

Title: Transposition of the EU Electricity (Recast) Directive (EU 2019/944)	Regulatory Impact Assessment (RIA)		
	Date: 27/10/2020		
	Type of measure: Subordinate		
Lead department or agency: Department for the Economy	Stage: Final		
	Source of intervention: Domestic NI		
Other departments or agencies: N/A	Contact details: Davina McCay		
	Brexit Impact Branch		
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Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum)	
<p>On 5 June 2019 the European Commission made the Electricity (Recast) Directive¹ [(EU) 2019/944] (The Directive) on the internal market for electricity which applies from 01 January 2021. The aim of the Directive is to outline rules for the generation, transmission, distribution, supply and storage of electricity, together with consumer protection aspects, aiming to create integrated competitive, consumer-centred, flexible, fair and transparent electricity markets in the EU. This Directive repeals Directive 2009/72/EC.</p>	
What are the policy objectives and the intended effects? (7 lines maximum)	
<p>The aim of this Directive is to outline the rules for the generation, transmission, distribution, supply and storage of electricity, together with consumer protection aspects and rules on retail markets for electricity. The intended effect is to ensure affordable, transparent energy process and costs for consumers, a high degree of security of supply and a smooth transition towards a sustainable low carbon energy system. The deadline for the transposition of the Directive is 31 December 2020 and is therefore within the Implementation Period. The UK, including NI, is therefore obliged to transpose the requirements into domestic law.</p>	
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum)	
<p>Although the UK left the EU on 31 January 2020, EU law continues to apply until the end of the Implementation Period, 31 December 2020. The transposition deadline for the Electricity Directive falls within the Implementation Period therefore the UK is obliged to transpose the requirements into domestic law. No other policy options have therefore been considered.</p>	
Will the policy be reviewed? No	If applicable, set review date: Month/Year

Cost of Preferred (or more likely) Option				
Total outlay cost for business £m	Total net cost to business per year £m		Annual cost for implementation by Regulator £m	
N/A	Unknown		N/A	
Does Implementation go beyond minimum EU requirements?			YES <input type="checkbox"/>	NO X
Is this measure likely to impact on trade and investment?			YES <input type="checkbox"/>	NO X
Are any of these organisations in scope?	Micro	Small	Medium	Large
	Yes <input type="checkbox"/> No X	Yes <input type="checkbox"/> No X	Yes <input type="checkbox"/> No X	Yes <input type="checkbox"/> No X

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0944&from=EN>

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Jane Dede

Approved by:

Date: 17Nov20

Description: Legislation to transpose requirements of the Electricity Directive 2019 into domestic law.

ECONOMIC ASSESSMENT (Option 2)

Costs (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
	(constant price)	Years		
Low	N/A Optional		N/A Optional	N/A Optional
High	N/A Optional		N/A Optional	N/A Optional
Best Estimate				
<p>Description and scale of key monetised costs by 'main affected groups' Maximum 5 lines There is only one main area of new policy/requirements to be introduced by these regulations:</p> <ul style="list-style-type: none"> Duties and obligations on the Regulatory Authority. <p>The new duties and obligations on the Regulatory Authority brought in by the Directive should not involve monetised costs.</p>				
<p>Other key non-monetised costs by 'main affected groups' Maximum 5 lines</p>				
Benefits (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
	(constant price)	Years		
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate				
<p>Description and scale of key monetised benefits by 'main affected groups' Maximum 5 lines</p>				
<p>Other key non-monetised benefits by 'main affected groups' Maximum 5 lines</p>				
<p>Key Assumptions, Sensitivities, Risks Maximum 5 lines If Northern Ireland does not transpose the Electricity (Recast) Directive (EU) 2019/944 there is potential that the Department for the Economy could face the risk of infraction fines from the EU Commission for failure to implement requirements.</p>				

BUSINESS ASSESSMENT (Option 2)

Direct Impact on business (Equivalent Annual) £m				
Costs: Unknown	Benefits: Unknown	Net: Unknown		

Cross Border Issues (Option 2)

<p>How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines</p> <p>The EU Electricity (Recast) Directive 2019 was made on 5 June 2019. It revises and replaces Directive 2009/72/EC and has to be transposed into domestic law by 31 December 2020. There is an obligation on the Department to transpose the Directive to ensure domestic legislation reflects EU Law by the end of December 2020. The Republic of Ireland, as an EU Member State, is also required to transpose this Directive into domestic law by 31 December 2020. Therefore, North and South are bound by the same rules. It is against this backdrop that the Department remains cognisant of maintaining the Single Electricity Market</p>
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Background

On 5 June 2019 the European Commission published the Electricity (Recast) Directive [(EU) 2019/944] on the internal market for electricity and will apply from 01 January 2021.

The deadline for transposition is 31 December 2020 and is therefore within the Implementation Period requiring the Department for the Economy to transpose its requirements into domestic law.

The Directive is one of 8 EU measures listed in Annex 4 to the NI/IE Protocol as applying to and in the United Kingdom in respect of Northern Ireland insofar as they apply to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity.

Problem Under Consideration

Following publication of the Electricity (Recast) Directive (EU) 2019/944 there is an obligation on the Department to transpose the Directive, to ensure domestic legislation reflects EU Law, by the end of December 2020.

