

## Energy

### Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019

#### Most relevant to

- Participants in the energy sector in Ireland, Northern Ireland and the UK generally



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The Single Electricity Market (SEM) is the wholesale electricity market for the island of Ireland (i.e. Ireland and Northern Ireland). It is separate from the electricity market of Great Britain. The SEM is regulated jointly by the Commission for Regulation of Utilities (CRU) in Ireland and the Utility Regulator in Northern Ireland.

The SEM underwent a fundamental change on 1 October 2018 in order to harmonise with EU legislation in respect of EU cross-border trade in electricity, however, it remains an 'all-island' market. The continued operation of the SEM on the island of Ireland is seen as hugely important measure for further creation of market efficiencies, enhancing security of supply (particularly for Northern Ireland) and consumer affordability.

There are two principal 'interfaces' in respect of the Irish electricity market: the SEM with Northern Ireland and the physical and market interconnection with the GB electricity market through the East West Interconnector.

As a consequence of the all-island and relatively isolated nature of the SEM, but recognising there are separate political systems, legal jurisdictions, electricity regulators and network operators, the structure and operation of the SEM is intertwined from a legislative, governance, contractual and also statutory licensing point of view. The SEM and the regulatory system also comply with the complex network of EU regulations and codes which allow effective interconnection and electricity market interaction with Great Britain. There is a 500MW interconnector between Ireland and Wales owned and operated by EirGrid which allows for import and export of

electricity subject to the EU regulations and network codes.

The UK and the EU's (and therefore Ireland's) energy and climate change policies have evolved together and are strategically aligned. The continued operation and 'coupling' of the EU electricity markets in the context of Brexit and also the protection of the ongoing operation of the Single Electricity Market has been specifically referred to in the Draft Withdrawal Agreement and also the HM Government 'explainer' of Article 11 of the Draft Withdrawal Agreement. In effect, the UK was committing to ensure the EU legislative 'acquis' in respect of energy into UK law.

The British Department for Business, Energy and Industrial Strategy has also published its guidance on 'Trading electricity if there's no Brexit deal' as well as various statutory instruments in respect of the post Brexit operation of its energy laws. In the guidance the UK government is essentially committing to 'take all possible measures to maintain the Single Electricity Market' but does contemplate a scenario where no agreement with the Irish government and the EU Commission can be reached to continue the SEM.

[www.gov.uk/government/publications/trading-electricity-if-theres-no-brex-it-deal/trading-electricity-if-theres-no-brex-it-deal](http://www.gov.uk/government/publications/trading-electricity-if-theres-no-brex-it-deal/trading-electricity-if-theres-no-brex-it-deal)

#### What does the Act say?

Part 4 of the Act introduces a new section 14(B) to the Electricity Regulation Act 1999 to give the Commission for Regulation of Utilities a wide ranging power to modify the conditions of statutory licences issued to electricity market participants in the

context of the withdrawal of the UK from membership of the EU.

Under the Electricity Regulation Act 1999, the CRU issues licences in respect of a number of electricity market activities. This includes electricity generation and retail supply, but also network owners and network operators, the SEM market operator and interconnector owners and operators. The licences contain detailed conditions which must be complied with by the licensee and which reflect both domestic policy and EU regulatory requirements.

While the provisions are generic to all CRU licences in respect of electricity market participants, it is likely that Part 4 is aimed principally at:

- the network owners/operators whose licences contain provisions dealing with the functioning of the SEM (including on a harmonised basis with NI)
- the SEM market operator who operates the SEM in conjunction with the NI market operator
- at interconnector owners/operators who are bound by EU rules on interconnector operations (capacity allocation, congestion, etc.) and who may be faced with dealing with revised access rules for interconnection with GB.

The provisions allow the CRU to modify a condition of a licence where, in consequence of the withdrawal of the UK from membership of the EU, the CRU considers it necessary or expedient to do so in order for the State to continue to comply with EU rules for cross-border trade in electricity or the Electricity Market Directive. This is a very broad power.

Before making a modification, the CRU is bound to consult with the licence holder, the Northern Ireland Authority for Utility Regulation and such other persons as the CRU thinks appropriate. The CRU is also required to notify consulted parties and publish the notification on the CRU website as soon as practicable after a modification

has been made.

There is a time limit on the CRU's power to modify licences under this section 14(B) of the legislation. The power may not be exercised after one year from the date the section comes into force.

Consistent with similar powers of modification introduced to implement and facilitate the operation of the Single Electricity Market, certain statutory procedural requirements which the CRU would ordinarily be bound to follow in order to effect licence modifications are expressly disappplied. For example the CRU's obligation to consider and address objections or representations and determine whether a public hearing is necessary have been disappplied.

Unlike more general licence modifications and in recognition of the strategic importance of the withdrawal arrangements, there is no recourse to the statutory Appeals Panel permitted as a consequence of the modifications. The judicial review provisions of the legislation would however seem to be preserved.

The modification powers would however need to be exercised in accordance with the many functions and duties of the CRU provided for in Ireland's Electricity Regulation Act 1999.

The section would also appear to override any terms and conditions of a licence which might conflict with the CRU power under section 14(B) and whether or not it would ordinarily be a matter for the SEM Committee.

The proposed legislation does not deal with new licences but it is however open to the CRU to specify the terms and conditions of the licence at the time of granting the licence. The proposed legislation does not deal with natural gas licences issued by it.

It is also interesting that the amendments do not seek to deal specifically with amendments to the legislation which may be necessary in the event that the SEM was not preserved on the island of Ireland.