



Number 23 of 1999

ELECTRICITY REGULATION ACT, 1999

ARRANGEMENT OF SECTIONS

PART I

Preliminary and General

Section

1. Short title and commencement.
2. Interpretation.
3. Laying of orders, etc.
4. Service of notices.
5. Offences by bodies corporate.
6. Prosecution of offences.
7. Making of orders by Minister.

PART II

Establishment of Commission for Electricity Regulation

8. Establishment of Commission.
9. Functions of Commission.
10. Directions to Commission.
11. Authorised officers.
12. Search warrants.
13. Prohibition on unauthorised disclosure of information.

PART III

Licences and Authorisations

14. Licences to generate and supply electricity.
15. Permits under section 37 of Principal Act.
16. Authorisations to construct or reconstruct a generating station.
17. Application for authorisation.

Section

18. Orders specifying criteria for considering applications for authorisations.
19. Modification of licence or authorisation.
20. Procedures to be followed before modifying licences or authorisations.
21. Public hearings of Commission.
22. Determination by Commission following public hearing.
23. Directions by Commission to protect public health, etc.
24. Issue of notice by Commission concerning contraventions, etc.
25. Determination by Commission of specified breach.
26. Compliance with direction or determination.
27. Eligible customers.
28. Purchase of electricity from combined heat and power.

PART IV

Appeal Panels

29. Establishment of Appeal Panel.
30. Functions of Appeal Panel.
31. Orders for establishment of Appeal Panels and related matters.
32. Review of determination of Commission.

PART V

Access to Transmission and Distribution Systems

33. Preparation of grid code and distribution code.
34. Terms for connection to and use of transmission or distribution system.
35. Charges for connection to and use of transmission or distribution system.
36. Approval by Commission of statement of charges.
37. Direct lines.
38. Estimate of capacity, forecast flows and loading.

PART VI

Public Service Obligations and Transitional Arrangements

39. Public service obligations.
40. Transitional arrangements.

PART VII

Consequential Repeals and Amendments

41. Repeals.
42. Amendment of section 35 of Principal Act.

Section

43. Amendment of section 45 of Principal Act.
44. Amendment of section 77 of Principal Act.
45. Amendment of section 98 of Principal Act.
46. Amendment of Freedom of Information Act, 1997.

PART VIII

Miscellaneous

47. Compulsory acquisition of land by Commission, etc.
48. Construction of sections 51 and 52(1) of Principal Act.
49. Construction of section 53 of Principal Act.
50. Construction of section 54 of Principal Act.
51. Construction of section 91 of Principal Act.
52. Application of certain regulations.
53. Amendment of section 2(2) of Electricity (Supply) (Amendment) Act, 1949.
54. Repeal of section 2(3), (4) and (6) of Electricity (Supply) (Amendment) Act, 1949.

SCHEDULE

The Commission for Electricity Regulation

[No. 23.] *Electricity Regulation Act, 1999.* [1999.]

Acts Referred to

Acquisition of Land (Assessment of Compensation) Act, 1919	1919, c. 20
Companies Acts, 1963 to 1990	
Courts Act, 1981	1981, No. 11
Electricity (Supply) Act, 1927	1927, No. 27
Electricity (Supply) Acts, 1927 to 1995	
Electricity (Supply) (Amendment) Act, 1949	1949, No. 12
European Parliament Elections Act, 1997	1997, No. 2
Freedom of Information Act, 1997	1997, No. 13
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 93



Number 23 of 1999

ELECTRICITY REGULATION ACT, 1999

AN ACT TO ENABLE EFFECT TO BE GIVEN TO DIRECTIVE NO. 96/92/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 19 DECEMBER 1996⁽¹⁾, TO ESTABLISH A BODY KNOWN AS AN COIMISIÚN UM RIALÁIL LEICTREACHAIS OR IN THE ENGLISH LANGUAGE THE COMMISSION FOR ELECTRICITY REGULATION, TO GIVE POWER TO THAT COMMISSION TO GRANT LICENCES TO GENERATE AND SUPPLY ELECTRICITY AND TO GRANT AUTHORISATIONS TO CONSTRUCT GENERATING STATIONS, TO PROVIDE FOR ACCESS TO THE TRANSMISSION OR DISTRIBUTION SYSTEM BY HOLDERS OF LICENCES, HOLDERS OF AUTHORISATIONS OR BY ELIGIBLE CUSTOMERS, TO AMEND AND REPEAL CERTAIN PROVISIONS OF THE ELECTRICITY (SUPPLY) ACT, 1927 AND TO PROVIDE FOR RELATED MATTERS. [11th July, 1999]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—(1) This Act may be cited as the Electricity Regulation Act, 1999. Short title and commencement.

(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 different provisions.

2.—(1) In this Act, except where the context otherwise requires— Interpretation.

“authorisation” means an authorisation granted under *section 16*;

“authorised officer” means a person appointed under *section 11* to be an authorised officer;

“Board” means the Electricity Supply Board;

⁽¹⁾ O.J. No. L. 027, 30.01.1997, p. 20

[No. 23.] *Electricity Regulation Act, 1999.* [1999.]

Pt.I S.2

“combined heat and power” means the simultaneous production of utilisable heat and electricity from an integrated thermo-dynamic process where the overall process operating efficiency, based on the gross calorific value of the fuel used and defined as the ratio of energy output usefully employed to the energy input, is greater than 70 per cent. and where the integrated thermo-dynamic process satisfies such technical, operational, economic and environmental criteria as may be specified by the Minister from time to time, following consultation with the Commission;

“Commission” means the Commission for Electricity Regulation;

“direct line”, in relation to electricity, means an electric line which is used or is to be used to carry electricity for the purpose of supply and the construction of which line is permitted under *section 37*;

“distribution”, in relation to electricity, means the transport of electricity by means of a distribution system, that is to say, a system which consists of electric lines, electric plant, transformers and switchgear and which is used for conveying electricity to final customers;

“distribution code” means a code in respect of all technical aspects relating to connection to and operation of the distribution system prepared by the Board under *section 33*;

“electric line” means any line which is used solely or among other things for carrying electricity for any purpose and includes—

- (a) any support for any such line, that is to say, any structure, pole, or other thing in, on, by or from which any such line may be supported, carried or suspended,
- (b) any apparatus connected to any such line for the purpose of carrying electricity or other services, and
- (c) any wire, cable, tube, pipe or similar thing (including its casing or coating) which surrounds or supports or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

“electric plant” means any plant, apparatus or appliance used for, or for purposes connected with, the generation, transmission, distribution or supply of electricity, other than—

- (a) an electric line,
- (b) a meter used for ascertaining the quantity of electricity supplied to any premises, or
- (c) an electrical appliance under the control of a consumer;

“electricity undertaking” means any person engaged in generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation under this Act, or any person who has been granted a permit under *section 37* of the Principal Act;

“establishment day” means the day appointed under *section 8*;

“final customer” means a person being supplied with electricity at a single premises for consumption on those premises;

[1999.] *Electricity Regulation Act, 1999.* [No. 23.]

“forecast statement” has the meaning assigned to it by *section 38*; Pt.I S.2

“functions” includes powers and duties;

“generate”, in relation to electricity, means to produce electricity;

“generating station” means a station for the generation of electricity;

“grid code” means a code in respect of all technical aspects relating to connection to and operation of the transmission system prepared by the Board under *section 33*;

“licence” means a licence issued under *section 14*;

“Minister” means the Minister for Public Enterprise;

“prescribe” means to prescribe by regulations made by the Minister or the Commission under this Act and cognate words shall be construed accordingly;

“Principal Act” means the Electricity (Supply) Act, 1927;

“record” means any book, document or any other written or printed material in any form including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;

“renewable, sustainable or alternative forms of energy” means energy used in the production of electricity which uses as its primary source one or a combination of more than one of the following—

- (a) wind,
- (b) hydro,
- (c) biomass,
- (d) waste, including waste heat,
- (e) biofuel,
- (f) geothermal,
- (g) fuel cells,
- (h) tidal,
- (i) solar,
- (j) wave;

“single premises” means one or more buildings or structures, occupied and used by a person, where each building or structure is adjacent to, or contiguous with, the other building or structure;

“supply”, in relation to electricity, means supply through electric lines to final customers for consumption;

“transmission”, in relation to electricity, means the transport of electricity by means of a transmission system, that is to say, a system which consists, wholly or mainly, of high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from

Pt.I S.2

one substation to another or to or from any interconnector or to final customers but shall not include any such lines which the Board may, from time to time, with the approval of the Commission, specify as being part of the distribution system but shall include any interconnector owned by the Board.

(2) In this Act—

- (a) a reference to a section or Schedule is a reference to a section of or Schedule to this Act unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and
- (c) a reference to the performance of functions includes with respect to powers and duties, a reference to the exercise of powers and the carrying out of duties.

(3) A reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment, including this Act.

(4) The Minister may from time to time by order amend the definition of renewable, sustainable or alternative sources of energy by the addition of further renewable, sustainable or alternative sources of energy.

Laying of orders,
etc.

