



Department for the
Economy
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ENERGY

Government Response to Consultation

Decision Paper on the Transposition of the 2019 Electricity (Recast) Directive ((EU) 2019/944)

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1. Introduction

- 1.1 On 3 September 2020 the Department for the Economy issued its statutory consultation document on the Transposition of the 2019 EU Electricity (Recast) Directive (2019/944). The purpose of the consultation was to ensure stakeholders were aware of forthcoming changes and to seek their comments and views on various aspects of the Directive.
 - 1.2 The Consultation closed on 16 October 2020. Thirteen responses were received to the consultation and the Department would like to take this opportunity to thank those who responded for taking the time to do so. A link to the responses is enclosed at Annex B of this Decision Paper.
 - 1.3 This Decision Paper outlines the feedback received from stakeholders to the questions posed within the consultation and the Department's position, going forward, in relation to the issues.
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2. Questions & Feedback Received

- 2.1 The consultation asked for comment and views from stakeholders on a number of questions covering a range of issues. Below are a summary of the responses in relation to each question.

Article 57(5)(f)

Q1 - In the interests of full compliance with the Directive, and to avoid any doubt, an amendment is required to Schedule 1 of the Energy (Northern Ireland) Order 2003 to include requirements around confidentiality obligations as per the Directive. The Department would welcome the views of stakeholders on this issue.

- 2.2 Two responses were received on this question. **SONI**, as it provides confidential information to the Utility Regulator (UR), welcomes the opportunity to strengthen the confidentiality requirements and **Moyle Interconnector** advises that the proposed amendment appears reasonable.

Government Response and Decision

- 2.3 The Department welcomes that respondents are in agreement with the proposed way forward to amend Schedule 1 of the Energy (NI) Order 2003 in line with the Directive. The Department will take forward amendment of the legislation as required.

Article 57(7)

Q2 - Although NI is not a Member State, the Directive will continue to apply under the Protocol, therefore the Department's view is that UR will require a power to allow co-operation with the Commission to fulfil its duty under this Article. To meet this requirement the Department would welcome the views of stakeholders on the proposal to amendment either Article 8 or 8A of the Energy Order.

- 2.4 **SONI** acknowledges the need to ensure that relevant powers are in place so that the UR continues to have the powers to act in accordance with its duties and **SSE** is supportive of the principle of the UR continuing to co-operate with other National Regulatory Authorities. **Moyle Interconnector**, whilst suggesting the proposal is reasonably benign, is not clear what the outworking of such a report to the European
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Parliament would be. They question this oversight as it is not required to maintain the operation of the Single Electricity Market (SEM).

Government Response and Decision

- 2.5 The Department welcomes the views of respondents and their views that the UR should have the necessary powers to allow co-operation with the Commission. The Department will take forward the relevant legislation to support this amendment.

Article 59(1)(c)

Q3 - The department would welcome the views of stakeholders on an additional duty to the Energy Order to ensure that ENTSO-E & EU DSO are referred to and that their duties are more specific than general duties to consult and co-operate on an additional duty.

- 2.6 Whilst SONI notes the importance of empowering the UR to continue to oversee compliance by SONI with relevant EU legislation, it is of the view that any powers created in legislation should properly relate to SONI, Moyle and NIE Networks' activities or roles in any participation in ENTSO-E (Energy Transmission System Operators - Electricity) or EU DSO (Distribution System Operators); rather than attempting to unilaterally create obligations binding on any European bodies themselves, which may not be enforceable. To facilitate the achievement of the purpose of Article 59(1) i.e. co-operation at a regional level, SONI welcomes any engagement by the UR with other European Regulatory Authorities for increased clarity as to the manner of participation of the UR in the processes laid out in Article 59(1).
- 2.7 SSE comments that it is not clear how the department is expecting the UR to engage with other regulatory authorities, or to ensure that the ENTSO-E and EU DSO entities will carry out their obligations and that further consideration may need to be given to licence changes in this respect and consulted on appropriately. It continues that the drafting of these changes will be important to ensure that the obligations that are placed on the UR are necessary and proportionate for the purposes of implementing this Directive. Moyle Interconnector agrees, stating care should be taken with placing any duty on the UR, which it may not be able to discharge, again being mindful of whether oversight of ENTSSOE is necessary for the ongoing operation of the SEM.

