

EXPLANATORY MEMORANDUM TO
THE GAS AND ELECTRICITY (INTERNAL MARKETS)
REGULATIONS (NORTHERN IRELAND) 2011

SR 2011 No. 155

1. INTRODUCTION

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment (“the Department”) to accompany the above Statutory Rule which has been laid before the Northern Ireland Assembly. The Explanatory Memorandum is designed to assist the reader in understanding the Statutory Rule. It does not form part of the Statutory Rule.
- 1.2 The Statutory Rule is made under Section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.

2. PURPOSE

- 2.1 The Statutory Rule transposes into domestic legislation certain requirements of the EU Third Energy Package (“the Third Package”). The Third Package comprises two Directives – Directive EC/72/2009 (“the Electricity Directive”), and Directive EC/73/2009 (“the Gas Directive”) and three Regulations – Regulation EC No. 713 (“the ACER Regulation”), Regulation EC No. 714 (“the Electricity Regulation”), and Regulation EC No. 715 (“the Gas Regulation”).
- 2.2 The objectives of the Third Package include more enhanced consumer protection measures; more stringent requirements for unbundling of electricity and gas transmission network operations from other activities; ensuring fairer competition between energy companies within the EU and those outside the EU; more powers and independence for national energy regulators; greater cooperation on energy matters between Member States; and the creation of a new European energy Regulators agency.
- 2.3 The Statutory Rule amends the Energy (Northern Ireland) Order 2003 (“the Energy Order”), the Electricity (Northern Ireland) Order 1992 (“the Electricity Order”), the Gas (Northern Ireland) Order 1996 (“the Gas Order”), the Energy Act (Northern Ireland) 2011 (“the Energy Act”), and the Electricity (Applications for Licences and Extensions of Licences) (No.2) Regulations (Northern Ireland) 2007 (“the Electricity Applications Regulations”).

3. BACKGROUND AND POLICY OBJECTIVES

- 3.1 The Third Package came into force in September 2009 and is intended to enhance energy consumer protection, strengthen the powers of national energy regulators, enhance co-operation between electricity and gas transmission system operators, improve the functioning of the internal energy market in Europe and provide for additional unbundling of electricity and gas transmission network activities. The binding date for transposition of the Directives was 3 March 2011. The full text of the two Directives and the three Regulations which constitute the Third Package can be accessed at the following links:

The Electricity Directive –
http://www.detini.gov.uk/electricity_directive_2009-72-ec_oj.pdf

The Gas Directive –
http://www.detini.gov.uk/gas_directive_2009-73-ec_oj.pdf

The Electricity Regulation –
http://www.detini.gov.uk/electricity_regulation_714-2009_oj.pdf

The Gas Regulation –
http://www.detini.gov.uk/gas_regulation_715-2009_oj.pdf

The ACER Regulation –
http://www.detini.gov.uk/acer_regulation_13-2009_oj.pdf

Consumer protection

- 3.2 The Third Package introduces a number of new energy consumer protection measures relating to, for example, switching energy supplier, fuel mix disclosure, and transparency regarding contractual terms. The Statutory Rule provides for these consumer protection measures to be implemented via obligations on the Northern Ireland Authority for Utility Regulation ('the Authority') to include in licences conditions which meet the requirements of the Directives. This allows some degree of flexibility to implement solutions in the most effective and least costly way possible. Any modifications to existing licences to give effect to the Directive requirements will be subject to the Department's consent.

(i) Vulnerable customers

- 3.3 The Energy Order already requires the Department and the Authority, in carrying out their electricity and gas functions, to have regard to the interests of a number of categories of individuals. The Statutory Rule strengthens the existing wording in the Energy Order to reflect the Directives' requirements to 'protect' vulnerable customers. This allows a targeted approach by the Authority in developing consumer focused solutions to the various categories of need via new or amended licence conditions.

(ii) Independent out-of-court dispute resolution: Billing Disputes

- 3.4 The Directives require an independent out-of-court dispute resolution mechanism. Existing legislative provisions address the majority of issues. However, to close an identified gap relating to billing disputes, the Statutory Rule establishes a billing disputes mechanism to enable the Authority to determine, or to appoint an arbitrator to determine, those electricity and gas billing disputes which cannot be resolved under the current arrangements.

Cross border co-operation

(i) Agency for Cooperation of Energy Regulators (ACER)

- 3.5 The Third Package contains measures to strengthen energy regulatory regimes across Member States and make provision for a range of duties and objectives for National Regulatory Authorities (NRAs). The Statutory Rule, therefore, designates the Authority as the NRA in Northern Ireland and provides the legislative basis for the Authority's new duties and functions in this regard. The ACER Regulation provides that only one

representative per Member State may be admitted to the ACER Board of Regulators and the GB Office of Gas and Electricity Markets (Ofgem), will be the NRA to represent the UK. The Statutory Rule also enables the Authority to make representations to Ofgem to ensure Northern Ireland interests are represented at ACER.

Electricity and Gas Transmission Systems

- 3.6 The Directives contain 3 options for unbundling of the electricity and gas transmission systems plus a limited disapplication of the arrangements permissible in certain circumstances -

Option 1: Full Ownership Unbundling (FOU)

This provides for the Transmission System Owner (TS Owner) and the Transmission System Operator (TS Operator) to be the same entity, independent in ownership from production and supply.

Option 2: Independent System Operator (ISO)

This provides for the TS Owner to be part of a vertically integrated undertaking (VIU) but the TS Operator is independent in ownership from the VIU.

Option 3: Independent Transmission Operator (ITO)

This provides for the TS Owner and TS Operator both to be part of a VIU, but very heavily ring-fenced within it.

Limited disapplication of unbundling requirements

In addition, both Directives allow for the limited disapplication of the unbundling requirements. Paragraph 9 of Article 9 (Article 9(9)) of the Directives states that a Member State may decide not to implement ownership unbundling where “on 3 September 2009, the transmission system belongs to a vertically integrated undertaking and there are arrangements in place which guarantee more effective independence of the transmission system operator” than the ITO model outlined in option 3 above.

- 3.7 The Statutory Rule implements the unbundling requirements by imposing a duty on certain electricity transmission and gas conveyance licensees to be certified in line with the timescales set out in the Directives. The Statutory Rule gives the Authority the powers to carry out the certification procedure in line with the Directive requirements. For electricity, the Statutory Rule provides for the options of full ownership unbundling (FOU), the independent system operator (ISO) model, and the Article 9(9) model; and in gas for FOU, the ISO model, and the independent transmission operator (ITO) model.
- 3.8 In order to give effect to the unbundling models, there may be a need for licence modifications and/or, in some cases, property arrangements schemes to be put in place. The Statutory Rule makes provision for this.

Electricity and Gas Distribution Systems

(i) Separate licensing of distribution

- 3.9 The Statutory Rule prohibits unauthorised distribution of electricity. In order to distribute electricity, an entity will have to be authorised by either a licence or an exemption. The Statutory Rule amends the Electricity Applications Regulations to provide separate application forms for electricity transmission and distribution licences. Transitional provisions will be made to ‘deem’ Northern Ireland Electricity plc’s existing transmission and distribution (T&D) licence and for that licence to be separated

into distinct licence documents. The Statutory Rule provides that, for a period of time, the prohibition on distributing electricity without a licence will not apply to entities currently carrying out distribution activities.

Gas infrastructure

- 3.10 Aspects of the Third Package relate, among other matters, to gas storage and unbundling of gas storage operators. There are currently no gas storage licences in Northern Ireland. The Statutory Rule provides the Authority with the necessary powers to include appropriate licence conditions to meet the relevant Directive requirements were such a licence to be granted.

National Regulatory Authorities

(i) Licence making and licence modification powers

- 3.11 The Directives require measures to be taken to ensure the autonomy and independence of NRAs. The Statutory Rule amends the Electricity Order and the Gas Order to vest in the Authority, rather than the Department, the power to grant licences. As a consequence of the removal of the Department's power to grant electricity licences, the Statutory Rule amends the Electricity Order to enable the Department to determine standard conditions for electricity licences (the Gas Order already provides for standard conditions in gas licences). The Statutory Rule also amends the Electricity Order and the Gas Order to replace the Department's power to "give general directions" to the Authority with a power to "issue guidance".
- 3.12 In order to ensure the requirements of the Third Package are implemented, the Statutory Rule includes a 'free-standing' power for the Department, or the Authority with the consent of the Department, to modify existing electricity and gas licences to give effect to the Directive requirements.

(ii) Objectives of National Regulatory Authorities

- 3.13 The Statutory Rule amends the existing principal objectives of the Department and the Authority for electricity and gas in the Energy Order to incorporate the objectives of the NRA as set out in the Third Package.
- 3.14 The Third Package clearly intends to strengthen energy regulatory regimes across Member States and make provision for a range of duties and objectives for NRAs. The Statutory Rule designates the Authority as NRA in Northern Ireland, and vests it with additional powers and duties. The Statutory Rule stipulates that in exercising the Authority's functions, its staff must have no financial or other interest which might compromise the Authority's independence and must not seek or take instruction from any person or body which might compromise or be reasonably seen to compromise the Authority's independence.
- 3.15 The Statutory Rule requires the Authority to prepare an annual report on the NRA activities carried out in the previous year and to copy this report to the Department, the European Commission, and ACER. The Statutory Rule requires the Authority to comply with any binding decision of ACER. Additionally, the Statutory Rule imposes a duty on the Authority to prepare (in consultation with the General Consumer Council), and to publish guidance for consumers.

- 3.16 The Statutory Rule requires the Authority, when carrying out its functions as NRA, to co-operate with NRAs in other Member States.
- 3.17 The Statutory Rule amends the Energy Order provisions relating to Authority Board member appointments, to reflect the Electricity and Gas Directive requirements for 5 year minimum and 7 year maximum terms with the possibility of one re-appointment, and for appropriate rotation of members. It also makes transitional arrangements to apply to existing Authority Board members.

(iii) Enforcement

- 3.18 Many aspects of the Third Package will be implemented in practical terms through changes to licences and other industry documentation by which market participants must abide. Compliance with gas and electricity licence conditions is enforced by the Authority which has the power in certain circumstances to impose financial penalties of up to 10% of the turnover of the licensees in the event of a breach of their obligations. In line with the requirements of the Directives, the Statutory Rule changes the basis on which turnover is calculated to allow for penalties to be calculated by reference to the turnover of a VIU, rather than just the licence holder, where relevant requirements of the Directives are being enforced.
- 3.19 The Statutory Rule amends the existing regulatory enforcement regime to ensure it is compliant with the Third Package. Market participants who are exempt from the requirement to hold a gas or electricity licence were previously not subject to the same enforcement provisions as licensed entities, because many of the requirements exist in the form of licence conditions. Therefore, to ensure implementation of the requirements of the Directives, the Statutory Rule amends the definition of "relevant conditions" in the enforcement provisions in the Energy Order to include any exemption conditions which exist.
- 3.20 The Electricity Regulation and the Gas Regulation impose various requirements on market participants which have direct effect. The Authority, in its capacity as the designated regulatory authority for Northern Ireland, has an obligation to enforce compliance with these Regulations. The Statutory Rule amends the Authority's enforcement powers under the Energy Order to enable the Authority to enforce provisions of the Electricity Order and the Gas Order which have been introduced to implement the Directives. The enforcement powers will now extend to all persons regulated under the Electricity Order and the Gas Order, not just licence holders. The Statutory Rule provides for the Department to designate, at a future date, the relevant provisions of the Electricity Regulation and the Gas Regulation which are to be "relevant requirements" capable of enforcement.

4. CONSULTATION

- 4.1 The Department has undertaken three written consultations on the matters contained within the Third Package and how it is intended to implement these provisions in Northern Ireland. An initial 6 week consultation on the transmission unbundling provisions was carried out in December 2009. This was followed in October 2010 by an 8 week consultation on the full range of provisions contained in the Third Package. In February 2011, the Department conducted a further two week consultation on the transmission unbundling arrangements specifically with holders of electricity transmission and gas conveyance licences. The Department subsequently published a Decision paper setting out its proposals for implementation of the Third Package.

- 4.2 The consultations, responses, Decision paper and other associated papers can be accessed at:

[Decision paper on the legislative proposals to implement the Third EU Energy Package in Northern Ireland | Department of Enterprise, Trade and Investment \(DETI\)](#)

5. EQUALITY IMPACT

- 5.1 In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, an equality screening exercise has been carried out on the provisions of the Statutory Rule and has concluded that an equality impact assessment is not required. The Statutory Rule will give effect to the requirements of the Third Package – many of the provisions being implemented will lead to an enhanced consumer protection framework, which will benefit, in particular, domestic electricity and gas consumers. The Statutory Rule will, therefore, bring benefits across the range of such consumers, and will strengthen the existing obligations with respect to vulnerable customers. It does not have any negative implications for equality of opportunity.

