

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY AND GAS (INTERNAL MARKETS) REGULATIONS 2014
2014 No. 3332

1. This explanatory memorandum has been prepared by the Department of Energy and Climate Change and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations extend existing enforcement powers of the Gas and Electricity Markets Authority in order to enable enforcement of the requirements of EU binding Guidelines on Gas Congestion Management Procedures (CMP) and the EU trans-European Energy Infrastructure Regulation (TEN-E).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The EU Third Energy Package was created in 2009 and established a process for developing EU-wide Network Codes and Guidelines in both the gas and electricity sectors. Their aim is to facilitate market integration by putting in place rules on a range of issues, including connection to networks, allocation of pipeline and grid capacity, balancing, and congestion management.

4.2 The Electricity and Gas (Internal Markets) Regulations 2011 amended the Gas Act 1986 and the Electricity Act 1989 to give Ofgem the ability to enforce the requirements set out in the Third Package in Great Britain.

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

5.2 Northern Ireland has already made regulations to similar effect.

6. European Convention on Human Rights

6.1 Matthew Hancock, Minister of State at the Department of Energy and Climate Change, has made the following statement regarding Human Rights:

In my view the provisions of the Electricity and Gas (Internal Markets) Regulations 2014 are compatible with the Convention rights.

7. Policy background

CMP

7.1 Binding CMP Guidelines were made as part of the Third Package. The purpose of these guidelines is to prevent established gas shippers from hoarding capacity on the EU's gas networks. In some cases, large incumbent suppliers were acquiring long term capacity contracts and using them to block competitors from accessing EU gas pipelines. This reduced competition and prevented consumers getting a better deal for their gas supply.

7.2 In 2012 the CMP Guidelines were amended to require gas transmission system operators (TSOs) to put in place congestion management procedures, and gas shippers to release capacity back to the market if they do not intend to use it. The requirements fall upon Ofgem, the TSOs and gas shippers currently operating in the GB market. The amendments applied, in part, from 1 October 2013. Other provisions will apply from 1 July 2016. Member States are required to have an effective enforcement regime in place. These Regulations amend the Gas Act 1986 to extend Ofgem's existing enforcement powers to enforce compliance by the TSOs with the amended requirements.

TEN-E

7.3 The Third Package also requires all TSOs to cooperate at EU level, through bodies known as the ENTSO for Gas and the ENTSO for Electricity. The purpose of TEN-E is to facilitate much needed investment in European energy infrastructure. It includes a requirement for the ENTSOs to publish common methodologies for the cost-benefit analysis of European 'projects of common interest' (PCIs). PCIs will benefit from streamlined planning procedures and may be able to access financial support. They include gas and electricity transmission interconnection, LNG, gas storage, smart grid and electricity highways projects. The requirement on GB TSOs is to contribute towards the costs of producing these methodologies. These Regulations amend the Gas Act 1986 and the Electricity Act 1989 to enable Ofgem to enforce this if TSOs do not make the necessary contribution.

Ambulatory References

7.4 When the principal set of GB regulations implementing the Third Package was made, ambulatory references were used to ensure that certain future amendments to EU legislation relating to enforcement would be automatically updated in GB regulations. In updating the Gas and Electricity Acts to take account of CMP and TEN-E, the Department of Energy and Climate Change has decided to remove these ambulatory references because they are drafted in a way that does not necessarily remove the need to update GB regulations. This will be applicable to ambulatory references relating to the Annexes of the EU Gas and Electricity Regulations and a Commission Regulation relating to transmission charging.

Consolidation

7.5 These Regulations amend the Electricity and Gas (Internal Markets) Regulations 2011, but only in a limited respect – namely the review provision. The review provision in the 2011 Regulations will also be amended by the Electricity and Gas (Ownership Unbundling) Regulations 2014, which come into force the day after

these Regulations come into force. The Department does not consider it appropriate to consolidate these Regulations with the Electricity and Gas (Ownership Unbundling) Regulations 2014, given that a consultation and impact assessment have been carried out specifically in respect of the changes to the ownership unbundling regime made by those Regulations. The Department therefore considers that it would not improve transparency for stakeholders for these regulations to be consolidated.

8. Consultation outcome

8.1 As CMP and TEN-E are directly applicable EU requirements, and these Regulations only amend Ofgem's existing enforcement powers, it was decided that no consultation was required.

9. Guidance

9.1 Throughout the implementation process for CMP, Ofgem has regularly met with and consulted all parties affected by these regulations. In March 2013, Ofgem published an open letter recommending an industry-led approach to implementing the CMP Guidelines in GB. Ofgem also intends to publish a guidance document next year on the provisions that will apply from 1 July 2016.

10. Impact

10.1 The impact on business, charities or voluntary bodies is largely on gas TSOs.

10.2 The impact on the public sector is largely on Ofgem. Giving Ofgem appropriate penalty tools is expected to carry zero costs. The proposal will not alter or modify Ofgem's general enforcement powers but will merely extend them to include the CMP code and the TSOs' contribution to the costs of the cost-benefit analyses required under TEN-E.

10.3 An impact assessment was not prepared for this instrument as it was considered to be a low cost measure.

11. Regulating small business

11.1 These Regulations will not apply to small business.

12. Monitoring and review

12.1 The Regulations will be reviewed alongside the rest of the EU Third Energy Package GB regulations in 2016 to ensure that they are still effective and fit for purpose. Such a review will adhere to the Better Regulation principles of proportionality.

13. Contact

13.1 Louise Clark at the Department of Energy and Climate Change (0300 068 8068 or louise.clark@decc.gsi.gov.uk) can answer any queries regarding the instrument.