

Regulation	Consultee	Abbreviated Consultee Comments	DETI Response
General Comments	NIE	Request that “an electricity distributor” should read “the electricity distributor” throughout the Regulations.	The Department does not consider this change to be appropriate. Although NIE plc may currently be the only operator of a distribution business in NI, it may not be in the future. The Directive requires connection obligations to apply to all distributors.
		Public electricity supplier has been amended throughout the 1992 Order to electricity supplier and/or electricity distributor where applicable. However, it has not been amended at Article 36(a), 44(3) and 45(1)(a).	36(a) – noted, with thanks. 44(3) – the Department disagrees, this is provided for in Schedule 2(6)(b). 45(1)(a) – the Department disagrees, this is provided for in Schedule 2(7)(b).
		“Director” has been replaced by “Authority” in specific places, however this change has not been made throughout the Order.	The Department only has vires to make such changes as are related to Directive implementation.
		Thus far there are no consequential amendments to legislation other than the 1992 Order. It is important to ensure that other legislation referring to a supplier carrying out distribution activities is amended.	The Department is currently considering this issue.
		The Regulations should amend the references in the Non Fossil Fuel Orders to Northern Ireland Electricity plc so that these references are in future to the supply successor of NIE (i.e. NIE Energy Limited), which will be the counterparty to these contracts. Any other references to NIE in legislation would also need to be updated if appropriate.	The Department proposes to make appropriate provision in this regard.
		Para 1.8 in the Consultation Paper states that "The SONI licence will permit it to carry out the TSO function and will regulate the operation of both the transmission and distribution assets". The reference to operation of the distribution system is incorrect. Regulation of the operation of the distribution assets will be achieved through the Transmission licence held by NIE plc.	The Department accepts this comment, the correct position is reflected in paragraph 3.20 of the consultation paper.
	NIAUR	It is the case that certain provisions will need to have taken effect before others in order for these other provisions to apply. This is because some provisions are reliant on certain activities or events as authorised or provided by the Regulations having been undertaken. It is not therefore practical or appropriate for all of the provisions to come into force from the same date. Therefore it will be necessary to find a mechanism for ‘staged’ commencement of the Regulations. This could be facilitated by the Regulations stating when certain provisions are to come into force i.e. commencement dates. We suggest that the commencement dates will need to be linked to Go Active and Go Live dates or events.	The Department is now proposing that provision should be included for the date for commencement of each of the regulations. The Department has been advised by DSO that the dates set out in Regulation 1 can be amended if necessary by further regulations under Section 2(2) provided such regulations are made before the date required to be altered.
4	NIE	In NI, all electrical lines of a nominal voltage of 110 kilovolts and above will be operated by SONI. As currently drafted, however, these would be construed under the legislation as part of the distribution system and therefore outside of the scope of responsibility of SONI. While we are considering further the consequential impact of this, we would propose that the definition of high voltage line be amended to replace “110” with “33” kilovolts to deal with this.	The Department understands that SONI will not operate any lines under 110 kilovolts. Therefore, it proposes to amend the definition of “transmission line” so that it relates to lines of 110 kilovolts or more so as to reflect more accurately the approach to be taken in NI.
	NIAUR	The definition of “electricity distributor” currently proposed may, inadvertently, capture	The Department is proposing to amend this provision to address

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		transmission licensees who do not own a distribution system, but who are undertaking transmission activities that relate to distribution. It would therefore benefit from further clarification.	this issue.
7	NIE	<p>Article 12, General duties of electricity distributors and transmission licence holders, has been amended to reflect that there will no longer be a public electricity supplier but instead there will be a distributor responsible for distribution matters. The way in which the provision has been amended is to replace the reference to public electricity supplier with distributor in Article 12(1) and also to supplement the reference to transmission with a reference to “distribution” in Article 12(2). This leads to a considerable amount of confusion as to the distinction between Article 12(1) and Article 12(2). Given that the obligation in Article 12(1) is effectively a subset of the duty in Article 12(2), to remove this confusion Article 12(1) should be deleted so that effectively the obligation is captured entirely within Article 12(2).</p> <p>Article 12(2) deals with a number of types of licensees, namely NIE plc in its activities as transmission owner, distribution owner and distribution system operator; SONI in its role as transmission system operator; and Moyle in its role as a transmission licensee. We note that the phraseology “as appropriate having regard to the activities authorised by the licence” seeks to ensure that the scope of the duty is limited and construed within the overall activities of each of these entities. The incorporation of distribution within this creates some difficulties in understanding fully how that aspect relates to, for example, SONI in its role as transmission system operator. We would not expect that the duty would extend in that way. The drafting needs to clarify this, and we would propose that the words “and the obligations under” be added after the words “having regard to the activities authorised by”. The licence obligations set out how the duties are in practice implemented and this would allow that to be taken into account in construing the duty.</p>	The Department notes the deficiencies in the current wording. It is proposing to amend this provision to clarify the position.
	NIAUR	The combination of transmission and distribution in the proposed Article 12(2) appears to place obligations regarding distribution on persons who undertake only transmission activities. It would be appropriate for the existing Article 12(2) to remain unaltered, and a new Article 12(3) to be added in the same form, save that it applies to electricity distributors (rather than holders of licences under 10(1)(b) generally) and to distribution (rather than transmission).	The Department is proposing to amend this provision to address this issue.
	Airtricity	The proposed draft of Article 12(2), sub-paragraphs (a)(i) and (a)(ii) refers to the duty of distributors and transmission licence holders to develop and maintain a system which: has long-term ability to meet demand; and “contribute to security of supply through adequate transmission and distribution capacity and system reliability”. Both these requirements can be met by increasing the share of renewables on the grid. The licence should be redrafted to reflect this reality. The wording needs a third provision (sub-paragraph (a)(iii)): “develop the grid to facilitate priority access for renewables”.	The Department notes this proposal, although considers it to be outside the scope of the proposed regulations.
9	NIE	Article 19 makes reference to the electricity distributor being “required” to make a connection between the distribution system and any premises. In practice, the person	The wording of Article 19 is modelled on equivalent wording in the Electricity Act 1989. Moreover, the amendments to Article 19

