

## **ANNEX 2**

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

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

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

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

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

		<p>obligations in their licences (Conditions 26, 27 and 29 of the Supply Licence) to protect consumers who are of pensionable age, disabled and chronically sick, irrespective of whether they are also fuel poor.</p>
<p>3 (4) &amp; 3 (8)</p>	<p>Requires Member States to take appropriate measures to protect final customers, such as energy efficiency and national energy plans.</p>	<p>GB has a range of measures in place to increase the energy efficiency and income of households with particular focus on those who are vulnerable. Key measures to increase the energy efficiency of households include the Warm Front programme (set up by the Home Energy Efficiency Scheme (England) Regulations 2005) and the equivalent programmes in Wales and Scotland; the Decent Homes Standard (a Public Service Agreement following the publication in April 2000 of the Housing Green Paper “Quality and Choice: a Decent Home for All”); the Carbon Emissions Reduction Target (CERT) and the Community Energy Savings Programme (CESP) both introduced through secondary legislation under the Gas Act. CERT requires gas suppliers to achieve targets for a reduction in carbon emissions generated by the domestic sector<sup>1</sup>; CESP requires gas suppliers to deliver energy efficiency saving measures to domestic consumers in low income areas of GB. Finally, the Energy Act 2011, includes a provision for a new “Green Deal”. This will establish a framework to enable private firms to offer consumers energy efficiency improvements to their homes, community spaces and businesses at no upfront cost, and recoup payments through a charge in instalments on the energy bill.</p> <p>The UK Government has announced proposals to mandate smart meters. Under powers in the Energy Act 2008, the Secretary of State has powers to make licence modifications requiring the industry to put these in place. Other mechanisms are also in place under powers in the Climate Change Act 2008. The Carbon Reduction Commitment Energy Efficiency Scheme is a cap and trade mechanism for large organisations designed to reduce energy use through</p>

<sup>1</sup> Prior to CERT, the Government had in place the Energy Efficiency Commitment (EEC).

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

<sup>2</sup> See Regulations 2010, No 2155 (Gas) and No 2154 (Electricity), Schedule "Application form and summary guidance".

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

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

	<p>relation to terms and conditions, with additional requirements that the payment methods offered do not unduly discriminate between customers, prepayment methods must be fair and adequately reflect likely consumption and terms and conditions must not include non-contractual barriers to the exercise of customers' rights.</p> <p>Customers are also required to be protected against unfair or misleading selling methods.</p>	<p>supply from a supplier who is obliged to offer a wide range of payment methods (Condition 27.1 of the Supply Licence). Condition 27.2A of the Supply Licence, and Schedule 2AB to the Gas Act (inserted by regulation 20), ensure that suppliers are unable to discriminate between customers, as any difference in terms and conditions (which includes differences in the prices charged), as between payment methods, must reflect the costs to the supplier of the different payment methods. In addition, Condition 28 of the Supply Licence imposes particular requirements to ensure prepayment meters reflect any changes in charges.</p> <p>Conditions 22 and 23 also impose requirements regarding the transparency of customer contracts (including a requirement to provide copies of contracts to customers on request) and notification of terms.</p> <p>Domestic customers are protected against unfair or misleading selling methods under Condition 25 of the Supply Licence. Where the contract has been entered into as a result of a visit to the customer's premises or as a result of a conversation in a public place the supplier is required within 14 days to take all reasonable steps to contact the customer and to seek his confirmation that he understands he has entered into a domestic supply contract, is content to have entered into that contract and is content with the way in which the supplier's marketing activities were conducted.</p>
Paragraph 1 (e)	Requires that consumers are not charged for changing supplier.	New Condition 14A.5 of the Supply Licence, and Schedule 2AB to the Gas Act (inserted by regulation 20), prevent suppliers from charging customers for any costs associated with changing supplier.
Paragraph 1 (f)	Sets out consumer rights in relation to standards of service and complaint handling.	In relation to standards of service, the Gas (Standards of Performance) Regulations 2005, impose particular obligations on suppliers and distributors and provide for compensation to be paid in certain situations. In relation to complaint handling the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008, made