3.—Every order, other than orders under *section 1(2)* or *section 27(6)*, or regulations made by the Minister, in the case of orders or regulations made by the Minister, or by the Commission, in the case of orders or regulations made by the Commission, shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Service of notices.

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,
- (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,
- (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,
or

[1999.] *Electricity Regulation Act, 1999.* [No. 23.]

(e) 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. Pt.I S.4

(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 registered under the Companies Acts, 1963 to 1990, 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) A person shall not at any time during the period of 3 months after a notice is affixed under *subsection (1)(e)* remove, damage or deface the notice without lawful authority and a person who contravenes this subsection shall be guilty of an offence.

(5) A person guilty of an offence under *subsection (4)* shall be liable on summary conviction to a fine not exceeding £1,500.

5.—(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence. Offences by bodies corporate.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

6.—(1) Summary proceedings for offences under this Act may be brought and prosecuted by the Commission. Prosecution of offences.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.

7.—(1) The Minister may prescribe a greater percentage than that specified in the definition of combined heat and power. Making of orders by Minister.

(2) The Minister may by order amend an order made under this section including an order made under this subsection.

PART II

Establishment of Commission for Electricity Regulation

Establishment of
Commission.

8.—(1) The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

(2) There shall stand established on the establishment day a body to be known in the Irish language as An Coimisiún um Rialáil Leictreachais or in the English language as the Commission for Electricity Regulation and in this Act referred to as the “Commission” to perform the functions conferred on it by this Act.

(3) The *Schedule* shall apply to the Commission.

(4) The Commission shall be a body corporate with perpetual succession and a common seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(5) The seal of the Commission shall be authenticated by the signature of the chairperson of the Commission, or by the signatures of any other member of the Commission and a member of the staff of the Commission authorised by the Commission to act in that behalf.

(6) Judicial notice shall be taken of the seal of the Commission and every document purporting to be an instrument made by and to be sealed with the seal of the Commission (purporting to be authenticated in accordance with this section) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

Functions of
Commission.

9.—(1) The Commission shall have the following functions, namely—

(a) to publish, pursuant to a policy direction or directions of the Minister, which shall be made publicly available when given to the Commission, proposals for a system of contracts and other arrangements, including appropriate rights and obligations, for trading in electricity,

(b) to engage in a public consultation process on the procedures to be adopted by the Commission to implement the proposals drawn up under *paragraph (a)*,

(c) to advise the Minister on the impact of electricity generation in relation to sustainability, and international agreements on the environment to which the State is or becomes a party,

(d) following the public consultation process referred to in *paragraph (b)* and taking account of matters raised in the public consultation process, to make regulations, subject to the consent of the Minister, establishing a system of trading in electricity, including the supervision and review of such a system by the Commission, and

(e) to advise the Minister on the development of the electricity industry and on the exercise of the functions of the Minister under this Act.

[1999.] *Electricity Regulation Act, 1999.* [No. 23.]

Pt.II S.9

(2) Notwithstanding the generality of *subsection (1)(a)*, a policy direction of the Minister shall include a direction that procedures of the Commission enable the implementation of orders made by the Minister under *sections 39 and 40*.

(3) It shall be the duty of the Minister and the Commission to carry out their functions and exercise the powers conferred on them under this Act in a manner which—

(a) does not discriminate unfairly between holders of licences, authorisations and the Board or between applicants for authorisations or licences, and

(b) the Minister or the Commission, as the case may be, considers protects the interests of final customers.

(4) In carrying out the duty imposed by *subsection (3)*, the Minister and the Commission shall have regard to the need:

(a) to promote competition in the generation and supply of electricity in accordance with this Act;

(b) to secure that all reasonable demands by final customers of electricity for electricity are satisfied;

(c) to secure that licence holders are capable of financing the undertaking of the activities which they are licensed to undertake;

(d) to promote safety and efficiency on the part of electricity undertakings;

(e) to promote the continuity, security and quality of supplies of electricity; and

(f) to promote the use of renewable, sustainable or alternative forms of energy.

(5) Without prejudice to *subsections (3) and (4)*, it shall be the duty of the Commission:

(a) to take account of the protection of the environment;

(b) to encourage the efficient use and production of electricity;

(c) to take account of the needs of rural customers, the disadvantaged and the elderly;

(d) to encourage research and development into—

(i) methods of generating electricity using renewable, sustainable and alternative forms of energy and combined heat and power, and

(ii) methods of increasing efficiency in the use and production of electricity;

and

(e) to require that the system operator gives priority to generating stations using renewable, sustainable or alternative energy sources when selecting generating stations.

10.—(1) Subject to *subsections (2) and (4)*, the Minister may give directions to the Commission as regards the performance of its functions under this Act, including directions in relation to the terms and conditions of licences.

(2) The Minister shall not give directions in respect of—

(a) the persons to whom licences or authorisations may be granted, or

(b) the performance of its functions in relation to individual holders of licences or authorisations, individual eligible customers or the Board.

(3) The Commission shall comply with directions given by the Minister under *subsection (1)*.

(4) This section shall stand repealed on the 19th day of February, 2000.

Authorised officers. **11.**—(1) In this section a “person to whom this section applies” means the Board or a holder of a licence or an authorisation.

(2) The Commission may appoint persons to be authorised officers for the purposes of this section.

(3) A person appointed under *subsection (2)* shall, on his or her appointment, be furnished by the Commission with a certificate of his or her appointment and when exercising a power conferred by *subsection (4)* shall, if requested by any person thereby affected, produce such certificate to that person for inspection.

(4) For the purposes of the exercise by the Commission of its functions under this Act, an authorised officer may—

(a) enter at any reasonable time any premises owned or occupied by a person to whom this section applies for the purpose of exercising any powers conferred on him or her by this subsection,

(b) require a person to whom this section applies or any member, officer or employee of the person to whom this section applies to produce to the authorised officer any books, documents or records which are in his or her power or control, and in the case of information in a non-legible form to reproduce it in a legible form,

(c) inspect and take extracts from or make copies of any books, documents and records (including in the case of information in a non-legible form a copy of or extract from such information in a permanent legible form), and

(d) require a person to whom this section applies to maintain such books, documents and records for such period or periods of time as the authorised officer may direct.

(5) Where an authorised officer in exercise of his or her powers under this section is prevented from entering any premises an application may be made under *section 12* for a warrant to authorise such entry.

(6) A person to whom this section applies who— Pt.II S.11

- (a) obstructs or impedes an authorised officer in the exercise of a power under this section,
- (b) fails or refuses to comply with a requirement under this section,
- (c) knowingly alters, suppresses or destroys any books, documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce, or
- (d) knowingly gives to the Commission or to an authorised officer information which is false or misleading, in a material respect,

shall be guilty of an offence and shall be liable on summary conviction 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.

12.—If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there has been a contravention of a condition or requirement of a licence or an authorisation, the judge may issue a warrant authorising the authorised officer, accompanied by other authorised officers or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production if so required of the warrant, to enter such premises as are specified in the warrant, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under *section 11*. Search warrants.

13.—(1) Save as otherwise provided by law, a person shall not disclose confidential information obtained by him or her while performing duties as a member of, or as a member of the staff of, or an adviser or consultant to, or as an authorised officer of, the Commission, unless he or she is duly authorised by the Commission to do so. Prohibition on unauthorised disclosure of information.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction 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.

(3) (a) In this section “confidential information” means that which is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description.

(b) In expressing information to be confidential, the Commission shall have regard to the requirement to protect information of a confidential commercial nature.

(4) The Freedom of Information Act, 1997, is hereby amended in the Third Schedule thereto by the addition to Part I at the end thereof—

(a) in column (2), of “*Electricity Regulation Act, 1999.*”, and

(b) in column (3), of “*Section 13.*”.

PART III

Licences and Authorisations

Licences to generate and supply electricity.

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

- (a) to generate electricity,
- (b) to supply electricity to eligible customers,
- (c) subject to *section 28*, to supply electricity to final customers which in aggregate does not exceed the amount of electricity which is available to the supplier and which is produced using renewable, sustainable or alternative forms of energy or electricity purchased, in place of such electricity, in accordance with the trading arrangements provided for in regulations to be made by the Commission under *section 9(1)(d)*, or
- (d) to supply to the single premises of the main heat customer electricity which is produced using combined heat and power at the generating station from which that main heat customer is supplied with heat, or electricity purchased, in place of such electricity, in accordance with the trading arrangements provided for in regulations to be made by the Commission under *section 9(1)(d)*,

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

(2) The Commission may grant to the Board a licence to supply electricity to eligible customers, subject to terms and conditions as may be specified in the licence.

(3) Any licence granted under this section shall be deemed to contain a condition that it shall be subject to modification for the purposes of compliance with any enactment implementing, whether in whole or in part, Council Directive No. 96/92/EC of the European Parliament and of the Council of 19 December, 1996 concerning common rules for the internal market in electricity.

(4) An application for a licence under this section shall be in writing and be in such form and contain such information as the Commission may request.

(5) An application for a licence under this section shall be accompanied by such a fee, if any, as the Commission may determine to be appropriate, having regard to the application being made, and the Commission shall make information on such fees available on request.

