

The Alternative Fuels Infrastructure Regulations 2017

Transposition Table

Article	Obligation	Implementing provision/measure
Art 1	None- subject matter and scope provisions.	
Art 2	Definitions.	Regulation 2.
Art 3(1)	<i>Member states shall adopt a national policy framework for the deployment of the market as regards alternative fuels.</i>	The UK National Policy Framework on Alternative Fuels (“the National Policy Framework”).
Art’s 3(2)- (3)	<i>Member states shall ensure that their national policy frameworks take into account the needs of different transport modes existing in their territory and take into account the interests of regional and local authorities.</i>	Addressed in the National Policy Framework.
Art 3(4)	No obligation.	
Art 3(5)	<i>Support measures for alternative fuels shall be implemented in compliance with the state aid rules.</i>	Not implemented. Support schemes are already in place regarding grants and competitions which are compliant with state aid rules.
Art 3(6)	<i>National Policy Frameworks shall be in line with the Union’s environmental and climate –protection legislation in force.</i>	Addressed in the National Policy Framework
Art 3(7)	Member states shall notify their national policy frameworks to the Commission by 18 th November 2016.	The National Policy Framework has now been notified to the Commission.
Art 3(8)	No obligation.	
Art 3(9)	No obligation.	
Art 4(1)	<i>Member states shall ensure by means of their national policy frameworks, an appropriate number of recharging points accessible to the public is put in place by 31 December 2020.</i>	Addressed in the National Policy Framework.

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Art 4(2)	No obligation.		
Art 4(3)	<i>Member states shall also take measures within their national policy frameworks to encourage and facilitate the deployment of private recharging points</i>		Addressed in the National Policy Framework.
Art 4(4)	<i>Member states shall ensure that normal power recharging points deployed or renewed as from 18 November 2017, comply at least with the technical specifications set out in point 1.1 of Annex II</i>		Regulations 3(1)-(3) and the Schedule, paragraph 1.
	<i>Member states shall ensure that high power recharging points deployed or renewed as from 18 November 2017, comply at least with the technical specifications set out in point 1.2 of Annex II</i>		Regulations 3(1)-(3) and the Schedule, paragraphs 2(1) and (2).
Art 4(5)	<i>Member states shall ensure that the need for shore-side electricity supply for inland waterway vessels and seagoing ships is assessed in their national policy frameworks.</i>		Addressed in the National Policy Framework.
Art 4(6)	<i>Member states shall ensure that shore-side electricity supply installations for maritime transport, deployed or renewed as from 18 November 2017, comply at least with the technical specifications set out in point 1.7 of Annex II.</i>		Regulation 4 and the Schedule, paragraph 4.
Art 4(7)	<i>The recharging of electric vehicles at recharging points accessible to the public shall, if technically feasible and economically reasonable, make use of intelligent metering systems.</i>		Regulation 5(1) and the Schedule, paragraph 5.
Art 4(8)	<i>Member states shall ensure that operators of recharging points are free to purchase electricity from any Union electricity provider. Operators of recharging points shall be allowed to provide electric vehicle recharging services to customers on a contractual basis.</i> <u>Commentary</u> The Office of Gas and Electricity Markets (Ofgem) regulates the market for the supply of electricity in Great Britain. The Utility Regulator for electricity, gas and water regulates the supply of electricity in Northern Ireland. The Electricity Act 1989 (“the Act”) provides for the regulation of the electricity market in Great Britain. Its provisions are substantially mirrored in the Electricity		Not transposed. See commentary for reasoning.