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

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

5	Requires Member States to monitor security of supply.	Section 172 of the Energy Act 2004 places an obligation on Government to publish an annual report which covers the matters specified in this article. The Government will ensure that a copy of this report is forwarded to the Commission every two years.
6	Requires Member States to co-operate in order to promote regional and bilateral solidarity in respect of gas supply. Measures need to cover possible severe disruptions of supply.	The GB has solidarity arrangements in place with the Republic of Ireland. Within the UK, GB also has arrangements with Northern Ireland.
7 (1) and (2)	Sets out how Member States will work together, both between governments and between regulatory authorities, for the purpose of integrating national markets.	Regulation 34 inserts a new section 4D into the Gas Act to impose a new duty on the Authority to consult and cooperate with other authorities.  New Condition 23 of the Gas Interconnector Licence places a new requirement relating to regional cooperation.
7 (3)	Requires Member States to ensure that transmission system operators (TSOs) have one or more integrated systems at a regional level that cover two or more Member States for capacity allocation and checking network security.	New Condition 5 of the Interconnector Licence imposes requirements for involvement in the establishment of integrated systems for capacity allocation and checking network security.
7 (4)	Requires that where vertically integrated TSOs participate in a joint undertaking, they establish and implement a compliance programme that must be approved by ACER.	New Condition 23 of the Interconnector Licence places requires interconnector operators to provide for compliance programmes for vertically integrated undertakings where they participate in a joint undertaking for the promotion of regional cooperation.
8	Requires Member States to establish and make public technical rules for transmission, distribution, generation, gas storage.	Technical rules for gas are set out in the Uniform Network Code (UNC), the Network Entry Agreement and Network Exit Agreement, the Gas Safety Management Regulations 1996, the Gas (Installation and Use) Regulations 1998, and are required by Condition 5 of the Interconnector Licence.  Condition 5 of the Gas Interconnector Licence has also been amended to ensure the interoperability of systems and

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

		<p>addition, there are a number of requirements on TSOs to comply with minimum standards for the maintenance and development of the transmission system (Pipeline Safety Regulations 1996 and Gas Safety Management Regulations 1996 and 1998).</p> <p>Interconnectors: Condition 19 of the Interconnector Licence sets out requirements in relation to how the licensee should operate and develop the interconnector, including building sufficient cross-border capacity, taking into account security of supply. Condition 5 requires the licensee to provide information to a relevant gas transporter or system operator. Condition 11.4 requires the licensee to provide reasons when third party access is denied.</p> <p>Storage and LNG operators: Regulation 7 inserts new section 11A into the Gas Act which imposes duties on the Gas Storage and LNG operators. Operators are also required to comply with these tasks by virtue of sections 19B and 19D of, and new Schedule 4B to, the Gas Act.</p>
14	Allows Member States to designate an ISO as a derogation from the ownership unbundling requirement (ISO model).	Regulation 4 inserts new section 8G into the Gas Act which permits certification of a TSO where an ISO is designated, and section 8J, which provides for designation of the ISO.
15	Requires legal and functional unbundling of operators of storage facilities which are not technically and/or economically necessary, and transmission owners when applying the ISO model.	<p>In relation to gas storage operators, regulation 6 inserts new sections 8R and 8S of the Gas Act 1986. New section 8R places the relevant requirements on owners of gas storage facilities. New section 8S enables the Authority to grant exemptions from the obligation in new section 8R to owners who operate facilities that are technically and/or economically necessary.</p> <p>The Authority will introduce appropriate licence provisions in the event that an ISO is designated.</p>
16(1) – 16 (3)	Sets out confidentiality requirements on Transmission System Operators and owners and LNG storage operators.	<p>Transmission: Part v of the Uniform Network Code (“Protected Information”) sets out the relevant requirements.</p>

