

# **DECC – Department of Energy and Climate Change**

## **Consultation on the Implementation of the EU Third Internal Energy Package**

**The Electricity Directive: 2009/72/EC**

**The Gas Directive: 2009/73/EC**

**The Electricity Regulation: (EC) No 714/2009**

**The Gas Regulation: (EC) No 715/2009**

**The ACER Regulation: (EC) No 713/2009**

**URN: 10D/727**

July 2010



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# Executive Summary

## Introduction

This consultation document seeks views on proposed changes to the GB energy market framework that are required in order to achieve compliance with the European Union's Third Energy Package ('the Third Package'). The Third Package comprises two Directives and three Regulations.

The consultation sets out the new requirements arising from the Third Package, the extent to which the GB framework is already in compliance and sets out the Government's proposals for those cases where changes are needed.

## Chapter 1 - Consumer Protection

The Third Package sets out measures to extend consumer protection and reinforce retail market competition.

The most significant measure is to allow consumers to switch energy suppliers within three weeks of agreeing a contract. In GB markets there is currently no minimum requirement, but there are important consumer protection measures in place in particular cooling off periods to allow consumers to re-consider any agreement. Other measures where changes are required relate to better consumer information and dispute resolution.

Our main proposals in this consultation are to require the energy suppliers to:

- **include in customer contracts the right to change their mind within 14 calendar days and then be switched within three weeks, subject to outstanding debt (and, in the case of non-domestic customers, contractual conditions).**
- **give consumers better information about their consumption and how to make a complaint.**
- **give Consumer Focus the lead role in compiling and maintaining the Energy Consumer checklist in co-operation with the industry and Ofgem.**

## Chapter 2 - Transmission and Distribution Networks

The Third Package sets out new requirements for the separation of transmission undertakings from energy supply, electricity generation and/or gas production undertakings ('ownership unbundling'). These requirements have implications for a number of companies operating in GB including onshore and offshore transmission owners and interconnectors. **The Government is proposing to set out the requirements for ownership unbundling in legislation and give Ofgem the powers necessary to certify these undertakings against the requirements set out in the Directives.**

The Third Package allows for alternative models to that of full ownership unbundling. **The Government considers that one of these models, the Independent Transmission Owner (ITO) model, may not be compatible with the market framework and is considering the case for not making it available in GB.**

### Chapter 3 - Gas Infrastructure

The provisions in the Gas Directive aim to improve the operation of the gas storage market and LNG facilities. The Directive includes requirements for the legal and operational unbundling of gas storage system operators (SSOs) to ensure their independence. In addition, it strengthens third party access to storage facilities that are technically and/or economically necessary for providing efficient access to the system.

**The Government is consulting on approaches to implementing these requirements either through legislation (as for current obligations) or through a new licence regime.**

### Chapter 4 - Role of the National Regulatory Authority (NRA)

The Third Package recognises the importance to well functioning energy markets of independent regulation. Ofgem is the regulator for GB energy markets with NIAUR covering Northern Ireland.

The Third Package gives national regulators new powers and duties. It also places a requirement on Member States to ensure that the regulator is independent and has the powers it needs to make autonomous decisions. Although GB has an independent regulator, we are proposing to strengthen some of our arrangements.

Our main proposals are:

- **in order to enable Ofgem to make independent decisions in a timely and expeditious manner, amend the current collective licence modification process so that the industry cannot object to a decision beforehand, and replace it with a right of appeal after the event to all licensees affected by the proposals.**
- **impose an obligation on Ofgem to ensure that all staff employed by it act independently of 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.**
- **set out in legislation the interaction between the domestic provisions which apply to Ofgem and the requirements under the Third Package on Ofgem acting as the NRA.**
- **make changes to legislation to give Ofgem the requisite powers to carry out its new duties, including monitoring duties.**

- **place a new duty on Ofgem to cooperate and consult with other NRAs and ACER, the new Agency for Co-operation of Energy Regulators.**

## Chapter 5 - Cross-border co-operation

Developing the cross-border relationship between Member States and NRAs is at the heart of the Third Package. As well as formalising inter regional processes and the promotion of gas regional solidarity within the Directives, the Regulations provide for new institutions designed to improve integration of the internal energy market, the new electricity and gas European Network of Transmission System Operator (ENSTO) groups and ACER.

### How to take part

**This Consultation was issued on 27 July 2010 and will close on 19 October 2010.** When responding, please state whether you are responding as an individual or representing the views of an organisation. Please make it clear on the Response Form who the organisation represents, and where applicable, how the views of members were assembled.

For your ease, you can reply to this consultation online at: [http://www.decc.gov.uk/en/content/cms/consultations/imp\\_eu\\_third/imp\\_eu\\_third.aspx](http://www.decc.gov.uk/en/content/cms/consultations/imp_eu_third/imp_eu_third.aspx). A copy of the Response Form is available electronically at the same address.

The Form can also be submitted by letter, fax or email to:

**Third Package Consultation Team**  
**Department of Energy and Climate Change**  
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**3 Whitehall Place**  
**London SW1A 2HD**  
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### Additional copies

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Other versions of the document in Braille, other languages or audiocassette are available on request.

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### **Help with queries**

**Questions about the policy issues raised in this document, and completed response forms, can be addressed to:**

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**Published by the Department of Energy and Climate Change (DECC).**

# Introduction

1. This consultation document seeks views on proposed changes to the GB energy market framework that are required in order to achieve compliance with the EU Third Energy Package ('the Third Package'). This consultation document takes account of responses to the Call for Evidence published on 1<sup>st</sup> April 2010.
2. The Third Package comprises two Directives and three Regulations:
  - Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (the "Electricity Directive");
  - Directive 2009/73/EC concerning common rules for the internal market in gas and repealing Directive 2003/55/EC (the "Gas Directive");
  - Regulation (EC) No 714/2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (the "Electricity Regulation");
  - Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (the "Gas Regulation"); and
  - Regulation (EC) No 713/2009 establishing an Agency for the Co-operation of Energy Regulators (the "ACER Regulation") (see list of Appendices).
3. The Third Package was published in the Official Journal of the European Union on 14 August 2009 and came into force on 3 September 2009. The requirements of the Directives must be transposed into domestic legislation by 3 March 2011. Undertakings affected by the transmission network unbundling requirements of the Third Package (see Chapter 2) will have an extra year after the requirements have been transposed into law, to comply, and therefore will have until 3 March 2012. The requirements relating to certification for third countries do not apply until March 2013. The three Regulations are directly applicable and therefore do not need to be transposed in the same way. We will, however, need to ensure that our national market framework is consistent with their application and transpose any specific requirements of the Regulations as necessary.
4. This consultation document identifies those areas covered by the Directives where the present structure of the GB energy industry does not comply and proposes ways in which compliance may be achieved. The key areas, that were also highlighted in the Call for Evidence, are dealt with in detail in the following chapters. A summary of compliance with the new provisions in the Third Package is in Annex A. We are planning to implement the new obligations primarily through regulations under section 2(2) of the European Communities Act 1972.
5. Once the responses have been considered, the Government will be issuing a response and a final Impact Assessment. It is intended that the Regulations and

(subject to parliamentary time), the required legislation, will be made in time to enter into force by the implementation date of 3<sup>rd</sup> March 2011.

6. This consultation document is only concerned with the implications of the Directive for England, Wales and Scotland; it does not cover Northern Ireland. The Northern Ireland Department of Enterprise, Trade and Investment (DETINI) will be consulting separately on plans to transpose the requirements in the Directives in Northern Ireland.
7. As a Member State we are obliged to implement the Third Package fully by the transposition deadline. We are consulting on the most significant changes. There are likely to be other minor and technical areas where changes to the law and to Licence Conditions will be required that will be reflected in the full package of transposition measures.

# CHAPTER 1 – CONSUMER PROTECTION

- 1.1 Article 3 and Annex 1 of the Gas and Electricity Directives, articles 40 of the Electricity Directive and 44 of the Gas Directive (“Record Keeping”) and 41 of the Electricity Directive and 45 of the Gas Directive (“Retail Markets”) contain a number of new provisions to protect consumers.
- 1.2 We outline below the key new requirements of these provisions and where appropriate proposed measures to ensure compliance. Wherever relevant, our proposals have taken into account the responses to our “Call for Evidence” published on 1st April 2010.
- 1.3 Please note that all of the obligations in the Directives (including the new obligations described below) also apply to exempt undertakings. The Government therefore will need to make appropriate changes to legislation to ensure that exempt undertakings also comply with these obligations. For more detail on how we propose to deal with exempt undertakings please see Chapter 2 (“Transmission and Distribution Networks”).

## Analysis

### Public Service Obligations (PSOs)

- 1.4 Article 3(2) retains the ability for Member States to impose, in the general economic interest, Public Service Obligations (PSOs) on electricity and gas undertakings in a number of areas.

### Responses to the Call for Evidence

- 1.5 Respondents noted that, to the extent that DECC considered such obligations were required, they should be introduced in a way that does not undermine the competitive market nor impose costs on market participants who have no need for such a PSO.

### Government response

- 1.6 The Third Package sets out that PSOs may relate to, amongst other things, energy security and environmental protection and, further to the Second Package, it is now explicit that this second category includes ‘energy from renewable sources’. The Government is able to impose PSOs on undertakings through legislation or Licence Conditions (depending on domestic legislation). **To meet the requirements of article 3(15) we will, along with the transposition notes we send to the Commission, provide a list of PSOs. We will also ensure that procedures are in place for any changes to be notified to the Commission every two years.**

## Supply from other Member States

- 1.7 Article 3(4) of the Electricity Directive and 3(5) of the Gas Directive requires Member States to ensure that customers are entitled to have their energy provided by a supplier, subject to the supplier's agreement. This would be regardless of the Member State in which the supplier is registered, as long as the supplier follows the applicable trading and balancing rules. Member States need to ensure that administrative procedures do not discriminate against suppliers registered in another Member State.
- 1.8 The existing arrangements in the GB system meet these requirements. Except in a limited number of circumstances (where an exemption under the Electricity or Gas Acts applies), electricity and gas suppliers must hold a licence granted by Ofgem, which is the means by which the trading and balancing rules are imposed in Great Britain. The process of applying for a licence is set out in regulations<sup>1</sup> which apply to all suppliers, regardless of where they are registered. The only additional requirement for a supply undertaking which is not registered in Great Britain is that they must provide an address in Great Britain for the service of the documents.

## Switching energy suppliers

- 1.9 Article 3(5)(a) of the Electricity Directive and 3(6)(a) of the Gas Directive requires Member States to ensure that where a customer, while respecting contractual conditions, wishes to change energy supplier, the change is effected within three weeks. This article also puts an obligation on Member States to ensure that relevant rights are granted to customers in a non-discriminatory manner as regards costs, effort or time.

## Responses to the Call for Evidence

- 1.10 The majority view in the responses to the Call for Evidence was that the current arrangements in the GB had resulted in the most competitive market in Europe with high levels of customer switching per month (400,000 electricity customers and 300,000 gas customers)<sup>2</sup> and that the current arrangements met the requirements of the Third Package. The energy suppliers and the Energy Retail Association argued strongly that the cooling-off periods<sup>3</sup> made available to customers are an important customer protection measure that allow customers to evaluate the contract, reduce erroneous transfers and ensure that any process-related problems between the suppliers are rectified without impacting on the customer experience. They therefore argued that the three week timescale should start after the relevant cooling-off period has ended.

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1 See Regulations 2009, No 3190 (Gas) and No 3191 (Electricity), Schedule 2 Part 1.

2 <http://www.ofgem.gov.uk/Markets/RetMkts/Compl/CustTransf/Pages/CustTransf.aspx>

3 "Cooling off" periods (i.e. periods within which customers can change their mind after signing the contract) are only required legally (in statute or in the suppliers' licence conditions) in certain situations, e.g. where a supplier's representative visits a consumer's property to encourage them to switch supplier. Despite this, we understand that in practice energy suppliers often offer a cooling off period to all customers.

- 1.11 The same respondents also argued that changing an established switching process which had already been subject to a detailed industry review would result in increased costs to the industry and consumers, as well as disruption and poor customer service. The suppliers urged the Government to ensure that if any changes were necessary, they dovetailed with the development of the smart meter project which is expected to bring a range of benefits to consumers including a quicker switching process.
- 1.12 Other organisations, such as the MRA Executive Committee, held the view that if any cooling-off period is included within the three week timescale, current industry processes would need to change and the industry would need to be involved at an early stage. Finally one supplier thought that it was timely to review the current switching arrangements to ensure that they complied reliably with the requirements of the Third Package and continued to be fit for purpose.

### Government response

- 1.13 Currently there is no obligation on suppliers to switch customers within defined timescales. According to responses we received to our Call for Evidence, in practice, it takes between 4 to 6 weeks to switch electricity suppliers and slightly longer to switch gas suppliers. This timeline includes any cooling-off period which gives customers the opportunity to change their mind after signing the contract.
- 1.14 The Government is conscious that the cooling-off periods which suppliers are required by statute or Licence Conditions to offer to consumers reflect the fact that customers require a particularly high level of consumer protection in certain situations (the actual cooling-off period that applies may differ according to the contract and the circumstances in which it was entered into). In such cases customers are not normally able to waive this right.
- 1.15 The Government considers that cooling-off periods provide important consumer protection. It also considers that not taking account of these cooling-off periods when calculating the three week timescale, would put a disproportionate administrative burden on the suppliers, as the supplier would have to assume that the consumer has made a final decision before the end of the cooling-off period. If the consumer then changes their mind, the supplier would have to unwind the switching process. Alternatively if the supplier waits until the period has expired and they know the customer's decision is final, the supplier will have a much shorter period (which may be as little as one week) to switch the consumer. We are aware that some suppliers offer extended cooling-off periods, and may offer cooling-off periods where there is not a statutory obligation to do so.
- 1.16 As is apparent from the use of these cooling-off periods<sup>4</sup>, we consider it important that in all cases, i.e. regardless of whether statutory cooling-off periods apply, customers should have the opportunity to consider the contract and decide whether they wish to switch. **Therefore we propose a new Licence Condition requiring**

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<sup>4</sup> According to data from the energy suppliers, between 8% to 10% of customers who sign contracts, cancel within the cooling-off period. Around 80% of those who cancel, do so within 10 days.

**suppliers to specify in contracts with customers a period of 14 calendar days (from the date the contract has been entered into) in which customers can decide whether they want to proceed with the contract. It is important to allow for a uniform cooling-off period for all customers so that it is clear to customers when their right to switch starts, while at the same time preserving necessary consumer protection. The Licence Condition will then require the new supplier to specify in contracts with customers that they will start supplying the customer within three weeks of the end of that period, unless the customer has notified the supplier they do not wish to proceed.**

*Domestic customers*

- 1.17 The article also makes a reference to “respecting contractual conditions” which allows for an exception to the three week timescale. At present suppliers can only prevent domestic customers from switching supplier for reasons based on contractual conditions where the customer owes the supplier outstanding charges (i.e. where the supplier has written to the customer stating how much is owed and the customer has not paid these after 28 days). We propose that this should be the only situation where domestic customers are not entitled to switch within three weeks of the end of the 14 calendar day period as mentioned above.
- 1.18 Suppliers cannot currently block a transfer when a domestic customer is on a fixed term contract. We consider that this is appropriate and that the right to switch within three weeks should apply to these customers in the normal way even where there is an obligation to pay a cancellation fee to their former supplier.
- 1.19 Where a customer has an outstanding debt, we consider that the starting point of that customer’s right to switch within three weeks starts when the debt has been resolved (assuming that 14 calendar days have passed since the contract with the new supplier was signed).

*Business customers*

- 1.20 At present, suppliers can prevent non-domestic customers from switching where there is a term in the customer’s contract to that effect (Condition 14.2(a) of the Supply Licence). In these cases we consider that the customers’ right to switch should still start 14 days after they have signed the contract with the new supplier, but if, three weeks later, the contract with the old supplier has not yet ended, the switch will not take effect until the day the contract ends. In respect of outstanding charges, we would expect the same arrangements to apply for domestic and business customers.

**Enforcement of right by individual customers**

- 1.21 At present, Ofgem can impose enforcement orders where a supplier (or other licence holder) is breaching or is likely to breach a Licence Condition or relevant statutory requirements. Consumers can only take direct action against suppliers if the supplier has breached an order made by Ofgem which has caused the consumer to sustain loss or damage. This is in addition to customers’ right to complain to their suppliers using the complaints procedures that the supplier is obliged to maintain by law, and

the right to refer the complaint to an Ombudsman if this cannot be resolved (described in the “Single point of contact for customers” section). **The Government considers consumers should be able to take legal action at an early stage if the right is breached. We therefore propose that as well as the existing enforcement mechanisms described above, consumer contracts should contain this right, to enable consumers to also take legal action for breach of contract if they are not switched within three weeks, after the end of the 14 calendar days.**

## Availability of consumption data

- 1.22 Article 3(5)(b) of the Electricity Directive and 3(6)(b) of the Gas Directive, now requires Member States to ensure that customers are entitled to receive all relevant consumption data. This new provision is relevant to two other provisions in the Third Package.
- 1.23 First, paragraph 1(i)<sup>5</sup> of Annex 1 requires that customers are properly informed of actual consumption and costs frequently enough to enable them to regulate their own consumption.
- 1.24 Second, paragraph 1(h) of Annex 1 outlines that customers should have at their disposal their consumption data and shall be able to by explicit agreement and free of charge give any registered supply undertaking access to their metering data.

## Responses to the Call for Evidence

- 1.25 Respondents to the Call for Evidence broadly agreed with the Government’s assessment that the current arrangements in the GB meet the new requirements regarding the availability of consumption data. In particular, the energy suppliers explained that they encourage customers to provide their own meter readings so that this information is more accurate, and felt that the introduction of smart meters which will be showing consumers their consumption in real time will help the provision of actual consumption data further. One respondent felt however that estimated bills are a frequent cause of indebtedness especially amongst low income consumers.

## Government response

- 1.26 The existing GB arrangements in practice enable customers to have at their disposal their consumption data. That data is directly available to customers through their individual meters. Under Condition 12 of the Supply Licence, the energy suppliers must take all reasonable steps to inspect meters and take meter readings at least once every two years.<sup>6</sup> However, in practice suppliers tend to take meter readings more frequently. In addition to visits by meter readers to collect data directly from customers’ meters (on either a quarterly or six-monthly basis), some suppliers offer electricity display devices to current customers and innovative online products which

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<sup>5</sup> These paragraphs can be found in Annex 1 of the Directives.