6. REGULATORY IMPACT

- 6.1 A Regulatory Impact Assessment (RIA) has been prepared in respect of the Statutory Rule and has been published together with the Decision paper. The implementation of the Third Package imposes a number of additional duties and objectives upon the electricity and gas industry and will be effected through a combination of legislative requirements and licence conditions enforced by the Authority. The Statutory Rule supports the implementation of the Third Package which aims to provide more enhanced consumer protection measures; more stringent requirements for unbundling electricity and gas transmission network operations from other activities; ensure that there is fairer competition between energy companies within the EU and those outside the EU; give more powers and independence for national energy regulators; ensure greater cooperation on energy matters between Member States; and facilitate the creation of a new European energy Regulators agency.
- 6.2 The Department has explored the full range of options and this is detailed in the attached Regulatory Impact Assessment at **Annex A**.

7. FINANCIAL IMPLICATIONS

- 7.1 The benefits and cost estimates of compliance with the Third Package, and implementation of the Statutory Rule, are highlighted in the Department's Regulatory Impact Assessment, attached at **Annex A**.

8. SECTION 24 OF THE NORTHERN IRELAND ACT 1998

- 8.1 These Statutory Rule does not contravene section 24 of the Northern Ireland Act 1998.

9. EU IMPLICATIONS

- 9.1 There are no negative implications for the EU or its Member States. Instead the legislation will have a positive effect by enhancing energy consumer rights, promoting cross border co-operation in energy matters and maximising competition for the benefit of consumers. The legislation also enhances regulatory powers to ensure compliance across the EU.

10. PARITY OR REPLICATORY MEASURE

10.1 The Third Package is required to be implemented in all EU Member States and the Department has been working closely with the Department of Energy and Climate Change (DECC) on the implementation of the Statutory Rule to transpose the Third Package to ensure harmonisation where practicable, but taking account of specific Northern Ireland requirements. DECC will implement the Third Package for GB, and the Department has legislated to transpose the Directives for Northern Ireland.

11. ADDITIONAL INFORMATION

Commentary on Articles

11.1 Transposition notes for the Third Package are attached at **Annex B**.

Commencement

11.2 The Statutory Rule comes into operation on 15 April 2011.

ENERGY DIVISION

DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT

March 2011

ANNEX A REGULATORY IMPACT ASSESSMENT

IMPLEMENTATION OF THE THIRD PACKAGE OF EU ENERGY LEGISLATION IN NORTHERN IRELAND

REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

The Implementation of the EU Energy Third Package of Legislation for electricity and natural gas in Northern Ireland (“the Third Package”)

2. Introduction

This Regulatory Impact Assessment (RIA) supports the implementation of the Third Package of EU Energy Legislation.

The Third Package comprises:

- Directive 2009/72/EC (the Electricity Directive);
- Directive 2009/73/EC (the Gas Directive);
- Regulation (EC) No 714/2009 (the Electricity Regulation);
- Regulation (EC) No 715/2009 (the Gas Regulation); and
- Regulation (EC) No 713/2009 (the ACER Regulation).

The binding date for transposition of the Third Package was 3 March 2011.

The Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (‘the Regulations’) will transpose the higher level requirements of the Third Package into Northern Ireland law. In its October 2010 consultation, the Department sought views on all aspects of the Third Package. **This RIA will only concentrate on the content and impact of those areas of the Directives where legislation is required for implementation.**

All the obligations set out in this document are EU Directive requirements, and the Department has no option but to implement them. However, where options are available to the Department, we have considered, where possible, the cost implications for Northern Ireland.

Full implementation of the requirements of the Third Package in Northern Ireland will involve a combination of new or amended legislation (by way of regulations made by the Department under Section 2(2) of the European Communities Act 1972); new or modified licence conditions (made under existing powers or new powers provided for in such regulations); amendments to industry codes (under powers provided in such licence conditions); or other regulatory instruments. A key aspect of the Third Package is that it gives enhanced powers and duties to the Northern Ireland Authority for Utility Regulation (the Utility Regulator).

The Department has engaged as appropriate with the Utility Regulator throughout the process of implementation of the Third Package, and the responses to the Department’s consultations will help the Utility Regulator in its development of the licence conditions. The Utility Regulator will also consult, in due course, with licence holders on the detail of proposed modifications to licences.

3. Background and objective

The Third Package aims to re-invigorate energy market integration, harmonise the powers and independence of energy regulators at a national and EU level, increase transparency, and provide for effective unbundling of vertically integrated gas and electricity undertakings – removing conflicts of interest between energy producers, suppliers and transmission system operators.

The objective of the draft Regulations is to transpose into national law the requirements of the Electricity and Gas Directives, and also to give effect to certain provisions in the Electricity and Gas Regulations and the Agency for the Cooperation of Energy Regulators (ACER) Regulation.

The Electricity Regulation relates to conditions for access to the network for cross-border exchanges in electricity. The Gas Regulation relates to conditions for access to natural gas transmission networks. The Electricity and Gas Regulations came into effect automatically on 3 March 2011. However there will be a requirement to make specific transposition of any part of these Regulations that refer to sanctions and to make certain obligations under the Regulations ‘relevant requirements’, capable of enforcement by the Utility Regulator.

The new Agency Regulation is mandated by Europe to establish ACER. The purpose of ACER is to assist national energy regulatory authorities (NRAs), like the Utility Regulator, in exercising, at Community level, the regulatory tasks performed in the Member States and, where necessary, to coordinate their action. ACER is not intended as a substitute for national energy regulators or as a single EU energy Regulator. But it will be able to make decisions on some cross-border issues. The specific tasks of ACER will include complementing and co-ordinating the work of the NRAs as necessary, participating in the creation of European Network Codes with the two European Networks of Transmission System Operators (ENTSOs), taking decisions where the NRAs have not been able to agree a way forward on terms and conditions for access to networks within a specified timeframe and providing advice on various energy related issues to the European Commission and NRAs.

The Agency Regulation is in force and ACER has already been established. However, pursuant to the Agency Regulation, ACER began discharging its tasks from 3 March 2011.

Many of the requirements of the Third Package are not new, and were part of the Second EU Energy Package on market liberalisation in the energy sector. This assessment only focuses on those provisions which are new.

Key issues included in the Third Package include:

- Enhanced consumer protection;
- More stringent requirements in relation to unbundling of transmission and distribution systems;
- Enhanced co-operation between Member States;
- More powers and independence for National Regulators; and
- Creation of a new European energy agency – the Agency For The Co-Operation Of Energy Regulators (ACER)

The Department has conducted a number of consultation exercises on implementation of the Third Package in Northern Ireland. In December 2009, the Department published a consultation paper on the unbundling requirements of the Electricity and Gas Directives. In October 2010, the Department conducted a further 8 week consultation exercise seeking views on implementation of all the requirements of the Third Energy Package in Northern Ireland. The responses to these consultation exercises have been published in full on the Department's website (except where respondents requested confidentiality) and can be accessed at the DETI website. In addition, in February 2011, the Department conducted a further focused consultation with the Utility Regulator and electricity and gas transmission/conveyance licensees on the developing proposals for implementation of the transmission unbundling requirements of the Directives and, in particular, the application and certification procedures. These consultation letters for electricity and gas and (except where respondents requested confidentiality) responses are available on the DETI website.

4. Purpose and intended effect - Key aspects of the Third Package, proposed implementation in Northern Ireland and associated Cost/Benefit Analysis

This section analyses in more depth the key aspects of the Third Package outlined at point 3 above, noting the action that will be taken to ensure compliance in Northern Ireland and, where relevant, exploring options for implementation including an assessment of costs and benefits, where this information is available. The section focuses on those issues that will require new legislation or are likely to have direct cost implications. When considering some issues, it has not been possible to provide quantifiable evidence and a qualitative assessment has been provided instead. Additionally, some costs will not be fully known until the outworking of the Directive requirements is taken forward, for example, through the necessary licence modifications by the Utility Regulator, and the outworking of the transmission unbundling arrangements.

Enhanced Consumer protection (Chapter 2 of the Decision paper)

The Third Package includes a considerable number of measures relating to consumer protection matters. To a large extent these measures build on the consumer protection measures which were implemented as part of the Second EU Energy Package (2003). The consumer protection matters will apply in some cases to domestic and non-domestic consumers.

(a) Customer Information

The Third Package requires that customers be informed of a range of matters, including energy consumption data, Fuel Mix Disclosure, energy efficiency advice, and provided with a consumer checklist.

Implementation in Northern Ireland

The Directives require Member States to ensure that customers are entitled to receive all relevant consumption data. This would require suppliers to provide information to customers about their energy consumption and costs. The Department has decided to implement the consumption data requirements through provision in the Regulations requiring the Utility Regulator to include in gas and electricity supply licences, conditions to meet the Directive requirements. This will allow for greater flexibility, and

importantly consultation on the detail of the licence conditions to be imposed will give supply companies a further opportunity to provide valuable feedback about how these arrangements might be implemented in practice.

The Electricity Directive requires Member States to ensure that electricity suppliers specify in bills and promotional material information about the fuel mix of the supplier. While there are interim arrangements for Fuel Mix Disclosure, the Regulations will require conditions of the electricity supply licence to oblige electricity suppliers to provide fuel mix disclosure information to customers.

The Third Package calls on Member States or the national regulatory authority to recommend that in relation to energy efficiency, supply undertakings optimise the use of electricity and gas, for example by providing energy management services, developing innovative pricing formulas or introducing intelligent metering systems or smart grids as appropriate. The Department has decided that it would be appropriate to formalise the rights of non-domestic customers to avail of energy efficiency advice and information – suppliers already compliant with the requirements should not find this burdensome. Therefore the Regulations will provide for licence conditions to extend existing requirements for the benefit of non-domestic customers.

The Directives introduce a requirement for energy customers to be provided with a consumer checklist that has been established by the European Commission. Member States are required to ensure that energy suppliers or distribution system operators provide consumers with a copy of the checklist. The Regulations will amend the Energy Order to require the Utility Regulator to develop and maintain a Northern Ireland consumer checklist in consultation with the Consumer Council for Northern Ireland (CCNI). Separately, new gas and electricity supply licence conditions will require suppliers to make the checklist available to customers.

Potential Costs and Benefits

At present, it is difficult to gauge what the exact requirements and costs will be in relation to providing energy consumption data to customers. A lot of the practical implementation of the requirements will be managed and monitored by the Utility Regulator who will be responsible for developing the new licence conditions in conjunction with the energy industry. The precise costs will depend on the detailed obligations imposed.

It is intended that the requirements in relation to energy consumption data will provide a greater level of transparency and, as a result, improved consumer awareness will be a key driver of competition, as consumers should be able to make more informed decisions when choosing tariffs and suppliers.

Measures relating to improving the access and quality of information may also result in consumers gaining increased market power and increase their ability to receive a better deal from alternative suppliers.

(b) Vulnerable energy customers

The Third Package requires Member States to define the concept of vulnerable customers and to ensure that there are adequate safeguards to protect these customers. The Energy (Northern Ireland) Order 2003 ('the 2003 Order') cites specific groups of electricity and natural gas customers to which the Department and the Utility Regulator must have due regard in performing its duties (i.e. individuals who are chronically sick or disabled, individuals of pensionable age, individuals with low

incomes). The 2003 Order includes an additional category of those individuals residing in rural areas in respect of electricity.

Implementation in Northern Ireland

The Department agrees that the needs of vulnerable customers should be addressed in a targeted way – in energy terms vulnerable customers may not always be limited to those in, or at risk of, fuel poverty, although this is a significant category within that group. Different categories of customers will have different needs to be addressed. The Department considers that the best way to target customers according to need is through licence conditions which can address the specific needs of each category of vulnerable customer. The Department will make an amendment to strengthen the duty (as to protection of vulnerable customers) in the Energy Order.

Potential Cost and Benefits

The obligation to consider the needs of these particular groups of individuals ensures a high level of protection for vulnerable consumers since it enables a more targeted approach to be adopted in respect of the licence obligations which refer to particular classes of need. There is no additional cost associated with amending the current provision.

(c) Customer switching

The Third Package requires that customers should be able to switch easily and free of charge to any gas or electricity supply company of their choosing. The Directives go on to state that effective switching must take place within three weeks. In addition, both the Electricity and Gas Directives require suppliers to ensure that final bills are sent within six weeks of switching. Reducing the time it takes to switch should improve competition, eventually leading to more innovation and greater efficiency in the market.

Implementation in Northern Ireland

In Northern Ireland at present there are mechanisms in place to facilitate customer switching which has taken place in the electricity and gas industrial and commercial (I&C) sectors for a number of years. For electricity, since active competition in the domestic market commenced in June 2010, it is reported that approximately 25,000 to 30,000 domestic customers have switched supplier. Since active competition commenced in the domestic gas market in the Greater Belfast licensed area in November 2010, there have been in total approximately 500 switches. There are practical restrictions in the switching systems which limits the number of customers who are able to switch suppliers (currently 7,500 per month for electricity and up to 500 per week for gas). However, these limits have never been reached and in practical terms, therefore, all customers who wish to switch energy suppliers are able to do so. However, as a separate exercise to the implementation of the Third Energy Package, the Utility Regulator has been working with licensees in developing an “enduring solution” for electricity which will improve the IT systems to facilitate a greater number of customers who can switch. This exercise involves the development and installation of new IT systems and will be implemented by March 2012.

