

<b><u>Name of Respondent</u></b>	<b><u>Summary of key points relating to the draft Electricity (Single Wholesale Market) (NI) Order 2007</u></b>	<b><u>DETI Response</u></b>
<b><u>NIE</u></b>	Definition of SEM at Article 2 is wider than equivalent definition under the BETTA arrangements in GB. The wider reference to the “operation” of the market in addition to its establishment is excessive and unnecessary.	<p>It is considered appropriate to include reference to arrangements for the “operation” of the market to ensure that arrangements governing its ongoing functioning which are vital to its success (e.g. arrangements regulating behaviour on the SEM) can be introduced under powers in the Order.</p> <p>In any event, the Order is more prescriptive in its definition of the market to which it relates than the legislation governing the NETA and BETTA arrangements as the SEM is defined by reference to the detailed arrangements set out in the MoU.</p> <p>The NETA legislation (S68 Utilities Act) also referred to “operation” as well as “establishment”.</p>
	Query the need for a 24 month period to make mandatory licence modifications, as opposed to the 18 month period under BETTA .	It is proposed to commence the Article 3 provisions very soon after the Order is made, which would make the timescale for exercise of the power very similar to that for NETA. In any event, a longer timescale than that for BETTA is required because establishment of the SEM requires co-ordination between two separate and sovereign jurisdictions.
	Exercise of the mandatory licence modification powers should be restricted to the Department and not extend to the Authority.	<p>The extension of these powers to the Authority is to provide flexibility and also in recognition that the Authority is taking the principal role in developing the detail of the SEM arrangements. The Department will, however, be required to consent to any such modification.</p> <p>It should be noted that this provision mirrors the approach taken in respect of the provisions to introduce postalisation of gas conveyance in NI under the Energy (Northern Ireland) Order 2003.</p>
	Concerned that there is no right of appeal or compensation for amendment/termination of contractual arrangements.	The power to judicially review exercise of the Article 3 powers remains. The provisions do not require inclusion of a power to compensate in order to be compatible with human rights legislation. In any event, the court remains able to order compensation if that is considered necessary on a successful judicial challenge of an exercise of the power.

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<b><u>NIE (cont'd)</u></b>	Consider that it would be inappropriate for matters such as price controls to be subject to the mandatory power to modify licences	<p>Neither the BETTA nor NETA powers “carved out” price controls. To exclude these required changes from the exercise of the mandatory licence modification power, as suggested, would both set an undesirable precedent in terms of reducing the scope of the mandatory powers and introduce an element of uncertainty to the implementation of the SEM.</p> <p>It is intended that changes to price controls to facilitate the SEM will be consensual. However in the event that a change is needed for SEM implementation purposes but consent is unforthcoming the change would be effected temporarily through the mandatory powers and the matter simultaneously referred to the Competition Commission.</p> <p>The licence modification would subsequently be confirmed or, as necessary, revised to reflect the outcome of the referral to the Commission.</p>

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<b><u>NIE (cont'd)</u></b>	<p>Concerned that there would be no explicit appeals mechanism to deal with SEM Committee decisions in respect of SEM matters on an ongoing basis.</p>	<p>Decisions of the SEM Committee on the exercise of NIAER's concurrent competition functions will be subject to appeal in accordance with the provisions of the Competition Act 1998 and Enterprise Act 2002.</p> <p>If the SEM Committee wishes to modify a licence other than pursuant to the time-limited powers under Article 3 of the draft Order, and has not been able to obtain the licensee's consent, it will be required to refer the matter to the Competition Commission. The Competition Commission will then consider the SEM Committee's case on the merits.</p> <p>Licence condition enforcement decisions will be subject to judicial review only. However this is entirely consistent with the approach in GB in respect of Ofgem's licence enforcement decisions</p> <p>Unlike the situation in GB, the SEM will be a supra-national market, with a requirement for co-ordinated regulation across two sovereign jurisdictions. Consequently, it is not sufficient merely to broadly replicate in NI the GB mechanism for dealing with appeals relating to certain industry codes, which provides for a limited appeal to the Competition Commission on grounds broadly similar to Judicial Review. This is particularly the case in the absence of any corresponding mechanism in the Republic of Ireland.</p>