<sup>6</sup> In the case of electricity this obligation applies to Non-Half-Hourly meters only.

allow customers to track their energy use or choose, via their tariff, to receive bills more or less frequently.

- 1.27 Following Ofgem's Energy Probe, a new Condition has been introduced in the Supply Licence (Condition 31A) from July 2010 to require suppliers to send an annual statement. Condition 31A sets out the format and procedure for providing this data. The annual statement will set out the name of the tariff, the quantity of gas/electricity supplied to these premises in the last year (unless the contract has been held for less than that time); an illustrative projection of the costs of the same amount of gas and electricity in the next 12 months; details of any premium or discount that applies to that tariff in relation to the supplier's standard tariff (if they pay by direct debit); details of the relevant principal terms of the contract; and information about switching. Suppliers are required to include some of this information in every bill (or within 65 days of the notice of increase in charges if applicable).<sup>7</sup>
- 1.28 GB requirements enable customers to have access to the metering data required in paragraph 1(h) of Annex 1. Under Condition 20 of the Supply Licence, suppliers are required to include in bills and statements (or annually if there is no such bill or statement) the customer's meter details (known as the "Meter Point Reference Number"). We consider that the details of tariff and consumption that are on the bill give sufficient information to a new supplier to be able to provide a quote to a customer on available tariffs. **However, as consumers may not always retain this information to be able to provide it to a new supplier, we propose to introduce a new Licence Condition to 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.**
- 1.29 In addition, to ensure that consumers have as accurate information as possible in relation to the amount of gas and electricity they consume, **the Government proposes to introduce a new obligation on energy suppliers. This will require that where a customer provides a meter reading to the supplier, and provided that the supplier is satisfied that this data is reasonable, the supplier should either send an updated bill to that customer or reflect this reading in the customer's next bill (unless the next bill is due in a matter of days). This updated consumption data should also be reflected in the customer's annual statement.**
- 1.30 The Government is currently developing arrangements for a roll-out of smart meters to all domestic customers. Smart meters will enable the customer to see and use consumption information with greater levels of granularity. This will make it easier for them to regulate their own consumption, to compare tariff offers and to provide the information to enable prospective suppliers or price comparison services to offer or quote for alternative tariffs.

## Definition for vulnerable customers

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<sup>7</sup> See Ofgem's recent consultation on this issue:

[http://www.ofgem.gov.uk/Markets/RetMkts/Compl/pricechange/Documents1/SLC23\\_consultation.PDF](http://www.ofgem.gov.uk/Markets/RetMkts/Compl/pricechange/Documents1/SLC23_consultation.PDF)

- 1.31 Article 3(7) of the Electricity Directive and 3(3) of the Gas Directive mirrors the Second Package in that it requires a range of measures to protect consumers. The Third Package includes a new requirement on Member States to define the concept of vulnerable customers which may refer to energy poverty and inter alia to the prohibition of disconnection of gas and electricity at critical times. Member States must ensure that the rights and obligations linked to vulnerable customers are applied.
- 1.32 The existing arrangements in the GB are compliant with the new requirements. 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.
- 1.33 The Electricity Act 1989 (section 3A(3)) and Gas Act 1986 (section 4AA(3)) provide that Ofgem 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 disabled or chronically sick, pensioners, those on low incomes and people living in rural areas. In addition, the energy suppliers have a number of obligations in their licences (Conditions 26, 27, 29<sup>8</sup> of the Supply Licence) to protect customers who are of pensionable age, disabled and chronically sick, irrespective of whether they are also fuel poor. For example suppliers are obliged to offer these customers a number of free services including frequent meter readings and free gas checks on request and they should also take all reasonable steps, in certain circumstances, not to disconnect them in winter.
- 1.34 In its role as the regulator, Ofgem monitors compliance with Licence Conditions and may have the ability to take enforcement action under section 28 of the Gas Act 1986 and section 25 of the Electricity Act 1989. In addition, the Gas Standards of Performance Regulations give rise to compensation payments.<sup>9</sup>

## Formulating national energy action plans

- 1.35 Article 3(8) of the Electricity Directive and 3(4) of the Gas Directive is new and requires Member States to take appropriate measures such as formulating national energy plans, providing benefits in social security systems to ensure the necessary electricity and gas supply to vulnerable customers, or providing for support for energy efficiency improvements to address energy poverty where identified, including in the broader context of poverty. Article 3(8) in the Gas Directive and 3(11) in the Electricity Directive, places similar requirements on Member States to promote energy efficiency. In particular, Member States or the national regulatory authority

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<sup>8</sup> Condition 29 in the Gas Supply Licence refers to Gas Safety therefore there is no equivalent licence in the Electricity Supply Licence.

<sup>9</sup> The relevant provisions (i.e. Regulation 9) of the Gas Standards of Performance Regulations only apply to gas transporters. The relevant provisions of the Gas Standards of Performance Regulations are subject to a wide range of exceptions (see Regulation 9(3) and Regulation 13), including where a customer has alternative cooking/heating facilities and where the premises were disconnected pursuant to a statutory power.

are required to recommend that gas undertakings optimise the use of gas, for example, by providing energy management services, developing innovative pricing formulas or introducing intelligent metering systems or smart grids where appropriate.

- 1.36 The existing GB arrangements meet the requirements of the above article. In addition to the measures described above to protect vulnerable customers, Great Britain 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 Electricity Act 1989 and the Gas Act 1986. CERT requires gas and electricity suppliers to achieve targets for a reduction in carbon emissions generated by the domestic sector<sup>10</sup>; CESP requires gas and electricity suppliers and electricity generators to deliver energy efficiency saving measures to domestic consumers in low income areas of Great Britain.
- 1.37 Measures in place to increase the income of vulnerable households in the 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).
- 1.38 The UK Government has also 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.

### Consumer rights regarding dispute settlement

- 1.39 Article 3(9)(c) of the Electricity Directive requires Member States to ensure that information about dispute settlement available are set out for consumers promotional materials and in or with bills.
- 1.40 The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008 require suppliers to have in place a complaints handling procedure. Suppliers must publicise this procedure on their website, inform domestic customers at least every 12 months of its existence and how a consumer can obtain a copy, and must provide a copy free of charge on request. In addition, Condition 31 of the Supply Licence requires suppliers to inform customers in, or with each bill (or at least

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<sup>10</sup> Prior to CERT, the Government had in place the Energy Efficiency Commitment (EEC).

annually) that Consumer Direct can provide information and to provide Consumer Direct's contact details.

- 1.41 However as this information is not all currently required to be included in or with bills and in promotional materials, as required by this article, we are not currently compliant. **To comply with this new requirement, we are proposing to amend Condition 31.1 of the Supply Licence to require the energy suppliers to inform consumers in promotional materials and in or with bills that they can complain using the suppliers' complaints procedure and how they can obtain a copy. In the case of bills, we propose that suppliers have an option of putting this information on the bill (sent to customers electronically or in hard copy) or sending it alongside it. In respect of promotional materials, we would expect suppliers to use the same methods currently required to comply with Condition 31.1 in the Supply Licence.**
- 1.42 Article 3(9) also requires Member States to ensure that information which is already provided about the contribution of fuel mix and environmental impact is presented in a comprehensible and at a national level, clearly comparable manner. Condition 21 of the Supply Licence sets out the Fuel Mix Disclosure Arrangement and includes rules as to how this information should be identified and presented which ensures that this information is compliant.

### Single point of contact for consumers

- 1.43 Article 3(12) of the Electricity Directive and 3(9) of the Gas Directive requires Member States to ensure they provide a single point of contact for consumers with all necessary information concerning their rights, current legislation and the means of dispute settlement available to them in the event of a dispute. Such contact points may be part of a general consumer information point. Member States are also required to ensure that an independent mechanism such as an energy ombudsman or a consumer body is in place in order to ensure efficient treatment of complaints and out of court dispute settlement.
- 1.44 The existing GB arrangements meet this requirement. Consumer Direct is the UK's funded 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.
- 1.45 In addition, all energy suppliers (and many other energy companies, such as distribution companies) are obliged to be a member of a qualifying redress scheme which customers can use if a complaint cannot be resolved with the supplier directly. The Energy Ombudsman was established in July 2006 and is run by the Ombudsman Service Ltd. If the energy companies and customers are unable to reach agreement on complaints, the independent Ombudsman will step in. The Ombudsman can require the company to comply with its obligations and require it to pay compensation to customers where appropriate. Finally, Consumer Focus is a consumer advocacy body providing assistance to vulnerable consumers in the

energy market. It has specific statutory responsibilities and powers relating to consumers in designated sectors including energy.

## Energy Consumer Checklist

- 1.46 Article 3(16) of the Electricity Directive and 3(12) of the Gas Directive requires energy suppliers or distribution system operators in co-operation with the regulatory authority to take the necessary steps to provide the consumers with a copy of the Energy Consumer checklist and ensure that this is made publicly available.

### Responses to the Call for Evidence

- 1.47 Respondents to the Call for Evidence argued that consumers in the UK already receive a lot of information on their bills from such sources as their supplier and Ofgem, and argued that the checklist should complement this information rather than provide extra new information which is likely to cause confusion. Consultees also argued that for the information to be useful it has to be proportionate and provided at appropriate intervals. It was also suggested that a specific body should make all this information available to consumers (Ofgem and Consumer Direct were nominated for domestic customers and Business Link for business customers) and that the suppliers should either signpost consumers to this body or make the checklist available on their websites.

### Government response

- 1.48 The Government agrees with the respondents' views that UK consumers already receive a lot of information on energy related matters. However this article places a requirement on all Member States to ensure that consumers are provided with a copy of the checklist and that this is made publicly available. **The Government is therefore proposing to give Consumer Focus the role of compiling and maintaining the Energy Consumer checklist in co-operation with the industry and Ofgem. The Government also proposes to introduce a new obligation on suppliers to provide their customers with a copy of the Energy Consumer checklist and make it publicly available.**

## Retail markets

- 1.49 Article 41 of the Electricity Directive and 45 of the Gas Directive sets out a new requirement to ensure that there is transparency about how the retail market works in order to facilitate customers' and suppliers' access to networks. These rules must be made public and kept under review by the national regulatory authority or other relevant national authorities.
- 1.50 The existing GB arrangements are compliant with this requirement. The arrangements which govern the operation of the GB markets 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 of this information is publicly available. All UK legislation is published online and is available in hard copy. In addition, Ofgem publishes an electronic record which includes copies of all the licences it has issued (including all

relevant conditions, exemptions, directions and orders) and provides links to where industry codes can be found.

## Record keeping

- 1.51 Article 40 of the Electricity Directive and 44 of the Gas Directive sets out a number of requirements on Member States to require energy suppliers to keep at the disposal of the national authority, the national competition authorities and the Commission, for the fulfilment of their tasks, for at least 5 years, the relevant data relating to all transactions in gas or electricity supply contracts and gas derivatives with wholesale customers and transmission systems operators, as well as storage and LNG operators. In respect of electricity and gas derivatives transactions between supply undertakings and wholesale customers and transmission system operators, these obligations will not apply until the Commission has adopted guidelines.
- 1.52 The article also envisages that the national regulatory authority may decide to make available to market participants elements of this information provided that commercially sensitive information on individual market players or individual transactions is not released.
- 1.53 For reasons of good business practice and for dealing with regulatory requests major traders are likely to keep at least five years of records. However this is not a formal obligation on them. **To comply with the requirements of the Third Package, we intend to place a new obligation on energy suppliers to hold this information.** The Government will also need to ensure that Ofgem will have the relevant powers to request and publish such information (please see our analysis of article 37 in Chapter 4 (“Role of the National Regulatory Authority”)).
- 1.54 It is also worth noting, that the Commission is reviewing the Market Abuse Directive<sup>11</sup> with proposals to extend the scope of the Directive to energy markets. We will keep this in mind as we work to implement the record keeping article under the Third Package.

## Consumer protection measures described in Annex 1 of the Electricity and Gas Directives

### Information to be included in contracts with customers

- 1.55 Paragraph 1(a) of Annex 1 sets out various obligations on gas and electricity providers regarding information that must be included in contracts with their customers. These include the identity and address of the supplier; the services provided, the service quality levels offered as well as the time for the initial connection; the types of maintenance service offered; the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained; the duration of the contract, the conditions for renewal and termination of services and of the contract and whether withdrawal from the contract without charge is permitted; any compensation and the refund arrangements which apply if contracted

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<sup>11</sup> [http://ec.europa.eu/internal\\_market/securities/abuse/index\\_en.htm](http://ec.europa.eu/internal_market/securities/abuse/index_en.htm).

service quality levels are not met including inaccurate and delayed billing; the method of initiating procedures for settlement of disputes; information relating to consumer rights including on the complaint handling and all of the information referred to in this point, clearly communicated through billing or the undertaking's website.

- 1.56 **Our existing arrangements reflect the requirements of this article with the exception of the new requirement regarding consumer rights information. We intend to amend the Principal Terms set out in Condition 1 of the Supply Licence (which specify contractual information suppliers are obliged to provide to their customers), to ensure these matters are always explicitly addressed on the face of the contract.**
- 1.57 Paragraph 1(b) of Annex 1 requires Member States to ensure customers are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers are required to notify their subscribers directly of any increase in charges at an appropriate time no later than one normal billing period after the increase comes into effect. This requirement mirrors what was required in the Second Package with the exception that subscribers need to be notified in a transparent and comprehensible manner. The GB arrangements meet this requirement by virtue of Condition 23.3-23.6 in the Supply Licence which sets out the rules regarding the notification of domestic supply contract terms (in the case of deemed contracts Condition 7.7 in the Supply Licence imposes an ongoing obligation on suppliers to take reasonable steps to provide the customer with the principal terms of the contract, which include charges).

### Non-discriminatory pricing

- 1.58 Paragraph 1(d) of Annex 1 requires Member States to offer a wide choice of payment methods. This requirement essentially mirrors what was required in the Second Package but also requires that payment methods do not unduly discriminate between customers and that pre-payment systems must be fair and adequately reflect likely consumption. A relevant requirement is stipulated in article 3(3) in the Electricity Directive requiring that consumers pay non-discriminatory prices.
- 1.59 The existing GB arrangements meet the requirements of paragraph 1 (d) and article 3(3). Condition 27.2A in the Supply Licence (Payments, Security Deposits and Disconnections) imposes an obligation on suppliers to ensure that “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.
- 1.60 Paragraph 1(d) also requires that general terms and conditions are not to include contractual barriers to the exercise of customers' rights. The GB arrangements meet this requirement by virtue of Condition 22.4 in the Supply Licence which requires contracts to be in writing and to include all terms and conditions, including particular requirements with respect to the identification of charges for supply as opposed to for any other services, and requirements regarding termination conditions.

## Standards of service

- 1.61 Paragraph 1(f) of Annex 1 places a new requirement on Member States to ensure all consumers have the right to a good standard of service and complaint handling by their gas and electricity provider and that out of court dispute settlement procedures are settled fairly and promptly (preferably within three months).
- 1.62 The arrangements in the GB system meet these requirements. In relation to standards of service, the Electricity and Gas Standards of Performance Regulations, impose particular obligations on suppliers and distributors and provide for compensation to be paid in certain situations. In relation to complaint handling, in addition to the requirements imposed by the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, we are compliant by virtue of the Consumers, Estate Agents and Redress Act 2007 which requires that complaints be resolved in an “efficient and timely manner”. On average 82% of provisional conclusions issued by the Energy Ombudsman, were issued within six weeks<sup>12</sup>.

## Final closure account

- 1.63 Paragraph 1(j) of Annex 1 requires that consumers receive a final closure account following any change of natural gas/electricity supplier no later than six weeks after the change of supplier has taken place.

## Responses to the Call for Evidence

- 1.64 Respondents stated that according to arrangements under the Balancing and Settlement Code (BSC)<sup>13</sup>, a new reading is sent to the new and old supplier within 8 working days after the customer transfer. This enables the old supplier to close the customer’s account soon after receiving this final reading. In most circumstances customers receive a final closure account no later than six weeks after the switch has taken place. In addition, the ERA voluntary Billing Code (which five of the largest suppliers have signed up to) requires suppliers to provide a final bill within 30 working days or where this is not possible, to provide the customer with an explanation.

## Government response

- 1.65 Although in practice, in most circumstances, the suppliers send the final bill within 30 working days after the customer has switched, this is not a formal arrangement therefore we are not currently compliant with the requirement of this article. **The Government is proposing to introduce a new Licence Condition to require the energy suppliers to send their customer a final bill within six weeks of the date the customer has transferred to a new supplier.**

## Smart meters

<sup>12</sup> [http://www.energy-ombudsman.org.uk/downloads/Energy\\_Ombudsman\\_Annual\\_Report\\_2009.pdf](http://www.energy-ombudsman.org.uk/downloads/Energy_Ombudsman_Annual_Report_2009.pdf)

<sup>13</sup> The BSC is a component of the British Electricity Trading and Transmission Arrangements (BETTA) which specify the methods of sale, purchase and transmission of wholesale electricity.

- 1.66 Paragraph 2 of Annex 1 of both Directives requires Member States to ensure the implementation of intelligent metering systems. The implementation of those metering systems may be subject to an economic assessment of all the long-term costs and benefits to the market and consumers. The assessment needs to take place by 3 September 2012. Subject to it, Member States or any competent authority they designate needs to prepare a timetable with a target of up to 10 years<sup>14</sup> for the implementation of these systems. Where roll-out of smart meters is assessed positively, at least 80% of consumers need to be equipped with intelligent metering systems by 2020. In addition, the Member States or any competent authority they designate, need to ensure the interoperability of those metering systems within their territories. They also need to have due regard to the use of appropriate standards and best practice and the importance of development of the internal market in electricity and gas.
- 1.67 The Government is already committed to the introduction of smart electricity and gas metering to all households in Great Britain. The necessary statutory base for delivery of smart metering is in place. The Government and Ofgem have just 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 Great Britain, as required under the Directives. The Government is now working with Ofgem to prepare for implementation of the smart meter programme.