(6) A licence granted by the Commission shall be subject to—

- (a) modification in accordance with *section 19*, or
- (b) revocation by the Commission in accordance with this Act.

(7) Where the Commission refuses to grant a licence to a person—

- (a) the person shall be notified, in writing, by the Commission of the reasons for the refusal,

[1999.] *Electricity Regulation Act, 1999.* [No. 23.]

(b) within 28 days of the making of a refusal, the Commission shall notify, in writing, the Commission of the European Communities of the reasons for the refusal, and

Pt.III S.14

(c) the person may appeal the refusal in accordance with *section 29*.

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

(9) A licence granted under *paragraph (b), (c) or (d) of subsection (1)* shall not authorise the supply of electricity to an eligible customer or final customer until after the 19th day of February, 2000.

(10) For the purposes of *subsection (1)*, “main heat customer” means a person who has entered into a contract with a producer of combined heat and power to purchase, in a calendar year, an amount of heat produced by that producer, which amount of heat is greater than that contracted to be purchased in that year from that producer by any other person (if any).

(11) The Commission shall monitor licensees to ensure that they continue to conform to all the conditions and requirements of their licences.

(12) The Board shall be obliged to supply electricity to the holder of a licence under *subsection (1)* in accordance with the trading arrangements provided for in regulations to be made by the Commission under *section 9(1)(d)*.

15.—(1) A person who has been granted a permit under section 37 of the Principal Act on or after the 1st day of September, 1998, shall apply for a licence or an authorisation within 3 months of the coming into operation of this section or such other period as may be agreed by the Commission.

Permits under section 37 of Principal Act.

(2) An application to the Board for a permit under section 37 of the Principal Act which has not been the subject of a decision by the Board before the commencement of this section shall be deemed to be an application for a licence under *section 14* and an authorisation under *section 17* and shall be dealt with accordingly.

(3) A permit granted under section 37 of the Principal Act on or after the 1st day of September, 1998, shall expire 12 months after the commencement of this section or on the granting on an earlier date of a licence or authorisation by the Commission.

(4) A permit granted under section 37 of the Principal Act before the 1st day of September, 1998, shall, subject to the provisions of this Act, continue in full force and effect.

(5) The power of modification or revocation of a permit referred to in *subsection (3) or (4)* shall be exercisable by the Commission and not by the Board, and any powers conferred on the Board by such a permit shall be exercisable by the Commission and not by the Board.

16.—(1) A person shall not construct or reconstruct a generating station, for the purpose of supply to final customers, unless an authorisation has been granted to the person by the Commission.

Authorisations to construct or reconstruct a generating station.

[No. 23.] *Electricity Regulation Act, 1999.* [1999.]

Pt.III S.16

(2) Notwithstanding the Electricity (Supply) Acts, 1927 to 1995, the Board may not construct or reconstruct a generating station unless an authorisation has been granted to it by the Commission.

(3) Subject to *section 17*, the Commission may grant or may refuse to grant to any person an authorisation to construct or reconstruct a generating station, subject to such terms and conditions as may be specified in the authorisation including terms and conditions as to generating capacity of the proposed generating station.

(4) A person who contravenes *subsection (1)* shall be liable on conviction on indictment to a fine not exceeding £100,000.

Application for authorisation.

17.—(1) An application for an authorisation under *section 16* shall be in writing and be in such form and contain such information as the Commission may reasonably request.

(2) An application for an authorisation shall be accompanied by such a fee, if any, as the Commission may determine.

(3) An authorisation granted by the Commission shall be subject to—

(a) modification in accordance with *section 19*, or

(b) revocation by the Commission in accordance with this Act.

(4) Where the Commission refuses to grant an authorisation—

(a) the person shall be notified, in writing, by the Commission of the reasons for the refusal, and

(b) within 28 days of the making of the refusal, the Commission shall notify, in writing, the Commission of the European Communities of the reasons for the refusal, and

(c) the person may appeal the refusal in accordance with *section 29*.

Orders specifying criteria for considering applications for authorisations.

18.—(1) The Minister shall specify by order the criteria in accordance with which an application for an authorisation may be determined by the Commission.

(2) The criteria specified by the Minister under *subsection (1)* may relate to—

(a) the safety and security of the electricity system, electric plant and domestic lines,

(b) the protection of the environment including the limitation of emissions to the atmosphere, water or land,

(c) the siting of a generating station and associated land use,

(d) the efficient use of energy,

(e) the nature of the primary source of energy to be used by a generating station,

(f) the qualifications of an applicant, including the technical and financial qualifications of the applicant, and

(g) public service obligations provided for in an order under *section 39*.

[1999.] *Electricity Regulation Act, 1999.* [No. 23.]

(3) The Minister may by order amend or revoke an order under this section including an order made under this subsection. Pt.III S.18

(4) An order under *subsection (3)* shall not be made unless a notice of intention to make such an order is published in a daily newspaper published and circulating in the State at least one month before the making of the order.

(5) A copy of the draft order proposed to be made under *subsection (3)* shall, on payment of the prescribed fee, if any, be given by the Minister to any person who requests it, and the notice of intention published under *subsection (4)* shall state that such a copy may be so obtained.

(6) An order under this section shall not provide for the use of nuclear fission for the generation of electricity.

19.—(1) Where the holder of a licence or an authorisation so requests the Commission may modify the conditions or requirements of the licence or authorisation. Modification of licence or authorisation.

(2) Where the Commission is of the opinion that a licence or an authorisation should be amended it may do so with or without the consent of the holder of the licence or the authorisation, as the case may be.

(3) Where the Commission is of the opinion that a modification of a condition or requirement of a licence or an authorisation is a modification of a class required by an order of the Minister made under *section 39* or *40* the Commission may modify the conditions or requirements of the licence or authorisation concerned without the consent of the holder of that licence or authorisation, as the case may be.

20.—(1) *Subsections (2) to (6)* shall apply to all modifications of a licence or an authorisation other than a modification made to give effect to an order under *section 39* or *40*. Procedures to be followed before modifying licences or authorisations.

(2) Before modifying a licence or an authorisation the Commission shall issue a notice—

- (a) stating that it proposes to make such modification,
- (b) stating the nature of such modification and the reasons therefor, and
- (c) specifying the period (being not less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modification may be made.

(3) The Commission shall consider any representations or objections which are made under *subsection (2)* and not withdrawn.

(4) A notice under *subsection (2)* shall be given—

- (a) by publishing the notice in a newspaper circulating in the State, and
- (b) by serving a copy of the notice on the holder of the licence or authorisation.

(5) The Commission shall send a copy of a notice issued under *subsection (2)* to the Minister who shall arrange, without undue delay, to provide a copy of the notice to the Oireachtas library.

(6) Where, within the period specified in *subsection (2)(c)*, no objections or representations are made or such objections or representations as are made in that period are subsequently withdrawn, the modification of the licence or authorisation concerned shall have effect accordingly.

(7) Where objections or representations made within the period specified in *subsection (2)(c)* are not withdrawn—

- (a) the Commission may either accept or reject such objections or representations, in whole or in part, and the modification shall have effect accordingly, or
- (b) where it is satisfied that sufficient grounds exist to warrant a public hearing, the Commission may cause such a public hearing to be held.

(8) Where the Commission rejects any objections or representations made under this section without a public hearing being held, the reasons for the rejection and the refusal of a public hearing shall be notified to the persons who made those objections or representations and the proposed modification shall be effected in accordance with *section 22(3)*.

21.—(1) Where the Commission proposes to hold a public hearing under *section 20(7)(b)* it shall issue a notice stating—

- (a) the date (being not less than 28 days from the date of giving notice) on which it is intended to hold the hearing, and
- (b) the location at which it is intended to hold the hearing.

(2) A notice referred to in *subsection (1)* shall be given—

- (a) by publishing the notice in a newspaper circulating in the State, and
- (b) by serving the notice on the holder of the licence or authorisation concerned and any persons by whom objections or representations were made in the period referred to in *section 20(2)(c)*.

(3) All hearings of the Commission shall be open to members of the public and may be held before the Commission or any other person authorised by the Commission to hold such a hearing and references to the Commission in *subsection (4)* shall include references to any other person so authorised.

(4) At a public hearing held for the purposes of this section—

- (a) those persons by whom objections or representations were made in the period referred to in *section 20(2)(c)* may be heard,
- (b) the Commission may assess the interest of any person who applies to be a party to the hearing and may admit or exclude them for stated reasons, and

(c) the Commission may administer oaths, issue notices, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and material and take and receive evidence. Pt.III S.21

(5) The Commission may, following consultation with the Minister, make rules concerning the practice and procedures to be adopted at such public hearings.

(6) A witness before a public hearing shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

22.—(1) The Commission shall, within a reasonable period from the date of completion of a public hearing, make a determination— Determination by Commission following public hearing.

(a) to modify a licence or an authorisation in accordance with the proposed modification set out in the notice issued under *section 20(2)(b)* or otherwise, or

(b) not to make the modification concerned.

(2) Notice of a determination made under *subsection (1)* shall be given to the holder of the licence or authorisation concerned and any parties to the hearing and the determination shall be made available by the Commission to any other person on request.