		<p>Interconnectors: New Condition 21 of the Interconnector Licence places these requirements on interconnectors.</p> <p>Regulation 7 inserts new section 11C into the Gas Act 1986 to place confidentiality requirements on LNG/Gas storage operators.</p>
17-23	Sets out requirements which must be met if a TSO is to be certified on the basis of its compliance with the Independent Transmission Operator model.	Regulation 4 inserts sections 8G into the Gas Act which ensures that a TSO can only be certified on the basis of its compliance with the ITO model if the Authority considers that the TSO meets the requirements of these articles.
24	Requires Member States to designate Distribution System Operators (DSOs).	DSOs are designated by virtue of licences granted by the Authority, licence exemptions granted by the Secretary of State, and exceptions under Schedule 2A to the Gas Act.
25	Sets out the tasks of DSOs.	<p>Section 9 of the Gas Act sets out the licensee's general obligation to develop and maintain an efficient and economical pipeline system. Standard Condition 9, and Standard Special Condition A11, of the Gas Transporter's Licence requires the licensee to put in place transportation arrangements (Codes) to achieve this. In respect of connection to and use of the system, Standard Conditions 4, 4A and 4B, and Standard Special Condition A4 and A5, impose requirements as to charging methodologies. Standard Condition 4B of the Gas Transporter's Licence has been amended to ensure that methodologies for use of system charges are compliant with the Gas Regulation and any binding decisions of the Agency and of the Commission.</p> <p>Standard Condition 4D, and Standard Special Condition A6, requires the conduct of the transportation business in a way that avoids conferring unfair commercial advantage on any parties.</p> <p>New Standard Condition 4F of the Gas Transporter's Licence has been inserted to ensure that access to the system is offered in accordance with the Gas Act and the Gas Directive.</p>
26	Sets out requirement that	Regulation 18 amends section 7 of the

	<p>generation and production undertakings must be legally unbundled from distribution. It also requires a fully independent compliance officer to monitor the unbundling arrangements and for vertically integrated undertakings not to create, through their branding, confusion between the DSOs and the associated supply undertakings.</p>	<p>Gas Act to prevent a person being a gas producer and a DSO (unless they serve fewer than 100,000 connected customers).</p> <p>Section 7(3) of the Gas Act already prohibits the Authority from granting a gas transporter licence to a person holding a supply or shipper licence.</p> <p>Standard Special Conditions A33, A34 and A36 of the Gas Transporter Licence implement the requirements in relation to legal unbundling, including in relation to compliance programmes and branding. New Standard Condition 40A requires all licence holders to notify the Authority if they become part of a vertically integrated undertaking.</p> <p>Regulation 30 amends section 34 of the Gas Act and inserts new section 34A which, taken together, give the Authority new monitoring duties (including in relation to Article 26(3)) and information gathering powers in respect of those monitoring duties.</p>
27	<p>Sets out the confidentiality obligations on DSOs.</p>	<p>Standard Condition 39, and Standard Special Conditions A33 of the Gas Transporter Licence require the licensee to preserve the confidentiality of commercially sensitive information and to not disclose information which may be advantageous in a discriminatory manner.</p>
28	<p>Enables Member States to provide for regulatory authorities or other competent authorities to classify certain systems as Closed Distribution Systems (CDS), and to exempt CDSs from specific Directive Requirements.</p>	<p>Regulation 20 inserts Schedule 2AA to the Gas Act, which sets out the duties of licence exempt gas distribution networks. Regulation 12 of Schedule 2AA makes provision for the Authority to classify a system as a CDSs, and exempts CDS from the requirement at Article 32(1) for tariff methodologies to be approved before their entry into force, subject to a request, by a customer or third party supplier, for such approval to be obtained. (It is the Government's view that any system capable of meeting the CDS classification criteria will fall within the class exemption regime rather than the licensed regime. Therefore, no equivalent provision has been included in the gas transporter licence.)</p>
29	<p>Clarifies that Article 26(1) does not prohibit the combined</p>	<p>This provision has been taken into account in the course of transposing</p>