### Consultation Questions

<b>1</b>	<b>Consultees are invited to comment on Government proposals to implement the consumer protection measures of the Third Package.</b>
<b>2</b>	<b>In respect of the requirement to switch customers within three weeks, subject to contractual terms, we propose to put in place a new Licence Condition requiring the new supplier to give new customers a 14 calendar day period after the contract has been entered into, to consider whether they wish to proceed with this. Unless the customer notifies the supplier they do not wish to proceed, the Licence Condition will require the new supplier to give customers the right to change their mind within 14 calendar days and then be switched within three weeks, subject to outstanding debt (and, in the case of non-domestic customers, contractual conditions). Do consultees agree with this proposal?</b>
<b>3</b>	<b>Do consultees consider that the requirement on supply undertakings which are not registered in Great Britain, to provide a GB address for the</b>

<sup>14</sup> There is no equivalent reference to the timescales in the Gas Directive.

<p><b>service of the documents, poses any difficulty for these suppliers? Evidence of costs to these suppliers would be particularly welcome.</b></p>
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# CHAPTER 2 – TRANSMISSION AND DISTRIBUTION NETWORKS

- 2.1 The Third Package affects arrangements for transmission and distribution networks in a number of ways, but most notable are the new unbundling requirements for transmission systems. In this chapter we outline how we propose to reflect these requirements within the energy market of Great Britain (GB), taking into account the relevant responses from our recent Call for Evidence. This chapter also covers provisions specific to the Electricity Directive and which aim to improve the operation of electricity generation, and specify the tasks of the Distribution System Operators (DSOs) and Closed Distribution Systems. For gas where applicable, corresponding discussion on these specific points can be found in Chapter 3.
- 2.2 Transmission systems are the high-voltage (electricity) and high-pressure (gas) networks that transport energy over large distances. Under the Third Package, the regulatory authority is required to certify transmission undertakings as compliant with the ownership unbundling requirements (see below). These include on-shore transmission licensees<sup>15</sup>, interconnector licensees and offshore transmission licensees. Ofgem has committed to consult on its initial assessment of the unbundling compliance of these undertakings.<sup>16</sup>
- 2.3 The operators of infrastructure relating to Northern Ireland, including the Moyle (electricity) and SNIP (gas) interconnectors, will be certified against the unbundling requirements of the Third Package by the Northern Ireland authorities.

## Transmission Unbundling

- 2.4 Article 9 of the Electricity and Gas Directives provides the legal framework for the unbundling of Transmission System Operators (TSOs)<sup>17</sup> from the activities of electricity generation, gas production and energy supply. As explained in the Directives<sup>18</sup> and in the European Commission's subsequent interpretive note<sup>19</sup> unbundling is required to remove any conflict of interest for energy companies involved in such operations. In particular, implementation of ownership unbundling or one of the derogations *"should remove the incentive for vertically integrated*

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15 National Grid, SPT and SHETL.

16 The forthcoming consultation document will be available at [www.ofgem.gov.uk/Europe/Pages/Europe.aspx](http://www.ofgem.gov.uk/Europe/Pages/Europe.aspx)

17 'Transmission System Operator' means a natural or legal person responsible for operating, ensuring the maintenance of and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transmission of electricity. (Article 2 definition from the Electricity Directive).

18 Recitals 11-12 of the Electricity Directive and recitals 8-9 of the Gas Directives.

19 Interpretive note on the 'Unbundling Regime', European Commission, 22 January 2010.

*undertakings<sup>20</sup> to discriminate against competitors as regards access to the network, as regards access to commercially relevant information and as regards investments in the network.*<sup>21</sup> Implementation in GB will be based on these principles.

- 2.5 In both Directives paragraphs 1-3 of article 9 detail the requirements of ownership unbundling for transmission systems. They specify that, from March 2012 undertakings that own transmission systems should also act as the operator of the transmission system (the TSO). They also state that, given these transmission undertakings will have ‘control’<sup>22</sup> of the transmission system, they should be prevented from ‘exercising any rights’<sup>23</sup> over energy supply, electricity generation or gas production. The reverse will also be true, in that any person that has ‘control’ over energy supply, electricity generation or gas production will not be able to ‘exercise any rights’ over a transmission system.

### Responses to the Call for Evidence

- 2.6 A number of issues were raised in relation to the unbundling requirements, including proportionality in implementation and their application to specific circumstances. National Grid asked for greater clarity around how the restriction on voting rights, associated with shareholdings in an unbundled TSO, would be implemented (article 9(2)). The company also identified a number of legacy and landlord arrangements within the GB market that will need to be addressed as part of Ofgem’s certification.
- 2.7 E.ON noted that infrastructure assets, such as gas interconnectors and gas storage, which were built on the basis of previous exemptions, should be allowed to continue without the need to unbundle for the period of these exemptions, as would be allowed for new infrastructure under article 36 of the Gas Directive.

### Government response

- 2.8 As described above, it is important that these unbundling requirements are introduced in a way that addresses the ‘conflict of interest’ concerns that they were designed to address. In Great Britain this will be achieved through the licensing regime around which our energy market is based. Within this, however, there will need to be a consideration of what is proportional, both in terms of the requirement and enforcement.
- 2.9 **The Government will set out in legislation the requirements for ownership unbundling for energy undertakings, with some obligations reflected in**

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20 The Third Package defines a Vertically Integrated Undertaking (VIU) as an energy undertaking where the same person or persons are entitled, directly or indirectly, to exercise control, and where the undertaking performs at least one of the functions of transmission or distribution, and at least one of the functions of electricity generation, gas production or energy supply.

21 Interpretive note on the ‘Unbundling Regime’, European Commission, 22 January 2010.

22 The definition of ‘control’ is taken from the Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (‘the EC Merger Regulation’).

23 ‘Rights’ are defined in Article 9(2) as the power to exercise voting rights, the power to appoint board members and holding a majority share. Therefore, shares in undertakings may be owned, but the shareholder cannot hold any influence over the decisions relating to the undertaking.

**licences as appropriate.** For example, where the full ownership unbundling model is applied the following will be true:

- i. Although the holder of an electricity or gas transmission licence as at 3 March 2012 may own a financial share of electricity generation, gas production or energy supply, it would not be able to exercise the following:
  - a) the power to exercise voting rights;
  - b) the power to appoint members of the supervisory board, administrative board or bodies legally representing the undertaking; or
  - c) hold a majority share.
- ii. A holder of an electricity or gas transmission licence would not be entitled to be a member of the supervisory board, the administrative board or bodies legally representing any undertaking performing the functions of electricity generation, gas production or energy supply.

2.10 Similar requirements would also need to be set on energy supply, electricity generation and gas production undertakings. For TSOs that succeed in obtaining an exemption from ownership unbundling (see the following section) their licences will need to reflect the requirements of the relevant derogation model. The prohibition described in paragraph 2.5 above also extends to non-licensed companies. We will need to ensure that we comply with these requirements through appropriate and proportionate regulation.

2.11 With regard to E.ON's concern on existing gas infrastructure, the Commission has previously made a statement on the potential roll-over of existing exemptions<sup>24</sup>. Ofgem will address this in more detail as part of their forthcoming consultation on unbundling certification.

2.12 Article 9 provides for a number of additional requirements that need to be addressed as part of implementation. Article 9(4) allows TSOs that are not vertically integrated an extra year to meet the ownership unbundling requirements and this will be made available through legislation<sup>25</sup>. Other scenarios that will be reflected will include the potential for two or more transmission system owners to run a TSO joint venture in two or more Member States (article 9(5)).

2.13 Finally, it is for Member States to ensure that energy suppliers, electricity generators and gas producers cannot take direct or indirect control of transmission undertakings in future (article 9(12)). The conditions described above will prevent those undertakings already licensed in GB from taking such action. **The Government will legislate to ensure that those companies that are not currently licensed cannot**

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24 Declaration from the Commission: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1228/2003 on conditions for access to the network for cross-border exchanges in electricity, 16 June 2009, European Commission.

25 The threshold for unbundling differs from the definition of 'control', which dictates whether a company is defined as 'vertically integrated'. Therefore, it is possible that a company that is not vertically integrated will have to unbundle.

**create a situation that would contravene the unbundling requirements.** This restriction will not prevent involvement in undertakings outside the EU.

## Derogations from transmission unbundling

- 2.14 Within the arrangements agreed as part of the Third Package there are three derogations from ownership unbundling that can be made available in certain circumstances. These allow structural arrangements to remove any conflict of interest between producers, suppliers and TSOs<sup>26</sup>. In each case Member States may decide whether to allow the derogation to be available to undertakings:
- a. The Independent System Operator (ISO) model: (article 9(8) and article 13<sup>27</sup>): where, on 3 September 2009, the transmission system was part of a vertically integrated undertaking, a distinct entity may be designated to act as the system operator with independent responsibility for tasks such as investment planning and management of third party access. The transmission system owner would provide support, including through finance for investments decided on by the ISO.
  - b. The Independent Transmission Operator (ITO) model: (article 9(8) and articles 17-23): where, on 3 September 2009, the transmission system was part of a vertically integrated undertaking, the TSO may remain part of the owning company, subject to meeting the requirements detailed in these articles.
  - c. Article 9(9) model - Arrangements providing greater independence than the ITO: (article 9(9) and 9(10)): where, on 3 September 2009, the transmission system was part of a vertically integrated undertaking and there are arrangements in place that guarantee more effective independence of the TSO than the ITO model, companies do not need to unbundle.

## Responses to the Call for Evidence

- 2.15 In the Call for Evidence we asked for views on the unbundling models and their compatibility with the GB market arrangements. Bord Gáis Éireann suggested that there is not one single model that works for all TSOs and so all models should be available. Scottish Power Transmission Limited considered that there was considerable benefit in maintaining the current arrangements. SSE noted that the current GB arrangements were more unbundled than the ITO model, although Centrica did not consider this to be the case.

## Government response

- 2.16 As described for ownership unbundling in the previous section, **the Government will set out in legislation those derogations that will be available to existing**

<sup>26</sup> Page 4 of the European Commission Interpretive Note: The Unbundling Regime – 22 January 2010

<sup>27</sup> Article 14 of the Gas Directive – ‘Independent System Operators’

**transmission companies.** To be certified as a derogated TSO, the relevant obligations will need to be reflected in the appropriate transmission licence.

- 2.17 Whether or not companies meet the requirements will be for Ofgem and, in some cases, the European Commission to decide. However, given that it is for Member States to decide whether derogations are available in the first place, the Government has considered each of the three listed above. **The Government is minded not to make the ITO model available** as it may not be compatible with GB market arrangements. **The Government is minded to make both the ISO model and the Article 9(9) derogation available.**

## Designation and certification of TSOs

- 2.18 Certification of GB TSOs against the Third Package unbundling requirements will fall to Ofgem as the National Regulatory Authority (NRA). As noted above, Ofgem will be consulting separately on this process. However, **it is for the Member State to ensure that the regulator has the appropriate powers and so, where necessary, we will make provision for the certification process in legislation.**
- 2.19 Article 10 (1-2) of the Directives and article 3 of the Regulations set out the general principles of certification and subsequent designation of TSOs. **As the Regulations automatically come into force, we will make clear in the legislation the timing and process of certification as described in the Directives and that, once certified, a company will be deemed to have been designated as a TSO.** Consequently, all existing companies that wish to be designated will need to be assessed as part of an initial certification process<sup>28</sup>, which is due to be completed by March 2012.
- 2.20 Within the detail of the legislation we intend to include the high-level tasks and deadlines for Ofgem (article 10(4-6)). Obligations that are allocated to companies, such as the requirement for the TSO to notify Ofgem of any planned transaction that may require a reassessment against the article 9 requirements (article 10(3)), will need to be included in the appropriate licence.<sup>29</sup>
- 2.21 If a company seeks a derogation using the ISO or article 9(9) models, Ofgem will follow the same certification process, but any decision will be subject to final clearance by the European Commission (see article 13(1)<sup>30</sup> and article 9(10)).

## Certification in Relation to Third Countries

- 2.22 Article 11 (1-4) of both Directives outlines the certification process in situations where a transmission system owner or TSO is controlled, or may become controlled, by persons from a third country. **The process is similar to the general certification process and will be reflected in legislation, confirming that**

<sup>28</sup> See also page 22 of the European Commission Interpretive Note: The Unbundling Regime – 22 January 2010.

<sup>29</sup> The NRA's relevant obligations are set out in Article 37(3)/41(3). Depending on what unbundling models are adopted in the UK, Ofgem will need to be given appropriate monitoring and enforcement powers.

<sup>30</sup> This is an Electricity Directive reference, equivalent to Article 14(1) of the Gas Directive.

**certification is for Ofgem.** There are, however, a number of differences that need to be addressed.

- 2.23 Article 11(3) explains that certification can be refused if it cannot be demonstrated to the NRA that granting certification would not endanger energy security and, as part of this, there must be a review of the risk to security of supply of the Member State and the Community. **Given the emphasis on security of supply we will confirm in legislation that DECC would carry out this assessment.** Article 11(5-6) also requires Member States to provide for the NRA to request an opinion from the European Commission before making a decision. This will be included as part of certification procedures within the legislation.

### Responses to the Call for Evidence

- 2.24 Article 11(8) requires Ofgem to take ‘the utmost account’ of the Commission’s opinion. In their response to the Call for Evidence, the Energy Networks Association (ENA) requested assurance that this would not be applied in such a way that would deter foreign investment in UK networks.

### Government response

- 2.25 **Within article 11(8) there is scope for Government to require Ofgem to adopt its final decision, having due regard to the DECC security of supply assessment referred to above. We will include this within the legislation.** Foreign investment will be an important factor when reviewing a particular situation. If there was a divergence between Ofgem’s final decision and the Commission’s opinion, the UK Government would also take responsibility for publishing these along with the reasoning that underlines the final decision.

### Tasks of TSOs

- 2.26 Article 12 sets out the principle tasks that each electricity transmission system operator is responsible for (tasks for gas transmission, storage and LNG system operators are set out in article 13 of the Gas Directive and covered in Chapter 3). Many of these tasks follow the requirements of the Second Package, with some additions focusing on having due regard for the environment, having adequate means to meet service obligations, ensuring the availability of ancillary services for demand-side response and collection of congestion rents under the inter-transmission system operator compensation mechanism.
- 2.27 The Government considers that some of these additional duties are already incorporated into Standard Licence Conditions for transmission operators. Where they are not these additional duties will be included in section 9 of the Electricity Act, and the Standard Licence Conditions.

### Confidentiality requirements for electricity TSOs and transmission system owners

- 2.28 Article 16 places confidentiality requirements explicitly on electricity transmission system operators and owners (the confidentiality requirements for gas TSOs are set out in article 16 of the Gas Directive and covered in Chapter 3). This article builds on article 12 of the Second Package where we relied on conditions in the transmission licence and section 105 of the Utilities Act. Additions include the non-disclosure of commercially sensitive information to related undertakings.

### Responses to the Call for Evidence

- 2.29 National Grid observed that these confidentiality requirements should not be interpreted in such a way that rules out the use of common services within network operators who are unbundled. They identified that any new rules should also not prevent the operation of a combined operator (article 29).

### Government response

- 2.30 **Although the Government considers that these requirements are largely covered by existing Licence Conditions, we will take steps to ensure that conditions reflect the requirements of this article as necessary.** With regard to National Grid's concerns, these changes will not prevent common services being used by a company that runs both transmission and distribution. All these conditions will also need to be included in interconnector licences (see below).

### Interconnector licensing

- 2.31 The Third Package includes interconnectors for electricity and gas within the definition of TSOs and so these point to point connections will need to, where applicable, meet the requirements placed upon TSOs, including those in relation to transmission unbundling. For example, we will need to introduce the relevant tasks of TSOs (and storage and LNG operators under the Gas Directive) and the confidentiality requirements. Some changes to the licences will also need to be made to comply with the Gas and Electricity Regulations.

### Offshore electricity transmission

- 2.32 The Government took statutory powers in the Energy Acts 2004 and 2008 to put in place a regime under which offshore transmission licences are awarded to successful bidders following competitive tenders run by Ofgem; and to enable the Secretary of State for Energy and Climate Change to extend (and amend) the onshore licensing regime for the purposes of offshore transmission.
- 2.33 Under the Offshore Electricity Transmission regime, which "went active" in June 2009, Ofgem will run tenders to appoint Offshore Transmission Owners (OFTOs) to be responsible for connections from offshore generation to the onshore grid (at 132kV and above). Ofgem began the tender process for the first nine such offshore generation projects in July 2009.
- 2.34 During the consultation process to introduce the new offshore transmission regime DECC and Ofgem made clear that Offshore Transmission undertakings would be

subject to the requirements of the Third Package like all other high-voltage transmission lines. Any generators successful in bidding to become OFTOs in the first and second transitional tender rounds (where the connections are built by generators), therefore, would have to fully comply with the article 9 requirements when these come into effect. This means that they would need to divest their interests in either the generation asset or transmission asset to other parties. **We can confirm, as part of this consultation that, once built and licensed, offshore transmission infrastructure will need to meet the unbundling requirements of article 9 unless a derogation (or exemption) applies.**

- 2.35 DECC and Ofgem have issued an Open Letter stating our intention to consult on an additional “generator build” option within the enduring Offshore Transmission regime. Under this option a generator would be permitted on an enduring basis to build the connection to the onshore grid and Ofgem would then tender the assets to grant an OFTO licence to own and maintain them. In developing this proposal we have identified issues relating to how this option may impact on network operation, maintenance and development obligations under the Third Package. The Open Letter is available at [http://www.decc.gov.uk/en/content/cms/what\\_we\\_do/uk\\_supply/network/grid\\_inv/grid\\_inv.aspx](http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/network/grid_inv/grid_inv.aspx) and further details will be published in the full consultation.

## Electricity and Gas Regulations: European network codes and the ENTSOs

- 2.36 The provisions of the Electricity and Gas Regulations are directly applicable and some of these provisions go beyond what exists in the current Regulations. For example, the Regulations<sup>31</sup> provide for the creation of European Network of Transmission System Operators (ENTSO<sup>32</sup>) organisations for electricity (ENTSO-E) and gas (ENTSO-G), both of which have now been set up. This remit includes the development of ten-year network development plans, to be established every two years, and European network codes that will be designed to help achieve integration of EU energy markets.

