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SUSTAINABLE ENERGY ACT, 2002

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SUSTAINABLE ENERGY ACT, 2002

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS FUINNEAMH INMHARTHANA ÉIREANN — ÚDARÁS FUINNIMH INMHARTHANA NA hÉIREANN OR IN THE ENGLISH LANGUAGE SUSTAINABLE ENERGY IRELAND — THE SUSTAINABLE ENERGY AUTHORITY OF IRELAND; TO AMEND THE GAS ACT, 1976, TO AMEND THE ELECTRICITY REGULATION ACT, 1999, AND FOR MATTERS CONNECTED THEREWITH. [27th February, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—This Act may be cited as the Sustainable Energy Act, 2002. Citation.

2.—In this Act, unless the context otherwise requires— Interpretation.

“the Authority” means the body established by *section 4*;

“the Board” means the Board of the Authority;

“enactment” includes any instrument made under an enactment;

“the establishment day” means the day appointed by the Minister under *section 3*;

“functions” includes powers and duties;

“the Minister” means the Minister for Public Enterprise;

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

3.—The Minister may, with the concurrence of the Minister for Finance and the Minister for Enterprise, Trade and Employment, by order appoint a day to be the establishment day for the purposes of this Act. Establishment day.

4.—(1) There shall stand established, on the establishment day, a body to be known as Fuinneamh Inmharthana Éireann — Údarás Fuinnimh Inmharthana na hÉireann or in the English language Sustainable Energy Ireland — The Sustainable Energy Authority of Ireland (in this Act referred to as the “Authority”) which shall perform the functions assigned to it by this Act. Establishment of new body.

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(2) The Authority shall be a body corporate with perpetual succession and a seal and with power—

- (a) to sue and be sued in its corporate name,
- (b) to acquire, hold and dispose of land or an interest in land, with the consent of the Minister, and
- (c) to acquire, hold and dispose of any other property.

Expenses of Minister.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Functions of Authority.

6.—(1) The functions of the Authority shall be—

- (a) to promote and assist environmentally and economically sustainable production, supply and use of energy,
- (b) to promote and assist energy efficiency and renewable sources of energy,
- (c) to promote and assist the reduction of greenhouse gas emissions and transboundary air pollutants associated with the production, supply and use of energy,
- (d) to promote and assist the minimising of the impact on the environment of the production, supply and use of energy,
- (e) to promote and assist research, development and demonstration of technologies connected with the foregoing paragraphs of this subsection,
- (f) to provide advice, information and guidance—
 - (i) to the Minister and such other Ministers or bodies as the Minister may direct, and
 - (ii) to energy suppliers and users,

relating to the matters specified in the foregoing paragraphs of this subsection.

(2) The Authority shall have all such powers as are necessary for or are incidental to the performance of its functions under this Act, including—

- (a) co-operating with the Central Statistics Office and acting as an agent of that Office in relation to matters related to the functions of the Authority,
- (b) the compilation, extraction and dissemination of information and projections relating to energy production and use (including implications relating to the sourcing, transformation, transmission, distribution and emissions thereof),
- (c) the licensing, regulation and control of activities related to the functions where directed by the Minister from time to time,

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- (d) the initiation, development, administration, participation in S.6 and promotion of schemes and programmes of action,
- (e) the promotion of and assistance with participation in international programmes,
- (f) the provision of assistance in the co-ordination of activities carried out in the State related to sustainable energy,
- (g) the assessment of energy technologies and markets for the purpose of promoting best practice,
- (h) encouraging the establishment and development of companies involved in the provision of services,
- (i) the exchange of information with organisations outside the State and participation in international activities,
- (j) representation of a Minister of the Government at meetings of international bodies where requested to do so by the Minister,

in connection with the matters referred to in *subsection (1)*.

(3) The Authority may perform any of its functions through or by a member of its staff duly authorised by the Authority in that behalf.

(4) The Authority shall have all such powers as are necessary for or are incidental to the performance of its functions under this Act.

7.—(1) The Authority may, with the consent of the Minister and the Minister for Finance, perform any of its functions through a subsidiary and, for the purpose of such performance, may acquire, form or establish one or more than one subsidiaries (within the meaning of section 155 of the Companies Act, 1963) and for that purpose may acquire, hold or dispose of shares or any other interest in a company or become a member of a company (within the meaning of the Companies Acts, 1963 to 2001).

