EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (FUEL MIX DISCLOSURE) REGULATIONS 2005

2005 No.391

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This Regulation transposes Article 3(6) of Directive 2003/54/EC.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative background

4.1. These Regulations partially implement Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity. They only apply to Great Britain. A further set of Regulations will be made over the next few months to implement other provisions in this Directive. These will be on complaints handling. Moreover, provisions in both Directive 2003/54/EC and 2003/55/EC (common rules for the internal market in natural gas) concerning interconnectors will be implemented through a licensing regime for interconnectors that will be introduced under the Energy Act 2004.

4.2. A Transposition Note is attached.

4.3. The DTI submitted Explanatory Memoranda on 28 June 2001 and 19 November 2001 when the EU legislation on the internal energy market was first proposed. The Commons European Scrutiny Committee held a debate on this on 28 Nov 2001 while the Lords Select Committee on the EU cleared it on 22 July 2002. A further Explanatory Memorandum (9855/02) was submitted on 2 July 2002 which was cleared by the Commons European Scrutiny Committee and Lords Select Committee on the EU.

5. Extent

5.1. This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1. The Minister for Energy has made the following statement regarding Human Rights:

In my view the provisions of the Electricity (Fuel Mix Disclosure) regulations

2005 are compatible with the Convention rights, as defined in section 1 of the Human Rights Act 1998.

7. Policy background

7.1. The aim of Directive 2003/54/EC is to introduce competition in EU electricity markets by, inter alia, allowing third party access to essential infrastructure such as transmission and distribution networks, and requiring the unbundling of supply from transmission. The UK already has a liberalised electricity market and is largely compliant with the Directive's requirements. The UK is strongly supportive of this EU legislation, as it will extend competition to other EU electricity markets. The Department has consulted on the steps it plans to take to ensure full compliance.

8. Impact

8.1. A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

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ANNEX A

Final Regulatory Impact Assessment

Implementation of the fuel disclosure provision (Article 3(6)) of EU Directive 2003/54 on the Internal Market in Electricity

1. Introduction

1.1. This is the Final Regulatory Impact Assessment for the implementation in GB of the fuel disclosure provision (Article 3(6)) in EU Directive 2003/54 on the Internal Market in Electricity. .

1.2. There are separate arrangements for implementation in Northern Ireland.

2. Purpose and Intended Effect of the Proposal

2.1. Objective

2.1.1. The aim of this proposal is to put in place a means of implementing Article 3(6) of Directive 2003/54/EC that complies fully, and minimises costs to consumers and businesses and allows maximum flexibility to adapt the arrangements as circumstances change.

2.1.2. The proposal is to put in place a framework that will require suppliers to provide information to all consumers on the fuel mix of their electricity supply and its environmental impact.

2.1.3. The intention was that the provision of information on the fuel mix of electricity should enable consumers to make informed choices about the environmental impact of the electricity they buy. Consequently, the implication is that, once furnished with the information, consumers may select more efficient and environmentally friendly power sources.

2.1.4. Parties affected directly will be electricity suppliers and consumers in the UK, Ofgem, and the Department of Trade & Industry, while generators, transmission companies and traders will be affected more indirectly.

2.2. Background

2.2.1. The 2003 Electricity and Gas Directives are part of a package of legislation intended to create a liberalised and fully competitive single market. The key elements include an obligation on Member States to ensure that industrial and commercial customers will be able to choose their supply by 1 July 2004 and all customers by 1 July 2007. It also requires the legal unbundling of electricity and gas transmission system operators by 1

July 2004 and of distribution system operators by 1 July 2007. Each Member State is required to establish independent regulatory authorities that will publish tariffs for access to grids and pipelines, and there should also be a regulated third party access regime to existing LNG terminals and gas interconnectors, although exemptions may be granted for new infrastructure.
The text of Directive 2003/54/EC can be found at: http://europa.eu.int/eurlex/pri/en/oj/dat/2003/l_176/l_17620030715en00370055.pdf.

2.2.2. The central aim of EU Directive 2003/54 is the liberalisation of European electricity markets. The market in the Great Britain is already fully liberalised, but to date no system in place for the provision of fuel mix information to consumers. It is therefore necessary to introduce the requirement in GB in order to achieve compliance and avoid infraction proceedings in the European Court of Justice. The fuel mix disclosure requirement will have cost implications for electricity suppliers.

