

Impact Assessment for Proposals for Implementation of the EU Third Energy Market Package



Introduction

Since the mid-1990s, the European Union (EU) has put in place legislation that aims to support the creation of a single energy market within the EU by introducing competition and removing barriers to cross-border trade. This gradual transition has been progressed to date through two previous packages of legislation. A third internal energy market package (the 'Third Package') was adopted in July 2009 and must be transposed into national law by all Member States by March 2011¹.

The Third Package consists of two Directives – one concerning the internal market in natural gas and one concerning the internal market in electricity – and three Regulations – one on conditions for access to the network for cross-border exchanges in electricity, one on conditions for access to the natural gas transmission networks and access to gas infrastructure and one establishing a new Agency for the Cooperation of Energy Regulators (ACER).

Issue

The key objectives of the Third Package are to enhance consumer protection, improve the functioning of the energy markets and increase security of supply. The energy market in Great Britain (GB) is already one of the most competitive markets in Europe, and many of the arrangements in the Third Package have already been implemented in GB.

Where GB is judged to be non-compliant, the Government is opting to take a light-touch approach to ensure that it does the minimum required to comply with the Third Package. This approach should ensure that GB gains the maximum benefits from implementation of the Third Package, at minimum cost.

Intended Effects

The Third Package has been designed to increase competition in many areas of the energy market, through creating a more liberalised market with enhanced consumer protection and improved functioning of energy markets. This should lead to greater security of supply, and more competitive prices and services.

There are five main areas that the Third Package attempts to reform;

- creating a fully liberalised market;

¹ Undertakings affected by the transmission network unbundling requirements of the Third Package will have an extra year after the requirements have been transposed into law, to comply, and therefore will have until 3 March 2012.

- ensuring strong consumer protection measures are in place;
- a fully independent regulator;
- robust security of supply monitoring procedures; and
- well developed network ownership arrangements.

Great Britain is largely compliant with the Third Package and therefore the overall direct costs and benefits from GB's implementation are expected to be limited, the most significant benefits derive to GB from ensuring the compliance of other member states. These benefits will come through the promotion of cross-border trade and the lowering of barriers to market entry to additional players across the EU, which could result in lower prices for GB energy imports.

We believe that the Package through creating a level playing field across Europe on which UK-based companies can operate will have an overall positive effect on the economy. The Package should also reduce regulatory uncertainty and improve transparency.

Our proposed option for implementation, represents minimum compliance which we believe will impose a minimal burden on business while maximising the benefits of the Third Package for the UK. This option is preferred as we wish to ensure that UK business is not placed at a disadvantage in the internal market as a result of these measures.

Measures

This Impact Assessment attempts to capture, at a high level, the benefits and costs to GB of these proposals for implementation of the Third Package.

All of the key measures within which GB is currently non-compliant have been examined in individual Impact Assessments included in this Consultation. Each Impact Assessment (IA) discusses the proposed options for implementation, rationale and costs and benefits in more detail. These have also been summarised at the end of this Impact Assessment.

In many cases, individual measures contribute to more than one policy objective. For the purposes of this Impact Assessment, however, we have brigaded individual measures under the primary policy objective that they target, while referring to any additional benefits in the text.

This impact assessment refers to key measures we have identified at this stage. As a result of the consultation, more measures may be identified and these will be captured in a later Final Impact Assessment.

Consumer Switching

The relevant measure requires suppliers of electricity and gas to ensure that where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected within three weeks. There is an additional requirement to ensure that following switching, final bills are sent within 6 weeks of switching.

These measures are designed to improve the switching process for consumers by reducing the time it takes to switch. High levels of switching are associated with greater competition in the market, which should result in lower prices and increased product ranges for consumers and increased innovation from suppliers.

Currently in the UK, it takes an average of between 4-6 weeks to switch electricity, and slightly longer to switch gas. This new measure will guarantee consumers the right to switch within three weeks, following the time consumers are given to cancel the contract. This will be supported by an enforceable right to consumers. As in practice the UK has already effective switching arrangements, this measure will reduce the time taken to switch slightly and therefore we expect the benefits to be limited.

A brief summary of the costs and benefits of the preferred option is set out in Table 1

Table 1: Consumer Switching	
Costs	Benefits
This measure imposes a one-off administrative cost to energy suppliers in order to amend their standard terms and conditions. Some additional changes are likely to be required by suppliers to reduce the time it takes currently to switch.	<p>As consumers will be guaranteed a switch within 3 weeks, following the end of the time they are given to cancel their contract, there will be a direct benefit to switching customers who take advantage of their new gas/electricity tariff in a reduced time.</p> <p>There may be an indirect effect as quicker switching could lead to greater competition in the market.</p>

Consumer Information

The measures include a requirement on suppliers to ensure consumers are informed about their actual consumption and costs and can request that data is provided to other suppliers; a requirement for suppliers to inform customers about the means of dispute settlement available to them; an energy consumer checklist which provides consumers with information about their rights and other issues that may affect them is sent to customers and made publicly available. Finally, there is a requirement on suppliers to keep certain data at the disposal of the national regulatory authority.

These measures are designed to improve the quality and quantity of the information available to consumers on both their individual consumption, their rights and industry processes. Greater transparency and consumer awareness is a driver of competitive energy supply markets. In the long term these measures may enable consumers to better act as a competitive constraint on

suppliers' pricing and provide strong incentives on suppliers to reduce costs, improve service and develop innovative products. However the proposed changes are only expected to have a minimal direct impact on GB consumers as these measures are already in place to a large extent. The costs on suppliers may be higher as they are required to collect and provide extra data.

A brief summary of the costs and benefits of the preferred option is set out in Table 2.

Table 2: Consumer Information	
Costs	Benefits
<p>This measure imposes a small one-off cost to energy suppliers associated with changing promotional material. There may be larger costs associated with data collection and an increased administrative burden associated with the provision of information to regulatory bodies.</p> <p>There is also a one-off cost to Consumer Focus for compiling and maintaining the checklist.</p>	<p>Direct benefit to the consumers who are able to use their consumption information to take advantage of more suitable tariffs and improve their services as a result of access to information about dispute settlement mechanisms.</p>

Transmission and Distribution Networks

The measures introduce new requirements for full ownership unbundling of transmission and introduce greater monitoring powers around the continued legal unbundling for distribution.

The network-related objectives of the Third Package are designed to improve competition through better regulation, unbundling and reducing asymmetric information, and improve security of supply by strengthening the incentives for sufficient investment in transmission and distribution capacities.

However, in the area of transmission and distribution networks, the GB gas and electricity arrangements are already largely compliant with the Third Package. As a result, the main objective of the implementation of the Third Package from a GB perspective is to provide the legislative framework within which Ofgem can certify transmission systems as meeting the requirements of ownership unbundling and we do not expect these measure to have a large effect.

A brief summary of the costs and benefits of the preferred option is set out in Table 4

Table 3: Transmission and Distribution Networks

Costs	Benefits
<p>This measure imposes legal and administration costs associated with legislation changes and licence modifications to ensure compliance with TSO and DSO unbundling requirements for both Ofgem and the TSOs. Administration and legal costs to Ofgem and TSOs associated with TSO certification process, particularly where derogations are requested. Additional costs associated with strengthened monitoring powers for Ofgem enforcement of DSO unbundling articles. Possible, but not certain, costs to DSOs of ensuring independence of compliance officer.</p>	<p>GB is already largely compliant and we would therefore expect the benefits to be minimal. Full compliance could lead to small gains in terms of more efficient networks (less congestion, more investment), decreased market concentration leading to lower energy prices for consumers, and higher innovation in the energy sector. The likely extent of these benefits is small, as under 10% of GB transmission assets are not already fully ownership unbundled and the EC acknowledges that even then the GB system exemptions function reasonably well.</p>

Gas Storage and LNG Facility Impacts

These measures include a requirement for storage system operators (SSOs) to be legally unbundled, for third party access to storage facilities that are technically and / or economically necessary to be strengthened, for all gas storage and LNG operators to be designated, and for more information to be made publically available by gas storage and LNG facility operators.

The measures are intended to have the effect of reducing market power, increasing competition, increasing efficient investment and use of assets, helping to allow gas to flow to where it is needed most, and enhancing security of supply. However, the actual measures are unlikely to have a large impact.

A brief summary of the costs and benefits of the preferred option is set out in Table 5

Table 4: Gas and Storage and LNG Impacts

Costs	Benefits
<p>There may be small costs associated with unbundling, some costs</p>	<p>The benefits specifically arising from GB implementing the gas market measures will be</p>

Table 4: Gas and Storage and LNG Impacts

<p>associated with reduced economies of scope on vertically integrated companies, and costs associated with additional information provision by LNG and storage facilities.</p> <p>Ofgem may experience small additional costs due to enforcement.</p>	<p>potentially small benefits to consumers from any increases in competition.</p>
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National Regulatory Authority

These measures include the designation of national regulatory authorities as representatives to the Agency for Co-operation of Energy Regulators (ACER) and a requirement to ensure that staff employed by national regulators are able to act independently of market interest. Compared to the Second Package, the Directives require an expansion to the regulator's duties and a requirement to ensure that they have the necessary powers to carry out their duties.

These provisions are intended to increase the independence and transparency of the regulator and promote co-operation with other European regulators. GB is largely compliant with the requirement for independence and transparency and it is difficult to quantify the benefits associated with these measures. However we would expect the intangible benefits arising from these measures should increase the integrity of the regulator and ensure that it is mandated to improving the functioning of the EU internal market. This should lead to better market outcomes and overall reduced costs for consumers.

For the reasons set out above, we expect the actual impact of these measures to be small. A brief summary of the costs and benefits of the preferred option is set out in Table 3

Table 5: National Regulatory Authority

Costs	Benefits
<p>These measures will increase Ofgem's monitoring and enforcement costs. There may also be an increase in the administrative costs Ofgem faces. Overall we expect the costs associated with individual measures to be small.</p>	<p>We would expect the intangible benefits arising from these measures to increase the integrity and workings of the regulator, as well as the consistency of regulation in Europe. This should lead to better market outcomes for both industry and consumers.</p>

Implementation Costs

There are some additional costs on Government and Ofgem associated with implementation of the Third Package that are not captured elsewhere. These costs are associated with drafting and implementing license changes. We estimate the costs on Government to be a one-off transitional cost of approximately half a million pounds. We would expect the cost to Ofgem to be similar.

DECC would welcome any information about the scale of any costs or benefits mentioned throughout these Impact Assessments as part of the consultation process.

Evidence Gathering

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 these impact assessments. Any information provided will be treated with sensitivity and anonymity.

Title: Third Package: Articles concerning customers right to switch provider within 3 weeks and receive final account closure within 6 weeks of switching Lead department or agency: Department for Energy and Climate Change Other departments or agencies:	Impact Assessment (IA)
	IA No: DECC0003
	Date: 27/07/2010
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Other
	Contact for enquiries: Marina.Pappa@decc.gsi.gov.uk Jenna.Obyrne@decc.gsi.gov.uk

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Article 3(5a) of the Electricity Directive and Article 3(6a) of the Gas Directive requires Member States to ensure that where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected within three weeks. In addition, Annex 1 (j) of both the Electricity and Gas Directive require 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.

There is currently no obligation on suppliers to ensure these requirements are met. It is therefore necessary for Government to put in place a new License Condition in order to comply with the Directives.

What are the policy objectives and the intended effects?