(3) Subject to *subsection (4)*, the modification of a licence or authorisation shall be effected—

(a) by serving notice of the modification on the holder of the licence or authorisation concerned, and

(b) by publishing the notice in a newspaper circulating in the State.

(4) A modification of a licence or authorisation shall take effect on the day which is 28 days after the day on which—

(a) service of notice of modification on the holder of the licence or authorisation concerned is effected, or

(b) notice of modification of the licence or authorisation concerned is published in a newspaper circulating in the State,

whichever is the later, unless an appeal is made under *section 29(2)* in which case the modification shall not come into effect, unless confirmed under *section 30(7)*.

23.—(1) In this section and in *sections 24, 25 and 26* “condition or requirement” means any term or condition of a licence or an authorisation or any requirement imposed by or under this Act. Directions by Commission to protect public health, etc.

(2) Where the Commission is satisfied that all or any of the circumstances set out in *subsection (3)* have arisen or are likely to arise it may direct the holder of the licence or authorisation concerned or the Board in respect of the transmission and distribution system to discontinue or to refrain from specified practices.

- (3) The circumstances referred to in *subsection (2)* are—
- (a) where the Commission is of the opinion that immediate action is necessary to protect—
 - (i) public health or safety or the environment,
 - (ii) the continuity of supplies of electricity,
 - (iii) the interests of other holders of licences or authorisations;
 - (b) where the Commission is of the opinion that the holder of a licence or an authorisation is contravening or is likely to contravene a condition or a requirement and immediate action is necessary to cease or prevent such contravention; or
 - (c) where the Commission is of the opinion that immediate action is necessary to prevent dissipation of the assets of the holder of a licence or an authorisation.
- (4) Nothing in this section shall authorise the Commission to give directions relating to industrial disputes.

Issue of notice by Commission concerning contraventions, etc.

24.—(1) Where the Commission is of the opinion that the holder of a licence or an authorisation may be contravening or may be likely to contravene a condition or requirement, it may issue a notice under *subsection (2)* to the holder of the licence or authorisation.

- (2) The notice referred to in *subsection (1)* shall—
- (a) specify—
 - (i) the condition or requirement which the Commission considers that the holder of the licence or authorisation may be contravening or may be likely to contravene, or
 - (ii) the acts or omissions which in the opinion of the Commission may constitute or would be likely to constitute contravention of the condition or requirement concerned,
- and
- (b) specify the period (being not less than 28 days from the date of the issuing of the notice) within which representations or objections may be made.
- (3) The Commission shall consider any representations or objections which are made under *subsection (2)* and not withdrawn.
- (4) On consideration of any representations or objections, the Commission may give a direction to the holder of a licence or an authorisation to take such measures as are necessary to cease the contravention or to prevent a future contravention.
- (5) As soon as practicable after giving a direction in accordance with *subsection (4)* or *section 23(2)* the Commission shall give notice of the direction in accordance with *subsection (10)*.

[1999.] *Electricity Regulation Act, 1999.* [No. 23.]

(6) Subject to *subsection (7)*, the Commission may revoke a direction given under this section. Pt.III S.24

(7) Before revoking a direction the Commission shall give notice in accordance with *subsection (10)*—

(a) stating that it proposes to revoke the direction and setting out the effect of the revocation, and

(b) specifying the period (being not less than 28 days from the publication of the notice) within which representations or objections with respect to the proposed revocation may be made.

(8) The Commission shall consider any representations or objections which are made under *subsection (7)* and not withdrawn.

(9) If, after giving notice of a revocation made in accordance with *subsection (6)*, the Commission decides not to revoke the direction to which the notice refers, it shall give notice of its decision.

(10) A notice under this section shall be given—

(a) by publishing the notice in a newspaper circulating in the State, and

(b) by serving a copy of the notice and a copy of the direction or revocation, as the case may be, on the holder of the licence or authorisation to whom the notice, direction or revocation relates.

25.—(1) Where the Commission decides not to give a direction under *section 24(4)*, the Commission may make a determination that the holder of a licence or an authorisation has committed a specified breach of a condition or requirement.

Determination by Commission of specified breach.

(2) As soon as practicable after making a determination under *subsection (1)* the Commission shall—

(a) publish a notice of the determination in a newspaper circulating in the State, and

(b) serve a copy of the notice and a copy of the determination on the holder of the licence or authorisation to whom the determination relates.

26.—(1) In order to ensure compliance with a direction given under *section 24*, the Commission may apply in a summary manner *ex parte* or on notice to the High Court for an order requiring the holder of a licence or an authorisation who, in the opinion of the Commission, is contravening or who is likely to contravene a condition or requirement to discontinue or to refrain from specified practices.

Compliance with direction or determination.

(2) The High Court may make such order as it thinks fit and may confirm, revoke or vary a direction given by the Commission.

27.—(1) The Commission, with the consent of the Minister, may prescribe the means by which the consumption of electricity is estimated and calculated for the purpose of this section and references

Eligible customers.

Pt.III S.27

in this section to calculation or estimation of electricity consumption shall be references to calculations or estimates made under those regulations.

(2) A consumer of electricity whose consumption of electricity at any single premises in any 12 month period is estimated and calculated to be or likely to be greater than 4 Giga Watt hours shall be deemed to be an eligible customer at that premises for the purposes of this Act.

(3) Subject to *subsection (4)*, the Minister may by order vary the figure of 4 Giga Watt hours referred to in *subsection (2)*.

(4) The Minister shall give notice of his or her intention to make an order under *subsection (3)* or *(5)* by publishing it in a newspaper circulating in the State at least 28 days before the making of the order.

(5) The Minister may by order amend or revoke an order made under *subsection (3)* including an order made under this subsection.

(6) Where an order is proposed to be made under this section, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

Purchase of electricity from combined heat and power.

28.—(1) The Minister, after consultation with the Commission, may, from time to time, prescribe the total amount or amounts of electricity from combined heat and power which may be supplied to final customers under *section 14(1)(d)* in any specified period.

(2) The Minister may prescribe procedures, including procedures relating to access to the transmission or distribution system and the circumstances in which the Board shall supply electricity to such final customers, to be followed for the purposes of this section.

PART IV

Appeal Panels

Establishment of Appeal Panel.

29.—(1) This section applies to—

- (a) a person whose application for a licence or an authorisation is refused,
- (b) a person who is a holder of a licence or an authorisation and who wishes to appeal against a decision of the Commission—
 - (i) to modify the licence or authorisation concerned, other than a modification of a class required by an order made under *section 39* or *40*, or
 - (ii) to refuse to modify the licence or authorisation concerned at the request of the holder of that licence or authorisation.

(2) A person to whom this section applies may, within 28 days of the making of a decision—

- (a) to refuse to grant a licence or an authorisation,

(b) to modify a licence or an authorisation, or

(c) to refuse to modify a licence or an authorisation,

request the Minister to establish a panel to be known and in this Act referred to as an "Appeal Panel".

(3) When requested to establish an Appeal Panel, following consultation with the Competition Authority as to the composition of the Appeal Panel, the Minister shall, within one month, establish an Appeal Panel to consider an appeal made under this section.

(4) An Appeal Panel established under this section shall consist of at least three persons, one of whom shall be appointed by the Minister to be the chairperson of the Appeal Panel.

(5) An Appeal Panel shall have all the powers and duties of the Commission that are necessary to carry out the functions of the Appeal Panel under this Act.

(6) An Appeal Panel shall be independent in the performance of its functions.

(7) The Minister may by order amend or revoke an order made under this section including an order made under this subsection.

(8) All appeals under *Part IV* of this Act shall be determined within six months.

30.—(1) An Appeal Panel shall hear and determine an appeal against— Functions of
Appeal Panel.

(a) a refusal to grant a licence or an authorisation,

(b) a modification, or

(c) a refusal to modify a licence or an authorisation,

and shall specify, on notice to the Commission and the appellant, the date on which the appeal shall be heard.

(2) An Appeal Panel shall have the powers, rights and privileges vested in the High Court or a judge thereof on the hearing of an action in respect of—

(a) the enforcement of the attendance of witnesses and their examination on oath or otherwise, and

(b) the compelling of the production of documents.

(3) A summons signed by the chairperson of the Appeal Panel or by such other member of the Appeal Panel as may be authorised by the Appeal Panel may be substituted for and shall be equivalent to any formal procedure capable of being issued in an action for enforcing the attendance of witnesses and compelling the production of documents.

(4) Where a person—

(a) being duly summoned to attend before an Appeal Panel makes a default in attending,

Pt.IV S.30

- (b) being in attendance as a witness before an Appeal Panel refuses to take an oath lawfully required by that Panel to be taken or to produce any document in his or her power or control lawfully required by that Appeal Panel to be produced by him or her or to answer any question to which the Appeal Panel may lawfully require an answer, or
- (c) being in attendance before an Appeal Panel does anything which, if the Appeal Panel were a court of law having power to commit for contempt, would be contempt of court,

that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

(5) A witness before an Appeal Panel shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court.