2.2.3. Paragraph 6 of Article 3 of EU Directive 2003/54 requires Member States to:

> *'ensure that electricity suppliers specify in or with the bills and in promotional materials made available to final customers:*
> *(a) the contribution of each energy source to the overall fuel mix of the supplier over the preceding year;*
> *(b) at least the reference to existing reference sources […] where information on the environmental impact, in terms of at least emissions of CO2 and the radioactive waste resulting from the electricity produced by the overall fuel mix of the supplier over the preceding year is publicly available.*
> *With respect to electricity obtained via an electricity exchange or imported from an undertaking situated outside the Community, aggregate figures provided by the exchange or the undertaking in question over the preceding year may be used.*
> *Member States shall take the necessary steps to ensure that the information provided by suppliers to their customers pursuant to this Article is reliable.'*

2.2.4. There is currently no requirement in Great Britain for suppliers to provide information on the fuel mix of their electricity supply.

2.2.5. Flexibility is a priority in order to deal with an evolving market and changing regulatory arrangements, both in the UK and throughout the EU. The best way to minimise cost and disruption is to make maximum use of existing arrangements.

2.2.6. Extensive formal and informal consultation with market players who would be affected by this provision, in particular via seminars arranged by Ofgem, have been undertaken. Many of the estimates for costs and timings

in this RIA have therefore been provided by industry, either at these seminars or in correspondence with Ofgem or the DTI.

2.2.7. In general, the directive is about establishing minimum standards rather than harmonisation. It should also be recalled that the main purpose of the Electricity Directive is to promote liberalised markets.

2.3. Risk Assessment

2.3.1. Inadequate implementation of Directive 2003/54/EC could lead to infraction proceedings at the European Court of Justice.

3. Options

3.1. Option 1: Do Nothing

3.1.1. Under EC Law we are obliged to implement Directives of the European Council and European Parliament addressed to Member States. If we do not properly implement legislation then we leave ourselves open to infraction proceedings, the result of which would be a proportionate financial penalty.

3.2. Option 2: Contract based tracking system

3.2.1. This option is based on the development of a system that would 'tag' electricity, so that the identification of the fuel source and its related characteristics would be permanently tied to the energy. It differs from the third option only in terms of the data sources used to verify the information provided.

3.2.2. The conclusion on the basis of responses to the DTI Consultation of 06/02/2004 was that this option would have very high implementation cost, would be unnecessarily burdensome on industry, and could have a potentially negative impact on the liquidity of the liberalised markets that the Directive is intended to promote.

3.3. Option 3: The Minimalist Approach

3.3.1. This approach takes the view that only the minimum requirements of the directive would be obligatory, but that best practice guidance would be available for further measures, and that it is preferable to use existing data sources until other systems are developed.

Publication, Content, Environmental Information and Presentation

3.3.2. Suppliers would be required to prepare a label covering their fuel mix over the preceding year and, at least, a reference to information on the environmental impact of the fuel mix. Customers would receive information about fuel mix on an annual basis on or with their bill and the information would be included with written materials intended to promote sales of electricity. The Fuel mix will be divided into 5 categories: coal, gas, nuclear, renewable and other. Specifically fuel that makes up more than 0.5% of the suppliers portfolio or UK average should be included and the information should be provided to the nearest 1%.

Data Sources

3.3.3. It is intended to provide useful and meaningful information to consumers using a combination of a number of already existing data sources. As and when new data systems are established, these may be incorporated.

3.3.4. Data sources include:

- **REGOs** (Renewable Energy Guarantees of Origin) – this a new certification scheme established in compliance with the Renewable Energy Directive 2001/77/EC guarantees are to be used as the primary source of evidence for renewables, as they will not have a negative impact on specialist "green" suppliers. Also, it will help to separate the aims from this provision to that of the Renewables Obligation. [1]
- **Generator declarations** – simple self-certification declarations assigning the output from generators to suppliers is the proposed source of evidence to be used for non-renewable generation; in addition in the interim stages of the fuel disclosure provisions (see section on timing for more details) generator declarations can be used as an alternative to REGOs by suppliers.
- Generation that cannot be assigned to categories by REGOs or generator declarations should be assigned according to a **Residual mix** as calculated and published by the DTI.

Timing

In order to tie in with GB accounting practices and to ensure consistency with other schemes the proposed compliance year will run from 1 April to 31 March. All labels would therefore relate to the fuel mix of the financial year ending the previous March. Suppliers would be allowed 6 months to calculate the new data, meaning new labels should be available from 1 October each year.

