

This Explanatory Memorandum refers to the Electricity (Dispute Resolution) Regulations (Northern Ireland) 2013

EXPLANATORY MEMORANDUM TO

The Electricity (Dispute Resolution) Regulations (Northern Ireland) 2013

SR 2013 No. 94

1. INTRODUCTION

This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment ('the Department') to accompany the above Statutory Rule which is to be laid before the Northern Ireland Assembly. The Explanatory Memorandum is designed to assist the reader in understanding the Regulations. It does not form part of the Regulations.

2. PURPOSE

The purpose of the Regulations is to amend Article 31A of the Electricity (Northern Ireland) Order 1992 ("the 1992 Order") to enable the Northern Ireland Authority for Utility Regulation ("the Utility Regulator") to determine disputes relating to licence exempt electricity suppliers and to enable the Utility Regulator to make a costs order in relation to any determination under that Article. The Utility Regulator is required to establish and publish procedures relating to such determination.

3. BACKGROUND

The Electricity Directive forms part of the EU Third Energy Package of legislation ("the Third Package or IME3") which comprises three EU Regulations and two Directives. Many of the requirements under the Third Package have already been transposed in Northern Ireland via the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 ("the 2011 Regulations").

The 2011 Regulations amended Article 8 of the 1992 Order to establish electricity distribution as a new licensable activity. The Department noted at that time that it would consult separately on proposed legislation to introduce exemptions from the requirement to hold an electricity distribution licence, and to impose obligations on licence exempt electricity distributors and electricity suppliers, in line with the requirements of the Electricity Directive. The consultation paper was subsequently published in July 2012.

The classes of exemption from the requirement to hold an electricity licence are set out in the Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013 ('the CEO'). The CEO also makes the exemptions from the requirement to hold a distribution licence or a supply licence subject to certain conditions, detailed in Schedules 4 and 5 to the CEO respectively.

These Regulations, by expanding the scope of the existing Article 31A of the 1992 Order, will ensure that the Authority has the power to determine disputes relating to exempt suppliers as well as exempt distributors.

4. CONSULTATION

As noted above, the Department undertook a written consultation on the establishment of the distribution exemptions regime and the obligations to be imposed on licence exempt entities. During and prior to the consultation process the Department engaged directly with key stakeholders, including the Utility Regulator and other Government Departments which may be affected by the legislation. The Department's consultation and responses to the consultative process as well as its decision paper have been published on the Department's website and can be accessed at <http://www.detini.gov.uk/energy-newpage-7>

5. EQUALITY IMPACT

The Regulations have been screened for compliance with Section 75 of the Northern Ireland Act 1998. The draft screening form was included in the Department's consultation and no responses identifying any equality issues were received. On this basis, the Department has concluded that the Regulations should not have a significant impact on equality of opportunity or good relations for people within any of the equality and good relations categories. A full EQIA was therefore not considered necessary.

6. REGULATORY IMPACT

The Department is of the view that the proposed new arrangements represent the minimum required to ensure compliance in Northern Ireland with EU Third Package requirements. A single Regulatory Impact Assessment was completed in relation to these Regulations and the associated CEO referred to above. On the basis of the assessment of the benefits that have been identified, the Department is of the opinion that there will be no significant negative impact brought about by the introduction of the proposed legislation. The completed Regulatory Impact Assessment is attached for further information at **Annex A**.

7. FINANCIAL IMPLICATIONS

The Regulations are unlikely to result in additional direct costs for the Department. However, due to the additional duties imposed on the Utility Regulator, there is likely to be some additional cost in implementing these tasks going forward.

The key benefit of implementing the proposed legislative measures is that this action will help to complete the transposition of the Electricity Directive. Transposition of the Directive is required to meet obligations imposed by European law; failure to comply could result in infraction proceedings and the imposition of substantial fines.

8. SECTION 24 OF THE NORTHERN IRELAND ACT 1998

The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the proposed Rule does not contravene the Act.