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<u>NIE (cont'd)</u>		<p>The Department intends to work with DCMNR to examine the possibility of introducing in due course a co-ordinated appeals mechanism for decisions of this kind, in light of the early experience of establishing the SEM. The development of such arrangements would require the agreement of both governments and a separate consultation.</p> <p>In the meantime, regulatory decisions on industry codes in both jurisdictions will continue to be subject to Judicial Review.</p>
	Transmission systems is referred to in Article 3(2) (a); as there is only one transmission system in NI, assume this refers to the Moyle Interconnector?	It is possible that changes will be needed to the Moyle licence. However, the main focus of the provision is on the NIE transmission network.
	Article 3 (3)(a) which provides that conditions included in a licence under this Article need not relate to the activity authorised by the licence- why is this power necessary? How will it be exercised? Checks and balances?	This provision is not unique to the draft order. It merely tracks the current provisions for subject matter of licence conditions in the current NI electricity legislation (in particular, Article 11 Electricity Order 1992).
	Require confirmation that Article 3(3)(b) is not intended to be utilised in cases where statutory prohibitions and practicality make this unnecessary?	<p>This provision is needed to ensure that DETI/NIAER can require licensees to procure, for SEM purposes, that related persons undertake activities which are prohibited unless licensed/authorised, and apply for the requisite licence.</p> <p>It is intended, however, to seek, wherever possible, to achieve such outcomes through consensus, rather than through the exercise of this power.</p>

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<u>NIE (cont'd)</u>	Question why Article 3(1)(a) refers to “the SEM” as defined rather than to what is contained in that definition.	This change has been made to the draft Order.
	Question why is it necessary to say in Article 3(1)(b) that licence conditions can be changed to give “full effect to” the arrangements when the Article already seeks to give power to implement or facilitate the operation of new arrangements?	The words “full effect” ensure that more than the bare minimum can be established through the licence amendment powers.
	Seek clarification as to why the reference in Article 3(2)(a) to “other systems for the conveyance of electricity”, to cover the distribution system, is expressed in the plural.	It is arguable that NIE’s distribution system is comprised of a number of distinct distribution systems. For the avoidance of doubt, therefore, the reference is in the plural.
	Question why the detail in Article 3(3) is greater than would be expected based on the equivalent legislative provisions relating to BETTA and NETA.	This approach is aimed at providing greater certainty as to the scope of the powers.
	The definition of SEM operator in Article 4, as currently drafted, would capture persons other than the SEM Operator.	The definition has been amended in light of this concern.

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<u>NIE (cont'd)</u>	Request clarity regarding a disagreement between NIAER and the SEM Committee on whether something is a SEM matter or not.	Article 5(3) (now Article 6(3)) proposes that the decision as to whether something is a SEM matter or not is clearly reserved to the SEM Committee
	The Department should have the ability to veto a SEM Committee decision in order to take account of domestic interests.	Such a provision would be contrary to the “all island” nature of the SEM.
	Unclear how a matter which could be both a SEM and non SEM matter would be dealt with by NIAER and the SEM Committee given the different objectives of each.	Article 5(3) (now Article 6(3)) of the draft Order makes clear that a matter is either a SEM matter or is not a SEM matter. It cannot be both at the same time. The decision as to which is clearly stated to reside with the SEM Committee.
	Where there is a series of changes to an industry document will these be unbundled into SEM and non SEM matters and dealt with separately?	This is a matter for the SEM Committee and NIAER to resolve in due course.
	Seek confirmation that the SEM committee would not reopen previous decisions of NIAER in relation to industry arrangements solely on the basis that it considers these to be not fully aligned with its primary and subsidiary duties	The SEM Committee’s duties are drafted to reflect the particular characteristics of the SEM, including its all-island nature, so as to ensure that it is regulated and operates in an appropriate manner. The SEM Committee should therefore have power to make decisions as to the exercise of NIAER’s functions so as to ensure that the arrangements for the SEM are consistent with the principles set out in its duties. Any such decisions would, of course, be subject to administrative law.

