

**EXPLANATORY MEMORANDUM TO**  
**THE ELECTRICITY AND GAS (INTERNAL MARKETS) REGULATIONS 2011**

**2011 No. 2704**

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change (DECC) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Electricity and Gas (Internal Markets) Regulations 2011 (“the Regulations”) make amendments to electricity and gas legislation and licences in order to implement, and address matters arising out of or related to, Directive 2009/72/EC (“the Electricity Directive”) and Directive 2009/73/EC (“the Gas Directive”) of the European Parliament and of the Council, concerning common rules for the internal market in electricity and gas, respectively; Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity (“the Electricity Regulation”), Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks (as amended) (“the Gas Regulation”)<sup>1</sup> and Regulation (EC) establishing the Agency for the Co-operation of European Regulators (“the Agency Regulation”). These instruments are collectively known as the European Union (EU) Third Energy Package (“the Third package”). The Third Package repeals Directives 2003/54/EC and 2003/55/EC and Regulations (EC) No 1228/2003 and (EC) No 1775/2005.

2.2 The Regulations also provide for the enforcement, by the Gas and Electricity Markets Authority (“the Authority”), of certain provisions of Commission Regulation (EU) No. 838/2010 of 23 September 2010 (“the ITC Regulation”) on laying down guidelines relating to the inter-transmission system operator compensation mechanism and a common regulatory approach to transmission charging.

2.3 The Regulations do not make changes to the Standard Special Conditions of Gas Transporter Licences, as noted in the Transposition Note. The changes required to these conditions, to implement certain of the requirements of the Gas Directive, will be taken forward separately.

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<sup>1</sup> The Gas Regulation has been amended by Commission Decision 2010/685/EU of 10 November 2010 amending Chapter 3 of Annex I to Regulation 2009/715/EC of the European Parliament and of the Council on conditions for access to the natural gas transmission networks.

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

3.1 It should be noted that the Regulations build on an established framework of domestic obligations, prohibitions and powers, found not only in legislation but also in licences. This framework already covers a number of the requirements in the Third Package. Given the systems that we currently have in place, and the need for regulatory consistency and certainty in order to protect industry investment, the aim has been to achieve a result that ensures proper implementation in a way that fits in with the existing regulatory regime.

3.2 The cumulative effect of the components of the Third Package (and consequently the Regulations) has led to the affirmative Parliamentary procedure being chosen in this instance. The five instruments that make up the Third Package contain measures aimed at further opening up the internal energy market to competition. Such changes come at a time when matters such as energy prices, costs to businesses and investment in ‘green’ technologies have attracted much Parliamentary interest. The Regulations themselves include a large number of textual amendments to primary legislation to substitute the existing procedure for modifying conditions of electricity and gas licences; to create a new appeal mechanism in respect of such licence modifications; to impose third party access requirements in relation to licence-exempt electricity distribution and gas pipe-line systems; to impose additional duties on owners of gas storage facilities and liquified natural gas (“LNG”) import or export facilities; to extend the existing enforcement regime, both in terms of the persons subject to the regime and the requirements to which it relates; to create two new criminal offences (albeit offences which mirror the approach taken in the existing regime, in relation to the same act in comparable contexts); and to introduce new separation of ownership requirements on those engaged in transmission activities. In addition, Part 8 of the Regulations amends the Amendment of Electricity and Gas (Determination of Turnover for Penalties) Order 2002, which was itself made under the affirmative procedure.

3.3 As highlighted in the preamble to the Regulations, the Secretary of State considers it expedient for any reference in the Regulations to certain technical Annexes to the Electricity Regulation, Gas Regulation or ITC Regulation to be construed as a reference to the appropriate Annex as amended from time to time. The Annexes in question contain technical guidelines. The Agency Regulation does not have any Annexes attached to it.

3.4 Finally, it should be noted that the new third party access requirements in relation to licence-exempt electricity distribution and gas pipe-line systems mentioned above relate to requirements contained not only in the Third Package Directives but also their 2003 ‘Second Package’ predecessors (repealed by the Third Package). In Great Britain, those requirements are imposed on licensed distributors through electricity distribution and gas transporter licences. It was considered at the time of creating those licence conditions that the European requirements were not intended to apply to persons covered by ‘de minimis’ domestic exemptions from the requirement to hold a licence. However, in 2008, the European Court of Justice (ECJ), in its judgment in the case commonly

referred to as ‘Citiworks’<sup>2</sup>, ruled that the German national law, which failed to impose third party access requirements on a distribution system within an airport, did not properly transpose the Directive requirements. In particular, the ECJ found that there is no general ‘de minimis’ exception to the requirements. In light of this judgment, and following extensive public consultation by the Government, Part 6 of the Regulations introduces third party access regimes in respect of licence-exempt electricity distribution and gas pipe-line systems, as part of the implementation of the Third Package.

#### **4. Legislative Context**

4.1 The Regulations are made under Section 2(2) of the European Communities Act 1972 to implement EU law on common rules for the internal market in gas and electricity (to the extent that the existing regulatory regime does not provide sufficient coverage), and address matters arising out of or relating to those rules. They are made under the affirmative resolution procedure, for the reasons outlined above.

4.2 The Regulations make amendments to the Gas Act 1986, Electricity Act 1989, Petroleum Act 1998, Utilities Act 2000, Energy Act 2004 and Consumers, Estate Agents and Redress Act 2007. They also amend the Amendment of Electricity and Gas (Determination of Turnover for Penalties) Order 2002 and modify standard conditions of supply, transmission, transporter, distribution and interconnector licences.

4.3 Part 1 of the Regulations covers the citation, commencement and extent of the Regulations and also includes the interpretation provision. With the exception of the regulation contained in Part 2 (described below), the regulations do not extend to Northern Ireland.

4.4 Part 2 relates to Article 3 and Annex I “Measures on Consumer Protection” of the Electricity and Gas Directives. The Consumers, Estate Agents and Redress Act 2007 is amended to require the National Consumer Council to prepare and publish guidance for energy consumers, and a summary of that guidance, addressing the matters in the ‘energy consumer checklist’ published by the European Commission, in accordance with the Gas and Electricity Directives (“the Directives”).

4.5 It is worth noting that, as part of the implementation of Article 3, a number of changes will also be made to supply licence conditions, which are covered in Part 10 of the Regulations. These include a requirement on licensees to improve the current process under which customers switch supplier; send to customers a final bill six weeks after they have switched to a new supplier; and retain for at least five years, and make available to the Authority data relating to, wholesale supply contracts and derivatives. Equivalent duties, where relevant, are imposed on licence-exempt suppliers, by virtue of Part 6 of the Regulations.

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<sup>2</sup> Citiworks AG v Sächsisches Staatsministerium für Wirtschaft und Arbeit als Landesregulierungsbehörde (C-439/06).

4.6 Part 3 of the Regulations relates to Articles 9 to 11, 14 and Chapter 5 of the Electricity Directive and Articles 9 to 11, 15 and Chapter 4 of the Gas Directive. These require Transmission System Operators (“TSOs”), including interconnectors, to obtain certification from the Authority (using the procedure specified in the Electricity Regulation and Gas Regulation) as to the independence of their transmission activities from any supply or production activities carried out by them or any of their affiliates. Companies must “ownership unbundle” (ie separate out the ownership of) these activities unless they satisfy one of the other grounds set out in Part 3 (referred to below as derogations) The Regulations make available, subject to specified conditions, the Independent System Operator (“ISO”) derogation from ownership unbundling requirements in both the electricity and gas sectors, and the Independent Transmission Operator (“ITO”) derogation in the gas sector. (Article 13 of the Electricity Directive and Article 14 of the Gas Directive sets out the circumstances under which Member States may provide for the ISO derogation. Chapter 4 of the Gas Directive does the same for the ITO derogation. The Electricity Directive permits the ITO derogation being given in the electricity sector also but we have decided not to make this available in Great Britain.) The certification process in Part 3 relates to the procedure required by Articles 10 and 11 of the Directives and Article 3 of the Electricity Regulation and Gas Regulation. Finally, the Regulations enable certification to be given where a TSO benefits from a “new infrastructure exemption” in accordance with Article 36 of the Gas Directive or under Article 17 of the Electricity Regulation, or where it is deemed to be in an equivalent position.

4.7 Part 4 makes changes to the statutory requirements that apply to operators of LNG import and export facilities and gas storage facilities, including changes to the existing exemption regime, requirements in respect of the operation of facilities, third party access to such facilities and (in the case of gas storage only) legal separation (“legal unbundling”) of such facilities from other gas related activities unless exempt. These requirements relate to Articles 13, 32 and 33 of the Gas Directive.

4.8 Part 5 makes provision to ensure the implementation of Article 26 of the Directives, which requires legal unbundling of distribution activities from generation and production activities.

4.9 Part 6 provides for new duties to be imposed on electricity distributors, gas transporters, and electricity and gas suppliers that are covered by statutory exemptions from the requirement to hold a licence. As mentioned in Section 3 of this Memorandum, the third party access provisions (which relate to Article 32 of the Directives) are considered to be necessary, in light of the ECJ ‘Citiworks’ case.

4.10 Part 7 makes necessary provision for the implementation of Chapter 8 of the Directives. Article 35 in the Electricity Directive (Article 39 in the Gas Directive) requires Member States to designate a regulatory authority. By virtue of Part 7, the Authority is designated as regulatory authority for Great Britain. In addition, if a representative of the Authority is appointed as the United Kingdom representative on the Board of Regulators of the Agency for the Co-operation of European Regulators (“the

4.11 Article 36 (Article 40 in the Gas Directive) requires Member States to ensure that regulatory authorities take into account particular objectives when carrying out EU regulatory functions. Article 37 (Article 41 in the Gas Directive) requires that regulatory authorities have certain duties, including monitoring and reporting duties, and sufficient information gathering and enforcement powers to carry out their functions under the Directives. Article 38 (Article 42 in the Gas Directive) requires that duties be imposed on regulatory authorities to consult and co-operate with other regulatory authorities (including related confidentiality duties). Part 7 also provides for the powers and duties contained in these Articles to be conferred or, as the case may be, imposed, on the Authority, where these are not already reflected in the domestic framework.

4.12 Part 8 contains provisions to extend the Authority's existing enforcement powers in relation to persons subject to new requirements by virtue of the other Parts of the Regulations. This Part also makes provision for enforcement of the obligations arising out of the Electricity Regulation, the Gas Regulation and the ITC Regulation by the Authority.

4.13 Part 9, alongside the implementation of the requirements on the regulatory authority covered by Part 7, makes provision for the Authority to modify the conditions of licences. This is a key mechanism, enabling it to carry out its regulatory tasks in accordance with the requirements of the Directives. Such tasks include, for example, matters referred to in Article 37 of the Directive (and Article 41 of the Gas Directive). The new process provides the Authority with the powers to modify the conditions of licences in an efficient and expeditious manner (required by Article 37(4) and by Article 41(4) of the Gas Directive), and ensures the Authority's independence and autonomy when carrying out its regulatory tasks (required by Article 35(4) and (5) and by Article 39(4) and (5) of the Gas Directive). Part 9 also introduces a new ex post appeals process, providing an appropriate appeals mechanism from such decisions for affected parties (required by Article 37(17) and Article 41(17) of the Gas Directive). An appeal against a decision of the Authority to amend the conditions of a licence may be made to the Competition Commission by the directly affected licensee, a licensee whose interests are materially affected by the decision, by a body representing such licensees or by Consumer Focus, where consumers are materially affected by that decision. The appeal is to be brought in accordance with the process specified in either Schedule 5 (modification of gas licence conditions) or Schedule 6 (modification of electricity licence conditions) of the Regulations. In order to ensure a consistent and coherent regulatory framework the changes apply to all decisions of the Authority to modify the conditions of licences, including those arising from the Directives.

4.14 Part 9, as part of the implementation of the requirements on the regulatory authority covered by Part 7, makes provision for an amended power for the Authority to modify the conditions of licences. It also introduces a new ex post appeals process, so that the Authority is able to make autonomous decisions, and is also able to implement binding decisions by the European Commission and the Agency. An appeal against a decision of the Authority to amend the conditions of a licence may be made to the Competition Commission by the directly affected licensee, a licensee whose interests are materially affected by the decision, by a body representing such licensees or by Consumer Focus, where consumers are materially affected by that decision. The appeal is to be brought in accordance with the process specified in either Schedule 5 (modification of gas licence conditions) or Schedule 6 (modification of electricity licence conditions) of the Regulations.

4.15 Part 10 ensures that terms relating to provisions inserted by the Regulations are defined in legislation. It also modifies the standard conditions of gas and electricity licence conditions in order to impose new requirements on licensed suppliers, interconnectors, gas transporters, electricity distributors and holders of electricity transmission licences. Those modifications implement, and deal with matters arising out of or relating to, various requirements of the Directives including legal and ownership unbundling, third party access and the duties in respect of consumers mentioned at paragraph 4.4 above. Part 10 also includes a review clause for the Regulations, which places an obligation on the Secretary of State to review the implementation of the Third Package and ITC Regulation five years after the Regulations come into force.

4.16 A Transposition Note for the Regulations is attached at Annex 1.

## **5. Territorial Extent and Application**

5.1 With the exception of the provision contained in Part 2, the Regulations do not extend to Northern Ireland. Northern Ireland will be making its own implementing regulations in respect of the Third Package.

## **6. European Convention on Human Rights**

The Secretary of State for the Department of Energy and Climate Change has made the following statement regarding Human Rights:

In my view the provisions of the Electricity and Gas (Internal Markets) Regulations 2011 are compatible with the Convention rights.

## **7. Policy background**

7.1 Since the mid-90s, the European Parliament and European Council have put in place legislation that aims to support the creation of a single energy market within the EU, by introducing competition and removing barriers to cross-border trade. This gradual transition has been progressed to date through two previous packages of legislation.



7.2 The Third Package sets out a number of new requirements on Member States and regulatory authorities. It includes new requirements on Member States which aim to reinforce retail market competition, increase consumer choice and consumer protection. It also gives national regulators more powers and duties and encourages cross-border co-operation, to ensure that regulation across Member States is applied consistently.

7.3 The Third Package also includes a number of measures which aim to improve security of supply by, for example, improving network access and encouraging further investment through the unbundling of transmission system ownership. New measures also aim to improve the operation of the gas storage market and LNG facilities by, for example, including requirements for the legal and operational unbundling of gas storage system operators and third party access to storage facilities that are technically or economically necessary.

