

Title: Implementation of New Rules for Priority Dispatch Provisions of the EU Electricity (Recast) Regulation 2019	Regulatory Impact Assessment (RIA)		
	Date: 16/10/2020		
	Type of measure: Subordinate		
Lead department or agency: Department for the Economy	Stage: Final		
	Source of intervention: Domestic NI		
Other departments or agencies: N/A	Contact details: Davina McCay		
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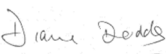
Summary Intervention and Options

What is the problem under consideration? Why is government intervention necessary? (7 lines maximum) On 5 June 2019 the European Commission published The Electricity (Recast) Regulation [(EU) 2019/943] on the internal market for electricity which came into force on 1 January 2020. EU regulations are directly applicable and therefore Member States must comply by date of operation. To ensure compliance with the Regulation there are some legislative amendments needed, as technically, due to out of date references in domestic legislation, Northern Ireland is in breach of some of the requirements in the Regulation. One area which requires action to progress compliance is Article 12 which outlines the new rules for priority dispatch. Compliance with the new rules involves both legislative, by the Department, and practical implementation by the Single Electricity Market Committee (SEMC) and the Transmission System Operators (TSOs).	
What are the policy objectives and the intended effects? (7 lines maximum) The objective of the regulation is to establish rules to ensure the functioning of the internal market for electricity and includes requirements related to the development of renewable forms of energy and environmental policy, in particular specific rules for certain types of renewable power-generating facilities. Priority dispatch is the obligation on Transmission System Operators (TSOs) to schedule and dispatch energy from renewable generators, ahead of other generators as far as secure operation of the electricity system permits. Rules around Priority Dispatch are usually set out in EU Regulations and Directives, ensuring that dispatch of renewables is treated the same across the EU. The amended legislation will ensure that Northern Ireland in line with the Electricity Regulation and maintain effective operation of the SEM.	
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base) (10 lines maximum) Although the UK left the EU on 31 January 2020, updated rules in the Electricity Regulation, which came into force prior to exit day are now the law. Article 9 and Annex 4 of the revised NI / IE Protocol to the Withdrawal Agreement list certain provisions of EU law governing wholesale electricity markets, carbon trading and industrial emissions (including the Electricity Regulation) that will apply in Northern Ireland once the Implementation Period has ended. As a result of this the new rules relating to Priority Dispatch must come into operation and will remain in force under the protocol, therefore the necessary legislative amendments are required as a matter of urgency. Northern Ireland is technically in breach of some of the requirements in the Regulation and, without recourse, could leave the Department open to legal challenge and/or infraction proceedings around Priority Dispatch.	
Will the policy be reviewed? No	If applicable, set review date: Month/Year

Cost of Preferred (or more likely) Option		
Total outlay cost for business £m	Total net cost to business per year £m	Annual cost for implementation by Regulator £m
N/A	Unknown	N/A

Does Implementation go beyond minimum EU requirements?		YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Is this measure likely to impact on trade and investment?		YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Are any of these organisations in scope?	Micro	Small	Medium
	Yes X No <input type="checkbox"/>	Yes X No <input type="checkbox"/>	Yes X No <input type="checkbox"/>
			Large
			Yes X No <input type="checkbox"/>

The final RIA supporting legislation must be attached to the Explanatory Memorandum and published with it.

Approved by: 

Date: 26 October 2020

ECONOMIC ASSESSMENT (Option 2)