These measures are designed to improve the switching process for consumers. High levels of switching are associated with greater competition in the market, which should result in better outcomes for consumers and suppliers. Eventually we would expect higher levels of switching to be associated with more innovation and a greater number of products on offer leading to greater efficiency in the market.

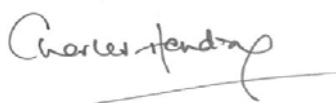
What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Two options have been considered at this stage: Option 1 involves a Licence Condition requiring 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. 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. Option 2 involves a Licence Condition requiring suppliers to switch customers within three weeks starting from the day the customer receives the terms and conditions. Our preferred option is Option 1 as this option achieves a similar level of benefits as Option 2 while imposing a lower cost on business and maintaining consumer protection. Both options include a new Licence Condition requiring suppliers to close a customer's account within six weeks after they have switched to a new supplier.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed Ongoing by EU
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Not applicable

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.



Signed by the responsible Minister:

Date: 26th July 2010

Summary: Analysis and Evidence

Policy Option 1

Description:

License condition requiring suppliers to start supplying electricity or gas to the new customer within three weeks of the end of the cooling-off period.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -0.25

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	0
High	0.5		0.5
Best Estimate	0.25		0.25

Description and scale of key monetised costs by 'main affected groups'

We would expect this option to impose a small one-off administrative cost on gas and electricity suppliers in order to amend their standard terms and conditions. The exact cost is not known, however we would expect them to be very close to zero, but certainly no more than £0.5m. This upper bound estimate is based on an assumption of a one-off increase in costs of £0.01 per customer bill.

Other key non-monetised costs by 'main affected groups'

There may be additional costs due to changing supplier systems, monitoring costs and an increased number of consumers that are erroneously switched, however the scale of these costs is unclear at this stage. There could also be a one-off transition cost to Ofgem to change the license conditions.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

It has not been possible to quantify the benefits at this stage. However we would expect there to be a direct benefit to switching customers who could take advantage of their new gas and/of electricity tariff in a reduced time.

There may be additional, intangible benefits to consumers as these measures are designed to improve the switching process for consumers which could lead to greater competition in the supply industry.

Key assumptions/sensitivities/risks

Discount rate (%)

There is a risk that reducing the time taken to switch could lead to a greater number of customers processed erroneously, which would have a negative impact on the customer experience of switching, the extent to which this may happen is unknown at this stage.

This option would also increase the costs to suppliers as they would have to unwind the process for those customers who subsequently changed their mind.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Great Britain				
From what date will the policy be implemented?	03/03/2011				
Which organisation(s) will enforce the policy?	Ofgem				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	6
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	European Commission Impact Assessment on Third Legislative Package
2	DECC's Call for Evidence
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Issue

Article 3(5a) of the Electricity Directive and Article 3(6a) of the Gas Directive require Member States to ensure that where a customer, while respecting contractual conditions, wishes to change supplier, the change is effected within three weeks.

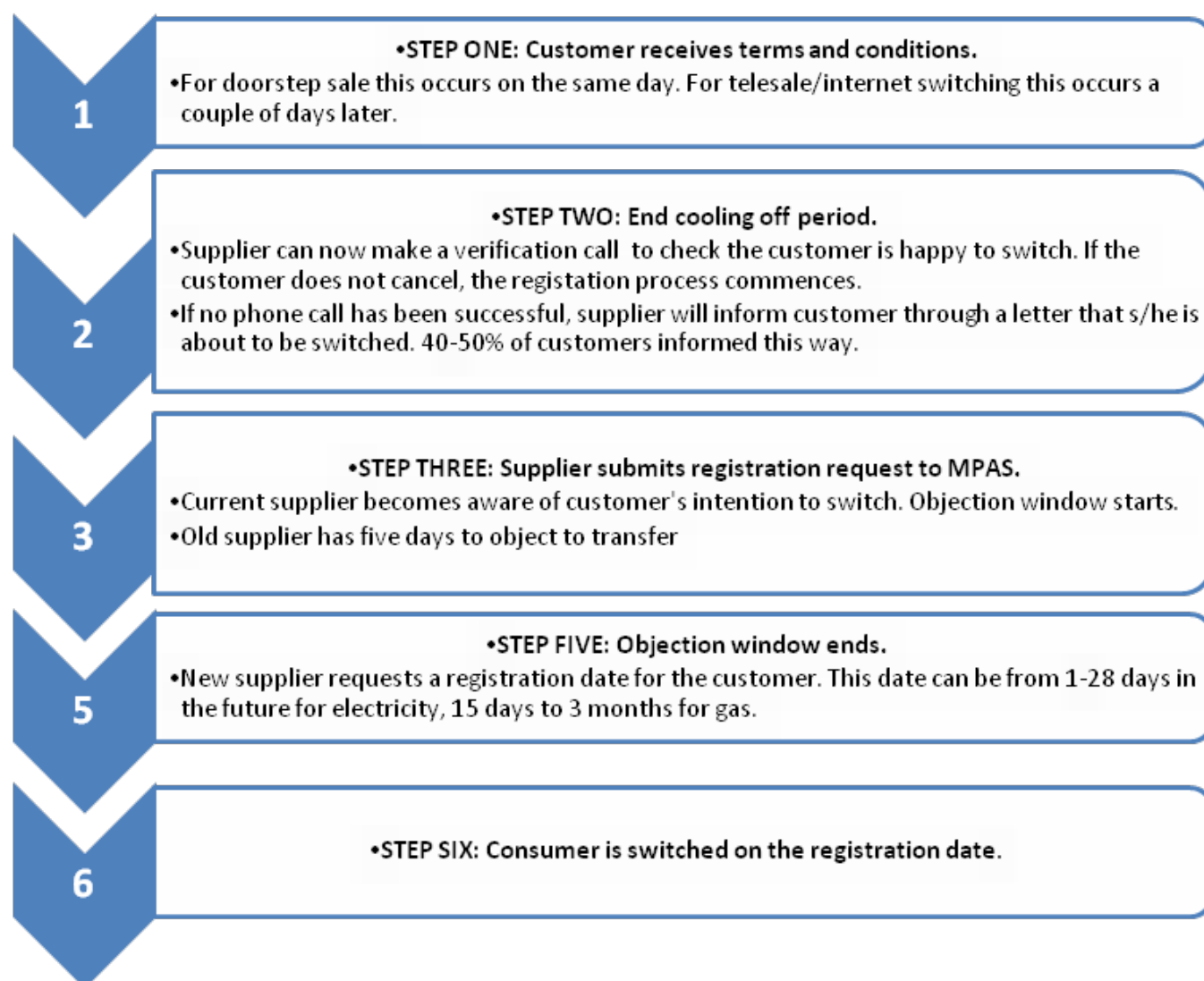
In addition, Annex 1 (j) of both the Electricity and Gas Directive require that consumers receive a final closure account following any change of natural gas/electricity supplier no later than six weeks after the change of supplier has taken place.

These measures are designed to improve the switching process for consumers. High levels of switching are associated with greater competition in the market, which should result in better outcomes for consumers and suppliers.

Background

The UK currently has the most competitive market in Europe with high levels of customer switching per month. Evidence suggests that, on average, 400,000 electricity and 300,000 gas customers switch supplier every month. Most customers are switched within 4-6 weeks of receiving terms and conditions.

The process for switching currently looks like this:



Options

Two options have been considered at this stage:

- Option 1: Licence Condition requiring 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. 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.
- Option 2: Licence condition to require suppliers to switch customers within three weeks of the day the customer receives the new terms and conditions

We also proposed to require the energy supplier to stipulate in their contracts with new customers that (subject to resolution of any outstanding debt) they will start supplying gas or electricity to the new customer within three weeks as described in the above options.

In addition, both options include a Licence Condition requiring suppliers to send their customers a final bill within six weeks of the date the customer has transferred to a new supplier. As this measure already occurs in practice, we expect the costs and benefits to be minimal and have not explored any further options with this requirement.

The preferred option at this stage is Option 1, which we believe is the option that achieves a similar level of benefits as Option 2 while imposing lower cost on industry which seems sensible given that the introduction of Smart Meters which will capture most of the benefits of these measures.

Benefits

For the purposes of evaluating costs and benefits a baseline of no action taken is used. Great Britain has an active energy supply market, and the level of consumer participation is amongst the highest in the world. Switching has been allowed in Great Britain since the opening of energy supply markets for domestic and small business consumers in the late 1990s. These measures are designed to ensure quicker switching, rather than to enable greater amounts of switching. The measures apply to both domestic and non-domestic consumers. The impact assessment focuses on the benefits to domestic consumers however we would expect them to apply to non-domestic consumers as well.

There are two sources of benefit from these measures to improve switching. Firstly, there is a direct benefit to consumers who are switched faster than they would have been otherwise. These customers receive a direct benefit in terms of the energy and service received under their new tariff earlier than they would have otherwise. Under current arrangements most customers are switched within 4-6 weeks of receiving their terms and conditions. Option 2 will have the largest impact on consumers as it will result in the fastest switching period of 3 weeks. The benefits then decline for Option 1 under which consumers are switched within 5 weeks.

We are unable to estimate what percentage of customers would receive any benefits however the evidence suggests that the overall direct benefit to consumers from these measures could be small. Evidence from Ofgem's Energy Supply Probe (2008) suggests that approximately 60% of consumers reduce their bills as a result of switching and achieve an average net saving range from 1 to 2 per cent for gas customers and 3 to 4 per cent of electricity customers. However this suggests that 40% of consumers do not switch to more favourable tariffs.

The second source of benefits which may arise from a quicker switching process are the more intangible benefits associated with improved competition. Consumer switching is the powerful driver of competitive energy supply markets. By switching suppliers, consumers can act as a competitive constraint on suppliers' pricing and provide strong incentives on suppliers to reduce costs, improve service and develop innovative products. The options will reduce the time it takes to switch for some customers, however the overall effect on the level of switching is expected to be small.

Any increase in the level of switching could also have an effect on prices, although in this case this will be very small. Overall, we would expect there to be downward pressure on prices as firms attempt to

hold-on to their existing customers who are now more likely to switch. However, they may also be less willing to offer low prices to attract new customers. This is because they are less likely to be able to prevent them from switching again in the future, limiting the rents that can be extracted.

It is important to note that some of benefits associated with these measures are going to be realised with the introduction of smart meters in the next few years regardless of the implementation of these measures.

Costs

The majority costs of these measures will depend on the option taken forward, as such each option will be examined separately in this section.

- Option 1: Licence Condition requiring 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. 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.

Responses to the Call for Evidence have suggested that suppliers and bodies involved in the switching process could adjust their switching process to accommodate switching within three weeks of the end of the cooling off period at little or no extra cost. However there may be a need to change some systems as a result of this measure. There may also be additional monitoring costs imposed on suppliers. We would welcome evidence on the scale of these costs of this measure as part of the consultation process.

As this option represents the lowest cost to suppliers this is currently our preferred option and has been covered in more detail in the 'Summary: Analysis and Evidence: Policy Option 1' section of this impact assessment. As some of the benefits of these measures will be realised in the next few years with the introduction of smart meters, it is important to attempt to reduce the cost on suppliers at this stage.

- Option 2: Licence Condition requiring suppliers to switch customers within three weeks of the day the customer receives terms and conditions.

Option 2 would require a substantial change to the switching computer system (MPAS) used for the switching process. It would also require a change to suppliers computer systems and other agents involved in the switching process. Responses to the Call for Evidence have suggested that these changes are likely to cost several million to suppliers, and we would expect these costs to ultimately be passed on to consumers in the form of increased bills. The industry is already committed to putting in place changes for the roll-out of smart meters and there is a risk these options could lead to delays in this process when ultimately smart meters will facilitate consumer switching.

