

Post-Enactment Report

Energy Act 2016 (No. 12 of 2016)

(Dáil Éireann – Standing Order 164A)

(Seanad Éireann – Standing Order 137A)

July 2017

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1. Background

The Energy Act 2016 is in essence a miscellaneous provisions Act, in that it was drafted to revise, consolidate, update and expand energy legislation in a number of certain, specific and well defined areas. It provides for various amendments to existing provisions of the Electricity Regulation Act 1999, the Gas Act 1976, the NORA Act 2007 and the Sustainable Energy Act, 2002 and the Registration of Title Act 1964. The Act also provides for the repeal of a small number of redundant legislative provisions.

2. Main elements of the Act

The main elements of the Energy Act 2016 are as follows:

- Change to the statutory definition of the Single Electricity Market
Sections 7 and 8 of the Energy Act provide for a wider legal definition of the existing Single Electricity Market (SEM) in the Electricity Regulation Act 1999, as amended. This is to facilitate the North/South regulators' (CER and NIAUR) development of new market rules for the SEM, known as the Integrated Single Electricity Market (I-SEM).
- Change of name of the Commission for Energy Regulation (CER)
Section 4 of the Energy Act provides for the renaming of the Commission for Energy Regulation as the Commission for Regulation of Utilities (CRU). The change in the Commission's name reflects its expanded remit which includes the economic regulation of water services.
- Various amendments of the Electricity Regulation Act 1999 to provide for:
 - Enhanced enforcement powers by the Commission to impose certain administrative sanctions on energy undertakings.
 - Increases in the penalty provisions for offences in respect of unregistered gas installers, electrical contractors and safety supervisory bodies and the obstruction of an authorised officer.
 - An increase in time limits for the prosecution of summary offences.
 - The formal closure of the carbon revenue levy account.
 - The publication of an energy strategy statement on a three year cycle by the CER.
 - The replacement of specific references to monetary penalties with references to a "Class A" fine in line with the Fines Act of 2010.
 - The updating of existing provisions within the Act on the service of notices by the CER.
- Various amendments of the Sustainable Energy Authority Act 2002 to provide for:
 - The removal of the requirement that on 1st of May of each year that the three longest serving members of the board of the Sustainable Energy Authority of Ireland must retire.
 - New criteria in relation to the experience and competences of potential appointees to the Board, to include under "environmental matters" references to climate change and environmental sustainability and to representatives of the not-for-profit sector.

- Revision of the deadlines for the submission of the Annual Report of the Sustainable Energy Authority.
- Amendments of the National Oil Reserves Agency (NORA) Act 2007 to provide for:
 - The exchange of data concerning oil imports between the Department and the Revenue Commissioners to ensure oil all companies importing oil are paying the appropriate levy.
 - Increased flexibility in the administration of the Biofuel Obligations Scheme by the National Oil Reserves Agency (NORA).

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Provides for increased penalty levels related to market abuse offences in the wholesale electricity and gas markets.

○ Amendments to other legislation

The Energy Act also amends the Registration of Title Act 1964 to clarify that existing telecommunications deeds of easement have the same legal effect that Act already confers on gas pipeline deeds of easement. This was to ensure the requisite legal certainty in respect of rights of access along the route of the telecommunications duct alongside the Galway-Mayo Gas Pipeline.

The Energy Act also provides for a technical amendment to the Continental Shelf Act of 1968 to correct a typographical error that occurs in the numbering in section 6 of that Act.

3. Current status

The Energy Act 2016 was signed into law by the President on 30 July 2016.

All sections of the Act have been commenced with the exception of section 8 (the redefinition of SEM in respect of I-SEM) and section 19 (CER Strategy Statement). The table at Appendix 1 sets out for each section whether it has been commenced or not, and, if commenced, the date of commencement

4. Significant provisions of the Act

The Act is designed provide for more robust energy legislation by revising, consolidating, updating and expanding legislation in various areas. While many of its provisions are technical, it contains a number of important provisions, as detailed below:

Administrative Sanctions

The Energy Act 2016 provides for enhanced investigation and enforcement powers by the CER to impose certain administrative sanctions on licensed energy undertakings for improper conduct.

The Act enables the CER to specify within its licences such standards of performance and quality in connection with the supply of electricity or natural gas to final customers as the CER determines ought to be achieved by the licence holder. The licence holder will be obliged to comply with such standards of performance as may be specified by the CER in the licence concerned. Failure to do so will constitute improper conduct and is liable to the imposition of administrative sanction of up to 10% of turnover. The imposition of such penalties will be subject to confirmation by the Courts.