Power to establish subsidiaries.

(2) In relation to the exercise of its powers under *subsection (1)*—

- (a) the Board of the Authority shall ensure that the memorandum and articles of association of a subsidiary are in a form consistent with this Act, and that the prior approval of the Minister and the Minister for Finance are obtained in relation to such memorandum and articles, and any alterations to them,
- (b) the Minister may give a direction in writing to the Authority on any matter relating to a subsidiary, and the Authority shall comply or ensure compliance with any such direction,
- (c) the Minister shall not issue a direction to the Authority under *paragraph (b)* which relates to the disposal of any assets or surpluses of a subsidiary without the consent of the Minister for Finance,
- (d) the grades of staff and the number of staff of a subsidiary shall be determined by the Board of the Authority, with the consent of the Minister and the Minister for Finance,

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(e) the staff of any subsidiary shall hold office or employment subject to such terms and conditions as are approved by the Minister with the consent of the Minister for Finance.

Additional functions.

8.—(1) The Minister may, following consultation with the Authority, the Minister for Finance and any other Minister of the Government who, in the opinion of the Minister, is concerned, by order assign to the Authority such additional functions relating to sustainable energy, energy efficiency and renewable energy as the Minister considers appropriate.

(2) Without prejudice to the generality of *subsection (1)*, an order under this section may assign to the Authority any function which relates to sustainable energy, energy efficiency and renewable energy and which arises from, or is necessary for, the implementation of any provision of the treaties governing the European Communities or any act adopted by the institutions of those Communities or other international convention or agreement to which the State is, or becomes, a party.

Orders.

9.—(1) An order under this Act may contain such consequential, ancillary or subsidiary provisions as the Minister considers necessary or expedient.

(2) The Minister may by order amend or revoke an order made under this Act (other than an order under *section 3*), including an order made under this subsection.

(3) Where it is proposed to make an order under this Act (other than an order under *section 3*), a draft of the order shall be laid before each House of the Oireachtas, and the order shall not be made until a resolution approving the draft has been passed by each such House.

Board of Authority.

10.—(1) The Board shall consist of 12 members.

(2) The Board shall direct the functions of the Authority in accordance with this Act and shall satisfy itself as to the adequacy of the systems in place for that purpose and shall keep under review the performance of the Authority.

(3) Each member of the Board shall be a person who, in the opinion of the Minister, has experience and competence in relation to one or more of the following areas:

- (a) renewable energy methodologies and technologies;
- (b) conservation and efficient use of energy;
- (c) environmental matters;
- (d) education;
- (e) engineering;
- (f) economics;
- (g) finance;
- (h) the construction industry;

- (i) urban development;
- (j) energy production and supply;
- (k) motor engineering;
- (l) legal matters;
- (m) trade union matters;
- (n) transport;
- (o) industry;
- (p) commerce.

(4) The Minister, with the consent of the Minister for Finance, shall appoint the members of the Board other than the Chief Executive, and the members appointed by the Minister shall, subject to the other provisions of this section, hold and vacate office as the Minister may determine.

(5) The Minister shall designate one member of the Board (other than the Chief Executive) as chairperson for a period not greater than 5 years.

(6) The Chief Executive shall, subject to *subsections (6) and (7) of section 15*, be a member of the Board.

(7) There shall be paid to members of the Board in relation to their membership of the Board, out of moneys at the disposal of the Board, such remuneration (if any) and such allowances for expenses incurred by them as the Minister, with the consent of the Minister for Finance, may determine.

(8) Each member of the Board shall hold office on such terms (other than those relating to the payment of remuneration and allowances for expenses) as the Minister determines at the time of appointment of such member.

(9) On the third anniversary of the establishment day and, thereafter, on each anniversary of the establishment day, 3 of the members of the Board (other than the chairperson and the Chief Executive) shall retire from office.

(10) The members required to retire by virtue of *subsection (9)* in any year shall be those who have served longest as a member of the Board since last appointed.

