

# Electricity Regulation 2021

Contributing editor  
John Dewar



**Publisher**

Tom Barnes

tom.barnes@lbresearch.com

**Subscriptions**

Claire Bagnall

claire.bagnall@lbresearch.com

**Senior business development manager**

Adam Sargent

adam.sargent@gettingthedealthrough.com

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# Electricity Regulation 2021

**Contributing editor****John Dewar**

Milbank LLP

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, John Dewar of Milbank LLP, for his continued assistance with this volume.



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For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

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# Ireland

Eoin Cassidy, Peter McLay and William Carmody  
Mason Hayes & Curran LLP

## LEGAL FRAMEWORK

### Policy and law

#### 1 | What is the government policy and legislative framework for the electricity sector?

The Minister for Communications, Climate Action and Environment (in the process of being redesignated as Climate Action, Communications Networks and Transport) is the member of the Irish government with responsibility for exercising executive power in relation to (among other things) the Irish electricity sector. A number of other statutory bodies have policy-related functions, including the Commission for Regulation of Utilities (CRU).

The Electricity Regulation Act 1999 (the 1999 Act) is the central piece of legislation governing the Irish electricity sector. The 1999 Act established the CRU and has been amended frequently since its passage to supplement the role, powers and duties of the CRU. The 1999 Act also provided for the issuance, by the CRU, of licences in relation to the generation and supply of electricity. The administration by the CRU of this licensing function and the supervision by the CRU of licensed activities (which have been extended to include transmission and distribution ownership and operation, and the operation of electricity interconnectors) form the basis for the competition that exists in the Irish electricity sector.

Irish government policy in the electricity sector tends to reflect EU energy policy, and recent Irish legislation tends to be driven by the requirement that relevant EU legislation be transposed into national law. Thus, the 1999 Act was enacted to give effect in Ireland to EU Directive 96/92/EC, which was itself enacted as part of the first EU energy package. The second and third EU energy packages have subsequently been transposed into Irish law, along with three out of the four directives from the EU 'clean energy package'. To further its goal, pursuant to the EU Renewable Energy Directive (2009/28/EC), to source 16 per cent of the country's total energy consumption from renewable energy sources by 2020, the Irish government set a 40 per cent target for renewable electricity. Verification of Ireland's performance against this target is awaited. The Irish government subsequently published its Climate Action Plan in June 2019, which included an increased renewable electricity target of 70 per cent by 2030.

A distinct local manifestation of Irish electricity policy was the commencement, on 1 November 2007, of trading in the Single Electricity Market (SEM), the wholesale electricity market through which most of the electricity generated and consumed on the 'island of Ireland' (encompassing the Republic of Ireland, together with Northern Ireland) is required to be traded.

Following a redesign in 2018 (the Integrated Single Electricity Market (I-SEM) project), the SEM includes day-ahead, intraday and balancing markets for energy, and a 'capacity remuneration mechanism', under which capacity support is allocated by auction. The

development of the energy trading arrangements within I-SEM was driven by the requirements of the network codes published under EU Regulation 714/2009 (which was also enacted as part of the third EU energy package).

The regulation and oversight of the SEM is complicated by the fact that its territory includes two separate legal jurisdictions. To ensure consistency of SEM regulation as between these jurisdictions, the electricity regulator in each jurisdiction retains exclusive regulatory authority in its particular jurisdiction (the CRU in the Republic of Ireland and the Northern Ireland Authority for Utility Regulation in Northern Ireland), but is required under local statute to discharge its SEM-related functions through a committee known as the SEM Committee, which has an identical constitution and membership in each jurisdiction. In Ireland the enduring arrangements underpinning these regulatory arrangements were given a statutory footing by way of amendments made to the 1999 Act in 2006 and 2007.

The latest comprehensive statement of the Irish government's energy policy is the Climate Action Plan, which was published in June 2019. Notably, in relation to electricity, the Climate Action Plan included ambitions to:

- deliver an 'early and complete' phase-out of coal- and peat-fired electricity generation;
- increase electricity generated from renewable sources to 70 per cent by 2030, indicatively comprised of at least 3.5GW of offshore renewable energy, up to 1.5GW of grid-scale solar energy and up to 8.2GW total of increased onshore wind capacity; and
- meet 15 per cent of electricity demand by renewable sources contracted under 'corporate power purchase agreements'.

In June 2020, a new government was formed, and the 'programme for government' reaffirmed the commitment to deliver at least 70 per cent renewable electricity by 2030. It lists a number of measures to achieve this, including but not limited to:

- holding the first Renewable Electricity Support System auction by the end of 2020, with further auctions being held on an annual basis thereafter;
- producing a 'whole of government' plan setting out how to deliver the 70 per cent target;
- building the Celtic Interconnector to connect Ireland's electricity grid to that of France; and
- continuing the procurement of ancillary system services under EirGrid's 'Delivering a Secure, Sustainable Electricity System' (DS3) programme.

## Organisation of the market

### 2 | What is the organisational structure for the generation, transmission, distribution and sale of power?

Prior to the liberalisation of the Irish electricity sector through the passage of the 1999 Act and the introduction of the generator licensing regime, substantially all electricity generation in Ireland was carried out by the Electricity Supply Board (ESB), a statutory body that is majority-owned by the Irish government, and in which its employees have a minority shareholding. However, it is now possible for any person to carry out the generation of electricity so long as they first obtain from the CRU a licence to generate electricity and an authorisation to construct the relevant generating station. A generator with nameplate capacity in excess of 10MW is required to participate as a generator in the SEM, while a generator with nameplate capacity of 10MW or less may elect to, but is not required to, participate in the SEM.

The Irish electricity system is small (with an all-time peak system demand of approximately 5,000MW), at least when compared to the scale of, for example, modern combined cycle gas turbine generators. The latest market figures published by the CRU (the Q2 2019 Electricity and Gas Retail Markets Report) states that at the end of Q2, the ESB was the largest generator of electricity in the SEM, with 30 per cent of total generation, followed by SSE Airtricity with 14 per cent and the Energia Group with 12 per cent.

While the market, therefore, remains relatively concentrated, a noteworthy trend in recent years has been the rapid increase in the amount of onshore wind generation connected to the Irish electricity system. There is now approximately 4,130MW (up from approximately 500MW as at the end of 2005), spread across a numerous and diverse set of owners – although the recent consolidation of development activities into a smaller subset of actors is also evident.

#### Transmission

Ownership and, separately, operation of the Irish electricity transmission system requires the holding of an appropriate licence issued by the CRU pursuant to the 1999 Act. The 1999 Act provides that a licence to own the transmission system may be issued only to the ESB, and that a licence to operate the transmission system may be issued only to EirGrid plc (wholly owned by the Irish government). The ESB and EirGrid plc regulate their relationship, in relation to the transmission system, by way of a contractual infrastructure agreement.

On 22 May 2013, EirGrid plc was certified by the CRU as the electricity transmission system operator (TSO) for Ireland for the purposes of Directive 2009/72/EC and Regulation 714/2009. This certification amounted to a finding that the arrangements for the ownership and operation of the Irish electricity transmission system satisfied the requirements of Directive 2009/72/EC in relation to the independence of transmission system operation from electricity generation and supply.