However there may be additional costs to starting the process before the end of the cooling-off period. Around 8-10% of customers cancel their contract during the cooling-off period. Not only will these requests have to be cancelled manually, but there is an increased chance of erroneous switches. Responses to the Call for Evidence suggest that an increased numbers of erroneous switches (which have to be resolved manually at some expense) and increased numbers of customer complaints could lead to deterioration of the customer experience and may disincentivise customers to switch in the future, however the scale of these effects is unclear.

For both options there may be an additional administrative cost to suppliers who would have to alter their standard terms and conditions to reflect the changes, however we are assuming that this would be done as part of regular updates and therefore at little extra cost. As an illustration, if we assume a cost of £0.01 per customer bill to make these changes, for example to cover costs of staff time and any additional paper, the additional costs could be close to £0.5m. We very much expect this to be an upper bound estimate, but would welcome further evidence on these costs.

As mentioned above, a Licence Condition requiring suppliers to close a customer's account within six weeks of switching is not expected to have significant costs. It is already industry practice to close a customer's account within 6 week after switching and therefore there are no significant changes. There

will however be a small cost to Ofgem to change and monitor compliance with the License Condition. We anticipate that this will mainly involve extra administrative costs. DECC would welcome any evidence regarding the scale and scope of these costs as part of the Consultation.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] These measures will be continuously reviewed by policy teams in DECC and will be examined by the Commission.</p>

Title: Third Package: Articles concerning provision of consumer information Lead department or agency: Department for Energy and Climate Change Other departments or agencies:	Impact Assessment (IA)
	IA No: DECC0004
	Date: 27/07/2010
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Other
Contact for enquiries: Marina.Pappa@decc.gsi.gov.uk Jenna.Obyrne@decc.gsi.gov.uk	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

There are several articles in the EU 3rd Package which are intended to increase the information available to consumers and therefore enable consumers to make more informed decisions when they choose tariffs and suppliers. These include providing transparent consumption data to consumers based on actual readings, making information available about dispute settlement mechanisms and complaints, providing a consumer energy checklist. There is an additional requirement on suppliers to keep certain data at the disposal of the regulatory authorities. In some areas, there is currently no obligation on suppliers and Ofgem to ensure that these requirements are met. It is therefore necessary for Government to put in place measures in the form of formal obligations to comply with the Directives.

What are the policy objectives and the intended effects?

These measures are designed to improve the quality and quantity of the information available to consumers on both their individual consumption, consumer rights and industry processes. Greater transparency and consumer awareness is a driver of competitive energy supply markets. In the long term these measures may enable consumers to better act as a competitive constraint on suppliers' pricing and provide strong incentives on suppliers to reduce costs, improve service and develop innovative products.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

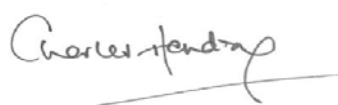
The Government has taken a light-touch approach to ensure that it does the minimum required to comply with the requirements of the Directives. The preferred option includes, but is not limited to, the following measures:

- Introduce an obligation on energy suppliers so that where a customer provides a meter reading, and provided that the supplier is satisfied that this data is reasonable, the supplier should reflect this reading in the customer's next bill.
 - Amend Supply Licence to require energy suppliers to inform consumers that they can complain using the suppliers' complaints procedure and they can obtain a copy, and include this information in all promotional materials.
 - Place a new obligation on energy suppliers to hold information required by the Third Package.
- Our preferred option captures all the benefits discussed, while imposing minimum costs on business.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed Ongoing by EU
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Not applicable

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.



Signed by the responsible Minister:

Date: 26th July 2010

Description:

Implement Option 1 (the minimum-compliance option) for all measures.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: -1.25

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	1	0
High	2.5		2.5
Best Estimate	1.25		1.25

Description and scale of key monetised costs by ‘main affected groups’

The monetised costs are not expected to be large. The cost estimate covers the necessary systems changes in the eventuality that all the suppliers are not compliant with the obligation to hold 5 years worth of transactions data. The costs will be closer to zero depending on the current level of compliance amongst suppliers. The one-off set-up cost for Consumer Focus of the Energy consumer checklist is expected to be in the range of £20-25,000.

Other key non-monetised costs by ‘main affected groups’

It has not been possible to quantify all the costs at this stage. There will be some additional costs for suppliers from including updated meter readings in the annual statement, from customers contacting them requesting them to pass their consumption data to another supplier, and from potentially more customers utilising the dispute mechanism.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by ‘main affected groups’

It has not been possible to quantify the benefits at this stage. However we would expect there to be a direct benefit to consumers who change their consumption patterns as a result of more timely consumption information and improve the services received by suppliers as a result of access to information about complaints procedures.

Other key non-monetised benefits by ‘main affected groups’

There may be additional, intangible benefits to consumers as these measures are designed to improve the access and quality of information, which could result in an increase in consumers' market power and lead to greater competition in the supply industry.

Key assumptions/sensitivities/risks

Discount rate (%)

There is a risk that customers will suffer from information overload and therefore not realise the benefits of these measures.

The costs presented are illustrative based on previous published information in a 2008 Impact Assessment on the cost of providing historical consumption data in energy bills. There is significant uncertainty as to the complexity of any system changes needed to record 5 years worth of data, and the proportion of suppliers who are already compliant.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Great Britain				
From what date will the policy be implemented?	01/03/2011				
Which organisation(s) will enforce the policy?	Ofgem				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	European Commission Impact Assessment on Third Legislative Package
2	DECC's Call for Evidence
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Issue

There are several articles in the EU 3rd Package which are intended to increase the information available to consumers and therefore enable consumers to make more informed decisions when they choose tariffs and suppliers. The UK is currently not compliant with some of these requirements in that there are no formal arrangements in place and it is therefore necessary to amend Licence Conditions in order to ensure compliance.

This impact assessment will first examine the requirements relating to consumer information with which the UK is currently non-compliant, and will then discuss the options available to ensure compliance and the associated costs and benefits.

All of these measures are designed to improve the quality and quantity of the information available to consumers on both their individual consumption, consumer rights and industry processes. Greater transparency and consumer awareness is a driver of competitive energy supply markets. In the long term these measures may enable consumers to better act as a competitive constraint on suppliers' pricing and provide strong incentives on suppliers to reduce costs, improve service and develop innovative products.

Articles and Associated Options

Availability of consumption data

Article 3 (5b) of the Electricity Directive (ED) and 3(6) of the Gas Directive (GD) requires Member States to ensure that customers are entitled to receive all relevant consumption data. In addition, Article 1 (i) of Annex 1 of both the Electricity and Gas Directives require Member States to ensure that customers are properly informed of actual consumption and costs frequently enough to enable them to regulate their own consumption. That information must be given by using a sufficient time frame which takes account of the capability of customer's metering equipment (and the electricity production in question). Due account must be taken of the cost-efficiency of such measure. No additional costs shall be charged to consumers for that service.

In order to comply with the requirement to provide consumers with consumption data the following options have been considered, with Option 1 being our preferred Option.

- Option 1: Introduce an obligation on energy suppliers so that where a customer provides a meter reading, 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.
- Option 2: Introduce an obligation on energy suppliers so that where a customer provides a meter reading the supplier should send an updated bill to that customer.

In addition we propose introducing 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.

Consumer rights regarding dispute settlement

Article 3(9) of the Electricity Directive lays down a new requirement on Member States to ensure that information concerning consumer rights regarding the means of dispute settlement available to them are specified in or with bills and in promotional materials.

In order to comply with this requirement the following option has been considered. This is the only option considered as it is the minimum compliance option.

- Option 1: Amend Supply Licence to require energy suppliers to inform consumers that they can complain using the suppliers' complaints procedure and how they can obtain a copy. Suppliers would be required to include this information in promotional material and in or with bills.

Energy consumer checklist

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 it is made publicly available.

In order to comply with this requirement the following option has been considered. This is the only option we have considered as it is the minimum compliance option.

- Option 1: Give Consumer Focus the lead role of compiling and maintaining the checklist in co-operation with the industry and Ofgem.

Record Keeping

Article 41 of the Electricity Directive and Article 45 of the Gas Directive set 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 and electricity supply contracts and gas derivatives with wholesale customers and transmission systems operators as well as storage and LNG operators. The provisions set out the detail of what the data should include.

In order to comply with this requirement the following option has been considered. This is the only option considered as it is the minimum compliance option.

- Option 1: Place a new obligation on energy suppliers to hold this information.

Preferred Option

In order to minimise the costs to energy suppliers and Ofgem we intend to implement Option 1 of all these measures which we believe is the minimum-cost option, while still achieving the benefit discussed below.

Benefits

All the measures discussed above are aimed at improving the quality and accessibility of information to consumers. While it is difficult to quantify the benefits directly, we can make a qualitative assessment of the benefits of each of the different measures.

The first measure (availability of consumption data) is intended to make consumers better aware of their consumption patterns. This should allow them to regulate their consumption more effectively. This in turn will enable consumers who take advantage of the updated bill to pick more appropriate tariffs and adjust their consumption to maximise their satisfaction. This may also enable consumers to make more informed decisions when choosing suppliers, while promoting competition in the supply market.

The second measure (consumer rights regarding dispute settlement) is intended to improve awareness of dispute settlement mechanisms and improve access to them. This should have a direct impact on consumers who wish to complain through a reduction in search costs. In addition this could potentially lead to a reduction in market power of suppliers as consumers become better aware of their rights. As industry already complies with this measure, we expect the benefit to be small.

The third measure (the consumer checklist) is intended to provide consumers with an easily accessible source of information regarding their rights as consumers. As mentioned above this could potentially lead to a reduction in market power of suppliers as consumers become better aware of their rights. There is however a risk that this may lead to information overload and confusion which would limit the benefits of this measure.

The fourth measure (record keeping) is intended to improve transparency in the retail market in order to facilitate access. As with the previous measures this is intended to improve information and, in turn, competition in the market place. By making information available to the regulator this measure is primarily designed to aid with the prevention of abuse of market power.

It is important to note that some of this information will be more accessible to consumers following the roll-out of smart meters regardless of implementation of these measures.

Costs

These measures will impose mainly administrative costs on the energy supply companies and Ofgem. Where possible we have attempted to make a quantitative assessment of the costs involved with each measure and where this has not been possible we have made a qualitative assessment of the costs involved.

Availability of consumption data

We have considered two options regarding consumption data.

- Option 1: Introduce an obligation on energy suppliers so that where a customer provides a meter reading, and provided that the supplier is satisfied that this data is reasonable, the supplier should 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.

Suppliers are currently required to visit customers at least once every two years, and as part of this visit a meter reading must be taken. However in practice most suppliers will visit customers much more frequently. Customers are also able to call suppliers with their own meter readings.

Responses to the Call for Evidence have suggested that it is already standard practice within the industry to take account of consumer provided meter readings in the next bill, thus we would not expect this option to have any additional costs associated with it. However, there will be some additional costs for including updated meter readings in the annual statement.

- Option 2: Introduce an obligation on energy suppliers so that where a customer provides a meter reading the supplier should send an updated bill to that customer.

The direct cost associated with this measure would be on suppliers due to the re-issuing of bills. Information from suppliers has indicated that this option may cost suppliers in the order of several million pounds per year.

As Option 1 leads to similar benefits as Option 2, but at a lower cost to suppliers, this is our preferred option at this stage.