The Regulations will require new electricity and gas supply licence conditions to be introduced to implement the three week switching requirement and underpin the arrangements already in place. As proposed in the consultation, it is intended that the gas and electricity supply licence conditions will provide for the three week switching limit to be included in the terms and conditions of the supply contract suppliers have with their customers, to ensure customers are aware of this time limit. A similar

provision dealing with the optimal switching arrangements may be included in the electricity distribution and gas conveyance licence conditions, to ensure that electricity and gas distributors facilitate the switching process. The consultation process that will be carried out by the Utility Regulator will address the detail, including the circumstances in which customers might be blocked from switching.

In relation to the provision of a final bill within six weeks of switching supplier, the Regulations will require the Utility Regulator to include in supply licences conditions requiring suppliers to provide customers with a final bill in line with the requirements of the Directive. The detail of the modified/proposed licence conditions will address the specific arrangements in this regard.

Potential Costs and Benefits

At present, it is difficult to gauge what the exact additional requirements and costs will be in relation to customer switching arrangements to ensure Directive compliance. There are also likely to be additional costs in relation to changing suppliers' IT systems, however it is not clear at this stage, to what extent additional IT changes will have to be made and whether costs are likely to be significant. A lot of the practical implementation of the requirements will be managed and monitored by the Utility Regulator who will be responsible for monitoring the new switching systems which are being developed by the electricity industry.

Customers will be able to avail of the benefits of switching supplier in a reduced time thus providing cost savings and improvements in customer service. Systems changes should also result in an improved switching process, which may lead to greater competition within the respective energy markets.

Greater competition may also act as an impetus on energy suppliers to reduce costs, improve customer service and develop innovative products.

(d) Independent complaints mechanism/out of court dispute settlement

The Third Package requires Member States to ensure that an independent mechanism is put in place to provide for the efficient treatment of complaints and out-of-court dispute settlements. Although the Directive is not prescriptive regarding the specific format this should take, an "energy ombudsman" or "consumer body" are given as possible examples.

Implementation in Northern Ireland

The Department notes that in practice, the current arrangements work well in resolving the vast majority of complaints, however has identified a potential gap in legislative provision relating to billing disputes. To address this potential gap the Department will give the Utility Regulator powers to determine billing disputes (or to appoint an arbitrator to do so) where the dispute is referred to the Utility Regulator by a customer. This dispute resolution mechanism will be available when the customer has exhausted other means of determining the billing dispute – namely raising the matter with the supplier, and engaging the assistance of CCNI. The Department does not consider that this additional provision should in any way replace the current procedures or displace the work of CCNI in resolving consumer complaints. Rather it provides a mechanism for resolving that very small number of cases where no satisfactory conclusion can be achieved.

Potential Costs and Benefits

It is difficult to ascertain what the exact costs will be in relation to appointing an arbitrator to determine a billing dispute and prices will vary on a case by case basis. The current arrangements involve CCNI and energy suppliers and are considered to work well. Given this, the Department would hope that the use of arbitration in the determination of a billing dispute would only be in an exceptional occurrence.

In terms of assessing costs, recent advice from the Departmental Solicitor's Office states that the average daily rate for an arbitrator may be similar to a legal counsel, and could cost around £1,500 per day. There is also the potential for each party involved in the dispute to engage their solicitors. The Department wishes to ensure a process is available to support, rather than displace, the current arrangements. The Department will keep the arrangements under review to monitor the effectiveness of the new process and associated costs.

Providing an independent mechanism for dealing with billing disputes addresses the potential gap by giving consumers an opportunity for redress when taking complaints against energy companies. Benefits are resolution of complex billing disputes and clarity for consumers.

Enhanced co-operation between Member States (Chapter 3 of the Decision paper)

The Third Package includes some measures relating to cross-border cooperation. Member State co-operation is sought in order to promote regional and bilateral solidarity in order to safeguard security of supply in the internal market. Such cooperation must cover situations likely to result in the short term in a severe disruption of supply, including co-ordination of national emergency, development of electricity/gas interconnections (where necessary) and conditions for mutual assistance.

(a) Regional cooperation

The Electricity and Gas Directives provide that Member States as well as the regulatory authorities shall cooperate with each other for the purpose of integrating their national markets at one or more regional levels, as a first step towards the creation of a fully liberalised internal market.

There is gas interconnection with RoI and a new high voltage electricity link is planned between NI and RoI to allow additional electricity flows. No further interconnection infrastructure is envisaged.

The Single Electricity Market (SEM) for NI and the Republic of Ireland (RoI) is an example of a regional initiative that was initiated by cooperation by the respective Governments of NI and the RoI, and then taken forward as a joint initiative by the Utility Regulator and the Commission for Energy Regulation (CER). Similarly for gas, the Utility Regulator and the regulator for the RoI (CER) signed a Memorandum of Understanding in April 2008 on the development of the Common Arrangements for Gas (CAG) project. While the relevant legislation will ensure that CAG will be compliant with the Gas Directive, it is important to note that the CAG project is being undertaken as a policy initiative that is independent to implementation of the Gas Directive, and as such the CAG project should not be viewed as requisite to implement this aspect of the Gas Directive.

In addition, NI is involved in the Electricity Regional Initiative (ERI) and the Gas Regional Initiative (GRI). The ERI and the GRI are joint European Commission and regulatory initiatives that are intended to foster the further integration of national electricity

markets and national gas markets, through the further development of regional electricity markets and regional gas markets respectively.

Implementation in Northern Ireland

To ensure continued focus on regional cooperation, the Energy Order will be amended to include an express provision requiring the Utility Regulator, wherever it thinks fit, to cooperate with Ofgem in GB and the designated regulatory authorities of other relevant Member States such as the Commission for Energy Regulation (CER) in RoI, with a view to achieving compliance with those requirements of the Directives in relation to regional cooperation.

Potential Costs and Benefits

As noted above, a new NI/RoI electricity interconnector link, which has been estimated to cost around £130 million, is planned. However there is no additional expenditure expected on new energy infrastructure due to the Third Package. Costs will be associated with day-to-day interaction and cooperation between regional authorities.

Benefits for security of supply are difficult to quantify but the loss of gas supply would result in higher power generation costs as power stations would revert to using distillate oil, hence enhancing security of supply protocols will avoid additional consumer costs.

Electricity and Gas Transmission systems (Chapter 4 of the Decision paper)

There are new requirements contained in the Third Package which are intended to increase competition within the energy sector. These are known as unbundling measures, and relate to the independence of the Transmission and Distribution networks, and are particularly significant as they have the potential to result in some energy companies having to divest elements of their business in order to be compliant.

The objective behind the new transmission unbundling regime is to ensure that there is no conflict of interest between electricity and gas generators/producers, suppliers and transmission system operators, and to remove the incentive for vertically integrated undertakings to discriminate against competitors as regards access to the energy network, access to commercially relevant information, and as regards investments in the network.

The Department, in December 2009, published a consultation document specifically on the unbundling options for Northern Ireland. The main consultation paper, issued in October 2010, on implementation of the Third Package again invited views on unbundling. In addition, in February 2011, the Department conducted a further focused consultation with the Utility Regulator and electricity and gas transmission/conveyance licensees on the developing proposals for implementation of the transmission unbundling requirements of the Directives and, in particular, the application and certification procedures.

The unbundling model which is chosen for Northern Ireland must be certified by the Utility Regulator, and this certification must then be authorised by the European Commission.

The Directives contain 3 options for unbundling of the electricity and gas transmission systems plus a limited disapplication of the arrangements permissible in certain circumstances -

Option 1: full ownership unbundling (FOU)

This provides for the Transmission System Owner (TS Owner) and the Transmission System Operator (TS Operator) to be the same entity, independent in ownership from production and supply.

Option 2: independent system operator (ISO)

This provides for the TS Owner to be part of a vertically integrated undertaking (VIU) but the TS Operator is independent in ownership from the VIU.

Option 3: independent transmission operator (ITO)

This provides for the TS Owner and TS Operator both to be part of a VIU, but very heavily ring-fenced within it.

Limited disapplication of unbundling requirements

In addition, both Directives provide for the limited disapplication of the unbundling requirements. Paragraph 9 of Article 9 (Article 9(9)) states that a Member State may decide not to implement ownership unbundling where the arrangements in place are such that they “guarantee more effective independence of the transmission system than the ITO model” which is outlined in option 3 above.

Implementation in Northern Ireland

The Regulations will implement the unbundling requirements by imposing a duty on a ‘relevant licensee’ to be certified in line with the timescales set out in the Directives. This duty will be a relevant requirement capable of enforcement by the Utility Regulator. The Regulations will give the Utility Regulator the powers to carry out the certification procedure. For electricity, the Department intends to legislate (in the case of a vertically integrated undertaking as at 3 September 2009) for the options of full ownership unbundling (FOU), the independent system operator (ISO) model, and the Article 9(9) model; and in gas for FOU, the ISO model, and the independent transmission operator (ITO) model.

In order to give effect to the unbundling models, there may be a need for licence modifications and/or, in some cases, property transfer schemes to be put in place. The Regulations will make provision in this regard.

Potential Cost

In response to the DETI consultation “Implementation of the unbundling provisions of the 2009 Electricity Directive”, a number of examples were cited as areas where significant costs could be incurred as a result of implementing the unbundling requirements.

- **Electricity**

If the Full Ownership Unbundling (FOU) model was adopted in Northern Ireland to comply with the Directive requirements for the electricity industry, this would necessitate the sale of NIE’s electricity transmission asset which is estimated to have a value of between £250-300 million.

NIE's response to the Department's consultations on the Third Package advised that there would be significant costs associated with such a transaction, including the following –

- Transaction costs (legal/banking) of perhaps £4-6 million
- IT costs which may be in the region of £5-6 million
- Stock/Maintenance Deposits of circa £1 million
- Ongoing annual costs of perhaps £5-7 million

There may be some additional significant costs relating to the physical unbundling of electrical sub-stations which NIE estimated could be as high as £27-32 million. However, it is not certain that such an extent of physical unbundling would be necessary, or if suitable arrangements or protocols could be established to minimise such associated costs.

Respondents to the consultations also suggested that an Independent System Operator (ISO) for the electricity industry would involve costs similar to those outlined for the FOU model, but with the exception of the transaction costs associated with the sale of the NIE transmission asset.

The least costly option would likely be the limited disapplication arrangement (Article 9(9)), as this is the least disruptive option in terms of the existing industry structure. This, however, does not take account of any opportunity costs related to potential benefits from other unbundling models. As previously stated, the Independent Transmission Operator model has not been included for electricity in the legislation.

- **Gas**

In relation to the natural gas industry in Northern Ireland, in 2008, Phoenix Natural Gas sold the Belfast Transmission Pipeline to what is now Mutual Energy. Mutual Energy also owns the Scotland to Northern Ireland Pipeline (SNIP) and the Moyle electricity interconnector between Northern Ireland and Scotland.

Given that Phoenix no longer owns a gas transmission business, and Mutual Energy only owns transmission assets (thereby complying with the FOU model), only Bord Gáis Éireann (BGE), which owns and operates the North-West and the South-North gas pipelines and is the ultimate owner of *firmus energy* in Northern Ireland, can be considered for more than one unbundling model. The Department has therefore provided for FOU, ISO and ITO in its legislation.

BGE's preferred unbundling model is ITO. Specific costs in relation to detailed proposals for unbundling provisions in Northern Ireland cannot be fully determined at this time, but will relate to the BGE owned North-West and the South-North gas transmission pipelines and *firmus energy* as a combined gas distribution and supply business. BGE consider that costs specific to an ISO unbundling model may be up to 50% greater in relation to both set up and ongoing operational costs compared to an ITO arrangement.

Potential Benefits

The Third Package seeks to continue the development of competition within energy markets mainly through unbundling the ownership and/or operation of transmission assets within VIUs.

The EC Impact Assessment¹ (pp. 33-45) highlights the following broad categories of benefits resulting from full ownership unbundling –

- **Greater investment in the network**

It is considered that unbundling could lead to more efficient investment in grid infrastructure as it will ensure that the system operator is incentivised to develop the network in the overall interest of the market rather than perhaps to meet the needs of a related company.

Indeed, SONI, in response to the 2009 DETI consultation on implementing the Third Package, suggested that properly incentivising the TS Operator to achieve the single consistent outcome of ensuring the most cost-effective network operation could result in a reduction of 20 – 30% in transmission outage constraint costs. SONI calculated that this could potentially save £4-6m on an all-island basis on the projected constraint costs for 2010. Against this, other consultation respondents highlighted significant transaction costs associated with unbundling and other ongoing costs.