The implementation of this proposal is expected to occur in two stages. The first stage will be an interim measure and will apply to labels produced from October 2005 to September 2006 (based on electricity supplied April 2004 to March 2005). The second stage will operate thereafter.

For bills issued between 1 October 2005 and 30 September 2006, as an interim measure, suppliers will use the same approach for accounting for their renewable sources as for conventional ones. Thus, where suppliers are in possession of verified generator declarations, these may be used to calculate the fuel source's contribution to the overall fuel mix. Where there is no such declaration available, i.e. for the residual mix, suppliers should use the data from the national averages provided on Energy Trends. If suppliers are in possession of REGOs, these may also be declared, but in the interests of avoiding double counting, all generator declarations regarding renewable energy sources will need to state that a REGO has not also been issued. It is hoped that this will enable suppliers and generators to become accustomed to the REGO scheme in preparation for 2006.

From 2006, i.e. in the long term, the following system will apply.

[1] See the section on "Timing" for details on how the evidential requirements are likely to change over the timing of the implementation of the proposal.

- For electricity from renewable energy sources generated in GB, the evidence should be based on Renewable Energy Guarantees (REGOs) issued by Ofgem for the relevant compliance year and held by the supplier at a fixed date, unless a suitable redemption facility is available in the REGOs register.

- For electricity produced by other generators (including CHP until such time as a system of guarantees of origin for CHP (CHP-GOs) is established under the European Cogeneration Directive) (2004/8/EC), disclosure may be based on verified generator declarations assigning the power from particular power stations to suppliers.

- Suppliers may include in their label any electricity sourced outside Great Britain that can be certified as above (or by equivalent certification schemes established under the Renewables or Cogeneration Directive) provided they can show contractual evidence that the relevant electricity was consumed or is to be consumed in GB.

- For supply that cannot be certified as above, suppliers will use the residual mix as calculated by the Department and updated quarterly on Energy Trends in a separate table.

Verification

3.3.5. The verification of accuracy and reliability of the information provided will be the responsibility of suppliers. Ofgem may also perform audits of suppliers' fuel mix disclosure systems.

Risks

3.3.6. Untimely information because of the difficulty of compiling and verifying evidence from a variety of data sources.

3.3.7. Best practice guidance only could mean too great a variety of formats and information provided for consumers to be able to compare data effectively and make an informed choice.

4. Costs and Benefits Assessment

4.1. Business Sectors Affected

4.1.1. The UK electricity supply market is the business sector affected by this proposal.

4.2. Assumptions

4.2.1. The Directive requires suppliers to *"provide their customers with reliable information on their fuel mix. They must also provide at least a reference to existing reference sources where information on the environmental impact of the electricity produced by the overall fuel mix is available."*

4.2.2. This information is to be provided at least once a year to all existing consumers and in or with promotional materials upon request for potential consumers, and is either to be attached to the bill or provided separately.

4.2.3. The responsibility of authenticating the information provided falls on the suppliers.

4.2.4. Ofgem has developed the cost estimates in the RIA in 2002-04. The purpose of the exercise is to provide order of magnitude estimates of the costs of implementing electricity disclosure in Great Britain, and to provide a general assessment of the variation in costs among alternative implementation models. While the best estimates of costs available have been used, there is considerable uncertainty, especially in regard to suppliers' costs.

4.3. **Costs of Options 1 and 2**

4.3.1. Option 1: To Do Nothing can be ruled out as the cost implications of ECJ proceedings and subsequent claims for Frankovich damages are an unacceptable risk.

4.3.2. Option 2 was rejected by all respondents to the DTI Consultation as being unnecessarily burdensome on the industry. Annualised costs per customer were estimated to be in the range of £0.309 - £0.941, more than three times the cost of Option 3.

4.4. <u>Option 3: Minimalist Approach</u>

4.4.1. Under this minimalist option chosen in light of consultation responses, we assume data that is already available for other purposes is used, therefore the only costs that would be incurred are the costs of compliance by suppliers and the regulator/system operator. The efforts of suppliers to get the information together for presentation (even if it exists already) imposes some costs on other market participants e.g. generators

may have to provide declarations to support suppliers' assertions. These costs are unlikely to be very large. The costs to suppliers are assumed to consist of collation, calculation of relevant factors etc and preparation of information for customers, auditing the information and preparation of a return to the regulator. These are estimated to be around £100,000 per supplier. With 20 suppliers in GB, the aggregate non – recurring cost to suppliers is estimate to be **£2 million.** Maintenance costs are estimated at £1 million per annum. The two-stage implementation process is thought to generate only minimal additional costs as the use of generator declarations for renewables in the first year uses information that is already available.