## **8. Consultation outcome**

8.1 DECC issued an eight week Call for Evidence on 1 April 2010, in which it highlighted the major new requirements in the Third Package and sought initial views on changes that might be needed to the GB framework. Following the responses to the Call for Evidence, DECC issued a twelve week consultation on 1 July where it responded to the issues raised and sought further views on initial proposals for complying with aspects of the Third Package.

8.2 Such areas included new measures to protect consumers, requirements on TSOs to ownership unbundle from electricity generation, gas production and energy supply, and new requirements on gas storage and LNG operators. DECC also highlighted that, in light of the new requirements in the Third Package relating to the independence and powers of the regulator, and the requirement for appeals rights to be made available to those who are affected by the decisions of the regulator, the current process which enables industry to effectively block the Authority's decisions ex-ante and requires a reference to another body where a blocking threshold of 20% of relevant licensees was formed, is not, in its view sufficient.

8.3 Between October and November 2010, DECC published two further supplementary consultation documents, one on proposals relating to the procedure for modifying licence conditions mentioned above, and one on the proposals relating to the provision of third party access to licence-exempt electricity and gas networks.

8.4 The Government confirmed its position in a Government Response published on 14 January 2011. The key decisions were:

- Final proposals to introduce a contractual right to allow customers to switch energy suppliers within 3 weeks. Some stakeholders maintained that current arrangements are already in line with the Directives – the Government does not agree with that position, given, for example, that

- Confirmation of the permitted ownership models for transmission undertakings with the addition of the ITO derogation for gas interconnectors (and in response to stakeholder requests).
- Proposals to introduce new requirements for gas infrastructure undertakings through legislation. This was the preferred option for stakeholders.
- Proposals to reform the licence modification process to meet the requirement for the Authority to be able to take autonomous decisions in an efficient and expeditious manner and to provide all affected parties with an appropriate right of appeal. Some stakeholders argued that such a change was not required. It is the Government's view that a single licence modification process (as opposed to separate processes for purely domestic matters and matters covered by the Directives) will provide a clearer and more coherent regulatory framework.

## **9. Guidance**

9.1 The Authority will issue guidance in relation to the certification process for unbundling to ensure that TSOs, (including offshore transmission operators, and interconnectors), all of which will be affected by the unbundling requirements, are aware of the timescales within which the Authority will need to be provided with relevant documentation in order to start the certification process. The Authority will also issue guidance in relation to the improvements energy suppliers need to make to their systems and processes to enable more people to switch within three weeks.

9.2 DECC will issue guidance on the arrangements exempt distribution network owners will have to put in place in order to give third party access to their networks. Finally, DECC also proposes to issue guidance related to Part 8 of the Regulations, to give further detail about obligations arising out of the Third Package.

## **10. Impact**

10.1 There will be a number of new requirements on businesses, for example, on energy suppliers to make changes to IT systems so that more people switch within three weeks and to reflect on bills consumption data provided by customers to their supplier; there will also be requirements on gas storage and LNG operators to provide third party access to their facilities; on exempt distribution network owners and suppliers to provide access to their networks; transmission undertakings will need to demonstrate compliance with the unbundling requirements and may incur some administrative and legal costs.

10.2 There will be some impact on the public sector as the Authority will have new powers and duties.



10.3 An Impact Assessment for the key provisions of the Regulations, and two supplementary Impact Assessments, one relating to the proposals in respect of third party access to distribution networks and one relating to the proposed changes to licence modification procedures, are attached to this Memorandum at Annex 2.

#### **11. Regulating small business**

Some of the requirements apply to licence-exempt distribution network owners. As mentioned above, the Government has consulted separately on what action these organisations need to take to comply with the requirements and has suggested a minimum implementation approach, to ensure that these requirements are imposed in a proportionate way on these businesses.

#### **12. Monitoring & review**

DECC will be responsible for monitoring the implementation of the Third Package and ITC Regulation. As mentioned above, the Regulations include a review clause, which places an obligation on the Secretary of State to review the implementation of the Third Package and ITC Regulation five years after the Regulations come into force.

#### **13. Contact**

Phil Hicken (0300 068 6059, [Phil.Hicken@decc.gsi.gov.uk](mailto:Phil.Hicken@decc.gsi.gov.uk)) and Christina Connolly (0300 068 5016, [Christina.Connolly@decc.gsi.gov.uk](mailto:Christina.Connolly@decc.gsi.gov.uk)) at the Department of Energy and Climate Change can answer any queries in relation to this instrument.

## **EU THIRD PACKAGE – TRANSPOSITION NOTE**

### **DIRECTIVE 2 – ELECTRICITY DIRECTIVE (2009/72/EC)**

1. This Transposition Note explains how Directive 2009/72/EC (“the Electricity Directive”) is implemented in Great Britain (GB). The accompanying Electricity Regulation (2009/714/EC) is directly applicable and therefore is not covered in this note.
2. The table seeks to explain how the main elements of the Directive are transposed by the existing regulatory framework, and by the Electricity and Gas (Internal Markets) Regulations 2011 (“the Regulations”).
3. These Regulations do more than is necessary to implement the Directive in relation to changes to preserve the independence of the designated Regulatory Authority for Great Britain (GB), preserve its autonomy in making decisions as regards its regulatory tasks and enable it to implement binding decisions and ensure a suitable appeals mechanism (Arts 35(4) and (5), 37(4)(a) and 37(17)). In order to ensure a consistent and coherent regulatory framework these changes will apply to all of the Gas and Electricity Markets Authority (“the Authority”) decisions to modify the conditions of licences including those arising from the Electricity Directive.

## DIRECTIVE 2 – ELECTRICITY DIRECTIVE (2009/72/EC)

Article	Objective	Implementation
1	Sets out the scope of the Electricity Directive.	No implementation action required in respect of this Article.
2	Sets out the definitions.	No implementation action required in respect of this Article.
3 (1)	Member State (MS) obligation to ensure undertakings operate in accordance with principles of the Electricity Directive.	GB’s regulatory framework for electricity, which includes the Electricity Act 1989 (“the Electricity Act”), Utilities Act 2000 (“the Utilities Act”) and Energy Acts 2004, 2008 and 2010, is established such that undertakings operate in accordance with the principles of the Electricity Directive, achieved through our implementation of it. The framework also seeks to achieve a competitive, secure and environmentally sustainable market, without discrimination between undertakings.
3 (2) & 3(15)	Allows Member States to impose Public Service Obligations (PSOs).	All current PSOs will be notified following transposition.  In accordance with Article 3 (15) of the Electricity Directive, we will notify future changes to the European Commission (“the Commission”) every two years.
3 (3)	Places an additional requirement on Member States compared to the previous Directives in relation to the right to be supplied with electricity at prices which are not discriminatory.	Condition 27.2A of the Supply Licence imposes an obligation on licensed suppliers to ensure that, in relation to domestic customers, any difference in terms and conditions including differences in the prices charged, as between payment methods, reflect the costs to the supplier of the different payment methods.
3 (4)	Requires Member States to ensure customers have the right to be supplied by companies registered in other countries and that administrative procedures do not constitute a barrier to this.	Except in a limited number of circumstances (where an exemption under the Electricity Act applies), suppliers must hold a licence granted by the Authority, which is the means by which the trading and balancing rules are imposed in GB. The process of applying for a licence is set out in the application regulations <sup>3</sup> which apply to all potential suppliers, regardless of where they are

<sup>3</sup> See Regulations 2009, No 3190 (Gas) and No 3191 (Electricity), Schedule 2 Part 1.

		<p>registered. While supply undertakings which are not registered in GB must provide an address in GB for the service of documents, in practice this does not constitute a barrier as a post office box, or the offices of another body (such as the offices of a lawyer or accountant) can be named for this purpose.</p>
3 (5) (a)	<p>Requires Member States to ensure customers who wish to switch suppliers are switched within three weeks, whilst respecting contractual conditions.</p>	<p>New Condition 14A of the Supply Licence imposes an obligation on suppliers to switch customers within three weeks.</p> <p>Schedule 2ZB to the Electricity Act (inserted by regulation 21) ensures that licence-exempt suppliers are also required to switch customers within three weeks.</p>
3 (5) (b)	<p>Requires Member States to ensure customers are entitled to receive relevant consumption data.</p>	<p>Condition 31A of the Supply Licence requires suppliers to provide customers with information relating to electricity consumption in every bill (or within 30 days of the notice of increase in charges if applicable). They must also send an annual statement to all customers in the prescribed format. Condition 12 of the Supply Licence requires suppliers to take meter readings at least once every two years. In order to ensure the information provided to customers is even more accurate, new Condition 21B of the Supply Licence will also enable customers to read their own meters as frequently as they wish, and have suppliers reflect that reading in the next bill.</p> <p>Schedule 2ZB to the Electricity Act (inserted by regulation 21) ensures that licence-exempt suppliers are also required to provide consumption data to customers every year.</p>
3 (6)	<p>Requires Member States to ensure that any compensation, including financial compensation, and any exclusive rights granted for the fulfilment of the obligations in paragraphs 2 and 3 are provided in a transparent and non-discriminatory way.</p>	<p>The Electricity (Connection Standards of Performance) Regulations 2010 specifies the way in which any compensation payable by electricity distributors for failure to meet specified standards of performance in respect of connection services is to be calculated.</p> <p>If a consumer, having pursued a complaint with a supplier or distributor, has not been offered suitable resolution or has not been contacted within 8 weeks of</p>

		<p>making their complaint, they can refer their complaint to the Energy Ombudsman. The Ombudsman can require the company to make changes to its practices and procedures, and also has the power to require compensation to be paid to consumers (up to £5000 including VAT). However, if a consumer does not accept the Ombudsman's final decision, they can pursue the matter through the court system. Access to the Ombudsman is free.</p>
3 (7)	<p>Places an additional requirement on Member States compared to the previous Directives to require Member States to introduce a number of measures to protect vulnerable customers, including a requirement to define the concept of vulnerable customers.</p>	<p>Vulnerable customers are defined in the Fuel Poverty Strategy which is required to be published under the Warm Homes and Energy Conservation Act 2000 (for England and Wales) and the Housing (Scotland) Act 2001.</p> <p>Measures in place to increase the income of vulnerable households in GB include the Winter Fuel Payment (set up by the Social Fund Winter Fuel Payments Regulations 1998) and the Cold Weather Payments (introduced by the Social Fund Cold Weather Payments (General) Regulations 1988).</p> <p>In addition, Section 3A (3) of the Electricity Act 1989 provides that the Authority must carry out its functions in a manner best calculated to further its principal objective, having regard to, amongst other things, the interests of people who are chronically sick, pensioners, those on low incomes and people living in rural areas. The electricity suppliers also have a number of obligations in their licences to protect consumers who are of pensionable age, disabled and chronically sick, irrespective of whether they are also fuel poor.</p>
3 (8) & 3(11)	<p>Requires Member States to take appropriate measures to protect final customers, such as energy efficiency and national energy plans.</p>	<p>GB has a range of measures in place to increase the energy efficiency and income of households with particular focus on those who are vulnerable. Key measures to increase the energy efficiency of households include the Warm Front programme (set up by the Home Energy Efficiency Scheme (England) Regulations 2005) and the equivalent programmes in Wales and Scotland; the Decent Homes Standard (a Public Service Agreement following the publication in April 2000 of</p>

		<p><sup>4</sup>; CESP requires suppliers and electricity generators to deliver energy efficiency saving measures to domestic consumers in low income areas of GB. Finally, the Energy Bill introduced to Parliament on 8 December 2010, includes a provision for a new “Green Deal”. This will establish a framework to enable private firms to offer consumers energy efficiency improvements to their homes, community spaces and businesses at no upfront cost, and recoup payments through a charge in instalments on the energy bill.</p> <p>The UK Government has announced proposals to mandate smart meters. Under powers in the Energy Act 2008, the Secretary of State has powers to make licence modifications requiring the industry to put these in place. Other mechanisms are also in place under powers in the Climate Change Act 2008. The Carbon Reduction Commitment Energy Efficiency Scheme is a cap and trade mechanism for large organisations designed to reduce energy use through imposing a price on carbon emissions.</p>
3 (9)	Requires Member States to place additional requirements on suppliers in relation to information about fuel mix and rights regarding dispute settlement.	<p>Condition 21 of the Supply Licence sets out suppliers’ obligations regarding fuel mix disclosure and includes rules as to how this information should be identified and presented.</p> <p>In respect of consumer rights regarding dispute settlement mechanisms, new Condition 20.5 of the Supply Licence requires the energy supplier to include this information in or with bills and in promotional materials. In addition, the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 require electricity suppliers to provide customers with</p>

<sup>4</sup> Prior to CERT, the Government had in place the Energy Efficiency Commitment (EEC).