	operation of transmission and distribution as long as the combined operator meets the specified unbundling requirements.	Article 26.
30	Requires that Member States and other designated authorities, including the regulator, have powers (to the extent necessary to carry out their functions) to access the accounts of electricity undertakings. Imposes a requirement to protect the confidentiality of commercially sensitive information.	<p>Section 38 of the Gas Act gives the Authority the power to require information from licensed gas undertakings where it appears to the Authority that the licensee may be contravening or may have contravened any relevant condition<sup>3</sup> or relevant requirement.</p> <p>In addition to requirements under the Companies Act 2006, gas transporters, interconnectors and suppliers are required to produce accounts under their licences, so the Authority can request the accounts if the licensee is or may be contravening the licence requirement to produce accounts.</p> <p>The obligation on Gas Transporters is set out in Standard Condition 30, and Standard Special Condition A30, (Regulatory Accounts), and in Condition 6 of the Interconnector licence (Separation of Accounts). The accounting duties imposed on licence exempt gas transporters under Schedule 2AA (see below) are relevant requirements.</p> <p>Section 105 of the Utilities Act 2000 (“the Utilities Act”) sets out general restrictions on the disclosure of information and makes clear that any confidential information must not be disclosed, except in specified circumstances.</p>
31	Requires gas undertakings to draw up, submit, audit and publish their annual accounts, and keep separate accounts for transmission, distribution, LNG and storage and other activities.	<p>In addition to requirements under the Companies Act 2006, gas undertakings are required to prepare accounts under their licences, and keep separate their accounts from any other business of the licensee under Standard Condition 30, and Standard Special Condition A30, of the Gas Transporter Licence and Condition 6 of the Interconnector Licence.</p> <p>Both licences have been amended to require the licensee to audit and report on the obligation to avoid discrimination and</p>

<sup>3</sup> A relevant condition in relation to a licence holder means any condition of his licence.

		<p>cross-subsidies between the transmission and distribution businesses and to specify this information in their internal accounting. The auditor is required to report on discrimination and cross-subsidisation.</p> <p>Section 19E(2)-(4) of the Gas Act contains accounting requirements relating to owners of LNG and gas storage facilities.</p> <p>Regulation 20 inserts Schedule 2ZA to the Electricity Act, which sets out the duties of operators of licence exempt gas transporter (distribution) networks. Regulation 6 of that Schedule imposes requirements relating to distribution accounts.</p>
32	Requires Member States to ensure the implementation of the third party access system for transmission, distribution and LNG facilities.	<p>Access to transmission and distribution systems is covered by the Gas Transporter Licence and via the Network Code. Standard Conditions 4-4E, and Standard Special Conditions A4-A7, of the Gas Transporter licence requires the licensee to obtain prior approval from the Authority for charging methodologies for system charging and requires all tariffs to be published. Standard Special Condition A35 of the Gas Transporter licence prohibits cross-subsidies. Regarding interconnectors, Condition 11 of the Interconnector Licence, requires the licensee to offer terms of access on the basis of a charging methodology approved by the Authority. Any disputes arising regarding connection are determined according to the process set out in section 27A of the Gas Act. Access disputes arising out of complaints against distributors are determined according to the process set out in sections 27B-D.</p> <p>Regulation 20 inserts Schedule 2AA to the Gas Act, which sets out the duties of operators of distribution networks that are exempt from the requirement to hold a transporter licence, including third party access requirements.</p> <p>Regulation 28 amends sections 27B-D of the Gas Act in order to (among other things) widen the Authority's dispute resolution functions so that they apply to disputes arising out of complaints about</p>