### Response to the Call for Evidence

- 2.37 In responding to our Call for Evidence, Shell urged National Grid to use its ENTSO role to help produce European ten-year plans that are genuine pan-European assessments of grid developments and that industry should be fully involved in their creation. EDF called for greater clarity on how the European Network Codes would be implemented by the GB authorities. National Grid asked for more details on implementation timescales for these codes. The Energy Network Association (ENA) suggested that an appeals process to be put in place similar to that already in place for regulatory decisions.

### Government response

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<sup>31</sup> Articles 4-8 of both Regulations.

<sup>32</sup> The membership of both ENTSO organisations consists of the TSOs from across the European Community.

- 2.38 The European wide Network Codes, as described in article 6 of both Regulations, are required to cover interactions across interconnectors and, therefore, facilitate an integrated energy market. The text of the Regulations confirms that the basis for such codes must “contribute to non-discrimination, effective competition and the efficient functioning of the market”. The codes themselves, will be developed by the ENTSO-E or ENTSO-G and are limited to those areas listed in article 8(6) of both Regulations, including network connection rules, third-party access and capacity allocation. These codes will be adopted by the Commission and Member States by Comitology and thereby be made binding.
- 2.39 Although directly applicable, the European network codes may entail changes to the domestic regulatory framework. Ofgem will coordinate the introduction of the associated requirements and we would envisage this happening through the Code Governance Review procedures. For details of the Government’s proposal for amending the code modification procedure in relation to binding decisions, please see analysis of article 37 in Chapter 4, “The Role of the National Regulatory Authority”.

### Designation and tasks of Distribution System Operators

- 2.40 Article 24 is the same as in the Second Directive and requires the designation of one or more electricity Distribution System Operators (DSOs) (the designation of gas DSOs (article 24 of the Gas Directive) is covered separately in Chapter 3). **The Government’s view is that the existing system of licensing is sufficient to deem a distribution system to be designated.**
- 2.41 Where Third Package requirements apply to licence exempt undertakings, including generators and suppliers as well as distribution system operators, we would propose the least burdensome solution that ensured that applicable DSO tasks did bite on these companies and that Ofgem did have a way of enforcing them. However, given that we need to introduce enforcement powers for the regulator (see article 37.1(b) of the Electricity Directive and article 41 of the Gas Directive), **for exempt undertakings we propose to set out the relevant requirements of the Third Package in legislation, and make those legislative provisions “relevant requirements” under section 25 of the Electricity Act 1989 and section 28 of the Gas Act 1986. Ofgem will then, within that legislative framework, be provided with the relevant powers to gather information and enforce penalties as required.**
- 2.42 Article 25 sets out the principle tasks that electricity DSOs are responsible for (tasks for gas DSOs (article 25 in the Gas Directive) are covered in Chapter 3). Many of these tasks follow the requirements of the Second Package, with some additions focusing on ensuring the long-term ability to meet reasonable demand and have due regard for energy efficiency. The new obligations will require licences to be amended (and, if necessary, legislation).

### Amendments to the legal unbundling of DSOs

- 2.43 The legal unbundling requirements for DSOs have not changed significantly from the Second Package. **However, to ensure clarity within the GB market framework, we will confirm in licences that generation and production undertakings must be legally unbundled from distribution.** Other requirements will need to be considered, including the need for a fully independent compliance officer to monitor the unbundling arrangements (article 26(2d)) and for vertically integrated undertakings (VIUs) not to create, through their branding, confusion between the DSO and the associated supply undertaking (article 26(3)). Ofgem would need to be provided with the requisite powers to make a formal request for this information.

### Responses to the Call for Evidence

- 2.44 On the issue of branding, the ENA observed in their response to the Call for Evidence that it would be doubtful that any customer benefits would arise from changing Licence Conditions in respect to branding. Centrica suggested that these requirements should be transposed via the appropriate licence modification.

### Government response

- 2.45 Within the regulation there are already conditions that ensure that DSOs cannot take advantage of their position to distort competition. However we consider that **DSO licences will need to be adjusted to include the reference to branding as reflected within the Third Package as well as the requirement for an independent compliance officer. Ofgem would need to be provided with the requisite powers to make a formal request for relevant information.**

### Third Party Access and Direct Lines

- 2.46 Some limited changes have been made to article 32 from the Second Package, which guarantees third party access to transmission and distribution systems. The Government's approach to implementing this article will be considered alongside the unchanged Electricity Directive article 34 and Gas Directive 38 (which places obligations on owners of direct lines) in the separate consultation on implementing the Citiworks judgment which will be published in the Autumn. The Government intends to ensure compliance with the Citiworks judgement on third party access in parallel with the Third Energy Package<sup>33</sup>.

### Closed Distribution Systems

- 2.47 Article 28 is a new article in both the Electricity and Gas Directives. It gives Member States the power to classify particular non-domestic distribution systems as Closed Distribution Systems and thereby exempt them from particular provisions, such as the requirement that charging methodologies are approved by the NRA prior to entry into force. Closed Distribution Systems are not exempt from the obligation to provide third party access.

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<sup>33</sup> This follows the informal Citiworks Call for Evidence from exempt stakeholders.

## Responses to the Call for Evidence

- 2.48 There were calls for Government to consider whether there was a role in the UK for the concept of Closed Distribution Systems and a general view that this should be looked at in the context of the forthcoming consultation on Third Party Access following the “Citiworks” ruling. A number of responses raised general expressions of interest in article 28 and in particular how it could apply to licence exempt distribution systems.

### Government response

- 2.49 We have considered whether article 28 could be useful and have concluded that, as some distribution system operators have suggested that they may find the limited exemptions available to be helpful, the Closed Distribution Systems option should be available in the UK. It would be for Ofgem to administer the system of classification. This option for classification should be available for both licensed and licence exempt distribution systems.

## Authorisation procedure for new generation capacity

- 2.50 Article 7 sets out the regulatory framework for the authorisation procedure for new electricity generation (the authorisation procedure to construct or operate gas facilities is set out in article 4 of the Gas Directive and covered in Chapter 3). This largely follows the requirements of the Second Package, with some relatively minor changes. In addition to these minor changes, the arrangements that existed in 2003 under section 36 of the Electricity Act 1989 have been significantly amended by the Planning Act 2008 and the Marine and Coastal Access Act 2009. There were no comments on the Authorisation Procedure for New Capacity in responses to the Call for Evidence.
- 2.51 The Government’s view is that we remain compliant with article 7, including the two new criteria listed under article 7(2) (j) and (k) relating to EC 2020 renewable targets and reducing emissions. There are different authorisation procedures available to developers, including National Policy Statements, section 36 of the Electricity Act, Food and Environment Protection Act and the Coastal Protection Act. The Government believes that these criteria were considered when drawing up the National Policy Statements. They were also referred to in a general sense as criteria that need to be met in the over-arching National Policy Statement that the decision makers on authorisation, whether central or devolved, must have regard to in reaching their decisions. The Government’s view is that, even though national rules have developed, we continue to be compliant.

## Electricity dispatching and balancing

- 2.52 Article 15 is the same as in the Second Package save for the new wording in 15(3) which now requires the system operator to act in accordance with article 16 of Directive 2009/28/EC on the promotion of the use of electricity from renewable resources. The Government’s view is that we are compliant with article 15(3) through the UK’s implementation of article 16(2)b of the Renewables Directive which requires

Member States to provide guaranteed access to the transmission system of electricity produced from renewable energy sources.

### Unbundling of accounts

- 2.53 Like the Second Package, the Third Package requires the unbundling of accounts for both gas and electricity undertakings. It has come to the attention of the Government that some elements of these requirements may need clarifying within the GB market framework.
- 2.54 Article 31 of each Directive places an obligation on gas and electricity undertakings to keep separate accounts for each of their transmission, distribution, LNG and storage undertakings. **For gas LNG and storage operators undertakings the Government intends to achieve compliance using the new mechanism decided on in relation to Third Package obligations generally (see paragraphs 3.3-3.8 in Chapter 3 “Gas Infrastructure”).** Regarding the separation of accounts for electricity and gas transmission and distribution, the Government intends to clarify the requirements through amendments to Licence Conditions where necessary.

### Consultation Questions

3	Do you have any comments relevant to our consideration of which unbundling models should be available in the GB market?
4	Do you have any views or concerns with how we intend to apply these new Third Package requirements on TSOs and DSOs?

# CHAPTER 3 – GAS INFRASTRUCTURE

- 3.1 The Gas Directive includes provisions that aim to improve the operation of the gas storage market and LNG facilities. The Directive requires legal and operational unbundling to ensure the independence of gas storage system operators (SSOs) and strengthens third party access to storage facilities that are technically and/or economically necessary for providing efficient access to the system. It is expected that this will benefit market participants by removing conflicts of interest, creating clarity for companies and ensuring confidence in the services they provide. Consumers will benefit from increased diversity in supply and stronger competition as more players enter the market.
- 3.2 Responses to the Call for Evidence were broadly supportive of the principles behind these requirements. However some respondents, such as Oil and Gas UK, called for the Government to consider how the Directive might impact on investment in gas supply infrastructure. Others, such as E.ON, called for early clarity on implementation to enable investors to understand the framework in which they could be operating.

## Implementing the new requirements

- 3.3 The UK is already compliant with many aspects of the Directive relating to gas infrastructure, but nevertheless there are a number of new requirements that LNG and storage operators will have to meet. Currently operators of LNG facilities and gas storage sites are not regulated under the Gas Act in the same way as other market participants such as shippers and suppliers. We need to decide how to implement the requirements of the Directive while ensuring that Ofgem, as the NRA, has access to appropriate powers of enforcement. Centrica raised this issue in its response to the Call for Evidence.

### Government response

- 3.4 **The Government considers that there are two options for implementing the new requirements:**
- i. by explicitly setting out these obligations in legislation; or**
  - ii. by creating a new, but light touch, licence regime for gas storage and LNG operators with licence obligations limited to the requirements of the Third Package and any subsequent binding decisions at European level.**

- 3.5 There are pros and cons for each of these options, as set out below:

#### **i) Implementation through a licence**

### Pros

- a licence would ensure that Ofgem had the appropriate means of enforcement;
- any future changes to requirements for storage and/or LNG operators via the European Commission's comitology process (which would be legally binding) would be easier to implement via a licence than by primary legislation; and
- licensing these activities would make their oversight consistent with other activities undertaken in the wholesale gas market.

### Cons

- a new licence regime could be seen as an overly elaborate method of implementing a number of relatively light touch requirements; and
- offshore gas storage operators are already required to hold a licence from DECC (resulting in multiple licences).

## **ii) Implementation through legislation**

### Pros

- much of the material that would go into a licence already exists in legislation; this could be amended to meet the requirements of the Third Package; and
- introduction of a licence might still require a revision of the Gas and Petroleum Acts, as well as the Energy Act 2008 for offshore storage, to avoid any duplication between the legislation and the licence.

### Cons

- legislation is difficult to amend and the process required could be lengthy – e.g. if it was considered necessary to change the way that the European obligations were set out in the legislation or to impose other obligations in the future.

3.6 The Third Package requirements that will be covered in legislative amendments or a licence regime include designation for LNG and storage operators; tasks for LNG and storage operators; unbundling of storage operators where necessary; confidentiality; and transparency of information as well as some aspects of the Gas Regulation. We will also consider whether third party access arrangements should remain in legislation or incorporated into a licence if this route is chosen. These issues are discussed in more detail below.

3.7 If a new licence regime was introduced, a class licence with notification might best meet the designation requirements of the Directive without being overly onerous for the industry. Designation is covered in more detail later in this chapter.

- 3.8 The administrative burden does not appear to differ significantly between the two options given the relatively small number of gas storage and LNG terminal operators that a licence would cover. **Given this, and the pros and cons set out above, the Government seeks views on which approach to adopt.**

### Third party access (TPA) – gas storage

- 3.9 Article 33 sets out the regulatory framework for providing access to gas storage facilities and linepack, and access to ancillary services and builds on article 19 of the Second Package.

#### Response to the Call for Evidence

- 3.10 There was a general feeling among respondents that the Government should maintain its relatively light touch approach to TPA for storage operators. SSE said that any compliance requirements should not inhibit or discourage investment in new gas storage. SSE and the Gas Storage Operators' Group called for a regulatory regime that encouraged gas storage projects to locate in GB rather than in other EU Member States. They warned that an unduly onerous regime could make GB a less attractive market for investment. Port Meridian Energy Limited commented on the direct and indirect costs of mandatory third party access and warned of the prohibitive impact on investment.
- 3.11 National Grid said the new requirements should not impinge on the existing contractual rights of companies that have purchased capacity at a facility on the basis of exemptions granted under the current TPA rules.
- 3.12 A number of respondents called for the Government to maintain the negotiated access regime. E.ON said the exemption regime provided a good balance between allowing access to assets and giving investors certainty. Shell UK welcomed the recent Ofgem guidance on negotiated third party access (nTPA)<sup>34</sup> saying that any other approach could deter investment. Statoil supported extending the current methodologies to cover the Third Package.
- 3.13 Taking a broader view of the UK's gas supply infrastructure, Consumer Focus said that if security of supply was an issue, interconnection and LNG facilities represented better value for the consumer than gas storage.

#### Government response

- 3.14 Article 33 contains three main issues. The *first* is for Member States to decide whether to have negotiated or regulated TPA (or both). This reflects the provision in the Second Package enabling Member States to choose either, or both, regime(s)

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<sup>34</sup> Link to Ofgem's nTPA guidance letter:

<http://www.ofgem.gov.uk/Markets/WhIMkts/ComandEff/Documents1/Preliminary%20views%20on%20the%20TPA%20regulatory%20regime%20for%20gas%20storage%20facilities.pdf>

for storage facilities that meet the “...technically and/or economically necessary...” threshold (which is the same as for storage unbundling, covered below in article 15).

- 3.15 The Government is proposing to maintain the negotiated access regime which it believes continues to be better suited to the GB gas market than the regulated regime. The Government introduced the negotiated regime, following public consultation, through the Gas (Third Party Access and Accounts) Regulations 2000<sup>35</sup> which amended the Pipe-lines Act 1962, the Gas Act 1986, the Gas Act 1995 and the Petroleum Act 1998.
- 3.16 The case for choosing a negotiated access regime for gas storage remains strong. GB has a flexible gas storage market with active competition between facilities. Access to storage is effective with allocation awarded in a non-discriminatory manner and there is a range of storage operators in the market.
- 3.17 Ofgem will continue to decide on applications for TPA exemptions and in so doing will assess which facilities are technically and/or economically necessary. Ofgem set out guidance on this process in its letter of 16 June 2009 “*Gas storage third party access exemptions – minor facilities*”<sup>36</sup>.
- 3.18 The *second* issue is the need to define and publish criteria according to which the access regime applicable to storage facilities and linepack<sup>37</sup> may be determined, i.e. for determining whether a facility is economically and/or technically necessary. This is an action for the Member State or for the NRA where provided by the Member State. **It is the Government’s intention that Ofgem as the NRA should perform this role and we intend to impose an explicit obligation on Ofgem to this effect.**
- 3.19 The Government is also proposing to make Ofgem, rather than storage and transmission system operators, responsible for making public which storage facilities, or which parts of those storage facilities, and which linepack is offered under the negotiated access regime. This is on the basis that it would be more efficient for the information to be collected and published by one body.
- 3.20 Under the definition of linepack in the Third Package, no linepack products are currently available in the GB market. National Grid Gas has a Special Licence Condition to use reasonable endeavours to develop (and implement if appropriate) a linepack product. Were such a product to be developed, we would expect that it would be made available to the market in such a way that it would be compatible with TPA requirements (this would include Ofgem publishing the criteria used to determine whether access to linepack was technically and/or economically necessary and if it was, the procedure used for accessing that linepack).

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35 SI 2000/1937.

36 Link to Ofgem letter on gas storage TPA exemptions:

[http://www.ofgem.gov.uk/MARKETS/WHLMKTS/COMPANDEFF/TPACCESS/Documents1/Storage%20Exemptions%20Open%20Letter%2009%20\\_For%20publication\\_.pdf](http://www.ofgem.gov.uk/MARKETS/WHLMKTS/COMPANDEFF/TPACCESS/Documents1/Storage%20Exemptions%20Open%20Letter%2009%20_For%20publication_.pdf)

37 The Gas Directive article 2(15) defines linepack as: “...the storage of gas by compression in gas transmission and distribution systems but not including facilities reserved for transmission system operators carrying out their functions”.

- 3.21 As third party access under article 33 extends to ancillary services, the Government will look at which services could be caught under this definition. We are considering in particular whether any other activities should be covered by the definition of gas processing facility in section 12 of the Gas Act 1995.<sup>38</sup>
- 3.22 The *third* issue is the new obligation on SSOs and natural gas undertakings to consult system users when developing their main commercial conditions under which third parties will be allowed to use their storage, linepack and other ancillary services (i.e. where the facility is not subject to an exemption).
- 3.23 **The Government proposes to impose an explicit obligation on Ofgem to define and publish criteria according to which the access regime applicable to storage facilities and linepack may be determined, as well as to make public which storage facilities, and which linepack, are offered under the negotiated access regime. The requirement on SSOs and natural gas undertakings who are providing ancillary services to consult system users when developing their main commercial conditions will be implemented through a licence or a legislative amendment as appropriate.**

### Third Party Access – transmission and distribution and LNG facilities

- 3.24 As in the Second Package (old article 18), under article 32 Member States need to ensure the implementation of a TPA system for transmission, distribution and LNG facilities.
- 3.25 **We continue to comply with these TPA requirements. However, we consider that it would be prudent to amend the Gas Act 1986 to ensure that new LNG technology located in the Gas Importation and Storage Zone<sup>39</sup> is subject to the same TPA rules as other land-based facilities. In addition, the TPA arrangements for exempt distribution undertakings will need to be considered as part of the overarching strategy following the Citiworks judgement<sup>40</sup>.**

### Exemptions for new infrastructure

- 3.26 Article 36 of the Gas Directive allows major new gas infrastructure, i.e. LNG and storage facilities and interconnectors, which meets specific conditions, to be made exempt for a defined period from the provisions of the following articles:
- unbundling (article 9);

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38 The Gas Act 1995 section 12 defines gas processing as including purifying, blending, odorising or compressing gas for introduction into a pipe-line system or conveyance to an electricity generating station, a gas storage facility or any place outside Great Britain; removing unwanted gases, or oil or water from the gas; and determining the quantity or quality of the gas.