9. EU IMPLICATIONS

The proposed Rule has no negative implications for the EU or its Member States. Instead the legislation will have a positive effect by transposing obligations under the Electricity Directive. A transposition note in relation to the Regulations is attached at **Annex B**.

10. PARITY OR REPLICATORY MEASURE

The Department of Energy and Climate Change (DECC) has transposed the Electricity Directive via the Gas and Electricity (Internal Markets) Regulations 2011 and these can be accessed at <http://www.legislation.gov.uk/ukxi/2011/2704/contents/made>

11. ADDITIONAL INFORMATION

The Regulations shall come into operation on 29th April 2013.

**ENERGY DIVISION
DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT
28 March 2013**

Regulatory Impact Assessment

1. Title of Proposal

The Electricity (Class Exemptions from the Requirement for a Licence) Order (Northern Ireland) 2013 ('the proposed Order') and the Electricity (Dispute Resolution) Regulations (Northern Ireland) 2013 ('the proposed Regulations').

2. Introduction

This Regulatory Impact Assessment (RIA) supports the introduction of the proposed Order and the proposed Regulations (together 'the proposed legislation') to introduce a framework for electricity distribution licensing exemptions and enforceable obligations on licence exempt distributors and suppliers. The proposed legislation is required to transpose certain requirements of the EU Directive 2009/72/EC ('the Electricity Directive') which forms part of the EU Third Package of Energy legislation, also known as IME 3. The Department is, therefore, bound to implement these obligations, but where options are available to the Department, we have considered, where possible, the cost implications and benefits for Northern Ireland stakeholders.

3. Background and objective

The Electricity Directive forms part of the EU Third Energy Package of legislation ('the Third Package or IME3') which comprises three EU Regulations and two Directives. Many of the requirements under the Third Package have already been transposed in Northern Ireland (NI) via the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 ('the 2011 Regulations').

The 2011 Regulations amended Article 8 of the Electricity (Northern Ireland) Order 1992 ('the 1992 Order') to introduce a prohibition on undertaking the activity of electricity distribution without a licence – this will come into effect on 30th April 2013. The creation of distribution as a new licensable activity also afforded the Department with a power to create by order exemptions from the requirement to hold a distribution licence.

In the Department's October 2010 consultation on the Third Package, the Department noted that it would consult separately on proposed legislative amendments to introduce exemptions from the requirement to hold an electricity distribution licence, and obligations to be imposed on licence exempt electricity distributors and electricity suppliers, to bring the arrangements into line with the requirements of the Electricity Directive.

In July 2012 the Department published its consultation paper on these matters and sought views and comments from stakeholders. The consultation identified those categories of electricity distributors which the Department proposed should be

exempt and the range of obligations to be imposed on licence exempt supply and distribution entities. The consultation document discussed these obligations in detail providing consultees with some information with regard to the potential cost of the proposals and seeking consultee feedback on the costs and benefits.

Following the consultation exercise and further consideration, the Department plans to implement some aspects of the proposals consulted on via an additional piece of legislation: the proposed Regulations to be made under section 2(2) of the European Communities Act 1972 will amend Article 31A of the 1992 Order to enable the Northern Ireland Authority for Utility Regulation ('the Utility Regulator') to determine disputes relating to the new obligations to be imposed on exempt distributors and suppliers under the proposed Order. It will also enable the Utility Regulator, where appropriate, to make a costs order to recover its costs in relation to such a determination.

4. Purpose and Intended effect

The introduction of the proposed legislation is intended to ensure compliance with certain requirements of the Electricity Directive. The intended effect of the introduction of the proposed legislation is set out below in more detail.

- i. the proposed Order will be made under Article 9 of the 1992 Order. It will:
 - set out new thresholds of exemption for electricity distribution activity in line with the consultation and restate the existing exemptions for electricity generation and supply
 - detail the conditions attaching to electricity distribution exemptions and supply exemptions, by which exempt distributors and suppliers must comply (these mainly relate to ensuring provision for third party access for electricity suppliers to licence exempt networks in certain circumstances and a range of consumer protection measures for customers supplied by licence exempt suppliers).
- ii. the proposed Regulations will be made under section 2(2) of the European Communities Act 1972. They will enable the Utility Regulator to determine disputes relating to obligations on licence exempt electricity distributors and suppliers and to make a costs order in relation to any such determination. The Utility Regulator is required to establish and publish procedures relating to such determination.