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<b><u>NIE (cont'd)</u></b>	Concerned that the quorum rules for the SEM Committee, at paragraph 7 of Schedule 1 (now Schedule 2) could mean that meetings could go ahead, and decisions taken, with one part of the island not represented.	The provision that allows for the SEM Committee to be quorate with one or other of the Regulatory Authorities plus the independent member increases the flexibility to hold meetings. It also avoids the problem whereby a meeting could not take place if either RA refused to attend, and therefore places a responsibility on both RAs to be represented.
	The Department should have formal overview of the preparation of the joint working arrangements between NIAER and the SEM Committee required by Article 6 (now Article 7). These arrangements should be the subject of a subsequent consultation.	<p>The draft Order sets the basic framework for the working arrangements which are then a matter for NIAER and the SEM Committee.</p> <p>The Department expects that NIAER and the SEM Committee would consult on these prior to their adoption.</p>
	The powers of entry provided at Article 7 (now Article 8) over and above those contained in the competition legislation are without precedent in the Regulatory arrangements within the UK. Powers of entry should be no wider than those currently available to NIAER, under competition legislation and only be applicable in situations where currently exercisable by NIAER.	<p>The existing RoI electricity legislation includes powers to enter premises where there has been a licence breach. Regulation of the SEM will be undertaken primarily through licence condition enforcement. It is necessary, therefore, to include broadly similar powers in the draft Order so that investigations of licence breaches related to the SEM can be harmonised in each jurisdiction.</p> <p>Amendments have been made to the draft Order, however, to bring its provisions in line with the analogous powers in the Competition Act 1998 and are described below.</p>

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<u>NIE (cont'd)</u>	The threshold for triggering the power of entry under Article 7 (now Article 8) is too low in that it allows for powers of entry where the SEM considers that a licence <u>may</u> be in breach, or have breached its licence in a manner which materially affects the SEM.	The threshold has been amended to bring it in line with the analogous powers under the Competition Act 1998 on which it was based so that the powers are exercisable only where the SEM Committee determines: <ul style="list-style-type: none"> <li>• that there are reasonable grounds for suspecting that a licence holder is contravening, or has contravened, any condition or his licence ; and</li> <li>• that any such contravention would materially affect or be likely materially to affect the SEM.</li> </ul>
	At paragraph 1(2)(a) of Schedule 2 (now Schedule 3), an investigating officer should be required to give 2 working days notice of intended entry as opposed to 48 hours.	This amendment has been made to the draft Order.
	At paragraph 1(3)(a) of Schedule 2 (now Schedule 3) the decision as to whether there is a reasonable suspicion that the premises are occupied by the licence holder should be made by the SEM committee as opposed to the investigating officer.	This amendment has been made to the draft Order to bring it in line with the analogous powers under the Competition Act 1998 on which it was based.
	Concerned that “any other persons” as referred to in para 1 (6) (a) (ii) of Schedule 2 (now Schedule 3) do not have to be officers of the Authority, with all corresponding safeguards.	This provision has now been amended so that only other officers of NIAER and officers of CER can be authorised by NIAER to accompany the “authorised officer”.
	The Authority should be included in the title of Article 8 (now Article 9).	This amendment has been made to the draft Order.