#### Distribution

Ownership and, separately, operation of the Irish electricity distribution system requires the holding of an appropriate licence issued by the CRU pursuant to the 1999 Act. The ESB is the licensed owner of the distribution system, and ESB Networks DAC, a wholly owned subsidiary of ESB, is the licensed distribution system operator (DSO).

#### Retail supply of electricity

Prior to the liberalisation of the Irish electricity sector through the passage of the 1999 Act and the introduction of the supplier licensing regime, the retail supply of electricity in Ireland was carried out by ESB. From February 2005, all Irish electricity customers were eligible to select an alternative electricity supplier, and initially the ESB's supply business was restricted in its ability to determine its retail

prices and thereby compete to win back customers. Following the achievement of what the CRU determined to be an adequate level of consumer switching, these pricing restrictions were removed for business customers in October 2010 and for domestic customers in April 2011. As a condition of this deregulation, the supply business of ESB – which, at Q1 of 2017, still enjoyed a majority share (51.16 per cent of the domestic electricity market, measured by consumption) – was rebranded as 'Electric Ireland'.

Any person may now carry out the retail supply of electricity in Ireland so long as they first obtain a licence from the CRU to supply electricity and accede to participation as a supplier in the SEM, which requires the provision to the market of appropriate collateral.

#### Capacity remuneration

From SEM go-live (November 2007) until I-SEM go-live (October 2018), participation as a generator in the SEM carried with it an entitlement to receive capacity payments in return for plant availability. The SEM regulators determined, for each calendar year, an Annual Capacity Payment Sum, which was distributed to SEM-participating generators throughout the year on a weighted basis reflecting the relative scarcity, and corresponding value, of generation capacity at various times.

Since I-SEM go-live, for a generator to receive remuneration for capacity, it must successfully bid in an auction and be awarded a contract for difference in regulated form. Broadly, the terms of the contract provide for the payment to the generator of a capacity fee (based on auction bids), but also require the generator to pay back any revenues earned in the energy market when prices exceed a regulated strike price. Auctions and contracts run on various timetables. 'T-1' auctions take place on an annual basis and allocate the regulated contracts in the year preceding the year in which it is to be effective. 'T-4' auctions also take place on an annual basis, but allocate regulated contracts approximately four years before they are to take effect – this lead time is intended to enable the construction of new generating capacity.

The latest T-1 auction was held in November 2019, in respect of the capacity year 2020/2021. The auction clearing price was €46,150 per megawatt. The latest T-4 auction was held in April 2020, in respect of the capacity year 2023/2024. The auction clearing price was €46,149 per megawatt.

#### System services

In its capacity as the operator of the Irish electricity transmission system, and with a view to increasing the percentage of instantaneous demand that may be securely served by intermittent generators, EirGrid plc is operating a programme of operational improvements known as DS3. The DS3 programme includes the procurement of technical system services, such as operating reserve, frequency response and ramping capabilities, from market participants that are capable of providing them.

The procurement of these system services is currently divided into 'Volume Capped' and 'Volume Uncapped' processes. The Volume Capped process has involved the awarding, during the course of 2019, of fixed-term contracts for a maximum period of six years and remuneration at rates based on the results of competitive auctions. It is anticipated that battery energy storage will secure the majority of these contracts. By contrast, the remuneration for Volume Uncapped services is based on regulated tariffs, which may be altered during the duration of the contract. Procurement of the Volume Uncapped services proceeds under a 'gate' cycle, whereby tenderers have six-monthly opportunities to enter the process. On 8 July 2020, the SEM Committee published a scoping paper asking for stakeholder views on the merits of moving to a more market-based and competitive procurement approach. The consultation process is due to close on 2 October 2020.

## REGULATION OF ELECTRICITY UTILITIES – POWER GENERATION

### Authorisation to construct and operate generation facilities

#### 3 | What authorisations are required to construct and operate generation facilities?

The electricity regulatory authorisation required to construct a generation facility is an 'authorisation to construct or reconstruct a generating station', issued by the Commission for Regulation of Utilities (CRU) pursuant to section 16 of the Electricity Regulation Act 1999 (the 1999 Act). The criteria to which the CRU may have regard in determining an application for such an authorisation are prescribed under the Electricity Regulation Act 1999 (Criteria for Determination of Authorisations) Order 1999 (SI No. 309 of 1999). Other authorisations such as planning permission are also required.

The electricity regulatory authorisation required to operate a generation facility is a licence to generate electricity issued by the CRU pursuant to section 14(1)(a) of the 1999 Act. Other operational permits such as an integrated pollution prevention and control licence may also be required.

Authorisations to construct and generation licences are typically issued by the CRU in a standard form, each of which is personalised only to the extent required to identify the relevant licence-holder and project. The 1999 Act includes a procedure, involving public consultation, under which the CRU may modify an issued authorisation or licence. The CRU modified the form of standard generation licence in 2007 in preparation for the commencement of trading in the Single Electricity Market (SEM), and then again in 2017 in preparation for the Integrated Single Electricity Market (I-SEM) go-live, although the CRU suspended the latter set of modifications following a challenge from a licence-holder.

Streamlined procedures also exist to facilitate the issuance of authorisations to construct and generation licences in respect of generators that are to have an installed capacity of 10MW or less. Of these, generators that are to have an installed capacity of 1MW or less automatically stand duly authorised and duly licensed, without the need for formal application to be made to the CRU.

### Grid connection policies

#### 4 | What are the policies with respect to connection of generation to the transmission grid?

Section 34 of the 1999 Act confers upon the CRU regulatory powers in respect of the connection of electricity generators to the transmission grid. Section 34 provides that where an application is made to the transmission system operator (TSO) for connection to or use of the transmission system, the TSO must (except where certain circumstances apply) offer to enter into an agreement for such connection or use, in accordance with directions given to the TSO by the CRU from time to time.

The CRU has used this power of direction to stipulate the required standard form of transmission connection and use of system agreements, as well as the approach required to be taken by the TSO to applications for connection. The most significant uses of this power have been:

- the approval of the basis upon which the system operators levy charges for the connection of parties to the electricity transmission and distribution systems. Each connecting party is generally responsible for meeting the cost of the construction of local connection assets, as designed by the system operators on a 'least cost technically acceptable' basis. Certain connection assets may be procured 'contestably', whereby the connecting party, rather than the system operators, is responsible for the construction of the relevant assets; and

- the establishment of the group processing approach (GPA) to connection applications, which was introduced by the CRU in 2004 and which limited the availability of connection to renewable generation projects that fell within the criteria specific for membership of the Gate 1 (370MW), Gate 2 (1,300MW) and Gate 3 (4,000MW) capacity tranches. A separate 2,000MW tranche of capacity was subsequently added to the Gate 3 programme for conventional (non-renewable) generation.

