

EXPLANATORY MEMORANDUM TO
ELECTRICITY (PUBLISHED CRITERIA FOR GENERATING
STATION) REGULATIONS (NORTHERN IRELAND) 2011
SR 2011 NO. 247

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 amends Article 39 of the Electricity (Northern Ireland) Order 1992 to update the references therein to reflect the obligations under Article 7(2) of European Parliament and Council Directive 2009/72/EC (‘the 2009 Electricity Directive’).

3. BACKGROUND AND POLICY OBJECTIVES

- 3.1 Article 39(2A) of the Order requires that the Department shall only grant a consent for the construction, extension or operation of an electricity generating station where it is satisfied that the station to which the consent relates will meet certain criteria determined and published by the Department. Article 7(2) of the 2009 Electricity Directive imposes certain obligations on the Department in relation to these criteria.
- 3.2 The definition of the Directive in the Order was amended by Regulation 80 of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (‘the implementing Regulations’) to refer to the 2009 Electricity Directive. The implementing Regulations transposed into Northern law the vast majority of the requirements of the package of EU legislation known as the Third Energy Package. The Third Energy Package comprises two Directives and three Regulations as set out below:

The 2009 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

- 3.3 The Statutory Rule amends Article 39(9) of the Order to update the references therein so that they properly reflect the obligation under Article 7(2) of the 2009 Electricity Directive.

4. CONSULTATION

- 4.1 The Department has consulted extensively on implementation of the Third Energy Package in Northern Ireland. 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 \(DETI\)](#)

- 4.2 An additional consultation was not conducted on the Statutory Rule as it merely updates the references in domestic legislation to accurately reflect the relevant provision under EU law.

5. EQUALITY IMPACT

- 5.1 In accordance with the requirements of Section 75 of the Northern Ireland Act 1998, an equality screening exercise was carried out in relation to implementation of the Third Energy Package and no adverse effects were identified. An additional screening was not conducted in respect of this Statutory Rule for the reasons noted at 4.2 above.

6. REGULATORY IMPACT

- 6.1 A Regulatory Impact Assessment (RIA) was been prepared in respect of implementation of the Third Energy Package and this has been published together with the decision paper and is available on the Department's website or by using the weblink above. An additional screening was not conducted in respect of this Statutory Rule for the reasons noted at 4.2 above.

7. FINANCIAL IMPLICATIONS

- 7.1 The benefits and cost estimates of compliance with the Third Energy Package are discussed in the Regulatory Impact Assessment prepared by the Department.

8. SECTION 24 OF THE NORTHERN IRELAND ACT 1998

- 8.1 This 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. The references in domestic legislation are being amended to align with current EU law.

10. PARITY OR REPLICATORY MEASURE

- 10.1 The Third Energy Package is required to be implemented in all EU Member States. The Department of Energy and Climate Change (DECC) in GB is in the process of preparing transposing legislation for the rest of the UK.

11. ADDITIONAL INFORMATION

Commentary on Articles

11.1 A Transposition Note for this Statutory Rule is attached at **Annex A**.

Commencement

11.2 The Statutory Rule comes into operation on 1st August 2011.

**ENERGY DIVISION
DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT
June 2011**

NORTHERN IRELANDTRANSPOSITION NOTE

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

This transposition note should be read in conjunction with the transposition note which accompanied the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011.

Article	Information on compliance and implementation
7	Authorisation procedure for new capacity
7(2)	<p>This provision is not new, but it is now mandatory for Member States to consider the listed criteria. There are two new considerations: contribution to meeting targets for energy from renewable sources (paragraph (j)); and contribution to reducing emissions (paragraph (k)).</p> <p>Article 39(2A) of the Electricity (Northern Ireland) Order 1992 ("the Order") requires that the Department shall only grant a consent under that Article in relation to the construction or extension of a generating station where it is satisfied that the station to which the consent relates will meet certain criteria determined and published by the Department.</p> <p>Article 7(2) of the European Parliament and Council Directive 2009/72/EC imposes certain obligations on the Department in relation to these criteria. The Electricity (Published Criteria for Generating Station) Regulations (Northern Ireland) 2011 amends Article 39 of the Order to update the references therein so that they properly reflect this obligation. The definition of the Directive in the Order was amended by Regulation 80 of the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 to refer to the 2009 Directive.</p>