Government Response and Decision

- 2.8 The Department welcomes the feedback on this matter and will proceed to legislate to ensure that the Utility Regulator has sufficient powers to ensure compliance of the EU entities with the obligations under Article 59(1)(c) where appropriate and
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necessary. This power will not regulate the relations between the Utility Regulator and licence holders, rather it is about co-ordination with other Regulatory Authorities. This legislative provision will also ensure ongoing compliance with the Directive when the Celtic Interconnector is in place and operating.

Article 59(1)(I)

Q4 - Consideration is being given to the inclusion of a legislative obligation on the Regulator in the Electricity (Northern Ireland) Order 1992 to meet the specific requirements and timescales set out in this Article. The Department would welcome comments from Stakeholders on this proposed way forward.

- 2.9 **NIEN** are of the view that there should be a wider review of the mandate of the UR including specific consideration of environmental, decarbonisation and economic issues relating to the electricity sector to create a regulatory framework in NI supporting innovation and strategic investment, enabling NIEN to strengthen electricity networks in anticipation of need. Any broadening of the UR mandate should not change its ability to protect customers' needs.
- 2.10 The **SDLP** and **SONI** support the proposal to expand the role of the UR to develop a 'smart grid' and to promote energy efficiency. Additionally, SONI welcomes the prominence being given to these important issues through the Department placing a monitoring, assessing reporting obligation upon the UR; however they are of the opinion that oversight on its own will not drive the changes that are required. SONI would therefore suggest that this reporting obligation is matched by a duty to fund and promote these developments in a manner that ensures an efficient and proactive approach although the UR must have the adequate resource to do so.

Government Response and Decision

- 2.11 The Department acknowledges that requiring the Utility Regulator to monitor and report is not sufficient on its own to drive change, however it is anticipated that the forthcoming energy strategy will lead to further policy development and implementation measures as appropriate.

The Department will proceed with legislation as outlined in the consultation document to place a requirement on UR to monitor and report on these matters as per the Directive requirements.

Article 59(9)

This article requests RAs to make available the detailed methodology and underlying costs used for the calculation of the relevant network tariffs, which requires a level of detail and factual underpinning. The Department is

considering a legislative amendment to ensure compliance and implementation and would welcome your view and comments.

- 2.12 **NIEN** considers it important to preserve the confidentiality of commercially sensitive information and that it should be captured within any legislative amendments in relation to its transposition whilst **Moyle Interconnector** considers the legislative amendment reasonable but questions whether it is required for the continued operation of the SEM.
- 2.13 **SONI** agree that it would be beneficial for stakeholders to be able to have access to the methodologies and underlying costs for the network tariffs presented in an accessible manner whilst protecting the confidentiality of third party data. If additional input is required from the network companies, the UR will need to allow time for those submissions in the annual tariff process, requiring it to start earlier than at present. Resources will also be required within the UR to deliver this additional workload. The SEM locational tariffs for generators rely on a complex model that reflects flows of electricity across the island. The information related to this would be delivered most efficiently through cross-border co-operation and this co-operation should be reflected in the legislation, if practicable.

Government Response and Decision

- 2.14 The Department intends to proceed with a new provision in the Energy Order to fulfil this requirement while ensuring that confidentiality of commercially sensitive data is preserved.

Article 61(2)(b)

Q6 - Given that the SEM is a single wholesale market and is delivered jointly by SONI and EirGrid under the oversight of the SEM Committee, it is our view that the requirement under this article should also be a function of the SEM Committee. The Department would welcome the views of stakeholders on this proposal.