(6) An Appeal Panel may confirm the refusal to grant a licence or an authorisation or may direct the Commission to grant a licence or an authorisation with or without conditions laid down by the Appeal Panel and where such a direction is made the Commission shall, in accordance with the decision of the Appeal Panel, grant the licence or authorisation, subject to such conditions as may be specified by the Commission which are not inconsistent with the decision of the Appeal Panel.

(7) In the case of a modification of a licence or an authorisation, the Appeal Panel may either confirm the modification or direct the Commission not to make it.

(8) In the case of a refusal to modify a licence or an authorisation, the Appeal Panel may either confirm the decision of the Commission or may direct the Commission to modify the licence or authorisation.

(9) The Appeal Panel shall notify the persons concerned of its decision in respect of an appeal under this section.

Orders for establishment of Appeal Panels and related matters.

31.—(1) An order made by the Minister under *section 29(3)* for the purpose of establishing an Appeal Panel may provide for—

- (a) the membership, on such terms and conditions as the Minister considers appropriate, of the Appeal Panel,
- (b) the procedure to be adopted by the Appeal Panel in considering any matter referred to it, and
- (c) any other matters which the Minister considers incidental or expedient for the proper and efficient conduct of an appeal by the Appeal Panel.

(2) The remuneration and allowances for expenses, if any, of a member of an Appeal Panel shall be such as may be determined by the Minister, with the approval of the Minister for Finance, and shall form part of the expenses of the Commission.

Review of determination of Commission.

32.—(1) Without prejudice to any right under this Act to appeal to an Appeal Panel, a person shall not question in any legal proceedings—

[1999.] *Electricity Regulation Act, 1999.* [No. 23.]

- (a) the validity of a decision of the Commission on an application made to it for the grant of a licence or an authorisation or for the modification of a licence or an authorisation, Pt.IV S.32
- (b) a modification by the Commission of a licence or an authorisation, or
- (c) a decision of an Appeal Panel under *section 30*,

otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Court (S.I. No. 15 of 1986).

(2) An application for leave to apply for judicial review in respect of any matter referred to in *subsection (1)* shall—

- (a) be made within the period of two months commencing on the date on which the decision is given, and
- (b) be made by motion on notice to—
- (i) the Commission,
 - (ii) where the applicant for leave is not the applicant for or holder of the licence or authorisation concerned, the applicant or holder of that licence or authorisation, and
 - (iii) any other person specified for that purpose by order of the High Court,

and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed.

- (3) (a) The determination of the High Court of such an application for leave to apply for judicial review or of an application for such judicial review shall be final and no appeal shall lie from the decision of the High Court to the Supreme Court in either case save with the leave of the High Court which leave shall only be granted where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.
- (b) This subsection shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

PART V

Access to Transmission and Distribution Systems

33.—(1) Subject to *subsection (2)*, within such time and following such consultation as the Commission may direct, the Board shall make regulations, subject to the approval of the Commission, setting out a grid code in relation to the transmission system of the Board and a distribution code in relation to the distribution system of the Board.

Preparation of grid code and distribution code.

(2) The Commission may from time to time give directions to the Board in respect of—

- (a) the matters to be specified in the grid code and the distribution code, and
- (b) the review and revision by the Board from time to time of the grid code and the distribution code,

and the Board shall comply with directions given by the Commission under this section.

(3) All releases of information under this section shall be made available within one month of any request for same.

Terms for connection to and use of transmission or distribution system.

34.—(1) Subject to *subsection (4)*, where an application is made to the Board by any person, the Board shall offer to enter into an agreement for connection to or use of the transmission or distribution system, subject to terms and conditions specified in accordance with directions given to the Board by the Commission under this section from time to time.

(2) Without prejudice to the generality of *subsection (1)*, directions given by the Commission under this section may provide for:

- (a) the matters to be specified in an agreement for connection to and use of the transmission or distribution system;
- (b) the matters to be specified in an agreement for use of the transmission or distribution system;
- (c) the terms and conditions upon which an offer for connection to the transmission or distribution system is made;
- (d) the methods for determining the proportion of the costs to be borne by the person making the application for connection to the transmission or distribution system and to be borne by the Board being costs which are directly or indirectly incurred in carrying out works under an agreement or making a connection or modifying an existing connection;
- (e) the terms and conditions upon which applications for an agreement are to be made and the period of time within which an offer or refusal pursuant to an application is to be made by the Board; and
- (f) any other matters which the Commission considers necessary or expedient for the purpose of making an offer for connection to or use of the transmission or distribution system,

and the Board shall comply with directions given by the Commission under this section within such time period as may be specified by the Commission.

(3) An offer made under *subsection (1)* to a person who is not the holder of a licence under *section 14* or an authorisation under *section 16* or an eligible customer shall be subject to the grant of a licence or authorisation to that person or to that person becoming an eligible customer.

(4) The Board shall not be required under *subsection (1)* to enter into an agreement where— Pt.V S.34

- (a) it has demonstrated to the satisfaction of the Commission that it is not in the public interest to provide additional capacity to meet the requirements to be imposed by that agreement,
- (b) to enter into an agreement under this section would be likely to involve the Board:
 - (i) in a breach of this Act;
 - (ii) in a breach of regulations made under this Act;
 - (iii) in a breach of the grid code or distribution code; or
 - (iv) in a breach of the conditions of any licence or authorisation granted to the Board under this Act,

or

- (c) the person making the application does not undertake to be bound by the terms of the grid code or distribution code in so far as those terms are applicable to that person.

(5) Where the Board refuses to offer to enter into an agreement under this section the Board shall serve notice on the applicant of the reasons for such refusal.

(6) Any dispute between the Board and any person who is, or claims to be, a person to whom the Board is obliged to make an offer for connection to and use of the transmission or distribution system (and whether as to the making of an offer, the terms offered, the proposed charges or otherwise)—

- (a) where an offer is made by the Board, or
- (b) where an offer is refused by the Board,

may, upon the application of that person, be determined by the Commission and the Board shall comply with and be bound by any such determination.

(7) In order to secure compliance with a determination made under this section the Commission may apply in a summary manner on notice to the High Court for an order requiring the Board to comply with the determination of the Commission made under this section.

(8) Where providing for use of the transmission or distribution system or where offering terms for the carrying out of works for the purpose of connection to the transmission or distribution system of the Board, the Board shall not discriminate unfairly as between any persons or classes of persons.

35.—(1) Subject to *subsection (2)*, within such time as the Commission may direct, the Board shall prepare a statement for the approval of the Commission setting out the basis upon which charges are imposed—

Charges for connection to and use of transmission or distribution system.

[No. 23.] *Electricity Regulation Act, 1999.* [1999.]

Pt.V S.35

(a) for use of the transmission or distribution system of the Board, and

(b) for connection to the transmission or distribution system of the Board.

(2) The Commission may give directions to the Board from time to time in respect of the basis for charges for use of and connection to the transmission or distribution system of the Board.

(3) Notwithstanding the generality of *subsection (2)*, directions given by the Commission under this section may provide for—

(a) the methods of charging to be included in the statement to be prepared by the Board,

(b) the form and the extent of the information to be provided by the Board to applicants,

(c) the form of charges and information about those charges to be included in the statement to be prepared by the Board,

(d) the procedure to be adopted in the submission by the Board of a statement of charges and the approval by the Commission of such statement, and

(e) the nature of information to be provided to applicants seeking connection to or use of the transmission or distribution systems and its presentation and transparency,

and the Board shall comply with directions given by the Commission under this section.

(4) A charge for connection to or for the use of the transmission or distribution system of the Board shall be calculated in accordance with directions given by the Commission under this section so as to enable the Board to recover—

(a) the appropriate proportion of the costs directly or indirectly incurred in carrying out any necessary works, and

(b) a reasonable rate of return on the capital represented by such costs.

(5) The Commission, solely, will determine what constitutes an “appropriate proportion” referred to in *subsection (4)(a)* and a “reasonable rate of return” referred to in *subsection (4)(b)*.

Approval by Commission of statement of charges.

36.—(1) The Board shall send each statement prepared in accordance with *section 35* to the Commission for its approval (in this section referred to as the “statement”) and the statement, and in particular any charges referred to therein, shall not apply until such time as it has been approved of by the Commission.

(2) The Commission shall consult with the Board and have regard to any submission made by the Board to the Commission prior to making a decision as to whether to approve of or not, as the case may be, a statement submitted by the Board to the Commission for approval.

(3) A statement and, in particular, charges referred to therein, shall not take effect until such time as it is approved of by the Commission, subject to such modifications, if any, as the Commission considers appropriate. Pt.V S.36

(4) Any charges imposed by the Board on or before the commencement of this section shall, subject to the approval of the Commission, continue in force until a statement has been approved of by the Commission under this section and thereafter all charges shall be in accordance with a statement approved of by the Commission.

37.—(1) Where access to the transmission or distribution system for holders of licences or authorisations or eligible customers is refused by the Board due to lack of capacity the Commission may permit the holder of the licence or authorisation or eligible customer to whom such refusal is made to construct a direct line not connected to the transmission or distribution system for the purpose of facilitating the supply of electricity for which the application for use of the transmission or distribution system concerned was made and refused. Direct lines.