Entities currently distributing electricity in NI which are likely to be affected by the proposed legislation may include the following categories, however most are not expected to require an electricity distribution licence, rather they will be subject to the new exemption requirements:

- industrial/ manufacturing companies;
- large commercial (e.g. larger businesses, ports, airports, bus and train facilities);
- small commercial (e.g. office facilities, smaller shopping developments, smaller industrial estates, caravan sites, marinas, larger scale farms or other agricultural usage etc.); and

- public sector organisations (e.g. Department of Regional Development Roads Service in respect of their street lighting network, and perhaps NI Water. Also other government entities such as Department of Agriculture and Rural Development in relation to their agricultural and forestry facilities, District Councils, Health Trusts/hospitals, and universities and schools).

In addition, those supply entities which are exempt from the requirement to hold a supply licence will be affected by the new obligations on licence exempt suppliers as set out in the proposed Order.

5. Risk Assessment

The Department is obliged under European Community Law to implement the Third Package. Failure to do so would be breach of such legal obligations and would expose the UK, as a Member State, to infraction proceedings from the European Commission and Northern Ireland to significant financial penalties. On 24 January 2013, the European Commission published a press notice advising of its intention to refer the United Kingdom to the Court of Justice of the European Union for failing to fully transpose the EU internal energy market rules in relation to the Electricity and Gas Directives which form part of the EU Third Package. The Commission has proposed a daily penalty payment of €148177.92 in respect of the Electricity Directive. This financial fine would be passed on by the Department of Energy and Climate Change (DECC) in London, in full, to the Northern Ireland Executive.

Failure to transpose all elements of the Third Package in Northern Ireland would also mean that those objectives of the Third Package would not be achieved in respect of Northern Ireland. 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. Analysis of the options and the costs and benefits

Option 1 – do nothing.

If the proposed legislation is not introduced then Northern Ireland will have failed to have fully transposed certain obligations of the Electricity Directive and will be subject to infraction proceedings. This option is therefore not being put forward.

Option 2 – introduce the proposed legislation

The introduction of the proposed Order will exempt the following classes of distribution activity from the requirement to hold a distribution licence:

- “small distributors” (those which distribute less than 2.5MW);
- “on-site distribution” (restricted to 1MW);
- “distribution to non-domestic consumers” (where the distributor does not at any time offer distribution facilities to a domestic customer); and
- “offshore distributors” (where the activity of distribution is only undertaken on offshore distribution lines).

In order to comply with the relevant obligations arising from the Electricity Directive in respect of licence exempt electricity distributors and suppliers, the proposed Order will impose conditions on exempt distributors and suppliers which will be enforceable by the

Utility Regulator under the existing enforcement regime in the Energy (Northern Ireland) Order 2003.

The main obligations contained in the proposed Order which will be placed on **exempt electricity distributors** include the following:

- (i) An obligation to provide 'third party access' (in circumstances where an existing system user expresses an interest in switching supplier) to give electricity customers (both domestic and commercial) the opportunity to choose from whom they wish to take their electricity supply. This is intended to enhance competition in the electricity market and is a fundamental component of a competitive energy market. There are certain circumstances where the exempt distributor may refuse to grant access, for example where the system does not have the capacity to facilitate further/new connections.
- (ii) Once a third party access requirement has been established the exempt distributor must give the third party supplier the necessary access to its network to enable a supply to be given to the customer.
- (iii) Where an exempt electricity distributor has received a request for third party access to his system he must provide a clear and transparent charging methodology, which must have been approved in advance by the Authority.
- (iv) Where an exempt electricity distributor holds information or is in a position to influence the activities of an exempt supplier (for example in facilitating customer switching or the provision of information to a supplier's customer) then that entity must participate in these processes.

