# EXPLANATORY MEMORANDUM TO

# THE ELECTRICITY AND GAS (OWNERSHIP UNBUNDLING) REGULATIONS (NORTHERN IRELAND) 2015 SR 2015 No. 249

## 1. Introduction

This explanatory memorandum has been prepared by the Department of Enterprise, Trade and Investment ("the Department") to accompany the above Statutory Rule which is laid before the Northern Ireland Assembly. The Explanatory Memorandum is designed to assist the reader in understanding the Regulations. It does not form part of the Regulations.

## 2. Purpose

The purpose of the Regulations is to amend the ownership unbundling provisions of the Electricity (Northern Ireland) Order 1992 and the Gas (Northern Ireland) Order 1996. This will introduce further flexibility in the consideration of certification cases by giving the Northern Ireland Authority for Utility Regulation ("the Authority") more discretion to certify transmission system operators (TSOs) where there is no conflict of interest or no incentive to exploit a conflict of interest. The changes will ensure a consistent approach to certification is maintained across the UK and is intended to remove unnecessary constraints on investment in the UK energy markets.

## 3. Background

The EU Third Energy Package introduced provisions in relation to structural separation ("unbundling") between TSO activities and generation and supply activities. These requirements prevent the same person having simultaneous ownership or control over the function of transmission and/or a transmission system and in generation, supply or gas production. TSOs need to be certified by the Authority as compliant with the ownership unbundling tests in the Electricity (Northern Ireland) Order 1992 and the Gas (Northern Ireland) Order 1996 (as amended by the Electricity and Gas (Internal Markets) Regulations (Northern Ireland) 2013).

European Commission guidance, published in May 2013, supports a more flexible approach to certification which would allow certification of some transmission businesses even if the test in the Directives is not met, if in practice no conflict of interest arises.

## 4. Consultation

Consultation via a UK 'Call for Comments' on amending the current ownership unbundling provisions was undertaken in September/October 2014. There were 6 responses which supported the proposal to give the UK energy Regulators more discretion when considering certification cases.

## 5. Equality Impact

The policy will maintain EU compliance and facilitate effective regulation which will benefit all section 75 groups. The policy has been screened out.

## 6. Regulatory Impact

A Regulatory Impact Assessment was carried out and is attached to this memorandum at **Annex A**.

## 7. Financial Implications

The proposal will affect the Northern Ireland Authority for Utility Regulation (the NI Regulator) in developing guidance to support the new legislation and in applying it to future certification decisions. It will also affect TSOs in relation to future certification processes. However, it is not expected to have any immediate impact in practice in Northern Ireland since the certification process for all NI TSOs is either complete or underway and the legislation will only apply to future certification processes.

## 8. Section 24 of the Northern Ireland Act 1998

The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied the proposed Rule does not contravene the Act.

## 9. EU Implications

The provisions of the Regulations are compatible with the European Convention on Human Rights and are considered necessary to remove unnecessary constraints on investment in the UK energy markets whilst retaining the overall aims of the EU Directives' ownership unbundling requirements.

## 10. Parity or replicatory measure

DECC made equivalent changes in GB via the Electricity and Gas (Ownership Unbundling) Regulations 2014. These Regulations can be accessed at the following link: http://www.legislation.gov.uk/uksi/2014/3333/pdfs/uksi_20143333_en.pdf

## 11. Additional Information

The NI Regulator is working with GB energy Regulator Ofgem to develop guidance for applicants. The Regulations shall come into operation on 5th June 2015.

**ENERGY DIVISION**
**DEPARTMENT OF ENTERPRISE, TRADE AND INVESTMENT**
**13 May 2015**

**ANNEX 1**



Regulatory Impact Assessment Signed.p