4.4.2. Suppliers are assumed to provide this information to their consumers at least once a year.

4.4.3. There is considerable debate as to the real additional cost to suppliers of providing this information. It could be argued that suppliers frequently revise bills, advertising and other marketing material and that the inclusion of additional information in such material at the time of revisions would be negligible. This is particularly true as it is proposed that requirements are to have a long lead time. An estimate of £0.03-0.05 per customer is used based on a supplier's estimate of information that could be incorporated into existing billing arrangements. This suggests an annual cost of **£850,000–1.4 million** (based on 28.4 million customers).

4.4.4. Regulators/operators will bear the cost of establishing a methodology for the calculation, presentation and verification of the information provided by the suppliers to customers of their fuel mix. This is estimated to cost around £150,000 in design costs and £40,000 per year for establishment and maintenance of the software systems.

4.4.5. The aggregate costs of this option are therefore estimated to be:

1. Aggregate Costs for this Option

Component	**Cost (£)**
Total Cost	
Non – recurring	2.256 million
Recurring	2.197 million
Annualised Cost*	£2.7 million
Annualised Cost per customer*	£0.097

Source: Ofgem * Over five years. **Per annum

4.5. Relative Benefits

4.5.1. This provision will aid in the attainment of a more transparent and efficient market for electricity, by increasing the flow of information about the generation of electricity.

4.5.2. By disclosing the fuel mix, both current and potential consumers will now be in a position to make a more informed choice when choosing an electricity supplier/source and may also encourage consumers to be more economical in their use of electricity. For suppliers, it provides them with an opportunity to differentiate their product from other suppliers.

4.5.3. In addition, there are further benefits that may potentially arise by disclosing the fuel mix of electricity supply. Consumers may increase their demand for low carbon/renewable sources of energy that in turn may increase the scope, and therefore capacity, of investment in renewable energy[2] and other low carbon technologies such as CHP. This offers two main benefits:

4.5.4. On the one hand there may be economic benefits to be reaped as renewable technologies can be labour intensive and therefore increased renewable demand may provide scope to increase regional employment

4.5.5. Another benefit could be the attainment of a greater level of security of supply. As increased renewable investment and capacity reduces the dependence on fossil fuels, therefore an increase in the share of renewable electricity generation could reduce the scope of supply shocks and their associated detrimental effects – e.g. Price swings and transportation disruptions.

4.5.6. The use of REGOs instead of ROCs carries over another benefit to 100% renewable suppliers. Under a scheme where ROCs are used, it is not possible for a Green supplier to declare itself as 100% green whereas under a scheme with REGOs this will be possible. Furthermore, it is important to separate the aims of the Renewable Obligation and those of the Fuel Mix Disclosure provision. Suppliers' contribution to renewable generation is already recognised by the ROC system itself, and the fuel mix disclosure provision in the directive is not intended to provide any further form of recognition. Nevertheless, suppliers would still be free to state the size of their financial contribution to renewable generation through the purchase of ROCs in promotional material or on/with the bill.

4.6. Small Firm Impact Test

4.6.1. The proposal applies to all electricity suppliers in the UK. While suppliers vary greatly in size, none is sufficiently small to fit the definition of small firm. The chosen implementation route will place the lowest burden on the smaller suppliers as it makes the greatest possible use of data that is already available to firms.

4.7. Competition Assessment

[2] Based on 4CE consumer research, it is estimated that there will be an increase in the capacity of renewables, of around 25TWh per year within the EU.

4.7.1. The proposed legislation applies to electricity suppliers, with a linked obligation on electricity generators to provide information to suppliers.

4.7.2. Although the proposed regulation strictly constitutes a barrier to entry in the UK electricity supply market in that suppliers' operating costs would be higher than otherwise, it is not anticipated that the adverse impact on industry competition would be substantial given that the fuel disclosure requirement would apply to all UK electricity suppliers and the cost per customer is minimal.