(2) A permission to construct a direct line granted by the Commission under this subsection shall require the person to whom the permission was granted to comply with such technical and other conditions, including those which may be necessary to ensure that direct lines are compatible with the transmission or distribution system, to such extent as the Commission may specify in the permission.

(3) The owner of a direct line constructed under *subsection (1)* may allow the direct line to be used for the transport of electricity to other eligible customers.

(4) (a) Where there is a connection made between a direct line and the transmission or distribution system of the Board, on the application of the Board, the Commission may direct the owner of a direct line constructed under *subsection (1)* to transfer the ownership of the direct line to the Board on such terms, including terms as to compensation, as may be agreed between the Board and the owner of the direct line.

(b) In default of agreement between the Board and the owner as to compensation, such compensation shall be assessed under the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, and for this purpose the Board shall be deemed to be a public authority.

38.—(1) On and after the commencement of this section, and at such intervals as the Commission may direct, the Board shall prepare a statement, (to be known and in this Act referred to as a “forecast statement”) based on the information available to it, in a form approved of by the Commission. Estimate of capacity, forecast flows and loading.

(2) A forecast statement shall include forecasts in respect of capacity, forecast flows and loading on each part of the transmission system of the Board and fault levels for each electricity transmission node together with:

(a) such further information as shall be reasonably necessary to enable any person seeking use of the transmission or

distribution system to identify and evaluate the opportunities available when connecting to and making use of the transmission or distribution system;

- (b) a statement identifying those parts of the transmission system of the Board most suited to new connections and to the transport of further quantities of electricity;
- (c) the generating capacity which is likely to be connected to the transmission system;
- (d) the demand for electricity in the period to which the statement relates; and
- (e) a statement on the demand for electricity generated from renewable, sustainable or alternative sources generally and a statement on arrangements for the supply of electricity to customers who have opted to purchase such electricity.

(3) The Board may revise from time to time the information set out in and, with the approval of the Commission, alter the form of each forecast statement and shall, at least once in every year, revise such statements.

(4) The Board shall give a copy of a forecast statement and of each revision of the forecast statement under *subsection (3)* to the Commission.

(5) Subject to *subsection (6)*, the Board shall give a copy of a forecast statement or, as the case may be, of the latest revision of the forecast statement, to any person who requests a copy of such statement or statements within fourteen days of the date that the request was received.

(6) The Board may, with the prior consent of the Commission, omit from a forecast statement given under *subsection (4)* any confidential details as to the capacity, loading or other information, where disclosure of that information would, in the opinion of the Commission, prejudice the commercial interests of the Board or any other person.

(7) The Board may make a charge for each forecast statement given under *subsection (4)* of an amount which shall not exceed the maximum amount specified by the Commission for the purpose of this section.

(8) In this section the period to which the forecast statement relates shall be seven calendar years on and after the date on which the statement is prepared by the Board.

PART VI

Public Service Obligations and Transitional Arrangements

39.—(1) The Minister, following consultation with the Minister for the Environment and Local Government, shall by order direct the Commission to impose on the Board and holders of licences or authorisations, or holders of a permit under section 37 of the Principal Act, public service obligations which may include obligations in relation to—

- (a) security of supply,
- (b) regularity, quality and price of supplies,
- (c) environmental protection, and
- (d) use of indigenous energy sources.

(2) Notwithstanding the generality of *subsection (1)*, an order made by the Minister under this section may require the Commission to impose on the Board a requirement to make such arrangements as are necessary to ensure that, in any calendar year, there shall be available to the Board a specific quantity of electricity from—

- (a) generating stations which use as their primary energy fuel source peat harvested within the State provided that the amount of peat used in any calendar year to generate that quantity of electricity may not exceed 15 per cent. of the overall primary energy necessary to produce the electricity consumed in the State that year, and
- (b) generating stations chosen as a result of a competitive process established by the Minister, the Commission or the Commission of the European Communities, as the case may be, which use as their primary fuel source such renewable, sustainable or alternative forms of energy as may be specified in the order or which operate as combined heat and power plants.

(3) Notwithstanding the generality of *subsection (1)*, an order made under this section may provide for—

- (a) the imposition of a public service obligation on the Board in respect of electricity which is produced using indigenous fuel or renewable, sustainable or alternative forms of energy as their primary source or which operate as combined heat and power plants as a result of a competitive process established by the Minister or the Commission of the European Communities prior to this enactment, and
- (b) measures designed to encourage effective and efficient use of electricity and to reduce demand for electricity.

(4) The Minister shall send a copy of an order made under *subsection (1)* to the Commission of the European Communities not later than 28 days after the making of the order.

(5) Subject to *subsection (6)*, an order under this section shall provide for—

- (a) the recovery, by way of a levy on final customers in respect of electricity provided to such customers, of the additional costs including a reasonable rate of return on the capital represented by such costs, where appropriate, incurred by the Board or holders of a licence or an authorisation in complying with an order under *subsection (1)* including costs incurred after the variation or revocation of such an order,
- (b) the collection of payments in that respect by the Board or a holder of a licence or an authorisation,

(c) the making, out of such payments so collected, of payments to the Board and holders of licences or authorisations, as appropriate.

(6) An order made under this section which, in accordance with *subsection (5)*, provides for the recovery of additional costs referred to in that subsection shall provide that such costs shall be recovered in respect of a specified period of years and that the amount to be paid in respect of each year in that period to the Board or to a holder of a licence or an authorisation shall be the amount of the additional costs certified by the Commission as having been incurred by the Board or such holder of a licence or an authorisation in accordance with the order.

(7) An order made under this section may—

(a) impose requirements (whether as to the furnishing of records or other information or the affording of facilities for the examination and testing of meters or otherwise) on the Board and on holders of licences or authorisations,

(b) provide for the times at which payments are to be made (whether payments by way of levy or payments to the Board and holders of licences or authorisations), and

(c) require the amount of any overpayment or underpayment which is made by or to any person to be set off against or added to any subsequent liability or entitlement of that person.

(8) The Minister shall exercise the powers conferred by this section so as to ensure that the sums realised by the levy or otherwise are sufficient (after the payment of the administrative expenses of holders of licences to supply under *section 14* or of the Board incurred in the collection of the levy) to pay to the Board and holders of licences or authorisations the payment required to be made by the order.

(9) The Minister may by order, amend or revoke an order made under this section including an order made under this subsection but such amendment or revocation shall be without prejudice to the continued operation of the order in respect of additional costs of the type referred to in *subsection (5)* which the Commission certifies in respect of each year or part thereof of the unexpired part of the specified period of years to have been reasonably incurred notwithstanding the amendment or revocation.

(10) A draft of the order proposed to be made under this section shall be given by the Minister to the person or persons upon whom the obligation is to be imposed one month before the order is made.

(11) For the purposes of orders made under this section, “public service obligation” means an obligation placed on electricity undertakings which takes account of general social, economic and environmental factors.

40.—(1) Where the Minister is satisfied that as a consequence of the implementation of Directive No. 96/92/EC of the European Parliament and of the Council of 19 December, 1996, the Board is unable to recover specified costs or revenue relating to a generating station constructed or under construction or reconstruction before the 19th day of February, 1997, he or she shall, after consultation with the Commission and the Commission of the European Communities, by order provide for the payment to the Board of an annual

sum and for the recovery from final customers of the amounts so paid to the Board. Pt.VI S.40

(2) The sum referred to in *subsection (1)* shall be calculated in accordance with the order in respect of the annual specified amounts of unrecovered costs or revenue that may occur in each single year applied only to a specified period of years.

(3) Notwithstanding the generality of *subsection (1)*, the Minister may by order provide for—

- (a) a levy on final customers in respect of electricity provided to such customers,
- (b) the collection of payments in that respect by the Board and holders of licences or authorisations, or holders of a permit under section 37 of the Principal Act,
- (c) the making of payments to the Board, out of such payments so collected,
- (d) a condition that any amount paid to the Board under the order shall be used for purposes specified in the order and that the Commission shall have the power to ascertain whether such a condition is being complied with,
- (e) conditions, in which a levy would be paid to the Board,
- (f) the recovery from the Board of an amount or part thereof paid to it under the order where it has not been used in accordance with the order, and
- (g) the certification by the Commission in respect of each year in the specified period of years that in that year the conditions specified in the order have been satisfied.

(4) An order made under this section may—

- (a) impose requirements (whether as to the furnishing of records or other information or the affording of facilities for the examination and testing of meters or otherwise) on the Board,
- (b) provide for the times at which payments (whether payments by way of levy or payments to the Board) are to be made,
- (c) require the amount of any overpayment or underpayment which is made by or to any person to be set off against or added to any subsequent liability or entitlement of that person, and
- (d) provide for the date of termination of the arrangement provided for in the order.

(5) The Minister shall exercise the powers conferred by this section so as to ensure that the sums realised by the levy are sufficient (after the payment of the administrative expenses of holders of licences to supply under *section 14* or of the Board incurred in the collection of the levy) to pay to the Board the payment required to be made by the order.