- **Reduced market concentration**

The EU's impact assessment suggests that the market share of the largest generators in the electricity market (as well as gas sector) is significantly higher in Member States with legal unbundling than in those with ownership unbundling.

Consequently it is thought that increasing unbundling requirements may lead to more competition in electricity generation to the ultimate benefit of consumers.

- **Lower energy prices for domestic and industrial consumers**

Although energy prices may continue to rise e.g. due to rising commodity prices, it is thought that weakening the market power of VIUs can help put downward pressure on prices by encouraging efficiency and new market entry. In its response to the Department's 2010 consultation SONI highlighted the view of the European Commission that the introduction of effective competition should result in lower prices for end users, with a reduction in prices in the range of 9-23% where there is a single transmission system owner and operator.

- **Greater levels of research and innovation in the electricity sector**

Although it is recognised that unbundling in itself may not necessarily lead to greater R&D in the electricity system, it is thought that FOU might give more financial/human resources to TS Operators and a more long term perspective to the business making them more sensitive to the needs of research and development.

Electricity and Gas Distribution systems (Chapter 5 of the Decision paper)

The Electricity and Gas Directives impose various duties on distribution system operators (DSOs), including maintaining a secure, reliable and efficient system, not discriminating between system users or classes of system users, permitting access to the system by third parties and publishing tariffs or an indicative range of price for use of the distribution system.

¹ Commission Staff Working Document - Accompanying the legislative package on the internal market for electricity and gas.

(a) Designation of DSOs

The Electricity Directive requires Member States to ensure that one or more DSOs are designated. Currently, NIE is designated as a DSO in NI by virtue of various licence conditions dealing with electricity distribution, which are contained in its electricity transmission licence. Whilst the existing arrangements for regulating distribution are currently compliant with the Third Package, there is now a very real prospect of new distribution systems being built, and such new distribution systems may be operated by persons other than NIE.

(b) DSO unbundling requirements

The Electricity and Gas Directives set out the unbundling requirements for DSOs and in particular, sets out a new requirement that where the DSO is part of a VIU, it must not, in its communication and branding, create confusion about the fact that the supply business and the distribution business are separate and independent.

Implementation in Northern Ireland

In order to designate DSOs, the Regulations will prohibit unauthorised distribution of electricity. In order to distribute electricity, an entity will have to be authorised by either a licence or exemption. The Regulations will amend the current Electricity (Applications for Licences and Extensions of Licences) (No. 2) Regulations (NI) 2007 to provide a separate application for transmission and distribution. Transitional provisions will be made to 'deem' NIE's existing transmission and distribution (T&D) licence and for that licence to be separated into distinct licence documents. The Regulations will provide that, for a period of time, the prohibition will not apply to entities currently carrying out distribution activities.

In terms of distribution unbundling, the Regulations will require conditions to be included in relevant licences to give effect to these requirements. The Utility Regulator will consult directly with affected licensees before making modifications to existing licences to give effect to these requirements of the Directives.

Potential Costs and Benefits

The separate licensing of electricity distribution will provide for system developers other than NIE to develop and maintain distribution networks. This will introduce competition into the electricity distribution market allowing customers to connect to such networks e.g. where small distribution networks are provided to facilitate localised renewable generation. This would include costs associated with applying for a licence. However, costs associated with development of a distribution regime are considered to be minimal compared to the potential benefits of increased levels of competition in this sector.

Gas infrastructure (Chapter 6 of the Decision paper)

The Gas Directive deals with access to gas infrastructure in NI (including transmission and distribution networks, interconnectors, LNG and storage facilities), and aims to ensure access on the basis of transparent and non-discriminatory market-based mechanisms and the independence of storage system operators.

(a) Third Party Access to gas storage

Article 33 of the Gas Directive addresses Third Party Access to storage facilities, linepack and ancillary services "when technically and/or economically necessary for providing efficient access to the system for the supply of customers". Article 33 builds on the requirements of the 2003 Gas Directive. It now imposes new obligations on Member States to publish criteria for access to storage facilities; and for publication of which storage facilities is offered under regulated access or negotiated access.

Implementation in Northern Ireland

The Regulations will amend the Gas Order to clarify that these Third Party Access issues must be addressed in licence conditions and will clarify that these licence conditions will require licensees to comply with access requirements as applicable in accordance with criteria published by the Utility Regulator.

The development of gas storage facilities in Northern Ireland would greatly enhance security of supply for both gas companies and consumers and any regulatory regime will require the issue of Third Party Access to be dealt with in compliance with the Directive.

Potential Costs and Benefits

The Regulations are not expected to add to the costs of any existing gas company and the clarification of the position on gas storage Third Party Access will slightly reduce the legal costs of any company seeking clarification on this aspect. The Third Party Access regime will be contained in storage licence conditions and it will be for the Utility Regulator to decide whether a negotiated or regulated Third Party Access regime should apply.

Increased powers and independence for National Regulators (Chapter 7 of the Decision paper)

The Electricity and Gas Directives stipulate the EU's requirements for the designation and independence of National Regulatory Authorities (NRAs). The Third Package mandates the duties and powers which the NRAs should have, and sets their objectives.

(a) Designation of National Regulatory Authorities

The Electricity and Gas Directives require Member States to designate a single NRA at national level. By way of derogation, the Directives allow Member States to designate NRAs for small systems in a geographically separate region, where consumption in the region in 2008 accounted for less than 3 per cent of the total consumption of the Member State of which it is part.

(b) Independence of National Regulatory Authorities

The Electricity and Gas Directives require Member States to guarantee the independence of the NRA and to ensure that it exercises its powers impartially and transparently. Member States must also ensure that, when carrying out the regulatory tasks conferred upon it by the Directives and related legislation, the NRA:

- (a) is legally distinct and functionally independent from any other public or private entity; and
- (b) ensures that its staff and the persons responsible for its management:
 - (i) act independently from any market interest; and
 - (ii) do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks.

(c) Duties and powers of National Regulatory Authorities

The Third Package set out the NRA's duties and powers. The Utility Regulator currently carries out a number of these duties and has some of these powers already, but there are a number of key new requirements which include ensuring undertakings comply with their obligations (including those in relation to cross-border issues) and those relating to compliance with the transmission unbundling requirements.

There will also be monitoring duties imposed on the NRA which include the monitoring of the roles and responsibilities of transmission system operators; network security; and competition and market transparency.

Implementation in Northern Ireland

The Department of Energy and Climate Change (DECC) confirmed in its decision paper published in January 2011, its intention of to designate Ofgem as the NRA for Great Britain. Northern Ireland benefits from the derogation noted above and the Department therefore intends to legislate to designate the Utility Regulator as the NRA for Northern Ireland in line with the EU Directives. The Department and the Utility Regulator will continue to work along with DECC and Ofgem to ensure that Northern Ireland interests are represented at ACER. Legislative provisions including the explicit requirement for Member States and National Regulators to co-operate will underpin this.

In order, for the requirements of the Third Package to be implemented to ensure independence of the Utility Regulator, the Department proposes to make provision in the Regulations to provide the Utility Regulator with the power to grant licences. However, in relation to modification of existing licences to ensure compliance with the Directives, such modifications will be made by the Department, or the Utility Regulator with the consent of the Department, reflecting the Department's overarching responsibility for full Directive compliance.

The Regulations will stipulate that in exercising the Utility Regulator's functions, staff must have no financial or other interest which might compromise their independence and shall not seek or take instruction from any person or body which might compromise or be reasonably seen to compromise their independence. The Regulations will also amend the Energy Order to reflect the Electricity and Gas Directives requirements for 5 year minimum and 7 year maximum terms with the possibility of one re-appointment, and for appropriate rotation of the appointments of Utility Regulator Board members.

The Regulations will transpose the requirements relating to the duties and powers of the Utility Regulator to compel it to prepare an annual report on the activities carried out in the previous year and require that this report must be copied to the Department, the European Commission and the Agency for the Co-operation of Energy Regulators (ACER). The legislation will ensure that the Utility Regulator complies with any binding decision of ACER. Equally, the Regulations will compel the Utility Regulator to co-operate with other designated Regulatory Authorities in other Member States for the

purposes of market integration, promoting or facilitating co-operation between transmission system operators, to optimise network management, to co-ordinate network codes and to enable adequate interconnection capacity.

Potential Costs and Benefits

There are likely to be some administrative cost implications for the Utility Regulator in developing new processes or procedures as regards its new duties outlined above. The extent of these costs cannot be fully quantified until these duties are put in practice by the Utility Regulator.

Benefits are that the Utility Regulator will have the ability to represent NI interests at a European level, and have the legislative powers to implement the requirements of the Directive through licence conditions.

5. Risk Assessment

The Department is obliged under European Community Law to implement the Third Package. Failure to do so would be a breach of such legal obligations and would expose the UK, as Member State, to infraction proceedings and Northern Ireland to significant financial penalties.

Failure to transpose the Third Package in Northern Ireland would also mean that the objectives of the Third Package would not be achieved in respect of Northern Ireland. In those circumstances the wide range of enhanced consumer protection measures, the re-structuring, where necessary, of energy undertakings and the establishment of increased energy regulatory powers and obligations would not be put in place. This could have the effect of restricting transparency and competition and would put Northern Ireland energy consumers at a disadvantage in comparison with consumers in other Member States where full transposition had been achieved.

6. Options

- **Option 1 - do nothing.** If Northern Ireland fails to implement the Third Package then the United Kingdom is at risk of the Commission commencing infraction proceedings. The result of this would be a proportionate financial fine which DECC would pass on, in full, to the Northern Ireland Executive. This option is therefore not being put forward.
- **Option 2 – Introduce staged legislation, with further consultation on particular aspects.** The Departmental consultations highlighted the most significant issues and changes required to implement the Third Package in Northern Ireland. From those consultations, the Department has identified certain issues which would require further consultation to enable policy to be determined. Consultation on these issues will take place as soon as practicable after the Regulations are made, and may involve further legislation.

The areas for further consultation are:

- a) the scope and extent of electricity distribution licence exemptions (the framework for distribution licensing will, as noted above, be established in the Regulations);
- b) duties that will apply to licence exempt suppliers and distributors;

- c) possible changes to the process for modifying gas and electricity licences to further enhance the independence of the Utility Regulator; and
 - d) amendments to the SEM legislation to reflect the objectives under the Electricity Directive.
- **Option 3 – Introduce legislation without further consultation on particular aspects.**
This option involves implementing the Third Package, without allowing a process of further consultation on the issues identified above.
 - **Option taken forward**
The Department considers that it is important to give the energy industry and other interested parties the opportunity to comment on the additional detail of areas of the Directive requirements noted above, in particular, where additional legislative provision might be required. Therefore the Department proposes to follow the approach of option 2 to ensure that there is a clear and meaningful way forward on the detail of the issues noted above. This option is therefore carried forward. This will not interfere with transposition of the key aspects of the Third Package which have been provided for in the Regulations.

7. Concentration of Small Business: The Small Business Impact Test

Overall, the respondents to the consultation paper on the Third Package felt that the implementation of the Third Package should provide more enhanced consumer protection measures and ensure fairer competition between companies within the EU and those outside the EU.

The consumer protection matters will apply in some cases to small businesses. Key facets of the consumer protection measures include:

- Additional duties on suppliers to provide information on tariffs and energy consumption including energy efficiency advice;
- Enhanced customer switching mechanisms; and
- Identification of a single point of contact for consumers' complaints.

The EU proposals should not result in increased costs for small businesses as greater competition and improved consumer information should help with reducing energy costs.

8. Environmental Impact

The provisions of the Third Package focus mainly on the structure of the energy industry in Member States, on provisions to protect customers and enhanced independence and powers for NRAs. As such there are no matters in the implementing provisions which should have an adverse environmental impact.

The Third Package includes provisions which are aimed at enhancing energy efficiency and environmental impact, for example dealing with additional environmental concerns in relation to authorisation of electricity generating capacity and additional conditions on energy supply companies to promote energy efficiency measures to customers. Therefore overall the provisions of the Third Package which will be implemented in Northern Ireland have the potential to make a modest but positive environmental impact.

9. Human Rights Impact

Having conducted a review of the Human Rights Act, the Department has identified that there are a number of provisions of the European Convention on Human Rights which are engaged in the Regulations. Article 1 first protocol, concerning protecting a person's right to the peaceful enjoyment of his or her property is engaged in a number of provisions including the additional duties on licensees to provide enhanced consumer service; the obligations relating to the unbundling of electricity and gas transmission and distribution systems; the introduction of a distribution licence; and increases to fines and penalties. In engaging this protocol in the Regulations the Department has sought to strike a fair balance between the interests of the person carrying on the economic activity in question and the general interests of society as a whole.