(11) Where in determining which member or members are required to retire by virtue of *subsection (9)* there is more than one member who was appointed to the Board on the same day then as respects such members appointed on the same day the member or members to retire shall be determined by lot unless such members otherwise agree.

(12) A member of the Board other than the Chief Executive shall not serve for more than 10 consecutive years.

(13) A member of the Board shall cease to be and shall be disqualified from being a member of the Board where such member—

- (a) is adjudicated bankrupt,

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- (b) makes a composition or arrangement with creditors,
- (c) on conviction on indictment by a court of competent jurisdiction is sentenced to a term of imprisonment, or
- (d) is disqualified or restricted from being a director of any company (within the meaning of the Companies Acts, 1963 to 2001).

(14) A member of the Board may resign from the Board by letter addressed to the Minister and the resignation shall take effect on receipt of the letter by the Minister.

(15) A member of the Board may at any time be removed from membership of the Board by the Minister if, in the Minister's opinion, the member has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance by the Authority of its functions.

(16) If a member of the Board other than the Chief Executive dies, resigns, becomes disqualified or is removed from office the Minister may appoint a person to be a member of the Board to fill the casual vacancy so occasioned.

(17) A member of the Board whose period of membership expires by the effluxion of time shall be eligible for re-appointment as a member of the Board, but a member of the Board, other than the Chief Executive, shall not serve for more than 10 consecutive years.

(18) Subject to *section 12(3)* the Board may act notwithstanding one or more vacancies in its membership.

(19) In making appointments to the Board the Minister shall have regard to the objective of there being not less than 4 members who are women and not less than 4 members who are men.

Chairperson of
Board of Authority.

11.—(1) Where the chairperson of the Board ceases to hold such office, he or she shall also cease to be a member of the Board.

(2) Where the chairperson of the Board ceases to be a member of the Board, he or she shall also thereupon cease to be chairperson of the Board.

(3) The chairperson of the Board may at any time resign his or her office as chairperson by letter addressed to the Minister and the resignation shall take effect on receipt of the letter by the Minister.

(4) The chairperson of the Board shall, unless he or she sooner dies or otherwise ceases to be chairperson by virtue of *subsection (2)* or *(3)*, hold such office until the expiration of his or her period of membership of the Board and if he or she is re-appointed as a member of the Board, he or she shall be eligible to be designated as chairperson of the Board in accordance with *section 10(5)*.

Meetings and
procedure of Board
of Authority.

12.—(1) The Board shall hold such and so many meetings as may be necessary for the performance of its functions but shall hold at least one meeting in each quarter of the calendar year.

(2) The Minister, in consultation with the chairperson of the Board, shall fix the time of the first meeting of the Board.

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(3) The quorum for a meeting of the Board shall be 5. S.12

(4) The chairperson of the Board shall chair any meetings of the Board except in the case that the chairperson is not present or such office is vacant in which case the members who are present shall choose one of their number to chair the meeting.

(5) At a meeting of the Board, each member of the Board present, including the chairperson, shall have a vote and any question on which a vote is required in order to establish the Board's view shall be determined by a majority of the votes of the members of the Board present when the vote is called and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second and casting vote.

(6) The Board may delegate to a committee established pursuant to *section 13* any of its functions which, in the opinion of the Board, can be better or more conveniently exercised or performed by a committee.

(7) Subject to this Act, the Board shall regulate, by standing orders or otherwise, the procedure and business of the Board.

13.—(1) The Board may establish committees—

Committees of Board.

- (a) to assist and advise it on matters relating to any of the functions of the Authority, and
- (b) to exercise or perform any of its functions which in the opinion of the Board can be better and more conveniently exercised or performed by such committee and have been delegated to that committee pursuant to *section 12(6)*,

and may determine the terms of reference and regulate the procedure of any such committee.

(2) A committee established under this section may include persons who are not members of the Board.

(3) A member of a committee established under this section may be removed at any time by the Board.

(4) The Board may at any time dissolve a committee established under this section.

(5) The Board may appoint a person to be a chairperson of a committee established under this section.

(6) There may be paid by the Board to members of a committee established under this section such allowances for expenses incurred by them as the Board may, with the consent of the Minister and the Minister for Finance, determine.

14.—(1) Where a member of the Board—

Membership of either House of Oireachtas, European Parliament or local authority.