Rationale for Intervention

As stated above Northern Ireland is required to transpose the Electricity (Recast) Directive (EU) 2019/944. To ensure that Northern Ireland is legislatively correct, amendments are required, specifically to the Electricity (NI) Order 1992 and the Energy (Northern Ireland) Order 2003. These respective Orders provide the main legislative framework for electricity in NI and are the focus, therefore, of any legislative amendments required, although amendments may not be restricted to these instruments.

Policy Objective

The overall policy objective is to ensure that Northern Ireland meets the transposition requirements of the EU Electricity (Recast) Directive 2019/944 and ensure that domestic legislation reflects EU law by the end of December 2020 as far as possible.

Description of Options Considered

Option 1 – Do Nothing

Doing nothing would mean that Northern Ireland would be in breach, of EU Law, should the Electricity (Recast) Directive not be transposed. There is a risk of infraction fines from the EU Commission for failure to implement requirements for market participants.

Additionally, as Northern Ireland and the Republic of Ireland share a single electricity market (SEM) the same rules need to apply in both jurisdictions. ROI is also under an obligation to transpose the Directive therefore, in matters relating to the SEM, and to allow the SEM to continue to operate, NI and ROI require to be legislatively comparable.

Option 2 (Preferred Option) – Transpose the EU Electricity (Recast) Directive 2019/944

EU Directives must be transposed into domestic law by the transposition deadline. While much of the scope of the Directive builds on policies and procedures brought forward in the 2009

Directive, it does contain a number of new policies which will need consideration including smart metering, aggregation, citizen energy communities and active customers.

Officials have been working closely with the Utility Regulator to analyse requirements and establish if any legislative or licence changes are required. Where a policy framework already exists, the Department will bring forward legislation under section 2(2) powers by 31 December 2020. However, given that the Department is currently developing an energy strategy, it is not possible or appropriate to bring forward transposition requirements fully by the end of December where the policy position is still being developed.

It is proposed therefore, that for areas where there is not currently an agreed policy framework, the Department will take forward transposition via the development of the Energy Strategy and the policy consultation put forward this approach.

Such areas include:

- Smart metering roll out;
- Active customers;
- Citizen energy communities;
- Dynamic price contracts;
- Aggregation;
- Energy storage
- Electromobility;
- Energy Poverty.

There are a number of requirements in the Directive which were previously brought in via the 2009 Directive and have been carried over to the 2019 Directive, but with amendments or inclusions. These requirements will have been transposed at the time and therefore NI is partially compliant through the current legislative and licencing framework. Where this is the case, and the intent remains the same, an update to the current legislation and licensing framework will be undertaken to ensure that article references are accurate. Any new requirements will require further policy development and will be legislated for, as appropriate, in a longer timeframe.

Further legislation may be required to ensure adherence with Protocol and will be considered as it arises.

Monetised and Non-Monetised Costs and Benefits

The UK is currently in an Implementation Period during which the UK is no longer a member of the EU but must continue to adhere to EU law until the end of the Implementation Period on 31 December 2020. EU Directives which have a transposition deadline within this period, must therefore be transposed. Northern Ireland is also required, under the NI/IE Protocol to continue to adhere to the Electricity Directive, along with other EU instruments, beyond the Implementation Period where the requirements are in respect of the wholesale electricity market.

If Northern Ireland does not transpose the Electricity (Recast) Directive 2019/944 then it will be in breach of the Directive. This could potentially leave the Department open to potential legal challenges from operators who consider themselves to be at a disadvantage if rules are not updated from the previous regulations. The legal costs of this is difficult to estimate, although if NI domestic legislation is in-line with EU legislation it makes the likelihood of a successful legal challenge less likely. There is a risk of infraction proceedings by the EU Commission which could lead to significant fines.

As mentioned previously, NI and ROI share a single electricity market and therefore conform to the same regulations.

Rationale and Evidence that Justify the Level of Analysis used in the RIA

Due to the Electricity (Recast) Directive 2019/944 having a transposition deadline within the Implementation Period, Northern Ireland has a legal obligation to transpose the Directive. Article 9 and Annex 4 of the revised NI/IE Protocol to the Withdrawal Agreement list certain provisions of EU law governing wholesale electricity markets, carbon trading and industrial emissions (including the Electricity Regulation) that will apply in Northern Ireland once the Implementation Period has ended. As a result of this the new rules relating to the Electricity Directive must be transposed and once transposed will remain NI law, therefore the necessary legislative amendments are required as a matter of urgency.

Risks and Assumptions

Option 1 – If the new Directive is not transposed then there is a risk of infraction proceedings by the EU.

Directs Costs and Benefits to Business

Wider Impacts

The Department has conducted a screening exercise to assess if transposition of the Electricity (Recast) Directive (EU) 2019/944 would have wider impacts (positive or negative) on Environmental, Human Rights or Economic issues. The Department has ascertained that there are no impacts on the aforementioned issues and therefore they have been screened out. An Equality screening was completed after the consultation exercise has been completed. The result was that there is no impact, positive or negative, on the Section 75 groups.

While the Electricity Directive has a number of cross-cutting issues it is proposed that cross-cutting elements, including vulnerable customers; energy poverty; and electromobility will not be included in this current transposition but should be taken forward as part of development of the energy strategy