In addition we propose introducing 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. While we are unsure at this stage how this would work in practice and the specific costs and scale of the costs involved, overall we expect the costs and benefits for this measure to be small due to the availability of price comparison websites. DECC would welcome more information on this as part of the consultation process.

Consumer rights regarding dispute settlement

We have considered only one option regarding dispute settlement procedures.

- Option 1: Amend Supply Licence to require energy suppliers to inform consumers that they can complain using the suppliers' complaints procedure and how they can obtain a copy. Suppliers would be required to include this information in promotional material and in or with bills.

This option should have limited impact on suppliers as some of the information is already provided on promotional material.

There may also be an indirect effect due to a greater numbers of consumers utilising the dispute mechanism process as a result. However it is difficult to quantify the costs of this, as we are unable to estimate how many additional customers may use the process.

Energy consumer checklist

We have considered only one option regarding the energy consumer checklist.

- Option 1: Give Consumer Focus the lead role of compiling and maintaining the checklist in co-operation with the industry and Ofgem. Industry will be required to provide consumers with a copy of the checklist.

In addition, there will be a one-time small cost to Consumer Focus for compiling the checklist, and an ongoing cost of maintaining it. It is very hard to place a cost on this work, however assuming the cost of 2FTE staff members working for 4 months to set up the list, this could amount to somewhere between £20-25,000. There will also be an on-going cost of keeping this up to date.

There may be some small costs to industry and Ofgem associated with co-operating with Consumer Focus on the compilation of the list.

There may also be costs associated with providing the consumer checklist to customers. We assume that this will be done as part of billing, however there will be additional costs associated with designing, printing and mailing the checklist. DECC would welcome evidence on the scale of these costs as part of the consultation process.

Record Keeping

We have considered only one option regarding record keeping.

- Option 1: Place a new obligation on energy suppliers to hold this information.

The main cost of this measure will fall on suppliers. There will be a one-time cost for setting up the databases, along with ongoing costs for maintaining them. The Commission will provide more information on how companies will be required to keep the data. It is possible therefore that as a result suppliers may have to create new systems which would potentially be quite costly.

Given this uncertainty regarding the need to adapt systems, it is difficult to estimate a cost. However using evidence from an earlier published Impact Assessment (2008) regarding the provision of historic consumption data on bills we can set out what we believe to be an upper limit on those costs. In 2010 prices the one-off cost presented for bill and system re-design are £9.8 million. The proposed system changes in this case are expected to be significantly less complex, and it is possible that a number of suppliers already hold the data. Therefore the additional costs would be only borne by a proportion of suppliers. As a working assumption for this Impact Assessment we are assuming an upper bound of no more than £2.5 million. However we recognise the uncertainties so would welcome more information as part of the consultation process.

We also anticipate that this measure is likely to impose a significant administrative burden on suppliers, which may rise depending on the number of data requests made by Ofgem, the competition authorities and the Commission. DECC would welcome more information on this as part of the consultation process.

Information to be included in contracts with customers

We have considered only one option on the measure regarding information to be included in contracts with customers.

Option 1: Amend the Supply Licence to ensure these matters are always explicitly addressed on the face of the contract.

As discussed above, we currently comply with this requirement and therefore this measure should impose no further costs.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] These measures will be continuously reviewed by policy teams in DECC and will be subject to approval from the Commission.</p>

Title: Third Package: Transmission and Distribution Networks Lead department or agency: Department of Energy and Climate Change Other departments or agencies:	Impact Assessment (IA)
	IA No: DECC0005
	Date: 27/07/2010
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Legislation
Contact for enquiries: John.Sartin@decc.gsi.gov.uk Bernabe.Sancheznavaz@decc.gsi.gov.uk	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Articles 9-11 of the Third Package Electricity and Gas Directives and Article 3 of the Electricity and Gas Regulations introduce new unbundling requirements on transmission system owners (TSOs). These articles affect existing electricity and gas transmission systems, interconnectors, and the new Offshore Transmission Operators (OFTOs). Article 26 of the Directives places further unbundling requirements on Distribution System Operators (DSOs). Provisions are also made for exemptions to be granted to Closed Distribution System (CDS) operators (Art 28). Government intervention is needed to introduce national legislation and licence conditions to ensure compliance. The Third Package has to be implemented by 3 March 2011.

What are the policy objectives and the intended effects?

The two primary network-related objectives of the Third Package are to:

- (a) Improve competition through better regulation, unbundling and reducing asymmetric information;
- (b) Improve security of supply by strengthening the incentives for sufficient investment in transmission and distribution capacities.

However, in the area of transmission and distribution networks the GB gas and electricity arrangements are already largely compliant with the Third Package. As a result, the main objective of the implementation of the Third Package from a UK perspective is to fully comply with EU law.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The minimum compliance option has been assessed throughout. It represents the Government's preferred option, as it ensures compliance with EU law at minimum cost to Government, regulator and industry. The preferred option will include the following measures:

- Legislation and licence changes to allow for Ofgem certification of TSOs, including derogations under Article 9. Some modifications might also be required with respect to interconnectors and OFTOs.
- The Ofgem certification process itself, which will apply to all existing TSOs, interconnectors and OFTOs.
- Licence modifications and additional monitoring powers for Ofgem to ensure full compliance with DSO unbundling requirements.
- Implementation might also lead to the designation by Ofgem of CDSs and the granting of exemptions to the CDS operators of certain Third Package provisions. Whether this will be required will be determined in the impact assessment for the implementation of the European Court of Justice Citiworks ruling.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will not be reviewed
01/2010

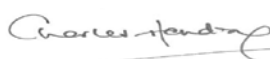
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

No

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 26th July 2010

Description:

Implement the minimum-compliance option for all measures.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: -0.35

COSTS (£m)	Total Transition (Constant Price) 2 Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.35	0	0.35

Description and scale of key monetised costs by ‘main affected groups’

Administration and legal costs to Ofgem and TSOs associated with TSO certification process, particularly where derogations are requested. Certification process has been costed for 25 TSO applications and the expected three derogation applications.

Other key non-monetised costs by ‘main affected groups’

Legal and administration costs associated with legislation changes and licence modifications to ensure compliance with TSO and DSO unbundling requirements. Additional costs associated with strengthened monitoring powers for Ofgem enforcement of DSO unbundling articles. Possible, but not certain, costs to DSOs of ensuring independence of compliance officer.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

Description and scale of key monetised benefits by ‘main affected groups’

No monetised benefits expected.

Other key non-monetised benefits by ‘main affected groups’

Minimal, as GB is already largely compliant. Full compliance could lead to small gains in terms of more efficient networks (less congestion, more investment), decreased market concentration leading to lower energy prices for consumers, and higher innovation in the energy sector. The likely extent of these benefits is small, as under 10% of GB transmission assets are not already fully ownership unbundled and the EC acknowledges that even then the GB system exemptions function reasonably well.

Key assumptions/sensitivities/risks

Discount rate (%)

Assumption 1: Legal formulations are found that reduce requirements for ensuring lack of energy supply, generation and production interest by shareholders in unbundled TSOs. Assumption 2: Concerns and complexities surrounding the application to interconnectors and OFTOs are successfully addressed.

Key risk: Should these concerns not be satisfactorily addressed, the implementation of the Third Package could lead to excessive restrictions on the range of investors allowed to fund transmission, distribution, interconnection and offshore transmission assets.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Great Britain				
From what date will the policy be implemented?	03/03/2011				
Which organisation(s) will enforce the policy?	DECC, Ofgem, EC				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes	Yes	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	DECC call for evidence: http://www.decc.gov.uk/en/content/cms/consultations/eu_energy_mkt/eu_energy_mkt.aspx
2	Call for evidence responses (will also be made available at the above link)
3	EC Third Package Impact Assessment: http://ec.europa.eu/energy/gas_electricity/interpretative_notes/doc/2007_09_19_impact_assessment.pdf
4	Transmission Price Control Review 2007-12: http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=191&refer=Networks/Trans/PriceControls/TPCR4/ConsultationDecisionsResponses

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

1. Issue

Articles 9-11 of the Third Package Electricity and Gas Directives and Article 3 of the Electricity and Gas Regulations introduce new unbundling requirements on transmission system owners (TSOs). These articles affect existing electricity and gas transmission systems, interconnectors, and the new Offshore Transmission Operators (OFTOs). Article 26 of the Directives places further unbundling requirements on Distribution System Operators (DSOs). Provisions are also made for exemptions to be granted to Closed Distribution System (CDS) operators.

Government intervention is needed to introduce national legislation and licence conditions are in place to allow compliance. The Third Package has to be implemented by 3 March 2011.

The two primary network-related objectives of the Third Package are to:

- (a) Improve competition through better regulation, unbundling and reducing asymmetric information;
- (b) Improve security of supply by strengthening the incentives for sufficient investment in transmission and distribution capacities.

However, in the area of transmission and distribution networks the GB gas and electricity arrangements are already largely compliant with the Third Package. As a result, the main objective of the implementation of the Third Package from a UK perspective is to fully comply with EU law.

2. Articles and description of options considered

Options

The minimum compliance option has been assessed throughout. It represents the Government's preferred option.

Transmission unbundling

The Third Package requires full ownership unbundling of transmission assets. However, article 9 allows for three derogation options:

- (a) The Independent System Operator (ISO) model: where, on 3 September 2009, the transmission system was part of a vertically integrated undertaking (VIU), the Member State may designate an ISO. Such an ISO would act as the system operator and would have, for example, independent responsibility for investment planning and management of third party access. The TSO would provide support, including through finance for investments identified by the ISO.
- (b) The Independent Transmission Operator (ITO) model: where, on 3 September 2009, the transmission system was part of a VIU, the TSO may remain part of the owning company. However, the TSO will need to comply with stringent rules on ring-fencing to ensure that it is completely independent from the rest of the VIU.
- (c) Arrangements providing greater independence than the ITO model: where, on 3 September 2009, the transmission system was part of a VIU and there are arrangements in place that guarantee more effective independence of the TSO than the ITO model, a Member State may decide to apply the ownership unbundling derogation.

There are a number of companies that might seek such derogations:

Scottish TSOs (SPET and SHETL): When the single GB energy market (BETTA) was created Scottish Power and SSE retained ownership of their transmission assets. These vertically integrated companies also own distribution, generation and supply businesses. There are, however, important regulatory safeguards to promote competition and efficient network operation including a single system operator (National Grid) and industry codes, overseen by Ofgem, governing such issues as investment and network access. Having multiple transmission owners provides the regulator with important comparators in agreeing network investment and pricing and a potential competitive element in delivering new infrastructure. Whilst transmission assets could not now be included in vertically integrated ownership structures we do not believe that they have been a barrier to the development of a competitive market.

Scottish Power and SSE are expected to apply for a derogation under option (c) above, on the basis that our regulatory arrangements are better than one of the models allowed in the Third Package.

Interconnector UK (IUK): Due to its particular circumstances this gas interconnector between Belgium and the UK has been disproportionately affected by the unbundling requirements of the Third Package. No one has a controlling interest in the company, but the unbundling text of the Directives still catches minority shareholders.

The derogations listed above will be granted by Ofgem, as National Regulatory Authority, but will also have to be approved by the European Commission. They will form part of the **TSO certification process** described in articles 10 and 11 of the Electricity and Gas Directives. Part of the certification process will need to be reflected in legislation and part in licences. The balance between legislation and licences will be determined following the consultation.

TSO certification will be required for existing electricity and gas TSOs, interconnectors and OFTOs.