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

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been elected to the European Parliament to fill a vacancy, or

(d) becomes a member of a local authority,

he or she shall thereupon cease to be a member of the Board.

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

(3) A person who is a member of a local authority shall be disqualified from becoming a member of the Board.

Chief Executive.

15.—(1) There shall be a chief executive officer of the Authority who shall be known, and is referred to in this Act, as the “Chief Executive”.

(2) The Chief Executive shall be appointed by the Board.

(3) The Chief Executive may be removed or suspended from office by the Board.

(4) The Chief Executive shall hold office for a period not exceeding 5 years upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Board with the consent of the Minister and the Minister for Finance.

(5) A person may be re-appointed as Chief Executive subject to the other provisions of this section.

(6) The Chief Executive shall for so long as he or she holds that office serve as an *ex officio* member of the Board.

(7) Where and for so long as the Chief Executive is suspended from office the Chief Executive shall stand suspended from membership of the Board.

(8) The Chief Executive shall carry on and manage and control generally the administration and business of the Authority and shall be responsible to the Board for the performance of his or her functions and for the implementation of the policies of the Authority and shall perform such other functions as may be determined by the Board.

(9) (a) Where the office of Chief Executive is vacant the Board may designate a member of the staff of the Authority to perform the functions of the Chief Executive which designation shall continue in force for no longer than the period of the vacancy in that office.

(b) The Board may revoke or alter a designation made under paragraph (a) at any time.

(10) (a) Where the Chief Executive is absent from duty and no member of the staff of the Authority has been assigned by the Chief Executive to perform the duties of the Chief Executive in his or her absence the Board may designate a member of the staff of the Authority to

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perform the functions of the Chief Executive which S.15
designation shall continue in force for no longer than
the period of the absence of the Chief Executive.

(b) The Board may revoke or alter a designation made under
paragraph (a) at any time.

(11) Nothing in *subsections (9) or (10)* shall entitle a person design-
ated to perform functions of the Chief Executive to be a member
of the Board.

(12) The Chief Executive shall not hold any other office or posi-
tion or carry on any business, trade or profession without the consent
of the Board.

16.—(1) Every person who is on the day immediately preceding Staff.
the establishment day a member of the staff of Forfás working in the
entity within Enterprise Ireland known as The Irish Energy Centre
shall on the establishment day become a member of the staff of the
Authority.

(2) Save in accordance with a collective agreement negotiated
with any recognised trade union or staff association concerned, a
person referred to in *subsection (1)* shall not while in the service of
the Authority be made subject to conditions of service (including
conditions in relation to tenure of office) or of remuneration which
are less favourable to such person than the conditions of service
(including conditions of service in relation to tenure of office) or
remuneration to which he or she was subject immediately before the
establishment day.

(3) The Authority may appoint persons to be members of the staff
of the Authority and the grades of the staff of the Authority and the
numbers of staff in each grade shall be determined by the Board
with the consent of the Minister and the Minister for Finance.

(4) Subject to *subsections (1) and (2)* members of staff of the
Authority shall hold their employment on such terms and conditions
(including those relating to remuneration and allowances for
expenses) as the Authority may, with the consent of the Minister and
the Minister for Finance, determine from time to time.

(5) The Chief Executive may from time to time assign such duties
as he or she considers appropriate to each member of staff and each
member of staff shall carry out the duties so assigned.

(6) Where a member of the staff of the Authority—

(a) is nominated as a member of Seanad Éireann,

(b) is elected as a member of either House of the Oireachtas or
as a representative in the European Parliament, or

(c) is regarded, pursuant to Part XIII of the Second Schedule
to the European Parliament Elections Act, 1997 as having
been elected to the European Parliament to fill a
vacancy,

he or she shall thereupon stand seconded from his or her employ-
ment with the Authority and shall not be paid by or be entitled to
receive from the Authority remuneration or allowances in respect of
the period commencing on such nomination or election, or when he

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or she is so regarded as having been elected (as the case may be), and ending when he or she ceases to be a member of that House or a representative in that Parliament.

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

Superannuation of
Chief Executive and
staff.

17.—(1) The Board may, with the approval of the Minister and the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of a person appointed as Chief Executive or members of the staff of the Authority.