In March 2018, the CRU established a multiphase enduring connection policy (ECP) to replace the GPA. The second cycle of capacity allocation, ECP-2, was announced on 10 June 2020, and will consist of one 'batch' per year in September 2020, September 2021 and September 2022. The size of these batches will be determined by number of applications rather than aggregate megawatts. There is a target of 115 connection offers for each batch period consisting of (1) 85 projects for the generation, storage and other system services technology projects with a maximum export capacity exceeding 500kW, prioritised by largest renewable energy generation (for the first 25) and thereafter by date of planning permission grant; (2) 15 non-batch projects; and (3) 15 community-led projects.

Offshore wind grid connection is dealt with separately to the ECP process. To achieve the 3.5GW offshore wind energy target set out in the Climate Action Plan, the Irish government is seeking to establish a policy framework for the delivery model for offshore grid connection in alignment with the National Marine Planning Framework. Accordingly, the Department for Communications, Climate Action and the Environment published a consultation paper in June 2020 on a Grid Development Policy for Offshore Wind in Ireland. The consultation paper outlined four different options, ranging from a developer-led model (which is similar to the model used in Great Britain) to a plan-led model (which is similar to the model used in the Netherlands). The consultation closed on 22 July 2020.

### Alternative energy sources

#### 5 | Does government policy or legislation encourage power generation based on alternative energy sources such as renewable energies or combined heat and power?

Pursuant to the 1999 Act, the Minister and the CRU are required, when carrying out their duties, to have regard to the need to promote the use of 'renewable, sustainable or alternative forms of energy'. This category is defined as the production of electricity using, as the primary source of energy, any of wind, hydro, biomass, waste (including waste heat), biofuel, geothermal, fuel cells, tidal, solar and wave (or a combination of such sources).

### Public Service Obligation (PSO) support schemes

Under section 39 of the 1999 Act, the Minister is required to direct the CRU to impose 'public service obligations' upon electricity licence-holders, which may include such arrangements as are necessary to ensure the availability of electricity generated using 'renewable, sustainable or alternative forms of energy' or that operate as combined heat and power plants.

This PSO mechanism was used to establish three renewable energy feed-in tariff (REFIT) support schemes. Each of these schemes operated by paying, to the off-taker of a supported power purchase agreement with a renewable generator, a feed-in tariff reflecting the difference between the wholesale electricity price and the technology-specific price guaranteed to the generator under the REFIT scheme. The last of the schemes, REFIT 3, closed to new applicants on 31 December 2015. REFIT support for an eligible project will expire after 15 years or at 31 December 2032, whichever occurs first.

In July 2018, following an earlier consultation exercise, the Department of Communications, Climate Action and Environment (as it was then known) announced its intention to establish a new Renewable Electricity Support Scheme (RESS), and published an accompanying high-level design paper. The RESS is intended to operate by allocating long-term two-way contracts for difference that will support the payment of fixed per megawatt hour prices (on a 'pay as bid' basis) to projects that are successful in RESS auctions. State aid approval was obtained in time for bidding in the first RESS auction in July 2020, and the announcement of the final results and notices of awards are scheduled for early and late September 2020 respectively.

## Planning

The Planning and Development Act 2000 allows an enhanced approval procedure for planning applications for wind farms with more than 25 turbines or an output of greater than 50MW, where the Planning Appeals Board considers that the project is of strategic, economic or social importance, contributes substantially to fulfilling the National Spatial Strategy or regional planning guidelines or would have a significant effect on the area of more than one planning authority. In 2006, the Department of Environment, Heritage and Local Government (as it then was) published Wind Energy Development Guidelines, which set the national policy context to be applied by planning authorities in the determination of planning applications for wind farms.

In December 2019, new draft Wind Energy Development Guidelines, which are intended to replace the 2006 Guidelines, were published by the Minister for Housing, Planning, Community and Local Government. The draft revisions were open to public consultation until February 2020. The key aspects of the draft approach are the following.

- New noise restriction limits of a relative rated noise limit of 5dB(A) above existing background noise within the range of 35–43dB(A) for both day and night, with 43dB(A) being the maximum noise limit permitted. The Guidelines propose a potential penalty of up to 11dB(A) for specific noise with tonal or amplitude modulation characteristics, with the result that wind farm developments with these specific noise characteristics would not be able to operate without mitigation measures. The Guidelines also specify a threshold for low frequency noise, beyond which a turbine will be required to be shut down.
- For visual amenity purposes, each turbine should be set back from the curtilage of a residential property by a distance of at least four times its tip height, subject to a mandatory minimum setback of 500 metres. Where the owner or occupier of such a residential property agrees to a lower setback distance, an exception can be permitted, but the requirement to comply with the noise requirements outlined above will continue to apply to such a residential property.
- The adoption of technology that will shut off each wind turbine automatically to eliminate any shadow flicker.
- Developers of wind energy developments must be required to engage in active public consultation with the local community in advance of the planning process, and there will be a requirement to submit a community report as part of that planning process outlining how the concerns of the community in relation to the development have been accommodated in the final proposed development. Furthermore, the community report must detail how the local community have been offered an opportunity to obtain an enduring economic or social benefit from the proposed development.
- No works in respect of the primary wind energy development, which will require an environmental impact assessment to be conducted, will be permitted unless the grid connection element of the project has also obtained a grant of planning permission.

The June 2020 'programme for government' indicates that the finalisation and publication of the Guidelines is a priority for the new government. That programme also proposes the establishment of a dedicated Environmental and Planning Law Court, along the lines of the dedicated Commercial Court that operates in Ireland. It is considered that such a dedicated court could assist in reducing the often lengthy delays occasioned by litigation of planning decisions in the Irish courts. The programme for government also flags the potential for some reform of the judicial review process, although it stops short of making any detailed proposal in that regard.

## Priority dispatch

Ireland was previously required, pursuant to the EU Renewable Energy Directive (2009/28/EC), to ensure that transmission and distribution system operators 'guarantee the transmission and distribution of electricity produced from renewable energy sources'. This obligation has been transposed into Irish law as a duty upon the TSO and distribution system operator to, when dispatching generating units, 'give priority to generating units using energy from renewable sources in so far as the secure operation of the electricity system permits', and was also reflected in:

- the dispatch obligations imposed upon the TSO in its TSO licence and in the Grid Code;
- rules imposed upon the TSO by the CRU for the dispatch of plant in 'tie-break scenarios'; and
- the ability of renewable generators to register as 'price taking generation' in the SEM (thereby providing preferential access to the SEM market schedule).

However, under the EU clean energy package, priority dispatch is removed for new generators that have contracts concluded on or after 4 July 2019, except for limited exemptions. The CRU is currently implementing this rule change, including specifying the contracts whose conclusion defines the priority dispatch entitlement.

## Climate change

### 6 What impact will government policy on climate change have on the types of resources that are used to meet electricity demand and on the cost and amount of power that is consumed?

In June 2019, the Irish government published its Climate Action Plan, which includes the stated government intention to:

- deliver an 'early and complete' phase-out of coal- and peat-fired electricity generation; and
- increase electricity generated from renewable sources to 70 per cent by 2030, indicatively comprised of at least 3.5GW of offshore renewable energy, up to 1.5GW of grid-scale solar energy and up to 8.2GW total of increased onshore wind capacity.

