

<b>Title:</b> <b>Third Package: Articles concerning the National Regulatory Authority (NRA)</b> <b>Lead department or agency:</b> Department for Energy and Climate Change <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> DECC0007
	<b>Date:</b> 14/01/2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> EU
	<b>Type of measure:</b> Legislation <b>Contact for enquiries:</b> <a href="mailto:Marina.Pappa@decc.gsi.gov.uk">Marina.Pappa@decc.gsi.gov.uk</a> <a href="mailto:Vikram.Balachandar@decc.gsi.gov.uk">Vikram.Balachandar@decc.gsi.gov.uk</a>

## 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 (NRAs) where more action is needed from the UK to become fully compliant. These relate to the independence and impartiality of the NRA and include designation of the NRA; representing the UK at the Agency for Co-operation of Energy Regulators (ACER); a requirement on Member States to ensure that staff of the regulatory authority are able to act independently of market interest. Other measures include some new duties on the NRA, especially monitoring and a requirement that that the National Regulatory Authority has the necessary powers to carry out certain these duties.

All Member States have to comply with EU legislation and therefore GB needs to transpose the requirements into UK law.

### 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 better functioning of the EU internal market by applying regulation more consistently. This could 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 NRA in GB (with NIAUR the NRA for NI).
- Impose an obligation on Ofgem to ensure that all staff employed by it have neither financial interests nor take instructions that might compromise their independence.
- 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?**

Please refer to the over-arching IA

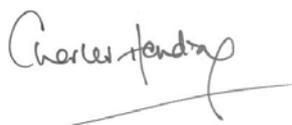
**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

No

**Ministerial Sign-off For** Final 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: 12/01/2011

**Description:**

Implement Option 1 (minimum compliance option) for all measures

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

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

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

N/A

**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 to Government and Ofgem are covered in the over-arching IA.

We expect the costs associated with individual measures to be small. 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	N/A	N/A	N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

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

N/A

**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 and the functioning of the EU internal market. This could lead to better market outcomes for both industry and consumers.

**Key assumptions/sensitivities/risks**

N/A

Discount rate (%)

N/A

<b>Impact on admin burden (AB) (£m):</b>			<b>Impact on policy cost savings (£m):</b>		<b>In scope</b>
New AB: N/A	AB savings: N/A	Net: N/A	Policy cost savings: N/A		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?	DECC/Ofgem				
What is the annual change in enforcement cost (£m)?	N/A				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	<b>Costs:</b> N/A		<b>Benefits:</b> N/A		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	<b>Micro</b>	<b>&lt; 20</b>	<b>Small</b>	<b>Medium</b>	<b>Large</b>
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
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	N/A
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	Yes	11
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	N/A
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	N/A
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	N/A
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	N/A
Human rights <a href="#">Human Rights Impact Test guidance</a>	Yes	11
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	11
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	N/A
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	N/A

<sup>1</sup> 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	<a href="#">European Commission Impact Assessment on Third Legislative Package</a>
2	<a href="#">DECC's Call for Evidence</a>
3	<a href="#">Consultation on the Implementation of the EU Third Internal Energy Package</a>
4	<a href="#">Impact assessment for proposals for implementation of the EU Third Energy Market Package</a>

+ 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 <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	N/A									
<b>Annual recurring cost</b>	N/A									
<b>Total annual costs</b>	N/A									
<b>Transition benefits</b>	N/A									
<b>Annual recurring benefits</b>	N/A									
<b>Total annual benefits</b>	N/A									

\* 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, to act as a representative at the Agency for Cooperation of European Regulators (ACER). The Directives also require 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 NRA takes 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.
- 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 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, to act 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, work closely with NIAUR for the purposes of representing the UK at ACER.

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: NIAUR (the Northern Ireland regulator) will be designated by NI 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:

- i) have neither financial interests nor take instructions that might compromise their independence; and
  - ii) do not seek or take direct instructions from any person or body that might compromise their independence
- Option: Impose an obligation on Ofgem to ensure that all staff employed by it have neither financial interests nor take instructions that might compromise their independence and do not seek or take direct instructions from any person or body that might compromise their independence.

### *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 require Member States to ensure an appropriate rotation scheme for the board or the top management.

- Option: Amend legislation to reflect the above requirements.

### **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.

### **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 and powers. New explicit duties in the Third Package (when compared to the Second 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.