(2) A scheme under *subsection (1)* shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.

(3) The Board may, with the consent of the Minister and the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection.

(4) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(5) No superannuation benefits shall be granted by the Authority to or in respect of a person on ceasing to be Chief Executive or a member of the staff of the Authority otherwise than—

(a) in accordance with a scheme or schemes under this section,
or

(b) with the consent of the Minister and the Minister for Finance.

(6) A scheme under this section, including an amendment of a scheme, shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) A scheme or schemes under *subsection (1)* shall, in so far as it concerns a person referred to in *section 16(1)* provide for the granting to or in respect of him or her of superannuation benefits upon and subject to terms and conditions that are not less favourable to him or her than the terms and conditions that applied to that person immediately before their appointment as Chief Executive or a member of staff of the Authority in relation to the grant of such benefits.

(8) In applying *subsection (7)*, superannuation benefits that would have been granted to or in respect of a person during the period between his or her appointment as Chief Executive or to a position on the staff of the Authority and the coming into operation of a

scheme under this section had he or she continued to be employed by Forfás shall be granted and paid to or in respect of that person by the Authority in accordance with the scheme or such enactments in relation to superannuation as applied to the person immediately before his or her appointment as Chief Executive or to a position as a member of the staff of the Authority and, for that purpose, his or her pensionable service shall be aggregated with his or her previous pensionable service in Forfás referred to in *section 16(1)*. S.17

18.—(1) Where the Chief Executive, a member of the Board, a member of a committee established by virtue of *section 13*, a member of the staff of the Authority, or a consultant, adviser or other person engaged by the Authority, has a pecuniary interest or other beneficial interest in or material to any matter which falls to be considered by the Board, he or she shall— Disclosure of interests.

- (a) disclose to the Board the nature of his or her interest in advance of any consideration of the matter,
- (b) neither influence nor seek to influence a decision in relation to the matter,
- (c) take no part in any consideration of the matter,
- (d) if he or she is the Chief Executive, a member of the Board, or a member of a committee established by virtue of *section 13*, or a member of the staff of the Authority, withdraw from the meeting for so long as the matter is being discussed or considered and shall not vote on or otherwise act as such Chief Executive or member in relation to the matter.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

- (a) he or she or any connected relative or any nominee of his or her or any connected relative, is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
- (b) he or she or any connected relative is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,
- (c) he or she or any connected relative is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates, or
- (d) any connected relative has a beneficial interest in, or material to, such a matter.

(3) For the purposes of this section a person shall not be regarded as having a beneficial interest in or material to any matter by reason only of an interest of his or hers or of any company or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

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(4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question shall be determined by the Board, whose decision shall be final, and particulars of the determination shall be recorded in the minutes of the meeting concerned.

(5) Where a disclosure is made to the Board, particulars of the disclosure shall be recorded in the minutes of the meeting concerned.

(6) Where a person referred to in this section fails to make a disclosure in accordance with this section, the Board shall decide the appropriate action (including removal from office or as a member, or termination of contract) to be taken.

(7) In this section “connected relative” means, in relation to a person to whom this section applies, the person’s spouse or partner, parent, child, brother, sister, or child of the person’s spouse or partner.

Disclosure of information.

19.—(1) Save as otherwise provided by law and *subsection (3)*, a person shall not, without the consent of the Board, disclose confidential information obtained by him or her while performing (or as a result of having performed) duties as—

- (a) a member of the Board,
- (b) Chief Executive,
- (c) a member of the staff of the Authority,
- (d) a member of a committee established pursuant to *section 13*,
- (e) an adviser or consultant to the Authority or an employee of such person whilst performing duties relating to such advice or consultation.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and liable on summary conviction to a fine of €2,000.

(3) Nothing in *subsection (1)* shall prohibit the disclosure of information by means of a report made—

- (a) to the Board, or
- (b) by or on behalf of the Board to the Minister.

(4) In this section “confidential information” includes information that is expressed by the Board or a committee of the Board, as the case may be, to be confidential either as regards particular information or as regards information of a particular class or description.