		<p>operators of licence-exempt gas pipe-line (distribution) systems and owners of LNG and gas storage facilities.</p> <p>Access to LNG and gas storage facilities is ensured by sections 19A to 19E of the Gas Act 1986.</p>
33	<p>Sets out the regulatory framework for providing access to gas storage facilities and linepack and access to ancillary services.</p>	<p>Section 19B of the Gas Act sets out requirements for access to gas storage facilities.</p> <p>In respect of an access regime, the UK Government believes that the negotiated access regime, introduced following public consultation, continues to be better suited to the GB gas market. GB has a flexible gas storage market with active competition between facilities. The Third Party Access and Accounts Regulations 2000 set out the relevant arrangements.</p> <p>In respect of the obligation to define and publish access criteria for gas storage facilities and the procedure to be followed for (negotiated) third party access, Regulation 8 which amends Section 19A of the Gas Act imposes a duty on the Authority to publish a list of storage facilities that are available under the negotiated access regime. Regulation 10 places a duty on storage system operators and other natural gas undertakings providing ancillary services to consult system users when developing their main commercial conditions.</p> <p>Under the definition of linepack in the Third Package, no linepack products are currently available (or expected to be made available) in the GB market.</p> <p>Section 12 of the Gas Act 1995 imposes the necessary access requirements in relation to downstream gas processing facilities.</p>
34	<p>Requires Member States to take necessary measures to so that eligible customers access to upstream pipeline networks.</p>	<p>Access to upstream pipelines and processing facilities is currently required by the new regime governing access to upstream petroleum infrastructure in sections 82-91 of the Energy Act 2011.</p>
35	<p>Sets out the circumstances in which natural gas undertakings may refuse access to their</p>	<p>In GB, the system is required to be developed in an economic way. The distribution business is to be conducted in</p>

	<p>system on the basis of lack of capacity.</p>	<p>a non-discriminatory way and the connection charging methodology is required to ensure non-discriminatory connection to the licensee's pipe-line system.</p> <p>Section 10 of the Gas Act imposes a duty to connect premises in the licensee's area.</p> <p>New Standard Condition 4F of the Gas Transporter licence requires the licensee to offer access to its system in line with the Gas Act and the Gas Directive and to give duly substantiated reasons for refusal.</p> <p>Condition 11 of the Interconnector Licence requires licensees to offer access to their interconnector unless there is a lack of capacity, and to give duly substantiated reasons in the event of a refusal.</p> <p>Regulation 20 inserts new Schedule 2AA into the Gas Act, which imposes third party access requirements in relation to operators of gas pipe-line (distribution) networks that are exempt from the requirement to hold a transporter licence. Paragraphs 2 and 3 of that Schedule set out rules relating to refusal of access on the basis of lack of capacity.</p> <p>In relation to gas storage and LNG facilities, sections 19B and 19D of the Gas Act set out the circumstances in which a facility owner can refuse to give access on the basis of lack of capacity.</p>
36	<p>Allows major new infrastructure, i.e. LNG and storage facilities and interconnectors which meet specific conditions, to be made exempt from certain obligations. Also imposes new requirements on the Authority when granting exemptions.</p>	<p>Gas storage facilities: Regulation 8 amends section 19A of the Gas Act (exemptions in respect of gas storage facilities) to require the Authority to comply with additional procedural requirements when granting an exemption under that section, including a requirement to impose conditions regarding the use of exempt facilities, and to repeal the giving of exemptions in respect of minor facilities (now provided for by new section 8S). Regulation 9 inserts new section 19AA into the Gas Act which imposes new procedural requirements relating to review by the Commission of exemptions given under</p>

		<p>section 19A of the Gas Act and the modification and revocation of such exemptions.</p> <p>LNG facilities: Regulation 11 amends section 19C of the Gas Act (exemptions in respect of LNG facilities) and regulation 12 inserts new section 19CA into the Gas Act in line with the amendments made by regulations 9 and 10 in respect of gas storage facilities, with the exception of the amendment in regulation 8 in respect of minor facility exemptions, as such exemptions are not available in respect of LNG facilities.</p> <p>Regulation 15 inserts new section 19DB into the Gas Act (capacity allocation in exempt gas storage and LNG facilities), which requires applications for an exemption under section 19A or 19C of the Gas Act to specify criteria relating to the use of the gas storage or LNG facilities by others and prevents the Authority from giving such an exemption if the criteria do not satisfy the conditions listed in section 19DB.</p> <p>Interconnectors: Condition 12 in the Interconnector Licence provides for the circumstances in which a new infrastructure exemption can be given, in which case the third party access obligations in Conditions 10 and 11 in the Interconnector Licence can be suspended. New Condition 11A of the Interconnector Licence requires the Authority to approve the terms for access to an interconnector in accordance with the requirements in article 36 of the Gas Directive.</p>
37	Requires Member States to open the gas markets.	The GB gas market has been fully open to competition since 1998. Suppliers from other Member States may supply eligible customers as long as they hold a licence granted by the Authority which is the means by which the trading and balancing rules are imposed in GB.
38	Places obligations on Member States relating to Direct Lines.	Our distribution licence exemption system allows producers to supply via direct lines. Such lines are covered by the ordinary planning consents regime. Connection to the main distribution system is governed by the Guaranteed Standards of

