

## **EXPLANATORY MEMORANDUM TO**

### **Electricity (Internal Markets) Regulations (Northern Ireland) 2020**

**SR No. 307**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under European Communities Act 1972 Chapter 68 Section 2.2 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The Electricity (Internal Markets) Regulations (Northern Ireland) 2020 will transpose elements of the Electricity (Recast) Directive [(EU) 2019/944] (The Directive) on the internal market for electricity. This Directive repeals Directive 2009/72/EC.

#### **3. Background**

- 3.1. European Parliament and Council Directive 2019/944/EU concerning common rules for the internal market in electricity ("the Recast Directive") repealed and replaced with amendments
- 3.2. (a) European Parliament and Council Directive 2009/72/EC ("the IME3 Directive"); and
- 3.3. (b) certain provisions of European Parliament and Council Directive 2012/27 on energy efficiency ("the Energy Efficiency Directive") which related to electricity metering and billing.
- 3.4. These Regulations amend the Electricity (Northern Ireland) Order 1992 ("the Electricity Order"), the Energy (Northern Ireland) Order 2003 ("the Energy Order"), and the Electricity (Single Wholesale Market) (Northern Ireland) Order 2007 ("the SEM Order") to ensure that they conform to the requirements of Article 57 to 62 of the Recast Directive and to update references in that domestic legislation to other provisions introduced in the IME 3 Directive and to the provisions of the Energy Efficiency Directives which the Recast Directive replaced.
- 3.5. The Directive, through Article 57 to 62, expanded the role and power of the Regulatory Authority. This Regulation transposes these requirements in national legislation to empower Northern Ireland Authority for Utility regulation ("the Authority") to take on that role.
- 3.6. Amendments to the Energy Order strengthen safeguards for the independence of the Authority, provides the Authority with the powers to cooperate with regulatory bodies within the EU, and requires the Authority to make publically available the methodology and underlying costs used for the calculation of the relevant network tariffs, while preserving the confidentiality of commercially sensitive information.

- 3.7. Regulation (EU) 2019/943 establishes Regional Coordination Centres (RCCs) to carry out certain tasks for the purpose of coordinating the activities of Transmission System Operators (TSOs). These regulations give new functions to the Authority in relation to these RCCs as set out in the recast Directive. In particular it provides for TSOs to submit for approval for the proposals, costs, resources and decision making processes of the RCC for Northern Ireland and to provide information to the Authority and in general assist it in relation to enforcement of the obligations on the RCC.
- 3.8. Further duties were placed on the Authority including:
- 3.9. (a) introduces a new duty for the Authority to approve products and procurement process for non-frequency ancillary services;
- 3.10. (b) introduces a new duty to implement network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of Regulation (EU) 2019/943;
- 3.11. (c) adds a new duty for the Authority to ensure that transmission system operators make available interconnector capacities to the utmost extent pursuant to Article 16 of Regulation (EU) 2019/943;
- 3.12. (d) the duty to monitor a range of matters; and
- 3.13. (e) provides for duties on the Authority to ensure that there is no cross-subsidisation between transmission, distribution and supply activities or other electricity or non-electricity activities.

#### **4. Consultation**

- 4.1. A 6 week consultation, on various issues raised within the Directive, was published on 3 September 2020, prioritising those matters relevant to the maintenance of the Single Electricity Market. The purpose of the consultation was to ensure stakeholders were aware of forthcoming changes and to seek their comments and views on various aspects of the Directive. Thirteen responses were received.

#### **5. Equality Impact**

- 5.1. The Department completed the Section 75 Equality screening assessment. It was determined that the transposition of the Directive would not have an impact, positive or negative, on anyone within any of the Section 75 categories.

#### **6. Regulatory Impact**

- 6.1. 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 an 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. A Regulatory Impact Assessment carried out by the department concluded that there was likely to be no impact, positive or negative, on business, charities, social economy enterprises or voluntary bodies.

## **7. Financial Implications**

7.1. Non-compliance with applicable EU legislation brings a risk of infraction fines.

## **8. Section 24 of the Northern Ireland Act 1998**

8.1. This SR does not contravene Section 24 of the Northern Ireland Act 1988.

## **9. EU Implications**

9.1. 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. Therefore, not to transpose the Directive could risk infraction proceedings.

## **10. Parity or Replicatory Measure**

10.1. The UK Government is still in the process of developing its transposition legislation. However, as the electricity market in Northern Ireland differs from the GB market (through the single electricity market with Ireland) it is likely there will be differences in the GB approach to transposition. As energy is a devolved matter, there will also be differences in the policy background covering other areas of the directive from the approach to be advocated for GB.

## **11. Additional Information**

11.1. Not applicable.