The main obligations contained in the proposed Order which will be placed on **exempt electricity suppliers** include the following:

- (i) Facilitating a change of supplier within three weeks (observing contractual obligations and any 'cooling off' period).
- (ii) Providing customers with certain specified information in the terms and conditions of their contracts, for example information in relation to charges payable by the customer.
- (iii) Providing customers with information on their energy use, information on the fuel mix of their supply, and information on their consumer rights via the provision of the energy Consumer Checklist.
- (iv) Providing vulnerable domestic customers with additional safeguards in relation to disconnection.
- (v) Informing their customers of the means available to resolve any disputes arising between the company and their customers.

The costs associated with implementing a new legislative regime including these obligations will involve some additional costs for parties affected by the exemptions regime, and the Utility Regulator. However these costs are not expected to be

significant as there is already a requirement under existing legal provisions to comply with certain aspects of the new exemptions regime. For example, confidential information is already required to be protected (e.g. under the Data Protection Act), and so would likely be merely an extension of the principles and practices used. However, third party access (TPA) (and by extension, supplier switching) has the potential to add new costs. For instance the tariffs to be charged to any party seeking TPA require review by the Utility Regulator which will have a cost. For licensed distributors this will be captured by the licence fees, and for exemption holders the proposed Regulations amend Article 31A of the 1992 Order to ensure that the Utility Regulator has the power to determine disputes relating to exempt suppliers and distributors and, where appropriate, to make a costs order to recover its costs of such determination. In addition, the Utility Regulator will be publishing specific Guidance on the detailed practical arrangements as well as its procedures in relation to disputes.

The Department, having considered the options outlined above, is proceeding with Option 2.

7. Concentration of Small Business: Small Business Impact Test

The proposed legislation will have an impact on licence exempt electricity distribution and supply entities arising from obligations under the Electricity Directive. The Department is compelled to ensure compliance with these obligations (as outlined above) and has endeavoured to take a 'light touch' approach to regulation in this matter, balancing the need to make these requirements enforceable by the Utility Regulator, while ensuring that the obligations on licence exempt distributors and suppliers are no more onerous than on those entities which hold licences. While it is likely that the majority of smaller electricity distribution entities will benefit from an exemption from holding a licence, all exempt distributors and suppliers will be required to meet the obligations in the proposed Order as outlined above. The Department will be publishing Guidance alongside the proposed legislation to assist entities potentially affected by it.

8. Environmental Impact

The outworking of the proposed legislation and the proposals concerning the licensing of electricity distribution systems and the requirement to comply with an exemptions regime may have environmental impacts. Where there are specific environmental impacts, the Utility Regulator will take such steps as are necessary to assess the respective environmental impacts. There are no matters in the proposed legislation which should have an adverse environmental impact.

9. Human Rights Impact

Having considered the Human Rights Act, the Department has identified that Article 1 First Protocol, relating to the peaceful enjoyment of property, is engaged in relation to the establishment of the electricity distribution and exemptions regime, as it will bring compliance with the proposed exemptions regime within the existing enforcement regime in the Energy Order. However, the Department considers that this engagement is justified and required under EU law and that therefore the proposed legislation will not interfere unjustifiably with Article 1 First Protocol rights.

10. Enforcement and Sanctions

Compliance with the obligations on exempt distributors and suppliers under the proposed Order will be enforceable by the Utility Regulator under the existing enforcement regime in the Energy (Northern Ireland) Order 2003.

11. Monitoring and Review

The Department, in liaison with the Utility Regulator, will continue to monitor all aspects of the implementation of the Third Package in Northern Ireland, including the proposed new exemptions regime. The proposed arrangements represent an important step in ensuring compliance with the Electricity Directive.