- 2.15 NIEN, in considering this article, advise that it is essential that whatever regulatory arrangements are put in place, recognise the central role that DSOs (as well as TSOs) have in the development of new operational and governance arrangements. SONI is of the view that in order to ensure the sound operation of what is understood as “the SEM Committee”, i.e. a reference to both committees acting jointly, that there should be clarity in the operation of the SEMC with regard to powers under any Northern Ireland legislation with particular regard to regional co-operation on regulatory authorities on cross border issues. SONI also recognises
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the importance of DfE engagement with relevant bodies where any additional agreement on co-operation may be facilitated between UR and CRU.

- 2.16 SSE has no objections to the proposal other than to ensure there is co-ordination with the Department of Environment & Climate Change (DECC) to ensure a consistent approach across NI/RoI for the benefit of the SEM. Moyle Interconnector advises that cross-border trade for the purpose of the SEM is on the SEM-GB border which will be excluded from EU platforms. The term 'region' in this context refers to the Ireland-UK capacity calculation region, meaning a geographic area in which co-ordinated capacity calculation (of cross-border capacity) is applied (per Commission Regulation (EU) 2015/1222). The Ireland-UK capacity calculation region will cease to exist since the Directive and these regulations will not apply to GB. It is therefore not apparent how this article is applicable to the SEM which is a single bidding zone with no electrical connections to the EU's internal energy market.

Government Response and Decision

- 2.17 The Department is not proposing any change to the powers of the SEM Committee. Rather, the Department is giving the Authority the power to enter into arrangements with other Regulatory Authorities for the purpose of joint oversight at regional level. If the nature of the function means that it falls within the scope of the SEM then it will be a SEM matter but if not it will be a matter simply for regional co-operation. The legislative proposals will ensure that the Utility Regulator has the necessary powers to fulfil their obligations. While we acknowledge that when the Implementation Period ends, the UK will no longer be part of the Internal Energy Market and the SEM will not be trading implicitly with other Member States at that point in time, it is possible that it will in the future, e.g. via the Celtic Interconnector. The provisions suggested will ensure the UR has appropriate powers as and when this is required.

Article 61)2)(c)

Q7 - The Department recommends the introduction of an express power, for the Regulator to carry out this function of this article, as it is our view that neither Article 8 nor 8A of the Energy Order is sufficient to cover the requirement. The Department is also of the view that this should also be a function of the SEM and would welcome the views of stakeholders on this Article.

- 2.18 **SONI** notes that the UR currently approves the SONI resource adequacy assessment however, they are unclear as to what further steps might be envisaged under Article 61. In practice the European resource adequacy assessments are conducted by ENTSO-E. It is clear that ENTSO-E facilitates the participation of non-Member State TSOs, such as SONI, but feel unclear the degree to which non-
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Member State Regulatory Authorities may participate in decision-making. SONI acknowledges the importance of engagement by DfE with relevant bodies to the extent that any additional agreement on co-operation may be facilitated, where required, between UR and the Commission for Regulation of Utilities (CRU). In addition, SONI welcomes any steps taken by the UR to engage with the Agency for the Co-operation of Energy Regulators (ACER) to ensure the SEM is equipped to deliver compliance with relevant network codes/ EU legislation.

- 2.19 **Moyle Interconnector** advises that it is unclear how to interpret the term ‘regional’. It suggests that resource adequacy assessments should be carried out and overseen by the UR at both a national (i.e. NI only) and SEM level. Given that there are currently no electrical connections between the SEM and the EU, the European Resource Adequacy Assessment seems to be of limited relevance to the SEM.

Government Response and Decision

- 2.20 This Article does not change the basic responsibilities of the UR in relation to resource adequacy assessments (or whether these would be SEM matters). But it allows the UR to carry out any functions it has in compliance with, in particular an EU wide frame of reference. The Department will therefore proceed with legislation to give the Utility Regulator the power to enter into arrangements with other Regulatory Authorities for the purpose of joint oversight at regional level. If the nature of the function falls within the scope of the SEM then it will be a SEM matter.

Article 62

The Department would welcome comments from stakeholders on its view that the requirements of Article 62 para 1 can be implemented by way of licence conditions with an obligation in the Electricity (Northern Ireland) Order 1992 to require those licence conditions, as appropriate, to be made.