Pt.VI S.40

(6) Subject to *subsection (7)*, the Minister may by order amend or revoke an order made under this section including an order made under this subsection.

(7) The sum calculated in accordance with *subsection (2)* shall not be altered.

(8) A draft of the order proposed to be made under *subsection (6)* shall be given to the Board by the Minister one month before the order is made.

PART VII

Consequential Repeals and Amendments

Repeals.

41.—Sections 36 and 37 of the Principal Act are hereby repealed.

Amendment of section 35 of Principal Act.

42.—Section 35 of the Principal Act is hereby amended in subsection (1) by the insertion after “granted under this Act” of “or a licence granted under *section 14* of the *Electricity Regulation Act, 1999*,” and the subsection as so amended is set out in the Table to this section.

TABLE

(1) From and after the expiration of six months from the passing of this Act or such further period as may be fixed by the Board for any particular area, no person (other than the Board) shall sell electricity or supply electricity for sale unless he is an authorised undertaker or is a person authorised by a permit granted under this Act or a licence granted under *section 14* of the *Electricity Regulation Act, 1999*, to supply electricity.

Amendment of section 45 of Principal Act.

43.—Section 45 of the Principal Act is hereby amended in paragraph (a) of subsection (5) by the insertion after “the Board” of “or a holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, as the case may be” and the paragraph as so amended is set out in the Table to this section.

TABLE

(5) A special order made under this section may incorporate—

(a) the Acquisition of Land (Assessment of Compensation) Act, 1919, with the modification that the expression “public authority” shall include the Board or a holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, as the case may be.

Amendment of section 77 of Principal Act.

44.—Section 77 of the Principal Act is hereby amended by the substitution for that section of the following section:

“Payment by local authorities of expenses of certain alterations.

77.—Whenever a local authority on account of or for the purpose of an alteration to a road or bridge—

(a) requires an authorised undertaker or a holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, or the holder of a direct line permission under *section 37* of the *Electricity Regulation Act, 1999*, to alter the position or depth of underground electrical wires, mains, or other electrical works or the position

of poles or other structures carrying electrical wires or mains or other above ground electrical works, or Pt.VII S.44

(b) requires the Board to alter the position or depth of any such underground electrical works or the position of any such above ground electrical works as aforesaid belonging to or under the control of the Board,

the expenses incurred by such authorised undertaker or holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, or holder of a direct line permission under *section 37* of the *Electricity Regulation Act, 1999*, or by the Board, as the case may be, in complying with such requisition shall be paid to such authorised undertaker or holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, or holder of a direct line permission under *section 37* of the *Electricity Regulation Act, 1999*, or to the Board, as the case may require, by such local authority on demand as part of the expenses of the maintenance of such road or bridge and the amount of such expenses so to be paid to such authorised undertaker or holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, or holder of a direct line permission under *section 37* of the *Electricity Regulation Act, 1999*, or to the Board shall be fixed by an arbitrator appointed by the Commission for Electricity Regulation established under *section 8* of the *Electricity Regulation Act, 1999*."

45.—Section 98 of the Principal Act is hereby amended by the substitution for that section of the following section: Amendment of section 98 of Principal Act.

"Lopping of trees by Board, an authorised undertaker or holder of an authorisation.

98.—(1) The Board, an authorised undertaker or a holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, or holder of a direct line permission under *section 37* of the *Electricity Regulation Act, 1999*, as the case may be, may, taking due care and attention to avoid unnecessary damage, lop or cut any tree, shrub or hedge which obstructs or interferes with any electrical wires of the Board or of such authorised undertaker or holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, or holder of a direct line permission under *section 37* of the *Electricity Regulation Act, 1999*, as the case may be, or with the erection or laying of any such electrical wires or with the survey of the proposed route of any transmission or distribution lines of the Board or of such authorised undertaker or of any electric wire of a holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, or holder of a direct line permission under *section 37* of the *Electricity Regulation Act, 1999*.

(2) Before lopping or cutting any tree, shrub

Pt.VII S.45

or hedge under this section the Board or an authorised undertaker or a holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, or holder of a direct line permission under *section 37* of the *Electricity Regulation Act, 1999*, as the case may be, shall give to the occupier of the land or in the case of a road or street to the local authority charged with the maintenance of such road or street on which such tree, shrub or hedge is standing, seven days notice of its intention to lop or cut the same and such occupier or local authority may if he or it, as the case may be, so desires and so informs the Board or such authorised undertaker or holder of an authorisation, as the case may be, within seven days himself or itself carry out such lopping or cutting.

(3) When the occupier of land cuts or lops any tree, shrub or hedge under this section the expense incurred by him in so doing shall be paid to him on demand by the Board or such authorised undertaker or holder of an authorisation under *section 16* of the *Electricity Regulation Act, 1999*, or holder of a direct line permission under *section 37* of the *Electricity Regulation Act, 1999*, as the case may be, and the amount of such expenses shall, in default of agreement, be fixed by an arbitrator appointed by the Commission for Electricity Regulation established under *section 8* of the *Electricity Regulation Act, 1999*.”.

Amendment of Freedom of Information Act, 1997.

46.—The First Schedule of the Freedom of Information Act, 1997, is hereby amended by the inclusion in paragraph 1(2) of the following—

“the Commission for Electricity Regulation,”.

PART VIII

Miscellaneous

Compulsory acquisition of land by Commission, etc.

47.—(1) Subject to *subsection (2)* the power to make a special order conferred on the Board by *section 45(1)* of the Principal Act shall be exercisable by the Commission and not by the Board on the application of the Board or a holder of an authorisation or a person who has applied for an authorisation and any references in that Act to the making of special orders shall be construed as references to the making of such orders by the Commission.

(2) A special order made by the Commission shall operate to confer on an applicant for an authorisation under *section 16* the functions which such an order would confer on the Board.

(3) Where an application is made to the Commission for a special order under this section, *section 45(2) to (6)* of the Principal Act shall apply to the Commission as it does to the Board.

Construction of sections 51 and 52(1) of Principal Act.

48.—The power to lay electric lines conferred on the Board by *section 51* and *section 52(1)* of the Principal Act may, with the consent of the Commission, also be exercised by the holder of an authorisation or the holder of a direct line permission under *section 37*

and the said sections 51 and 52(1) shall apply to the holder of an authorisation or the holder of a direct line permission under the said *section 37* in like manner as they apply to the Board. Pt.VIII S.48

49.—A holder of an authorisation or the holder of a direct line permission may, with the consent of the Commission, for the purposes of such authorisation, exercise the powers conferred on the Board by subsections (1) to (5) and (9) of section 53 of the Principal Act and references to the Board in those subsections shall be construed as including references to a holder of an authorisation. Construction of section 53 of Principal Act.

50.—(1) Subject to *subsection (2)*, references in section 54 of the Principal Act to an authorised undertaker shall include references to the holder of an authorisation or the holder of a direct line permission under *section 37*. Construction of section 54 of Principal Act.

(2) Where regulations made before the commencement of this section are made by the Board under the Principal Act which regulate the placing of electric lines across or along or either over or under any railway, land, inland navigation, dock or harbour those regulations shall apply to the holder of an authorisation or the holder of a direct line permission under *section 37*.

(3) The Board shall not amend regulations to which *subsection (2)* applies without the consent of the Commission.

(4) The Commission may prescribe modifications to regulations referred to in *subsection (2)* for the purposes of enabling their application to the holder of an authorisation or the holder of a direct line permission under *section 37*.

51.—Section 91 of the Principal Act shall apply to the holder of an authorisation or the holder of a direct line permission under *section 37* in like manner as it applies to an authorised undertaker and references to the Board shall be construed as references to the Commission for that purpose. Construction of section 91 of Principal Act.

52.—Regulations made by the Board before the commencement of this section under section 2 of the Electricity (Supply) (Amendment) Act, 1949, shall have effect in respect of persons to whom licences or authorisations have been granted under this Act or in respect of eligible customers. Application of certain regulations.

53.—Section 2 of the Electricity (Supply) (Amendment) Act, 1949, is hereby amended by the substitution of the following subsection for subsection (2): Amendment of section 2(2) of Electricity (Supply) (Amendment) Act, 1949.

“(2) Where the Board proposes to make regulations under this section the purposes of which are not solely connected with the procedure, administration or internal direction of the Board, it shall submit the regulations to the Commission for approval and the Commission may—

- (a) approve of the regulations with or without amendments, or
- (b) refuse to approve of the regulations until amendments specified by the Commission are made by the Board.”.

Pt.VIII
Repeal of section
2(3), (4) and (6) of
Electricity (Supply)
(Amendment) Act,
1949.

54.—Section 2(3), (4) and (6) of the Electricity (Supply) (Amendment) Act, 1949, is hereby repealed.

Section 8.

SCHEDULE

The Commission for Electricity Regulation

1. The Commission shall consist of at least one but not more than three members, each of whom shall be appointed by the Minister on such terms and conditions of appointment, including remuneration, as the Minister may fix, with the consent of the Minister for Finance, to hold office in a full-time capacity for a period of not less than three and not more than seven years.