Costs (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Cost (Present Value)
	(constant price)	Years		
Low	N/A Optional		N/A Optional	N/A Optional
High	N/A Optional		N/A Optional	N/A Optional
Best Estimate				
<p>Description and scale of key monetised costs by ‘main affected groups’ Maximum 5 lines Under the new priority dispatch rules, main affected groups would be operating stations generating 400kW or above of energy that were not connected to the grid on or before 4 July 2019. Currently in Northern Ireland, only plant generating more than 10Mw of electricity must trade through the Single Electricity Market (SEM) and, as such, be considered ‘dispatchable’. Plant generating between 5Mw and 10Mw may trade on a voluntary basis and anything below that is not normally expected to trade in the SEM unless it is part of an aggregator. For the purposes of this assessment therefore, the Department is considering plant of 5Mw or above as being in the affected group. In that context, based on BEIS Renewable Energy Planning Database¹, the Department has identified a potential 45 generating sites of 5Mw or above capacity that are in the planning pipeline post-4 July 2019 and, as such, would be subject to the new priority dispatch rules when operational. The impact costs on the businesses affected are difficult to predict as there are a number of factors that could influence the revenue received from their generation.</p>				
<p>Other key non-monetised costs by ‘main affected groups’ Maximum 5 lines</p>				
Benefits (£m)	Total Transitional (Policy)		Average Annual (recurring) (excl. transitional) (constant price)	Total Benefit (Present Value)
	(constant price)	Years		
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate				
<p>Description and scale of key monetised benefits by ‘main affected groups’ Maximum 5 lines</p>				
<p>Other key non-monetised benefits by ‘main affected groups’ Maximum 5 lines</p>				
<p>Key Assumptions, Sensitivities, Risks Maximum 5 lines If Northern Ireland does not implement the amendments to Article 12 of the EU Electricity Regulation 2019 then there is the potential that the Department could face legal challenges from operators who consider themselves to at a disadvantage if rules on priority dispatch are not updated from the previous regulations. There is also a risk of infraction fines from the EU Commission for failure to implement requirements.</p>				

¹ <https://www.gov.uk/government/publications/renewable-energy-planning-database-monthly-extract>

BUSINESS ASSESSMENT (Option 2)

Direct Impact on business (Equivalent Annual) £m				
Costs: Unknown	Benefits: Unknown	Net: Unknown		

Cross Border Issues (Option 2)

How does this option compare to other UK regions and to other EU Member States (particularly Republic of Ireland) Maximum 3 lines
The EU Electricity (Recast) Regulation was published in July 2019 and came into force on 1 January 2020. In relation, specifically to Article 12 of the Regulation, the Republic of Ireland, as an EU Member State, is currently consulting, via the Single Electricity Market Committee (SEMC), on the implications of priority dispatch. In order to maintain the secure operation of the Single Electricity Market it is essential that market participants in both jurisdictions are bound by the same rules.

Background

On 5 June 2019 the European Commission published The Electricity (Recast) Regulation [(EU) 2019/943] on the internal market for electricity which came into force on 1 January 2020. The purpose of the regulation was to establish rules to ensure the functioning of the internal market for electricity and includes requirements related to the development of renewable forms of energy and environmental policy, in particular specific rules for certain types of renewable power-generating facilities.

Problem Under Consideration

EU regulations are directly applicable and therefore Member States must comply by date of operation. To ensure compliance with the Regulation there are some legislative amendments needed, as technically, due to out of date references in domestic legislation, Northern Ireland is in breach of some of the requirements in the Regulation. One area which requires action to progress compliance is Article 12 which outlines the new rules for priority dispatch. Compliance with the new rules involves both legislative, by the Department, and practical implementation by the Single Electricity Market Committee (SEMC) and the Transmission System Operators (TSOs).

Rationale for Intervention

As stated above Northern Ireland is in breach of some of the requirements in the Regulation, one of which is Article 12 and the rules concerning Priority Dispatch. To ensure that Northern Ireland is legislatively correct, amendments are required, specifically to the Electricity Order 1992 and the Electricity (Priority Dispatch) Regulations (Northern Ireland) 2012.

Policy Objective

The overall policy objective is to ensure that Northern Ireland meets the legislative requirements of the EU Electricity (Recast) Regulation 2019 and, in particular, Article 12 around Priority Dispatch.

Description of Options Considered

Option 1 – Do Nothing

Doing nothing would mean that Northern Ireland would remain in breach of the Electricity Regulation in relation to Priority Dispatch. This could leave Northern Ireland open to potential legal challenges from generators who would have been eligible under the previous regulation but unable to access priority dispatch. Additionally, as Northern Ireland and the Republic of Ireland share a single electricity market (SEM) the same rules need to apply in both jurisdictions. There is also a risk of infraction fines from the EU Commission for failure to implement requirements.