		<p>information about their complaints handling procedure. Condition 31 of the Supply Licence requires suppliers to provide contact details for Consumer Direct (a customer information and advice service described further in relation to article 3(12) (below) in, or with each bill (and at least annually).</p> <p>Schedule 2ZB to the Electricity Act (inserted by regulation 21) ensures that licence-exempt suppliers are also required to provide customers with information about fuel mix and their rights regarding dispute settlement.</p>
3 (10)	Requires Member States to achieve the objectives of social and economic cohesion and environmental protection.	The Government's Annual Energy Statement published in June 2010, sets out our climate change and energy policy, which takes account of social, economic and environmental objectives. In relation to compliance with security of supply aspects of the article, Condition C14 of the Transmission licence requires that the Grid Code is designed to promote security and efficiency of the electricity generation, transmission and distribution systems in the national electricity transmission system operator area. Condition 20 of the Distribution Licence requires the licensee to comply with the Grid Code. Relevant price control incentives also encourage efficient network investment decisions.
3 (11)	Requires Member States to optimise the use of energy.	See implementation of article 3 (8).
3 (12) and 3 (13)	Requires Member States to provide a single point of contact for energy customers and put in place an independent mechanism for complaints handling and dispute settlement.	<p>Consumer Direct is the UK's single point of contact (telephone, letter and online service) offering information and advice on consumer issues including for energy markets. The service is free for all UK customers (including small and medium sized enterprises) and provides clear, practical advice to help sort out problems and disagreements with suppliers of goods and services including energy suppliers. Consumer Direct's advisers are trained in all aspects of consumer rights.</p> <p>The Energy Ombudsman resolves complaints and disputes in relation to electricity suppliers and distributors. This arises from the Consumers, Estate Agents and Redress Act 2007, which requires such energy companies to be a</p>

		<p>In the case of vulnerable customers, additional assistance is provided by Consumer Focus, a consumer advocacy body. It has specific statutory responsibilities and powers relating to vulnerable consumers in designated sectors including energy.</p> <p>In the case of licence-exempt suppliers, Schedule 2ZB to the Electricity Act (inserted by regulation 21) requires the Authority to resolve complaints and disputes.</p>
3 (14)	Allows Member States to not apply articles 7,8, 32 and or 34 to the extent that their application would obstruct the performance of obligations imposed on undertakings in the general economic interest.	The Government considers that the application of these articles does not currently obstruct the performance of such obligations.
3 (15)	Requires Member States to inform the Commission of measures to fulfil universal service and PSOs.	See implementation of article 3 (2).
3 (16)	Requires Member States to ensure consumers are provided with the Energy Consumer Checklist and that it is made publicly available.	<p>New section 19A of the Consumers, Estate Agents and Redress Act 2007 (inserted by regulation 3), requires the National Consumer Council (known as Consumer Focus) to compile the energy consumer guidance, and concise version of that guidance, addressing the matters in the European Commission's Energy Consumer Checklist. Consumer Focus must keep this guidance under review and publish both versions on its website.</p> <p>New Condition 31.5-31.7 of the Supply Licence requires energy suppliers to publish both versions of the guidance on their websites, inform customers, with each bill, as to how these can be accessed and to provide customers with a copy of the concise version of the guidance each year.</p>

		Schedule 2ZB to the Electricity Act (inserted by regulation 21) requires licence-exempt suppliers to inform customers, with each bill, how to access both versions of the guidance and provide a copy of the concise version on request.
<b>Annex 1 (measures on consumer protection)</b>		
Paragraph 1 (a)	Sets out consumer rights in relation to notification of contractual terms, with additional requirements in relation to notification of whether withdrawal from the contract without charge is permitted, compensation for inaccurate and delayed billing, and information on complaints handling.	New Condition 22.5 of the Supply Licence, and Schedule 2ZB to the Electricity Act (inserted by regulation 21), require suppliers to address the matters listed in paragraph 1(1)(a), when specifying terms in their contracts with customers.
Paragraph 1 (b)	Sets out consumer rights in relation to changes to contractual conditions with an additional requirement that notification of changes be done in a transparent and comprehensible manner.	Condition 23.3-23.6 of the Supply Licence and Schedule 2ZB to the Electricity Act (inserted by regulation 21) set out the rules regarding the notification of changes in domestic supply contract terms and termination rights. Condition 7.7 of the Supply Licence also imposes an ongoing obligation on suppliers to take reasonable steps to provide any customer who has not entered into a contract with them, but who is nevertheless taking a supply, with information about the conditions under which they are being supplied, which includes the applicable charges.
Paragraph 1 (c)	Sets out consumer rights in relation to information about tariffs and terms and conditions.	Condition 25 of the Supply Licence ensures that customers has the relevant information before entering into a contract and new Condition 22.5 of the Supply Licence, and Schedule 2AB to the Gas Act (inserted by regulation 20), put an obligation on energy suppliers to identify in the contract how up to date information may be obtained.
Paragraph 1 (d)	Sets out consumer rights in relation to terms and conditions, with additional requirements that the payment methods offered do not unduly discriminate between customers, prepayment methods must be fair and adequately reflect likely consumption and terms and conditions must not include non-contractual barriers to the	All customers are entitled to obtain their supply from a supplier who is obliged to offer a wide range of payment methods (Condition 27.1 of the Supply Licence). Condition 27.2A of the Supply Licence, and Schedule 2ZB to the Electricity Act (inserted by regulation 21), ensure that suppliers are unable to discriminate between customers as any difference in terms and conditions (which includes differences in the prices charged) as between payment methods must reflect

	<p>exercise of customers' rights.</p> <p>Customers are also required to be protected against unfair or misleading selling methods.</p>	<p>the costs to the supplier of the different payment methods. In addition, Condition 28 of the Supply Licence imposes particular requirements to ensure prepayment meters reflect any changes in charges. Conditions 22 and 23 also impose requirements regarding the transparency of customer contracts (including a requirement to provide copies of contracts to customers on request) and notification of terms.</p> <p>Domestic customers are protected against unfair or misleading selling methods under Condition 25 of the Supply Licence. Where the contract has been entered into as a result of a visit to the customer's premises or as a result of a conversation in a public place the supplier is required within 14 days to take all reasonable steps to contact the customer and to seek his confirmation that he understands he has entered into a domestic supply contract, is content to have entered into that contract, and is content with the way in which the supplier's marketing activities were conducted.</p>
Paragraph 1 (e)	Requires that consumers are not charged for changing supplier.	New Condition 14A.5 of the Supply Licence, and Schedule 2ZB to the Electricity Act (inserted by regulation 21), prevent suppliers from charging customers for any costs associated with changing supplier.
Paragraph 1 (f)	Sets out consumer rights in relation to standards of service and complaint handling.	In relation to standards of service, the Electricity (Standards of Performance) Regulations 2010 impose particular obligations on suppliers and distributors and provide for compensation to be paid in certain situations. In relation to complaint handling, the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, made under the Consumers, Estate Agents and Redress Act 2007, impose requirements regarding the handling of customer complaints and require that these be resolved in an "efficient and timely manner". In addition, as described in relation to article 3(9), disputes can be referred to the Energy Ombudsman or, in the case of licence-exempt suppliers, the Authority.
Paragraph 1 (g)	Requires that consumers are	Condition 22 of the Supply Licence sets

	informed of their rights in relation to universal service.	
Paragraph 1 (h)	Sets out a new requirement to enable consumers to give registered supply undertakings access to relevant data.	New Condition 22.9 of the Supply Licence and Schedule 2ZB to the Electricity Act (inserted by regulation 21), give customers a right to contact their supplier to request them to pass on their consumption and metering data to another supplier, free of charge.
Paragraph 1 (i)	Sets out consumer rights in relation to consumption data.	Condition 12.14-12.16 of the Supply Licence requires suppliers to read customer meters every 2 years and new Conditions 21.B1 and 21.B2 of the Supply Licence enable customers to provide meter readings to their supplier, who must take all reasonable steps to reflect these in the next bill or the customer's annual statement. Condition 31A of the Supply Licence also requires suppliers to provide information about consumption patterns on every bill or statement of account and send this to customers annually. Schedule 2ZB to the Electricity Act (inserted by regulation 21), also requires licence-exempt suppliers to send this information annually.
Paragraph 1 (j)	Sets out consumer rights to receive a final bill six weeks after switching to a new supplier.	New Condition 27.17-27.18 of the Supply Licence, and Schedule 2ZB to the Electricity Act (inserted by regulation 21), require electricity suppliers to take all reasonable steps to send the final bill within six weeks after the customer has switched to a new supplier.
Paragraph 2	Requires Member States to ensure the implementation of smart meters.	The Government is already committed to the introduction of smart electricity metering to all households in GB. The necessary statutory base for delivery of smart metering is in place. The Government and the Authority have published a Prospectus that sets out how smart meters would be delivered. That Prospectus is accompanied by a revised Impact Assessment, which we will continue to update as the smart meter programme proceeds. To ensure that the energy and environmental benefits identified in the Impact Assessment are

4	Requires Member States to monitor security of supply.	Section 172 of the Energy Act 2004 places an obligation on Government to publish an annual report which covers the matters specified in this article. The Government will ensure that a copy of this report is forwarded to the Commission every two years.
5	Requires Member States to establish and make public technical rules for transmission, distribution, generation.	Technical rules are set out in the Electricity Safety, Quality and Continuity Regulations 2002, the Grid and Distribution Codes, Condition C17 of the Transmission Licence (SQSS) and C24 of the Distribution Licence. Condition 3 of the Interconnector Licence requires electricity interconnectors to become parties to the Grid Code.  We will notify the Commission of relevant technical codes in due course.
6 (1) and (2)	Sets out how Member States will work together, both between governments and between regulatory authorities, for the purpose of integrating national markets	Regulation 35 inserts new section 3F into the Electricity Act to impose a new duty on the Authority to consult and cooperate with other authorities. Subsection (2) relates specifically to regional co-operation.
6 (3)	Requires Member States to ensure that TSOs have one or more integrated systems at a regional level that cover two or more Member States for capacity allocation and checking network security.	Conditions C11 of the Transmission Licence and Condition 5 of the Interconnector Licence impose requirements for involvement in the establishment of integrated systems for capacity allocation and checking network security.
6 (4)	Requires that where vertically integrated TSOs participate in a joint undertaking, they establish and implement a compliance programme that must be approved by ACER.	New condition 23 of the Interconnector Licence and new condition B20 of the Transmission Licence also place a new requirement on interconnectors to provide for compliance programmes for vertically integrated undertakings where they participate in a joint undertaking for the promotion of regional cooperation.
7 (1)	Requires Member States to adopt an authorisation	The required authorisation procedure is established through the National Policy



	<p>procedure for construction of new generating capacity which is conducted in accordance with objective, transparent and non-discriminatory criteria.</p>	<p>Statements (under the Planning Act 2008) and Section 36 of the Electricity Act. There are alternative authorisation procedures available to limited qualifying generation developments through the Town and Country Planning Act 1990, Food and Environmental Protection Act 1985 and a Marine Licence granted under the provisions of the Marine and Coastal Access Act 2009.</p> <p>The regime in Scotland operates in parallel. The Planning system is devolved to the Scottish Government and new on-shore (not water driven) energy generating capacity under 50MW is determined through the procedure established by the Town and Country Planning (Scotland) Act 1997 and the Planning etc. (Scotland) Act 2006 (in essence in accordance with development plan policies prepared by planning authorities, which reflect Scottish Planning Policy and the National Planning Framework for Scotland, which are issued by the Scottish Government). New on-shore generating capacity over 50MW is determined in accordance with the Electricity Act 1989, with cognisance of the National Planning Framework for Scotland, Scottish Planning Policy, the Scottish Government's guidance on thermal power stations and the Draft Electricity Generation Policy Statement. Although the decision making responsibility is devolved to Scottish Ministers, the procedures remain reserved to the UK Government.</p>
7 (2)	Requires Member States to set out various criteria for the construction of new generating capacity and to consider particular matters when	Section 36 of the Electricity Act has been amended by the Planning Act 2008 and the Marine and Coastal Access Act 2009 to set out the various criteria. The relevant matters were considered when drawing

	determining the appropriate criteria.	up the National Policy Statements and all are referred to in the text of the over-arching National Policy Statement which decision makers in England/Wales and Scotland must have regard to. The National Policy Statements set out the necessary criteria for decisions made by the Infrastructure Planning Commission.
7 (3)	Requires Member States to set out procedures and guidelines for small decentralised systems and/or distributed generation.	<p>Public authorisation procedures and guidelines for small decentralised systems and/or distributed generations are set out in the relevant Planning Policy Statements published by the Department of Communities and Local Government.</p> <p>The National Planning Framework for Scotland and the Scottish Planning Policy set out the spatial development and planning policy approach (respectively) to new generating capacity in Scotland, including factors to be considered in decision making. Scottish Planning Policy is considered by Scottish Ministers when making decisions under the Electricity Act and can inform planning authorities in determining applications for planning consent.</p>
7 (4)	Requires Member States to make public capacity authorisation procedures and criteria. Applicants must also be informed of reasons for any refusal and an appeals procedure must be made available.	Under the regime of the Infrastructure Planning Commission (IPC), capacity authorisation procedures and criteria must already be made public. IPC decisions can be appealed via Judicial Review.
8	Requires Member States to ensure the possibility of providing for new capacity to be awarded through a tendering procedure or an equivalent process (in certain circumstances and subject to various conditions), in the interest of security of supply. Permits Member States to do the same in the interests of environmental protection and the promotion of infant	<p>The trading of electricity in the wholesale markets between generators and suppliers forms the primary mechanism for providing both for new capacity and the participation of the demand side, through the operation of the pricing mechanism.</p> <p>All transmission companies are obliged by Condition C7G of the transmission licence to publish a Seven Year Statement, which includes scenarios for potential demand and generation growth. Such information</p>

	<p>technologies, in certain circumstances. Details of such procedures must be published in the OJ.</p>	<p>provides a set of transparent and non-discriminatory information against which generators and investors in generation can choose to enter the generation market.</p> <p>Special Licence Condition AA4 of the NETSO's (National Electricity Transmission System Operator) licence places a duty on the NETSO to operate the transmission system in an efficient, economic and co-ordinated manner. Furthermore, it requires the NETSO not to discriminate in the procurement or use of balancing services. As a result, the NETSO would be expected to consider contracting ahead for its operating margin requirements when it considered that it was economic and efficient to do so.</p> <p>In addition, the NETSO'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. The NETSO, therefore procures, among other things, Standing Reserve services in the form of either generation or demand reduction. This enables the NETSO to access additional power at short notice in order to meet unexpected changes in generation or demand.</p> <p>Although such services are used at short notice, the NETSO tenders for them on an annual basis up to 12 months before they are needed. The NETSO 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.</p>
9	<p>Requires the ownership unbundling of Transmission System Operators ("TSOs") from the activities of electricity generation, gas production and energy supply unless an independent system operator ("ISO") is designated, the TSO complies with the provisions of Chapter V or article 9(9) applies (arrangements are in place which guarantee more</p>	<p>Regulation 5 inserts sections 10A to 10O into the Electricity Act to address the new independence requirements for TSOs (i.e. in Great Britain, holders of transmission or interconnector licences).</p> <p>New section 10E provides that a TSO can be certified if it is ownership unbundled, if article 9(9) applies, if an ISO is designated, or if the TSO benefits from an exemption under the Electricity Regulation. New section 10F sets out the</p>

	effective independence than Chapter V).	tests which a TSO must meet in order to be certified as ownership unbundled. New sections 10M and 10N prohibit the exercise of certain shareholder rights and rights of appointment by persons with an interest in an ownership unbundled TSO.
10	Requires the designation and certification of TSOs.	New section 10A of the Electricity Act requires the certification of TSOs by the Authority. New sections 10B to 10G provide for the certification process and new section 10H provides for designation. New sections 10I, 10J and 10L address monitoring and review of certification.
11	Sets out additional requirements for the certification procedure for TSOs controlled by a person or persons from a third country or third countries.	New sections 10B and 10C, 10I and 10K of the Electricity Act address the particular requirements for certification of applicants connected to third countries. The remainder of the requirements do not require implementation action.
12	Sets out the tasks of TSOs	<p>These tasks are imposed on TSOs through their transmission or interconnector licences and through legislation as described below.</p> <p>Article 12 (a): Section 9 of the Electricity Act and the following Conditions of the transmission licence:</p> <p>C11 (Production of Information about the national security system)  C14 (Grid Code)  C8 (Requirement to offer terms)  B12 (System Operator – Transmission Owner Code)</p> <p>Article 12(b):  B5 (Prohibition of cross subsidies)  B6 (Restriction of activity and financial ring fencing)  B7 (Availability of resources)  B8 (Undertaking from ultimate controller)  B9 (Indebtedness)  B10 (Credit Rating)</p> <p>Article 12 (c):  C17 (Transmission System Security Standard and Quality of Service)  C11 (Production of Information about the national security system)  B17 (Network output measures, part B)</p> <p>Article 12 (d):</p>