- 2.21 **SONI**, as one of the TSOs of the IU SOR (System Operating Region) submitted their proposal on the establishment of the IU Regional Co-ordinating Centre (RCC) to the relevant regulators in July 2020, acknowledging that the proposal may need revising in light of the forthcoming end of the UK transition period under the UK/EU Withdrawal Agreement. The proposal is currently under review by the Regulators. However, the IU RCC submission proposes that Coreso (located in Belgium) will become the IU RCC.
- SONI acknowledges the importance of engagement by the UR with relevant bodies in the oversight of RCC establishment and activities.
- As current Coreso fees are paid by SONI and recoverable by SONI under the provisions set out in the annex to its licence it is not clear what additional licence change would be required to allow for the recovery of RCC service fees but SONI would support the more explicit codification of this if it gives greater clarity to the services CORESO will provide to the All-Island region and TSOs. This could be
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achieved efficiently and effectively through the update of the Annex that the UR is currently working on.

- 2.22 **Moyle Interconnector** advises that the Ireland-UK system operation region will cease to exist if the Directive and relevant regulations do not apply to GB. It is therefore not apparent how this article is applicable to the SEM which has no requirement for many of the tasks allocated to RCCs (such as co-ordinated capacity calculation and creation of a common grid model) as a single control area with no electrical connections to the EU's internal energy market. It is not clear that it is appropriate to compel licencees to participate in RCCs in these circumstances.

Government Response and Decision

- 2.23 This Article is intended to impose obligations on the licence holders in relation to matters within their power providing information and using best endeavours to assist in enforcement. The Department will proceed with legislation to require the Utility Regulator to ensure that appropriate licence conditions are in place as well as provisions to allow coordination and cooperation with other designated regulatory authorities to ensure compliance with the Directive in relation to regional coordination centres.
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3. Impact Assessments

- 3.1 No comments were received in relation to the Equality Screening nor the Regulatory Impact Assessment.
- 3.2 There was a response received in relation to the Rural Needs Impact Assessment. The respondent is concerned about the harm a 70% renewable energy target may cause to rural communities. He advises that this is compounded by the erection of wind farms on upland blanket bog which could lead to damaging the ability of peatland to sequester carbon.
- 3.3 The respondent also has concerns surrounding the planning procedures around wind turbines and the age and condition of turbines being erected. He concludes that there should be a full cost-benefit analysis of these new technologies.

Government Response and Decision

- 3.4 The Department thanks the respondent for the response and, although outside the scope of this consultation, the response will be forwarded to the team within Energy Division that is responsible for renewable policy within the forthcoming Energy Strategy.
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4. General Responses

- 4.1 A number of responses were received, which although outside the scope of the consultation questions, the Department considers that it should provide a response to the issues raised.

Energy/Battery Storage

- 4.2 A number of respondents raised the issue of energy/battery storage within their responses. Issues raised included:
- Ensuring legislation does not differ from the rest of the UK;
 - Supporting the principle of new primary legislation to facilitate the licensing of energy storage;
 - A clear and appropriate legal framework to ensure a level playing field with other market participants;
 - Careful consideration of the licensable activity to be created whilst ensuring the objectives of this Directive are adhered to; and
 - Risks Battery Energy Storage Systems (BESS) can pose to public safety;

Government Response

- 4.3 The Department welcomes the feedback from consultees. The Utility Regulator has determined that, as a stop-gap measure, battery storage can be licensed under standard generating licences. However, energy storage involves a number of new and emerging technologies and, as there is no specific policy framework to license energy storage, including (in relation to Articles 36 and 54 of the Directive) creating a prohibition on ownership by DSOs and TSOs except where they qualify for a derogation, the Department considers that an appropriate policy framework for the licensing of Energy Storage should be developed as part of the new Energy Strategy.

Smart Metering

- 4.4 Smart metering was also high on the agenda of respondents with issues raised including:
- The commitment by the Department to take forward a cost-benefit analysis (CBA) with calls for a timetable;
 - that the measurement of services such as dynamic pricing may not require smart metering;
 - If a positive outcome, the need to set out a work programme for implementation;
 - Regardless if the CBA is negative, consumers should be facilitated to request a dynamic electricity price contract; and
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- Recognising the theoretical benefits of introducing smart metering.