4.7.3. The proposed regulation will assist market competitiveness in that its goal is to better inform consumers about the electricity that they are purchasing; this is positive for competition and will better enable consumers to change supplier.

4.8. Enforcement and Sanctions

4.8.1. The licence condition dealing with fuel mix disclosure will be a "relevant condition" under the Electricity Act 1989. Therefore, non-compliance with the licence condition will be an enforcement matter for the Gas and Electricity Markets Authority.

4.9. Monitoring and Evolution

4.9.1. **Implementation will be by tabling regulations under Section 2(2) of the European Communities Act (1972) to insert an additional condition in suppliers' licences. Monitoring and evaluation would therefore occur as a part of the regulator's responsibility for monitoring licence conditions. In addition, Article 28(1), in particular subparagraph (h), of Directive 2003/54/EC requires that the Commission monitors and reviews the application of the Directive across Member States, submitting an annual review to Council and the European Parliament**

5. Consultation

5.1. The Department has consulted on the implementation of the fuel mix requirement as part of its wider consultation on EC Directives 2003/54 and 2003/55. In addition, there has been extensive informal consultation with Ofgem, suppliers and other interested parties, including British Energy, Centrica, Innogy, EdF, AEP, Powergen, 4CE.

5.2. All respondents to the consultation agreed with the Department's preferred Option – the 'Minimalist' route as described above. The majority also provided convincing arguments against choosing Option 2, the contract-based tracking approach, particularly regarding the costs of such a scheme. The clear consensus among respondents clearly determined the direction of the Department's subsequent decisions.

6. Summary and Recommendation

6.1. The department, having closely consulted with the industry, can recommend the minimalist implementation option for fuel mix disclosure. It offers the security of implementation, while avoids the costs of the tagging system also considered.

6.2. Fuel mix disclosure is in the interests of electricity consumers whose purchase decisions will be better informed in the future, and while the financial implications of this measure will fall on the electricity suppliers, the implementation route recommended aims to minimise the burden on industry.

7. Declaration

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

Signed by

Mike O' Brien

Mike O' Brien
Minister for Energy
Date: 24th February 2005

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GREAT BRITAIN

TRANSPOSITION NOTE

Directive 2003/54/EC concerning common rules for the internal market in electricity and repealing Directive 96/92/EC

Introduction

The aim of Directive 2003/54/EC is to introduce competition in EU electricity markets by, *inter alia*, allowing third party access to essential infrastructure such as transmission and distribution networks, and requiring the unbundling of supply from transmission. The UK already has a liberalised electricity market and is already largely compliant with the requirements of the Directive.

Article	**Information on compliance and implementation**

1	{Scope}
2	{Definitions}
3 (1)-(5); (7)-(9)	**Public Service Obligations and consumer protection** GB is compliant. - A number of public service obligations are imposed on electricity undertakings by the Electricity Act 1989 and the supply and distribution licences granted thereunder. These include obligations on undertakings to meet previously set standards of performance, establish customer complaints procedures and provide special services for elderly or disabled customers. - Under the Supply Licence, (Standard Licence Condition ("SLC") number 32) the licensee has a duty to supply electricity to domestic customers, and under the Distribution Licence, SLC 4B it has a duty to offer terms and charges for connection to the grid, with the methodologies subject to approval by the Gas and Electricity Markets Authority ("the Authority"). - The Supply Licence contains specific duties (SLC 37 & 38) as regards the protection of vulnerable customers (i.e. those who are blind, deaf, of pensionable age, disabled or chronically sick). In addition, Ofgem publishes and updates social and environmental objectives that focus on reducing fuel poverty and improving energy efficiency through promotion of research and innovation, and best practice guidance for industry. SLC 40-44 of the Supply Licence require the licensee to ensure that contractual terms are transparent and clear and that SLC 46 -47 customers may not be charged for the termination of contracts on notice although reasonable charges may be imposed when a fixed term contract has been terminated, which might create cost not related to the change of supplier. - As regards 3(9), Directive 96/92/EC required Member States to inform the Commission of measures taken to fulfil public service obligations. However, information on universal service and a two yearly update will also need to be formally notified to the Commission. - As regards 3(7), where environmental and social aspects are concerned, our compliance with this article will be ensured by GB compliance with Articles 3(1)-(6). As regards compliance with security of supply aspects of Article 3(7), the transmission licence (SLC7 and SLC9) of the distribution licence require that a licensee's grid code designed to promote security and efficiency. Relevant price control incentives also encourage efficient network investment decisions.
3(6)	**Fuel Mix Disclosure** There is not currently a system of fuel mix disclosure in place in GB. A new licence condition will therefore be introduced into the supply licence via the Electricity (Fuel Mix Disclosure) Regulations 2005. This condition will require licensees to inform customers in or with bills and on promotional materials of their overall fuel mix for the preceding year. It will also specify the evidence that may be used to support this disclosure and the procedure for its verification. The form of the condition has been consulted on by the Department.
4	**Monitoring of security of supply** GB is largely compliant - The monitoring of security of supply (including the specific areas outlined in detail in Article 4) is already carried out via regular reports produced by JESS (Joint Energy Security of Supply Working Group), National Grid Transco ("NGT"), the Authority and the Department. However, it will be necessary to consolidate these various reports and forward them to the Commission.
5	**Technical Rules** GB is already compliant