		<p>C14 (Grid Code)  C16 (Procurement and Use of Balancing services)  C17 (Transmission System Security Standard and Quality of Service)  C3 (Balancing and Settlement Code)  C10 (Connection and Use of System Code)  B12 (System Operator Transmission Owner Code)</p> <p>Article 12 (e):  Condition C11 of transmission licences requires the licence holder (currently National Grid) to provide the Seven Year Statement (approved by the Authority) to any person who requests it. C11 has been amended to require the licensee to revise the Seven Year Statement at least every 3 months and to also make it available to non-GB TSOs.</p> <p>Article 12 (f):  C7 (Prohibition of discrimination between users)  B5 (Prohibition of cross-subsidies)  C7 has been amended to require that charges for access to the system are applied objectively and without discrimination.</p> <p>Article 12 (g):  Condition 11 (Production of Information about the national electricity system).</p> <p>Article 12(h):  C8 (Requirement to offer terms). National Grid's transmission network use of system (TNUoS) charges has been reviewed to reflect the new requirements and require NG to give reasons where access is denied to respect the requirement to facilitate market integration.</p> <p>Interconnectors</p> <p>Article 12(a)  Condition 3 – Grid Code</p> <p>Article 12(b)  Conditions 19.1(a) and (b) of the Interconnector Licence (Operation and development of the interconnector)</p> <p>Article 12(c)  SQSS</p>
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13	Allows Member States to designate an ISO as a derogation from the ownership unbundling requirement (ISO model).	Regulation 5 inserts section 10E into the Electricity Act, which permits certification of a TSO where an ISO is designated, and section 10H, which provides for designation of the ISO.
14	Requires legal and functional unbundling of transmission owners when applying the ISO model.	The Authority will introduce appropriate licence provisions in the event that an ISO is designated.
15	Sets out requirements in relation to the dispatching of generating system, the balancing of the system and the use of interconnectors. Requires Member States to ensure system operators comply with Directive 2009/28/EC on the promotion of the use of electricity from renewable sources.	<p>In GB each generator self-dispatches i.e. decides in the light of market conditions whether and how much to generate in each market period.</p> <p>The NETSO, National Grid Electricity Transmission Plc, does have a residual balancing role that is governed by the balancing mechanism after gate closure one hour before real time.</p> <p>GB provides guaranteed access for electricity produced from all types of generation, including renewables, meaning that every connected generator has a guarantee of being able to use the electricity network. The only reason that generators may not be able to generate is to ensure the reliability and safety of the grid system. On such occasions, GB's market arrangements determine which</p>



		<p>generator reduces its output. National Grid procures energy to achieve overall energy balance on the GB system including generation, demand and network losses. This is covered in the System Operator–Transmission Owner Code (STC) and Balancing and Settlement Code (BSC). With respect to reserve capacity, this is covered by the Procurement Guidelines which are published and are non-discriminatory as required under Condition C16 of the Transmission Licence.</p> <p>Section 9 of the Electricity Act requires Transmission Licensees to develop, operate and maintain an efficient and economical electricity transmission system. Condition C17 of the Transmission Licence sets out the quality and safety standards that need to be maintained. Condition C16 sets out requirements in relation to procurement and use of balancing services. C3 requires the licensee to have in place a Balancing and Settlement Code. C5 sets out that the charging methodology facilitates effective competition in generation and supply that the charges reflect the costs and that it exists and is made available. Condition 10 of the Interconnector Licence sets out requirements in relation to a charging methodology for third party access. Condition 10.3(a)(ii) of the Interconnector licence requires that the charging methodology shall set out the methodologies for the calculation of any charges imposed for access to (including use of) the interconnector and/or the provision of ancillary services and Condition 19 of the Interconnector Licence requires the licensee to manage electricity flows on the licensee’s interconnector, taking into account exchanges with any interconnected system and ensuring the availability of all ancillary services, including those provided by demand response, insofar as such availability is independent from an interconnected system.</p>
16	Sets out confidentiality requirements on Transmission System Operators and owners.	There are various obligations on the National Grid through the Balancing and Settlement Code, the System Operator–Transmission Owner <i>Code, Connection</i>

		<p>pecial Conditions C1-C3 and Special Conditions G, M and N of its licence.</p> <p>Standard Condition D5 and Special Conditions C and D of the Scottish companies' transmission licences place confidentiality requirements on onshore licence holders and prohibit discriminatory behaviour.</p> <p>Condition E19 of the Transmission Licence and Condition 21 of the Interconnector Licence, place confidentiality requirements on offshore electricity Transmission System Operators and interconnectors.</p>
17-23	Sets out requirements which must be met if a TSO is to be certified on the basis of its compliance with the Independent Transmission Operator model.	In accordance with the discretion accorded to Member States, this model is not being made available to electricity TSOs in GB.
24	Requires Member States to designate Distribution System Operators (DSOs).	DSOs are designated by virtue of licences granted by the Authority and licence exemptions granted by the Secretary of State.
25 (1) - 25(3) and 25(7)	Sets out the tasks of DSOs.	Condition 21 of the distribution licence (Distribution Code) requires the licensee to set up a Distribution Code which permits the development, maintenance and operation of an efficient, co-ordinated and economical system for the distribution of electricity and facilitates competition in the generation and supply of electricity. Condition 24 of the Distribution Licence (Distribution System Planning Standard and Quality of Performance Reporting) requires the licensee to plan and develop its distribution system to a standard not less than P.2/6 of the Energy Networks Association, changes to which are subject to approval by the Authority. Condition 25 of the distribution licence (Long-Term Development Statement) requires the licensee to prepare a long-term development statement. This is to assist any person who might wish to enter into arrangements with the licensee that relate to use of system or connections to identify and evaluate opportunities for doing so. Under section 16 of the Electricity Act and Condition 12 of the Distribution Licence,

		<p>distributors are required to offer terms for connections of distributed generation. Special Condition C1 sets out charge restriction adjustments arising from the distribution losses incentive scheme. Standard Licence Conditions 13 and 14 require DSOs to offer terms for connection and use of system and to maintain and publish charging methodologies. Section 9 of the Electricity Act requires DSOs to operate co-ordinated and an economical distribution system. Regulation 21 inserts Schedule 2 to the Electricity Act which sets out the duties of operators of licence exempt distribution networks.</p>
25(4) - 25(6)	Places requirements on DSOs when dispatching generating installations.	Not applicable in GB as DSOs do not procure energy to cover losses and do not contract for reserve capacity.
26	Sets out requirement that generation and production undertakings must be legally unbundled from distribution. It also requires a fully independent compliance officer to monitor the unbundling arrangements and for vertically integrated undertakings not to create, through their branding, confusion between the DSOs and the associated supply undertakings.	<p>Regulation 19 amends Section 6 of the Electricity Act to make it explicit that the same person may not be the holder of both a distribution and a generation licence.</p> <p>Section 6(2) prevents the same person from holding a distribution licence and a supply licence.</p> <p>Conditions 42 and 43 of the Distribution Licence impose functional separation requirements, including requirements relating to the Compliance Officer. Condition 43 also sets out the terms of the appointment of the Compliance Officer. New Conditions 31B-C impose equivalent requirements in relation to Independent Distribution Network Operators.</p> <p>Regulation 31 amends section 47 of the Electricity Act and inserts new section 47A which, taken together, give the Authority new monitoring duties (including in relation to Article 26(3)) and information gathering powers in respect of those monitoring duties.</p>
27	Sets out confidentiality obligations on DSOs.	Condition 42 of the Distribution Licence requires the licensee to preserve the confidentiality of commercially sensitive information and to not disclose information which may be advantageous in a discriminatory manner. New condition 31B imposes equivalent requirements in relation to Independent Distribution

		Network Operators.
28	Enables Member States to provide for regulatory authorities or other competent authorities to classify certain systems as Closed Distribution Systems (CDSs), and to exempt CDSs from specific Directive requirements.	Regulation 21 inserts Schedule 2ZA to the Electricity Act, which sets out the duties of licence exempt distribution networks. Regulation 12 of Schedule 2ZA makes provision for the Authority to classify a system as a CDS, and exempts CDSs from the requirement at Article 32(1) for tariff methodologies to be approved before their entry into force, subject to a request, by a customer or third party supplier, for such approval to be obtained. (It is the Government's view that any system capable of meeting the CDS classification criteria will fall within the class exemption regime rather than the licensed regime. Therefore, no equivalent provision has been included in the distribution licence.)
29	Clarifies that Article 26(1) does not prohibit the combined operation of transmission and distribution as long as the combined operator meets the specified unbundling requirements.	This provision has been taken into account in the course of transposing Article 26.
30	Requires that Member States and other designated authorities, including the regulator, have powers (to the extent necessary to carry out their functions) to access the accounts of electricity undertakings. Imposes a requirement to protect the confidentiality of commercially sensitive information.	Section 28 of the Electricity Act gives the Authority powers to require information from regulated electricity undertakings where it appears to the Authority that the licensee may be contravening or may have contravened any relevant condition <sup>5</sup> or requirement.  Electricity undertakings (apart from suppliers for whom obligations are imposed through ordinary company law) are required to produce accounts under their licences, so the Authority can request the accounts if the licensee is or may be contravening the licence requirement to produce accounts.  These obligation are set out in the following Licence Conditions: Generation Licence Condition 16 (Regulatory Accounts); Distribution Licence Condition 44 (Regulatory Accounts); Interconnector Licence Condition 6 (Separation of Accounts); Transmission Licence

<sup>5</sup> A relevant condition in relation to a licence holder means any condition of his licence.

		<p>Condition B1 (Regulatory Accounts).</p> <p>Condition B4(1)(b) of the Transmission Licence has been amended to ensure the regulator can ask for relevant information to carry out its functions.</p> <p>The accounting duties imposed on licence exempt electricity distributors under Schedule 2ZA (see below) are relevant requirements.</p> <p>Section 105 of the Utilities Act sets out general restrictions on the disclosure of information and makes clear that any confidential information must not be disclosed, except in specified circumstances.</p>
31	Requires electricity undertakings to draw up, submit, audit and publish their annual accounts, and keep separate accounts for transmission, distribution and other activities.	<p>In addition to requirements under the Companies Act 2006, electricity undertakings are required to prepare accounts under their licences, and keep separate their accounts for transmission and distribution from other activities: Condition 16 of the Generation Licence, Condition 44 of the Distribution Licence; Condition 6 of Interconnector Licence, Condition B1 of the Transmission Licence. Condition 6 of the Interconnector Licence has been amended to require the licensee to audit and report on the obligation to avoid discrimination and cross-subsidies between the transmission and distribution businesses and to specify this information in their internal accounting. The auditor is required to report on discrimination and cross-subsidisation.</p> <p>Regulation 21 inserts Schedule 2ZA to the Electricity Act, which sets out the duties of operators of licence exempt distribution networks. Regulation 6 of that Schedule imposes requirements relating to distribution accounts.</p>
32	Requires Member States to ensure the implementation of a third party access system for transmission and distribution. Transmission and Distribution operators need to give substantiated reasons if they refuse access on the basis that the network lacks the necessary capacity.	<p>Distribution: Condition Condition 12.7 of the Distribution Licence, requires licensees to offer terms for Use of System and Connection. Any disputes arising regarding connection are determined according to the process set out in section 23 of the Electricity Act. Access disputes arising out of complaints against distributors are determined according to the process set out in sections 44B-D.</p>

		<p>Regulation 21 inserts Schedule 2ZA to the Electricity Act, which sets out the duties of operators of licence exempt distribution networks, including third party access requirements.</p> <p>Regulation 29 amends sections 44B-D of the Electricity Act in order to (among other things) widen the Authority's dispute resolution functions so that they apply to disputes arising out of complaints about operators of licence-exempt distribution systems.</p> <p>Transmission: Conditions C4 and C6 of the Transmission Licence require the licensee to determine a connection charging methodology approved by the Authority. These have been amended to ensure that these tariffs are published and are applied objectively and without discrimination. Condition C7 requires the licensee to not discriminate between users. Condition C9 sets out the functions of the Authority which includes settling any relevant disputes. C8 has been amended to ensure that reasons are given for not offering to enter/not entering into an agreement.</p> <p>Interconnectors: Condition 11 of the Interconnector licence sets out the requirement to offer terms for access to the licensee's interconnector. Condition 10 of the Interconnector Licence provides that the licensee shall only enter into agreements for access to the licensee's interconnector on the basis of the charging methodology last approved by the Authority.</p>
33	Sets out arrangements for the supply of electricity to eligible customers.	The GB electricity market has been fully open to competition since mid 1999. Suppliers from other Member States may supply eligible customers as long as they hold a licence granted by the Authority which is the means by which the trading and balancing rules are imposed in GB.
34	Places obligations on Member States relating to Direct Lines.	Our distribution licence exemption system allows producers to supply via direct lines. Such lines are covered by the ordinary planning consents regime. Connection to the main distribution system is governed by the Guaranteed Standards of



		Performance that set out service levels that must be met by each licensed distribution company.
35 (1)	Requires Member States to designate a single national authority at national level, subject to paragraph (2) which provides for designation of other regulatory authorities at a regional level, and Article 35(3), which allows Member States to designate national regulatory authorities for small systems in a geographically separate region whose consumption in 2008 accounted for less than 3% of the total consumption of the Member State of which it is part.	Regulation 22 inserts new Section 3A into the Utilities Act to designate the Authority as the regulatory authority in GB. New section 3A also makes supplementary requirements that apply in the event that a representative of the Authority is appointed as the United Kingdom representative on the Board of Regulators of the Agency for the Co-operation of European Regulators (“the Agency”), under the Agency Regulation (2009/713/EC). (A separate regulatory authority will be designated for and by Northern Ireland, in accordance with Article 35(3).)
35 (4)	Requires Member States to guarantee the independence of the regulatory authority and to ensure that it exercises its powers impartially and transparently. Member States are also required to ensure that the regulatory authority is legally distinct and functionally independent from any other public or private entity and that its staff and the persons responsible for its management act independently from any market interest and do not seek or take direct instructions from any Government or other public or private entity when carrying out regulatory tasks.	<p>Section 1 of the Utilities Act, establishes the Authority as a body corporate for the purpose of carrying out functions and duties attributed to it, including those transferred to it from the Director General of Gas Supply and the Director General of Electricity Supply under the Utilities Act. Within the confines of its statutory functions, the Authority can exercise its discretion however it sees fit, subject to the framework of applicable public law.</p> <p>In addition, the Authority is legally required to take decisions based on impartial and objective criteria. It is bound by the Electricity Act and the Gas Act 1986 (“the Gas Act”) principal objectives and general duties. It is also bound by domestic public law duties such as the requirements of fairness and reasonableness which include an absence of bias. The Authority must also comply with general and specific EU duties of non-discrimination. Regulation 43 amends section 11A of the Electricity Act enabling the Authority to make licence modifications, following consultation, independently of industry and government.</p> <p>The Authority must act within the scope of its statutory powers, functions and duties. These are provided for in statute, principally the Gas Act, the Electricity Act ,</p>