2. Where there is more than one member of the Commission, the Minister shall appoint one of them to be chairperson of the Commission on such terms and conditions of appointment, including remuneration, as the Minister may fix, with the consent of the Minister for Finance, to hold office in a full-time capacity for a period of not less than three and not more than five years.

3. A member of the Commission, including the chairperson, whose term of office expires by effluxion of time shall be eligible for re-appointment to serve a second term, subject to a limit of serving no more than ten years on the Commission.

4. A member of the Commission shall not be entitled to serve more than two terms of office.

5. A member of the Commission may—

(a) at any time resign his or her office by letter addressed to the Minister and the resignation shall take effect from the date of receipt of the letter, and

(b) be removed from office by the Minister if, in his or her opinion, the member has become incapable through ill-health of effectively performing his or her duties or for stated misbehaviour and the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for such removal.

6. The Commission may act notwithstanding a vacancy or vacancies in its membership.

7. A member of the Commission shall not hold any other office or employment in respect of which emoluments are payable.

8. A member of the Commission shall not, for a period of twelve months following his or her resignation, removal or retirement from the office of Commission, hold any office or employment or act as a consultant where he or she may be liable to use or disclose information acquired by him or her in the exercise of the functions of the Commission.

9. Subject to this Act, the Commission shall be independent in the performance of its functions.

10. The Commission may, subject to the consent of the Minister and the Minister for Finance, appoint such and so many persons to be members of its staff as it considers necessary to assist it in the

performance of its functions on such terms and conditions including Sch.
terms and conditions as to remuneration and grading as may be
agreed.

11. The Commission may perform such of its functions as it may deem proper through or by any member of its staff.

12. The Commission shall designate a member of its staff as deputy member of the Commission who shall assume and carry out with the authority of the Commission all of the functions of the Commission in the absence of the members or when the membership of the Commission is vacant.

13. The Minister may make available to the Commission, on a request being made by the Commission, such staff, premises, equipment, services and other resources as the Minister may determine from time to time in consultation with the Minister for Finance.

14. Members of the staff of the Minister whose services are afforded to the Commission by secondment shall remain civil servants of the Minister and in any particular case a period of assignment on secondment to the Commission shall not exceed two years.

15. The Commission shall pay to the Minister such sum or sums as the Minister may specify to be the expenses incurred by the Minister in establishing the office of Commission and in making available to the Commission such staff, premises, equipment, services and other resources under *paragraph 13*.

16. For the purpose of meeting expenses properly incurred by the Commission in the discharge of its functions under this Act, the Commission may make an order (in this Act referred to as a "levy order") imposing a levy to be paid each year on such classes of electricity undertakings as may be specified by the Commission in the order.

17. Whenever a levy order is made under *paragraph 16* there shall be paid to the Commission by an electricity undertaking which belongs to a class of electricity undertaking specified in the order such amount as shall be appropriate having regard to the terms of the levy order.

18. A levy order made under *paragraph 16* may be amended or revoked by the Commission by order.

19. An amendment to a levy order made under *paragraph 16* which provides for an increase in the levy may only take effect in the year after the year in which the amendment is made.

20. Any excess of the revenue of the Commission over its expenditure in any year shall be applied by the Commission to meet its expenses.

21. The Minister may from time to time, with the consent of the Minister for Finance, advance to the Commission out of moneys provided by the Oireachtas such sums as the Minister may determine for the purposes of expenditure by the Commission in the performance of its functions.

22. The sums to be advanced under *paragraph 21* shall be expended solely for the purpose and exercise of the functions conferred on the Commission by this Act.

Sch.

23. The Commission shall pay to the Minister on every sum advanced to the Commission under this Act interest from the date of the advance of such sum until the same is repaid at such rate and in such manner as shall be appointed by the Minister at the time of the advance and at such rate as may be determined from time to time and such rate of interest shall not at any time exceed that fixed by an order under section 20 of the Courts Act, 1981.

24. The Commission may, for the purpose of the performance of its functions, borrow money, but shall not do so without the consent of the Minister and the Minister for Finance.

25. The Commission shall—

(a) keep in such form as may be approved by the Minister, with the concurrence of the Minister for Finance, all proper and usual accounts of all moneys received or expended by it including an income and expenditure account and balance sheet,

(b) submit accounts kept under *subparagraph (a)* in respect of each year to the Comptroller and Auditor General for audit and those accounts when so audited, shall, together with the report of the Comptroller and Auditor General thereon, be presented within six months of the end of the financial year, to the Minister, who shall cause copies of the accounts and report to be laid before each House of the Oireachtas, and

(c) within the first three months of each year make a report to the Minister in relation to the performance of its functions in the previous year and its proposed work programme for the following year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas as soon as practicable.

26. From time to time, and whenever so requested, the Commission shall account for the performance of its functions to a Joint Committee of the Oireachtas and shall have regard to any recommendations of such Joint Committee relevant to its functions.

27. The Commission may from time to time engage such consultants or advisers as it may consider necessary to assist it in the discharge of its functions and any fees due to a consultant or adviser engaged under this paragraph shall form part of the expenses of the Commission.

28. No action or other proceedings shall lie or be maintainable (except in the case of wilful neglect or default) against any member of the Commission arising from a failure to perform or to comply with any of the functions conferred on the Commission by this Act.

29. Where the Commission is satisfied that any member of the staff of the Commission or authorised person appointed by the Commission has discharged his or her duties in a *bona fide* manner, the Commission shall indemnify the member of staff or authorised person against all actions or claims howsoever arising in respect of the discharge by him or her of his or her duties.

30. (a) The Minister may, with the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of a member of the Commission ceasing to hold office or for the

making of contributions to a pension scheme approved Sch.
of by the Minister with the consent of the Minister for
Finance which has been entered into by a member of
the Commission.

- (b) The Minister may, with the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this paragraph, including a scheme under this subparagraph.
- (c) If any dispute arises as to the claim of a member of the Commission to, or the amount of, any pension, gratuity or other allowance payable in pursuance of a scheme under this paragraph, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance for determination by him or her.
- (d) A scheme under this paragraph shall be carried out by the Minister in accordance with its terms.
- (e) No pension, gratuity or other allowance shall be granted by the Minister to or in respect of any person referred to in *subparagraph (a)* ceasing to hold office otherwise than in accordance with a scheme under this paragraph or as otherwise may be approved of by the Minister with the consent of the Minister for Finance.

31. The Commission may prepare and submit to the Minister a scheme or schemes or may make such other arrangements with the approval of the Minister given with the consent of the Minister for Finance, for the granting of superannuation benefits to or in respect of such members of staff of the Commission, including a member appointed as a deputy member of the Commission in accordance with *paragraph 12*, as he or she may think fit.

32. Every scheme made under *paragraph 30* or *31* shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

33. Every scheme made under *paragraph 31* may with the consent of the Minister for Finance be amended or revoked by a subsequent scheme prepared, submitted and approved under *paragraph 31*.

34. A scheme made under *paragraph 31* submitted by the Commission to the Minister shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Commission in accordance with its terms.

35. No superannuation benefits shall be granted by the Commission nor shall any other arrangements be entered into by the Commission for the provision of such a benefit to or in respect of a member of the staff of the Commission otherwise than in accordance with a scheme under *paragraph 31* or otherwise as may be approved of by the Minister with the consent of the Minister for Finance.

36. If any dispute arises as to the claim of any person to, or the amount of any superannuation benefit payable in pursuance of a scheme or schemes under *paragraph 30* or *31*, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, for determination by him or her.

Sch.

37. As soon as may be the Commission shall establish a fund administered by trustees who shall be appointed by the Commission from which superannuation benefits payable in respect of a member of the staff of the Commission ceasing to hold office, under a scheme under *paragraph 31* shall be paid.

38. A scheme under *paragraph 30* or *31* shall be laid before each House of the Oireachtas by the Minister, in the case of a scheme under *paragraph 30*, or by the Commission, in the case of a scheme under *paragraph 31*, as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

39. Where a member of the Commission is—

- (a) nominated as a member of Seanad Éireann, or
- (b) nominated to stand as a candidate for election as a member of either House of the Oireachtas or to the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy,

the member shall thereupon cease to be a member of the Commission.

40. Where a person employed by the Commission—

- (a) is nominated as a member of Seanad Éireann, or
- (b) is elected as a member of either House of the Oireachtas or to the European Parliament, or
- (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy,

he or she shall thereupon stand seconded from his or her employment by the Commission and shall not be paid by, or be entitled to receive from, the Commission remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either such House or such Parliament.

41. A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a member of, or a member of the staff of the Commission.

42. Without prejudice to the generality of *paragraph 40* that paragraph shall be construed as prohibiting, among other things the reckoning of a period mentioned in that paragraph as service with the Commission for the purposes of any superannuation benefits.

43. In this Schedule—

“expenses” means outgoings of the Commission to include the remuneration of the Commission and its staff, any expenditure

[1999.] *Electricity Regulation Act, 1999.* [No. 23.]

incurred by the Commission or its staff in consequence of the carrying out of the functions of the Commission, payments to the Minister under this Act and repayment of any advance or interest or any advance made by the Minister under this Act; Sch.

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.