The RESS is anticipated to be the key policy lever by which new renewable generation capacity is to be delivered towards this target. RESS support will be priced according to the results of auctions, on a pay-as-bid basis, which makes its cost difficult to predict ahead of time.

The Irish Government is also seeking to reduce the amount of power that is consumed, through the implementation of the National Energy Efficiency Action Plan that Ireland maintains pursuant to the EU Energy Efficiency Directive (2012/27/EU). The 2020 energy efficiency target equates to a 20 per cent reduction in final overall energy demand based on the average energy demand during the period 2001 to 2005, with the public sector expected to play an exemplar role by working towards a 33 per cent reduction target – although it should be noted that these targets apply to overall energy demand and not just the demand for electricity.

## Storage

### 7 | Does the regulatory framework support electricity storage including research and development of storage solutions?

The Irish electricity regulatory framework does not currently recognise electricity storage as a licensable activity in its own right. Absent this recognition, the business of an entity engaged in the storage of electricity falls to be regulated on the basis of the separate licensable activities that this business entails: in particular, the supply and generation of electricity. Specific treatment of batteries and pumped storage units was, however, introduced into the wholesale electricity market rules as part of I-SEM go-live. A recent consultation of the CRU has noted that storage providers pay both demand-related network charges and general-related network charges (GTUOS) and has proposed a revised interim approach (eliminating the requirement to pay GTUOS) pending a full review of the network tariff structure later in 2020.

## Government policy

### 8 | Does government policy encourage or discourage development of new nuclear power plants? How?

It is noted in the 2015 energy white paper that nuclear power generation in Ireland is currently prohibited by legislation. This may be a reference to section 18(6) of the 1999 Act, which prohibits the Minister from providing for nuclear fission in any order by which the Minister directs the CRU as to how it determines whether or not to grant an authorisation to construct a generation station. An order of this type was made in 1999, but does not refer explicitly to nuclear fission. A more effective prohibition is set out in section 37K of the Planning and Development Act 2000, which provides that nothing in that Act shall be construed as enabling the authorisation of development that consists of an installation for the generation of electricity by nuclear fission.

## REGULATION OF ELECTRICITY UTILITIES – TRANSMISSION

## Authorisations to construct and operate transmission networks

### 9 | What authorisations are required to construct and operate transmission networks?

Pursuant to the European Communities (Internal Market in Electricity) Regulations 2000 to 2009, functions and duties in relation to the Irish electricity transmission system are borne by each of EirGrid plc, as transmission system operator (TSO), and the Electricity Supply Board (ESB), as owner (transmission asset owner (TAO)). Each bears a degree of responsibility for the construction and operation of the transmission system. Accordingly, the electricity regulatory authorisations required to construct and operate the Irish electricity transmission network are both: the licence to discharge the functions of the transmission system operator, issued by the Commission for Regulation of Utilities (CRU) pursuant to section 14(1)(e) of the Electricity Regulation Act 1999 (the 1999 Act); and the licence to discharge the functions of the transmission system owner, issued by the CRU pursuant to section 14(1)(f) of the 1999 Act.

The 1999 Act provides that a licence to own the transmission system may be issued only to the ESB, and that a licence to operate the transmission system may be issued only to EirGrid plc. However, under limited circumstances the CRU may also permit another person to construct a 'direct line'.

## Eligibility to obtain transmission services

### 10 | Who is eligible to obtain transmission services and what requirements must be met to obtain access?

Section 34 of the 1999 Act imposes upon the TSO a duty to offer to enter into an agreement for connection to or use of the Irish electricity transmission system, where an application for such connection or use is made by any person. However, in considering such an application or entering into such an agreement, the TSO is obliged to comply with directions given by the CRU. The CRU has made extensive use of its powers to issue these directions, with the result that connection policy is one of the most extensively regulated areas of the Irish electricity sector.

As a starting point, section 34 provides that a connecting party should be the holder of an electricity licence or authorisation issued pursuant to the 1999 Act, or should be an 'eligible customer'. However, the requirements that must be met to apply for, obtain and maintain access to the electricity transmission system are set out across a number of sources, including the Grid Code, CRU decision papers, electricity licences and the forms of connection and use of system agreement that have been approved by the CRU.

The TSO is required to prepare and maintain a Grid Code, governing the technical aspects relating to connection to and operation of the Irish electricity transmission system, and with which each connected party is obliged to comply. To facilitate the integrated operation of the Single Electricity Market, certain sections of the Grid Code – relating primarily to scheduling and dispatch – are governed jointly by the TSO and SONI Limited, the operator of the Northern Irish transmission system.

## Government transmission policy

### 11 | Are there any government measures to encourage or otherwise require the expansion of the transmission grid?

Pursuant to the 1999 Act, the Minister and the CRU are required, when carrying out their duties, to have regard to the need to secure that 'all reasonable demands by final customers of electricity for electricity are satisfied'. The TSO is obliged, both by legislation and by the terms of its TSO licence, to develop, if necessary, the transmission system with a view to ensuring that all reasonable demands for electricity are met, and to plan the long-term ability of the transmission system to meet reasonable demands for the transmission of electricity. The TAO receives a regulated rate of return on transmission assets, which suggests that expansion is not likely to occur without the approval of the CRU.

## Rates and terms for transmission services

### 12 | Who determines the rates and terms for the provision of transmission services and what legal standard does that entity apply?

Under the 1999 Act the TSO is required to prepare, from time to time, a statement of the basis upon which charges for providing transmission services (namely, connection to and use of the electricity transmission system) are imposed, which statement must then be approved by the CRU. The CRU may also give directions to the TSO in relation to the charging basis that must be adopted.

A charge for connection to or use of the transmission system is required to be calculated so as to enable the TSO to recover an 'appropriate proportion' of the costs directly or indirectly incurred in carrying out any necessary works, and a 'reasonable rate of return' on the capital represented by such costs. The CRU determines what constitutes such an 'appropriate proportion' and a 'reasonable rate of return'.

Under the CRU's current approach to charging policy, the CRU conducts a price review that sets the transmission revenue that can be collected from connected customers during each successive five-year

period. The current price review period relates to the calendar years 2016–2020 (inclusive). Within each price review period, tariffs are set annually by the CRU on a basis that includes adjusting for over- or under-recovery of transmission revenues in previous tariff periods. In practice, and in recognition that approved transmission revenues will be shared between the parties, both the TSO and the TAO participate in the regulatory price review process.

In offering to enter into an agreement for connection to or use of the Irish electricity transmission system, the TSO is obliged to comply with directions given by the CRU. The CRU has used this power to approve the forms of agreement for connection to or use of the transmission system that are required to be offered by the TSO to new and existing customers. The TSO is not permitted to discriminate unfairly between persons or classes of persons when providing for use of the transmission system or where offering terms for the carrying out of works for the purpose of connection to the transmission system.

### Entities responsible for grid reliability

#### 13 Which entities are responsible for the reliability of the transmission grid and what are their powers and responsibilities?