(5) The First Schedule to the Freedom of Information Act, 1997 is amended by the insertion in subparagraph (2) of paragraph 1 at the end thereof of the following:

“Sustainable Energy Ireland — The Sustainable Energy Authority of Ireland.”.

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20.—(1) The Authority shall, as soon as may be after its establishment, provide itself with a seal. Seal of Board.

(2) The seal of the Authority shall be authenticated by the signature of—

(a) the chairperson of the Board or another member of the Board authorised by it to act in that behalf, and

(b) a member of the staff of the Authority authorised by the Board to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Authority and every document purporting to be an instrument made by the Authority and to be sealed with the seal of the Authority (purporting to be authenticated in accordance with *subsection (2)*) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

(4) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Authority by a member of the staff of the Authority or a person generally or specially authorised by the Board for that purpose.

21.—(1) With effect from the establishment day the Authority shall have a licence to occupy the property which on the day immediately before the establishment day was the property of Enterprise Ireland and occupied by The Irish Energy Centre, subject to such terms and conditions as may be agreed in writing between the Minister and Enterprise Ireland prior to the making of the order pursuant to *section 3* appointing a day to be the establishment day. Transfer of property and rights and liabilities.

(2) On the establishment day all equipment and property (other than that referred to in *subsection (1)*) which on the day immediately before the establishment day was the property of Enterprise Ireland for the use of The Irish Energy Centre shall be transferred to the Authority subject to and with the benefit of all rights and liabilities relating to such property and equipment.

22.—(1) The Minister shall from time to time, with the consent of the Minister for Finance, advance to the Authority out of moneys provided by the Oireachtas, such sums as the Minister may determine for the purposes of expenditure by the Authority in the performance of its functions. Financing of Authority.

(2) In determining the amount of any such moneys to be paid in any financial year the Minister shall give due consideration to the income and expenditure of the Authority, and for that purpose the Board shall furnish to the Minister as and when requested information regarding such income and expenditure.

23.—The Authority may, for the purpose of providing for current or capital expenditure, from time to time, borrow money (whether on the security of the assets of the Authority or otherwise), including money in a currency other than the currency of the State, subject to the consent of the Minister and the Minister for Finance and to such conditions as they may specify. Borrowing by the Board.

[No. 2.] *Sustainable Energy Act, 2002.* [2002.]

Annual report and
accounts of
Authority.

24.—(1) The Authority shall submit, in such form as the Minister may direct, an annual report of its activities after the end of the financial year to which it refers and the Minister shall cause copies of the report to be laid before each House of the Oireachtas not later than six months after the end of that financial year.

(2) The Authority shall keep, in such form as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of money received and expended by it.

(3) The accounts of the Authority shall be submitted annually to the Comptroller and Auditor General for audit at such times as the Minister, with the consent of the Minister for Finance, shall direct and when so audited, shall, together with the report of the Comptroller and Auditor General thereon, be presented to the Minister, who shall cause copies thereof to be laid before each House of the Oireachtas.

(4) The Chief Executive shall whenever he or she is required to do so by a Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and the reports of the Comptroller and Auditor General, give evidence to that Committee on all matters pertaining to the expenditure of the Authority.

Information to
Minister and
Oireachtas on
performance of
functions.

25.—(1) The Authority shall, whenever so requested by the Minister, furnish to him or her information in relation to such matters as he or she may specify concerning or relating to the performance of its functions, or its plans for the future performance of its functions, generally or in respect of any report or account prepared by the Authority under *section 24* of this Act or the policy and activities, other than day-to-day activities, of the Authority.

(2) Each report under *subsection (1)* of this section shall include information in such form and regarding such matters as the Minister may direct.

(3) Not less than 3 months before the end of each financial year of the Authority, it shall furnish to the Minister a report in writing—

- (a) outlining its proposed activities (other than day-to-day activities) in the financial year immediately following,
- (b) giving estimates of its expenditure in the forthcoming financial year in relation to each of those activities, and
- (c) giving estimates of its income in the forthcoming financial year,

and the Authority shall not carry out any of those activities or incur any such expenditure until the report has been approved of by the Minister.

(4) The Authority shall not during any financial year—

- (a) carry out any activity (other than a day-to-day activity) not specified in the report under *subsection (3)* of this section in relation to that year, or
- (b) incur expenditure in relation to any activity in excess of the estimate of that expenditure given in that report,

without the prior approval of the Minister.