Additionally Article 6, concerning the right to a fair hearing and matters such as the rights to a trial within a reasonable time and the right to an independent and impartial tribunal, is engaged in relation to provisions concerning billing dispute settlement arrangements contained in the Regulations. In particular the engagement pertains to the referral of billing disputes to the Utility Regulator or an arbitrator appointed by the Utility Regulator. The Department considers that while the provisions engage the Article, they do not interfere with Article 6 rights.

10. Enforcement and Sanctions

Many aspects of the Third Package will be implemented in practical terms through changes to licences and other industry documentation by which market participants must abide. Compliance with gas and electricity licence conditions is enforced by the Utility Regulator who has the power to impose financial penalties of up to 10% of the turnover of the licensees in the event of a breach. In line with the requirements of the Third Package, the Regulations will provide for penalties to be calculated by reference to the turnover of a VIU, rather than just the licence holder, where relevant requirements of the Directives are being enforced.

The Department has also identified an additional need to amend the existing regulatory enforcement regime to ensure it is compliant with the Third Package. Currently, market participants who are exempt from the requirement to hold a gas or electricity licence are not subject to the same enforcement provisions as licensed entities, because many of the requirements exist in the form of licence conditions, applying only to licensed parties. Therefore, to ensure implementation of the requirements of the Directives, the Department will amend the definition of "relevant conditions" in the enforcement provisions in the Energy Order to include any exemption conditions which exist.

The Electricity Regulation and the Gas Regulation impose various requirements on market participants which have direct effect. The Utility Regulator, in its capacity as the designated regulatory authority for NI, has an obligation to enforce compliance with these Regulations. To allow the Utility Regulator to enforce these requirements, the Regulations will amend the definition of "relevant requirements" in the enforcement provisions to include such requirements imposed on market participants by the Gas Regulation and the Electricity Regulation as designated by the Department. The Department will publish notice of such designation in due course.

11. Monitoring and Review

The Department, in liaison with the Utility Regulator, will monitor the operation of the Northern Ireland gas and electricity markets to assess if the elements of the Third Package are delivering the anticipated benefits. The binding date for transposition of the Directives into national law was 3 March 2011. The deadline in the Directives for practical compliance with the unbundling requirements is 3 March 2012, reflecting the fact that there is an application process, subject to certification by the NRA and approval by the European Commission.

12. Consultation

The Department has conducted a number of consultation exercises on implementation of the Third Energy Package in Northern Ireland. In December 2009, the Department published a consultation paper on the unbundling requirements of the Electricity and Gas Directives. In October 2010, the Department conducted a further 8 week consultation exercise seeking views on implementation of all the requirements of the Third Package in Northern Ireland. In addition, in February 2011, the Department conducted a further focused consultation with the Utility Regulator and electricity and gas transmission/conveyance licensees on the developing proposals for implementation of the transmission unbundling requirements of the Directives and, in particular, the application and certification procedures.

Responses to these consultations can be found on the Department's website (at the following link) except where respondents requested confidentiality:

<http://www.detini.gov.uk/>

The Department will continue to liaise with the Utility Regulator, the energy industry and consumer organisations as part of the outworking of the provisions set out in the legislation, licence conditions and industry codes associated with the implementation of the Third Package.

13. Ministerial Sign-off

"I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs."

[Signed]

Date 21 March 2011

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ANNEX B TRANSPOSITION NOTES

NORTHERN IRELAND

ELECTRICITY TRANSPOSITION NOTE

Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ('the Directive')

Article	Information on compliance and implementation
1	Subject matter and scope
2	Definitions
3	Public service obligations and customer protection
3(1)	This requirement is not new and has already been implemented. The relevant provisions are set out in Article 12 of the Energy (Northern Ireland) Order 2003 ("the Energy Order"). Northern Ireland is already compliant.
3(2)	This requirement is not new. The only new element is an express reference to "goals for energy from renewable sources". The Department of Enterprise, Trade and Investment ("the Department") will give the European Commission ("the Commission") notice of all existing Public Service Obligations, as required by Article 3(15).
3(3)	This requirement is not new and has already been implemented. Northern Ireland is already compliant.
3(4)	This requirement is new, but Northern Ireland is already compliant. There are no barriers to suppliers registered in other Member States wishing to apply for an electricity supply licence under the Electricity (Applications for Licences and Extensions of Licences) (No. 2) Regulations (Northern Ireland) 2007 ("the Applications Regulations").
3(5)	<p>This requirement is new. To implement this requirement, the Gas and Electricity (Internal Markets) Regulations 2011 ("the Regulations") substitutes Article 11A in the Electricity (Northern Ireland) Order 1992 ("the Electricity Order") which inter alia will require new electricity licence conditions to be introduced to implement the requirement that all customers are able to switch suppliers within three weeks, to underpin the existing arrangements for electricity supplier switching already in place in Northern Ireland. Electricity supply licence conditions will also provide for switching within three weeks to be a term of the contract suppliers have with their customers.</p> <p>The substituted Article 11A of the Electricity Order also requires electricity licence conditions which impose an obligation on electricity suppliers (and electricity distributors to facilitate this, to the extent relevant) to provide more consumption data to their customers, and to facilitate the provision of access to a customer's consumption data by different suppliers. These licence conditions will also implement the requirements of paragraphs 1(h) and 1(i) of Annex I, which also deal with the provision and availability of consumption data and related issues.</p>
3(6)	This requirement is not new. Existing schemes, such as the supplier of last resort scheme, comply with the requirements of this Article. Northern Ireland is already compliant.

Article	Information on compliance and implementation
3(7)	<p>This requirement is not new, although it includes to some new measures. There are various existing provisions in legislation and licence conditions which implement the requirements which existed under Directive 2003/54/EC and therefore Northern Ireland is already largely compliant with the requirements of this provision. The Regulations amend to the way the duty to protect vulnerable customers is expressed in Article 12(3) of the Energy Order, with a view to achieving consistency of that duty with the Directive.</p> <p>Article 3(7) also refers to the need to implement the measures set out in Annex I, which are discussed below.</p>
3(8)	<p>This requirement is new. There are various existing measures in Northern Ireland that implement the requirements of this Article, including the Warm Homes Scheme, and the NORTHERN IRELAND Sustainable Energy Programme. In addition, existing electricity supply licence conditions place obligations on suppliers to deal with issues of energy efficiency and the management of energy bills by consumers. The substituted Article 11A of the Electricity Order requires electricity supply licence conditions to impose an obligation on suppliers to provide information to business customers about sources of energy efficiency advice.</p>
3(9)	<p>This requirement is not new, although there are some minor changes.</p> <p>The substituted Article 11A of the Electricity Order requires electricity supply licence conditions to impose an obligation on suppliers to provide fuel mix information to customers.</p> <p>In relation to information about dispute settlement, there are existing supply licence conditions requiring suppliers to provide information to customers about complaint handling and the role of the General Consumer Council (GCC) in resolving complaints. The substituted Article 11A of the Electricity Order requires amendment of the electricity supply licence conditions so that the obligation to have a code of practice for dealing with complaints extends to complaints from business customers, not just domestic customers.</p>
3(10)	<p>This requirement is not new, but it is now mandatory (optional before) that such measures shall include energy efficiency/demand-side management measures and means to combat climate change, and security of supply, where appropriate.</p> <p>There are various measures currently in place in Northern Ireland, which are of the types contemplated by this Article, including:</p> <ul style="list-style-type: none"> • the Northern Ireland Sustainable Energy Programme; • the Northern Ireland Warm Homes Scheme; • the Northern Ireland Renewables Obligation to encourage renewable generation; • fiscal measures (e.g. climate change levy). <p>Northern Ireland is already compliant.</p>
3(11)	<p>This requirement is new. The existing Northern Ireland arrangements meet the requirements of this Article, as energy efficiency is already part of the overall energy policy and energy regulation. See also comments in relation to Article 3(8).</p>
3(12)	<p>This requirement is new. In Northern Ireland currently the single point of contact for all consumers is the GCC. Northern Ireland is already compliant.</p>

Article	Information on compliance and implementation
3(13)	This requirement is new. There are existing arrangements in Northern Ireland for the resolution of disputes between customers and energy companies. In the vast majority of cases, the GCC can resolve consumer complaints in co-operation with the energy companies. There are also existing provisions under the Electricity Order which provide dispute resolution mechanisms. The Regulations substitute in the Electricity Order a new Article 47A to establish a new process for the determination of billing disputes.
3(14)	This requirement is not new. No action is required to implement the requirements of this Article.
3(15)	This requirement is not new. The Department will give the Commission notice of all existing Public Service Obligations.
3(16)	This requirement is new. The Regulations amend Article 7 of the Energy Order to provide for the preparation by the Northern Ireland Authority for Utility Regulation (“the Authority”) of guidance, based on the consumer checklist template prepared by the Commission. The substituted Article 11A of the Electricity Order requires licence conditions to include an obligation on electricity suppliers to provide this guidance to customers.
Annex I	
Par. 1(a)	This requirement is not new. It is substantially the same as under Directive 2003/54/EC, but there are some additional requirements. The new requirements are already implemented in Northern Ireland in the relevant electricity supply licence conditions.
Par. 1(b)	This requirement is not new – the only new requirement is that increases in charges must be notified "in a transparent and comprehensible manner". These requirements are already implemented in the relevant electricity supply licence conditions.
Par. 1(c)	This requirement is not new and has already been implemented in the relevant electricity supply licence conditions.
Par. 1(d)	<p>There are some changes to the requirements dealing with payment methods. Payment methods must not unduly discriminate between customers and pre-payment systems must be fair and adequately reflect likely consumption. The substituted Article 11A of the Electricity Order requires supply licences to include conditions to implement these requirements in respect of household customers.</p> <p>In relation to unfair or misleading selling methods, Article 11A also requires electricity licences to require conditions which protect customers from unfair or misleading selling methods.</p>
Par. 1(e)	This requirement is not new and has already been implemented in the relevant electricity supply licence conditions.

Article	Information on compliance and implementation
Par. 1(f)	<p>There is a new requirement that all consumers shall have the right to a good standard of service and complaint handling by their electricity service provider. Disputes should be settled preferably within three months.</p> <p>There are existing provisions in the relevant licence conditions, provisions of the Electricity Order and the Electricity (Standards of Performance) Regulations (Northern Ireland) 1993 (as amended) dealing with standards of performance. Northern Ireland is already compliant with these requirements.</p> <p>In relation to dispute settlement, all provisions under the Electricity Order dealing with dispute resolution will be amended to provide for disputes to be determined within a defined period of time, to comply with the requirements of this provision. In addition, as mentioned in relation to Article 3(13), to address billing disputes, the substituted Article 47A of the Electricity Order gives the Authority the power to determine billing disputes which have been referred to it by a customer.</p>
Par. 1(g)	This requirement is not new. Information about universal service will be included in the new consumer checklist as discussed in relation to Article 3(16) above.
Par. 1(h)	This requirement is new. The substituted Article 11A of the Electricity Order provides for this requirement to be implemented in new electricity licence conditions, as discussed in relation to Article 3(5) above.
Par. 1(i)	This requirement is new. The substituted Article 11A of the Electricity Order provides for this requirement to be implemented in new electricity licence conditions, as discussed in relation to Article 3(5) above.
Par. 1(j)	This requirement is new. The substituted Article 11A of the Electricity Order will provide for a new electricity supply licence condition to provide for provision of a final bill within the required period.
Par. 2	This requirement is new. The Authority has commenced a programme of work to complete the requisite cost benefit analysis by 3 September 2012.
4	Monitoring of security and supply
	This requirement is not new. Northern Ireland is compliant. The Department and the Authority have powers to monitor security of supply issues. The Authority has existing information gathering powers under Article 50 of the Electricity Order.
5	Technical Rules
	Northern Ireland is already compliant as a result of a licence requirement on electricity network owner to draft a Grid Code and the existence of the Electricity Supply Regulations (NI) 1991 (as amended by the Electricity Supply (Amendment) Regulations (NI) 1993).
6	Promotion of regional co-operation
	This requirement is new. Northern Ireland is already largely compliant through its involvement in the Single Electricity Market and the Electricity Regional Initiative. The Regulations supplement the existing arrangements by inserting a new Article 8A in the Energy Order, requiring the Authority to have regard to the need for consultation and cooperation with other regulatory authorities.
7	Authorisation procedure for new capacity

Article	Information on compliance and implementation
7(1), 7(4)	These provisions are not new. Northern Ireland is compliant.
7(2)	This provision is not new, but it is now mandatory for Member States to consider the criteria listed in the Directives. There are two new considerations: contribution to meeting targets for energy from renewable sources (paragraph (j)); and contribution to reducing emissions (paragraph (k)). Article 39 of the Electricity Order already provides that the Department will only consent to authorising the construction of new generation stations if it is satisfied that it meets the criteria published by the Department. The Department will ensure that the published criteria are consistent with the new requirements in Article 7(2).
7(3)	This includes two new provisions; the first gives the Member State discretion on whether to set guidelines for specific authorisation procedures for small decentralised generation. The Department does not propose to set such guidelines. (On the second new provision, in relation to the construction of new generation capacity, Northern Ireland is already compliant).
8	Tendering for new capacity
	This requirement is not new. Northern Ireland is compliant.