Option 2 (Preferred Option) – Implement Article 12 of the EU Electricity (Recast) Regulation 2019

EU Regulations are directly applicable and therefore Member States must comply by date of operation. To ensure compliance with the Regulation there are some legislative amendments

needed, as technically, due to out of date references in domestic legislation, Northern Ireland is in breach of some of the requirements in the Regulation. One area which requires action to progress compliance is Article 12 which outlines the new rules for priority dispatch.

Compliance with the new rules involves both legislative, by the Department, and practical implementation by the Single Electricity Market Committee (SEMC) and the Transmission System Operators (TSOs).

Through amending the current legislation the Department will update the provisions on rules surrounding priority dispatch to facilitate a non-discriminatory, transparent and market-based system.

To protect existing renewable generators with contracts settled prior to the Regulation date of 4 July 2019, grandfathering provisions will be implemented as set out at Article 12(6).

Monetised and Non-Monetised Costs and Benefits

EU Regulations are directly applicable and Member States must comply by date of operation. If Northern Ireland does not legislate for Article 12 of the Electricity Regulation then it will continue to be in breach of the Regulation. This could potentially leave the Department open to legislative challenge from renewable electricity generators who, under the new regulation, would no longer have access to the benefits of priority dispatch for generators. The legal costs of this is difficult to estimate although if NI domestic legislation is in-line with EU legislation it makes the likelihood of a legal challenge less likely. Likewise the impact costs on the businesses affected are also difficult to predict as there are a number of factors that could influence the revenue received from their generation. There is also a risk of infraction proceedings by the EU Commission which could lead to significant fines.

As mentioned previously, NI and ROI share a single electricity market and therefore conform to the same regulations.

Rationale and Evidence that Justify the Level of Analysis used in the RIA

Due to the Electricity Regulation 2019 coming into force (1 January 2020) prior to exit day on 31 January 2020, Northern Ireland has a legal obligation to implement the Regulation. Article 9 and Annex 4 of the revised NI / IE Protocol to the Withdrawal Agreement list certain provisions of EU law governing wholesale electricity markets, carbon trading and industrial emissions (including the Electricity Regulation) that will apply in Northern Ireland once the Implementation Period has ended. As a result of this the new rules relating to Priority Dispatch must come into operation and will remain in force under the protocol, therefore the necessary legislative amendments are required as a matter of urgency.

Risks and Assumptions

Option 1 – If the new regulations are not implemented then there is a risk of legal challenges against the Department from operators coming onto the system who, under the previous regulations, would have been eligible for priority dispatch and would have an expectation to be included in the scheme and/or infraction proceedings by the EU.

Directs Costs and Benefits to Business

Under the previous rules generating stations had to participate in the SEM to gain access to priority dispatch, i.e. generate ≥ 10 MW (mandatory participation) or between 5 MW and 10 MW (voluntary participation). Article 12 of the Electricity Regulation 2019 sets out the new provisions on rules surrounding priority dispatch. It states that on or after 4 July 2019 system operators shall give priority to generating installations using renewable energy sources that:

- Have an installed capacity of less than 400kW; or
- Are demonstration projects for innovative technologies.

Having interrogated the Renewable Energy Planning database hosted by the Department for Business, Energy & Industrial Strategy (BEIS) it has been ascertained that there are a potential 45 projects with generation => 5MW that could potentially participate in the SEM that would be affected by changes in priority dispatch. However, these projects would need to obtain planning permission and a connection to the grid.

Wider Impacts

The Department has conducted a screening exercise to assess if implementation of Article 12 would have wider impacts (positive or negative) on Environmental, Human Rights or Economic issues. The Department has ascertained that there are no impacts on the aforementioned issues and therefore have been screened out. An equality impact assessment has also been carried out, post-consultation, and the Department is of the view that there is no impact, positive or negative, on the various Section 75 categories. |