		Performance that set out service levels that must be met by each licensed distribution company.
39 (1)	Requires Member States to designate a single national authority at national level, subject to paragraph (2) which provides for designation of other regulatory authorities at a regional level, and Article 35(3), which allows Member States to designate national regulatory authorities for small systems in a geographically separate region whose consumption in 2008 accounted for less than 3% of the total consumption of the Member State of which it is part.	Regulation 22 inserts a new Section 3A into the Utilities Act 2000 (the Utilities Act) to designate the Authority as the regulatory authority in GB. New section 3A also makes supplementary requirements that apply in the event that a representative of the Authority is appointed as the United Kingdom representative on the Board of Regulators of the Agency for the Co-operation of European Regulators (“the Agency”), under the Agency Regulation (2009/713/EC). (A separate regulatory authority will be designated for and by Northern Ireland, in accordance with Article 39(3).)
39 (4)	Requires Member States to guarantee the independence of the regulatory authority and to ensure that it exercises its powers impartially and transparently. Member States are also required to ensure that the regulatory authority is legally distinct and functionally independent from any other public or private entity and that its staff and the persons responsible for its management act independently from any market interest and do not seek or take direct instructions from any Government or other public or private entity when carrying out regulatory tasks.	<p>Section 1 of the Utilities Act, establishes the Authority as a body corporate for the purpose of carrying out functions and duties attributed to it, including those transferred to it from the Director General of Gas Supply and the Director General of Electricity Supply under the Utilities Act. Within the confines of its statutory functions, the Authority can exercise its discretion however it sees fit, subject to the framework of applicable public law.</p> <p>In addition, the Authority is legally required to take decisions based on impartial and objective criteria. It is bound by the Electricity Act and Gas Act principal objectives and general duties. It is also bound by domestic public law duties such as the requirements of fairness and reasonableness which include an absence of bias. The Authority must also comply with general and specific EU duties of non-discrimination. Regulation 41 amends section 23 of the Gas Act enabling the Authority to make licence modifications, following consultation, independently of industry and government.</p> <p>The Authority must act within the scope of its statutory powers, functions and duties. These are provided for in statute, principally the Gas Act, the Electricity Act, the Utilities Act, the Competition Act 1998, the Enterprise Act 2002 and the Energy</p>

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

	<p>members of the board or top management are appointed for a fixed term of five to seven years, renewable once. Member States must also ensure that a rotation scheme for the board or top management exists.</p>	<p>approved by Parliament, following consultation with the industry and others, there is no formal role for the Government in setting the budget. The Authority must demonstrate propriety, regularity and value for money, and is accountable to Parliament. Finally, as mentioned above, the Authority's accounts and reports are audited by the Comptroller and Auditor General who is appointed under statute and reports to Parliament.</p> <p>Regulation 41 amends section 23 of the Gas Act enabling the Authority, in carrying out its regulatory tasks, to make licence modifications autonomously.</p> <p>In respect of appointments to the Board, Regulation 24 inserts new paragraph 2A into Schedule 1 of the Utilities Act, to impose obligations on the Authority's board members not to seek or take instructions nor carry out any activity/have any financial or other interests that might compromise the independence of the Authority, in the context of the Authority carrying out functions as the designated regulatory authority for GB.</p> <p>Regulation 24 also amends paragraph 3 of Schedule 1 of the Utilities Act to set out a minimum of five years and a maximum of seven years for the length of a term of appointment as a board member, and to ensure that terms of appointment can be renewed only once. It also places a duty on the Secretary of State to ensure that there is sufficient continuity when appointing/renewing terms of board members (i.e. a rotation scheme must be in place).</p>
40	<p>Requires regulatory authorities to take into account a number of objectives when it carries out its regulatory tasks.</p>	<p>Regulation 26 amends Section 4AA(1A) of the Gas Act in order to specify that, when the Authority is carrying out its functions as regulatory authority for GB, its principal objective of protecting the interests of existing and future consumers includes the interests of those consumers in the Authority's fulfilment of particular objectives, set out in Article 40.</p>
41	<p>Sets out the regulatory authority's powers and duties.</p>	<p>Many of the provisions listed in this Article are already reflected in the Gas Act and relevant licence conditions, which impose duties on gas undertakings, enforceable</p>