New specific monitoring duties include monitoring the investment plans of the Transmission System Operators; monitoring network security, competition and market transparency including supply prices; monitoring 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; and 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. The new duties and powers are already reflected to a large extent in the domestic framework and are consistent with Ofgem's current activities. However, there are areas where Ofgem's current duties need to be extended. In addition, the Third Package is broadening the scope of obligations on undertakings and therefore Ofgem's enforcement regime in respect of these new obligations.

- 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 enable Ofgem to require information for all relevant European law requirements.

### *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.

- ***We consider the costs and benefits of implementation of these provisions in the separate Impact Assessment of Proposals for implementation of licence modification appeals under the EU Third Package.***
- *Option: Ofgem to be able to initiate code modifications where they are essential for the implementation of ACER or Commission decisions. The usual industry process will then take effect including provision for industry parties to raise alternative approaches with Ofgem reaching a final decision subject to appeal. However any such process by the industry would need to respect the timescales set by ACER or the Commission to implementing a decision.*

#### *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 transmission system operators, distribution system operators, interconnectors, exempt distributors and independent system operators.

- Option: Extend regulations to include complaints in relation to the above undertakings.

#### *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 activities 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**

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

- 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;
- a requirement on the NRA to coordinate the development of all network codes for the relevant transmission system operators and other market actors;
- a requirement on the NRA to coordinate the development of the rules governing the management of congestion; and
- 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.
  - o A duty to ensure Ofgem is empowered to engage with the Agency under Article 6 (2)
  - o A duty on Ofgem to co-operate 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.

#### **Summary of Options considered**

We propose to implement all the options described in the above section. This option ensures compliance at a minimum cost to Government, the regulator and industry.

#### **Costs and Benefits - summary**

We expect that 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. We examine the costs associated with each measure in more detail in the next section.

These provisions are intended to increase the independence, accountability 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 could lead to better market outcomes and overall reduced costs for consumers. We examine the benefits of each measure below in more detail in the next section.

## Costs and benefits - detail

There may be some additional costs and benefits associated with each measure. These are detailed below. Where relevant, we refer to responses given to the consultation. We did not receive substantial new evidence from our main consultation to inform the quantitative assessment of costs and benefits. Table 1 below summarises the costs and benefits associated with individual measures.

**Table 1 Summary of costs and benefits of individual measures**

	Costs	Benefits
<b>Designation of regulatory authority</b>	Costs to Ofgem of attending ACER meetings; costs to Ofgem and NIAUR of co-operating	Benefits to UK of ensuring that UK interests are represented at ACER
<b>Independence of regulatory authority</b>	Possible enforcement costs	Possible increase in Ofgem's credibility as independent regulator
<b>Rotation scheme</b>	Negligible	Negligible
<b>General objective of the NRA</b>	Small additional compliance costs	
<b>Duties and powers of the NRA</b>	Small additional compliance costs	
<b>Enforcement</b>	Costs to Ofgem and industry if there is a breach	Enhanced ability to carry out regulatory tasks
<b>Implementing binding decisions</b>	Costs to Ofgem from initiating licence and code changes to implement these decisions	Timely implementation of EU legislation
<b>Complaints to the NRA</b>	Possible costs if number of complaints increase	Helping to ensure that operators act in the interests of existing and future consumers
<b>Annual reporting</b>	Negligible	Negligible
<b>Cross-border issues</b>	Costs of consulting and sharing information with other regulatory authorities and ACER	Ensuring consistency of regulation and avoiding regulatory uncertainty

## 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 work with NIAUR (the NI regulator).

There are no membership costs associated with membership of ACER. Therefore the only costs 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, allowing them to gain experience of energy market regulation at an EU level.

There may be some additional benefits of Ofgem's membership of 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.

There may be additional costs, in particular to Ofgem and NIAUR, associated with consulting with other regulatory authorities. We have not quantified these costs. However, Ofgem already work closely with other regulators.

Some responses to the consultation supported the designation of Ofgem as the UK's representative to ACER, and the obligation on Ofgem to work closely with the NIAUR. However, responses also noted that the Single Electricity Market (in Northern Ireland and the Republic of Ireland) is different to the GB market. We expect that Ofgem and NIAUR will co-operate to ensure that the UK position is adequately represented at ACER.

#### *Independence of regulatory authorities*

- Option: Impose an obligation on Ofgem to ensure that all staff employed by it have neither financial interests nor take instructions that might compromise their independence.