Distribution unbundling and Closed Distribution Systems (CDS)

Article 26 of the Electricity and Gas Directives highlights some additional unbundling requirements for Distribution System Operators (DSOs). DECC and Ofgem's analysis together with the responses to the call for evidence suggest that GB is largely compliant in this area.

There are two areas that require action. Article 26 (2) states that the DSO must establish a compliance programme to ensure discriminatory conduct is excluded. An annual report setting out the measures taken must be submitted by the compliance officer of the DSO. Further to the second package this compliance officer shall be fully independent and have access to necessary information. Ensuring compliance with these provision will require modification of some of the DSO licence conditions.

Article 26 (3) requires that where a DSO is part of a VIU its activities will be monitored by the regulatory authority (or another 'competent body') so it cannot take advantage of its position to distort competition. Specifically, a DSO be clear about its separate identity in its communications and branding. Whereas current licences mostly comply with this provision, DECC and Ofgem's assessment is that enforcement will require strengthening Ofgem's monitoring powers.

A separate issue highlighted in the call for evidence was that of **Closed Distribution Systems (CDSs)**. Article 28 of both Directives introduces the option for Member States to provide for NRAs to classify a system which distributes energy within a geographically confined industrial, commercial or shared services site as a CDS if certain conditions are met. Member States may provide for the NRA to exempt the CDS operator from specific Third Package provisions.

The CDSs (as all licence exempt networks) will continue to be required to provide third party access, and it is not clear that the exemption provisions in the Third Package will be required. One respondent to the call for evidence suggested the current GB arrangements already provides for exemptions to independent distribution network operators and "consequently the licensing Statutory Instruments already provide for low "de minimis" tests". Elexon have also suggested that the current Balancing and Settlement Code (BSC) already allows for licence exempt networks to be opened to third party access without imposing the burdens associated with a full licence.

The need for and impact of the Third Package CDS exemptions will be assessed as part of the impact assessment for the implementation of the European Court of Justice ruling on the Citiworks case. Should specific costs and impacts be identified there, these will be incorporated into the final/implementation stage impact assessment for the Third Package.

3. Benefits

Transmission unbundling

The EC Impact Assessment (pp. 33-45) highlights the following broad categories of benefits from full ownership unbundling:

- greater investment in the network – e.g. the EC IA finds that in markets with ownership unbundled TSOs investment in interconnectors as a proportion of congestion revenues is double

that in markets without full unbundling (33% compared to 17%), in turn leading to less congestion.

- reduced market concentration – “average market shares of the largest generator were in 2005 in Member States with legal unbundling 73% versus 47.7% in Member States with ownership unbundled TSOs”
- lower energy prices for domestic and industrial consumers – for industrial consumers “the price difference between the two country samples over the entire period of nine years was thus 9% in favour of Member States with ownership unbundling”; for household electricity users the difference was 24% in favour of Member States with ownership unbundling
- greater levels of research and innovation in the electricity sector – “while it is difficult to attribute increased research expenditures to single factors, open competitive markets seem to support innovation and research in energy”

The association between ownership unbundling and these positive outcomes is therefore strong and significant. Caution, however, should be exercised in interpreting these results – whereas the EC Impact Assessment does demonstrate a strong association, it does not conclusively prove a causal link.

Transmission Owner	Regulated Asset Value (RAV), at close 2006/07	Share of total transmission RAV
National Grid Electricity Transmission (NGET)	£5,416m	57.3%
National Grid Gas NTS (NGG)	£2,981m	31.5%
Scottish Power Transmission Ltd (SPTL)	£288m	3.0%
Scottish Hydro Electricity Transmission Ltd (SHETL)	£764m	8.1%

Source: *Ofgem Transmission Price Control Review (2007-12)*

However, even if GB transmission assets are not fully unbundled the extent to which the UK will benefit from the Third Package is limited by two factors. Firstly, the large majority of transmission assets are unbundled: the entire gas transmission network is fully ownership unbundled and the entire electricity network in England and Wales in ownership unbundled. It is only the Scottish electricity TSOs that are not ownership unbundled, representing less than 10% of the total transmission Regulated Asset Value (RAV).

Secondly, even the EC Impact Assessment (p. 41) recognises that the current arrangements “functions reasonably well in Scotland”:

“SP and SSE promote the ISO solution while NG, Ofgem and the UK Department of Trade and Industry express a more reserved position. A common criticism is that the ISO is only a second best solution to ownership unbundling and only functions reasonably well in Scotland because some particularities:

- (i) The Scottish electricity market is relatively small and largely isolated from the rest of the UK. The grid is therefore relatively easy to manage;*
- (ii) NG is an experienced, ownership unbundled TSO in the neighbouring area guaranteeing its independence and preventing “cross-border” problems and*
- (iii) Ofgem is a strong regulator closely monitoring the relationship between the ISO and the asset owners.”*

Having said that, three responses to the call for evidence (from National Grid, one of the Big Six, and an independent DSO) support full unbundling, whereas only SSE and Scottish Power argued in favour of the current system. This suggests that there might be some additional competition gains to be had from full unbundling in the GB market.

Distribution unbundling

The EC Impact Assessment (pp. 57-58) suggests that “as with TSOs, the more effective unbundling of DSOs would in principle contribute to the creation of a level playing field at the retail level, mainly by eliminating incumbents’ information advantages, preventing cross-subsidies and ensuring fair network

access and transparent customer switching procedures... [it] would thus contribute to the contestability of the retail market and thus facilitate market entry by third party suppliers”, leading to lower prices for consumers.

However, as already stated, the GB market arrangements are already largely compliant with the Third Package in these areas, suggesting few additional benefits from implementation. In its response to the call for evidence, EDF suggests that on the specific issue of the designation of an independent compliance officer they “already apply the procedure set out in the Directive for the more stricter [sic] Independent Transmission Operator provision”. If, as EDF suggests, current practice in this area (the main one requiring changes) already exceeds the requirements laid out in the Third Package then no additional benefits can be expected from implementation of the specific provisions.

The call for evidence response from Energy North West (ENW), however, welcomes the new provisions suggesting it will address some of the concerns it has expressed in the past regarding the “monitoring the vertically integrated companies on this issue and enforcing existing licence conditions related to separation of distribution and supply”. This would suggest some additional competition benefits for consumers could result from implementation of the Third Package provisions in this area.

Finally, it is at present unclear that the CDS exemption provisions offer any benefits beyond what is already available in the GB market arrangements. They could potentially offer some savings to some unlicensed networks in complying with the Citiworks third party access ruling. These potential savings will be assessed in the upcoming Citiworks impact assessment.

4. Costs

Transmission unbundling

There are some process, legal and administration costs associated with the implementation of the Third Package, largely associated with legislation and license modifications. They will be required to enable Ofgem to certify TSOs in line with Article 9 and clarifications to the current interconnector and OFTOs licences. These costs are covered in the overall IA.

Beyond these costs, the certification process for TSOs will involve administration and legal costs for both Ofgem and the TSOs, particularly those seeking derogations under article 9. The costs for the approximately 25 companies requiring TO certification (including current gas and electricity TOs, interconnectors and OFTOs) is expected to be minimal and broadly in line with the costs assumed for the Gas Storage and LNG Facility Third Package Impact Assessment of between £900 and £2,100 per licensee. For those seeking derogations we expect costs to be higher, potentially in the range of £100k per derogation – a cost broadly equivalent to that assumed for existing OFTOs to engage in the development of the new offshore regime in the March 2009 Offshore Electricity Transmission Impact Assessment. As three TOs are expected to seek derogations, the total cost of the certification process is estimated at around £350k.

In their response to the call for evidence SSE suggest there are potential costs in terms of additional risk and uncertainty for required transmission investments associated with moving towards a different ownership unbundling regime as part of Ofgem’s certification process.

However, the evidence of recent European experience in ownership unbundling presented in the EC Impact Assessment, suggests that the commercial and investment risks associated with unbundling tend to be overplayed. The EC find (p. 35) that “shareholders have in fact in almost all cases benefited from increasing share prices during and after the ownership restructuring”. Moreover, there is “some evidence against the common view that the predictable revenue stream of the network business makes a vertically integrated companies [sic] less risky than a company without network assets, allegedly giving it cheaper access to investment capital”. Overall, the Commission do not find any negative impact on security of supply as a result of reduced network investment is likely to arise from the proposed measures. It is worth restating the caveat that this conclusion is reached without having established a robust counterfactual – in other words, we do not know whether these companies would have done even better in terms of their value and credit-worthiness in the absence of unbundling.

Distribution unbundling

As with transmission unbundling, there are likely to be administrative and legal costs in ensuring full compliance with the Third Package for DSOs. These are likely to be lower than for transmission

unbundling, as no new legislation will be required and are covered in the overarching Third Package Impact Assessment.

There might be costs associated with strengthening Ofgem’s monitoring capability to ensure compliance with article 26(3), but at this stage it is unclear what the scale of these might be.

EDF’s response suggests that there would be no additional costs for DSOs in ensuring the full independence of the compliance officer. No other companies have raised concerns about the cost of complying with this provision, supporting the view that costs are minimal.

Should Article 28 CDS exemptions be deemed necessary there would be a cost to Ofgem and CDS operators of being designated a CDS in the first place and then applying and being granted specific exemptions. Again, this issue will be explored in the Citiworks impact assessment.

5. Risks

A number of call for evidence responses raise concerns about the fact that the Third Package precludes undertakings with ownership of energy supply, generation or production from owning shares in an unbundled TSO and any subsequent voting rights associated with that share ownership. National Grid, for example “ is particularly concerned about the efficacy, costs and complexity of any rules which might be used to implement the unbundling regime, in the manner contemplated” by the Commission. “It is not clear how shareholders of network operators might be identified as being, for example, suppliers, or how they might be prohibited from voting. It would seem [...] sub-optimal to impose obligations on such shareholders and is not in keeping with the transmission independence which already exists in GB”. We plan to implement these provisions in a way that is as light touch as possible.

6. Summary of consultation responses on main transmission and distribution network issues

Respondent	Articles 9-11 (Full Transmission ownership unbundling, including implications for interconnectors and OFTOs)	Article 26 (Further DSO unbundling)	Article 28 (Closed Distribution Systems)
IUK	Unduly restricts the type of investor in infrastructure. Exemptions need to be widened to non-VIUs.		
ENW	Support full unbundling	“Support the requirement for a fully independent compliance officer” Concerned about monitoring the vertically integrated companies on this issue and enforcing existing licence conditions related to separation of distribution and supply.	Support independent compliance officer CDS: provisions already exist for IDNOs. Consequently the licensing Statutory Instruments already provide for low “ de minimis” tests.
ENA		DSOs already compliant with 3 rd Package	No problem with proposed approach to exemptions
EDF	No immediate concerns with derogations from full ownership unbundling	Supports and already applies the stricter procedure for independent transmission operator (art 21 2)	
National Grid	Concerns regarding shareholding restrictions – sub-optimal.	UK largely compliant.	No problems with proposed approach to exemptions.