12. Consultation

The consultation on the introduction of electricity distribution licensing exemptions and the imposition of obligations on licence exempt distributors and suppliers closed on 12 October 2012 and may be found on the Department's website at www.energy.detini.gov.uk/consultations. The Department received seven substantive responses to its consultation and these along with the Department's response are available on the website www.detini.gov.uk/energy-newpage-7

13. Executive Referral

This issue was brought to the attention of the Executive, as it is a cross-cutting matter under the terms of paragraph 2.4 of the Ministerial Code insofar as the establishment of the exemptions regime for electricity distributors and the imposition of obligations on licence exempt distributors and suppliers may affect other Departments which have responsibility for licence exempt networks.

The Executive agreed to the Department proceeding with the legislation at their meeting on 7 March 2013.

14. Summary and Recommendation

The Department has been working alongside the Utility Regulator and other interested parties to develop a legislative framework for distribution exemptions and to impose obligations on exempt electricity distributors and suppliers which satisfy the requirements of the Electricity Directive and allow market participants to operate with an appropriate level of regulation but minimising any administrative burden (and associated costs) both on those participants and the Utility Regulator.

Taking consideration of the points made by consultation respondents, the Department is of the view that the new arrangements to be delivered through the proposed legislation represent the minimum required to ensure compliance in Northern Ireland with aspects of the Electricity Directive.

The Department has sought to deliver a light touch approach, ensuring that both customers and companies are afforded all the necessary protections contained in the EU legislation and at the same time ensuring that the obligations on licence exempt distributors and suppliers are no more onerous than those on licensed entities.

The Department has developed an accompanying guidance document, in consultation with the Utility Regulator, and this will assist consideration of the proposed legislation. The guidance will be available on the Department's website. The Utility Regulator will develop and publish separate guidance on the detailed practical arrangements for implementing the obligations under the legislation.

On the basis of the assessment of the benefits that have been identified, the Department is of the opinion that there will be no significant negative impact brought about by the introduction of the proposed legislation.

15. Declaration

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

[SIGNED]

Arlene Foster MLA
Minister of Enterprise, Trade and Investment

8 March 2013

NORTHERN IRELAND**TRANSPOSITION NOTE****Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC ('the Electricity Directive')**

The majority of obligations under the Electricity Directive were implemented via the Gas and Electricity (Internal Markets) Regulations (Northern Ireland) 2011 (S.I. 2011 No. 155) and a comprehensive transposition note was completed in relation to those Regulations. This transposition note concerns the transposition of certain aspects of the Electricity Directive in relation to licence exempt electricity distributors and suppliers. The relevant obligations of the Electricity Directive have been imposed on licence exempt distributors and suppliers by way of conditions imposed on their exemption as set out in Schedules 4 and 5 respectively to the Electricity (Class Exemptions from the Requirement for a Licence) Order 2013.

The Electricity (Dispute Resolution) Regulations 2013 ('the Regulations') expand the powers of the Authority under Article 31A of the Electricity (Northern Ireland) Order 1992 ('the 1992 Order') to enable the Authority to determine disputes relating to licence exempt suppliers as well as distributors and enable the Authority to make a costs order in relation to such a determination. This will assist the Authority in ensuring that the obligations on licence exempt distributors and suppliers are complied with.

Article	Information on compliance and implementation
3	Public Service obligations and customer protection
3(13)	<p>Article 3(13) of the Electricity Directive requires that complaints and out-of-court dispute settlements are handled by an independent mechanism.</p> <p>The transposition note relating to the 2011 Regulations noted the existing mechanisms in place to comply with this requirement. By expanding the existing Article 31A in the 1992 Order, these Regulations give the Authority the power to determine disputes relating to licence exempt suppliers as well as distributors and this will assist in ensuring compliance with the obligations imposed on these exempt entities by the Electricity (Class Exemptions from the Requirement for a Licence) Order 2013.</p>
37	Duties and powers of the regulatory authority
	<p>Article 37 of the Electricity Directive sets out the duties and powers of the regulatory authority.</p> <p>These Regulations amend Article 31A of the 1992 Order to expand the powers of the Authority to enable it to determine disputes relating to licence exempt suppliers as well as distributors, in compliance with certain requirements of Article 37 of the Electricity Directive.</p>