[2002.] *Sustainable Energy Act, 2002.* [No. 2.]

(5) From time to time, and whenever so requested, the Chief Executive shall account for the performance of the functions of the Authority to a Committee of one or both Houses of the Oireachtas. S.25

26.—(1) The Authority shall have power to charge, receive and recover fees in respect of work undertaken by the Authority on behalf of any person or body other than a Minister of the Government. Power to charge fees.

(2) The Authority may recover, as a simple contract debt in any court of competent jurisdiction, from any such person any amount due and owing to it under *subsection (1)*.

27.—The Minister may give to the Authority, in writing, such general policy directives as he or she may consider appropriate to be followed by the Authority in the exercise of its functions. Policy Directives.

28.—(1) The Authority may accept subscriptions of money from any body or person in return for the use by such body or person or other bodies or persons of such services and facilities of the Authority as the Board may determine. Power to accept subscriptions and donations.

(2) The Authority may, subject to the approval of the Minister and the consent of the Minister for Finance, accept a gift of money, land or other property, upon such trusts and conditions, if any, as may be specified by the person making the gift.

(3) The Authority shall not accept any gift or subscription of money if the conditions by the donor to the acceptance thereof are inconsistent with the functions of the Authority.

29.—The Authority may, from time to time, as it considers necessary for the performance of its functions— Power to engage consultants and advisers and to enter into contracts.

(a) enter into contracts with persons or bodies, and

(b) engage consultants or advisers,

and any sums thereby payable by the Authority to such persons, bodies, consultants or advisers shall be paid by the Authority out of moneys at its disposal.

30.—Nothing in this Act shall affect the validity of any act done in the name of Enterprise Ireland on behalf of the Irish Energy Centre prior to the establishment day and every such act shall insofar as it was operative immediately before the establishment day have effect on and after that day. Saving for certain acts.

31.—Section 23 of the Gas Act, 1976 is amended by the substitution in subsection (2) of “€1,700,000,000” for “£550,000,000” (inserted by the Gas (Amendment) Act, 2000). Amendment of section 23 of Gas Act, 1976.

[No. 2.] *Sustainable Energy Act, 2002.* [2002.]

Amendment of
section 39 of
Electricity
Regulation Act,
1999 (Public Service
Obligations).

32.—Section 39 of the Electricity Regulation Act, 1999 is amended—

(a) in subsection (2)—

- (i) by the substitution of “as are necessary to ensure that, in any specified period,” for “as are necessary to ensure that, in any calendar year,”,
- (ii) by the deletion of “a specific quantity of” before “electricity from”, and
- (iii) by the substitution of “generate that electricity” for “generate that quantity of electricity” in paragraph (a),

(b) in subsection (5)—

- (i) by the deletion in paragraph (a) of “in respect of electricity provided to such customers”, and
- (ii) by the substitution for paragraph (b) of the following paragraph—

“(b) the collection and recovery of payments in respect of the levy—

- (i) from final customers by the Board or the holder of a licence or an authorisation or the holder of a permit under section 37 of the Principal Act,
- (ii) from the Board or such holders of a licence, authorisation or permit by the distribution system operator or the transmission system operator, and
- (iii) from the distribution system operator by the transmission system operator,”,

(c) in subsection (5)—

- (i) by the insertion in paragraph (a) of “or holders of a permit under section 37 of the Principal Act”, after “the Board or holders of a licence or an authorisation”, and
- (ii) by the insertion in paragraph (c) of “or holders of permits under section 37 of the Principal Act” after “the Board and holders of licences or authorisations”,

(d) by the insertion of the following subsection after subsection (5)—

“(5A) (a) The levy referred to in paragraph (a) of subsection (5) shall be imposed on final customers in respect of a levy period in such a manner that—

[2002.] *Sustainable Energy Act, 2002.* [No. 2.]

(i) the levy is apportioned between each category of electricity accounts specified in paragraph 1 of Schedule 2 on the basis of the maximum demand attributable to that category of accounts as a proportion of the aggregate of the maximum demand attributable to each of the three categories of accounts, and S.32

(ii) each holder of an electricity account who is a final customer is charged and liable to pay the levy in respect of each electricity account on the basis set out in paragraph 2 of Schedule 2.