	Supports full unbundling		
BBL	Concerns about ownership unbundling for interconnectors unduly limiting the range of potential investors.		
Shell	Over-riding concern is non-discriminatory access to networks – currently met		
Elexon			Mechanisms within the BSC to allow licence exempt networks to be opened up without imposing the burdens of full licence.
Centrica	Support full ownership unbundling for electricity transmission. Gas: not relevant “there may be complexities around the issue of unbundling in so far as this relates to the new OFTO arrangements”		
Transmission Capital Ltd	Complexities surrounding OFTO regime: confirm system owned by offshore transmission licensee		
EON	Exemptions from unbundling requirements needed for future investments in interconnection etc. Additional separation requirements for interconnectors not necessary and could deter investment	“Business separation regime for DSOs in E&W is robust, and we believe that it is already in line with the requirements of the Third Package”	
SSE	Current level of unbundling needs to be maintained in order not to bring risk and uncertainty to the market that would hamper investment. Derogation under Art 9 (9) should be applied.	“UK is already fully compliant in the area of DSO legal unbundling”	
Scottish Power	Will apply for derogation under Art 9 (9). GB model has proven successful in the five years since it was implemented, with no actions being brought forward either by National Grid as System Operator or by Ofgem.	No need for further legal unbundling of DSOs in GB	Small network operators should be subject to the same obligations as DSOs
MRA Executive Committee			Links between DG, third party access and proposed exemptions to be examined in association with the MRA
BGE group	Unbundling model chosen for		

	gas interconnectors should be consistent across jurisdictions (focus on GB, NI, ROI). Prefer the ITO over ISO model.		
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Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>

Title: Third Package: Gas Storage and LNG Facility Impacts Lead department or agency: Department of Energy and Climate Change Other departments or agencies: n/a	Impact Assessment (IA)
	IA No: DECC0006
	Date: 27/07/2010
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Other
Contact for enquiries: Alex.Whitmarsh@decc.gsi.gov.uk John.Sartin@decc.gsi.gov.uk	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The 'Third Energy Package' came into force on 3 September 2009 and includes directives and regulations on gas and electricity. The directives will need to be transposed into GB law and the regulations will be directly applicable from 3 March 2011. The Government is required, by EU law, to implement the Gas Directive and certain provisions of the Gas Regulation.

This impact assessment forms part of a suite of impact assessments on the Third Package; it focuses on the parts of the energy package that are targeted at gas storage and liquefied natural gas (LNG) facilities.

What are the policy objectives and the intended effects?

For gas storage and LNG, the high-level objectives of the Third Package are to increase the access to, and transparency of, gas storage and LNG facilities in a consistent way throughout the European Union. These changes will allow all market participants to stay informed of the current status of individual storage and LNG facilities, while also ensuring they have access to these flexible supply sources when needed. By doing so, the package should enhance investment signals, as well as creating greater security of supply, and more competitive prices and services.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Two policy options have been identified, neither of which go beyond the minimum implementation of the measures:

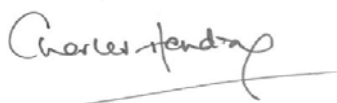
1. Implement the relevant legislative provisions through legislative changes (with no specific licensing regime) which will be enforced by Ofgem.
2. Implement the relevant legislative provisions and introduce a licensing regime to be administered by Ofgem.

Each option has its own merits, and the cost burdens do not appear to differ greatly between them. Consequently, DECC will not have a preferred option going into the consultation, and would welcome more information on each of the options as part of the consultation process.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed Ongoing by EU
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Not applicable

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.



Signed by the responsible Minister:

Date: 26th July 2010

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.0135	High: 0.0315	Best Estimate: 0.0225

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0135	0	0.0135
High	0.0315	0	0.0315
Best Estimate			

Description and scale of key monetised costs by ‘main affected groups’

- If a licensing regime was introduced (DECC has no preferred option as to whether to introduce such a regime or not at this stage), then quantified administrative costs could be in the range of 13,500 to 31,500 to reflect the costs to business of applying for a licence. These costs, should a licencing regime be introduced, are reflected at the top and bottom of this page. Alternatively, if we did not introduce a licensing regime, we would expect the costs to be closer to zero.

Other key non-monetised costs by ‘main affected groups’

i) Any loss of economies of scope due to any restrictions on the ability of vertically integrated firms to coordinate activities across different functions (for example shared services). ii) Any changes to the access requirements and services offered by storage sites with negotiated third-party access (nTPA) iii) Additional information provided by LNG and storage facilities iv) Potentially varying amounts of regulatory uncertainty depending on whether a licencing regime was introduced or not.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by ‘main affected groups’

Other key non-monetised benefits by ‘main affected groups’

Changes to storage and LNG practices, due to the Third Package, will increase competition, create greater movement of gas between markets, and will reduce the market power for certain market participants, thus increasing security of supply and creating more competitive prices, as highlighted in the European Commission's own impact assessment. UK-specific benefits will be the avoidance of infraction costs, as well as potentially small benefits to consumers from greater market competition.

Key assumptions/sensitivities/risks

Discount rate (%)

na

DECC does not have intricate details of current or planned business operations and it is possible that the measures could impact to a greater degree than judged here. Beyond those facilities that are existing or under construction, DECC has not attempted to consider the impact on future facilities, as this would require predicting the number and timing of projects as well as which measures would be relevant to them (although DECC notes that a number of planned facilities have nTPA exemptions, which would reduce the burden on these facilities if they come to market).

Impact on admin burden (AB) (£m): New AB: 0.025	AB savings:	Net: 0.025	Impact on policy cost savings (£m): Policy cost savings:	In scope Yes
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Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		Great Britain			
From what date will the policy be implemented?		03/03/2011			
Which organisation(s) will enforce the policy?		Ofgem			
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		No			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		Yes			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	Yes	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	
2	
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Strategic Overview and Rationale for Intervention

The 'Third Energy Package' came into force on 3 September 2009 and includes directives and regulations on gas and electricity. The directives will need to be transposed into GB law and the regulations will be directly applicable from 3 March 2011. The Government is required, by EU law, to implement the Gas Directive and certain provisions of the Gas Regulation.

This impact assessment forms part of a suite of impact assessments on the Third Package; it focuses on the parts of the energy package that are targeted at gas storage and liquefied natural gas (LNG) facilities.

The UK wholesale gas market is already one of the most competitive in Europe, and many of the arrangements in the Third Package are already in place. Since 2004, the UK has returned to being a net importer of gas, and a significant amount of gas now comes to the UK from the EU. These links with Europe, allied with declining indigenous production, mean that it will become increasingly important for the UK's security of gas supply and the affordability of our gas supplies that the UK can source sufficient gas at competitive prices from the EU. Greater access to storage and LNG facilities throughout the EU will help the UK achieve this by increasing the gas potentially available to the UK market.

The UK supports the goals of the Third Energy Package. For gas storage and LNG facilities, there are a range of requirements which are intended to have the effect - where equivalent arrangements are not already in place - of reducing market power, increasing competition, increasing efficient investment and the use of assets, helping gas to flow to where it is needed most, and enhancing security of supply.

Background and Assessment of the Relevant Articles

This impact assessment is for the articles in the Gas Directive and Gas Regulation which specifically target storage and LNG operations (for example, the measures which impact on transmission system operators are considered in a separate impact assessment). The key requirements of the Gas Directive and Regulation (and who they might apply to) are as follows:

1. Legal and functional unbundling is required for those vertically integrated storage and LNG operators that are technically and economically necessary (TEN) for the efficient running of the system. The TEN requirement is already the test as to whether negotiated nTPA is required for gas storage; therefore for this impact assessment it has been assumed that if nTPA is presently required then legal and functional unbundling would also be required under article 15 of the Gas Directive.

Of the nine commercially operational gas storage sites, two are required to have nTPA - Rough and Hornsea, both of which are already legally unbundled. Seven storage sites presently under construction or planned have also been granted exemptions from nTPA, including the 2 proposed expansions at Aldbrough.

DECC is aware that Centrica Storage Limited (the legally unbundled company that owns the Rough gas storage facility), whilst being divorced from the vertically-integrated parent company's operations, also operates the York field in the middle North Sea, around 8km north of Rough. When developed, this field will produce gas. In order to comply with the EU Third Package, Centrica Storage Limited is therefore in the process of separating these two activities.

2. Commercially sensitive information needs to be treated appropriately. The UK's common law of confidence already prevents the disclosure by an undertaking of confidential information that is not their own. However, all vertically integrated storage and LNG facilities need to ensure that certain information which could be commercially advantageous is not shared with other parts of the business. At present, Rough is likely to be compliant with this (because Centrica legally unbundled Rough from other activities when it acquired the facility). However, It is not clear what actions other facilities operators may need to take to ensure compliance.

3. The arrangements for access to storage for gas storage facilities with nTPA have been altered. These arrangements would presently apply to the Rough and Hornsea storage facilities. Ofgem has recently issued an open letter laying out its proposed approach to third party access to gas storage; this will be the subject of consultation.

4. Under the Gas Regulation, all storage and LNG facilities operators must provide a range of data that must be made publically available. LNG and storage operators of TEN facilities are required to facilitate the trading of capacity to ensure that the storage capacity is being utilised. Storage operators must ensure that a range of storage services are available at TEN storage facilities.

Table 1: Summary of Articles with Significant Potential Impact

Article	Key Requirements	Who It Applies to*
15 of the Directive: Legal and functional Unbundling	Create a separate legal company	TEN SSOs & LNG SOs
	separate management structure at the operational level	
	Separate remuneration packages	
	Common services, where unavoidable, must be contracted at market rates	
	Compliance Program must be put in place	
16 of the Directive: Commercially Sensitive Information	Confidentiality must be ensured	All LNG SOs & SSOs
	Non-disclosure of activities to other parts of business	VIU LNG SOs & SSOs
	Information necessary for competition should be made public	All LNG SOs & SSOs
	Chinese Walls	VIU LNG SOs & SSOs
33 of the Directive: Access to Storage	Regulatory authority to determine and publish criteria for access regime	Ofgem
	Storage facilities available for third party access must be published by the regulatory authority and/or by the SSOs	Ofgem/ TEN & SSOs
	System users must be consulted on the proposed criteria	Ofgem/ System Users
15 of the Regulation: Access Services	Information on access services to be made publically available	TEN SSOs & LNG SOs
	Potentially provide a range of services (e.g. interruptible services, long and short term services, and bundled and unbundled service)	TEN SSOs & LNG SOs
	Network users must offer guarantees as a pre-requisite for access	All network users
	Capacity limits should be justified on the basis of technical constraints	TEN SSOs & LNG SOs
17 of the Regulation: Capacity allocation	Maximum storage capacity will be made available to the market	TEN SSOs & LNG SOs
	Capacity allocation mechanisms must be non-discriminatory and transparent; these must be published	
	Measures must be taken to avoid capacity hoarding	
19 of the	Data, in quantified terms, on contracted, available, and total	TEN SSOs &

Regulation: Transparency Requirements	storage must be published Data must be published in a non-discriminatory way and must be meaningful Make public information on the inflows, outflows and available capacity, in a manner consistent with how services are offered Information on derivation of tariffs must be published	LNG SOs TEN SSOs & LNG SOs All SSOs and LNG SOs TEN SSOs & LNG SOs
22 of the Regulation: Trading of Capacity Rights	Capacity must be freely tradable Trading must take place in a transparent and non-discriminatory manner. Contracts and procedures must be harmonised; details of which must be passed to the regulator Secondary market for trading must be available.	TEN SSOs & LNG SOs

* TEN = technically and economically necessary for providing efficient access to the system; VIU = Vertically integrated Undertakings; SSOs = Storage system operators; LNG SOs = LNG storage operators.

Table 2 summarises the other articles which apply specifically to LNG or storage facilities where either GB is either already compliant or the potential impact of the measure is immaterial. These articles are not considered further in this impact assessment.