Article	Information on compliance and implementation
9	Unbundling of transmission system operators
	<p>This is a substantially amended version of Article 10 of Directive 2003/54/EC.</p> <p>The Regulations amend the Electricity Order to ensure compliance with Article 9. New articles 10B to 10L of the Electricity Order will provide for the availability of certification on the basis of:</p> <ul style="list-style-type: none"> • full ownership unbundling; • the independent system operator model (where the transmission system belongs to a vertically integrated undertaking); • the derogation under Article 9(9); or • an exemption in accordance with Article 17 of the Electricity Regulation, <p>subject to meeting the applicable tests for the relevant certification ground.</p>
10	Designation and certification of transmission system operators
	<p>This is a substantially amended version of Article 8 of Directive 2003/54/EC.</p> <p>The amended Electricity Order ensures compliance with Article 10 by including a duty on licensed transmission system owners to be certified (as meeting the requirements of the Directive applicable under a given unbundling model).</p>
11	Certification in relation to third countries
	<p>This requirement is new. The amended Electricity Order places duties on the Authority and the Department to achieve compliance with the requirements of this Article.</p>
12	Tasks of transmission system operators
	<p>These requirements are not new. Northern Ireland is already compliant. This is for the most part achieved through duties on transmission licensees under Article 13(2) of the Electricity Order, and under licence conditions. In relation to the new requirement to have 'due regard to the environment', the Department considers that compliance is achieved through the existing legal framework for environmental law.</p>
13	Independent System Operator
	<p>This requirement is new. The Regulations will require conditions, if applicable, to be included in relevant licences to give effect to the requirements of this Article.</p>
14	Unbundling of transmission system owners
	<p>This requirement is new. The Regulations require, if applicable, conditions to be included in relevant licences to give effect to the requirements of this Article.</p>
15	Dispatch and balancing
15(1), (2), (5), (6), (7)	<p>These requirements are not new. Northern Ireland is already compliant. The Department has not made legislative provision for prioritisation of generation from indigenous fuel sources as permitted by Article 15(4).</p>
15(3)	<p>The mandatory requirement to comply with Directive 2009/28/EC (the Renewable Energy Directive) is new. Compliance with Article 15(3) in Northern Ireland will be achieved through Northern Ireland's implementation of Article 16(2)(b) of the Renewable Energy Directive.</p>

Article	Information on compliance and implementation
16	Confidentiality for transmission system operators and transmission system owners
	<p>This Article corresponds to Article 12 of Directive 2003/54/EC. Northern Ireland was compliant with the requirements of Article 12 of that Directive through the common law of confidentiality and conditions contained in SONI and NIE's transmission licences.</p> <p>Article 16 differs from Article 12 of that Directive, in that Article 16 imposes new requirements concerning restrictions on using certain joint services (such as joint legal services); restrictions on using commercially sensitive information obtained from third parties; and the making available of information necessary for effective competition and the effective functioning of the market.</p> <p>The Regulations will amend the Electricity Order to require conditions to be included in relevant licences to give effect to the requirements of this Article. Insofar as existing licenses are concerned, the new requirements will be addressed in the Authority's consultation on licence condition modifications required by the Regulations.</p>
17- 23	Chapter V (Independent Transmission Operator)
	<p>There has been general agreement in the electricity industry that the Independent Transmission Operator model is not appropriate for Northern Ireland. The Department agrees with this and does not intend to make this model available in relation to electricity transmission systems.</p>
24	Designation of distribution system operators
	<p>Northern Ireland is compliant with Article 24. Distribution is not currently a licensed activity in Northern Ireland, but the Electricity Order contains provisions to allow for the regulation of electricity distribution through the terms of a transmission licence. Currently NIE is designated as a distribution system operator by virtue of various licence conditions dealing with distribution which are contained in its transmission licence.</p> <p>Due to the prospect of new distribution systems being built, and operated by persons other than NIE, the Regulations amend the Electricity Order to provide for the creation of a new licensable activity of electricity distribution. The Regulations also amend the Applications Regulations to enable persons to apply for distribution licences. The Regulations also contain provisions that treat NIE's existing transmission licence as having effect as a transmission licence and a distribution licence and transitional provisions for separating the terms and conditions of the existing licence into the two successor licences.</p> <p>The Department also has the power to grant exemptions from the requirement to hold a distribution licence. Further industry consultation will be undertaken on the scope and extent of exemptions that are appropriate for Northern Ireland.</p> <p>By extension of the principle in the Citiworks Case, the Department's view is that there are a number of duties in the Directive that apply to electricity undertakings, regardless of whether they are licensed or exempt. To reflect this approach in domestic law, where a person is granted an exemption from holding a distribution or supply licence (or benefits from a class exemption), the Department intends that the exemption will be made subject to conditions that will reflect the relevant duties imposed by the Directive. To enable this, the Regulations will amend Article 9 of the Electricity Order to introduce the concept of exemption conditions. The Department intends to consult further on the appropriate conditions of class and other exemptions, and will if necessary make additional S 2(2) Regulations.</p>

Article	Information on compliance and implementation
25	Tasks of distribution system operators
	<p>Northern Ireland is already compliant (save in respect of licence exemption persons). This requirement is not new, but has been expanded to include two new obligations on distribution system operators.</p> <p>To achieve full compliance in Northern Ireland, the Regulations amend Article 12 of the Electricity Order to reflect the new obligation on distribution system operators to ensure the long-term ability of the electricity/gas distribution system to meet reasonable demands for the distribution of electricity/gas. The new obligation to have due regard to energy efficiency is one which can, to the extent necessary, be dealt with through appropriate licence conditions.</p> <p>In relation to licence exempt persons, compliance will be achieved by introducing exemption conditions (see Article 24 above).</p>
26	Unbundling of distribution system operators
26(1) and (4)	These provisions are not new. Northern Ireland is already compliant with Article 26(1). In relation to Article 26(4), no action is required.
26(2) and (3)	<p>This requirement is not new, but there are some additional requirements in Article 26(2) (such as the need to have necessary resources and an independent compliance officer to monitor the unbundling arrangements) and 26(3) (i.e. requiring a distribution system operator which is part of a vertically integrated undertaking, in its communication and branding, not to create confusion about the fact that the supply business and the distribution business are independent and separate). The Regulations substitute a new Article 11A in the Electricity Order to require conditions to be included in relevant licences to give effect to the requirements of Article 26(2) and (3).</p> <p>In relation to licence exempt persons, compliance will be achieved by introducing exemption conditions (see Article 24 above).</p>
27	Confidentiality obligation of distribution system operators
	This requirement is not new. Northern Ireland is already compliant where licensees are concerned. In relation to licence exempt persons, compliance will be achieved by introducing exempt conditions (see Article 24 above).
28	Closed distribution systems
	This is a new provision, which allows the Member State discretion to classify certain distribution systems as being exempt from certain requirements of the Directive (such as the requirement to have tariffs approved). It is intended that the closed distribution system option will be made available in Northern Ireland for licence exempt distributors. Exemption conditions would state the requirements for maintaining classification as a 'closed distribution system'. (see Article 24 above).
29	Combined operators
	This provision is not new. It is the same as Articles 17 of Directive 2003/54/EC save that it now refers to the new transmission unbundling requirements. Northern Ireland is already compliant by virtue of Article 11A of the Electricity Order.
30	Right of access to accounts
	<p>This provision is not new. Northern Ireland is compliant (save in respect of licence exemption persons).</p> <p>In relation to licence exemption persons, compliance will be achieved by introducing exemption conditions (see Article 24 above).</p>

Article	Information on compliance and implementation
31	Unbundling of accounts
	<p>This provision is not new. Northern Ireland is compliant (save in respect of licence exempt persons).</p> <p>In relation to licence exempt persons, compliance will be achieved by introducing exemption conditions (see Article 24 above).</p>
32	Third party access
	<p>This requirement is not new. Northern Ireland is compliant (save in respect of licence exempt persons).</p> <p>In relation to licence exemption persons, compliance will be achieved by introducing exemption conditions (see Article 24 above).</p>
33	Market opening and reciprocity
	This requirement is not new. Northern Ireland is compliant.
34	Direct lines
	This requirement is not new. Northern Ireland is compliant.
35	Designation and independence of regulatory authorities
	<p>Article 35 contains substantially revised provisions as compared to Article 23(1) of the Directive 2003/54/EC.</p> <p>The Regulations include in the Energy Order a new Article 3A. Article 3A (1) designates the Authority as national regulatory authority for Northern Ireland in accordance with Article 35(3) of the Directive. Article 3A(3) provides for the Authority to make representations to the energy regulator in Great Britain for the purposes of representing the interests of Northern Ireland at meetings of the Agency for the Cooperation of Energy Regulators.</p> <p>Northern Ireland is largely compliant with the requirements of Article 35 relating to the independence, impartiality, transparency and autonomy of the Authority, but some additional measures are being taken. In relation to existing arrangements, there are various provisions in the Energy Order regulating the make-up, powers and duties of the Authority. In addition, the Authority is bound by domestic administrative law requirements of fairness and reasonableness as well as general and specific EU law requirements of non-discrimination.</p> <p>Article 3A (2) requires the Authority to ensure that its staff act independently, to implement the requirements of Article 35(4)(b) of the Directive. Schedule 1 to the Energy Order is amended to strengthen the provisions dealing with the independence of the Authority and its Board members. The Regulations also amend Articles 10 and 14 of Electricity Order to provide for the Authority, rather than the Department, to grant electricity licences to implement Article 35(5) of the Directive. The Regulations include a new Article 11AA in the Electricity Order to provide for the determination, publication and modification of standard licence conditions for electricity licences, in the same way that this is already provided for under the Gas Order. The Regulations amend Article 6(3) of the Energy Order to replace the words "give general directions" with the words "issue guidance" to strengthen the autonomy of the Authority. An equivalent amendment will also be made to Article 50(2) of the Electricity Order.</p>
36	General objectives of the regulatory authority
	This entire provision is new. The Regulations amend Article 12(1) of the Energy Order to refer, in the principal electricity objective, to the interests of consumers in the fulfilment by the Authority of the objectives set out in Articles 36(a) to (h) of the Directive.

Article	Information on compliance and implementation
37	Duties and powers of the regulatory authority
	<p>As with Article 35, this substantially revises the provisions of Article 23 of Directive 2003/54/EC.</p> <p>The Authority already currently carries out a number of these duties and has some of these powers. Where an (existing or new) requirement on regulated entities is or is to be contained in licence conditions, the Authority will automatically have the power and the duty of ensuring compliance (and may also have requisite information gathering powers by virtue of existing obligations).</p> <p>To cover any gaps in the Authority's duties and powers, to implement these requirements, the following new provisions are being introduced:</p> <ul style="list-style-type: none"> • a new Article 6A of the Energy Order requires the Authority to prepare each year a report on its activities as designated regulatory authority for Northern Ireland, to implement the requirements of Article 37(1)(e); • a new Article 6B of the Energy Order provides for the implementation by the Authority of decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission, to implement the requirements of Article 37(1)(d); • Article 62 of the Energy Order is amended to expand the Authority's obligation to give reasons for its decisions, to implement Article 37(16); • Article 31A of the Electricity Order is amended to widen the scope of disputes to be resolved by the Authority pursuant to that Article, to implement Article 37(11); • a new paragraph 3B of Article 50 of the Electricity Order widens the Authority's monitoring functions in relation to electricity, to implement various monitoring requirements under Article 26(3) and Article 37; • the Authority's enforcement powers under the Energy Order are amended, to enable the Authority to enforce provisions of the EC Electricity Regulation and some of the new provisions of the Electricity Order, which have been introduced to implement the Electricity Directive. To do this, the Regulations amend Article 41 of the Energy Order and insert a new Article 41A. Where relevant, the enforcement power now extends to all persons regulated under the Electricity Order, not just licence holders. The Department shall designate at a future date the relevant provisions of the EC Electricity Regulation which are to be "relevant requirements" for the purposes of Article 41A. The Regulations also amend Article 45(9) of the Energy Order to provide for the way penalties are to be calculated for vertically integrated undertakings, to implement Article 37(4)(d) of the Directive.
38	Regulatory regime for cross-border issues
	<p>This provision is new. The provisions of this Article are closely linked to Article 6 of the Directive. Northern Ireland is largely compliant through its involvement in the SEM and the existing Article 8 of the Energy Order. In addition, the Regulations insert a new Article 8A in the Energy Order to require the Authority to engage in regional cooperation.</p>
39	Compliance with guidelines
40	Record keeping
	<p>This requirement is new. The substituted Article 11A in the Electricity Order provides for supply licence conditions to require electricity suppliers to maintain records in accordance with this requirement. In exercising its existing powers the Authority may make this information available subject to the restrictions in the Energy Order.</p>