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	<p>(Northern Ireland) Order 1992 (“the Order”). Both regulators have broad duties to ensure competition in their markets and to protect consumers. They have powers to issue orders to bring about compliance with licence conditions or prevent non-compliance. They can also issue financial penalties. The electricity market in the UK is heavily regulated and the aims and objectives of Articles 4(8), (10), (11) and (12) are achieved within the statutory framework for such regulation.</p> <p>Both the Act (section 4) and the Order (Article 8) require that parties who supply electricity must be licensed to do so. Where parties are not licensed then they must come within one of a number of exemptions set out in secondary legislation.¹ The Secretary of State has a power to vary or grant further exemptions from such a licence (section 5, Article 9). Electricity suppliers will be licence holders and accordingly will have to comply with the conditions of their licence or face sanctions. Conditions must be imposed by the regulator on the issue of licences (section 7, Article 11). In addition, it is a general duty for licence holders to encourage competition within the market (section 9, Article 12). There are wide powers for regulators to use licence conditions to ensure effective workings in the market. There are statutory duties on the regulators to protect consumers within the market and licence conditions will be set which ensure such protection. In addition, the regulators can take action under competition law (Competition Act 1988) where the party and action come within the remit of that legislation. This provides further measures to ensure effective competition and avoid anti-competitive practices.</p> <p>As stated, there are duties on licence holders to support competition in the market. There are no impediments in UK law which prohibit or impede supply of electricity through any licenced supplier. An operator is therefore free to choose</p>	
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¹ Electricity (Class Exemptions from the requirement for a licence) Order 2001.

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	<p>his supplier. Where the market acts abnormally (for example, by restricting supply to an operator) the regulator will step in and remove such abnormality through enforcement of licence conditions and powers to issue compliance orders or financial sanctions.</p> <p>It is also for each operator to determine whether to give away the electricity it supplies or to re-sell it and whether to do so under a contract or not. The ability to re-sell electricity is a central feature of the market as acknowledged by the power to direct the maximum price for re-sold electricity (see Article 4(10)). Directive 2009/72/EU concerning common rules for the internal market in electricity (3rd Energy Package) is transposed into Law by means of the Electricity and Gas (Internal Markets) Regulations 2011 and in Northern Ireland by the Electricity and Gas (Internal Markets) Regulations (Northern Ireland) 2011. 2009/72/EU requires (Article 4) that a customer should be able to acquire the services of any Union supplier.</p>	
Art 4(9)	<p><i>All recharging points accessible to the public shall also provide for the possibility for electric vehicle users to recharge on an ad hoc basis without entering into a contract with the electricity supplier or operator concerned.</i></p>	Regulation 5(2).
Art 4(10)	<p><i>Member states shall ensure that prices charged by the operators of recharging points accessible to the public are reasonable, easily and clearly comparable, transparent and non-discriminatory.</i></p> <p><u>Commentary</u> As charge point operators sell-on electricity they would not be licensed but rather come within a class exemption. They must adhere to the terms of that exemption, otherwise they would be acting unlicensed which is a criminal offence. Section 44 of the Act provides a power for a regulator to direct the maximum price at which electricity may be re-sold (Article 47 in the Order). A direction may also require the seller to provide additional pricing information as</p>	Not transposed. See commentary for reasoning.

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	<p>set out in the Direction. Currently, the maximum price retail order excludes the re-sale of electricity for charge points. Given the current embryonic state of the electric vehicle charging market, setting a maximum price is not yet considered appropriate. Competitive market forces ensure prices remain reasonable (and in many cases, no charge is levied for using charging infrastructure). The power to issue a direction in law can be used swiftly to counter unwelcome or anticipated pricing adjustments. Whilst pricing remains reasonable, were that to be anticipated to change, the regulator could act swiftly through the relevant power to set a maximum re-sale price and protect consumers.</p> <p>Recharging point services accessible to the public are open to anyone who wishes to access them and prices are displayed on operators' web sites, at the recharging points and on smart phone applications, enabling easy comparison. Consumer protection legislation (e.g The Consumer Rights Act 2015, Consumer Protection Act 1987, the Consumer Contract Regulations 2014 and Consumer Credit Act 1974, as well as the Competition Act itself, require that pricing is transparent. Any consumer measures which are discriminatory will be addressed through consumer protection legislation or the Competition Act powers.</p>	
<p>Art 4(11)</p>	<p><i>Member states shall ensure that distribution system operators cooperate on a non-discriminatory basis with any person establishing or operating a recharging point accessible to the public.</i></p> <p><u>Commentary</u> Distribution system operators are licensed by the regulators. Each electricity supplier requires a licence from the regulator. That licence contains a condition (standard condition 19) which prevents abuse of a licensee's position. The Regulator has confirmed that this condition would ensure appropriate cooperation between distribution network operators (DNO). Should there be a breach of the licence then the Regulator can take appropriate action under the</p>	<p>Not transposed. See commentary for reasoning.</p>