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<u>NIE (cont'd)</u>	Need to ensure that the objectives to be taken into account under Article 8 (now Article 9) are consistent with the existing objectives of the Department and Authority; for example, where the Authority makes a decision on a non SEM matter this should not be affected by the SEM Committee in exercising its functions in relation to SEM matters	The Department believes that the suggested amendment would defeat the objective of co-ordinated regulation of the SEM.
	Require clarification of the differing definitions of “unfair” discrimination employed at Article 8(2)(e) (now Article 9(2)(e) )and “undue” discrimination.	The use of the term “unfair discrimination” reflects terminology contained in Directive 2003/54/EC on which it was based.
	There exists a potential overlap between the Departments ‘ordinary’ functions and those it considers affect the SEM; the proposed new Article 13 (1A) of the Energy Order means that if the Department determines that an issue is an non SEM matter the ordinary objectives can not apply.	The Department believes that the legislation has been drafted so that there should be no overlap.
	Question why Article 58 of the Electricity Order (security periods) is included at Article 9 (now Article 10) as a non SEM matter, but not Article 37 of the Electricity Order (fuel stocks).	The exceptions listed here follow the exceptions to the application of the current duties and principal objective under Article 13 of the Energy (Northern Ireland) Order 2003.

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<u>NIE (cont'd)</u>	Fully support the change of law provisions.	DETI welcomes the support for these provisions of the draft Order.
	Para 3(3) of Schedule 3 (now Schedule 4), which provides that conditions included in a licence may relate to activities whether or not they are carried out in Northern Ireland, is extremely wide and should be limited to matters directly related to the SEM.	This provision is needed to ensure that conditions can be included in licences in respect of interactions with operators in RoI (for instance, the RoI system operator).
	The inclusion in the Order of the ability to deal with certain matters through a property scheme, as provided for in the legislation for BETTA in GB would be useful.	Provision is now included at Article 5 of, and Schedule 1 to, the draft Order to facilitate SONI unbundling and ultimate divestment as anticipated by the Memorandum of Understanding (MoU) between the UK and Irish Governments.
	The concept of 'Best Regulatory Practice' should be included in the legislation.	A provision requiring the Department, NIAER and the SEM Committee to have regard to best regulatory practice in the exercise of their functions in relation to the SEM has been included at Article 9(7) of the draft Order.

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	Questions aspects of the analysis of the benefits contained in the Regulatory Impact Assessment.	The Department has noted these comments.
	Notwithstanding its comments on the RIA, believes that, subject to market dominance being satisfactorily addressed, real benefits will be delivered by the SEM – although the magnitude of these benefits is difficult to quantify.	The Department welcomes this qualified endorsement of the SEM.
<b><u>AES</u></b>	Concerned that the mandatory licence modification powers at Article 3 are wider than those under BETTA and NETA and should be omitted.	The additional provision in Article 3 merely make explicit powers implicit in the equivalent BETTA powers. In any event, arguably, the Article 3 powers are narrower because they can only be exercised in furtherance of the detailed arrangements described in the MoU – by contrast, the BETTA powers were not similarly prescribed.
	Concerned that the licensees' contractual arrangements could be subject to amendment and/or termination without the right of appeal or compensation and the relevant Article 3 provisions are thereby illegal. Explicit safeguards should be included or the scope of the proposed powers curtailed.	Powers to impose contractual modifications are essential to ensure implementation of the SEM. Their exercise is subject to the principles of administrative law and is susceptible to judicial review. A Court could order compensation to be paid if necessary without explicit provisions to that effect. Explicit provisions in relation to compensation and rights of judicial review are not therefore required.

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	<p>Article 3(3) gives the Department and the Authority powers fundamentally to alter a licensee's contractual position, only giving the licensee the right to be consulted. This is without precedent in the United Kingdom practice and is unnecessary to achieve the SEM.</p>	<p>Such powers have precedence in the Utilities Act 2000 (in respect of NETA) and the Energy Act 2004 (in respect of BETTA). Contractual arrangements were amended under those powers. It will be necessary to change some of the contractual arrangements in place to introduce the SEM, for instance, to provide for electricity to be sold through a pool arrangement.</p>
	<p>Concerned that the breadth of the powers proposed to be granted to the Department and Authority even if limited in duration, will increase uncertainty and discourage investment other than by Government owned entities.</p>	<p>The Department considers that the powers are necessary to implement the SEM and does not believe that they will minimise uncertainty and discourage investment. They can only be exercised over a period of 24 months. Industry is in favour of the SEM.</p>

