpayer information, held by them for those purposes, relating to mineral oil brought into the State and declared to the Revenue Commissioners in accordance with excise law.

(2) Taxpayer information transferred to the Minister by the Revenue Commissioners under subsection (1) may be used only by the Minister in the exercise of his or her powers and functions, relating to the administration of the levy, under this Act or any regulations made under this Act and shall not be disclosed by the Minister to any other person for any other purpose whatsoever.

(3) Notwithstanding any obligation to maintain secrecy or any other restriction on the disclosure or production of information obtained by or furnished to the Minister, the Minister may transfer to the Revenue Commissioners information, relating to mineral oil brought into the State, furnished to the Minister by oil companies and oil consumers under section 59 and any regulations made under that section for the purposes of this Act.

(4) Information transferred to the Revenue Commissioners by the Minister under section (3) may be used only by the Revenue Commissioners in the exercise of their powers under the Acts and shall not be disclosed by the Revenue Commissioners to any other person for any other purpose whatsoever.

(5) In this section—

‘excise law’ means the statutes and the instruments made under statute that relate to the duties of excise or the management of those duties;

‘mineral oil’ has the meaning given to it by section 94 of the Finance Act 1999;

‘taxpayer information’ has the meaning given to it by section 851A of the Taxes Consolidation Act 1997;

‘the Acts’ has the meaning given to it by section 1078 of the Taxes Consolidation Act 1997.”.

Amendment of section 44A of Act of 2007

29. Section 44A of the Act of 2007 is amended by inserting the following definition:

“ ‘reporting period’, in respect of each obligation period, means a period of 3 consecutive months beginning on 1 January, 1 April, 1 July and 1

October;”.

Amendment of section 44G of Act of 2007

30. Section 44G of the Act of 2007 is amended—

- (a) in subsection (1) by substituting “reporting period” for “obligation period”,
- (b) by inserting the following subsection after subsection (2):

“(2A) (a) The Agency shall, in respect of each reporting period, make a determination specifying the closing date for the submission to it of applications for biofuel obligation certificates.

- (b) The Agency shall publish a determination under paragraph (a) on its website as soon as is practicable after the date of its making.”,

and

- (c) by substituting the following subsection for subsection (3):

“(3) An application for a biofuel obligation certificate may be made at any time during the reporting period in which the biofuel was disposed of as referred to in subsection (1) but in any case not later than the closing date specified in respect of the reporting period concerned in a determination made under subsection (2A).”.

Amendment of section 44H of Act of 2007

31. Section 44H of the Act of 2007 is amended—

- (a) by substituting the following subsection for subsection (1):

“(1) The Agency shall give to each biofuel obligation account holder, not later than the date specified in respect of the reporting period concerned in a determination made under subsection (3A), a statement in such form as the Agency determines specifying—

- (a) the number of biofuel obligation certificates (if any) held to the credit of the biofuel obligation account concerned on the date of the statement,
- (b) the date of each such certificate, and
- (c) such other particulars relating to each such certificate as the Agency determines.”,

- (b) by deleting subsection (2), and

- (c) by inserting the following subsection after subsection (3):

“(3A) (a) The Agency shall, in respect of each reporting period, make a determination specifying the date by which it shall issue—

- (i) a statement referred to in subsection (1), and

- (ii) a statement referred to in subsection (3).
- (b) The Agency shall publish a determination under paragraph (a) on its website as soon as is practicable after the date of its making.”.

Amendment of section 44I of Act of 2007

32. Section 44I of the Act of 2007 is amended by substituting “75 days” for “35 days”.

PART 9

MISCELLANEOUS

Amendment of section 72(4) of Registration of Title Act 1964

33. Section 72(4) of the Registration of Title Act 1964 is amended by substituting the following paragraph for paragraph (b):

“(b) is intended to be used, or is used, in providing either or both of the following:

- (i) a pipeline for the transmission of gas;
- (ii) ducts, cables, pipes or conduits for any other purpose where such purpose is expressed in an agreement described in paragraph (a) (whether such agreement is made before or after the coming into operation of *section 33* of the *Energy Act 2016*), and”.

Amendment of section 6 of Continental Shelf Act 1968

34. Section 6 (inserted by section 23 of the Petroleum (Exploration and Extraction) Safety Act 2015) is amended by renumbering subsection (2) (where it secondly occurs) and subsection (3) as subsection (3) and subsection (4) respectively.