Government Response

- 4.5 The Department welcomes the feedback from consultees. It is anticipated that a CBA of smart metering will commence during 2021 and any policy consequences from this cost benefit analysis would be subject to further consideration and consultation in due course.

Article 59 – Duties and Powers of the Regulatory Authorities

- 4.6 A number of the sub-articles within Article 59 were covered within the consultation and questions posed for comment. However, some respondents provided comment on a number of other articles, most notably regarding Article 59(1) on the duties of the Regulatory Authority.

Government Response

- 4.7 Article 59(1)(d) introduces a new duty on the Regulator to approve products and procurement processes for non-frequency ancillary services. The Department was of the view that this falls into scope of UR's licensing powers but to ensure compliance with the Directive, a duty should be included in the Electricity (Northern Ireland) Order 1992 to require the Authority to impose such conditions.
- 4.8 SONI highlighted that UR already has the powers necessary to approve SONI's procurement of System Services through Condition 29 of SONI's TSO licence and sought assurance that, given the system services market is considered a SEM matter, there would be no unintended consequences introduced as a result of the legislation.
- 4.9 While the Department acknowledges that this licence condition does ensure a level of compliance in principle, to ensure full transposition of the requirement it is necessary to include a legislative provision. This will be a function of the Utility Regulator and in turn a function of the SEM to ensure a level playing field for participants in the wholesale market.
- 4.10 Article 59(1)(e) introduces a new duty to implement network codes and guidelines adopted pursuant to Articles 59, 60 and 61 of the Electricity Regulation (EU) 2019/943. Moyle Interconnector Ltd queried the implementation of network codes and guidelines without participation on the EU's dedicated platforms as well as whether codes and guidelines are considered separate acts to those listed in Annex 4 of the protocol.
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- 4.11 Network codes are considered supplementary and implementing legislation under the Withdrawal Act and deemed in general to be in scope of the Protocol. Network codes and guidelines will have to be assessed for SEM implications on a case-by-case basis but it is essential that UR has sufficient powers to ensure compliance with the Directive where appropriate.
- 4.12 59(1)(h) adds a new duty for the Regulator to ensure that TSOs make available interconnector capacities to the utmost extent pursuant to Article 16 of the Electricity Regulation. The consultation document set out that NI is compliant in principle but the Department would place a duty on the Utility Regulator to impose appropriate licence conditions.
- 4.13 SONI noted NI's compliance and requested that the licence condition should reflect the need to ensure operational security while maximising interconnector capacity availability as per the capacity allocation and congestion management guideline (CACM).
- 4.14 The Department notes SONI's comments and feedback. The content of licence conditions will be for UR to take forward in line with both the Directive and CACM requirements.
- 4.15 Article 59(1)(i) extends the requirement for the regulatory authority to ensure that there is no cross-subsidisation between transmission, distribution and supply activities to include "other electricity or non-electricity activities". SONI in their response queried the need for a licence modification power as their existing licence conditions are sufficiently broad.
- 4.16 While the Department acknowledges that this may be the case, nonetheless to ensure full transposition of the Directive, it is necessary to ensure a legislative basis for the requirement.
- 4.17 Article 59(5)(c) reduces the frequency of the requirement for TSO's to submit a network development plan from 1 year to 2 years. SONI noted their content to submit bi-annually rather than annually but asked that consultation obligations are also reviewed as part of that process to reduce the burden of the current double consultation on both SONI and market participants.
- 4.18 The Department notes SONI's response and will consider in due course.
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Annex A – Consultation Respondents

Jim Allister, MLA

Kells Vocal

Northern Ireland Electricity Networks

SDLP

National Energy Action NI

Jayne McCaw

Consumer Council

Alun Evans MD

SONI

SSE

Moyle Interconnector

Electricity Association of Ireland

West Tyrone Against Wind Turbines

Annex B – Consultation Responses

The consultation responses can be located through the following link.

- [Transposition of 2019 Electricity \(Recast\) Directive](#)
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