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	Unfortunate that the MoU was not finalised until 7 December 2006.	The Department regrets that it was not possible to finalise the MoU prior to publication of the draft Order for consultation.
	Since it purports to create powers that interfere with contractual rights the draft Order would be outside the scope of the powers granted by the Northern Ireland Act 2000 and The Northern Ireland (Miscellaneous Provisions) Act 2006.	The Department does not agree that the exercise of the powers contained in the draft Order would be outside the scope of the Northern Ireland Act 2000 and the Northern Ireland (Miscellaneous Provisions) Act 2006.
	The proposed powers contained within the Order would contravene the rights of licensees under Article 1 of the first Protocol to the European Convention on Human Rights.	The Department does not agree that there is any contravention of human rights.
	The concept of 'Best Regulatory Practice' should be included in the legislation.	See response to similar comment by NIE.

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<b><u>Energia</u></b>	The scope of the powers should be limited to the minimum required for the establishment of the SEM as opposed to the current drafting which refers to the operation of the SEM.	See response to similar comment by NIE.
	Query necessity for 24 month period to make mandatory licence modifications- as opposed to 18 month period under BETTA.	See response to similar comment from NIE.
	Concerned that the mandatory licence modification powers are wider than those under BETTA.	See response to similar comment by NIE.
	An appeals mechanism is essential in respect of regulatory decisions affecting the SEM and for any changes to the TSC.	See response to similar comment by NIE.
	Seek clarification on how NIAER/SEM committee will decide whether a matter is a SEM matter.	Article 6 of the draft Order makes clear that the ultimate decision is for the SEM Committee alone. How NIAER and the SEM Committee will work together to facilitate the decision making process is a matter for NIAER and the SEM Committee.

<b>Energia (cont'd)</b>	Review is required of what constitutes a quorum and voting rights within the SEM committee.	The quorum provisions have been designed so as to ensure co-ordinated regulation of the SEM with appropriate input from both regulators. See also response to comments by NIE for an explanation of the rationale for the voting provisions. The purpose of the SEM Committee is to co-ordinate regulation between the two existing Regulators. Therefore, each Regulator has one vote and, in order to deal with a deadlock situation, the independent member also has one vote.
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<b>Energia (cont'd)</b>	Request details of the Departments proposals for ensuring impartiality of the independent member.	The appointment process will be determined by the two Departments in due course.
	Suggest that quorum should constitute the presence of at least one representative from the Authority and CER and the independent member and decisions should be made by consensus of attending members.	See response to comments by NIE on quorum rules and response to Energia on voting rights.
	Concerned that meetings of the SEM committee could go ahead and decisions taken with one part of the island not represented.	See response to similar comment by NIE.
	The powers of entry at Article 7 and Schedule 2 (now Article 8 and Schedule 3) should be no wider than those currently available to the Authority. The additional powers are unnecessary given the existing provisions in the Competition Act 1998.	See response to similar comment by NIE. In any event, the Competition Act 1998 relates to investigations of competition law breaches only, and not to licence breaches.
	Conditions under which the powers of entry may be exercised should be more explicit.	The trigger test for application of the powers has been tightened as referred to in the response to the similar comment by NIE.



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<b>Energia (cont'd)</b>	Entry under these powers should be supported by a warrant granted by a relevant court.	The Department believes that this would unnecessarily restrict the powers, and would be out of step with the analogous process under the Competition Act 1998.
	Support the objectives as outlined in Article 8(1) (now Article 9(1)) of protecting the interests of consumers and promoting effective competition between market participants.	The Department welcomes the support for these provisions.
	Not clear, however, how consumer interests will be protected in relation to SEM Committee decisions and the potential for a SEM matter to be a non SEM matter or impact on a non SEM matter.	SEM Committee decisions must be taken in accordance with the principal objective and duties provided for in Article 8.  A matter cannot be both a SEM matter and a non SEM matter at the same time. In the context of an all island market which requires co-ordinated regulation, it is not appropriate to fetter the discretion of the SEM Committee in relation to its consideration of SEM matters by reference to their impact on non-SEM (ie domestic) matters. Otherwise, this would lead to different decisions in NI and RoI.
	The concept of 'Best Regulatory Practice' should be included in the duties.	See response to similar comment by NIE.
<b><u>ESB International</u></b>	Confirms its support for the establishment of the SEM.	The Department welcomes this support for the SEM.
	Requests clarification on the circumstances under which a licensee may have its licence changed in respect of an activity which, does not relate to that authorised by the licence	This power replicates the position under current NI electricity legislation, which allows for licence conditions which relate to activities other than those authorised by the licence.