It is a matter for the CER, as the independent regulator, to develop and specify these standards of performance. The said standards will represent a selection of the key requirements from the various existing CER documents, including the “Suppliers’ Handbook”, the Codes of Practice, Customer Charters and CER decision papers.

Once developed, specifying standards of performance in a licence will require the CER to modify its existing licences. The process for the modification of electricity and gas licences is subject to the established legislative procedure under sections 20 to 22 of the Electricity Regulation Act 1999. This includes a mandatory obligation on the CER to consider any representations or objections in relation to any proposed modification of a licence. Sections 29 to 32 of the Electricity Regulation Act of 1999 set out the process for an appeals mechanism by a licence holder against a decision of the Commission to modify a licence.

CER has completed the detailed work of revising the licences and will publish a consultation, as required, on the draft licences in the third quarter of this year, with the intention of finalising the revised licences towards the end of the year. The amended licences will provide an enabling provision for administrative sanctions in the event of a breach of a licence requirement. Performance standards need to be developed and this will require a separate consultation process. The CER anticipate that the consultation and final decision on these performance standards will be published in 2018.

Change of the name of the Commission

The Energy Act 2016 also provides for the renaming of the Commission for Energy Regulation (CER) as the Commission for Regulation of Utilities (CRU). The Commission has a rebranding project plan in place and it is currently anticipated that the change of name will come into effect in early October 2017. The CER’s project plan for the change of name encompasses website and logo redesign, a consumer awareness campaign and stakeholder engagement workshops.

Sustainable Energy Authority

The Energy Act 2016 amended provisions in relation to the appointment of Board members to the Sustainable Energy Authority of Ireland (SEAI). In particular, it removed the requirement for the 3 longest serving Board members to retire each year. This has provided a certain level of stability to the Board membership. In addition, the environmental criterion for board membership was expanded to include climate change and environmental sustainability. Since the enactment of the legislation, one person has been appointed to the Board in line with this revised criterion.

Amendment of the National Oil Reserves Agency Act

The Energy Act amended sections 44G, 44H and 44I of the National Oil Reserves Agency Act 2007 (as previously amended by the Energy (Biofuel Obligation and Miscellaneous Provisions) Act 2010). This provides the National Oil Reserves Agency (NORA) with increased flexibility concerning end-of-period reconciliation dates as well as allowing NORA to determine the deadline dates for quarterly applications for Biofuel Obligation Scheme (BOS) Certs. NORA has already implemented these changes and updated its website accordingly.

5. Sections yet to be commenced

Only two sections of the Act now remain to be commenced and this is for logistical and timing reasons, as explained further below:

Section 8: Single Electricity Market

A key aspect of the Energy Act 2016 relates to the Single Electricity Market, or SEM. The Single Electricity Market (SEM) is the wholesale electricity market for Ireland and Northern Ireland. For the purpose of regulating the wholesale electricity market, the Commission for Energy Regulation (CER) and the Utility Regulator for Northern Ireland (UR), together with the Independent Member and Deputy Independent Member, act jointly in the Single Electricity Market (SEM) Committee.

The rules that govern the existing Single Electricity Market (SEM) are not compatible with new European Union (EU) rules for cross border trade in electricity and gas, commonly known as the EU Target Model. Consequently, the SEM is changing how it operates. The North/South regulators' are developing and implementing new market arrangements for the all-island wholesale electricity market. The new set of trading arrangements is called the Integrated Single Electricity Market (I-SEM).

The Integrated Single Electricity Market (I-SEM) project is well underway, with the go live date for the new market on 23 May 2018. Section 7 of the Energy Act provides for transitional SEM measures that will operate during the interim period until go live and was commenced with the enactment of the Energy Act on 30 July 2016 to enable these transitional measures.

These measures will remain in place until the new I-SEM arrangements are in place in May 2018. Section 8 of the Act, in relation to I-SEM, will be commenced when the new market goes live and operational in May 2018.

Section 19: Energy Strategy Statement

Section 19 places a statutory obligation on the CER to produce a Strategy Statement every three years in respect of its energy and safety remit. Previous strategic plans on energy have been developed by CER and provided to the Department on an administrative basis. The last strategic plan covered the five-year period from 2014 to 2018.

Section 19 provides that the CER must submit a strategy statement within 6 months of the commencement of that section. The Minister in turn must lay the strategy statement before the Oireachtas. The strategy statement comes into effect from the following year.