	- The Electricity Safety, Quality and Continuity Regulations 2002 (SI 2002 No. 2665) outline the technical safety criteria and technical rules that are in place in GB. These Regulations have been notified to the Commission.
6	**Authorisation procedure for new capacity** GB is already compliant - Section 36 of the Electricity Act 1989 sets out the relevant requirements relating to the consents required for the construction of new generating stations. - This article is largely unchanged from Article 4 of Directive 96/92/EC, apart from the fact that the authorisation procedure is no longer optional.
7	**Tendering for new capacity** GB is already compliant - The New Electricity Trading Arrangements (NETA) in England and Wales and the wider trading of electricity in the wholesale markets between generators and suppliers form the primary mechanism for providing both for new capacity and the participation of the demand side, through the operation of the pricing mechanism. Forward prices for example presently exist out three years, and help provide a stable investment climate for new generation projects. NETA will apply to the whole of GB following the introduction of BETTA. - All licensed transmission companies are obliged by SLC C7G of the transmission licence to publish a Seven Year Statement, which includes scenarios for potential demand and generation growth. Such information provides a set of transparent and non-discriminatory information against which generators and investors in generation can choose to enter the generation market. - Special Licence Condition AA4 of the National Grid Company ("NGC") electricity transmission licence places a duty on NGC to operate the transmission system in an efficient, economic and co-ordinated manner. Further, it requires NGC not to discriminate in the procurement or use of balancing services. As a result, NGC would be expected to consider contracting ahead for its operating margin requirements when it considered that it was economic and efficient to do so. In addition, NGC's wider obligations as the residual balancer mean that they are responsible for ensuring that demand and supply are balanced on a moment-to-moment basis. - NGC therefore procures, among other things, Standing Reserve services in the form of either generation or demand reduction. This enables NGC to access additional power at short notice in order to meet unexpected changes in generation or demand. Although such services are used at short notice, NGC tenders for them on an annual basis up to 12 months before they are needed. NGC can therefore take a longer-term view of the demand and generation balance in assessing the need for Standing Reserve in enabling supply to match demand in real time and so preserve security of supply.
8	**Designation of Transmission System Operators** GB is already compliant. - The Electricity Act establishes transmission as a licensed activity.
9	**Tasks of Transmission System Operators** GB is already compliant - The Electricity Act establishes transmission as a licensed activity. The tasks of transmission system operators, as outlined in Article 9, are all