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	Proposes that a quorum should consist of one Authority member and one CER member	See response to similar comment by NIE.
	Concerned that meetings of the SEM committee could go ahead and decisions taken with one part of the island not being represented	See responses to similar comments by NIE and Energia.
	SEM Committee should be required to publish an annual work programme	The SEM Committee is part of NIAER, and its workings will be covered by the obligation on NIAER to publish an annual forward work programme.
<b><u>Moyle Interconnector Limited</u></b>	Supports the proposed implementation of the SEM which, it believes, will be in the interest of consumers.	The Department welcomes this support for the SEM.
	Acknowledge the necessity for the proposed mandatory powers to be granted to the Department and the Authority; however, have concerns regarding the use of these powers, particularly in relation to licences and contracts which underpin industry financing arrangements.	These powers can only be exercised in furtherance of the MoU, and cannot be used to make arbitrary changes. The Department will seek to avoid any adverse impact on licensees' financing arrangements.
	NIAER should not be prevented/hindered from protecting the interests of NI electricity consumers (as over other consumers). The Order should therefore enable NIAER to give priority to such interests if a conflict arises with such interests and the principal objective of the SEM committee	The Department believes that such a change would undermine co-ordinated regulation of an all island market. Article 8(2)(e) (now Article 9(2)(e)) requires the Department, the NIAER and the SEM Committee to have regard to the need to avoid unfair discrimination between consumers in NI and RoI.

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<u>Irish Congress of Trade Unions</u>	Endorses the aims of the SEM but expresses doubts about whether those aims can be realised by the regulatory and legislative framework reflected in the consultation document.	The Department has noted these comments but believes that the proposed regulatory and legislative framework will deliver the aims of the SEM.
	Considers that the current regulatory model will not address the issue of dominance in the new market, and urges that both Governments enter into urgent consultation to reach a consensus on this issue.	Initial action to address dominance and market power designed to promote competition has been set out in the joint Ministerial communiqué of 12 January 2007 which can be found on DETI website at <a href="http://www.detini.gov.uk">www.detini.gov.uk</a> .
	Queries whether the proposed SEM model will facilitate the generation of renewables.	The Department believes that the operational arrangements being put in place by the Regulators will facilitate the growth of renewable electricity generation.
	The regulatory arrangements for the SEM need to facilitate the desired energy mix.	An aim of the SEM is to enhance security and diversity of supply.
	Question the wisdom of limiting to 24 months the power under Article 3 to modify licence conditions	The Department believes that this period should be adequate for the exercise of the Article 3 powers. See also response to comment by NIE on proposed 24 month period.
	Request clarification that if a conflict arises between Article 5(3) and Article 5(5) the former will take precedent?	The purpose of Article 5(5) (now Article 6(5)) is to ensure that decisions in relation to the listed functions which relate to non- SEM matters, are never capable of falling to the SEM Committee.

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	The majority of members of the SEM Committee should be independent in that they are not members or employees of NIAER or CER; they do not have any interests in energy business; and they are representative of the broad range of economic and consumer interests.	The SEM Committee is a sub-committee of NIAER and CER. The aim is to ensure consistent decision making by NIAER and CER in relation to SEM matters.
	Concerned about the proposal that 3 of the 7 seats on the SEM Committee would go to members or employees of NIAER, because the members and senior staff of NIAER do not reflect the diversity of consumer and economic interests. Therefore this does not accord with the principal objective that consumer interests should be protected.	The SEM Committee is a sub-committee of NIAER. The Department does not believe that the composition of the sub-committee will be an impediment to fulfilment of the principal objective.
	Fully supports the proposals as outlined in Article 8 (now Article 9).	The Department welcomes the support for these provisions of the draft Order.