These responsibilities are shared between the TSO, the TAO and the CRU. The TSO is obliged, both by legislation and by the terms of its TSO licence, to operate and ensure the maintenance of and, if necessary, develop a safe, secure, reliable, economical and efficient electricity transmission system. The TAO is, in turn, obliged to maintain the transmission system and to provide to the TSO such information as the TSO requires to ensure the secure operation of the transmission system. The discharge of these responsibilities, among other things, is governed by the Infrastructure Agreement in place between EirGrid plc and the ESB.

The CRU is obliged by law to monitor the security of supply of electricity, which includes the monitoring of the quality and level of maintenance of the transmission networks and taking such measures as it considers necessary to protect security of supply. The CRU has a general power to monitor and enforce the compliance by licensed parties with the terms of their respective licences, which includes the supervision of the performance of the TSO and TAO obligations referred to above.

## REGULATION OF ELECTRICITY UTILITIES - DISTRIBUTION

### Authorisation to construct and operate distribution networks

#### 14 What authorisations are required to construct and operate distribution networks?

Functions and duties in relation to the Irish electricity distribution system are borne by each of the Electricity Supply Board (ESB) Networks DAC, as distribution system operator, and the ESB, as distribution system owner (DAO). Each bears a degree of responsibility for the construction and operation of the distribution system. Accordingly, the electricity regulatory authorisations required to construct and operate the Irish electricity distribution network are both: the licence to discharge the functions of the distribution system operator, issued by the Commission for Regulation of Utilities (CRU) pursuant to section 14(1)(g) of the Electricity Regulation Act 1999 (the 1999 Act); and the licence to discharge the functions of the distribution system owner, issued by the CRU pursuant to section 14(1)(k) of the 1999 Act.

The 1999 Act provides that a licence to own the distribution system may be issued only to the ESB, and that a licence to operate the distribution system may be issued only to the ESB or a subsidiary of the ESB. However, under limited circumstances the CRU may also permit another person to construct a 'direct line'.

### Access to the distribution grid

#### 15 Who is eligible to obtain access to the distribution network and what requirements must be met to obtain access?

Section 34 of the 1999 Act imposes on the distribution system operator (DSO) a duty to offer to enter into an agreement for connection to or use of the Irish electricity distribution system, where an application for such connection or use is made by any person. However, in considering such an application or entering into such an agreement, the DSO is obliged to comply with directions given by the CRU. The CRU has made extensive use of its powers to issue these directions, with the result that connection policy is one of the most extensively regulated areas of the Irish electricity sector.

As a starting point, section 34 provides that a connecting party should be the holder of an electricity licence or authorisation issued pursuant to the 1999 Act, or should be an 'eligible customer'. However, the requirements that must be met to apply for, obtain and maintain access to the electricity distribution system are set out across a number of sources, including the Grid Code, the CRU decision papers, electricity licences and the forms of connection and use of system agreement that have been approved by the CRU.

ESB Networks DAC maintains a separate Distribution Code governing the technical aspects relating to connection to and the operation of the Irish electricity distribution system.

### Government distribution network policy

#### 16 Are there any governmental measures to encourage or otherwise require the expansion of the distribution network?

Pursuant to the 1999 Act, the Minister and the CRU are required, when carrying out their duties, to have regard to the need to secure that 'all reasonable demands by final customers of electricity for electricity are satisfied'. The DSO is obliged, both by legislation and by the terms of its DSO licence, to develop, as necessary, the distribution system with a view to ensuring that all reasonable demands for electricity are met. The DAO receives a regulated rate of return on distribution assets, which suggests that expansion is not likely to occur without the approval of the CRU.

### Rates and terms for distribution services

#### 17 Who determines the rates or terms for the provision of distribution services and what legal standard does that entity apply?

Under the 1999 Act, the DSO is required to prepare, from time to time, a statement of the basis upon which charges for the provision of distribution services (namely, connection to and use of the electricity distribution system) are imposed, which statement must then be approved by the CRU. The CRU may also give directions to the DSO in relation to the charging basis that must be adopted.

A charge for connection to or use of the distribution system is required to be calculated so as to enable the DSO to recover an 'appropriate proportion' of the costs directly or indirectly incurred in carrying out any necessary works, and a 'reasonable rate of return' on the capital represented by these costs. The CRU determines what constitutes such an 'appropriate proportion' and a 'reasonable rate of return'.

Under the CRU's current approach to charging policy, the CRU conducts a price review that sets the distribution revenue that can be collected from connected customers during each successive five-year period. The current price review period relates to the calendar years 2016–2020 (inclusive). Within each price review period, tariffs are set annually by the CRU on a basis that includes adjusting for over- or

under-recovery of distribution revenues in previous tariff periods. In practice, and in recognition that approved distribution revenues will be shared between the parties, both the DSO and the DAO participate in the regulatory price review process.

In offering to enter into an agreement for connection to or use of the Irish electricity distribution system, the DSO is obliged to comply with directions given by the CRU. The CRU has used this power to approve the forms of agreement for connection to or use of the distribution system that are required to be offered by the DSO to new and existing customers. The DSO is not permitted to discriminate unfairly between persons or classes of persons when providing for use of the distribution system or where offering terms for the carrying out of works for the purpose of connection to the distribution system.

## REGULATION OF ELECTRICITY UTILITIES – SALES OF POWER

### Approval to sell power

18 | What authorisations are required for the sale of power to customers and which authorities grant such approvals?

The electricity regulatory authorisation required to sell power to customers, whether commercial or domestic, is a licence to supply electricity to eligible customers, issued by the Commission for Regulation of Utilities (CRU) pursuant to section 14(1)(b) of the Electricity Regulation Act 1999. While 'eligible customer' was originally defined by reference to a minimum annual consumption volume, this limit has now been removed and any customer is now an 'eligible customer'.

### Power sales tariffs

19 | Is there any tariff or other regulation regarding power sales?

The CRU does not currently limit or direct the retail prices that may be charged by Irish electricity suppliers.

However, the CRU has a general power to monitor and enforce the compliance by each licensed electricity supplier with the terms of its supply licence. Each supplier serving domestic customers is required to comply with a number of Codes of Practice published by the CRU, including in relation to billing, disconnection, marketing, complaints handling, prepayment meters and vulnerable customers.

### Rates for wholesale of power

20 | Who determines the rates for sales of wholesale power and what standard does that entity apply?

Following the Integrated Single Electricity Market (I-SEM) go-live, the prices payable for sales of wholesale electricity in the Single Electricity Market (SEM) are established by the interaction of bidding and regulated processes in three separate temporal markets: the day-ahead market administered by 'SEM0px' (a contractual joint venture between EirGrid plc and SONI Limited); the intraday market, also administered by SEM0px; and the balancing market, which is administered by the 'sem-o' contractual joint venture between EirGrid plc and SONI Limited under which the SEM has been operated since its inception.