Article	Information on compliance and implementation
41	Retail markets
	<p>This requirement is new. In relation to the requirement that the roles and responsibilities of market participants be clearly defined, this is already implemented through provisions in legislation, licence conditions and industry codes and agreements which set out the roles, responsibilities and obligations of market participants.</p> <p>In relation to the requirements relating to supply from multiple suppliers, there are currently no substantial barriers to Large Energy Users contracting with multiple suppliers, nor is there any barrier to contracting exclusively with one supplier with associated benefits. Therefore Northern Ireland is already compliant.</p>
42	Safeguard measures
	Northern Ireland is compliant.
43	Level playing field
44	Derogations
45	Review procedure
46	Committee
47	Reporting
48	Repeals
49	Transposition
50	Entry into Force
51	Addressees

NORTHERN IRELAND

GAS TRANSPOSITION NOTE

Directive 2009/73/EC concerning common rules for the internal market in gas and repealing Directive 2003/55/EC ('the Directive')

Article	Information on compliance and implementation
1	Subject matter and scope
2	Definitions
3	Public service obligations and customer protection
3(1)	This requirement is not new and has already been implemented. The relevant provisions are set out in Article 14 of the Energy (Northern Ireland) Order 2003 ("the Energy Order"). Northern Ireland is already compliant.
3(2)	This requirement is not new. The only new element is an express reference to "goals for energy from renewable sources". The Department of Enterprise, Trade and Investment ("the Department") will give the European Commission ("the Commission") notice of all existing Public Service Obligations, as required by Article 3(11).
3(3)	<p>This requirement is not new, although it refers to some new measures. There are various existing provisions in legislation and licence conditions which implement the requirements which existed under the Directive 2003/55/EC and therefore Northern Ireland is already largely compliant with the requirements of this provision. However, the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 ("the Regulations") amend the way the duty to protect vulnerable customers is expressed in Article 14(3) of the Energy Order, with a view to achieving consistency of that duty with the Directive.</p> <p>Article 3(3) also refers to the need to implement the measures set out in Annex I, which are discussed below.</p>
3(4)	This requirement is new. There are various existing measures in Northern Ireland that implement the requirements on this Article, including the Warm Homes Scheme, and the NI Sustainable Energy Programme. In addition, existing gas supply licence conditions place obligations on suppliers to have arrangement in place for the provision of advice to household customers on the efficient use of gas. However, the Department considers that business customers would benefit from more information about energy efficiency and therefore the Regulations substitute a new Article 10A in the Gas (Northern Ireland) Order 2006 ("the Gas Order") which requires gas supply licences to include conditions which impose an obligation on suppliers to provide information to business customers about sources of energy efficiency advice.
3(5)	This requirement is new, but Northern Ireland is already compliant. There are no barriers to suppliers registered in other Member States wishing to apply for a gas supply licence under the Gas (Applications for Licences and Extensions) Regulations (Northern Ireland) 1996.

Article	Information on compliance and implementation
3(6)	<p>This requirement is new. To implement this requirement, the Regulations substitute a new Article 10A in the Gas Order which, inter alia, requires gas licences to include conditions to be introduced to implement the requirement that all customers are able to switch suppliers within three weeks. Gas supply licence conditions will also provide for switching within three weeks to be a term of the contract suppliers have with their customers.</p> <p>The substituted Article 10A of the Gas Order also requires gas licences to include conditions which impose an obligation on gas suppliers (and gas distributors to facilitate this, to the extent relevant) to provide more consumption data to their customers, and to facilitate the provision of access to a customer's consumption data by different suppliers. These licence conditions will also implement the requirements of paragraphs 1(h) and 1(i) of Annex I, which also deal with the provision and availability of consumption data and related issues.</p>
3(7)	<p>This requirement is not new. There are various measures currently in place in Northern Ireland, which are of the types contemplated by this Article, including:</p> <ul style="list-style-type: none"> • the Northern Ireland Sustainable Energy Programme; and • the Northern Ireland Warm Homes Scheme. <p>Northern Ireland is already compliant.</p>
3(8)	<p>This requirement is new. The existing Northern Ireland arrangements meet the requirements of this Article, as energy efficiency is already part of overall energy policy and energy regulation. See also comments in relation to Article 3(4).</p>
3(9)	<p>This requirement is new.</p> <p>In Northern Ireland currently the single point of contact for all consumers is the General Consumer Council (GCC). Northern Ireland is already compliant with this requirement.</p> <p>There are existing arrangements in Northern Ireland for the resolution of disputes between customers and energy companies. In the vast majority of cases, the GCC can resolve consumer complaints in co-operation with the energy companies. There are also existing provisions in the gas licence conditions and under the Energy Act (Northern Ireland) 2011 (“the Energy Act”) which provide dispute resolution mechanisms. The Regulations substitute a new Article 24A in the Gas Order to establish a new process for the determination of billing disputes.</p>
3(10)	<p>This requirement is not new. No action is required to implement the requirements of this Article.</p>
3(11)	<p>This requirement is not new. The Department will give the Commission notice of all existing Public Service Obligations.</p>
3(12)	<p>This requirement is new. The Regulations amend Article 7 of the Energy Order to provide for the preparation by the Northern Ireland Authority for Utility Regulation (“the Authority”) of new guidance for consumers, based on the consumer checklist template prepared by the Commission. The substituted Article 10A of the Gas Order requires licence conditions to include an obligation on gas suppliers to provide this guidance to customers.</p>

Article	Information on compliance and implementation
Annex I	
Par. 1(a)	<p>This requirement is not new. It is substantially the same as under Directive 2003/55/EC, but there are some additional requirements. The new requirements are already implemented in Northern Ireland in the relevant gas supply licence conditions. The substituted Article 10A of the Gas Order provides for gas conveyance licences to include conditions which require that the terms of any contract that a gas distributor enters directly with a domestic customer shall comply with these requirements.</p>
Par. 1(b)	<p>This requirement is not new. The only new requirement is that increases in charges must be notified "in a transparent and comprehensible manner". These requirements are already implemented in the relevant gas supply licence conditions.</p> <p>The substituted Article 10A of the Gas Order provides for gas conveyance licences to include conditions which require that where a gas distributor enters into a contract directly with a domestic customer then it shall comply with this requirement.</p>
Par. 1(c)	<p>This requirement is not new and has already been implemented in the relevant gas supply licence conditions.</p> <p>The substituted Article 10A of the Gas Order provides for gas conveyance licences to include conditions which require that where a gas distributor enters into a contract directly with a domestic customer then it shall comply with this requirement.</p>
Par. 1(d)	<p>There are some changes to the requirements dealing with payment methods. Payment methods must not unduly discriminate between customers and pre-payment systems must be fair and adequately reflect likely consumption. The substituted Article 10A of the Gas Order requires supply licences to include conditions which implement these requirements in respect of household customers. Article 10A of the Gas Order also provides for gas conveyance licences to include conditions which require that the terms of any contract that a gas distributor enters directly with a domestic customer shall comply with these requirements.</p> <p>In relation to unfair or misleading selling methods, Article 10A requires gas licences to include conditions which protect customers from unfair or misleading selling methods.</p>
Par. 1(e)	<p>This requirement is not new and has already been implemented in the relevant gas supply licence conditions.</p>
Par. 1(f)	<p>There is a new requirement that all consumers shall have the right to a good standard of service and complaint handling by their gas service provider. Disputes should be settled preferably within three months.</p> <p>There are existing provisions in the relevant licence conditions dealing with standards of performance. In addition, the Energy Act includes provisions which will enable the Authority to make regulations prescribing standards of performance. Northern Ireland is already compliant with these requirements.</p> <p>In relation to dispute settlement, the Regulations amend Section 2 of the Energy Act to provide for disputes to be determined within a defined period of time, to comply with the requirements of this provision. In addition, as mentioned in relation to Article 3(9), to address billing disputes, the substituted Article 24A of the Gas Order gives the Authority the power to determine billing disputes which have been referred to it by a customer.</p>
Par. 1(g)	<p>This requirement is not new. Information about the right to be supplied with gas will be included in new guidance for consumers, as discussed in relation to Article 3(12) above.</p>

Article	Information on compliance and implementation
Par. 1(h)	This requirement is new. The substituted Article 10A of the Gas Order provides for this requirement to be implemented in new gas licence conditions, as discussed in relation to Article 3(6) above.
Par. 1(i)	This requirement is new. The substituted Article 10A of the Gas Order provides for this requirement to be implemented in new gas licence conditions, as discussed in relation to Article 3(6) above.
Par. 1(j)	This requirement is new. The substituted Article 10A of the Gas Order provides for a new gas supply licence condition to provide for provision of a final bill within the required period.
Par. 2	This requirement is new. The Authority has commenced a programme of work to complete the requisite cost benefit analysis by 3 September 2012.
4	Authorisation procedure
4(1), (3), (4)	These provisions are not new. Northern Ireland is already compliant, save that in June 2005 Northern Ireland was granted a temporary derogation (PH (2005) 0791 Commission Decision of 1 June 2005) from Article 4 of Directive 2003/55/EC to facilitate development of the local natural gas industry in specified towns and cities.
4(2)	This requirement is not new but there is an additional requirement to take into account the importance of the project for the internal market in natural gas where appropriate. Northern Ireland complies with the new requirement as Article 38 of the Gas Order (for construction of natural gas facilities) determines and publishes criteria in this respect.
5	Monitoring of security of supply
	This requirement is not new. Northern Ireland is compliant. The Department and the Authority have powers to monitor security of supply issues. The Authority has existing information gathering powers under Article 27 of the Gas Order.
6	Regional solidarity
	This requirement is new. There are existing arrangements in Northern Ireland that comply with these requirements, including planning for the proposed Security of Supply Regulation. Also, in September 2009 the Commission for Energy Regulation (CER) in the Republic of Ireland and the Authority issued a conclusions paper on security of supply issues, as part of the Common Arrangements for Gas (CAG) project.
7	Promotion of regional cooperation
	This requirement is new. Northern Ireland is already largely compliant through its involvement in the Gas Regional Initiative. The Regulations supplement existing arrangements by inserting a new Article 8A in the Energy Order, requiring the Authority to have regard to the need for consultation and cooperation with other regulatory authorities.
8	Technical rules
	This requirement is not new. Northern Ireland is already compliant for the same reasons as GB, i.e. the technical safety criteria and rules are publicly available and have been notified to the Commission.

Article	Information on compliance and implementation
9	Unbundling of transmission systems and transmission system operators
	<p>This is a substantially amended version of Article 10 of Directive 2003/55/EC.</p> <p>The Regulations amend the Gas Order to ensure compliance with Article 9. New Articles 8B to 8L in the Gas Order provide for the availability of certification on the basis of:</p> <ul style="list-style-type: none"> • full ownership unbundling; • the independent system operator model (where the transmission system belongs to a vertically integrated undertaking); • the independent transmission operator model (where the transmission system belongs to a vertically integrated undertaking); or • exemption in accordance with Article 36 of the Directive, <p>subject to meeting the applicable tests for the relevant certification ground.</p>
10	Designation and certification of transmission system operators
	<p>This is a substantially amended version of Article 7 of Directive 2003/55/EC.</p> <p>The amended Gas Order ensures compliance with Article 10 by including a duty on licensed transmission system owners to be certified (as meeting the requirements of the Directive applicable under a given unbundling model).</p>
11	Certification in relation to third countries
	<p>The amended Gas Order places duties on the Authority and the Department to achieve compliance with the requirements of this Article.</p>
12	Designation of storage and LNG system operators
	<p>This requirement is not new. It is substantially the same as Article 7 of Directive 2003/55/EC save that Article 12 now only deals with liquified natural gas (LNG) and storage system operators.</p> <p>The Department does not propose to introduce legislation to implement any of the requirements of the Directive insofar as they relate to LNG, since no LNG facilities have ever been established in Northern Ireland nor is it currently foreseeable that they will be.</p> <p>There are no storage undertakings in Northern Ireland at present. The grant of a storage licence under Article 8 of the Gas Order has the effect of operating as a designation of a storage system operator for the purposes of Article 12 of the Directive.</p>
13	Tasks of transmission, storage and/or LNG system operators
	<p>These requirements are not new. There is a new requirement to "secure an open market" and "ensure adequate means to meet service obligations".</p> <p>The new duties are (for gas transmission system operators) already covered by conditions of gas conveyance licences.</p> <p>In relation to gas storage, these additional duties will be addressed within the standard licence conditions which are to be developed.</p> <p>To the extent anything in particular is needed to implement Article 13(2) (which requires gas transmission system operators to build sufficient cross border capacity) it will be dealt with as part of the arrangements for the CAG project.</p> <p>In relation to LNG, see Article 12 above.</p>