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	<p>licence itself. Directive 2009/72/EU requires in Article 3 that electricity undertakings shall not discriminate against each other. This is already achieved within the current legislative regime to ensure compliance with 2009/72/EU.</p> <p>DNOs are in a monopoly position as each operates in a unique regional setting. The Competition Act prohibits the abuse of a dominant position and the regulator could take action in those circumstances under powers under the Competition Act.</p>	
<p>Art 4(12)</p>	<p><i>Member states shall ensure that the legal framework permits the electricity supply for a recharging point to be the subject of a contract with a supplier other than the entity supplying electricity to the household or premises where recharging is located.</i></p> <p><u>Commentary</u></p> <p>The legal framework requires an open, transparent and competitive market and the regulator will intervene where barriers to competition or market abnormalities are likely to occur. Moreover, consumer rights legislation enforces the rights of consumers not to be locked out of goods or services. Directive 2009/72/EU also requires that customers can have a relationship with any Union supplier (subject to limited exceptions) which is already implemented in the UK. There is nothing within the legislation which prohibits or in any way impedes the ability of an electricity supply for recharging points to be provided under a separate contract.</p>	<p>Not transposed. See commentary for reasoning.</p>
<p>Arts 4(13)-(14)</p>	<p>No obligation.</p>	

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Art 5(1)	<i>Member states which decide to include hydrogen refuelling points accessible to the public within their national policy frameworks shall ensure that by 31 Dec 2025 an appropriate number of points are available.</i>	Addressed in the National Policy Framework.
Art 5(2)	<i>Member states shall ensure that hydrogen refuelling points accessible to the public deployed or renewed as from 18 Nov 2017 comply with the technical specifications set out in point 2 of Annex II.</i> Commentary Points 2.1 & 2.3. Annex II. The standard ISO/TS 20100 has now been withdrawn. A new standard will be introduced later this year by a Commission delegated act in accordance with Article 5(3). Once the delegated act is published, the new standard will be transposed into domestic law at the earliest possible opportunity. Point 2.2 of Annex II. ISO 14687-2 is currently being re-considered by the standards bodies for replacement. That replacement will be implemented as soon as possible after adoption of the replacement standard.	Regulation 3(1)-(3) and the Schedule, paragraph 3. The standard set out at point 2.3 of Annex II has not been transposed. See commentary.
Art 5(3)	No obligation.	
Art 6(1)	<i>Member states shall ensure by means of their national policy frameworks, that an appropriate number of LNG refuelling points are put in place.</i>	Addressed in the National Policy Framework.
Art 6(2)	<i>Member states shall ensure, by means of their national policy frameworks, that an appropriate number of refuelling points for LNG are put in place at inland ports, to enable LNG waterway vessels or seagoing ships to circulate throughout the TEN-T Core Network by 31 December 2030. Member states shall cooperate with the neighbouring Member States where necessary to ensure adequate coverage of the TEN-T Core Network.</i>	Addressed in the National Policy Framework.
Art 6(3)	<i>Member states shall designate in their national policy frameworks the maritime and inland ports that are to provide access to the refuelling points for LNG.</i>	Addressed in the National Policy Framework.