		<p>the Utilities Act, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from EU Regulations. The Authority has a number of duties to be transparent. In particular, it has a duty under section 3A (5A) of the Electricity Act to have regard, when exercising its functions, to the principles under which regulatory activities should be, among other things, transparent ; and section 49A of the Electricity Act, requires the Authority to give reasons in relation to specific decisions concerning licences. In addition, the Authority publishes its rules of procedure and minutes of the Authority's meetings on their website, and it holds an annual open meeting. Under Section 5 of the Utilities Act, the Authority is under a duty to make an annual report to the Secretary of State on its activities during the relevant year and the activities of the Competition Commission during that year in respect of any references made by the Authority. The annual report also includes a statement on how much the Authority has spent that year. Finally, the Authority prepares and publishes accounts (known as "resource accounts") under a direction issued by HM Treasury in accordance with Section 5(2) of the Government Resources and Accounts Act 2000. The Authority accounts are approved by the National Audit Office.</p> <p>In respect of independence of staff from market interests, regulation 24 inserts new Section 3A into the Utilities Act, which among other things imposes an explicit obligation on the Authority to ensure that its staff do not carry out any activity nor have any financial or other interests that might compromise the independence of the Authority, in the context of the Authority carrying out functions as the designated regulatory authority for GB.</p>
35 (5)	Requires Member States to ensure that the regulatory authority can take autonomous decisions independently from any political body, has separate budget allocations, with autonomy in the implementation of the allocated budget and adequate human	The Authority has been set up at an institutional level as a separate entity. In terms of annual budget allocations, in respect of regulatory functions, the Authority is mainly funded from licence revenues which are collected directly from licence holders. It is for the Authority to set the level of licence fees and to determine how these funds are allocated

	<p>and financial resources to carry out its duties; and that members of the board or top management are appointed for a fixed term of five to seven years, renewable once. Member States must also ensure that a rotation scheme for the board or top management exists.</p>	<p>to enable it to meet its statutory duties. Although the Authority's budget is approved by Parliament, following consultation with the industry and others, there is no formal role for the Government in setting the budget. The Authority must demonstrate propriety, regularity and value for money, and is accountable to Parliament. Finally, as mentioned above, the Authority's accounts and reports are audited by the Comptroller and Auditor General who is appointed under statute and reports to Parliament.</p> <p>Regulation 43 amends section 11A of the Electricity Act enabling the Authority, in carrying out its regulatory tasks, to make licence modifications autonomously.</p> <p>In respect of appointments to the Board, Regulation 24 inserts new paragraph 2A into Schedule 1 of the Utilities Act, to impose obligations on the Authority's board members not to seek or take instructions nor carry out any activity/have any financial or other interests that might compromise the independence of the Authority, in the context of the Authority carrying out functions as the designated regulatory authority for GB.</p> <p>Regulation 24 also amends paragraph 3 of Schedule 1 of the Utilities Act to set out a minimum of five years and a maximum of seven years for the length of a term of appointment as a board member, and to ensure that terms of appointment can be renewed only once. It also places a duty on the Secretary of State to ensure that there is sufficient continuity when appointing/renewing terms of board members (i.e. a rotation scheme must be in place).</p>
36	<p>Requires regulatory authorities to take into account a number of objectives when it carries out its regulatory tasks.</p>	<p>Regulation 27 amends Section 3A(1A) of the Electricity Act to in order to specify that, when the Authority is carrying out its functions as regulatory authority for GB, its principal objective of protecting the interests of existing and future consumers includes the interests of those consumers in the Authority's fulfilment of particular</p>

		objectives, set out in Article 36.
37	Sets out the regulatory authority's powers and duties.	<p>Many of the provisions listed in this article are already reflected in the Electricity Act and relevant licence conditions, which impose duties on electricity undertakings, enforceable by the Authority under sections 25 to 28 of the Electricity Act. For example, conditions in the Transmission, Interconnector and Distribution licences (Conditions B5, 6 and 4 respectively) prohibit cross-subsidies; Conditions B15 and B16 of the Transmission Licence contain provisions which require licensees to report on historical and future investment; Conditions D03 (transmission system security standard and quality of service), B17 (Network Output Measures); monitoring investment through and C11 (production of information about the GB transmission system) of the transmission licence require licensees to monitor security and quality standards; Conditions C3 (Balancing and Settlement Code ) and C16 (procurement and use of balancing services) of the transmission licence provide relate to the provision of balancing services. There are also a number of requirements on transmission and distribution companies to increase efficiencies, for example through Condition C16 in the Transmission Licence and through price control for Distribution System Operators; incentives to foster market integration; foster security of supply through Condition 17 of the distribution licence.</p> <p>The Regulations impose further duties on electricity undertakings, enforceable by the Authority under the Electricity Act. New obligations have also been placed on the Authority and new powers conferred on it.</p> <p>In addition, the Authority has powers under the Enterprise and Competition Acts to monitor the market and information gathering powers in licence conditions.</p> <p>Regulation 31 inserts subsection 1C into section 47 of the Electricity Act to give the Authority additional monitoring duties in relation to Article 26(3) Article 37(1)(g) to (k), (m) and (q) to (t), and, where an independent system operator has been</p>

		<p>Regulation 39 makes amendments, and inserts new Schedule 6A, to the Electricity Act. This has the effect of extending the Authority's enforcement powers under the Act so that they apply to requirements in the Electricity Act which transpose Electricity Directive requirements (including those applying to licence-exempt persons).</p> <p>Regulation 33 inserts new Section 3E into the Electricity Act to place a duty on the Authority to carry out its functions in the manner that it considers is best calculated to implement or ensure compliance with any binding decision of the Agency or the Commission under the Electricity Directive, Electricity Regulation, or Agency Regulation.</p> <p>Condition C3 of the Transmission Licence (Balancing and Settlement Code (BSC)) is amended to ensure that the procedures for modifying the BSC incorporate modification proposals made by the Authority in order to comply with or implement binding decisions of the Commission or the Agency, or any aspect of the Electricity Regulation, and to require relevant licensees to comply with timetables for ACER and Commission decisions.</p> <p>Regulation 23 inserts new section 5ZA into the Utilities Act to place a duty on the Authority to report annually to the Agency and the Commission in respect of its regulatory tasks.</p> <p>Regulation 29 amends sections 44B-D of the Electricity Act to extend the scope of the dispute resolution mechanism to cover disputes arising out of complaints to the Authority against licence-exempt distributors, and ISOs. Regulation 43 repeals section 11 and amends section 11A of the Electricity Act and inserts new sections 11B to 11H into, the Electricity Act . This makes provision for an</p>
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		<p>amended power for the Authority to modify the conditions of licences. It also introduces a new ex-post appeals process, to ensure that the Authority is able to make autonomous decisions, and is also able to implement binding decisions by the Commission and the Agency. Under the new procedure, an appeal against a decision of the Authority to amend the conditions of a licence may be made to the Competition Commission by the directly affected licensee; a licensee whose interests are materially affected by the decision; by a body representing such licensees; or by Consumer Focus, where consumers are materially affected by that decision. The appeal is to be brought in accordance with the process specified in the newly inserted Schedule 5A to the Electricity Act.</p>
38	<p>Requires national regulatory authorities to consult and co-operate with each other; to promote regional co-operation; to co-ordinate the development of network codes for TSOs and other market actors; to co-ordinate the development of the rules governing congestion management. Also provides that regulatory authorities have the right to enter into co-operative arrangements with each other in order to foster regulatory cooperation. Finally, imposes confidentiality requirements in respect cross-border exchanges of information.</p>	<p>Regulation 35 inserts new section 3F into the Electricity Act to require the Authority to consult and cooperate with the Agency, relevant national authorities and other regulatory authorities (including the provision of information). A number of duties relating to regional cooperation are also inserted.</p> <p>Regulation 36 inserts new section 105A into the Utilities Act in order to impose confidentiality requirements on the Authority, in respect of any information provided to the Authority by another regulatory authority (directly or indirectly) in accordance with Article 38(1).</p>
39	<p>Sets out provisions relating to compliance with Guidelines under the Electricity Directive and Electricity Regulation.</p>	<p>No implementation action required by the Government in respect of this Article.</p>
40	<p>Requires that suppliers retain, and make available to the NRA, data regarding transactions in supply contracts and derivatives.</p>	<p>New Condition 5.5 to 5.8 of the supply licence requires suppliers to retain this information and make it available to the Authority.</p>
41	<p>Requires Member States to</p>	<p>The arrangements which govern the</p>

	ensure there is transparency about how the retail market works in order to facilitate customers' and suppliers' access to networks.	operation of the GB market are set out in licence conditions; in the relevant industry codes which licence holders are obliged to maintain in accordance with the terms of their licence; and to a more limited extent, in legislation. All UK legislation is published online and is available in hard copy. In addition, the Authority has a searchable electronic facility which includes copies of all the licences it has issued (including relevant conditions, exemptions, directions and orders) and provides links to where industry codes can be found.
42	Sets out the safeguard measures in case of a critical event.	The Energy Act 1976 gives the Secretary of State emergency powers to issue directions regulating the production, supply, acquisition or use of fuel.
43	Allows Member States to take measures to ensure a level playing field, compatible with the Treaty.	The Government, at the time of writing, has no plans to use the powers provided for in this Article.
44	Allows for derogations for small isolated systems.	This does not apply to GB.
45	Sets out a review procedure in respect of Directive requirements.	No implementation action required in respect of this Article.
46	Sets out that the Commission shall be assisted by a committee.	No implementation action required in respect of this Article.
47	Sets out that the Commission shall monitor and review and report to the European Parliament on progress with the implementation of the Directives.	No implementation action required in respect of this Article.
48	Repeals Directive 2003/54/EC.	No implementation action required by the Government in respect of this Article.
49	Imposes obligations on Member States relating to transposition of the Directive.	This transposition note, and another transposition note relating to gas, are to be provided to the Commission, along with the Regulations.
50	Sets out the date the Directive enters into force.	No implementation action required in respect of this Article.
51	States that the Directive is addressed to Member States.	No implementation action required in respect of this Article.

#### EU THIRD PACKAGE – TRANSPOSITION NOTE



## **DIRECTIVE 1 – GAS DIRECTIVE (2009/73/EC)**

1. This Transposition Note explains how Directive 2009/73/EC (“The Gas Directive”) is implemented in GB (GB). The accompanying Gas Regulation (2009/715/EC) is directly applicable and therefore is not covered in this note
2. The table seeks to explain how the main elements of the Directive are being transposed by the existing regulatory framework and by the Electricity and Gas (Internal Markets) Regulations 2011 (“the Regulations”).
3. These Regulations do more than is necessary to implement the Directive in relation to changes to preserve the independence of the National Regulatory Authority (Ofgem), preserve its autonomy in making decisions as regards its regulatory tasks and enable it to implement binding decisions and ensure a suitable appeals mechanism (Arts 35(4) and (5), 37(4)(a) and 37(17)). In order to ensure a consistent and coherent regulatory framework these changes will apply to all Ofgem’s decisions to modify the conditions of licences including those arising from this Directive
4. Changes necessary to the Standard Special Conditions of Gas Transporter Licences will be addressed in a separate document, to be annexed at a later date.

**DIRECTIVE 1 – GAS DIRECTIVE (2009/73/EC)**

Article	Objective	Implementation
1	Sets out the scope of the Gas Directive.	No implementation action required in respect of this Article.
2	Sets out the definitions.	No implementation action required in respect of this Article.
3(1)	Member State (MS) obligation to ensure undertakings operate in accordance with principles of the Directive.	GB’s regulatory framework for gas, which includes Gas Act 1986, Utilities Act 2000 and Energy Acts 2004, 2008 and 2010, is established such that undertakings operate in accordance with the principles of the Directive, achieved through our implementation of it. The framework also seeks to achieve a competitive, secure and environmentally sustainable market, without unjustified discrimination between undertakings.
3 (2) & 3(15)	Allows Member States to impose Public Service Obligations (PSOs).	All current PSOs will be notified following transposition.  In accordance with Article 3 (11) of the Gas Directive, we will notify any future changes to the European Commission (“the Commission”) every two years.
3 (3)	Places an additional requirement on Member States compared to the previous Directives to require Member States to introduce number of measures to protect vulnerable customers, including a requirement to define the concept of vulnerable customers.	Vulnerable customers are defined in the Fuel Poverty Strategy which is required to be published under the Warm Homes and Energy Conservation Act 2000 (for England and Wales) and the Housing (Scotland) Act 2001.  Measures in place to increase the income of vulnerable households in GB include the Winter Fuel Payment (set up by the Social Fund Winter Fuel Payments Regulations 1998) and the Cold Weather Payments (introduced by the Social Fund Cold Weather Payments (General) Regulations 1988).  In addition, Section 4AA (3) of the Gas Act 1986 (the Gas Act) provides that the Authority must carry out its functions in a manner best calculated to further its principal objective, having regard to, amongst other things, the interests of people who are chronically sick, pensioners, those on low incomes and people living in rural areas. The gas suppliers also have a number of