Table 2: Summary of Other Articles in the Gas Directive

Article	Key Requirements	Who It Applies to*
4	Non-discrimination n authorising the construction / operation of gas facilities	DECC / Ofgem
8	The development of technical rules (such as safety requirements), where required, for natural gas facilities.	Various government organisations
13	non-discrimination between users; provision of sufficient information to TSO and system users.	SSOs and LNG SOs
32	LNG facilities must publishing tariffs for the purposes of third party access; these must be applied without discrimination between users	LNG SOs
36	New Infrastructure may be granted, for predefined period, exemption from offering third party access	LNG SOs & TEN SSOs

* TEN = technically and economically necessary for providing efficient access to the system; VIU = Vertically integrated Undertakings; SSOs = Storage system operators; LNG SOs = LNG storage operators.

Options considered

Two policy options have been identified, neither of which goes beyond the minimum implementation of the measures:

Option 1. Implement the measures solely through the legislative changes (with no new licensing regime) which would be enforced by Ofgem

This option would see the Gas Directive and relevant provisions of the Gas Regulation be implemented into GB law through changes to legislation. Designation of SSOs and LNG SO would be fulfilled by DECC / Ofgem listing these operations. Ofgem would be given sufficient powers to enforce the requirements of the Gas Regulation and Gas Directive where present powers are judged insufficient.

Option 2. Implement the measures and introducing a licensing regime to be administered by Ofgem

This option would see the Gas Directive and relevant provisions of the Gas Regulation be implemented into GB law through changes to legislation and the introduction of licences. Designation of SSOs and LNG SOs would be fulfilled by a licensing regime administered by Ofgem. This would involve Ofgem having sufficient powers to enforce the requirements of the Gas Regulation and Gas Directive and, ultimately, to remove undertakings' licence to operate.

Options considered

Two policy options have been identified, neither of which goes beyond the minimum implementation of the measures:

Option 1. Implement the measures solely through the legislative changes (with no new licensing regime) which would be enforced by Ofgem

This option would see the Gas Directive and relevant provisions of the Gas Regulation be implemented into GB law through changes to legislation. Designation of SSOs and LNG SO would be fulfilled by DECC / Ofgem listing these operations. Ofgem would be given sufficient powers to enforce the requirements of the gas regulation and gas directive where present powers are judged insufficient.

Option 2. Implement the measures and introducing a licensing regime to be administered by Ofgem

This option would see the Gas Directive and relevant provisions of the Gas Regulation be implemented into GB law through changes to legislation and the introduction of licences. Designation of SSOs and LNG SOs would be fulfilled by a licensing regime administered by Ofgem. This would involve Ofgem having sufficient powers to enforce the requirements of the Gas Regulation and Gas Directive and, ultimately, to remove undertakings' licence to operate.

[Option 1. Implement the measures solely through the legislative changes \(with no new licensing regime\) which would be enforced by Ofgem](#)

Costs

Impact on Business

Article 15 of the Directive: GB seems to be largely compliant with this article. As regards the unbundling of the Rough gas storage site from the production facility, the costs of this unbundling could be small, although DECC would welcome more information on this.

Article 16 of the Directive: As regards limiting the amounts of information that can be shared between different parts of a vertically integrated firm, there may be some costs in terms of reduced economies of scope (for example, from the loss of shared services). The scale of these costs is unclear and DECC would welcome more information on this as part of the consultation process.

Article 17 of the Regulation: GB is largely compliant with this article. Some costs are likely to be incurred due to the requirement to publish details on capacity allocation mechanisms. But these costs are likely to be small, although DECC would welcome more information on this as part of the consultation process.

Article 19 of the Regulation: This is an extension of the existing rules on what information SSOs and LNG SOs must make publically available, and compliance costs are likely to be small. Some SSOs and LNG SOs currently publish detailed information that at least in part complies with the article. For others, or where certain information requirements are not currently met by any SSO or LNG SO, such information should be collected as part of normal commercial operations; thus making this information publically available is unlikely to involve significant expenditure.

Article 22 of the Regulation: This pertains to the trading of capacity rights. Presently, secondary trading is expected under nTPA for both storage and LNG, while other specified trading requirements should also be practiced by all under the current market arrangements. Companies should therefore be compliant. Only where companies do not collect adequate information on market trading are costs likely

to be present. Otherwise, the sole cost under this article should involve providing requisite information to the regulator in an appropriate format.

Administrative Costs

The costs of implementing the entirety of the Third Package are covered in the over-arching impact assessment and are not covered here.

Article 33: There may be some small additional administrative costs for Ofgem in terms of additional enforcement costs or costs associated with facilitating the consultation of system users. These costs are unlikely to be material, although Ofgem will be in a better position to assess these costs after transposition of the Directive.

Implementation Costs

In this option, implementation would be through use of the changes to legislation and would not be through a licensing regime. Designation could be achieved by compiling a list based on information that is already available, or storage and LNG operations could self-certify. Ofgem would be given sufficient enforcement powers - if present powers are judged to be insufficient.

The cost of implementation through changes to legislation (and without using licences) are considered relative to the option of introducing licences, below.

Benefits

Changes to storage and LNG practices, due to the Third Package, will increase competition, create greater movement of gas between markets, and will reduce the market power for certain market participants, thus increasing security of supply and creating more competitive prices, as highlighted in the European Commission's own impact assessment. UK-specific benefits will be the avoidance of infraction costs, as well as potentially small benefits to consumers from greater market competition.

Implementation Benefits

The benefits of implementation through changes to legislation (and without using licences) are considered relative to the option of introducing licences, below.

Option 2. Implement the measures and introducing a licensing regime to be administered by Ofgem

This option also sees the introduction of the Third Package and therefore the costs and benefits of the measures themselves are relative to the first option.

However, in this option a licensing regime would be used to designate storage and LNG system operators and as a vehicle to enforce the relevant measures. The disadvantages and advantages of this are set out below and considered relative to option 1.

Cost

Implementation Costs

- a licence regime could increase regulatory risk and have an adverse effect on long-term investment in LNG and gas storage infrastructure;
- a new licence regime could be seen as an overly elaborate method of implementing a number of relatively light touch requirements;
- 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, or it may be necessary to extract it to avoid being duplicated in a licence;
- the introduction of a new licence regime would require legislation; and
- potentially some duplication as offshore gas storage projects are already required to hold a

licence from DECC (which were introduced under the Energy Act 2008 to simplify the consents regime for offshore gas infrastructure).

There would also be an additional administrative costs to licensees. Application fees for licences tend to cost between £450 to £1050 and this is likely to be indicative of the potential application costs. Licensees might also experience some administrative costs in making the application which might be of the same order of magnitude as the application fee costs. Applying these costs to the 15 storage and LNG facilities that are already existing or under construction would imply an small additional administrative burden to the private sector of £13,500 to £31,500.

Benefits

Implementation Benefits

- a licence would provide clarity on the new requirements in the Directive for LNG and gas storage operators while ensuring that Ofgem have the appropriate means of enforcement;
- future changes such as those required to address EU network codes (which are binding) or to implement other changes could be easier to implement via licensing rather than primary legislation or other route (conversely a licence change might not be scrutinised as closely as a change to primary legislation);
- a licence would consist of standard conditions that could be switched-on and off to reflect the size and type of each facility being licensed.

Risks and assumptions

DECC does not hold detailed information on the precise working and operations of each LNG and storage sites. It is possible, therefore, that there is a greater or lesser impact on market participants than assumed in this impact assessment. DECC would welcome more information from market participants regarding this as part of the consultation.

DECC is also aware of a number of specific concerns raised in the responses to the call for evidence, and aims to gather information on these specific areas of concern as part of the consultation process. This will then feed into the final impact assessment of the EU Third Package on gas storage and LNG.

This impact assessment has not attempted to predict the storage and LNG facilities that might come to market other than those that are presently under construction. As more facilities come to market the greater the costs (and benefits) will be of these measures.

Summary and preferred option with description of implementation plan

As regards the measures considered in this impact assessment, GB is largely compliant. However, there are a range of changes that may be required.

DECC is consulting on the whether to introduce a licensing regime or to implement the measures through changes to legislation.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>

Title: Third Package: Articles concerning the National Regulatory Authority Lead department or agency: Department for Energy and Climate Change Other departments or agencies:	Impact Assessment (IA)
	IA No: DECC0007
	Date: 27/07/2010
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Other
Contact for enquiries: Marina.Pappa@decc.gsi.gov.uk Jenna.Obyrne@decc.gsi.gov.uk	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

There are requirements in Articles 35 to 38 of the Electricity Directive and Articles 39 to 42 of the Gas Directive regarding national regulatory authorities with which the UK is not compliant. These include designation of a representative to the Agency for Co-operation of Energy Regulators (ACER), ensuring that staff of the regulatory authority are able to act independently of market interest, some new duties and that the national regulatory authority has the necessary powers to carry out certain new duties.

It is therefore necessary for Government to make changes to ensure compliance with the Directives.

What are the policy objectives and the intended effects?

These provisions are intended to increase the independence and transparency of the regulator and promote co-operation with other European regulators. It is difficult to quantify the benefits associated with these measures. However we would expect the intangible benefits arising from these measures to increase the integrity of the regulator and the functioning of the EU internal market. This should lead to better market outcomes and overall reduced costs for consumers.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Only one option has been considered, as this option ensures compliance at minimum cost to Government, the regulator and industry. The option includes the following measures, but are not limited to:

- Confirm Ofgem's designated position as single national NRA .
- Impose an obligation on Ofgem to ensure that all staff employed by it act independently of any market interest.
- Provide for a formal rotation scheme for GEMA's board
- Amend legislation so that the Article 36 objectives are expressly included as matters which Ofgem must pursue when undertaking regulatory tasks. This would include a further duty to ensure the reference to close consultation with other relevant national authorities.
- A number of new duties as a result of Article 38 and 42 of the Electricity and Gas Directives, respectively

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

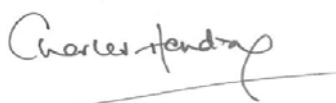
It will be reviewed
Ongoing by EU

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Not applicable

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.



Signed by the responsible Minister:

Date: 26th July 2010

Description:

Implement Option 1 (minimum compliance option) for all measures

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0		0

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

The majority of the costs associated with these measures are associated with a one-off transition cost of making changes to the regulations. These costs fall predominantly on Government and Ofgem and would be included as part of the costs to Government and Ofgem associated with making changes in order to comply with the Third European Package (please see over-arching IA). We expect the costs associated with individual measures to be small or zero. Ofgem may also have additional monitoring costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

It is difficult to quantify the benefits associated with these measures. However we would expect the intangible benefits arising from these measures to increase the integrity of the regulator. This should lead to better market outcomes for both industry and consumers.

Key assumptions/sensitivities/risks

Discount rate (%)

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Great Britain				
From what date will the policy be implemented?	03/03/2011				
Which organisation(s) will enforce the policy?	HMG/ Ofgem				
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded:		Non-traded:		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	European Commission Impact Assessment on Third Legislative Package
2	DECC's Call for Evidence
3	
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Issue

Articles 35 to 38 of the Electricity Directive and Articles 39 to 42 of the Gas Directive deal with the National Regulatory Authority. These include:

- Article 35 of the Electricity Directive (and Article 39 of the Gas Directive) requires the designation of a single national regulatory authority, who acts as a representative at the Agency for Cooperation of European Regulators (ACER). The Directives also requires Member States to guarantee the independence of the regulatory authority and ensure that it exercises its regulatory tasks impartially and transparently.
- Article 36 of the Electricity Directive (and Article 40 of the Gas Directive) requires that the regulatory authority take all reasonable measures in pursuit of objectives laid out in the article, in close consultation with other relevant national authorities. The objectives include promoting close cooperation with the Agency, developing competitive and properly functioning regional markets within the Community, eliminating restrictions on trade in electricity/natural gas between Member States.
- Article 37 of the Electricity Directive (and Article 41 of the Gas Directive) sets out the regulatory authority's duties, a number of which are monitoring duties.
- Article 38 of the Electricity Directive (and Article 42 of the Gas Directive) sets out the regulatory regime for cross-border issues.