	imposed on transmission system operators via Condition 7 of the Transmission Licence.
10	**Unbundling of Transmission System Operators** GB is already compliant - In England and Wales, NGT is an independent company which is not part of a vertically integrated undertaking and which has no generation, distribution or supply interests. In Scotland, where the transmission system is owned by two vertically integrated electricity companies, the operation of the transmission system is independent in legal and management terms and the operator meets all of the conditions outlined in Article 10 via Condition D3A of the Transmission Licence.
11	**Dispatching and balancing** England and Wales are already compliant. - Section 9 of the Electricity Act requires transmission system operators to develop, operate and maintain an efficient electricity transmission system. The Transmission Licence also includes requirements to balance the system and to cover energy losses and reserve capacity according to transparent and non-discriminatory rules and procedures. Licence Condition 7 requires a Grid Code to be in force, which is designed to permit the development, maintenance and operation of an efficient, co-ordinated and economical system for the transmission of electricity - NGT is not responsible for dispatch and so the majority of Article 11 does not apply in England & Wales. - In Scotland, the introduction of British Electricity Transmission and Trading Arrangements (BETTA) scheduled for April 2005 will align the arrangements on dispatch, access and separation to those of England and Wales. Therefore, once BETTA is introduced, GB will comply fully with Article 11.
12	**Confidentiality for Transmission System Operators** GB is already compliant. - As regards the confidentiality provisions in Article 12, these are explicitly covered by Condition D3 of the Transmission Licence in the case of Scotland, and implicitly covered by Condition C7C of the Transmission Licence in the case of England and Wales (the licensee has a duty not to discriminate between any persons). Furthermore, section 105 of the Utilities Act 2000, which restricts the disclosure of information by regulatory authorities, and section 57 of the Electricity Act 1989, which provides for the Secretary of State to give directions to restrict the use of certain information by a particular party, are also relevant to this requirement**.**
13 (&14)	**Designation of Distribution Systems Operators** GB is already compliant. - The current arrangements in the GB system meet the requirements of Article 13 (and 14). The Electricity Act establishes distribution as a licensed activity. Where relevant in the GB system, the required tasks of distribution system operators (as outlined in Article 14) are mainly imposed on distribution system operators via Condition 9 (the Distribution Code) of the Distribution Licence. As regards the planning of the distribution network, distribution system operators have a licence obligation (SLC 5) to plan their networks in accordance with the Engineering Recommendation P2/5 (this recognises contributions that can be provided from distributed generation).
14	**Tasks of Distribution System Operators** GB is already compliant. - See entry on Article 13 above for compliance in GB.
15	**Unbundling of Distribution System Operators**

	GB is already compliant - Section 6 of the Electricity Act requires that the same person may not be the holder of both a distribution and a supply licence. Condition 39 of the Distribution Licence makes clear that the licensee shall maintain the full managerial and operational independence of the distribution business and also restricts the disclosure of confidential information outside the distribution business. Condition 40 outlines the terms of the appointment of a compliance officer. Condition 41 prohibits cross-subsides to and from any other business or undertaking outside the distribution business. Finally Condition 43 sets out terms for the financial ring-fencing of the distribution business.
16	**Confidentiality for Distribution System Operators** GB is already compliant. - There is a provision in Condition 39 of the Distribution Licence which requires the licensee not to disclose or authorise access to confidential information.
17	**Combined Operator** GB is already compliant - The arrangements in Scotland, where the businesses of transmission and distribution are operated jointly, meet the requirements of this Article. Licence conditions in both the transmission and distribution licences ensure separation of these businesses from other activities. Condition D3A of the Transmission Licence for example, which applies only in Scotland, requires independence of and appointment of a Managing Director of the Transmission business. - The Article is not relevant to the arrangements in England and Wales, where separate companies operate transmission and distribution activities.
18	**Right of access to accounts** GB is already compliant. - Section 28 of the Electricity Act gives the Authority the power to require information from any licensee**.** In addition, all of the standard electricity licences (Electricity Generation Licence Condition 16; Electricity Supply Licence Condition 52; Electricity Distribution Licence Condition 42; Electricity Transmission licence Condition 5) require the preparation of regulatory accounts and Section 105 of the Utilities Act 2000 sets out general restrictions on the disclosure of information and makes clear that any confidential information shall not be disclosed, except in specified circumstances.
19	**Unbundling of accounts** GB is already compliant. - All the standard electricity licences also include provisions, where relevant, requiring separate accounting. Licence Condition 43 of the electricity Distribution licence restricts activities and subjects the distribution business to a financial ring fence. Licence Condition 12 of the Transmission Licence prohibits cross subsidy to or from any affiliates or related undertakings. Licence conditions require that network operators are obliged to keep transmission and distribution businesses separate.
20	**Third party access** GB is already compliant. - As regards access to the transmission system, compliance is covered by the Transmission Licence. In Conditions 7 and 7A, the licensee is required to determine a methodology for system charging which is approved by the regulatory authority prior to its entry into force. Condition 7C requires the licensee not to discriminate between any