		<p>obligations in their licences (Conditions 26, 27 and 29 of the Supply Licence) to protect consumers who are of pensionable age, disabled and chronically sick, irrespective of whether they are also fuel poor.</p>
<p>3 (4) &amp; 3 (8)</p>	<p>Requires Member States to take appropriate measures to protect final customers, such as energy efficiency and national energy plans.</p>	<p>GB has a range of measures in place to increase the energy efficiency and income of households with particular focus on those who are vulnerable. Key measures to increase the energy efficiency of households include the Warm Front programme (set up by the Home Energy Efficiency Scheme (England) Regulations 2005) and the equivalent programmes in Wales and Scotland; the Decent Homes Standard (a Public Service Agreement following the publication in April 2000 of the Housing Green Paper “Quality and Choice: a Decent Home for All”); the Carbon Emissions Reduction Target (CERT) and the Community Energy Savings Programme (CESP) both introduced through secondary legislation under the Gas Act. CERT requires gas suppliers to achieve targets for a reduction in carbon emissions generated by the domestic sector<sup>6</sup>; CESP requires gas suppliers to deliver energy efficiency saving measures to domestic consumers in low income areas of GB. Finally, the Energy Bill introduced to Parliament on 8 December 2010, includes a provision for a new “Green Deal”. This will establish a framework to enable private firms to offer consumers energy efficiency improvements to their homes, community spaces and businesses at no upfront cost, and recoup payments through a charge in instalments on the energy bill.</p> <p>The UK Government has announced proposals to mandate smart meters. Under powers in the Energy Act 2008, the Secretary of State has powers to make licence modifications requiring the industry to put these in place. Other mechanisms are also in place under powers in the Climate Change Act 2008. The Carbon Reduction Commitment Energy Efficiency Scheme is a cap and trade mechanism for large organisations</p>

<sup>6</sup> Prior to CERT, the Government had in place the Energy Efficiency Commitment (EEC).

		designed to reduce energy use through imposing a price on carbon emissions.
3 (5)	Requires Member States to ensure customers have the right to be supplied by companies registered in other countries and that administrative procedures do not constitute a barrier to this.	Except in a limited number of circumstances (where an exemption under the Gas Act applies), gas suppliers must hold a licence granted by the Authority, which is the means by which the trading and balancing rules are imposed in GB. The process of applying for a licence is set out in the application regulations <sup>7</sup> which apply to all potential suppliers, regardless of where they are registered. While supply undertakings which are not registered in GB must provide an address in GB for the service of documents, in practice this does not constitute a barrier as a post office box, or the offices of another body (such as the offices of a lawyer or accountant) can be named for this purpose.
3 (6) (a)	Requires Member States to ensure customers who wish to switch suppliers are switched within three weeks, whilst respecting contractual conditions.	New Condition 14A of the Supply Licence imposes an obligation on suppliers to switch customers within three weeks.  Schedule 2AB to the Gas Act (inserted by regulation 20) ensures that licence-exempt suppliers are also required to switch customers within three weeks.
3 (6) (b)	Requires Member States to ensure customers are entitled to receive relevant consumption data.	Condition 31A of the Supply Licence requires suppliers to provide customers with information relating to gas consumption in every bill (or within 65 days of the notice of increase in charges if applicable). They must also send an annual statement to all customers in the prescribed format. Condition 12 of the Supply Licence requires suppliers to take meter readings at least once every two years. In order to ensure the information provided to customers is even more accurate, new Condition 21B of the Supply Licence will also enable customers to read their own meters as frequently as they wish, and have suppliers reflect that reading in the next bill.  Schedule 2AB to the Gas Act (inserted by regulation 20) ensures that licence-exempt suppliers are also required to provide consumption data to customers every year.

<sup>7</sup> See Regulations 2010, No 2155 (Gas) and No 2154 (Electricity), Schedule "Application form and summary guidance".

3 (8)	Requires Member States to optimise the use of energy.	See implementation of article 3 (4).
3 (9)	Requires Member States to provide a single point of contact for energy customers and put in place an independent mechanism for complaints handling and dispute settlement.	<p>Consumer Direct is the UK's single point of contact (telephone, letter and online service) offering information and advice on consumer issues including for energy markets. The service is free for all UK customers (including small and medium sized enterprises) and provides clear, practical advice to help sort out problems and disagreements with suppliers of goods and services including energy suppliers. Consumer Direct's advisers are trained in all aspects of consumer rights.</p> <p>The Energy Ombudsman resolves complaints and disputes in relation to licensed electricity suppliers and distributors. This arises from the Consumers, Estate Agents and Redress Act 2007, which requires such energy companies to be a member of a qualifying redress scheme which customers can use if a complaint cannot be resolved with the supplier directly. The Ombudsman can require the company to comply with its obligations and require it to pay compensation to customers where appropriate.</p> <p>In the case of vulnerable customers, additional assistance is provided by Consumer Focus, a consumer advocacy body. It has specific statutory responsibilities and powers relating to vulnerable consumers in designated sectors including energy.</p> <p>In the case of licence-exempt suppliers, Schedule 2AB to the Gas Act (inserted by regulation 20) requires the Authority to resolve complaints and disputes.</p>
3 (12)	Requires Member States to ensure consumers are provided with the Energy Consumer Checklist and that it is made publicly available.	New section 19A of the Consumers, Estate Agents and Redress Act 2007 (inserted by regulation 3), requires the National Consumer Council (known as Consumer Focus) to compile the energy consumer guidance, and concise version of that guidance, addressing the matters in the European Commission's Energy Consumer Checklist. Consumer Focus

		<p>must keep this guidance under review and publish both versions on its website.</p> <p>New Condition 31.5-31.8 of the Supply Licence requires energy suppliers to publish both versions of the guidance on their websites, inform customers, with each bill, as to how these can be accessed and provide customers with a copy of the concise version of the guidance each year.</p> <p>Schedule 2AB to the Gas Act (inserted by regulation 20) requires licence-exempt suppliers to inform customers, with each bill, how to access both versions of the guidance and provide a copy of the concise version on request.</p>
<p><b>Annex 1 (measures on consumer protection)</b></p> <p>Paragraph 1 (a)</p>	<p>Sets out consumer rights in relation to notification of contractual terms, with additional requirements in relation to notification of whether withdrawal from the contract without charge is permitted compensation for inaccurate and delayed billing and information on complaints handling.</p>	<p>New Condition 22.5 of the Supply Licence, and Schedule 2AB to the Gas Act (inserted by regulation 20), require suppliers to address the matters listed in paragraph 1(1) (a), when specifying terms in their contracts with customers. Condition 23 of the Supply Licence imposes requirements regarding the notification of terms before a customer enters into a contract with the supplier.</p>
<p>Paragraph 1 (b)</p>	<p>Sets out consumer rights in relation to changes to contractual conditions with an additional requirement that notification of changes be done in a transparent and comprehensible manner.</p>	<p>Condition 23.3-23.6 of the Supply Licence and Schedule 2AB to the Gas Act (inserted by regulation 20) set out the rules regarding the notification of changes in domestic supply contract terms and termination rights. Condition 7.7 of the Supply Licence also imposes an ongoing obligation on suppliers to take reasonable steps to provide any customer who has not entered into a contract with them, but who is nevertheless taking a supply under a “deemed contract”, with information about the conditions under which they are being supplied, which includes the applicable charges.</p>
<p>Paragraph 1 (c)</p>	<p>Sets out consumer rights in relation to information about tariffs and terms and conditions.</p>	<p>Condition 25 of the Supply Licence ensures that customers has the relevant information before entering into a contract and new Condition 22.5 of the Supply Licence, and Schedule 2AB to the Gas Act (inserted by regulation 20), put an obligation on energy suppliers to identify in the contract how up to date information may be obtained.</p>

<p>Paragraph 1 (d)</p>	<p>Sets out consumer rights in relation to terms and conditions, with additional requirements that the payment methods offered do not unduly discriminate between customers, prepayment methods must be fair and adequately reflect likely consumption and terms and conditions must not include non-contractual barriers to the exercise of customers' rights.</p> <p>Customers are also required to be protected against unfair or misleading selling methods.</p>	<p>All customers are entitled to obtain their supply from a supplier who is obliged to offer a wide range of payment methods (Condition 27.1 of the Supply Licence). Condition 27.2A of the Supply Licence, and Schedule 2AB to the Gas Act (inserted by regulation 20), ensure that suppliers are unable to discriminate between customers, as any difference in terms and conditions (which includes differences in the prices charged), as between payment methods, must reflect the costs to the supplier of the different payment methods. In addition, Condition 28 of the Supply Licence imposes particular requirements to ensure prepayment meters reflect any changes in charges.</p> <p>Conditions 22 and 23 also impose requirements regarding the transparency of customer contracts (including a requirement to provide copies of contracts to customers on request) and notification of terms.</p> <p>Domestic customers are protected against unfair or misleading selling methods under Condition 25 of the Supply Licence. Where the contract has been entered into as a result of a visit to the customer's premises or as a result of a conversation in a public place the supplier is required within 14 days to take all reasonable steps to contact the customer and to seek his confirmation that he understands he has entered into a domestic supply contract, is content to have entered into that contract and is content with the way in which the supplier's marketing activities were conducted.</p>
<p>Paragraph 1 (e)</p>	<p>Requires that consumers are not charged for changing supplier.</p>	<p>New Condition 14A.5 of the Supply Licence, and Schedule 2AB to the Gas Act (inserted by regulation 20), prevent suppliers from charging customers for any costs associated with changing supplier.</p>
<p>Paragraph 1 (f)</p>	<p>Sets out consumer rights in relation to standards of service and complaint handling.</p>	<p>In relation to standards of service, the Gas (Standards of Performance) Regulations 2005, impose particular obligations on suppliers and distributors and provide for compensation to be paid in certain situations. In relation to complaint handling the Gas and Electricity</p>



		(Consumer Complaints Handling Standards) Regulations 2008, made under the Consumers, Estate Agents and Redress Act 2007, impose requirements regarding the handling of customer complaints and require that these be resolved in an “efficient and timely manner”. In addition, as described in relation to articles 3(9), disputes can be referred to the Energy Ombudsman or, in the case of licence-exempt suppliers, the Authority.
Paragraph 1 (g)	Sets out consumer rights in relation to being connected to the gas system.	Condition 22 of the Gas Supply Licence sets out the requirements on licensed suppliers regarding when a supplier must offer to supply electricity to a customer. The Gas (Standards of Performance) Regulations 2005 require licensed suppliers and distributors to notify customers of their rights in the event supply is disrupted.
Paragraph 1 (h)	Sets out a new requirement to enable consumers to give registered supply undertakings access to relevant data.	New Condition 22.9 of the Supply Licence and Schedule 2AB to the Gas Act (inserted by regulation 20), give customers a right to contact their supplier to request them to pass on their consumption and metering data to another supplier, free of charge.
Paragraph 1 (i)	Sets out consumer rights in relation to consumption data.	Condition 12.84-12.16 of the Supply Licence requires suppliers to read customer meters every 2 years and new Conditions 21.B1 and 21.B2 of the Supply Licence enable customers to provide meter readings to their supplier, who must take all reasonable steps to reflect these in the next bill or the customer’s annual statement. Condition 31A of the Supply Licence also requires suppliers to provide information about consumption patterns on every bill or statement of account and send this to customers annually. Schedule 2AB to the Gas Act (inserted by regulation 20), also requires licence-exempt suppliers to send this information annually.
Paragraph 1 (j)	Sets out consumers rights to receive a final bill six weeks after switching to a new supplier.	New Condition 27.17-27.18 of the Supply Licence, and Schedule 2AB to the Gas Act (inserted by regulation 20), require gas suppliers to take all reasonable steps to send the final bill within six weeks after the customer has switched to a new supplier.

Paragraph 2	Requires Member States to ensure the implementation of smart meters.	<p>The Government is already committed to the introduction of smart electricity and gas metering to all households in GB. The necessary statutory base for delivery of smart metering is in place. The Government and the Authority have published a Prospectus that sets out how smart meters would be delivered. That Prospectus is accompanied by a revised Impact Assessment, which we will continue to update as the smart meter programme proceeds. To ensure that the energy and environmental benefits identified in the Impact Assessment are delivered, the Government is promoting the interoperability of the smart metering deployed within GB, as required under the Directives. The Government is now working with the Authority to prepare for implementation of the smart meter programme.</p>
4	Sets out requirements on Member States when granting authorisation for the construction or operation of natural gas facilities, including the criteria which are to be used.	<p>The UK has a well developed system of authorising and licensing infrastructure including gas facilities. The authorisation of natural gas facilities is subject to the requirements of this article. The considerations which must be taken into account when authorising a new gas facility are set out in the DECC guidance for offshore LNG and gas storage facilities and the National Policy Statement (NPS) for gas infrastructure onshore. In relation to the new requirement that authorisation procedures take into account the importance of the project for the internal market where appropriate, the NPS has been amended to ensure that, when granting construction consents for major natural gas infrastructure, the decision-maker must take into account the contribution the infrastructure could make to the functioning of the internal market.</p> <p>The requirement to notify the Commission of any refusal to build or operate the facility is being made explicit by amending the DECC guidance on offshore gas storage and LNG licensing under the Energy Act 2008; guidance on offshore gas storage and offshore gas unloading; and the</p>