	<p>by the Authority under sections 28 to 30F and 38 of the Gas Act. For example, Standard Special Condition A35, of the Gas Transporter Licence which prohibits cross-subsidies; Condition 6 of the Interconnector Licence which requires the licensee to keep separate accounts for other gas activities; Standard Condition 25, and Standard Special Condition D3, of the Gas Transporter Licence which requires the licensee to a long term development statement, including forecasts and use of the pipeline system; and Condition 16, and Standard Condition A9. of the Gas Transporter Licence which sets out the system security standard for the pipeline. There are similar incentives on the gas transporters that are DSOs through price controls to plan and develop the distribution systems taking into account security of supply considerations. Condition 10 of the Interconnector Licence has been amended to reflect the new requirements in relation to a charging methodology for third party access.</p> <p>In addition, the Authority has powers under the Enterprise Act 2002 and Competition Act 1998 to monitor the market and general information gathering powers in licence conditions.</p> <p>Regulation 30 amends section 34 of the Gas Act, adding a new subsection (2A) to give the Authority additional monitoring duties in relation to Article 26(3), Article 41(1) (g) to (k), (m) (n) and (r) to (t), Article 41 (3) (a) and (b) where an ISO has been appointed, and Article 41(5)(b) and (d) where an ITO has been appointed. Regulation 30 also inserts new section 34A into the Gas Act, which gives the Authority information gathering powers in order to carry out the monitoring functions listed in section 34(1C).</p> <p>Regulation 37 makes amendments, and inserts new Schedule 4B, into the Gas Act. This has the effect of extending the Authority's enforcement powers under the Act so that they apply to requirements in the Gas Act which transpose Gas Directive requirements (including those applying to licence-exempt persons, owners of gas storage facilities, and</p>
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		<p>owners of LNG import or export facilities). Regulation 32 inserts new section 4C into the Gas Act to place a duty on the Authority to carry out its functions in the manner that it considers is best calculated to implement or ensure compliance with the any binding decision of the Agency or the Commission under the Gas Directive, Gas Regulation, or Agency Regulation.</p> <p>Standard Condition 9, and Standard Special Condition A11, (Network Code and Uniform Code) of the Gas Transporter Licence requires the licensee to establish transportation arrangements which facilitate achievement of certain relevant objectives. The amendment to Condition 9.1 adds an objective of compliance with EU law.</p> <p>Regulation 23 inserts new section 5ZA into the Utilities Act to place a duty on the Authority to report annually to the Agency and the Commission in respect of its regulatory tasks.</p> <p>Regulation 28 amends sections 27B-27D of the Gas Act, to extend the scope of the dispute resolution mechanism to cover disputes arising out of complaints to the Authority against licence-exempt gas transporters, ISOs, owners of gas storage facilities and owners of LNG import or export facilities.</p> <p>Regulation 41 amends section 23 of, and inserts new sections 23A-G into, the Gas Act. This makes provision for an amended power for the Authority to modify the conditions of licences. It also introduces a new ex post appeals process, to ensure that the Authority is able to make autonomous decisions, and is also able to implement binding decisions of the Commission and the Agency. Under the new procedure, an appeal against a decision of the Authority to amend the conditions of a licence may be made to the Competition Commission by the directly affected licensee, a licensee whose interests are materially affected by the decision, by a body representing such licensees or by Consumer Focus, where consumers are materially affected by that decision. The appeal is to be brought in accordance with</p>
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		the process specified in the newly inserted Schedule 4A to the Gas Act.
42	Requires national regulatory authorities to consult and co-operate with each other; to promote regional co-operation; to co-ordinate the development of network codes for TSOs and other market actors; to co-ordinate the development of the rules governing congestion management. Also provides that regulatory authorities have the right to enter into co-operative arrangements with each other in order to foster regulatory cooperation. Finally, imposes confidentiality requirements in respect cross-border exchanges of information.	Regulation 34 inserts new section 4D into the Gas Act to require the Authority to: consult and cooperate with the Agency, relevant national authorities and other regulatory authorities (including the provision of information). A number of duties relating to regional cooperation are also inserted.  Regulation 36 inserts new section 105A into the Utilities Act in order to impose confidentiality requirements on the Authority, in respect of any information provided to the Authority by another regulatory authority (directly or indirectly) in accordance with Article 38(1) of the Gas Directive.
43	Sets out provisions relating to compliance with Guidelines under the Electricity Directive and Electricity Regulation.	No implementation action required by the Government in respect of this Article.
44	Requires Member States to ensure energy suppliers keep, at the disposal of the regulatory authority, national competition authorities and the Commission, the relevant data relating to all transactions in gas or electricity supply contracts and gas derivatives with wholesale customers and TSOs, as well as storage and LNG operators. Such data must be kept for at least five years.	Condition 5 of the Gas Supply Licence has been amended to insert new paragraphs 5.5-5.8 to impose these new requirements on gas suppliers.
45	Requires Member States to ensure there is transparency about how the retail market works in order to facilitate customers' and suppliers' access to networks.	The arrangements which govern the operation of the GB market are set out in licence conditions; in the relevant industry codes which licence holders are obliged to maintain in accordance with the terms of their licence; and to a more limited extent, in legislation. All UK legislation is published online and is available in hard copy. In addition, the Authority has a searchable electronic facility which includes copies of all the licences it has