Participation by generators and off-takers in the day-ahead and intraday markets is voluntary, while market participants are 'balance responsible' and their participation in the balancing market is therefore compulsory. At I-SEM go-live, SEM0px was the only 'nominated electricity market operator' (as defined in EU legislation) operating day-ahead and intraday electricity markets for Ireland and Northern Ireland although this role is, under law, open to competition.

To mitigate perceived market power, certain generators are also obliged to issue a suite of contracts for differences, known as 'directed contracts'. The terms of these contracts, including the strike prices

against the day-ahead market price, are set by the CRU and the Northern Ireland Authority for Utility Regulation. Entry into directed contracts is open to electricity suppliers.

### Public service obligations

21 | To what extent are electricity utilities that sell power subject to public service obligations?

Each electricity supplier that supplies electricity to domestic or small business customers bears an obligation, set out in its supply licence, to offer to enter into a supply contract upon receiving any reasonable request from a potential customer. It is also required, if designated by the CRU, to act as supplier of last resort.

## REGULATORY AUTHORITIES

### Policy setting

22 | Which authorities determine regulatory policy with respect to the electricity sector?

The Minister for Communications, Climate Action and Environment (in the process of being redesignated as Climate Action, Communications Networks and Transport) has overall policy responsibility for the electricity sector. However, the Commission for Regulation of Utilities (CRU) is responsible for day-to-day regulation of the sector. The CRU is required to discharge its SEM-related functions through a committee known as the Single Electricity Market (SEM) Committee, made up of three individuals appointed by the CRU, three individuals appointed by the Northern Ireland Authority for Utility Regulation, an independent member and a deputy independent member.

### Scope of authority

23 | What is the scope of each regulator's authority?

The many functions and duties of the CRU are set out in section 9 of the Electricity Regulation Act 1999 (the 1999 Act) and, in relation to electricity, include establishing arrangements for trading in electricity, monitoring retail market opening and customer switching, granting, enforcing and revoking electricity licences and acting as Ireland's national regulatory authority for the purposes of Directive 2009/72/EC (concerning common rules for the internal market in electricity).

The CRU has, since 2006, had the power to take all necessary steps to establish and facilitate the operation of the SEM. In June 2016 this power was extended to include the amendments to the SEM that were made by way of the Integrated Single Electricity Market (I-SEM) project.

### Establishment of regulators

24 | How is each regulator established and to what extent is it considered to be independent of the regulated business and of governmental officials?

The CRU was established under the 1999 Act, stands as a statutory body and is funded by a levy imposed on energy undertakings and other regulated entities. The minister is responsible for the appointment of each member of the CRU, and retains the power to give general policy directions to the CRU (as well as specific directions in relation to certain other, specified matters). The minister is not, however, permitted to give general policy directions to the CRU in relation to SEM matters.

## Challenge and appeal of decisions

### 25 | To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?

Decisions of the CRU on the granting of an electricity supply or generation licence under section 14 or an authorisation to construct a generating station under section 16 of the 1999 Act, and decisions of the CRU on modification of the terms of these licences or authorisations already granted, can be appealed within 28 days of making the decision by requesting that the minister establish an appeal panel. Such an appeal panel has all the powers and duties of the CRU that are necessary to determine the issue. The first such appeal panel was constituted in 2018, and in July 2018 it found in favour of two licence holders who had challenged the CRU's purported amendment of their licences as part of the I-SEM project, and directed the CRU not to make the proposed modifications.

The 1999 Act also provides for application for judicial review, through order 84 of the Rules of the Superior Courts, of certain decisions of the CRU. Such an application must, except in exceptional circumstances, be made within two months of the decision in question, which is a shorter period than the three-month period that is set out in order 84 itself. It is likely that the general principles of Irish administrative law, including the right to apply for leave to apply for judicial review within that longer three-month period, apply to decisions of the CRU that are not explicitly listed in this part of the 1999 Act.

## ACQUISITION AND MERGER CONTROL – COMPETITION

### Responsible bodies

### 26 | Which bodies have the authority to approve or block mergers or other changes in control over businesses in the sector or acquisition of utility assets?

Merger control in Ireland is, in general, a matter for the Competition and Consumer Protection Commission (CCPC). The CRU also has a separate power to revoke an electricity licence if a change in control has left the licence controlled by parties without adequate 'technical, financial or managerial strength'.

### Review of transfers of control

### 27 | What criteria and procedures apply with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or blocking the transaction?

The primary legislation governing this area is the Competition Act 2002 (as amended) (the Competition Act). The Competition Act requires that mergers, takeovers and joint ventures be notified to the CCPC for approval if the aggregate turnover in the state of the parties involved is not less than €60 million and at least two of the parties involved have turnover in the state of not less than €10 million.

The CCPC reviews transactions to see whether they would 'substantially lessen competition' in any market for goods or services in the state. This test is concerned solely with competition issues, ignoring employment, regional development, etc. The notification of a merger to the CCPC is mandatory where the thresholds in the Competition Act are met. Therefore, a proposed transaction cannot be implemented until the CCPC has issued a clearance determination in respect of the transaction, or where the statutory waiting period has elapsed without the CCPC having issued a clearance determination. Where competition issues arise, this clearance determination may have conditions attached (for example, the divestment of a specific part of the business or providing third parties with access to essential facilities).

There are two possible phases for the CCPC's investigation. During Phase I, the CCPC must make a decision within 30 working days. However, should the parties offer commitments during Phase I to assuage any competition concerns, the time period is extended to 45 working days. These time periods may be extended if the CCPC issues a formal request for information (RFI), which will stop the clock and reset it to day one when the parties respond in full to the RFI. The vast majority of transactions are dealt with in Phase I and the average time for dealing with a Phase I transaction in 2019 was 28 working days.

If the matter moves to Phase II, the CCPC has 120 working days from the original receipt of the notification or, if the CCPC has issued an RFI in Phase I, from the receipt of full responses to the Phase I RFI, which may be extended to 135 working days if the parties offer commitments. If the CCPC issues a formal RFI within 30 working days of opening Phase II, this time period is suspended until the parties respond in full to the RFI.

On 1 July 2020, the CCPC's simplified merger notification procedure regime was commenced. The simplified procedure applies to certain categories of transactions that are unlikely to raise competition concerns. It is hoped that the simplified procedure will reduce the review period for non-complex transactions.

## Prevention and prosecution of anticompetitive practices

### 28 | Which authorities have the power to prevent or prosecute anticompetitive or manipulative practices in the electricity sector?

The CCPC is responsible for the enforcement of competition law in Ireland. The CCPC can undertake an investigation either on its own initiative or on foot of a complaint. Private parties can also take civil actions against other private parties in the Irish courts for breaches of the Competition Act.

Under the Electricity Regulation Act 1999, the CRU must have regard to the need to promote competition in the supply of electricity. The CRU must also monitor licensees to ensure that they comply with licence conditions. Under the terms of the standard licence to supply electricity, a dominant supplier is prohibited from predatory pricing or discrimination in supply.

The CCPC has an agreement in place with the CRU to facilitate cooperation in the performance of their respective functions in so far as they relate to issues of competition between undertakings.