39 The Gas Importation and Storage Zone (GISZ) Order came into force on 6th April 2009. It designates the GISZ to extend from the edge of the 12 nautical mile limit of the territorial sea to a distance of 200 nautical miles.

40 This follows the informal Citiworks Call for Evidence from exempt stakeholders.

- TPA to transmission and distribution systems, LNG and gas storage facilities (articles 32 and 33);
- TPA to upstream pipeline networks (article 34); and
- particular requirements relating to NRA approval of the terms/conditions for: connection and access to networks (including tariffs or their methodologies); provision of balancing services; and access to cross- border infrastructures (article 41(6), (8) and (10)).

3.27 The inclusion of unbundling in the list of exemptions is new in the Third Package.

3.28 The article covers LNG and storage facilities that are new as well as those where there has been a significant increase in capacity, or where modification to existing infrastructure has enabled the development of new sources of gas supply.

### Responses to the Call for Evidence

3.29 Centrica observed that exemptions for TPA under article 36 would be time limited and asked how operators would be monitored for compliance once they were no longer covered by the exemption.

3.30 Shell raised questions about how the requirement for an open season for parties seeking an exemption under article 36 would be applied. Article 36(6) paragraph 3 says:

“The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place.”

3.31 Shell felt that it was not clear how the requirement would protect the gas storage developer from having to reveal a proposed commercial investment that it might not go ahead with; guard against the developer receiving speculative bids; and provide some certainty about the level of own-use capacity.

3.32 National Grid was of the view that installations that were exempt under article 22 in the Second Package should not be required to change their status on implementation of the Third Package. Oil and Gas UK said that given National Grid’s position as GB’s monopoly TSO, its LNG facilities at Isle of Grain should be in a different category to the other LNG reception terminals.

### The Government response

3.33 The article clarifies that the exemption must be for a defined period of time. Under current legislation Ofgem can grant a TPA exemption for a limited *or* unlimited period for storage and LNG (Gas Act 1986 ss19A and 19C), and for interconnectors (Standard Licence Condition (SLC) 12 which allows the TPA obligations in SLC 10 and 11 to be suspended). This is appropriate in the case of storage as an exemption could be granted because a facility is not technically and/or economically necessary (i.e. relying on article 33 in the Directive rather than article 36), **but we intend to**

**amend the legislation for LNG to make clear that an exemption can only be granted for a defined period of time.**

- 3.34 Ofgem is already required to decide whether to award an exemption, as set out in article 36(3). The Third Package makes some additions to the requirements for Ofgem. These include making decisions on the duration of an exemption; whether to impose conditions on non-discriminatory access to the infrastructure; the content of any conditions, and the rules and mechanisms for the management and allocation of capacity. Ofgem will also require that congestion management rules include an obligation to enable unused capacity to be offered on the market and infrastructure users can trade their contracted capacities on the secondary market.
- 3.35 **The Government will amend the legislation and interconnector Licence Conditions to clarify the additional matters that Ofgem will need to take into account when assessing an exemption application.**

### **Unbundling of gas storage (including LNG storage) facilities**

- 3.36 Article 15 requires any system storage operator (SSO) that is part of a vertically integrated undertaking<sup>41</sup> (VIU) to be independent, at least in terms of its legal form, organisation and decision making, from activities that do not relate to storage, transmission and distribution.
- 3.37 Legal and operational unbundling of storage system operators is designed to improve third party access. This means that producers or suppliers can own storage businesses but the storage business must be in a separate legal entity and operate independently from the rest of the group. The requirements of article 15 apply to storage facilities that are deemed to be technically and/or economically necessary for providing efficient access to the system.

### **Responses to the Call for Evidence**

- 3.38 Respondents including National Grid and Oil and Gas UK called for greater clarity on the definition of “technically and/or economically necessary”. National Grid said that there was a risk that if unbundling measures were “overdone” costs could be incurred without any commensurate benefit to customers. E.ON said unduly onerous costs could deter investment and any burden placed on business as result of unbundling should be proportionate to their effect on the market. Shell said that unbundling measures could increase the costs of storage development.
- 3.39 Centrica supported the principle of unbundling but commented that the mechanism to carry out separation needed to be flexible and reflect changing circumstances in the market. SSE said it believed that it already met the Directive’s requirements.

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41 The Gas Directive defines ‘Vertically Integrated Undertaking’ as a natural gas undertaking or a group of natural gas undertakings where the same person or the same persons are entitled, directly or indirectly, to exercise control, and where the undertaking or group of undertakings perform at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas.

- 3.40 Respondents, including ENI, asked how unbundling would apply to facilities with TPA exemptions. Statoil, Centrica and Shell UK felt that a facility that had been granted an exemption from nTPA requirements should have the exemption extended to cover the requirements of the Third Package.
- 3.41 The Gas Storage Operators Group (GSOG) said that the development of some unconventional gas infrastructure in the UK could involve gas storage facilities being linked with production in the parent company. GSOG believe that this kind of integration could work within the Directive providing mechanisms were in place to ensure the basic requirements of article 15(2)(c) were met.
- 3.42 GSOG also said that the unbundling requirements should not be imposed on LNG terminals that store LNG on spare carriers prior to regas and on LNG that is stored as gas prior to release into the network.

### Government response

- 3.43 Companies that are vertically integrated undertakings and have storage facilities, will be affected by the requirements of this article and may be required to carry out some re-organisation of their corporate structures.
- 3.44 The storage system operator should be unbundled if it operates facilities that are deemed to be technically and/or economically necessary (this technically and/or economically necessary criteria is also used to determine whether third party access must be provided as covered in paragraph 3.14).
- 3.45 Two storage facilities would currently be affected by this interpretation of the article: Rough owned by Centrica Storage Ltd and Hornsea owned by SSE Hornsea Ltd. Storage facilities with a minor facilities exemption would not be required to comply as they are not deemed to be technically and/or economically necessary for providing efficient access to the system.
- 3.46 **The requirements in this provision could be implemented through legislation or included in a licence for gas storage operators. Whichever option is chosen will include confirmation that the unbundling requirements would only apply to SSOs that operate facilities that are deemed technically and/or economically necessary.**

### Confidentiality for TSOs, storage and / or LNG system operators

- 3.47 Article 16 places confidentiality requirements explicitly on storage system operators (even where TPA obligations do not apply), LNG system operators, and transmission system operators and owners, and builds on article 10 of the Second Package. There is new text in article 16(1) that restricts the use of commercially sensitive information in the context of a VIU. Article 16(1) also restricts the use of joint services within VIUs– e.g. joint legal services.
- 3.48 Article 16(2) extends the prohibition on the misuse of commercially sensitive information obtained from third parties with regard to access to the system to storage and/or LNG system operators. Although requirements exist on an ad hoc basis for

Rough and the Grain LNG facility it is not clear that they are sufficient, and any remaining or future facilities would not be under any such obligation.

- 3.49 **To ensure that commercially sensitive information is not disclosed by transmission, storage and LNG operators, or the transmission system owner, to the remaining parts of the same undertaking, and to prevent such information from being misused in the context of providing or negotiating access to the system, the Government proposes that the obligations in this article be included in a licence or legislation as necessary. These obligations will also apply to undertakings that are not technically and/or economically necessary.**

### Authorisation procedure

- 3.50 Article 4 covers circumstances where an authorisation (such as a licence, permission, concession, consent or approval) is required for the construction or operation of natural gas facilities. This article is similar to the Second Package but has an additional requirement to ensure that, where appropriate, authorisation procedures take account of the importance of the project for the internal energy market. Scotland and Wales have equivalent regimes that will also need to be considered in the light of these requirements.
- 3.51 The Government is reviewing criteria for the construction or operation of natural gas facilities to assess whether it is appropriate to include this additional requirement. The Government is also considering whether it would be appropriate to set out the requirement to notify the European Commission in article 4(3) in legislation.

### Designation of storage and LNG system operators

- 3.52 Article 12 does not add to the requirements of the Second Package, but now only refers to Member States designating storage and LNG facilities (transmission is now dealt with under unbundling certification – article 10).
- 3.53 However, we are considering the meaning of ‘designation’ within the context of the Citiworks judgement and the resulting impact on undertakings that are currently exempt from licensing.<sup>42</sup>
- 3.54 If we licensed storage and LNG operators, we would consider designation to be a part of that activity.

### Designation and tasks of DSOs

- 3.55 Article 24 is the same as in the Second Package and requires the designation of one or more Distribution System Operators (DSOs). **The Government’s view is that the existing system of licensing is sufficient to deem a distribution system to be designated.**

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<sup>42</sup> See paragraph 2.46.

- 3.56 For exempt undertakings in general, including exempt suppliers and generators/producers, to the extent that the Third Package requirements apply to them, we would propose the least burdensome solution that ensured that applicable DSO tasks did bite on these companies and that Ofgem did have a way of enforcing them. However, given that we need to introduce enforcement powers for the regulator (see article 41 of the Gas Directive), **for exempt undertakings we propose to set out the relevant requirements of the Third Package in legislation, and make those legislative provisions “relevant requirements” under section 28 of the Gas Act 1986. Ofgem will then, within that legislative framework, be provided with the relevant powers to gather information and enforce penalties as required.**
- 3.57 Article 25 sets out the principle tasks that DSOs are responsible for. Many of these tasks follow the requirements of the Second Package, with some additions focusing on ensuring the long-term ability to meet reasonable demand and having due regard for energy efficiency. **The new obligations will require licences to be amended (and, if necessary, legislation).**

### Amendments to the legal unbundling of DSOs

- 3.58 The legal unbundling requirements for DSOs have not changed significantly from the Second Package. **However, to ensure clarity within the GB market framework, we will confirm in licences that generation and production undertakings must be legally unbundled from distribution.** Other requirements include the need for a fully independent compliance officer to monitor the unbundling arrangements (article 26(2d)) and for VIUs not to create, through their branding, confusion between the DSO and the associated supply undertaking (article 26(3)). **DSO licences will need to be adjusted to include the reference to branding as well as the requirement for an independent compliance officer. Ofgem will need to be provided with the requisite powers to make a formal request for relevant information.**

### Tasks of transmission, storage and / or LNG operators

- 3.59 Article 13(1) sets out the tasks that transmission, storage and/or LNG operators are required to carry out. These are to:
- operate, maintain and develop under economic conditions secure, reliable and efficient transmission, storage and/or LNG facilities to secure an open market, with due regard to the environment, ensure adequate means to meet service obligations;
  - refrain from discriminating between system users;
  - provide sufficient information to any other transmission, storage and/or LNG operator to ensure that the transport and storage of gas is compatible with the secure and efficient operation of the interconnected system; and
  - provide system users with the information they need for efficient access to the system.

- 3.60 The article builds on old article 8 and includes a new requirement to secure an open market through secure, reliable and efficient transmission, storage and/or LNG facilities, as well as for TSOs to build sufficient cross-border capacity.
- 3.61 DECC considers that these additional duties are either already incorporated into Standard Licence Conditions for transmission operators or, as necessary, will need to be introduced as amendments to licences. We will also consider whether section 9 of the Gas Act 1986 should be amended to reflect these. **The tasks are not currently included in interconnector licences and proposes to amend these to reflect the obligations. For storage and LNG operators the duties would need to be placed in a licence or legislation as required.**

### Consultation Questions

<b>5</b>	<b>Should the Gas Directive requirements for storage and LNG operators be introduced through a new licence regime or by amending existing legislation? Please provide evidence of costs and benefits wherever possible.</b>
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## Gas Regulation

- 3.62 The provisions of the Gas Regulation are directly applicable to GB legislation. As the new Regulation includes some requirements that extend beyond the Second Package, Member States must have effective measures in place to ensure compliance.
- 3.63 Views on the Gas Regulation in the Call for Evidence tended to call for a light touch approach to implementation and more detail on specific issues such as enforcement.
- 3.64 National Grid said that detailed implementation should be arrived at jointly between the regulator and industry. They called for clarity on the definition of LNG storage and LNG importation facilities and believed that implementation should be achieved by amending the Gas Act. SSE, the Gas Storage Operators Group and Oil and Gas UK supported a regime operated by Ofgem that was not overly onerous for industry. Centrica said that the Regulation contained detailed and complex issues and both Centrica and EDF raised questions about how the new requirements would be enforced.
- 3.65 It is worth noting that article 1 makes clear which facilities the Regulation applies to: "This Regulation, with the exception of article 19(4), shall apply only to storage facilities falling under article 33(3) or (4) of Directive 2009/73/EC." Thus all the articles of the Regulation except for 19(4) only apply to those facilities that have been deemed technically and economically necessary.

## Articles relating to gas storage and LNG operators

- 3.66 Article 15 on third party access services concerning storage and LNG facilities is new and sets out the services that gas storage and LNG operators have to offer to the market.
- 3.67 Article 17 on principles of capacity allocation and congestion management procedures concerning storage and LNG facilities is a new requirement. Storage and LNG operators already meet some of the requirements of this article, but we do not believe that sufficient powers of enforcement exist in the current legislation.
- 3.68 Article 19 on transparency requirements is a new provision for LNG and gas storage operators to make public specific information about their facilities. We believe that the operators already maintain most if not all of this information and making it publicly available is unlikely to have significant cost implications for SSOs.
- 3.69 As mentioned above, article 19(4) applies to all gas storage and LNG operators “including those facilities exempted from third party access”. Operators are required to make public the amount of gas in each storage or LNG facility, as well as inflows, outflows and the available capacity. The information should be made available to the TSO and updated at least daily. The article also covers confidentiality where the SSO is the only user of the facility.
- 3.70 Article 20 on record keeping by system operators including LNG and storage operators is new and requires the information referred to in articles 18 and 19 and in Part 3 of Annex I to be kept at the disposal of the national authorities for five years. There is no current requirement for SSOs or LNG operators to retain specified information.
- 3.71 Article 22 on trading of capacity rights focuses on the need for standard contracts to be sufficiently harmonised to enable storage users to make a reasoned assessment of the services or products provided by different SSOs. This is also necessary for the development of secondary trading because, while SSOs would not be expected to provide identical products, customers should be able to make a reasonable comparison between the products available in the GB market.
- 3.72 Article 27 on penalties is largely unchanged from the Second Package where Member States must provide rules on the penalties applicable to infringements of the Regulation. The Third Package requires Member States to notify the Commission of any rules that do not correspond to the provisions laid down in Regulation (EC) 1775/2005<sup>43</sup>.
- 3.73 **To ensure that Ofgem have the appropriate powers to enforce the new requirements in the Regulation, the Government is proposing that express obligations are made in legislation or are included as part of a licence.**

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43 Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks. [http://www.energy.eu/directives/l\\_28920051103en00010013.pdf](http://www.energy.eu/directives/l_28920051103en00010013.pdf)

# CHAPTER 4 – ROLE OF THE NATIONAL REGULATORY AUTHORITY

- 4.1 **Articles 35-38 in the Electricity Directive and 39-43 in the Gas Directive** deal with the National Regulatory Authority. Both Government and the NRA (within the scope of its functions) are responsible for ensuring compliance with relevant EU legislation for example in relation to energy markets, security of supply and renewable energy. The requirement for regulatory independence in relation to the NRA's performance of its regulatory tasks does not deprive the Government of the ability to set the national policy framework within which the regulator works. Where strategic policy action has been put in place (e.g. in relation to energy policy objectives and expected outcomes), the NRA will continue to operate its day-to-day regulatory functions within the new broad policy framework set by Government. One way the Government can set the strategic direction is by introducing a Public Service Obligation (PSO) (please see paragraph 1.6 in Chapter 1 for more detail on PSOs).
- 4.2 We outline below the key new requirements in the Third Package and seek consultees' views on our proposals setting out how we intend to comply with these requirements (a summary of these proposals and relevant questions can be found in Annex A, "Summary of compliance with the new provisions in the Third Package"). Wherever relevant, our proposals have taken account of the responses we received recently to our "Call for Evidence" published on 1st April.

## Designation of regulatory authorities

- 4.3 Articles 35(1) of the Electricity Directive and 39(1) of the Gas Directive require Member States to designate a single national authority at national level. By way of derogation from paragraph 35(1)/39(1), article 35(3) and 39(3) 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. Articles 35(2) and 39(2) require Member States to appoint a single senior representative at Community level within the Board of Regulators of ACER (Agency for the Co-operation of Energy Regulators), but does not make provision for how that single representative will be chosen.
- 4.4 **DECC intends to designate Ofgem<sup>44</sup> as the national regulatory authority (NRA) for GB for the purposes of article 35(1)/39(1). NIAUR will be designated as the national regulatory authority for NI under article 35(3)/39(3).** Ofgem was established by section 1 of the Utilities Act 2000 as the regulator of the GB gas and electricity markets and already performs within GB many of the functions that are attributable, under the Third Package, to the NRA. Similarly, NIAUR performs these functions within Northern Ireland. **To reflect Ofgem's proposed position as the**

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<sup>44</sup> Ofgem is the Office of the Gas and Electricity Markets which supports the Gas and Electricity Markets Authority.

**GB NRA, we propose to include in either the Utilities Act 2000 or the Electricity Act 1989 and Gas Act 1986 a provision to confirm that Ofgem is the designated NRA for GB.**

- 4.5 **In terms of representation at ACER, the Government’s proposal is that, subject to consultation, this role is performed by Ofgem on behalf of the two UK regulatory authorities. In this case, the Government also considers that it would be appropriate to impose an obligation on Ofgem, when performing its representation role, to take account of the views of NIAUR. This obligation would either be reflected in the Utilities Act 2000 or the Electricity Act 1989 and Gas Act 1986.**

### **Independence of regulatory authorities**

- 4.6 Articles 35(4) of the Electricity Directive and 39(4) of the Gas Directive require Member States to guarantee the independence of the regulatory authority and to ensure that it exercises its powers impartially and transparently. Member States must also ensure that when carrying out the regulatory tasks conferred upon it by the Directives and related legislation, the regulatory authority: **a)** is legally distinct and functionally independent from any other public or private entity; **b)** ensures that its staff and the persons responsible for its management:

- i) act independently from any market interest; and
- ii) do not seek or take direct instructions from any Government or other public or private entity when carrying out the regulatory tasks.