		issued (including relevant conditions, exemptions, directions and orders) and provides links to where industry codes can be found.
46	Sets out the safeguard measures in case of a critical event.	The Energy Act 1976 <sup>4</sup> gives the Secretary of State emergency powers to issue directions regulating the production, supply, acquisition or use of fuel.
47	Allows Member States to take measures to ensure a level playing field, compatible with the Treaty.	The Government, at the time of writing, has no plans to use the powers provided for in this Article.
48	Allows a derogation from Article 32, in relation to take or pay commitments.	Regulation 14 inserts new section 19DZA into the Gas Act, to enable the Authority to grant temporary exemptions from the third party access requirements in section 19D where granting third party access to an LNG facility would cause the owner significant difficulties because of take or pay commitments under one or more gas-purchase contracts.  Regulation 13 amends section 19D of the Gas Act (third party access to LNG facilities) to address, in particular, matters arising from the insertion of new section 19DZA.
49	Allows for derogations for small isolated systems.	This article does not apply to the UK.
50	Sets out a review procedure in respect of Directive requirements.	No implementation action required in respect of this Article.
51	Sets out that the Commission shall be assisted by a committee.	No implementation action required in respect of this Article.
52	Sets out that the Commission shall monitor and review and report to the European Parliament on progress with the implementation of the Directives.	No implementation action required in respect of this Article.
53	Repeals Directive 2003/55/EC.	No implementation action required by the Government in respect of this Article.
54	Imposes obligations on	This transposition note, and another

<sup>4</sup> Copy of the legislation can be found at:  
[http://www.legislation.gov.uk/ukpga/1976/76/pdfs/ukpga\\_19760076\\_en.pdf](http://www.legislation.gov.uk/ukpga/1976/76/pdfs/ukpga_19760076_en.pdf).

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