Ofgem may experience some additional enforcement costs due to this measure, as there will now be a formal duty to ensure that all staff have neither financial interests nor take instructions that might compromise their independence when carrying out regulatory tasks. We have not monetised these costs, but they will depend on how Ofgem choose to comply with this duty. Ofgem advises that costs could be material, should problems arise. This measure may have the impact of strengthening Ofgem's credibility as an independent, impartial regulator.

#### *Rotation Scheme*

- Option: Amend legislation to reflect the five year minimum and seven year maximum term length Provide for a formal rotation scheme.

An informal rotation scheme is already in place for Ofgem, however these arrangements will need to be formalised. Ofgem advise that there should be no added cost to introducing these arrangements formally. Correspondingly, we expect the benefits of this measure also to be limited.

### **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.

While Ofgem may require additional resources to ensure compliance with these additional objectives, Ofgem anticipate that the cost will be marginal. Ofgem already closely engage with NRAs; this particular duty will just require Ofgem to take decisions in close consultation with them.

### **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 duties. According to the European Commission IA (page 46):

*The Commission services estimate the additional powers granted to regulators may lead them to increase their staff by 5 to 10%.*

However, costs to Ofgem are likely to be small, because the GB framework is largely compliant with the requirements of the Third Package. Substantive costs arising from Ofgem's new explicit duties under the Third Package are examined separately in the other individual Impact Assessments of GB implementation of the Third Package.

#### *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. We believe Ofgem would only exercise this option in cases where the benefit to consumers outweighed the cost. There may be an indirect administrative cost of these powers on industry as Ofgem is enabled to collect more information.

#### *Implementing binding decisions*

- *Option: Ofgem to be able to initiate code modifications where they are essential for the implementation of ACER or Commission decisions. The usual industry process will then take effect including provision for industry parties to raise alternative approaches with Ofgem reaching a final decision subject to appeal. However any such process by the industry would need to respect the timescales set by ACER or the Commission to implementing a decision.*

The principal impact of this option will be timelier implementation of code modifications where they are essential for the implementation of ACER or Commission decisions. The precise costs and benefits of this will vary depending on the code modification under consideration.

#### *Complaints to the NRA*

Option: Extend regulations to include complaints that may be made to the NRA against transmission system operators, distribution system operators, interconnectors, exempt distributors and independent system operators.

This may increase Ofgem's operational costs as they see an increase in the number of complaints. While this is difficult to anticipate, Ofgem advise that they do not expect a significant increase in the number of additional complaints, and suggest the cost increase will be marginal. This may strengthen the degree of oversight that Ofgem have over transmission system and distribution operators, and help to ensure that these operators act more in line with Ofgem's statutory duties to existing and future consumers.

#### *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 co-operate 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. We have not quantified these costs. However, Ofgem advise that they do not anticipate a significant increase in the number of meetings, as ACER meetings will largely replace ERGEG (European Regulators' Group for Electricity and Gas) meetings. There may be some additional costs of travel, however, which will depend on the locations of the meetings. Possible benefits include ensuring consistency of regulation and avoiding regulatory uncertainty, and helping to improve competition across member states.

### **Competition Impact Assessment**

As outlined above, the main set of measures likely to have an impact on competition are those relating to the regulatory regime for cross-border issues. We do not believe that the measures will directly limit the

number or range of suppliers; nor would they affect the number of licensees. According to the European Commission Impact Assessment (see “references” section above), the “...segmentation of the European market increases the effect of the dominance of a small number of suppliers”. Increased cross-border co-operation could lead indirectly to an increase in the number of market participants in GB, to the extent that it reduces barriers to entry to participants resulting from inconsistent regulatory arrangements between Member States. To the extent that the measures reduce barriers to entry and facilitate cross-border trade, they will increase the ability of market participants to compete. The proposals are unlikely to affect firms’ incentives to compete vigorously, as they are unlikely to facilitate collusion between firms, or affect the ability of consumers to switch between suppliers.

## **Human rights**

To the extent that human rights may be engaged, we consider our approach to be compatible with the Human Rights Act 1998.

## **Justice System**

The Third Package is broadening the scope of obligations on gas and electricity undertakings and hence Ofgem’s enforcement regime. As part of this regime, we are extending the scope of civil and criminal offences therefore there is a likely impact on courts’ resources.

## 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><b>Basis of the review:</b> [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]; Please refer to the over-arching Impact Assessment.</p>
<p><b>Review objective:</b> [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><b>Review approach and rationale:</b> [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><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p><b>Success criteria:</b> [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><b>Monitoring information arrangements:</b> [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><b>Reasons for not planning a PIR:</b> [If there is no plan to do a PIR please provide reasons here]</p>