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Art 6(4)	<i>Member states shall ensure, by means of their national policy frameworks that an appropriate number of refuelling points for LNG accessible to the public are put in place by 31 Dec 2025 at least along the core TEN-T network.</i>	Addressed in the National Policy Framework.
Art 6(5)	No obligation.	
Art 6(6)	<i>Member states shall ensure that an appropriate LNG distribution system is available in their territory for LNG tank vehicles.</i>	Addressed in the National Policy Framework.
Art 6(7)	<i>Member states shall ensure by means of their national policy frameworks an appropriate number of CNG refuelling points accessible to the public are put in place by 31 December 2020.</i>	Addressed in the National Policy Framework.
Art 6(8)	<i>Member states shall ensure by means of their national policy frameworks, that an appropriate number of CNG refuelling points accessible to the public is put in place by 31 Dec 2025 at least along the existing TEN-T core network.</i>	Addressed in the National Policy Framework.
Art 6(9)	<i>Member states shall ensure that CNG refuelling points for motor vehicles deployed or renewed as from 18 November 2017 comply with the technical specifications set out in point 3.4 f Annex II.</i>	Not transposed. No standards have yet been specified which can be implemented.
Art 6(10)	No obligation.	
Art 6(11)	No obligation.	
Art 7(1)	<i>Member states shall ensure that relevant, consistent and clear information is made available as regards those motor vehicles which can be regularly fuelled with individual fuels placed on the market, or recharged by recharging points.</i>	Not transposed. See commentary for reasoning.
(2)	<i>The supply of information referred to in paragraph 1 shall be based on the labelling provisions regarding fuel compliance under standards of the ESOs setting the technical specifications of fuels.</i>	
	Commentary	

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Art 7(3)	<p>The relevant standard (EN 16942) has been produced by a CEN technical committee earlier this year. This will now be formally adopted by national standards agencies. Article 5(3) requires that technical standards related to the Directive are not brought into force until a period of 24 months has elapsed². The standard was not published until after the consultation took place on the Regulations. Accordingly, the standard will be brought into domestic law well within the 24 month period, following a separate consultation.</p> <p><i>Where appropriate, when fuel prices are displayed at a fuel station, a comparison between the relevant unit prices shall be displayed for information purposes.</i></p> <p><i>In order to increase consumer awareness and provide for fuel price transparency in a consistent way across the Union, the Commission shall be empowered to adopt, by means of implementing acts, a common methodology for alternative fuel price comparison</i></p> <p><u>Commentary</u> The obligation in 7(3) cannot be implemented without the common methodology which is to be introduced by implementing act. This was confirmed in the Dena report on behalf of the Commission of January 2017³ in which it was stated that a common methodology was necessary “..in order to implement this part of the Directive..” The Article makes clear that an implementing act will be necessary in order for member states to then implement this requirement. That act has not yet been published by the Commission and accordingly, this obligation will be transposed once the common methodology is published in an implementing act.</p>	
		<p>Not transposed. No methodology has yet been specified which can be implemented. See commentary.</p>

² See also the correspondence from the Commission to member states from H Ruijters of 22nd January 2016 “Implementation of Article 7(5) of the Directive on the deployment of alternative fuels infrastructure”

³ “Study on the implementation of Article 7(3) of the “Directive on the Deployment of Alternative Fuels Infrastructure” -Fuel Price Comparison”

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Art 7(4)	No obligation.		
Art 7(5)	No obligation.		
Art 7(6)	No obligation.		
Art 7(7)	<i>Member states shall ensure that, when available, the data indicating the geographic location of the refuelling and recharging points accessible to the public of alternative fuels covered by this Directive are accessible on an open and non-discriminatory basis for all users.</i>		Regulation 6.
Art 8(1)-(5)	No obligation.		
Art 9(1)-(3)	No obligation.		
Art 10(1)	<i>Each member state shall submit to the Commission a report on the implementation of its national policy framework by 18 November 2019.</i>		Prospective obligation which will be complied with.
Art 10(2)-(6)	No obligation.		
Art 11(1)	<i>Member states shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 November 2016.</i>		Complied with at earliest opportunity.
Art 11(2)	<i>When member states adopt these provisions they shall contain a reference to this Directive.</i>		The reference is made in the Regulations.
Art 11(3)	<i>Member states shall communicate to the Commission the text of the main provisions of national law which they adopt.</i>		The Regulations have been submitted to the Commission.
Art 12	No obligation		

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