(b) The attribution of the maximum demand in respect of each category of electricity account shall be carried out by the distribution system operator with the approval of the Commission in respect of each levy period.

(c) In this subsection ‘levy period’ means a calendar year or such shorter period as may be specified in the order.”,

(e) in subsection (6)—

(i) by the insertion of “or the holder of a permit under section 37 of the Principal Act” after “or an authorisation” wherever those words occur in that subsection,

(ii) by the substitution of “specified period” for “specified period of years”, and

(iii) by the insertion of “or part of a year” after “each year”,

and

(f) by the substitution of the following subsection for subsection (8)—

“(8) The Minister shall exercise the powers conferred by this section so as to ensure that the sums realised by the levy or otherwise are sufficient (after the payment of the administrative expenses, as certified by the Commission, of the Board and holders of licences or authorisations or holders of permits under section 37 of the Principal Act incurred in the collection of the levy) to pay to the Board and holders of licences or authorisations or holders of permits under section 37 of the Principal Act the payment required to be made by the order.”.

33.—The Electricity Regulation Act, 1999 is amended by the insertion of the matter in the Schedule to this Act after the Schedule to that Act as Schedule 2 to that Act.

Insertion of
Schedule 2 to
Electricity
Regulation Act,
1999.

SCHEDULE

“SCHEDULE 2

Categorisation of Accounts

1. For the purposes of section 39 the categories of electricity account are—

- (a) Domestic Accounts, meaning electricity accounts held by final customers and which are identified by the distribution system operator as liable for distribution use of system charges at the rate for urban domestic customers or the rate for rural domestic customers;
- (b) Small Accounts, meaning electricity accounts held by final customers which are not Domestic Accounts or Medium-Large Accounts;
- (c) Medium-Large Accounts, meaning electricity accounts held by final customers which, in respect of each such account, the distribution system operator certifies as having a maximum import capacity of not less than 30kVA.

Computation of amount of levy payable by holders of individual electricity accounts

2. The amount of levy to be imposed on each electricity account in respect of a levy period shall be computed—

- (a) in the case of a Domestic Account by dividing the amount of the levy attributed to that category of accounts in accordance with section 39(5A) by the number of electricity accounts certified by the distribution system operator as falling within that category;
- (b) in the case of a Small Account by dividing the amount of the levy attributed to that category of accounts in accordance with section 39(5A) by the number of electricity accounts certified by the distribution system operator as falling within that category;
- (c) in the case of a Medium-Large Account by applying the formula in paragraph 3 of this Schedule.

Formula to be applied in computation of amount of levy payable by holders of Medium-Large electricity accounts

3. The amount of levy payable by the holder of an electricity account in respect of each electricity account which is certified by the distribution system operator as being a Medium-Large Account shall be calculated according to the following formula—

$$A \times \frac{B}{C}$$

Where

A is the proportion of the levy attributable to the category of Medium-Large Accounts in accordance with section 39(5A) expressed as a monetary amount;

[2002.] *Sustainable Energy Act, 2002.* [No. 2.]

B is the maximum import capacity of the electricity account of the SCH. final customer expressed in kVA;

C is the aggregate of the maximum import capacities of electricity accounts which are certified by the distribution system operator as Medium-Large Accounts expressed in kVA.

Construction and Interpretation

4. (a) In this Schedule a reference to the distribution system operator shall in the case of a final customer who has a direct connection to the transmission system be construed as including a reference to the transmission system operator.

(b) In this Schedule—

‘formula determined by the Commission’ means a formula determined by the Commission following consultation with the electricity industry, and having been approved by the Minister, which formula is, after such approval, published by the Commission;

‘maximum import capacity’ means in relation to an individual electricity account—

- (i) the agreed maximum import capacity being the maximum import capacity expressed in kVA agreed by the holder of the electricity account with the distribution system operator, or
- (ii) in a case where the maximum import capacity has not been agreed with such an operator, the deemed maximum import capacity being the level of maximum import capacity calculated by the distribution system operator (in accordance with a formula determined by the Commission) as being the maximum import capacity in relation to that account.”.