Regarding the Single Electricity Market, any abuse of a dominant position in the market, or any arrangement with the object or effect of distorting competition, would, by definition, affect a market in more than one member state (at the very least, Ireland and the UK) and would therefore come within the scope of articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). Under Regulation 1/2003 the Irish courts (as a national competition authority) have the authority to apply articles 101 and 102 TFEU.

## Determination of anticompetitive conduct

### 29 | What substantive standards are applied to determine whether conduct is anticompetitive or manipulative?

Competition law in Ireland mirrors EU competition law.

Section 4(1) of the Competition Act (implementing article 101 TFEU) prohibits agreements, decisions or concerted practices that have as their object or effect the prevention, restriction or distortion of competition (eg, price fixing, market sharing or limiting production). Similar to the TFEU, Irish law also provides for the 'efficiency defence' where it can be demonstrated that the agreement or arrangement actually contributes to improving the production or distribution of goods or services or to promoting technical or economic progress, while allowing

consumers a fair share of the resulting benefit. The efficiency defence can be applied only on condition that the competition restrictions are indispensable and substantial competition will not be eliminated.

Section 5 of the Competition Act (implementing article 102 TFEU) prohibits the abuse of a dominant position. Generally, a firm is considered to be dominant if it enjoys a position of economic strength that gives it the power to act, to an appreciable extent, independently of its customers or its rivals. Section 5 is not necessarily breached when a firm's vigorous competition takes sales away from less efficient rivals, as this is competition working properly. The examples of abuses provided under the Competition Act are identical to those under article 102 TFEU.

### Preclusion and remedy of anticompetitive practices

#### 30 | What authority does the regulator (or regulators) have to preclude or remedy anticompetitive or manipulative practices?

The CCPC has extensive powers of investigation, which include the ability to conduct dawn raids or to compel individuals to give evidence under oath. However, the CCPC, unlike the European Commission, does not currently have the power to adopt its own binding decisions or to unilaterally impose fines. This position is due to change with the implementation of EU Directive 1/2019 (the ECN+ Directive), which is due to be transposed into Irish law by 4 February 2021. Under the ECN+ Directive, EU member states will be required to give their national competition authorities adequate investigative and fining powers. In January 2019, the CCPC confirmed that it will introduce a system of administrative civil fines of up to 10 per cent of worldwide turnover for competition infringements.

In Ireland, businesses or individuals that breach competition law may be subject to civil or criminal sanctions. In the case of the most serious types of anticompetitive conduct, criminal fines and prison sentences, on conviction on indictment, are as follows:

- a business can be fined up to €5 million or 10 per cent of its annual business turnover, whichever is greater; and
- an individual can be fined up to €5 million or 10 per cent of his or her annual individual turnover, whichever is greater. In the case of hard core cartel infringements under Section 6(2) of the Competition Act, an individual can also be imprisoned for up to 10 years.

## INTERNATIONAL

### Acquisitions by foreign companies

#### 31 | Are there any special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies?

No, except to the extent that, as set out in Directive 2009/72/EC (or, after 1 January 2021, as set out in Directive 2019/944/EC), the European Commission retains a certifying role in relation to any proposed acquisition of a European transmission network business by a non-EU entity.

### Authorisation to construct and operate interconnectors

#### 32 | What authorisations are required to construct and operate interconnectors?

The electricity regulatory authorisation required to construct an interconnector is an 'authorisation to construct an interconnector', issued by the Commission for Regulation of Utilities (CRU) pursuant to section 16 of the Electricity Regulation Act 1999 (the 1999 Act). The electricity regulatory authorisation required to operate an interconnector is a licence to 'transport electricity across and maintain an interconnector' issued

by the CRU pursuant to section 14(1)(i) of the 1999 Act. Following a series of consultations in 2018, the CRU published a Policy for Electricity Interconnectors in which it listed its assessment criteria for electricity interconnection applications, encompassing technical, economic and regulatory criteria. In addition to this, the CRU has consulted on the regulatory treatment of specific interconnector projects, namely the Celtic Interconnector (which will connect Ireland to France) and the Greenlink Interconnector (which will connect Ireland to Wales).

### Interconnector access and cross-border electricity supply

#### 33 | What rules apply to access to interconnectors and to cross-border electricity supply, especially interconnection issues?

The Irish electricity transmission system is currently linked with that of Northern Ireland by a twin circuit 275kV AC connection. Since the establishment of the Single Electricity Market (SEM), arrangements for access to this interconnection have been subsumed into the unified dispatch of the all-island transmission networks, meaning that this interconnection capacity is allocated by means of an implicit auction.

EirGrid and SONI are jointly planning a major cross-border electricity transmission development between the existing high-voltage transmission networks of Ireland and Northern Ireland. The proposed interconnector is a 400kV overhead line circuit linking the existing 400kV substation in Woodland, County Meath, Ireland with a planned substation in Turleenan, County Tyrone, Northern Ireland – the 'North-South 400kV Interconnection'. As with the existing twin-circuit connection, it is proposed that the capacity of the new interconnection will be allocated by means of an implicit auction.

EirGrid Interconnector DAC, a member of the EirGrid group, owns a 500MW high voltage direct current interconnector running between Ireland and Wales, known as EWIC. From the Integrated Single Electricity Market go-live, access to the EWIC has been facilitated through the sale and purchase of financial transmission rights.

Two further high-profile Irish interconnector projects currently under development are: the 700MW Celtic Interconnector, proposed to run between County Cork and Brittany, France, currently being developed as a joint venture between EirGrid and Réseau de Transport d'Électricité, the French transmission system operator; and the 500MW Greenlink interconnector, proposed to run between Great Island, County Wexford and Pembroke, Wales, currently being developed by Greenlink Interconnector Limited (a private consortium).

## TRANSACTIONS BETWEEN AFFILIATES

### Restrictions

#### 34 | What restrictions exist on transactions between electricity utilities and their affiliates?

The standard electricity supply licence provides that where the licensee is in a dominant position in the market for the supply of electricity, and the licensee also owns a generation business, it is not permitted to give or receive cross-subsidies between the licensee's electricity supply business and any other business of the licensee or of an affiliate or related undertaking of the licensee. A similar restriction is contained in the standard electricity generation licence.

General principles of competition law, relating to transactions between dominant companies and their affiliates, are also relevant.

## Enforcement and sanctions

### 35 | Who enforces the restrictions on utilities dealing with affiliates and what are the sanctions for non-compliance?

According to the Electricity Regulation Act 1999, it is the responsibility of the Commission for Regulation of Utilities (CRU) to enforce the terms and conditions of a supply or generation licence. Ultimately, the CRU has the power to revoke a licence if the licensee fails to comply with a direction, a determination or an order.

## UPDATE AND TRENDS

### Key developments of the past year

#### 36 | Are there any emerging trends or hot topics in electricity regulation in your jurisdiction?

The likely consequences of Brexit, for Ireland's wholesale and retail electricity markets, remain uncertain.

The Single Electricity Market (SEM) is the wholesale electricity market for both of the separate jurisdictions of Ireland and Northern Ireland. As a consequence of Brexit, one of these jurisdictions – Northern Ireland – will cease to be part of a member state of the European Union. While the SEM has been developed in a manner consistent with EU energy legislation, the same legislation does not make clear provision for the consequences of Brexit.