The commencement of section 19 has been deferred on the basis that the CER's current strategic plan covering 2014 to 2018 covers energy, energy safety and water up to, and inclusive of, 2018. This deferral affords the CER time to develop a new combined Strategy Statement for the three year period from 2019 to 2021, for water and energy regulation, on expiry of the current statement at the end of 2018. It is expected that the process of developing the new strategy statement will commence in 2018, with the new statement therefore commencing in 2019. Section 19 will be commenced during 2018 to enable the next such Strategy Statement to be completed, submitted to the Minister and laid before the Oireachtas, within the six month period stated in the section.

4. Conclusion

Most (32 from 34) of the sections in the Energy Act 2016 have been commenced and are now either implemented or are in the process of being implemented. Only two sections of the Act remain to be commenced for the reasons stated above: section 8 (the redefinition of SEM in respect of I-SEM) and section 19 (energy Strategy Statement).

Electricity and Gas Regulation Division

Department of Communications, Climate Action and Environment
17th July 2017

Appendix 1: ENERGY ACT 2016 COMMENCEMENT TABLE

SECTION	SECTION TITLE	COMMENCEMENT DATE	COMMENCEMENT ORDER
Section 1	Short title and commencement	7 October 2016	S.I. No. 509 of 2016
Section 2	Definitions	7 October 2016	S.I. No. 509 of 2016
Section 3	Repeals	28 April 2017	S.I. No. 171 of 2017
Section 4	Change of name of Commission for Energy Regulation	28 April 2017	S.I. No. 171 of 2017
Section 5	Investigations and administrative sanction	28 April 2017	S.I. No. 171 of 2017
Section 6	Oral hearings conducted by inspector or by Commission	28 April 2017	S.I. No. 171 of 2017
Section 7	Single Electricity Market: provision in respect of revised arrangements in the State and Northern Ireland	30 July 2016	Commenced on enactment
Section 8	Amendment of section 2 of Act of 1999 (I-SEM)	Not yet commenced	To be commenced in 2018 when I-SEM goes live
Section 9	Service of notices	28 April 2017	S.I. No. 171 of 2017
Section 10	Prosecution of offences	28 April 2017	S.I. No. 171 of 2017
Section 11	Amendment of section 9 of Act of 1999	7 October 2016	S.I. No. 509 of 2016
Section 12	Functions of Commission for Energy Regulation	28 April 2017	S.I. No. 171 of 2017
Section 13	Increase of penalties	28 April 2017	S.I. No. 171 of 2017
Section 14	Authorised officers	28 April 2017	S.I. No. 171 of 2017
Section 15	Licences to generate and supply electricity(Standards of performance)	28 April 2017	S.I. No. 171 of 2017
Section 16	Issue of notice by Commission concerning contraventions	28 April 2017	S.I. No. 171 of 2017
Section 17	Determination by Commission of specified breach	28 April 2017	S.I. No. 171 of 2017

Section 18	Closure of carbon levy account	7 October 2016	S.I. No. 509 of 2016
Section 19	Energy strategy statement	Not yet commenced	To be commenced in 2018.
Section 20	Definitions for Part 5 of Act	28 April 2017	S.I. No. 171 of 2017
Section 21	Amendment of section 13(1) of Act of 2002	28 April 2017	S.I. No. 171 of 2017
Section 22	Amendment of section 16 of Act of 2002	28 April 2017	S.I. No. 171 of 2017
Section 23	Amendment of European Union (Wholesale Energy Market Integrity and Transparency) Regulations 2014: penalties	28 April 2017	S.I. No. 171 of 2017
Section 24	Definition (<i>Part 7</i>)	7 October 2016	S.I. No. 509 of 2016
Section 25	Amendment of Sustainable Energy Act 2002	7 October 2016	S.I. No. 509 of 2016
Section 26	Amendment of Sustainable Energy Act 2002	7 October 2016	S.I. No. 509 of 2016
Section 27	Definition (<i>Part 8</i>)	7 October 2016	S.I. No. 509 of 2016
Section 28	NORA -Exchange of information	7 October 2016	S.I. No. 509 of 2016
Section 29	Amendment of NORA of Act of 2007	20 November 2016	S.I. No. 572 of 2016
Section 30	Amendment of NORA of Act of 2007	20 November 2016	S.I. No. 572 of 2016
Section 31	Amendment of NORA of Act of 2007	20 November 2016	S.I. No. 572 of 2016
Section 32	Amendment of NORA of Act of 2007	20 November 2016	S.I. No. 572 of 2016
Section 33	Amendment of section 72(4) of Registration of Title Act 1964	7 October 2016	S.I. No. 509 of 2016
Section 34	Amendment of section 6 of Continental Shelf Act 1968	7 October 2016	S.I. No. 509 of 2016