	persons and Condition 7D sets out the conditions the licensee may use to refuse access to the system. - As regards access to the distribution system, compliance is ensured via the Distribution Licence. Condition 4 sets out the basis of charges for use of, and the connection to, the system. Conditions 4A and 4B require that the licensee does not discriminate between any persons and offers terms for use of, and connection to the system. Finally, Condition 4B also sets out the conditions under which the distribution system operator may refuse access to the system.
21	**Market opening and reciprocity** GB is already compliant. - The GB electricity market has been fully open to competition since mid 1999.
22	**Direct lines** GB is already compliant. - The text of Article 22 has not changed from the original text in Article 21 of Directive 96/92/EC. - Anyone may apply to the Secretary of State for Trade and Industry (in Scotland the Secretary of State for Scotland) for a consent to build a direct overhead line under section 37 of the Electricity Act 1989. All but the most minor overhead line developments can be expected to require a consent. If, however, the line is within the site of the person installing the line, no section 37 consent is required but normal planning permission will probably be needed. When deciding whether or not to grant a consent under section 37, the Secretary of State will usually consider the need for the line, the environmental impact which would be caused, compliance of the proposals with technical standards and the availability of any alternative ways of meeting any need established (including alternative routes and undergrounding). In addition to these matters the Secretary of State will take into account any issues which also appear to be relevant to the particular proposal in question, which may, for example, include specific local issues. Duly substantiated reasons are given to the applicant if consent is refused. Judicial review is available in respect of refusals to grant consent under section 37 of the 1989 Act.
23	*Regulatory Authorities* ***GB is largely compliant.*** - The Utilities Act 2000 designates the Authority with the function of a regulatory authority. - There are specific conditions in the Transmission and Distribution Licences which require the Authority to undertake the majority of the monitoring activities outlined in Article 23. Thus, in relation to monitoring of connections and repairs, the Authority has powers to arbitrate when third parties cannot come to an agreement with a Transmission or Distribution company within a reasonable period on connections. - The Authority's duties also include monitoring the number of faults and the impact on customers; cost information on maintenance costs under price controls; measures taken by distribution companies to manage risks of disruptions. In addition, distribution companies have specific standards of performance. Indeed, the recent compensations paid following the time-taken to resolve the storm damage to distribution networks are reflective of the Authorities activities in this area. - Although the Authority does not have an explicit duty to publish an annual report on its monitoring activities, this requirement is implicitly met through the Authority's general monitoring duties. - Overall, the Authority meets the requirements concerning the approval of methodology via specific licence conditions and section 7 and 25 of the Electricity Act. - For 23(2), which requires ex-ante approval of at least the methodologies used to calculate connection and access tariffs to transmission and distribution and the provision of balancing services, GB is compliant in terms of transmission, via Licence Conditions 7A and B in the transmission licence and Licence Conditions 4, 4A and 4B in the distribution licence.

	- In relation to balancing services, notwithstanding the major reorganisation of electricity trading arrangements under NETA, governance arrangements of the Balancing and Settlements Code (BSC) meet this requirement since Ofgem approves any modifications proposals prior to their entry into force. - Regarding the capacity to settle disputes referred to in paragraph 5, almost all of the areas about which complaints may be submitted to the regulatory authority are covered by licence conditions and / or existing dispute resolution functions conferred on Ofgem under licence conditions or industry codes. Under the GB regulatory regime, the authority is obliged to issue a decision regarding any alleged breach of licence conditions or standard governance procedures under industry codes. - The Authority will monitor the rules on the management and allocation of interconnection capacity under the new provisions introducing an interconnector licensing regime in by the Energy Act 2004. - In addition, with respect to 23(5), DTI is still considering in consultation with interested parties the question of whether it is necessary to confer additional dispute resolution functions and procedures on Ofgem in Regulations under Section 2(2) of the European Communities Act 1972. At the time of writing it is not yet clear that such additional functions will be needed. - The DTI considers that Ofgem's duty to consult on its proposals delivers compliance with Article 23(6). - Finally, although the Competition Act 1998 and the Enterprise Act 2002 contain provisions which comprehensively prohibit anti-competitive behaviour, we will need to provide a regular report to the Commission on these issues.
24	- **Safeguard measures** This provision has not changed from the text of Directive 96/92/EC. The Emergency Powers Act 1920, and the Energy Act 1976 give the Secretary of State the power to take safeguard measures.
25	- **Monitoring of imports of electricity** This is a new monitoring requirement that is not currently undertaken in the GB system. The administrative arrangements will be put in place to compile and supply the data to the Commission
26	{Derogations}
27	{Review Procedure}
28	{Reporting}
29	{Repeals}
30	{Implementation}
31	{Entry into Force}
32	{Addressees}
Annex A	GB is compliant. - See entry for Article 3.