		Department for Communities and Local Government's "Planning Act 2008: guidance for the examination of applications for development consent for nationally significant infrastructure projects".
5	Requires Member States to monitor security of supply.	Section 172 of the Energy Act 2004 places an obligation on Government to publish an annual report which covers the matters specified in this article. The Government will ensure that a copy of this report is forwarded to the Commission every two years.
6	Requires Member States to co-operate in order to promote regional and bilateral solidarity in respect of gas supply. Measures need to cover possible severe disruptions of supply.	The GB has solidarity arrangements in place with the Republic of Ireland. <sup>Within the</sup> UK, GB also has arrangements with Northern Ireland.
7 (1) and (2)	Sets out how Member States will work together, both between governments and between regulatory authorities, for the purpose of integrating national markets.	Regulation 34 inserts a new section 4D into the Gas Act to impose a new duty on the Authority to consult and cooperate with other authorities.  New Condition 23 of the Gas Interconnector Licence places a new requirement relating to regional cooperation.
7 (3)	Requires Member States to ensure that transmission system operators (TSOs) have one or more integrated systems at a regional level that cover two or more Member States for capacity allocation and checking network security.	New Condition 5 of the Interconnector Licence imposes requirements for involvement in the establishment of integrated systems for capacity allocation and checking network security.
7 (4)	Requires that where vertically integrated TSOs participate in a joint undertaking, they establish and implement a compliance programme that must be approved by ACER.	New Condition 23 of the Interconnector Licence places requires interconnector operators to provide for compliance programmes for vertically integrated undertakings where they participate in a joint undertaking for the promotion of regional cooperation.
8	Requires Member States to establish and make public technical rules for transmission, distribution,	Technical rules for gas are set out in the Uniform Network Code (UNC), the Network Entry Agreement and Network Exit Agreement, the Gas Safety

	generation, gas storage.	<p>Management Regulations 1996, the Gas (Installation and Use) Regulations 1998, and are required by Condition 5 of the Interconnector Licence.</p> <p>Condition 5 of the Gas Interconnector Licence has also been amended to ensure the interoperability of systems and that technical criteria are objective and non-discriminatory.</p> <p>We will notify the Commission of relevant technical codes separately.</p>
9	Requires the ownership unbundling of Transmission System Operators (TSOs) from the activities of electricity generation, gas production and energy supply unless an independent system operator ("ISO") is designated, the TSO complies with the provisions of Chapter V ("ITO model") or article 9(9) applies (arrangements are in place which guarantee more effective independence than Chapter V).	<p>Regulation 4 inserts sections 8C to 8Q into the Gas Act to address the new independence requirements for TSOs (i.e. in GB, holders of gas transporter licences who carry out transmission and holders of interconnector licences).</p> <p>New section 8G of the Gas Act provides that a TSO can be certified if it is ownership unbundled, if the ITO model or article 9(9) applies, if an ISO is designated, or if the TSO benefits from an exemption or is in a position which is substantially similar to that of a person who benefits from an exemption. New section 8H sets out the tests which a TSO must meet in order to be certified as ownership unbundled. New sections 8O and 8P prohibit the exercise of certain shareholder rights and rights of appointment by persons with an interest in an ownership unbundled TSO.</p>
10	Requires the designation and certification of TSOs.	New section 8C of the Gas Act requires the certification of TSOs by the Authority. New sections 8D to 8I provide for the certification process and new section 8J provides for designation. New sections 8K, 8L and 8N address monitoring and review of certification.
11	Sets out additional requirements for the certification procedure for TSOs controlled by a person or persons from a third country or third countries.	New sections 8D and 8E, 8K and 8M of the Gas Act address the particular requirements for certification of applicants connected to third countries. The remainder of the requirements do not require implementation action.
12	Requires Member States to designate storage and LNG system operators.	Storage and LNG system operators are designated by virtue of section 48 of the Gas Act (inserted by regulations 7 and 47) which identifies the owners of gas storage

		and LNG facilities to whom the obligations in the Gas Directive (set in the Gas Act) apply.
13	Sets out the tasks of transmission, storage and LNG operators.	<p>Transmission: Section 9 of the Gas Act sets out the relevant duties on gas transporters, including the use of the systems. In addition, there are a number of requirements on TSOs to comply with minimum standards for the maintenance and development of the transmission system (Pipeline Safety Regulations 1996 and Gas Safety Management Regulations 1996 and 1998).</p> <p>Interconnectors: Condition 19 of the Interconnector Licence sets out requirements in relation to how the licensee should operate and develop the interconnector, including building sufficient cross-border capacity, taking into account security of supply. Condition 5 requires the licensee to provide information to a relevant gas transporter or system operator. Condition 11.4 requires the licensee to provide reasons when third party access is denied.</p> <p>Storage and LNG operators: Regulation 7 inserts new section 11A into the Gas Act which imposes duties on the Gas Storage and LNG operators. Operators are also required to comply with these tasks by virtue of sections 19B and 19D of, and new Schedule 4B to, the Gas Act.</p>
14	Allows Member States to designate an ISO as a derogation from the ownership unbundling requirement (ISO model).	Regulation 4 inserts new section 8G into the Gas Act which permits certification of a TSO where an ISO is designated, and section 8J, which provides for designation of the ISO.
15	Requires legal and functional unbundling of operators of storage facilities which are not technically and/or economically necessary, and transmission owners when applying the ISO model.	<p>In relation to gas storage operators, regulation 6 inserts new sections 8R and 8S of the Gas Act 1986. New section 8R places the relevant requirements on owners of gas storage facilities. New section 8S enables the Authority to grant exemptions from the obligation in new section 8R to owners who operate facilities that are technically and/or economically necessary.</p> <p>The Authority will introduce appropriate</p>

		licence provisions in the event that an ISO is designated.
16(1) – 16 (3)	Sets out confidentiality requirements on Transmission System Operators and owners and LNG storage operators.	<p>Transmission: Part v of the Uniform Network Code (“Protected Information”) sets out the relevant requirements.</p> <p>Interconnectors: New Condition 21 of the Interconnector Licence places these requirements on interconnectors.</p> <p>Regulation 7 inserts new section 11C into the Gas Act 1986 to place confidentiality requirements on LNG/Gas storage operators.</p>
17-23	Sets out requirements which must be met if a TSO is to be certified on the basis of its compliance with the Independent Transmission Operator model.	Regulation 4 inserts sections 8G into the Gas Act which ensures that a TSO can only be certified on the basis of its compliance with the ITO model if the Authority considers that the TSO meets the requirements of these articles.
24	Requires Member States to designate Distribution System Operators (DSOs).	DSOs are designated by virtue of licences granted by the Authority, licence exemptions granted by the Secretary of State, and exceptions under Schedule 2A to the Gas Act.
25	Sets out the tasks of DSOs.	<p>Section 9 of the Gas Act sets out the licensee’s general obligation to develop and maintain an efficient and economical pipeline system. Standard Condition 9, and Standard Special Condition A11, of the Gas Transporter’s Licence requires the licensee to put in place transportation arrangements (Codes) to achieve this. In respect of connection to and use of the system, Standard Conditions 4, 4A and 4B, and Standard Special Condition A4 and A5, impose requirements as to charging methodologies. Standard Condition 4B of the Gas Transporter’s Licence has been amended to ensure that methodologies for use of system charges are compliant with the Gas Regulation and any binding decisions of the Agency and of the Commission.</p> <p>Standard Condition 4D, and Standard Special Condition A6, requires the conduct of the transportation business in a way that avoids conferring unfair commercial advantage on any parties.</p>

		New Standard Condition 4F of the Gas Transporter's Licence has been inserted to ensure that access to the system is offered in accordance with the Gas Act and the Gas Directive.
26	Sets out requirement that generation and production undertakings must be legally unbundled from distribution. It also requires a fully independent compliance officer to monitor the unbundling arrangements and for vertically integrated undertakings not to create, through their branding, confusion between the DSOs and the associated supply undertakings.	<p>Regulation 18 amends section 7 of the Gas Act to prevent a person being a gas producer and a DSO (unless they serve fewer than 100,000 connected customers).</p> <p>Section 7(3) of the Gas Act already prohibits the Authority from granting a gas transporter licence to a person holding a supply or shipper licence.</p> <p>Standard Special Conditions A33, A34 and A36 of the Gas Transporter Licence implement the requirements in relation to legal unbundling, including in relation to compliance programmes and branding. New Standard Condition 40A requires all licence holders to notify the Authority if they become part of a vertically integrated undertaking.</p> <p>Regulation 30 amends section 34 of the Gas Act and inserts new section 34A which, taken together, give the Authority new monitoring duties (including in relation to Article 26(3)) and information gathering powers in respect of those monitoring duties.</p>
27	Sets out the confidentiality obligations on DSOs.	Standard Condition 39, and Standard Special Conditions A33 of the Gas Transporter Licence require the licensee to preserve the confidentiality of commercially sensitive information and to not disclose information which may be advantageous in a discriminatory manner.
28	Enables Member States to provide for regulatory authorities or other competent authorities to classify certain systems as Closed Distribution Systems (CDS), and to exempt CDSs from specific Directive Requirements.	Regulation 20 inserts Schedule 2AA to the Gas Act, which sets out the duties of licence exempt gas distribution networks. Regulation 12 of Schedule 2AA makes provision for the Authority to classify a system as a CDSs, and exempts CDS from the requirement at Article 32(1) for tariff methodologies to be approved before their entry into force, subject to a request, by a customer or third party supplier, for such approval to be obtained. (It is the Government's view that any system capable of meeting the CDS



		classification criteria will fall within the class exemption regime rather than the licensed regime. Therefore, no equivalent provision has been included in the gas transporter licence.)
29	Clarifies that Article 26(1) does not prohibit the combined operation of transmission and distribution as long as the combined operator meets the specified unbundling requirements.	This provision has been taken into account in the course of transposing Article 26.
30	Requires that Member States and other designated authorities, including the regulator, have powers (to the extent necessary to carry out their functions) to access the accounts of electricity undertakings. Imposes a requirement to protect the confidentiality of commercially sensitive information.	<p>Section 38 of the Gas Act gives the Authority the power to require information from licensed gas undertakings where it appears to the Authority that the licensee may be contravening or may have contravened any relevant condition<sup>8</sup> or relevant requirement.</p> <p>In addition to requirements under the Companies Act 2006, gas transporters, interconnectors and suppliers are required to produce accounts under their licences, so the Authority can request the accounts if the licensee is or may be contravening the licence requirement to produce accounts.</p> <p>The obligation on Gas Transporters is set out in Standard Condition 30, and Standard Special Condition A30, (Regulatory Accounts), and in Condition 6 of the Interconnector licence (Separation of Accounts). The accounting duties imposed on licence exempt gas transporters under Schedule 2AA (see below) are relevant requirements.</p> <p>Section 105 of the Utilities Act 2000 (“the Utilities Act”) sets out general restrictions on the disclosure of information and makes clear that any confidential information must not be disclosed, except in specified circumstances.</p>
31	Requires gas undertakings to draw up, submit, audit and publish their annual accounts, and keep separate accounts for transmission, distribution,	In addition to requirements under the Companies Act 2006, gas undertakings are required to prepare accounts under their licences, and keep separate their accounts from any other business of the

<sup>8</sup> A relevant condition in relation to a licence holder means any condition of his licence.

	<p>LNG and storage and other activities.</p>	<p>licensee under Standard Condition 30, and Standard Special Condition A30, of the Gas Transporter Licence and Condition 6 of the Interconnector Licence.</p> <p>Both licences have been amended to require the licensee to audit and report on the obligation to avoid discrimination and cross-subsidies between the transmission and distribution businesses and to specify this information in their internal accounting. The auditor is required to report on discrimination and cross-subsidisation.</p> <p>Section 19E(2)-(4) of the Gas Act contains accounting requirements relating to owners of LNG and gas storage facilities.</p> <p>Regulation 20 inserts Schedule 2ZA to the Electricity Act, which sets out the duties of operators of licence exempt gas transporter (distribution) networks. Regulation 6 of that Schedule imposes requirements relating to distribution accounts.</p>
32	<p>Requires Member States to ensure the implementation of the third party access system for transmission, distribution and LNG facilities.</p>	<p>Access to transmission and distribution systems is covered by the Gas Transporter Licence and via the Network Code. Standard Condition 4, and Standard Special Condition A4, of the Gas Transporter licence requires the licensee to obtain prior approval from the Authority for charging methodologies for system charging and requires all tariffs to be published. Standard Special Condition A35 of the Gas Transporter licence prohibits cross-subsidies. Regarding interconnectors, Condition 11 of the Interconnector Licence, requires the licensee to</p> <p>offer terms of access on the basis of a charging methodology approved by the Authority. Any disputes arising regarding connection are determined according to the process set out in section 27A of the Gas Act. Access disputes arising out of complaints against distributors are determined according to the process set out in sections 27B-D.</p> <p>Regulation 20 inserts Schedule 2AA to the Gas Act, which sets out the duties of operators of distribution networks that are</p>

		<p>exempt from the requirement to hold a transporter licence, including third party access requirements.</p> <p>Regulation 28 amends sections 27B-D of the Gas Act in order to (among other things) widen the Authority's dispute resolution functions so that they apply to disputes arising out of complaints about operators of licence-exempt gas pipe-line (distribution) systems and owners of LNG and gas storage facilities.</p> <p>Access to LNG and gas storage facilities is ensured by sections 19A to 19E of the Gas Act 1986.</p>
33	Sets out the regulatory framework for providing access to gas storage facilities and linepack and access to ancillary services.	<p>Section 19B of the Gas Act sets out requirements for access to gas storage facilities.</p> <p>In respect of an access regime, the UK Government believes that the negotiated access regime, introduced following public consultation, continues to be better suited to the GB gas market. GB has a flexible gas storage market with active competition between facilities. The Third Party Access and Accounts Regulations 2000 set out the relevant arrangements.</p> <p>In respect of the obligation to define and publish access criteria for gas storage facilities and the procedure to be followed for (negotiated) third party access, Regulation 8 which amends Section 19A of the Gas Act imposes a duty on the Authority to publish a list of storage facilities that are available under the negotiated access regime.</p> <p>Regulation 10 places a duty on storage system operators and other natural gas undertakings providing ancillary services to consult system users when developing their main commercial conditions.</p> <p>Under the definition of linepack in the Third Package, no linepack</p>

		<p>products are currently available (or expected to be made available) in the GB market.</p> <p>Section 12 of the Gas Act 1995 imposes the necessary access requirements in relation to downstream gas processing facilities.</p>
34	Requires Member States to take necessary measures to so that eligible customers access to upstream pipeline networks.	<p>Access to upstream pipelines and processing facilities is currently required by sections 17F of the Petroleum Act 1998 and section 10E of the Pipelines Act 1962. This regime will be replaced, in due course, by the new regime governing access to upstream petroleum infrastructure in the Energy Bill. The regime in this Bill will also ensure that the requirements of article 34 are met</p>
35	Sets out the circumstances in which natural gas undertakings may refuse access to their system on the basis of lack of capacity.	<p>In GB, the system is required to be developed in an economic way. The distribution business is to be conducted in a non-discriminatory way and the connection charging methodology is required to ensure non-discriminatory connection to the licensee's pipe-line system.</p> <p>Section 10 of the Gas Act imposes a duty to connect premises in the licensee's area.</p> <p>New Standard Condition 4F of the Gas Transporter licence requires the licensee to offer access to its system in line with the Gas Act and the Gas Directive and to give duly substantiated reasons for refusal.</p> <p>Condition 11 of the Interconnector Licence requires licensees to offer access to their interconnector unless there is a lack of capacity, and to give duly substantiated reasons in the event of a refusal.</p> <p>Regulation 20 inserts new Schedule 2AA</p>