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<b><u>DUP</u></b>	The balance of benefits from the SEM would seem to be tilted towards the RoI.	The Cost Benefit Analysis reflected at Table 2 of the RIA indicates that the benefits to consumers, in particular, will be broadly shared.
	Cannot support the SEM, as outlined in the consultation document, as any benefits which may flow from the new market require creation of a competitive environment in the Republic which will not exist by the target implementation date.	Initial action to address dominance and market power designed to promote competition has been set out in the joint Ministerial communiqué of 12 January 2007 which can be accessed on the DETI website at <a href="http://www.detini.gov.uk">www.detini.gov.uk</a> .
	It has not been demonstrated how maintaining the dominance of the ESB in the Republic, and creating an ESB dominance on the island as a whole, will make the market more attractive to potential investors – the recent decision of CER to allow ESB to develop a further station at Aghada is a discouragement to competition.	See above comment.  The decision to build Aghada was for security of supply reasons. However constraints have been placed by CER that would force ESB to sell the plant if it does not meet the obligations under the agreement with CER, as referred to in the communiqué of 12 January 2007- see above.
	Concerned at the low level of savings identified for Northern Ireland consumers and also rejects the option on value for money terms.	The Department has noted these comments against the savings identified in the Cost Benefit Analysis.
	The absence of a specific appeal mechanism to TSC modifications will discourage new investors.	See response to similar comment by NIE.

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<b>DUP (cont'd)</b>	It is unacceptable that NI appointments to the SEM Committee would be approved by the Irish Minister.	<p>The approval of the Irish Minister would only be required for the appointment of the CER members of the SEM Committee. The Department believes that this requirement is consistent with the role of the SEM Committee in regulating an all island market.</p> <p>Appointments of the NIAER members to the SEM Committee of the CER would similarly be subject to the approval of DETI.</p>
	Appointments to the SEM Committee should be subject to the same selection and appointment criteria in both jurisdictions.	The Department has noted this comment.
	Consideration should be given to a voting mechanism which requires a majority of members from the Republic of Ireland and a majority of members from Northern Ireland before any matter is approved.	See response to comment by Energia.
	The principal objective of the SEM should be to promote and protect the interests of Northern Ireland consumers. The inclusion in the principle objective of an objective to protect the interests of Republic of Ireland consumers is nonsense and unacceptable.	<p>The Department believes that it is necessary for the SEM Committees in both jurisdictions to be subject to the same principal objective and duties in order to enable co-ordinated regulation of the SEM. It would be inappropriate for the principal objective and duties only to protect the interests of NI consumers in the context of an all-island market.</p> <p>Article 9(2)(e) requires the Department, NIAER and the SEM Committee to have regard to the need to avoid unfair discrimination between consumers in NI and consumers in RoI. A similar duty is placed on DCMNR and CER in RoI.</p>

<u>Name of Respondent</u>	<u>Summary of key points relating to the draft Electricity (Single Wholesale Market) (NI) Order 2007</u>	<u>DETI Response</u>
<b><u>CBI</u></b>	Welcomes the publication of the partial RIA and emphasises the importance of the Regulatory Authorities maintaining a vigorous focus on delivering an effective and competitive market.	The Department notes and agrees with these comments.
	The market governance arrangements must offer investors and customers confidence, and be exercised in an open and transparent manner.	The Department notes and agrees with these comments.
	Measures need to be taken to mitigate the potential for market dominance including an active role by the Regulatory Authorities to promote competition in the market.	See response to similar comments by NIE and DUP.
	The SEM legislation should ensure that the early cancellation provisions of the long term generation contracts are preserved.	The provisions of Article 3 of the draft Order will facilitate the licence modifications required to preserve the cancellation powers.
	There is a need for an explicit appeals mechanism for SEM committee decisions. The absence of such a mechanism will discourage new investors.	See responses to similar comments by NIE,AES and Energia.