While the UK is broadly compliant with these requirements a number of changes need to be made to become fully compliant. The detail of these changes is covered in greater detail below.

These measures are designed to improve competition in the internal market, through greater cooperation between European regulators and greater independence and transparency of the national regulator.

Articles and Associated Options

This section explores the specific articles within which the UK is currently non-compliant and the options available to ensure compliance with the Third European Package.

Article 35 - Independence

Designation of regulatory authorities

Article 35 (1) of the Electricity Directive and Article 39 (1) of the Gas Directive require the designation of a single national regulatory authority, who acts as a representative at Community level within ACER.

- Option: Confirm Ofgem's designated position as the NRA for GB. Impose an obligation on Ofgem to, when performing its representation role, to take account of the views of any other regulatory authority designated under Articles 35(2)/36(2) and/or Article 35(3)/39(3).

Article 35 (3) of the Electricity Directive and Article 39 (3) of the Gas Directive allow Member States to designate regulatory authorities for small systems in geographically separate regions.

- Option: Designate NIAUR (the Northern Ireland regulator) as a separate regulatory authority for Northern Ireland in accordance with this provision.

Independence of regulatory authorities

Article 35 (4b) of the Electricity Directive and Article 39 (4b) of the Gas Directive require Member States to ensure that the regulatory authority ensures that its staff and the persons responsible for its management:

- Act independently from any market interest; and
 - Do not seek or take direct instructions from any government or other public or private entity when carrying out the regulatory tasks.
- Option: 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 instruction from any government or other public or private entity when carry out regulatory tasks

Appointments to Board and Rotation Scheme

Article 35.5b of the Electricity Directive and Article 39.5b of the Gas Directive require Member States to ensure that members of the board of the regulatory authority or, in the absence of a board, the regulatory authority's top management are appointed for a fixed term of five up to seven years, renewable once. The articles also requires Member States to ensure an appropriate rotation scheme for the board or the top management.

- Option: Amend legislation to reflect the five year minimum and seven year maximum term length with no renewal. Provide for a formal rotation scheme.

Article 36 – General objective of the regulatory authority

Article 36 of the Electricity Directive and Article 40 of the Gas Directive require that the regulatory authority shall take all reasonable measures in pursuit of objectives laid out in the article, in close consultation with other relevant national authorities.

- Option: Amend legislation so that the Article 36 objectives are expressly included as matters which Ofgem must pursue when undertaking regulatory tasks. This would include a further duty to ensure the reference to close consultation with other relevant national authorities in Article 36 is given effect. Amendment of the principal objective and general duties of Ofgem will include ensuring appropriate conditions for the effective and reliable operation of electricity networks and eliminating restrictions on trade in electricity/natural gas between Member States.

Article 37- Duties and powers of the regulatory authority

Article 37 of the Electricity Directive (and Article 41 of the Gas Directive) sets out the regulatory authority's duties. 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 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. A number of duties in relation to Transmission System Operators will also need to be extended to interconnectors.

In addition, new specific monitoring duties include some of the new duties on the NRA 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 an critical incident in the energy market; that the NRA monitors technical co-operation between Community and third-country transmission system operators.

Member States are required to ensure that regulatory authorities are granted the powers enabling them to carry out these duties in an efficient and expeditious manner.

- Option: Amend legislation to include any new duties which are not currently reflected in the GB framework and give Ofgem the requisite powers to carry them out.

Enforcement

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.

- Option: Amend legislation to make all relevant European law requirements as conditions for which Ofgem may require information.

Implementing binding decisions

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.

- Option: Replace the current collective licence modification process with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body (most likely the Competition Commission) and allow Ofgem to initiate code modifications where they are essential for the implementation of ACER or Commission decisions.

Complaints to the NRA

Article 37 (10) of the Electricity Directive and 41 (10) of the gas Directive extends the scope of complaints that may be made to the NRA against a transmission or distribution system operator.

- Option: Extend regulations to include complaints in relation to transmission system and distribution system operators.

Annual reporting on fulfilment of its duties

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.

- Option: Amend legislation to ensure Ofgem reports annually to the Commission and ACER.

Article 38 – Regulatory regime for cross-border issues

Article 38 of the Electricity Directive and 42 of the Gas Directive sets out the regulatory regime for cross-border issues. This includes:

- i) requiring regulatory authorities to closely consult and co-operate with each other and the Agency with any information necessary for the fulfilment of their tasks under the Third Package;
 - ii) a requirement on the NRA to coordinate the development of all network codes for the relevant transmission system operators and other market actors;
 - iii) a requirement on the NRA to coordinate the development of the rules governing the management of congestion; and
 - iv) a requirement that 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.
- Option: Amend legislation to include:
 - o a general duty to cooperate and consult with other NRAs and the Agency in the performance of Third Package regulatory tasks and a duty on Ofgem 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.

- A duty to ensure Ofgem is empowered to engage with the Agency under Article 6 (2)
- A duty on Ofgem to cooperate on certain matters with other NRAs in any region which is i) identified by the Commission under Article 12(3) of the Electricity Regulation, ii) includes the UK. 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.

Options

Implementation of all the options described in the above section is the only option that has been considered at this stage. This option ensures compliance at a minimum cost to Government, the regulator and industry.

Benefits

These provisions are intended to increase the independence and transparency of the regulator and promote co-operation with other European regulators. It is difficult to quantify the benefits associated with these measures. However we would expect the intangible benefits arising from these measures should increase the integrity of the regulators and the functioning of the EU internal market. This should lead to better market outcomes and overall reduced costs for consumers.

There may be some additional benefits of Ofgem's membership to the Agency for the Cooperation of European Regulators (ACER). ACER focuses on cross-border issues, monitoring and advising the European Commission on key issues such as 10-year Network Development Plans in electricity and gas and the legally-binding EU-wide Network Codes. ACER will be able to issue binding decisions regarding cross border infrastructure disputes. It is therefore vital for Ofgem to be involved in ACER as its decisions and advice to the Commission will have a direct impact on UK markets and actors.

Costs

The majority of the costs associated with these measures are associated with a one-off transition cost of making changes to legislation. These costs fall predominantly on Government and Ofgem and would be included as part of the costs to Government and Ofgem associated with making changes in order to comply with the Third European Package (please see over-arching IA). In general we would expect these costs to be relatively small.

There may be some additional costs associated with each measure, and these are detailed below:

Article 35

Designation of regulatory authorities

- Option: Confirm Ofgem's designated position as the NRA for GB. Impose an obligation on Ofgem to, when performing its representation role, to take account of the views of any other regulatory authority designated under Articles 35(2)/36(2) and/or Article 35(3)/39(3).

There are no membership costs associated with membership of ACER. Therefore the only cost that Ofgem will incur from its membership are the costs associated with attending meetings (including travel costs and opportunity cost of time) and advising ACER staff. It is impossible to quantify these costs yet as it is unclear how often meetings will take place. Membership of ACER may also create secondment opportunities at ACER for Ofgem employees.

There may be additional costs associated with consulting with other regulatory authorities. However it is difficult to estimate these costs at this stage.

- Option: Designate NIAUR as a separate regulatory authority for Northern Ireland in accordance with this provision.

This measure is unlikely to have any additional costs. There may be additional costs associated with consulting with other regulatory authorities, however it is difficult to estimate these costs at this stage.

Independence of regulatory authorities

- Option: 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 instruction from any government or other public or private entity when carry out regulatory tasks.

Ofgem may experience some additional enforcement costs due to this measure.

Rotation Scheme

- Option: Amend legislation to reflect the five year minimum and seven year maximum term length with no renewal. Provide for a formal rotation scheme.

An informal rotation scheme is already in place for Ofgem, however these arrangements will need to be formalised.

There should be no added cost to introducing these arrangements formally.

Article 36 - General objective of the regulatory authority

- Option: Amend legislation so that the Article 36 objectives are expressly included as matters which Ofgem must pursue when undertaking regulatory tasks. This would include a further duty to ensure the reference to close consultation with other relevant national authorities in Article 36 is given effect. Amendment of the principle objective and general duties of Ofgem will include ensuring appropriate conditions for the effective and reliable operation of electricity networks and eliminating restrictions on trade in electricity/natural gas between Member States.

While Ofgem may require additional resources to ensure compliance with these additional objectives, it is likely that these will be subsumed by Ofgem and therefore the opportunity cost should be small. DECC would welcome evidence on the type and scale of these costs of this measure as part of the consultation process.

Article 37- Duties and powers of the regulatory authority

- Option: Amend legislation to include any new duties which are not currently reflected in the GB framework and give Ofgem the requisite powers to carry them out.

Ofgem may require additional resources to ensure compliance with these additional objectives. It is likely that these will be subsumed by Ofgem and therefore the opportunity cost should be small. DECC would welcome evidence on the type and scale of these costs of this measure as part of the consultation process.

Enforcement

- Option: Amend legislation to make all relevant European law requirements as conditions for which Ofgem may require information.

The direct costs of these measures are implementation and enforcement costs which will be experienced by Ofgem. However there may be an additional administrative cost on Ofgem if it decided to exercise the option and use its increased information gathering powers. However we believe Ofgem would only exercise this option in cases where the benefit outweighed the cost. There may be an indirect administrative cost of these powers on industry as Ofgem is enabled to collect more information. DECC would welcome evidence on the type and scale of these costs of this measure as part of the consultation process.

Implementing binding decisions

- Option: Replace the current collective licence modification process with a process that allows Ofgem to reach its decisions subject to appeal to an appropriate body (most likely the Competition Commission) and allow Ofgem to initiate code modifications where they are essential for the implementation of ACER or Commission decisions.

The cost of implementing this measure fall primarily on Government and reflect the requirement to change legislation. There may be indirect effects and DECC would welcome any evidence on these as part of the Consultation process.

Complaints to the NRA

- Option: Extend regulations to include complaints in relation to transmission system and distribution system operators.

This may increase Ofgem's operational costs as they see an increase in the number of complaints, however we anticipate that this will be small. DECC would welcome evidence on the scale of these costs as part of the consultation process

Annual reporting on fulfilment of its duties

- Option: Amend legislation to ensure Ofgem reports annually to the Commission and ACER.

As Ofgem currently reports to the Secretary of State on its activities we do not anticipate that this action will pose much additional cost on Ofgem.

Article 38 – Regulatory regime for cross-border issues

- Option: Amend legislation to include:
 - o a general duty to cooperate and consult with other NRAs and the Agency in the performance of Third Package regulatory tasks and a duty on Ofgem 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.
 - o A duty to ensure Ofgem is empowered to engage with the Agency under Article 6 (2)
 - o A duty on Ofgem to cooperate on certain matters with other NRAs in any region which is i) identified by the Commission under Article 12(3) of the Electricity Regulation, ii) includes the UK. 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.

The costs of these measures fall primarily on Ofgem. These costs include the additional costs of consultation and administrative costs involved with sharing information and engaging with the Agency. It is not possible to quantify these costs at this stage, however we anticipate that they will be small.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] These measures will be continuously reviewed by policy teams in DECC and will be subject to approval from the Commission.</p>

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