If Brexit occurs pursuant to an agreement between the United Kingdom and the remaining EU member states, such an agreement will likely legislate for these consequences. The latest draft withdrawal agreement contemplates the continued application, in Northern Ireland, of EU energy law, and the preservation of the SEM.

If Brexit is not governed by such an agreement (a no-deal Brexit), these consequences remain uncertain, although the European Commission (through D-G Energy) issued a notice to stakeholders in April 2018 that stated that:

*'[as] of the withdrawal date, United Kingdom based operators will cease to participate in the single allocation platform for forward interconnection capacity, the European balancing platforms and the single day-ahead and intraday coupling.'*

Ireland maintains several physical electrical links with the United Kingdom: namely, the EWIC and also a number of relatively low-capacity 'tie lines' that span the border between Ireland and Northern Ireland (the more substantial North-South 400kV Interconnection is under development). While the EWIC is regulated as an EU interconnector (including in relation to EU price coupling), the allocation of capacity across the tie lines occurs implicitly under the aligned dispatch arrangements between the Irish and Northern Irish transmission system operators.

The latest guidance from the Commission for Regulation of Utilities (CRU) and the Single Electricity Market (SEM) Committee (issued in March 2019) states that in the event of a no-deal Brexit, both the trade of electricity within the SEM, and the trade of electricity between Ireland and Great Britain across the EWIC, will continue. However, the trade in electricity with Great Britain 'may be less efficient, as some platforms operated under EU rules may not be used in the same way as today'. This echoes the EU's guidance that UK operators will cease to participate in market coupling. The CRU and the SEM Committee maintain that while Great Britain will no longer participate in European day-ahead market coupling, '[trade] with Great Britain will continue, unaffected, in the intraday markets'.

These statements are clearly only intended as high-level indications of the regulatory structure that is anticipated post-Brexit. Subsequent,

more detailed regulatory and legal instruments will be required before a clear position is established.

The UK officially left the EU on 31 January 2020 and entered into an 11-month transition period that, now that the 30 June 2020 deadline for extension has passed, is due to end on 31 December 2020.

## Coronavirus

### 37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

As a highly infectious respiratory disease, the effects of covid-19 and the public health response have been felt most keenly in those sectors that are most exposed to the movement of humans. The energy sector occupies a middle ground – the physical transformations that generate value are, under 'business as usual' scenarios, largely carried out without direct human intervention. Human involvement is, of course, more concentrated in certain parts of the energy sector, such as construction and maintenance of generation assets, and the sales and service element of the supply function.

In March 2020, the Irish government published a list of essential services that were afforded exemptions from the covid-19 movement restrictions (which restrictions were effectively lifted in early June 2020). Essential services included services provided in the areas of electric power generation, transmission and distribution and extraction and distribution of gas. The essential services list was later put on a statutory footing by the Health Act 1947 (section 31A – Temporary Restrictions) (Covid-19) Regulations 2020. Exceptions to the movement restrictions also applied to the manufacture of products necessary for the related supply chain, as well as the supply, repair and installation of related machinery and equipment.

### Impact on RESS 1 timetable

In relation to the Renewable Electricity Support System (RESS), the Qualification Application Closing Date for the RESS 1 auctions was pushed back from 2 April 2020 to 30 April 2020 for reasons associated with covid-19 and the issues associated with remote working. All subsequent deadlines and milestones in the auction process were also moved, in lockstep.

### CRU and covid-19

The CRU published a number of responses to various technical queries received from Irish energy sector stakeholders on the impact of covid-19. These responses included:

- when assessing any generator unavailability, due consideration will be given by the CRU to the inability of equipment manufacturers to undertake necessary maintenance or outage work owing to covid-19 restrictions;
- when assessing any non-compliance with industry rules during the period of 'public health guidance', the CRU will give due consideration to the specific circumstances of the case; and
- the CRU resisted pressure to grant a general waiver of network pass-through charges for all customers.

### Supply suspension scheme

On 1 May 2020, the CRU published a second queries list and a Decision Paper on COVID-19 Supply Suspension Due to Temporary Closure. The scheme described in the decision paper involves a temporary administrative suspension of supply to certain small and medium-sized enterprise electricity customers who had been classified as

non-essential during the covid-19 movement restrictions, and who had become non-operational as a result.

Successful applicants were to have no energy or network charges billed for their business premises supply point for the duration of the restrictions. Fixed network charges for these customers and the relevant suppliers were suspended, although the Public Service Obligation levy continued to apply. The scheme was due to run until at least 31 July 2020.

### Market effects

Independent Irish energy trading and services company ElectroRoute has calculated that for the first four weeks of the covid-19 movement restrictions, average Single Electricity Market prices were down by 32 per cent (day-ahead market) and 46 per cent (balancing market) relative to the equivalent period in 2019. However, they note that these price reductions are not solely attributable to the demand reductions and shifts associated with covid-19 – recent low oil and gas prices, combined with high levels of wind generation, have also contributed.

### Construction

The impact of the covid-19 pandemic on the energy sector is also seen in the construction of energy projects. The Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 granted emergency powers to the Irish government to tackle the covid-19 crisis. Regulations made under that Act resulted in the closure of the majority of Irish construction sites until 18 May 2020, when some reopened on the condition of strict compliance with social distancing measures.

### Planning

The covid-19 crisis has had an impact on the planning system in Ireland, with an effective pause being applied to the determination of planning applications and appeals from 29 March 2020 until 24 May 2020, pursuant to orders made under Section 251A of the Planning and Development Act 2000 (as amended). The result of this is that statutory timelines for planning applications and public consultation periods resumed on 24 May 2020 in the following manner:

- all new planning applications submitted on or after 24 May 2020 will apply the standard statutory timelines;
- if a planning application was submitted during the period that the order was in force (29 March 2020 to 23 May 2020 inclusive), the relevant statutory timeline began on 24 May 2020; and
- the statutory timelines for planning applications submitted prior to the order will depend on the number of days of the time period that remained when the order came into effect. The remaining time period of the statutory timeline began to run from 24 May 2020.

In addition, where the lifespan of a planning permission is the default five years (pursuant to section 40 of the Planning and Development Act), this is extended by 56 days (which was the period of duration of the order). The timelines for making an application for leave to seek judicial review of a planning decision has been extended by 56 days.

An Bord Pleanála and the planning authorities have begun working through the backlog of planning applications and have implemented safety protocols and moved certain procedures online to try to ensure the integrity of the planning system is maintained, while also ensuring government guidelines are followed.



**Eoin Cassidy**  
ecassidy@mhc.ie

**Peter McLay**  
pmclay@mhc.ie

**William Carmody**  
wcarmody@mhc.ie

South Bank House  
Barrow Street  
Dublin 4  
D04 TR29  
Ireland  
Tel: +353 1 614 5000  
Fax: +353 1 614 5001  
www.mhc.ie

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Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security			
Procurement			
Dispute Resolution			

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