### **Responses to the Call for Evidence**

- 4.7 Respondents agreed that Ofgem was established as the independent regulator of the GB energy markets and therefore the current arrangements broadly met the requirements of the Third Package although some administrative changes (for example in relation to Board term length) may be necessary.
- 4.8 It was also argued that Ofgem’s powers and duties are set out in legislation and as such Ofgem operates in an independent manner free from Government interference, although some argued that there should be oversight by elected politicians. Consultees also argued that as Ofgem is funded by fees collected from licensed energy companies, it has autonomy over its annual budget. They also considered the administration of environmental programmes as being distinct from Ofgem’s statutory regulatory role although they argued that the administration would need to be done in a manner that was compliant with the Third Package. In relation to environmental guidance issued by Government, consultees considered that this did not have adverse effects on Ofgem’s ability to fulfil its duties as Ofgem is only obliged to have regard to the guidance. It was also noted that the Third Package requires greater regulatory co-operation at European level and as such appropriate checks and balances would need to be put in place on regulatory powers taken to provide confidence to investors.

### **Government response**

#### **a. independence**

4.9 At an institutional level, Ofgem has been set up as a separate legal entity - a body corporate – independent of Government and industry. Within the confines of its statutory functions, it can exercise its discretion however it sees fit, subject to the framework of applicable public law. We therefore, consider that in this respect we are already compliant with the requirement for institutional independence.

4.10 In relation to the industry's role in collective licence modifications and code modifications and how this fits with the independence of the regulator, please see our analysis of article 37 below.

#### **b. impartiality**

4.11 Ofgem is bound by the Electricity Act 1989 and Gas Act 1986 principal objective 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. Finally, it must comply with general and specific EU duties of non-discrimination. Thus, as we have set out above, our current arrangements meet the general requirement of impartiality as Ofgem is legally required to take decisions based on impartial and objective criteria.

#### **c. transparency**

4.12 Ofgem is a statutory body. It must, therefore act within the scope of its powers, functions and duties. These are provided for in statute, principally the Gas Act 1986, the Electricity Act 1989, the Utilities Act 2000, the Competition Act 1998, the Enterprise Act 2002 and the Energy Act 2004, as well as arising from EU Regulations. This provides a degree of transparency.

4.13 There are a number of duties on Ofgem to be transparent. For example; (a) under section 3A (5A) of the Electricity Act 1989 (and Gas Act 1986 equivalent), Ofgem needs to have regard, when exercising its functions, to the principle of transparency; (b) general public law principles require Ofgem to consult (and give reasons) etc; (c) section 49A of the Electricity Act 1989 (and Gas Act 1986 equivalent) require Ofgem to give reasons in relation to specific decisions concerning licences.

4.14 In addition, Ofgem publishes its rules of procedure and minutes of the Authority's meetings on their website, and Ofgem holds an annual open meeting. Ofgem is under a duty (section 5 Utilities Act 2000) 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 Ofgem. The annual report includes a statement on how much Ofgem has spent that year. Finally, Ofgem 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. Ofgem's accounts are approved by the National Audit Office. We, therefore, consider that the current arrangements for transparency are compliant with this provision.

#### **d. NRA legally distinct and functionally independent from any other public or private entity when carrying out regulatory tasks**

4.15 As noted above, Ofgem is a separate legal entity. Section 1 of the Utilities Act 2000 establishes Ofgem as a body corporate for the purpose of carrying out functions and duties attributed to Ofgem including those transferred to it from the Director General of Gas Supply and the Director General of Electricity Supply under the Utilities Act. As mentioned earlier, it has discretion in the exercise of its statutory regulatory powers. Furthermore, we consider the physical and other arrangements affecting Ofgem (e.g. office space, personnel etc) are consistent with these requirements.

### Independence of NRA's staff

4.16 The Third Package places an explicit new requirement on Member States to ensure that staff employed by the regulatory authorities act independently of market interest and do not seek or take direct instructions from any Government or other public or private entity when carrying out regulatory tasks.

4.17 Although Ofgem's staff are subject to the Civil Service Code<sup>45</sup> and the Nolan Principles of Public Life<sup>46</sup>, there is no explicit rule which requires staff to act independently from market interest and prohibits them from seeking or taking direct instructions from any Government or other public or private entity when carrying out regulatory tasks. **We are therefore proposing to impose an obligation on Ofgem (to be reflected in the Utilities Act 2000 or the Electricity Act 1989 and Gas Act 1986) to ensure that all staff employed by it act independently of 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. This obligation will be without prejudice to the need to co-operate with other national authorities (e.g. competition authorities) or to general energy policy guidelines issued by the Government.**

### Autonomous decisions and budgetary autonomy

4.18 Articles 35(5)(a) and (b) and 39 (5)(a) and (b), require 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 up to seven years renewable once. Member States must ensure an appropriate rotation scheme for the board or top management.

4.19 As noted above, in addition to Ofgem being set up at an institutional level as a separate entity, we will need to ensure that in future, the Secretary of State's powers are used in a way which is compatible with the Third Package. This may cover cases for example where the Secretary of State needs to give Ofgem consent to use its powers or where the Secretary of State can direct Ofgem not to take certain actions.

4.20 In terms of annual budget allocations, in respect of its regulatory functions, Ofgem is mainly funded from licence revenues which are collected directly from licence holders. It is for Ofgem to set the level of the licence fee and to determine how these

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45 <http://www.civilservice.gov.uk/about/values/cscodex/index.aspx>

46 [http://www.public-standards.gov.uk/Library/Seven\\_principles.doc](http://www.public-standards.gov.uk/Library/Seven_principles.doc)

funds are allocated to enable it to meet its statutory duties. There is no formal role for Government in setting this budget, although Ofgem's budget is approved by Parliament following consultation with industry and others. As a Government department, Ofgem must demonstrate propriety, regularity and value for money when spending public money, and is accountable to the Public Accounts Committee, the main parliamentary watchdog on Government finance. Finally, Ofgem's accounts are audited by the Comptroller and Auditor General, who is appointed under statute and reports to Parliament. Our view is that these arrangements are already compliant with the requirements of the Directives.

## Appointments to the Board

- 4.21 Appointments to Ofgem are currently regulated by Schedule 1 to the Utilities Act 2000. This specifies a current maximum term of appointment of 5 years (it does not specify a minimum term). **The Government proposes to amend Schedule 1 to reflect the five year minimum and seven year maximum provided for in the Third Package. The current arrangements impose no limit on the number of re-appointments to Ofgem. As the Third Package does not allow for more than one renewal, Schedule 1 to the Utilities Act will need to be amended to reflect this.** In addition to the Third Package restrictions on appointments, the Government will continue to make appointments in accordance with OCPA's guidance.

## Rotation scheme

- 4.22 **The Utilities Act 2000 does not currently provide for a formal rotation scheme. The Government therefore proposes to provide for such a scheme in Schedule 1 to the Utilities Act.**

## General objectives of the regulatory authority

- 4.23 Articles 36 of the Electricity Directive and 40 of the Gas Directive require that the regulatory authority takes into account a number of objectives when it carries out its regulatory tasks.
- 4.24 The existing arrangements in the GB system are broadly compliant with this article. The effect of the principal objective and general duties of Ofgem under section 4AA of the Gas Act 1986 and section 3A of the Electricity Act 1989 is that Ofgem is required to pursue many of the objectives mentioned in this article when performing its duties and functions. However, there are some objectives specified in this article which Ofgem is not explicitly required to pursue under the current domestic arrangements.
- 4.25 Section 3D(5) of the Electricity Act 1989 and section 4B(4) of the Gas Act 1986 provide that the principal objective and general duties do not affect the obligation of Ofgem to perform or comply with any other duty or requirement by virtue of any Community obligation. This would include Ofgem's duties as designated NRA under this article. It could, therefore, be argued that the effect of this article combined with that of sections 3D(5) and 4B(4) of the Electricity and Gas Acts ensure that any gaps in the existing domestic legal framework are filled. However, we consider that greater transparency and clarity will be provided if the Electricity and Gas Acts set out the interaction between the domestic provisions (which apply both to the Secretary of

State and Ofgem) and the article 36 duties of Ofgem acting as the NRA. **We are therefore proposing to amend the Gas Act 1986 and Electricity Act 1989 so that the article 36 objectives are expressly included as matters which Ofgem must pursue when undertaking regulatory tasks.**

- 4.26 The requirement to pursue the article 36 objectives will be in addition to rather than instead of the existing principal objective and general duties, which would remain in place and continue to apply.
- 4.27 The Government's view is that all of the other matters which Ofgem currently has to have regard to in the remainder of sections 3A of the Electricity Act 1989 and 4AA of the Gas Act 1986, would continue to apply as now (subject to conflict with article 36 objectives when Ofgem is performing a regulatory task).
- 4.28 **A further duty would also be included to ensure that the reference to close consultation with other relevant national authorities in article 36 is given effect.**
- 4.29 Article 36(a) and 40(a) requires national regulatory authorities to promote in close co-operation with the Agency, regulatory authorities of other Member States and the Commission, a competitive, secure and environmentally sustainable internal market in electricity within the Community, and effective market opening for all customers and suppliers in the Community. This requirement mirrors the Second Package, except that regulatory authorities need to ensure appropriate conditions for the effective and reliable operation of electricity networks, taking into account long-term objectives.
- 4.30 Ofgem's duties already require that it promotes a competitive (see Section 3A(1B) of the Electricity Act 1989), secure (Section 3A(2) and 3A(5)(c) of the Electricity Act 1989) and environmentally sustainable (Section 3A(2)(c) and 3A(5) of the Electricity Act 1989) market within GB. However it currently has no existing specific duties towards the securing of the internal market within the Community. The reference to close co-operation with the Agency, regulatory authorities of other Member States and the Commission is not reflected in GB law. Ofgem is currently under a duty to ensure appropriate conditions for the effective and reliable operation of electricity networks taking into account long-term objectives (Section 3A(2), 3A(5)(c) and reference to existing and future customers in Section 3A(1) of the Electricity Act 1989).
- 4.31 **A duty to secure the internal market, as well as the requirements described in articles 36(b) and (c)/40(b) and (c) which are not currently reflected in GB law, for example in relation to cross-border issues, will be ensured by the amendment of the principal objective and general duties to incorporate reference to these duties under article 36(a) to (h).**

### **Duties and powers of the regulatory authority**

- 4.32 Article 37 of the Electricity Directive and 41 of the Gas Directive sets out the regulatory authority's duties and powers.
- 4.33 Ofgem currently carries out a number of these duties. We have highlighted below key new requirements and indicate where Ofgem's current duties and powers may

need to be strengthened to comply fully with the requirements of the Third Package. The details of compliance with the remainder of the duties are shown in Annex A.

- 4.34 New explicit duties in the Third Package include ensuring that undertakings comply with their obligations; that there are no cross-subsidies between transmission, distribution and supply (also in gas storage and LNG); that those operating under the unbundling models in the Third Package comply with their duties; that there is transparent access to networks and cross-border infrastructures; that the NRA consults with Transmission System Operators and, as appropriate, co-operates with other relevant national authorities when carrying out these duties.
- 4.35 In respect of specific monitoring duties, some of the new duties on the NRA are to monitor the investment plans of the Transmission System Operators; monitor network security; monitor competition and market transparency including supply prices; monitor the roles and responsibilities of the Transmission System Operators; investment in generating capacity; the implementation of safeguard measures in the event of a critical incident in the energy market; that the NRA monitors technical co-operation between Community and third-country Transmission System Operators. We need to ensure that in relation to these duties, Ofgem has the requisite information gathering powers.
- 4.36 As mentioned above, Ofgem currently carries out a number of the duties which are required under the Third Package. Where there are gaps, any new duties will need to be reflected in the GB framework. For example Ofgem carry out a number of duties in relation to Transmission System Operators but under the Third Package these will need to be extended to interconnectors. Examples of these duties relate to network security and quality of service and access to cross-border infrastructures, including the procedures for the allocation of capacity and congestion management and monitoring investment plans of the transmission system operators.
- 4.37 Article 37 (4) of the Electricity Directive and 41 (4) of the Gas Directive places a requirement on Member States to ensure that regulatory authorities are granted the powers enabling them to carry out these duties in an efficient and expeditious manner. In particular, the Third Package requires that in order to carry out these duties, the regulatory authority will be able to issue binding decisions on undertakings, carry out investigations into the functioning of the markets, promote effective competition and ensure the proper functioning of the market by being able to, for example, require relevant information from undertakings, carry out investigations and impose penalties.
- 4.38 Ofgem has general powers to monitor the market under section 47 of the Electricity Act 1989 and section 34 of the Gas Act 1986. The Government will ensure that Ofgem has adequate information gathering powers for the fulfilment of any new specific duties under the Third Package, as Ofgem's current information gathering powers are limited to compelling the provision of information in certain circumstances (e.g where Ofgem suspects a breach of licence or when considering whether to make a market investigation reference to the Competition Commission). **We therefore intend to make changes to the Electricity Act 1989 and the Gas Act 1986 and licences to ensure that Ofgem has the requisite monitoring duties and information gathering powers.** For more information on these areas, please see the table in Annex A.

## Enforcement

4.39 Article 37(4)(d) requires the NRA to impose effective, proportionate and dissuasive penalties on undertakings not complying with their obligations under the Third Package. **To ensure that Ofgem has the requisite powers, we propose to make all relevant Third Package requirements ‘Relevant Conditions’ or ‘Relevant Requirements’ under section 25 of the Electricity Act 1989 and section 28 of the Gas Act 1986.** This will mean that the information gathering and enforcement provisions set out in these Acts will apply and will allow Ofgem to ensure compliance. In respect of enforcing the requirements of the Third Package on exempt undertakings, the Government has set out its proposal in Chapter 2 (“Transmission and Distribution Networks”).

## Implementing binding decisions

4.40 Article 37(1)(d) in the Electricity Directive and 41(1)(d) in the Gas Directive places an additional duty on the regulatory authority to comply with, and implement any relevant legally binding decisions of the Agency and of the Commission. Article 37(17) and 41(17) requires Member States to ensure that suitable mechanisms exist at national level under which a party affected by a decision of a regulatory authority has a right of appeal to a body independent of the parties involved and of any Government.

4.41 In particular, Member States must ensure that:

- NRAs are given duties to implement and comply with decisions of the Agency for the Co-operation of Energy Regulators (ACER) and the Commission;
- NRAs are granted “enabling powers in order to carry out regulatory tasks in an efficient and expeditious manner”; and
- a right of appeal is available for any party affected by the NRA’s proposals.

4.42 In view of these new requirements which set out a clear expectation that the NRA will be able to make decisions independently and will be able to implement them in an efficient and expeditious manner, the Government’s view is that the current collective licence modification process does not provide an effective and expeditious way for Ofgem to exercise its functions in the way envisaged by the Third Package, for the following reasons:

- Member States must ensure that NRAs are granted “enabling powers in order to carry out regulatory tasks in an efficient and expeditious manner”. It is questionable that the collective objection process provides an effective and expeditious way for Ofgem to exercise its functions. In particular the implementation of Commission’s/Agency’s and other regulatory decisions can be significantly delayed by objections raised by some parties and, at Ofgem’s discretion, subsequent reference to the Competition Commission. The public interest test currently applied by the Competition Commission is unlikely to be appropriate to these decisions.
- Finally, the Third Package requires a suitable appeal mechanism to be available to any party affected by the NRA’s proposals. Under the current arrangements, if

20% of affected licensees object or affected licensees who together represent 20% of market share object, Ofgem cannot implement the changes without first making a successful modification reference to the Competition Commission. Due to its limited scope, it is our view that this arrangement falls short of the expectation as not all licensees holding the same type of licence have the same right of appeal (under the current arrangements a single licensee with a 20% share of the market or number of licensees of a particular type can automatically trigger a fact-based appeal, but the same rights are not available to licensees with smaller shares).

**4.43 To comply with these new requirements, the Government therefore proposes to:**

- **replace the current collective licence modification process with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body. This would reinforce Ofgem’s power to make decisions in line with the EU Third Package, and give all licensees of the relevant type the same right of appeal. Ofgem’s decisions, as now, would need to be reached following consultation and subject to the principles of better regulation. This proposal would include all Ofgem licence modification decisions and not only those covered by the Third Package. As is the current position, third parties affected by the decision would have the right to bring a judicial review.**
- **allow Ofgem to initiate code modifications where they are essential for the implementation of ACER or Commission decisions. The usual industry process will then take effect including provision for industry parties to raise alternative approaches with Ofgem reaching a final decision subject to appeal. However any such process by the industry would need to respect the timescales set by ACER or the Commission to implementing a decision.**

### **Confidentiality and scrutiny of NRA decisions**

4.44 Articles 37(14) of the Electricity Directive and 41(14) of the Gas Directive require Member States to ensure that appropriate measures are taken, including administrative action or criminal proceedings, against natural or legal persons responsible, respecting confidentiality rules. The existing confidentiality rules at section 105 Utilities Act 2000 and Part 9 of the Enterprise Act contain enforcement provisions. Moreover, action can be brought against Ofgem for failure to comply with the general restrictions on publication of information and advice at section 48 Electricity Act 1989. Where new confidentiality rules are proposed in order to transpose the Third Package e.g. in relation to NRAs cooperating with each other and the Agency and exchanging information for the fulfilment of their tasks under the Directives, as set out in article 38 of the Electricity Directive and 42 of the Gas Directive, we will need to ensure that appropriate enforcement measures are in place.

4.45 Article 37(16) and 41(16) requires that decisions taken by regulatory authorities shall be fully reasoned and justified to allow for judicial review. The decisions shall be available to the public while preserving the confidentiality of commercially sensitive information. As set out above, Ofgem consults when developing decisions (including

the development of its corporate strategy). In addition, Ofgem publishes the minutes of Authority meetings on its website, and the Authority holds an annual open meeting. It is also bound by general public law requirements and so must demonstrate that it is acting reasonably, by giving reasons for its decisions. Section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986 also impose requirements on Ofgem to issue a notice of reasons in relation to various decisions concerning licences. We are of the view that the combination of the provisions referred above and Ofgem's common law duties is sufficient.