		<p>into the Gas Act, which imposes third party access requirements in relation to operators of gas pipe-line (distribution) networks that are exempt from the requirement to hold a transporter licence. Paragraphs 2 and 3 of that Schedule set out rules relating to refusal of access on the basis of lack of capacity.</p> <p>In relation to gas storage and LNG facilities, sections 19B and 19D of the Gas Act set out the circumstances in which a facility owner can refuse to give access on the basis of lack of capacity.</p>
36	<p>Allows major new infrastructure, i.e. LNG and storage facilities and interconnectors which meet specific conditions, to be made exempt from certain obligations. Also imposes new requirements on the Authority when granting exemptions.</p>	<p><b>Gas storage facilities:</b> Regulation 8 amends section 19A of the Gas Act (exemptions in respect of gas storage facilities) to require the Authority to comply with additional procedural requirements when granting an exemption under that section, including a requirement to impose conditions regarding the use of exempt facilities, and to repeal the giving of exemptions in respect of minor facilities (now provided for by new section 8S). Regulation 9 inserts new section 19AA into the Gas Act which imposes new procedural requirements relating to review by the Commission of exemptions given under section 19A of the Gas Act and the modification and revocation of such exemptions.</p> <p><b>LNG facilities:</b> Regulation 11 amends section 19C of the Gas Act (exemptions in respect of LNG facilities) and regulation 12 inserts new section 19CA into the Gas Act in line with the amendments made by regulations 9 and 10 in respect of gas storage facilities, with the exception of the amendment in regulation 8 in respect of minor facility exemptions, as such</p>

		<p>exemptions are not available in respect of LNG facilities.</p> <p>Regulation 15 inserts new section 19DB into the Gas Act (capacity allocation in exempt gas storage and LNG facilities), which requires applications for an exemption under section 19A or 19C of the Gas Act to specify criteria relating to the use of the gas storage or LNG facilities by others and prevents the Authority from giving such an exemption if the criteria do not satisfy the conditions listed in section 19DB.</p> <p>Interconnectors: Condition 12 in the Interconnector Licence provides for the circumstances in which a new infrastructure exemption can be given, in which case the third party access obligations in Conditions 10 and 11 in the Interconnector Licence can be suspended. New Condition 11A of the Interconnector Licence requires the Authority to approve the terms for access to an interconnector in accordance with the requirements in article 36 of the Gas Directive.</p>
37	Requires Member States to open the gas markets.	The GB gas market has been fully open to competition since 1998. Suppliers from other Member States may supply eligible customers as long as they hold a licence granted by the Authority which is the means by which the trading and balancing rules are imposed in GB.
38	Places obligations on Member States relating to Direct Lines.	Our distribution licence exemption system allows producers to supply via direct lines. Such lines are covered by the ordinary planning consents regime. Connection to the main distribution system is governed by the Guaranteed Standards of Performance that set out service levels that must be met by each licensed distribution company.
39 (1)	Requires Member States to designate a single national authority at national level,	Regulation 22 inserts a new Section 3A into the Utilities Act 2000 (the Utilities Act) to designate the Authority as the

	<p>subject to paragraph (2) which provides for designation of other regulatory authorities at a regional level, and Article 35(3), which allows Member States to designate national regulatory authorities for small systems in a geographically separate region whose consumption in 2008 accounted for less than 3% of the total consumption of the Member State of which it is part.</p>	<p>regulatory authority in GB. New section 3A also makes supplementary requirements that apply in the event that a representative of the Authority is appointed as the United Kingdom representative on the Board of Regulators of the Agency for the Co-operation of European Regulators (“the Agency”), under the Agency Regulation (2009/713/EC). (A separate regulatory authority will be designated for and by Northern Ireland, in accordance with Article 39(3).)</p>
<p>39 (4)</p>	<p>Requires Member States to guarantee the independence of the regulatory authority and to ensure that it exercises its powers impartially and transparently. Member States are also required to ensure that the regulatory authority is legally distinct and functionally independent from any other public or private entity and that its staff and the persons responsible for its management act independently from any market interest and do not seek or take direct instructions from any Government or other public or private entity when carrying out regulatory tasks.</p>	<p>Section 1 of the Utilities Act, establishes the Authority as a body corporate for the purpose of carrying out functions and duties attributed to it, including those transferred to it from the Director General of Gas Supply and the Director General of Electricity Supply under the Utilities Act. Within the confines of its statutory functions, the Authority can exercise its discretion however it sees fit, subject to the framework of applicable public law.</p> <p>In addition, the Authority is legally required to take decisions based on impartial and objective criteria. It is bound by the Electricity Act and Gas Act principal objectives and general duties. It is also bound by domestic public law duties such as the requirements of fairness and reasonableness which include an absence of bias. The Authority must also comply with general and specific EU duties of non-discrimination. Regulation 41 amends section 23 of the Gas Act enabling the Authority to make licence modifications, following consultation, independently of industry and government.</p> <p>The Authority must act within the scope of its statutory powers, functions and duties. These are provided for in statute, principally the Gas Act, the Electricity Act, the Utilities Act, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from EU Regulations. The Authority has a number of duties to be transparent. In particular, it has a duty under section 3A (5A) of the Electricity Act to have regard, when exercising its functions, to the principles under which regulatory activities should</p>



		<p>be, among other things, transparent; and section 49A of the Electricity Act, requires the Authority to give reasons in relation to specific decisions concerning licences. In addition, the Authority publishes its rules of procedure and minutes of the Authority's meetings on their website, and it holds an annual open meeting. Under Section 5 of the Utilities Act, the Authority is under a duty to make an annual report to the Secretary of State on its activities during the relevant year and the activities of the Competition Commission during that year in respect of any references made by the Authority. The annual report also includes a statement on how much the Authority has spent that year. Finally, the Authority prepares and publishes accounts (known as "resource accounts") under a direction issued by HM Treasury in accordance with Section 5(2) of the Government Resources and Accounts Act 2000. The Authority accounts are approved by the National Audit Office.</p> <p>In respect of independence of staff from market interests, regulation 24 inserts new Section 3A into the Utilities Act, which among other things imposes an explicit obligation on the Authority to ensure that its staff do not carry out any activity nor have any financial or other interests that might compromise the independence of the Authority, in the context of the Authority carrying out functions as the designated regulatory authority for GB.</p>
39 (5)	<p>Requires Member States to ensure that the regulatory authority can take autonomous decisions independently from any political body, has separate budget allocations, with autonomy in the implementation of the allocated budget and adequate human and financial resources to carry out its duties; and that members of the board or top management are appointed for a fixed term of five to seven years, renewable once. Member States must also ensure that a rotation scheme for the board or top</p>	<p>The Authority has been set up at an institutional level as a separate entity. In terms of annual budget allocations in respect of regulatory functions, the Authority is mainly funded from licence revenues which are collected directly from licence holders. It is for the Authority to set the level of the licence fee and to determine how these funds are allocated to enable it to meet its statutory duties. Although the Authority's budget is approved by Parliament, following consultation with the industry and others, there is no formal role for the Government in setting the budget. The Authority must demonstrate propriety, regularity and value for money, and is accountable to Parliament. Finally, as mentioned above,</p>

	management exists.	<p>the Authority's accounts and reports are audited by the Comptroller and Auditor General who is appointed under statute and reports to Parliament.</p> <p>Regulation 41 amends section 23 of the Gas Act enabling the Authority, in carrying out its regulatory tasks, to make licence modifications autonomously.</p> <p>In respect of appointments to the Board, Regulation 24 inserts new paragraph 2A into Schedule 1 of the Utilities Act, to impose obligations on the Authority's board members not to seek or take instructions nor carry out any activity/have any financial or other interests that might compromise the independence of the Authority, in the context of the Authority carrying out functions as the designated regulatory authority for GB.</p> <p>Regulation 24 also amends paragraph 3 of Schedule 1 of the Utilities Act to set out a minimum of five years and a maximum of seven years for the length of a term of appointment as a board member, and to ensure that terms of appointment can be renewed only once. It also places a duty on the Secretary of State to ensure that there is sufficient continuity when appointing/renewing terms of board members (i.e. a rotation scheme must be in place).</p>
40	Requires regulatory authorities to take into account a number of objectives when it carries out its regulatory tasks.	Regulation 26 amends Section 4AA(1A) of the Gas Act in order to specify that, when the Authority is carrying out its functions as regulatory authority for GB, its principal objective of protecting the interests of existing and future consumers includes the interests of those consumers in the Authority's fulfilment of particular objectives, set out in Article 40.
41	Sets out the regulatory authority's powers and duties.	Many of the provisions listed in this Article are already reflected in the Gas Act and relevant licence conditions, which impose duties on gas undertakings, enforceable by the Authority under sections 28 to 30F and 38 of the Gas Act. For example,

		<p>In addition, the Authority has powers under the Enterprise Act 2002 and Competition Act 1998 to monitor the market and general information gathering powers in licence conditions.</p> <p>Regulation 30 amends section 34 of the Gas Act, adding a new subsection (2A) to give the Authority additional monitoring duties in relation to Article 26(3), Article 41(1) (g) to (k), (m) (n) and (r) to (t), Article 41 (3) (a) and (b) where an ISO has been appointed, and Article 41(5)(b) and (d) where an ITO has been appointed. Regulation 30 also inserts new section 34A into the Gas Act, which gives the Authority information gathering powers in order to carry out the monitoring functions listed in section 34(1C).</p> <p>Regulation 37 makes amendments, and inserts new Schedule 4B, into the Gas Act. This has the effect of extending the Authority's enforcement powers under the Act so that they apply to requirements in the Gas Act which transpose Gas Directive requirements (including those applying to licence-exempt persons, owners of gas storage facilities, and owners of LNG import or export facilities). Regulation 32 inserts new section 4C into</p>
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	<p>the Gas Act to place a duty on the Authority to carry out its functions in the manner that it considers is best calculated to implement or ensure compliance with the any binding decision of the Agency or the Commission under the Gas Directive, Gas Regulation, or Agency Regulation.</p> <p>Standard Condition 9, and Standard Special Condition A11, (Network Code and Uniform Code) of the Gas Transporter Licence requires the licensee to establish transportation arrangements which facilitate achievement of certain relevant objectives. The amendment to Condition 9.1 adds an objective of compliance with EU law.</p> <p>Regulation 23 inserts new section 5ZA into the Utilities Act to place a duty on the Authority to report annually to the Agency and the Commission in respect of its regulatory tasks.</p> <p>Regulation 28 amends sections 27B-27D of the Gas Act, to extend the scope of the dispute resolution mechanism to cover disputes arising out of complaints to the Authority against licence-exempt gas transporters, ISOs, owners of gas storage facilities and owners of LNG import or export facilities.</p> <p>Regulation 41 amends section 23 of, and inserts new sections 23A-G into, the Gas Act. This makes provision for an amended power for the Authority to modify the conditions of licences. It also introduces a new ex post appeals process, to ensure that the Authority is able to make autonomous decisions, and is also able to implement binding decisions of the Commission and the Agency. Under the new procedure, an appeal against a decision of the Authority to amend the conditions of a licence may be made to the Competition Commission by the directly affected licensee, a licensee whose interests are materially affected by the decision, by a body representing such licensees or by Consumer Focus, where consumers are materially affected by that decision. The appeal is to be brought in accordance with the process specified in the newly inserted Schedule 4A to the Gas Act.</p>
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42	<p>Requires national regulatory authorities to consult and co-operate with each other; to promote regional co-operation; to co-ordinate the development of network codes for TSOs and other market actors; to co-ordinate the development of the rules governing congestion management. Also provides that regulatory authorities have the right to enter into co-operative arrangements with each other in order to foster regulatory cooperation. Finally, imposes confidentiality requirements in respect cross-border exchanges of information.</p>	<p>Regulation 34 inserts new section 4D into the Gas Act to require the Authority to: consult and cooperate with the Agency, relevant national authorities and other regulatory authorities (including the provision of information). A number of duties relating to regional cooperation are also inserted.</p> <p>Regulation 36 inserts new section 105A into the Utilities Act in order to impose confidentiality requirements on the Authority, in respect of any information provided to the Authority by another regulatory authority (directly or indirectly) in accordance with Article 38(1) of the Gas Directive.</p>
43	<p>Sets out provisions relating to compliance with Guidelines under the Electricity Directive and Electricity Regulation.</p>	<p>No implementation action required by the Government in respect of this Article.</p>
44	<p>Requires Member States to ensure energy suppliers keep, at the disposal of the regulatory authority, national competition authorities and the Commission, the relevant data relating to all transactions in gas or electricity supply contracts and gas derivatives with wholesale customers and TSOs, as well as storage and LNG operators. Such data must be kept for at least five years.</p>	<p>Condition 5 of the Gas Supply Licence has been amended to insert new paragraphs 5.5-5.8 to impose these new requirements on gas suppliers.</p>
45	<p>Requires Member States to ensure there is transparency about how the retail market works in order to facilitate customers' and suppliers' access to networks.</p>	<p>The arrangements which govern the operation of the GB market are set out in licence conditions; in the relevant industry codes which licence holders are obliged to maintain in accordance with the terms of their licence; and to a more limited extent, in legislation. All UK legislation is published online and is available in hard copy. In addition, the Authority has a searchable electronic facility which includes copies of all the licences it has issued (including relevant conditions, exemptions, directions and orders) and</p>

		provides links to where industry codes can be found.
46	Sets out the safeguard measures in case of a critical event.	The Energy Act 1976 <sup>9</sup> gives the Secretary of State emergency powers to issue directions regulating the production, supply, acquisition or use of fuel.
47	Allows Member States to take measures to ensure a level playing field, compatible with the Treaty.	The Government, at the time of writing, has no plans to use the powers provided for in this Article.
48	Allows a derogation from Article 32, in relation to take or pay commitments.	Regulation 14 inserts new section 19DZA into the Gas Act, to enable the Authority to grant temporary exemptions from the third party access requirements in section 19D where granting third party access to an LNG facility would cause the owner significant difficulties because of take or pay commitments under one or more gas-purchase contracts.  Regulation 13 amends section 19D of the Gas Act (third party access to LNG facilities) to address, in particular, matters arising from the insertion of new section 19DZA.
49	Allows for derogations for small isolated systems.	This article does not apply to the UK.
50	Sets out a review procedure in respect of Directive requirements.	No implementation action required in respect of this Article.
51	Sets out that the Commission shall be assisted by a committee.	No implementation action required in respect of this Article.
52	Sets out that the Commission shall monitor and review and report to the European Parliament on progress with the implementation of the Directives.	No implementation action required in respect of this Article.
53	Repeals Directive 2003/55/EC.	No implementation action required by the Government in respect of this Article.
54	Imposes obligations on Member States relating to	This transposition note, and another transposition note relating to transposition

<sup>9</sup> Copy of the legislation can be found at:  
[http://www.legislation.gov.uk/ukpga/1976/76/pdfs/ukpga\\_19760076\\_en.pdf](http://www.legislation.gov.uk/ukpga/1976/76/pdfs/ukpga_19760076_en.pdf).

	transposition of the Directive.	of the Electricity Directive, are to be provided to the Commission, along with the Regulations.
55	Sets out the date the Directive enters into force.	No implementation action required in respect of this Article.
56	States that the Directive is addressed to Member States.	No implementation action required in respect of this Article.