<u>Name of Respondent</u>	<u>Summary of key points relating to the draft Electricity (Single Wholesale Market) (NI) Order 2007</u>	<u>DETI Response</u>
<b><u>GCCNI</u></b>	Confirms its support for the development of an all-island electricity market in view of the potential benefits in terms of security of supply, fuel diversification and reduced pressure on costs.	The Department welcomes this support for the SEM.
	Records its concern about the restricted (eight week) consultation period and seeks clarification of consultation guidelines employed.	Government guidance states that a 12 week public consultation period is preferred but allows for a 8 week period if this is required. To enable the OiC to proceed through Parliament in a timely manner in parallel with the RoI Bill the Department felt that it was essential that the consultation period be reduced to 8 weeks. The Department made the decision to carry out an 8 week consultation period in conjunction with OFMDFM which was approved by the Minister and the Secretary of State.
	Welcomes the fact that the principal objective of DETI, NIAER and the SEM Committee will be to protect the interests of consumers.	The Department notes this comment.
	Welcomes the publication of the cost benefit analysis undertaken by NERA Economic Consulting, as reflected in the RIA.	The Department notes this comment.
	Proposes that the minutes and details of the considerations of the SEM committee should be made available publicly.	This will be a matter for the SEM Committee and will be covered in the working arrangements for the Committee to be published by the NIAER in accordance with article 7 of the NI draft Order. It is intended that the operation of the SEM Committee will be as open and transparent as possible in accordance with best regulatory practice and subject to commercial confidentiality.



<u>Name of Respondent</u>	<u>Summary of key points relating to the draft Electricity (Single Wholesale Market) (NI) Order 2007</u>	<u>DETI Response</u>
<u><b>GCCNI (cont'd)</b></u>	Question whether one independent member of the SEM Committee is adequate. Consideration should be given to the appointment of at least two appropriately qualified and expert independent members to the Committee, on an open competition for a member from each jurisdiction.	The SEM Committee structure is designed to enable co-ordinated regulation by the two existing regulators. The Department therefore believes that a single independent member is adequate.
	Further information is needed regarding the selection process for the independent member	This will be provided in due course.
<u><b>Airtricity</b></u>	Fully supports the establishment of the SEM which, it believes, will be significantly superior to the existing arrangements in either jurisdiction.	The Department welcomes this support for the SEM.
	Propose that SEM Committee meetings be held in public, with agendas and minutes being published, subject to commercial considerations.	See response to similar comment by GCCNI.

<b><u>Name of Respondent</u></b>	<b><u>Summary of key points relating to the draft Electricity (Single Wholesale Market) (NI) Order 2007</u></b>	<b><u>DETI Response</u></b>
	There is no need to make provision for non attendance by the independent member at meetings of the SEM Committee as there is provision for a deputy independent member	The Order makes appropriate provision to ensure that the business of the Committee can continue to be undertaken in the absence of the independent member without risk of stalemate.
<b><u>Wind Farm Developments Ltd</u></b>	The Order does not deal with certain matters relating to the ROCs and LECs regimes affected by the introduction of the SEM.	These matters are the subject of ongoing consideration between the Department and NIAER outside the scope of the draft Order.
<b><u>SDLP</u></b>	The issue of dominance in the SEM should be addressed by both Governments as a matter of urgency, with a view to ensuring a fully competitive market.	See response to comments by NIE and the DUP.
	Encourages the NIAUR and CER to work together to develop a new all-island energy planning network to anticipate future demand and sources of supply.	The Department welcomes this comment. The two system operators plan to coordinate their release of Generation Adequacy Reports (GARs) to determine the generation requirements in both jurisdictions with a view to the future joint publication of single GARs.
	There are still renewables issues to be addressed, particular in relation to issuing Renewable Obligation Certificates	See response to similar comment by Wind Farm Developments Ltd.