## Complaints to the NRA

- 4.46 Article 37(11) of the Electricity Directive and 41(11) of the Gas Directive extends the scope of complaints that may be made to the NRA against a Transmission or Distribution System Operator.
- 4.47 **The Government proposes to amend the dispute resolution procedures in the Electricity Act 1989 and Gas Act 1986 in order to extend the scope of complaints that can be made against Transmission System and Distribution System Operators and to ensure procedures are in place in respect of LNG and storage system operators.**

## Annual reporting on fulfilment of its duties

- 4.48 Article 37 (1) (e) of the Electricity Directive and 41(1) (e) of the Gas Directive, places a duty on the regulatory authority to report annually on its activity and the fulfilment of its duties to the relevant authorities of the Member States, the Agency and the Commission. Such reports shall cover the steps taken and the results obtained as regards each of the tasks listed in this article.
- 4.49 This is, in some respects, a new requirement on Ofgem. Ofgem is currently obliged, by section 5 (1) of the Utilities Act 2000 to report annually to the Secretary of State on its activities. **The Government proposes to amend section 5 (1) to ensure Ofgem also reports annually to the Commission and ACER.**

## Regulatory regime for cross-border issues

- 4.50 Article 38 of the Electricity Directive and 42 of the Gas Directive sets out the regulatory regime for cross-border issues. Article 38 (1) of the Electricity Directive and 42 (1) of the Gas Directive places a requirement on regulatory authorities to closely consult and co-operate with each other and provide each other and the Agency with any information necessary for the fulfilment of their tasks under the Directives. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.
- 4.51 The obligation to consult and co-operate with other NRAs and the Agency is similar to the requirement in the Second Package for co-operation with other NRAs and the Commission. However, the Third Package sets out much greater detail on specific matters for co-operation in articles 6, 36 and 38(2), and these will need to be incorporated into domestic law as specific regulatory tasks. In this context, we consider that a general duty to cooperate and consult with other NRAs and the Agency in the performance of the Third Package regulatory tasks should also be

given effect in national law. In addition, the requirement to share information and to respect the confidentiality requirements of other NRAs and the Agency is a new provision which confers rights on individuals in respect of confidentiality when the NRA shares information with other NRAs and the Agency for the fulfilment of a regulatory task. **We therefore propose to provide Ofgem with a duty to share information, as necessary for the fulfilment of its regulatory tasks, with other NRAs and the Agency, and to hold information received from other NRAs or the Agency in pursuance of regulatory tasks with the appropriate level of confidence.**

- 4.52 Article 38(2) of the Electricity Directive and 42(2) of the Gas Directive places a number of requirements on regulatory authorities to co-operate with each other at least at regional level to manage the network, promote joint electricity/gas exchanges, allocate cross-border and interconnection capacity and co-ordinate the development of all network codes and rules governing the management of congestion. These actions shall be carried out in close co-operation with other relevant national authorities and without prejudice to their specific competencies.
- 4.53 Article 38 (2) (a) requires the NRA to foster the creation of operational arrangements in order to enable an optimal management of the network, promote joint electricity exchanges and the allocation of cross-border capacity. In addition the NRA is required to enable an adequate level of interconnection capacity, including through new interconnection, within the region and between regions to allow for development of effective competition and improvement of security of supply, without discriminating between supply undertakings in different Member States.
- 4.54 **These requirements are closely linked with the requirements for NRAs set out in article 6 and aspects of the objectives set out in article 36, and we propose to deal with the common aspects together.**
- 4.55 Article 38(2)(b) places a requirement on the NRA to co-ordinate the development of all network codes for the relevant transmission system operators and other market actors. This requirement corresponds to the Agency's duty under article 6(2) to co-operate with NRAs and TSOs to ensure compatibility of regulatory frameworks between the regions. **We intend to make provision in national law to give effect to Ofgem's duty under this article 38(2)(b), and to ensure that it is empowered to engage with the Agency under article 6(2).**
- 4.56 Article 38 (2) (c) requires the NRA to co-ordinate the development of the rules governing the management of congestion.
- 4.57 This requirement also corresponds to the Agency's duty to cooperate with NRAs and TSOs under article 6(2), and with the obligation on Member States under article 6(3) to ensure that TSOs have integrated systems at regional level for capacity allocation and checking the security of the network. It is also linked to aspects of the NRAs objectives in article 36(a) and (c). **Again, we intend to make provision in national law to give effect to article 38(2)(c), which will also help ensure that Ofgem is empowered to engage with the Agency under article 6(2).**
- 4.58 Article 38 (3) sets out that the NRAs shall have the right to enter into cooperative arrangements with each other to foster regulatory co-operation.

- 4.59 Our existing arrangements meet this requirement. Ofgem has the power under Schedule 1 to the Utilities Act 2000 to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions. This would include entering into arrangements with other NRAs.
- 4.60 Article 38 (4) sets out that the actions referred to in paragraph 38 (2) shall be carried out, as appropriate, in close consultation with other relevant national authorities and without prejudice to their specific competencies.
- 4.61 We have not identified any UK public bodies whose responsibilities and interests are likely to be routinely affected by Ofgem’s regional co-operation activities. In any specific cases where an activity involves another regulatory body’s area of competence, Ofgem will of course need to ensure that existing UK law regarding that body’s powers and duties is respected.
- 4.62 This is a new requirement, setting out certain matters upon which NRAs are required to cooperate *at least* at a regional level. **We propose to transpose this requirement by placing a statutory duty on Ofgem to co-operate on these matters with other NRAs in any region which is: (i) identified by the Commission under article 12(3) of the Electricity Regulation (714/2009), (ii) includes the United Kingdom. We intend that the implementation will leave it open to Ofgem to co-operate in other regions not specified in article 12(3) of the Electricity Regulation, as appropriate.** Some of the matters listed in article 38(2) have a close link with obligations set out in articles 6, 36 and 37 of this Directive.

## Consultation Questions

### 6 Implementing binding decisions

**For the reasons we have set out, the Government proposes to replace the current collective licence modification objection arrangements with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body. This would reinforce Ofgem’s power to make decisions in accordance with their powers and duties under the Third Package, and would give all licensees the same right of appeal. Ofgem’s decisions, as now, would need to be reached following consultation and subject to the principles of better regulation. This proposal would include all Ofgem licence modification decisions and not only those covered by the Third Package. We would be grateful for your views on these proposals.**

# CHAPTER 5 – CROSS BORDER CO-OPERATION

- 5.1 The Third Package continues the development of the European internal energy market, which has been driven by the need to improve integration across the Community and encourage cross-border trade. As a result, the UK and other Member States will benefit from increasingly open markets leading to greater consumer choice and a strengthening of supply security. Building on the Second Package, the Third Package sets out for the first time how Member States and national regulatory authorities (NRAs) should promote regional co-operation and strengthen the links between markets. It also introduces ACER, the Agency for the Co-operation of Energy Regulators.

## Regional co-operation

- 5.2 Article 6 of the Electricity Directive<sup>47</sup> is titled ‘Promotion of regional co-operation’ and sets out how Member States will work together, both between governments and between regulatory authorities, for the purpose of integrating national markets. Article 6(1) also specifies that Member States (or where they have provided for this, the NRA) should promote and facilitate the co-operation of Transmission System Operators (TSOs) at a regional level, something that will be facilitated by the new electricity and gas European Network of Transmission System Operator (ENTSO) groups (see section on ENTSOs in Chapter 2 “Transmission and Distribution Networks”) and the new duties imposed on the NRA (see analysis of article 38 in Chapter 4 “The Role of the National Regulatory Authority”). ACER, described in more detail in the following section, also has a role in helping to ensure the compatibility of regulatory frameworks between regions and, where appropriate, making recommendations on any areas where it suggests there might be imposition of binding rules to the Commission (article 6(2)). Ofgem will also have a duty to engage with ACER in this respect (see relevant analysis of article 38/42 in Chapter 4).
- 5.3 GB currently complies with these requirements through the ‘regional initiatives’, which cover both electricity and gas. Also involving Member State governments, these were launched by the European regulators in 2006 with the aim of identifying and removing barriers to trade in specific regions, as a stepping stone towards a single energy market. On electricity the EU is divided into 7 regions with the UK being part of the France, UK and Ireland region. On gas there are three regions with the UK part of the North West region, together with Belgium, France, Netherlands, Germany, Denmark, Sweden and Ireland. Each regional initiative decides the key issues to be addressed in the region, for example transparency, access to interconnectors, co-operation and co-ordination of regulators, balancing and interoperability.

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<sup>47</sup> This is the same as Article 7 in the Gas Directive.

- 5.4 Article 6(3) requires Member States to ensure that TSOs have one or more integrated system(s) at a regional level that cover two or more Member States for capacity allocation and for checking network security. The aim of this provision is to move over time towards a common market model in the regions so that they begin to operate more and more as one gas market. This specific requirement of the Third Package is currently being addressed through the regional and EU-level discussions between the UK and other Member States, for example on day-ahead market coupling in electricity. Once the details of the market models have been agreed they will be enshrined in a technical code. **To meet the requirements of the Directive we intend to introduce a Licence Condition ensuring continued TSO involvement in the establishment of these integrated systems.**
- 5.5 Article 6(4) describes a situation where vertically integrated TSOs may participate in a joint undertaking established for the promotion of regional co-operation. By definition this would relate to TSOs that have secured a derogation from full unbundling (see our analysis in Chapter 2 “Transmission and Distribution Networks”). Such an undertaking would need to establish a compliance programme that must be approved by ACER and be independently monitored by the compliance officers of the vertically integrated TSOs. **The Government will provide for this potential scenario, and the associated compliance programme requirements, through an amendment to licences.**
- 5.6 Article 6 of the Gas Directive is also new and describes the concept of ‘regional solidarity’. In order to safeguard security of supply, article 6(1) requires Member States to cooperate in order to promote regional and bilateral solidarity. Article 6(2) goes on to explain that scenarios covered by such co-operation would be those that have the potential to cause short-term disruption. Co-operation might include the co-ordination of national emergency measures, development and upgrading of interconnectors and having in place methods for mutual assistance. Article 6(3) requires the Commission and other Member States to be kept informed of such co-operation.
- 5.7 The GB arrangements comply with this provision by means of its solidarity arrangements with the Republic of Ireland<sup>48</sup>, and the Commission has been made aware of these. Arrangements are kept under review to ensure that they both meet the need to manage emergencies effectively and that the customers in the different countries are not disadvantaged relative to each other.

### The Agency for Co-operation of Energy Regulators (ACER)

- 5.8 In order to fully develop the internal energy market the Commission had identified the need to improve the regulatory framework at Community level<sup>49</sup>. To help achieve this, the Third Package establishes a new Agency for the Co-operation of Energy Regulators (ACER). This is detailed in the Regulation (EC) No 713/2009, which is already in force.

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48 Within the UK, GB also has arrangements with Northern Ireland.

49 ‘An Energy Policy for Europe’, European Commission, 10 January 2007.

- 5.9 ACER has been set up to promote security of supply and its main role will be to oversee cross-border co-operation for gas and electricity transmission between Member States. ACER is not intended as a substitute for national regulators nor as a single EU Regulator, but is able to make decisions on some cross-border issues.
- 5.10 The specific tasks of ACER will include complementing and co-ordinating the work of the NRAs as necessary, participating in the creation of European Network Codes with the two ENTSOs, taking decisions where the NRAs have not been able to agree a way forward on terms and conditions for access to networks within a specified timeframe, and providing advice on various energy related issues to the European Commission and NRAs.
- 5.11 The Third Package obliges Member States to appoint one particular regulatory authority for the purposes of representation and contact at ACER (article 14 of the ACER Regulation). As mentioned in Chapter 4, our proposal is that this role is given to Ofgem for the UK, taking account of the views of the Northern Ireland regulator (NIAUR). ACER held its first meeting in May 2010.

### Consultation Questions

<b>7</b>	<b>Do you have any views or concerns with how we intend to introduce the regional co-operation elements of the Third Package?</b>
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## Annex A - Summary of compliance with the new provisions in the Third Package

Article number <sup>50</sup>	Already compliant?	If compliant how?	If not compliant, what action is needed?
<b>1– Subject Matter and Scope</b>	Yes	In both Directives, this article describes the content of the Third Package.  Compared to the Second Package, the Gas Directive now requires that the provisions are applied to biogas and gas from biomass “in a non-discriminatory way”. This is already the case in GB.	
<b>2 - Definitions</b>	Yes	Revised definitions and new definitions have been taken into account as part of our analysis and will be reflected in the subsequent implementation of the Third package requirements.	
<b>3 - Public Service Obligations and Customer Protection</b>  (1- 2)	Yes	See paragraph 1.6 for our approach to PSOs.	
<b>3(7) ED</b> <b>3 (3) GD</b>	Yes	See paragraph 1.32 for definition of vulnerable customers and ensuring rights are applied.	
<b>(3) ED only</b>	Yes	See paragraphs 1.59-1.60 for arrangements regarding non-discriminatory pricing.	

<sup>50</sup> Article numbers are for both the Electricity and Gas Directives, unless otherwise specified.

<b>3(8) ED 3 (4) GD</b>	Yes	See paragraphs 1.36-1.38 for arrangements regarding energy efficiency and national energy plans.	
<b>3(4) ED 3 (5) GD</b>	Yes	See paragraph 1.8 for arrangements regarding supply from other Member States.	
<b>3(5) (a) ED 3(6) (a) GD</b>	No		See paragraphs 1.13-1.21 for proposal regarding switching arrangements.
<b>3 (5) (b) ED 3 (6) (b) GD</b>	Yes	See paragraphs 1.26-1.30 for arrangements regarding consumption data.	
<b>3 (11) ED 3 (8) GD</b>	Yes	See paragraphs 1.36-1.38 for arrangements regarding energy efficiency and national energy plans.	
<b>3 (12) &amp; 3(13) ED 3 (9) GD</b>	Yes	See paragraphs 1.44-1.45 for arrangements regarding a single point of contact and an independent complaints mechanism.	
<b>3 (9) (a) &amp; (c) ED only</b>	In parts		See paragraphs 1.40-1.42 for arrangements regarding consumer rights in relation to dispute settlement.
<b>3(16) ED 3 (12) GD</b>	No		See paragraph 1.48 for proposals regarding the availability of the Energy Consumer checklist.
<b>ANNEX 1 Paragraph 1(a)</b>	Yes	See paragraph 1.56 for notification of contractual terms.	
<b>ANNEX 1 Paragraph 1(b)</b>	Yes	See paragraphs 1.57 for notification of changes to contractual conditions.	
<b>ANNEX 1 Paragraph 1(d)</b>	Yes	See paragraphs 1.59-1.60 regarding non-discriminatory pricing, including for pre-payment meters and non-contractual barriers.	
<b>ANNEX 1 Paragraph 1 (f)</b>	Yes	See paragraph 1.62 for arrangements regarding standards of service.	
<b>ANNEX 1 Paragraph 1(h)</b>	Yes	See paragraphs 1.26-1.30 for arrangements regarding consumption	

		data.	
<b>ANNEX 1 Paragraph 1 (i)</b>	Yes	See paragraphs 1.26-1.30 for arrangements regarding consumption data.	
<b>ANNEX 1 Paragraph 1 (j)</b>	No		See paragraph 1.65 for proposals regarding final closure account.
<b>ANNEX 1 Paragraph 2</b>	Yes	See paragraph 1.67 for arrangements regarding smart meters.	
<b>4 GD only Authorisation Procedure</b>	In Part		See paragraph 3.51 for proposals for authorising the construction or operation of natural gas facilities.
<b>6 (1-4) GD only  Regional Solidarity</b>	Yes	See paragraphs 5.6-5.7 regarding the arrangements that are already in place to ensure regional solidarity with regard to gas supplies.  Article 6(4) is for the Commission.	
<b>6 ED  7 GD  (1-4) Promotion of Regional Co- operation</b>	Yes	See paragraphs 5.2 – 5.5 regarding the arrangements that are already in place to promote regional co-operation.	
<b>5 ED 8 GD Technical Rules</b>	In Part	ED: The Electricity Safety, Quality and Continuity Regulations 2002, the Grid and Distribution Codes and some Standard Licence Conditions.  GD: The technical safety criteria and rules (e.g. the Gas Safety Management Regulations 1996, the Gas (Installation and Use) Regulations 1998, the gas transporter Licence Conditions and	Changes to interconnector licences may be required so that Ofgem can ensure that interconnector operators and National Grid Gas on technical rules, continue to comply with any recommendations by ACER (which are legally binding).