Article	Information on compliance and implementation
14	Independent System Operator
	This requirement is new. The Regulations require, if applicable, conditions to be included in relevant licences to give effect to the requirements of this Article.
15	Unbundling of transmission system owners and storage system operators
	<p>This is a new requirement. It requires that any transmission system owner (where an independent system operator has been appointed) and gas storage system operator which are part of a vertically integrated undertaking must be independent, at least in terms of its legal form, organisation and decision making, from activities that do not relate to gas storage, transmission and distribution. The requirements of Article 15 only apply to storage facilities that are deemed to be technically and/or economically necessary for providing efficient access to the system.</p> <p>The Regulations require, if applicable, that conditions in gas storage licences should address the requirements of the Directive for unbundling of gas storage operators. The requirements will be addressed through switching on or off certain conditions in gas storage licences as appropriate to each case.</p>
16	Confidentiality for transmission system operators and transmission system owners
	<p>This Article corresponds to Article 10 of Directive 2003/55/EC. Northern Ireland was compliant with the requirements of Article 10 of that Directive through the common law of confidentiality and conditions in gas conveyance licences.</p> <p>Article 16(1) and (2) are unchanged from Article 10 of that Directive, save that there is a new requirement not to use certain joint services, such as joint legal services; the requirement in Article 16(2) now also refers to LNG and storage system operators, as well as transmission system operators. Article 16(3) is new and requires information necessary for effective competition and the effective functioning of the market to be made public.</p> <p>The Regulations will amend the Gas Order to require conditions to be included in relevant licences to give effect to the requirements of this Article. Insofar as existing licenses are concerned, the new requirements will be addressed in the Authority's consultation on licence condition modifications required by the Regulations.</p>
17 - 23	Chapter V ((Independent Transmission Operator)
	This requirement is new. The Regulations require, if applicable, conditions to be included in relevant licences to give effect to the requirements of this Article.
24	Designation of distribution system operators
	<p>This requirement is not new. Northern Ireland is already compliant (save in respect of licence exempt persons). The licensing of an operator by grant of a conveyance licence in respect of a distribution system amounts to designation by the Member State as required by this Article. However, for the avoidance of doubt a specific term is included in any conveyance licence relating to distribution explicitly designating the relevant party as a distribution system operator in accordance with this Article.</p> <p>By extension of the principle in the Citiworks Case, the Department's view is that there are a number of duties in the Directive that apply to gas undertakings, regardless of whether they are licensed or exempt. To reflect this approach in domestic law, where a person is granted an exemption from holding a conveyance or supply licence (or benefits from a class exemption), the Department intends that the exemption will be made subject to conditions that will reflect the relevant duties imposed by the Directive. The Department will carry out a consultation on the appropriate conditions on licence exempt suppliers and distributors.</p>
25	Tasks of distribution system operators

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	<p>Northern Ireland is already compliant (save in respect of licence exempt persons). This requirement is not new, but has been expanded to include two new obligations on distribution system operators. The obligation to ensure the long-term ability of the system to meet reasonable demands for the distribution of gas is new. An obligation to take energy efficiency into consideration is also new. The substituted Article 10A of the Gas Order requires conditions to be included within any new gas conveyance (distribution) licences to achieve compliance with the requirements of Article 25.</p> <p>In relation to licence exempt persons, compliance will be achieved by introducing exemption conditions (see Article 24 above).</p>
26	Unbundling of distribution system operators
<p>26(1)</p> <p>26(2) and (3)</p> <p>26(4)</p>	<p>This provision is not new. Northern Ireland is already compliant with Article 26(1).</p> <p>There are some additional requirements in Article 26(2) (such as the need to have necessary resources and an independent compliance officer to monitor the unbundling arrangements) and Article 26(3) (requiring a distribution system operator which is part of a vertically integrated undertaking, in its communication and branding, not to create confusion about the fact that the supply business and the distribution business are independent and separate). The Regulations substitute a new Article 10A in the Gas Order which requires conditions to be included in relevant licences to give effect to the requirements of Article 26(2) and (3). The Authority will consult with affected licensees before making modifications to existing licences to give effect to these requirements of the Directive. In relation to licence exempt persons, compliance will be achieved by introducing exemption conditions (see Article 24 above).</p> <p>In relation to Article 26(4), Firmus Energy currently benefits from a derogation from the requirements of Article 26, and will continue to do so in accordance with the requirements of Article 26.</p>
27	Confidentiality obligations of distribution system operators
	<p>Article 27 is unchanged from Article 14 of Directive 2003/55/EC.</p> <p>Northern Ireland is already compliant where licensees are concerned. In relation to licence exempt persons, compliance will be achieved by introducing exemption conditions (see Article 24 above).</p>
28	Closed distribution systems
	<p>This is a new provision, which allows the Member State discretion to classify certain distribution systems as being exempt from certain requirements of the Directive (such as the requirement to have tariffs approved). It is intended that the closed distribution system option will be made available in Northern Ireland for licence exempt distributors. Exemption conditions would state the requirements for maintaining classification as a 'closed distribution system'. (see Article 24 above).</p>

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29	Combined operator
	This requirement is not new, but the new version of this Article now refers to the new transmission unbundling requirements. Northern Ireland is already compliant.
30	Right of access to accounts
	Northern Ireland is already compliant
31	Unbundling of accounts
	Northern Ireland is already compliant
32	Third-party access
	<p>The requirements in this Article are not new. Northern Ireland is compliant (save in respect of licence exempt persons), and save also that in June 2005 Northern Ireland was granted a temporary derogation from Article 18 of Directive 2003/55/EC to facilitate development of the local natural gas industry in specified towns and cities.</p> <p>In relation to licence exempt persons, compliance will be achieved by introducing exemption conditions (see Article 24 above).</p>
33	Access to storage
	<p>Article 33(1) is an amended version of Article 19(1) of Directive 2003/55/EC. The amended Article imposes new obligations on Member States (or the regulatory authorities) to publish criteria regarding access to storage facilities and linepack. Member States should also establish which storage facilities and which linepack is offered under regulated access or negotiated access.</p> <p>Whilst there are no gas storage facilities in NI at present, they are likely to become operational in Northern Ireland in the foreseeable future.</p> <p>The third party access regime will be contained in storage licence conditions and it will be for the Authority to decide whether a negotiated or regulated access regime should apply.</p> <p>Licence conditions will also address the requirement for consultation when developing service conditions. The Regulations will provide for the Authority to be able to include such licence conditions when granting new storage licences. Such licence conditions will require licensees to comply with access requirements as applicable in accordance with criteria published by the Authority.</p>
34	Access to upstream pipeline networks
	This requirement is not new. It is not considered that this Article applies to Northern Ireland at present.
35	Refusal of access
	This requirement is not new. Northern Ireland is already compliant
36	New infrastructure
	<p>Articles 36(1) to (3) of the Gas Directive allows exemptions (in respect of third party access) to be granted for in respect of major new gas infrastructure (such as interconnectors, and LNG and storage facilities) where certain conditions are satisfied.</p> <p>The new requirements provide that exemptions may now only be granted 'for a defined period of time' and unbundling (Article 9 of the Gas Directive) is now also included within the list of exemptions.</p> <p>As gas storage is a licensable activity, where an exemption is available, those licence conditions which address third party access can be 'switched-off'. This allows for the</p>

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	<p>decision on such exemption to be taken by the Authority (as contemplated by the Directive).</p> <p>In relation to interconnectors, it is less clear whether provision for such exemptions will in practice be needed. If it should be needed, it could be implemented through the existing licence exemption provisions of Article 7 of the Gas Order, which already allows for time limited exemptions to be granted.</p>
37	Market opening and reciprocity
	<p>This requirement is not new. Northern Ireland is currently compliant, save that in June 2005 Northern Ireland was granted a temporary derogation from Article 23(1) of Directive 2003/55/EC to facilitate development of the local natural gas industry in specified towns and cities.</p>
38	Direct lines
	<p>This requirement is not new. Northern Ireland is currently compliant, save that in June 2005 Northern Ireland was granted a temporary derogation from Article 24 of Directive 2003/55/EC to facilitate development of the local natural gas industry in specified towns and cities.</p>
39	Designation and independence of regulatory authorities
	<p>Article 39 contains substantially revised provisions as compared to Article 25(1) of Directive 2003/55/EC.</p> <p>The Regulations will insert a new Article 3A in the Energy Order. Article 3A(1) will designate the Authority as national regulatory authority for Northern Ireland in accordance with Article 39(3) of the Directive. Article 3A(3) provides for the Authority to make representations to the energy regulator in Great Britain for the purposes of representing the interests of Northern Ireland at meetings of the Agency for the Cooperation of Energy Regulators.</p> <p>Northern Ireland is largely compliant with the requirements of Article 39 relating to the independence, impartiality, transparency and autonomy of the Authority, but some additional measures are being taken. In relation to existing arrangements, there are various provisions in the Energy Order regulating the make-up, powers and duties of the Authority. In addition, the Authority is bound by domestic administrative law requirements of fairness and reasonableness as well as general and specific EU law requirements of non-discrimination.</p> <p>Article 3A(2) requires the Authority to ensure that its staff act independently, to implement the requirements of Article 39(4)(b) of the Directive. Schedule 1 to the Energy Order will be amended to strengthen the provisions dealing with the independence of the Authority and its Board members. The Regulations also amend Articles 8, 11 and 14 of the Gas Order to provide for the Authority, rather than the Department, to grant gas licences to implement Article 39(5) of the Directive. The Regulations amend Article 6(3) of the Energy Order to replace the words "give general directions" with the words "issue guidance" to strengthen the autonomy of the Authority. There have also been equivalent amendments to Article 27(2) and Article 30(2) of the Gas Order.</p>
40	General objectives of the regulatory authority
	<p>This entire provision is new. The Regulations amend Article 14(1) of the Energy Order to refer, in the principal gas objective, to the objectives set out in Article 40(a)-(h) of the Directive.</p>
41	Duties and powers of the regulatory authority
	<p>As with Article 39, this substantially revises the provisions of Article 25 of Directive 2003/55/EC.</p> <p>The Authority already currently carries out a number of these duties and has some of these powers. Where an (existing or new) requirement on regulated entities is or is to be</p>

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	<p>contained in licence conditions, the Authority will automatically have the power and the duty of ensuring compliance (and may also have requisite information gathering powers by virtue of existing obligations).</p> <p>To cover any gaps in the Authority's duties and powers, to implement these requirements, the following new provisions are being introduced:</p> <ul style="list-style-type: none"> • a new Article 6A of the Energy Order requires the Authority to prepare each year a report on its activities as designated regulatory authority for Northern Ireland, to implement the requirements of Article 41(1)(e); • a new Article 6B of the Energy Order provides for the implementation by the Authority of decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission, to implement the requirements of Article 41(1)(d); • Article 62 of the Energy Order is amended to expand the Authority's obligation to give reasons for its decisions, to implement Article 41(16); • Article 27A of the Gas Order is amended to widen the scope of disputes to be resolved by the Authority pursuant to that Article, to implement Article 41(11); • a new paragraph 3B of Article 27 of the Gas Order widens the Authority's monitoring functions in relation to gas, to implement various monitoring requirements under Article 26(3) and Article 41; • the Authority's enforcement powers under the Energy Order are amended, to enable the Authority to enforce provisions of the EC Gas Regulation and some of the new provisions in the Gas Order, which have been introduced to implement the Gas Directive. To do this, the Regulations amend Article 41 of the Energy Order and insert a new Article 41B. Where relevant, the enforcement power now extends to all persons regulated under the Gas Order, not just licence holders. The Department shall designate at a future date the relevant provisions of the EC Gas Regulation which are to be "relevant requirements" for the purposes of Article 42B. The Regulations also amend Article 45(9) of the Energy Order to provide for the way penalties are to be calculated for vertically integrated undertakings, to implement Article 41(4)(d) of the Directive.
42	Regulatory regime for cross border issues
	<p>This provision is new. The provisions of this Article are closely linked to Article 7 of the Directive. Northern Ireland is already largely compliant under the existing Article 8 of the Energy Order. In addition, a new Article 8A of the Energy Order will require the Authority to engage in regional cooperation.</p>
43	Compliance with the guidelines
44	Record keeping
	<p>This requirement is new. The substituted Article 10A of the Gas Order provides for supply licence conditions to require gas suppliers to maintain records in accordance with this requirement. In exercising its existing powers the Authority may make this information available subject to the restrictions in the Energy Order.</p>

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45	Retail markets
	This requirement is new. In relation to the requirement that the roles and responsibilities of market participants be clearly defined, this is already implemented through provisions in legislation, licence conditions and industry codes and agreements which set out the roles, responsibilities and obligations of market participants.
46	Safeguard measures
47	Level playing field
48	Derogations in relation to take-or-pay commitments
49	Emergent and isolated markets
50	Review procedure
51	Committee
52	Reporting
53	Repeal
54	Transposition
55	Entry into force
56	Addressees