		<p>the Uniform Network Code) are publicly available.</p> <p>We will inform the Commission of the existing rules (including those for interconnectors) as part of the transposition documents.</p>	
<b>7 (1-4) ED only Authorisation Procedure for new capacity</b>	Yes	We are compliant with 7(3) through 2 Planning Policy Statements - PPS1 Supplement and PPS22.	
<b>8 (1-5) ED only Tendering for New Capacity</b>	Yes	This is a largely permissive provision. The Government does not consider that legislation on implementation is required.	
<b>9 (1-12) Unbundling of Transmission Systems and Transmission System Operators</b>	No		<p>See paragraphs 2.4 -2.17 regarding transmission unbundling.</p> <p>Although not currently applicable, reference will be made to the availability of articles 9(5) and 9(6) in legislation.</p> <p>Articles 9(11) and 9(12) will be met through the implementation of unbundling.</p>
<b>10 (1-8) (Also A3 of the Electricity and Gas Regulations) Designation and certification of transmission system operators</b>	No		See paragraphs 2.18 – 2.21 regarding the regulator's certification process and paragraphs 4.45 and 4.45 in Chapter 4. We will need to ensure that appropriate enforcement measures are in place.
<b>11 (1-11) Certification in relation to third countries</b>	No		<p>See paragraphs 2.22 - 2.25 regarding the Third Country certification process.</p> <p>Articles 11(7) and 11(10) are</p>

			<p>not for the domestic authorities so do not need implementing.</p> <p>Article 11(9) ensures that existing emergency powers in national legislation continue to be available. Therefore, there is no need to implement.</p> <p>Article 11(12) is in relation to a derogation that is not applicable to GB.</p>
<b>12 (a-h) ED only Tasks of transmission system operators</b>	In Part		<p>See paragraph 2.26 – 2.27. Some licence changes may be necessary.</p>
<b>13 (1-5) GD only Tasks of Transmission, storage and LNG operators</b>	In Part		<p>See paragraph 3.61 on tasks for transmission, storage and LNG system operators including interconnector operators.</p>
<b>13 (1-4) ED 14 (1-6) GD Independent system operators</b>	No		<p>See paragraphs 2.14-2.17 regarding the Independent System Operator (ISO) model.</p>
<b>14 (1-3) ED 15 (1-3) GD Unbundling of transmission system owners and storage system operators for gas.</b>	No		<p>The requirement for legal unbundling when applying the ISO model will need to be referenced with the legislation. The detail will be addressed through the certification process and obligations recorded within the TSO licence.</p> <p>See paragraph 3.46 for proposals on TSO and SSO unbundling.</p>
<b>15 (1-7) ED only Dispatching</b>	Yes	See paragraph 2.52	

<b>and Balancing</b>			
<b>16 (1-3) Confidentiality for transmission system operators</b>	In Part		ED: Some licence changes may be necessary see paragraphs 2.28 – 2.30.  GD: Also see paragraph 3.49 for proposals on confidentiality in the gas chapter.
<b>17-23 Independent Transmission Operator (ITO)</b>	No		See paragraphs 2.14-2.17 regarding the Independent Transmission Operator (ITO) model.
<b>25 ED (1-7) GD (1-5) Tasks of distribution system operators</b>	In Part		See paragraph 2.41 for consideration of treatment of licence exempt distribution networks.  See paragraph 3.57 for proposals on tasks for DSOs.
<b>26 (1-4) Unbundling of distribution system operators</b>	In Part		As described in paragraphs 2.43 – 2.45, the GB largely meets these requirements, but there are minor changes to be addressed within the licences. These will include the clarification within the regulation that, as they are licensed, DSOs must be legally unbundled from generation and production.
<b>28 (1-4) Closed distribution systems</b>	Yes	Technically compliant, but consideration being given to if and how exemptions for closed distribution system could be useful in the UK.	
<b>29 Combined Operator</b>	Yes	This allows the joint operation of transmission and distribution as long as the operator meets the specified unbundling requirements. We consider that this will	

		<p>apply to all derogations from unbundling, including the article 9(9) model that is a derogation of article 9(1).</p> <p>Confirmation of compliance is dependent on the unbundling certification process, but we do not need to implement through regulation or legislation.</p>	
<p><b>31 ED (1-4) GD (1-6)</b></p> <p><b>Unbundling of accounts</b></p>	No		<p>As described in paragraphs 2.53 – 2.54, some elements of these requirements may need clarifying.</p>
<p><b>33 (1-3) GD only</b></p> <p><b>Access to storage</b></p>	No		<p>See paragraph 3.23 for proposals on access to storage.</p>
<p><b>36 (1-10) GD only</b></p> <p><b>New Infrastructure</b></p>	No		<p>See paragraphs 3.33-3.35 on proposals for new infrastructure.</p>
<p><b>34 (1-5) ED</b></p> <p><b>38 (1-3) GD</b></p> <p><b>Direct lines</b></p>	In Part		<p>See paragraph 2.46 – consideration of treatment of licence exempt distribution networks.</p>
<p><b>35 ED</b></p> <p><b>39 GD</b></p> <p><b>Designation and independence of regulatory authorities (1)</b></p>	No		<p>See paragraphs 4.4 and 4.5 for proposals about designating the NRA.</p>
<p><b>35 (2) ED</b></p> <p><b>39 (2) GD</b></p>	No		<p>See paragraph 4.5 for proposals about representation at ACER.</p>
<p><b>35 (3) ED</b></p> <p><b>39 (3) GD</b></p>	No		<p>See paragraph 4.5 for proposals about the use of derogation.</p>
<p><b>35 (4) ED</b></p> <p><b>39 (4) GD</b></p>	Yes	<p>See paragraphs 4.9 - 4.15 - Ofgem was set up as a separate legal entity.</p>	

<b>35 (4) (a) ED</b> <b>39 (4) (a) GD</b>	Yes	See paragraphs 4.9 - 4.15 - Ofgem was set up as a separate legal entity.	
<b>35 (4) (b) ED</b> <b>39 (4) (b) GD</b>	In Part		See paragraph 4.17 for proposal regarding independence of staff.
<b>35 (5) (a) ED</b> <b>39 (5) (a) GD</b>	Yes	See paragraphs 4.19-4.20-regarding autonomous decisions and budgetary autonomy.	
<b>35 (5) (b) ED</b> <b>39 (5) (b) GD</b>	No		See paragraph 4.21 for proposals regarding appointments to Ofgem's board.
<b>36 ED</b> <b>40 GD</b> <b>General objectives of the regulatory authority</b>	In Part		See paragraph 4.25 for proposals regarding a new duty on Ofgem to incorporate duties towards the securing of internal market within the Community.
<b>36 (b) ED</b> <b>40 (b) GD</b>	In Part		See paragraphs 4.25-4.31 for proposals regarding a new duty on Ofgem to incorporate duties towards the securing of internal market within the Community.
<b>36 (c) ED</b> <b>40 (c) GD</b>	In Part		See paragraphs 4.25-4.31 for proposals regarding a new duty on Ofgem to incorporate duties towards the securing of internal market within the Community.
<b>36 (d) ED</b> <b>40 (d) GD</b>	In Part		See paragraphs 4.25-4.31 for proposals regarding a new duty on Ofgem to incorporate duties towards the securing of internal market within the Community.
<b>36 (e) ED</b> <b>40 (e) GD</b>	In Part		See paragraphs 4.25-4.31 for proposals regarding a new duty on Ofgem to incorporate duties towards the securing of internal market within the Community.
<b>36 (f) ED</b> <b>40 (f) GD</b>	In Part		See paragraphs 4.25-4.31 for proposals regarding a new duty on Ofgem to incorporate duties towards the securing of internal market within the Community.

<b>36 (g) ED 40 (g) GD</b>	In Part		See paragraphs 4.25-4.31 for proposals regarding a new duty on Ofgem to incorporate duties towards the securing of internal market within the Community.
<b>36 (h) ED 40 (h) GD</b>	In Part		See paragraphs 4.25-4.31 for proposals regarding a new duty on Ofgem to incorporate duties towards the securing of internal market within the Community.
<b>37 ED 41 GD Duties and powers of the regulatory authority  (1) (b)</b>	In Part		Amend the Electricity and Gas Acts to make all relevant Third Package requirements “relevant conditions” or “relevant requirements”.
<b>37 (1) (c) ED 41 (1) (c) D</b>	No		New duty on Ofgem (see implementation of article 36).
<b>37 (1) (d) ED 41 (1) (d) GD</b>	No		Amend the Electricity and Gas Acts or the Utilities Act to give Ofgem a duty to implement/comply with binding decisions of the Commission/Agency.
<b>37 (1) (e) ED 41 (1) (e) GD</b>	No		See paragraph 4.49 for proposal regarding annual reporting
<b>37 (1) (f) ED 41 (1) (f) GD</b>	In Part		Changes to section 25 of Electricity Act 1989 and section 28 of Gas Act regarding cross-subsidies.
<b>37 (1) (g) ED 41 (1) (g) GD</b>	In Part		New provisions will need to cover interconnectors.
<b>37(1) (h) ED 41 (1) (h) GD</b>	In Part		New provisions will need to cover interconnectors.
<b>37 (1) (i) ED 41 (1) (i) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and Licence Conditions to ensure Ofgem has requisite monitoring duties and information gathering powers.
<b>37 (1) (j) ED 41 (1) (j) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and Licence Conditions to ensure Ofgem has requisite

			monitoring duties and information gathering powers.
<b>37 (1) (k) ED</b> <b>41 (1) (k) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and Licence Conditions to ensure Ofgem has requisite monitoring duties and information gathering powers.
<b>37 (1) (l) ED</b> <b>41 (1) (l) GD</b>			Compliant as Ofgem has relevant duties.
<b>37 (1) (n) ED</b> <b>41 (1) (n) GD</b>	Yes	Ofgem's principal duty is to protect the interests of existing and future consumers. For proposal on exempt undertakings, see paragraph 2.41 in Chapter 2, "Transmission and Distribution Networks".	
<b>37 (1) (o) ED</b> <b>41 (1) (o) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and Licence Conditions to ensure Ofgem has requisite monitoring duties and information gathering powers.
<b>37 (1) (p) ED</b> <b>41 (1) (p) GD</b>	In Part		See paragraphs 1.26-1.30 in Chapter 1, "Consumer Protection".
<b>37 (1) (q) ED</b> <b>41 (1) (q) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and Licence Conditions to ensure Ofgem has requisite monitoring duties and information gathering powers.
<b>37 (1) (r) ED</b> <b>41 (1) (r) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and Licence Conditions to ensure Ofgem has requisite monitoring duties and information gathering powers.
<b>37 (1) (s) ED</b> <b>41 (1) (s) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and Licence Conditions to ensure Ofgem has requisite monitoring duties and information gathering powers.
<b>37 (1) (t) ED</b> <b>41 (1) (t) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and Licence Conditions to ensure Ofgem has requisite monitoring duties and information gathering powers.
<b>37 (1) (u) ED</b>	In Part		New requirements would need

<b>41 (1) (u) GD</b>			to cover interconnectors.
<b>37 (2) ED 41 (2) GD</b>	In Part		Ofgem has a public duty to consult but imposing a new specific duty in respect of TSOs.
<b>37 (3) (a) ED 41 (3) (a) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37(3) (b) ED 41 (3) (b) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (3) (c ) ED 41 (3) (c) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (3) (d) ED 41 (3) (d) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (3) (e) ED 41 (3) (e) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK
<b>37 (3) (f) ED 41 (3) (f) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (4) (a) ED 41 (4) (a) GD</b>			See paragraphs 4.40 and 4.43 for proposals regarding binding decisions.
<b>37 (4) (b) ED 41 (4) (b) GD</b>	Yes	Ofgem has powers to conduct investigations under Part 4 of the Enterprise Act. Ofgem co-operates with other competition authorities under the Competition Act 1998.	
<b>37 (4) (c) ED 41 (4) (c) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and Licence Conditions to ensure Ofgem has requisite information gathering powers.
<b>37 (4) (d) ED 41 (4) (d) GD</b>	In Part		Amend the Electricity and Gas Acts or the Utilities Act to give Ofgem a duty to implement/comply with binding decisions of the Commission/Agency.
<b>37 (4) (e) ED 41 (4) (e) GD</b>	In Part		Changes to Electricity Act 1989 and Gas Act 1986 and licence conditions to ensure Ofgem has requisite information gathering powers.
<b>37 (5) (a) ED</b>	In Part		Depends on which unbundling models will be adopted in the UK.

<b>41 (5) (a) GD</b>			
<b>37 (5) (b) ED 41 (5) (b) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (5) (c) ED 41 (5) (c) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (5) (d) ED 41 (5) (d) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (5) (e) ED 41 (5) (e) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (5) (f) ED 41 (5) (f) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (5) (g) ED 41 (5) (g) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (5) (h) ED 41 (5) (h) GD</b>	In Part		Depends on which unbundling models will be adopted in the UK.
<b>37 (6) (b) ED 41 (6) (b) GD</b>	In Part		Minor amendments may be needed to relevant licence conditions.
<b>37 (6) (c) ED 41 (6) (c) GD</b>	In Part		Requirement will need to cover interconnectors.
<b>37 (7) ED 41 (7) GD</b>	In Part		Requirement will need to cover interconnectors.
<b>37 (8) ED 41 (8) GD</b>	Yes	Section 9 of Electricity Act 1989 and Gas Act 1986 and relevant electricity and gas transmission licences.	
<b>37 (9) ED 41 (9) GD</b>	In Part		Requirement will need to cover interconnectors.
<b>37 (10) ED 41 (10) GD</b>	In Part		Requirement will need to cover interconnectors.
<b>37 (11) ED 41 (11) GD</b>	No		Amend Gas and Electricity Act Dispute Resolution provisions to extend the scope of complaints to the NRA
<b>38ED 42 GD Regulatory</b>	No		See proposal at paragraph 4.56 to introduce a new duty on Ofgem to co-operate and consult with other NRAs and

<b>regime for cross-border issues (1)</b>			ACER.
<b>38 (2) (a) ED 42 (2) (a) GD</b>	Yes	See paragraph 5.3 for arrangements to promote regional co-operation.	
<b>38 (2) (b) ED 42 (2) (b) GD</b>	No		See paragraph 4.56 for proposals for a new duty on Ofgem.
<b>38 (2) (c) ED 42 (2) (c) GD</b>	No		See paragraph 4.58 for proposals for a new duty on Ofgem.
<b>38 (3) ED 42 (3) GD</b>	Yes	See paragraph 4.60.	
<b>38 (4) ED 42 (4) GD</b>	No		See paragraph 4.62 for co-operation of NRAs at regional level.
<b>39 (1-9) ED 43 (1-9) GD Compliance with the guidelines</b>			Amend the Electricity and Gas Acts or the Utilities Act to give Ofgem a duty to implement/comply with binding decisions of the Commission/Agency.
<b>40 (1-7) ED 44 (1-7) GD Record keeping</b>	No		See paragraphs 1.53-1.54 for proposals regarding record keeping.
<b>41 ED 45 GD Retail Markets</b>	Yes	See paragraph 1.50 for arrangements regarding retail markets.	
<b>43 (1-3) ED 47 (1-3) GD Level playing field</b>	Yes	We do not intend to use the powers provided by this 'level playing field' article.	
<b>49 (1-2) ED 54 (1-2) GD Transposition</b>	No		Once the Third Package has been implemented, DECC will provide the European Commission transmission documents that will confirm how the GB market complies with its requirements.

## **Annex B**

### **SUMMARY OF CONSULTATION QUESTIONS**

<b>Consultation Questions</b>	
<b>Chapter 1 – Consumer Protection</b>	
<b>1</b>	<b>Consultees are invited to comments on Government proposals to implement the consumer protection measures of the Third Package.</b>
<b>2</b>	<b>In respect of the requirement to switch customers within three weeks, subject to contractual terms, we propose to put in place a new Licence Condition requiring the new supplier to give new customers a 14 calendar day period after the contract has been entered into, to consider whether they wish to proceed with this. Unless the customer notifies the supplier they do not wish to proceed, the Licence Condition will require the new supplier to give customers the right to change their mind within 14 calendar days and then be switched within three weeks, subject to outstanding debt (and, in the case of non-domestic customers, contractual conditions). Do consultees agree with this proposal?</b>
<b>3</b>	<b>Do consultees consider that the requirement on supply undertakings which are not registered in Great Britain, to provide a GB address for the service of the documents, poses any difficulty for these suppliers? Evidence of costs to these suppliers would be particularly welcome.</b>
<b>Chapter 2 – Transmission and Distribution Networks</b>	
<b>4</b>	<b>Do you have any comments relevant to our consideration of which unbundling models should be available in the GB market?</b>
<b>5</b>	<b>Do you have any views or concerns with how we intend to apply these new Third Package requirements on TSOs and DSOs?</b>
<b>Chapter 3 – Gas Infrastructure</b>	
<b>6</b>	<b>Should the Gas Directive requirements for storage and LNG operators be introduced through a new licence regime or by amending existing legislation? Please provide evidence of costs and benefits wherever possible.</b>

## Chapter 4 – Role of the National Regulatory Authority

7	<p><b>Implementing binding decisions</b></p> <p>For the reasons we have set out in the consultation document, the Government proposes to replace the current collective licence modification objection arrangements with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body. This would reinforce Ofgem’s power to make decisions in accordance with their powers and duties under the Third Package, and would give all licensees the same right of appeal. Ofgem’s decisions, as now, would need to be reached following consultation and subject to the principles of better regulation. This proposal would include all Ofgem licence modification decisions and not only those covered by the Third Package. We would be grateful for your views on these proposals.</p>
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## Chapter 5 - Cross border co-operation

8	<p>Do you have any views or concerns with how we intend to introduce the regional co-operation elements of the Third Package?</p>
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## SUMMARY OF IMPACT ASSESSMENT QUESTIONS

<b>Consultation Questions</b>	
<p>These are partial Impact Assessments containing our initial qualitative assessment of the costs and benefits. We therefore would welcome any quantitative evidence to support the further development of the final impact assessments. Any information provided will be treated with sensitivity and anonymity.</p>	
<b>Consumer Switching</b>	
9	<p>Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with this measure?</p>
10	<p>The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: supplier systems changes, monitoring costs, administrative burdens, the number of extra erroneous switches which may occur as a result of our proposals, the cost of manually stopping the switch and any information regarding the number of customers that currently fall outside the 3 week switching period defined (excluding the cooling-off period).</p>
<b>Consumer Information</b>	
11	<p>Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?</p>
12	<p>The Government would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding: whether the record keeping requirement imposes additional costs (system costs and administrative costs) on industry; an estimate of the scale of these costs; and any evidence regarding the costs associated with passing on consumption and metering data to another supplier.</p>
13	<p>What would be the additional costs to the industry for providing the additional information to consumers in terms of complaints handling/dispute settlement arrangements available by the supplier?</p>
<b>National Regulatory Authority</b>	

14	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?
15	We would welcome any information that could improve our analysis of the costs and benefits highlighted in this Impact Assessment, and specifically any evidence regarding; the monitoring, enforcement and administrative costs involved and any evidence regarding the indirect costs on industry of these measures.
<b>Transmission and Distribution</b>	
16	Are the Impact Assessment assumptions on the costs to TSOs of complying with the new TSO certification process realistic (both for those seeking derogations and those not doing so)?
17	The Impact Assessment assumes that ensuring the independence of the compliance officer for DSOs requires little additional action on the part of the affected DSOs. Your views including evidence of costs would be appreciated.
<b>Gas and LNG Operators</b>	
18	Are the assumptions made as part of this Impact Assessment correct and have we correctly identified the costs and benefits associated with these measures?
19	What specific changes to current practice will be required to comply with articles 15 (unbundling) and 16 (confidentiality) of the Directive? What are the likely costs of making these changes?
20	Articles 15, 17 and 19 of the Gas Regulation specify that certain operational information must be made publicly available by ‘technically and economically necessary’ LNG and storage sites. What are the likely costs involved in making this information publicly available?
21	Article 22 of the Regulation outlines the requirement for contracts and procedures to be harmonised at ‘technically and economically necessary’ LNG and storage sites. What changes to current practices will, in your view, be required to achieve this and what are the likely costs of making these changes?
22	We would welcome evidence on the costs and benefits of introducing a licensing regime for LNG and storage as opposed to introducing the measures through changes to legislation.

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