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		<p>would make a “request” for a connection and then there would be a need for this request to be considered alongside the exceptions and other matters within the Order. This is a change from the original provision which related primarily to a duty to supply where there were fewer issues for consideration and therefore the word “require” was more appropriate. The duty to supply is now captured elsewhere in regulatory arrangements and therefore the duty to connect within the legislation should reflect that the process is much more involved than simply a blanket “requirement”.</p>	<p>constitute a lessening to rather than an increase to NIE’s current obligations in that they remove the duty to supply on request and leave only the connection element of the current duty.</p>
		<p>Article 19(1)(a)(ii) provides that the electricity distributor can be requested to make a connection by an electricity supplier or exempt supplier acting with the consent of the owner or occupier of the premises. In practice, in NI the request for a connection would always come from the owner or occupier of the premises and never via a supplier. If a supplier was approached for a supply to unconnected premises, it would refer the relevant person to NIE T&amp;D to effect the connection. There is no proposal to allow electricity suppliers effectively to invoke the duty to connect and the way in which the provisions later on in the Order work, in particular Article 20(5), interposing a supplier between the distributor and the person requiring a connection would make the process very cumbersome. For example, it is not clear how the requirements to be imposed on the person would be managed if there was a supplier intermediary. We therefore propose that this provision be deleted.</p>	<p>The Department does not consider the change requested appropriate. Article 19(1)(a)(ii) does not require requests for connection to be made through a supplier. It only provides an alternative means of applying for a connection to that of direct application from owner/occupier to the distributor. The Department considers the availability of such an alternative to be appropriate in the context of full market opening, in that it facilitates competition, and also to have other consumer benefits in that it enables a simplification of the process for obtaining a first supply of electricity. It is for the industry to decide whether to avail itself of this alternative.</p>
		<p>Article 19(1)(b) imposes a duty on a distributor to connect his system to another distribution system. Given that NIE owns the distribution system in NI, and is the only distributor, while this provision mirrors the GB provision it is not appropriate in NI and should be removed.</p>	<p>The Department does not consider this change to be appropriate. Although NIE plc may currently be the only operator of a distribution business in NI, it may not be in the future.</p>
		<p>The wording in Article 21(1)( c) should revert to the wording as used in Section 17(1)( c) of the Electricity Act 1989 presently in force in GB so that the distributor is not obliged to make a connection if and to the extent that “it is not reasonable in all the circumstances for him to be required to do so”.</p>	<p>The Department considers that it does not have <i>vires</i> to make the changes requested. It is implementing two Directive requirements. The first is the unbundling of supply from distribution. That requires the former PES no longer to have a duty to connect (as connection is a distribution and not a supply function). The second is the UK’s duty to ensure that distribution companies have a duty to connect, which requires us to apply the current duty to connect on the PES (which is part of its current duty to supply on request) to distribution companies. None of these requires the UK to make the change suggested.</p> <p>In any event, in practice NIE will continue to be under the same duty to connect as it is currently, and it is not apparent why unbundling makes this obligation inappropriate.</p>
		<p>In Article 26 there is no time limit in relation to disputes on the maintenance of the connection or the requisite assets. It would be helpful if this were the case.</p>	<p>This wording is modelled on precedent from the Electricity Act 1989. The Department is not minded to make the change requested.</p>
10	NIE	<p>Regulations under Articles 42 and 43 currently exist and have existed for some time, without amendment. It will be important to understand what is envisaged in terms of</p>	<p>This is a matter for the Authority to determine rather than the Department. However, the Department does propose to amend</p>

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		<p>the transition from the existing guaranteed standards and overall standards. NIE's expectation would be that the process described in Article 43B is not envisaged in relation to this.</p> <p>In reviewing the existing Regulations, both in terms of guaranteed standards and overall standards, these almost entirely relate to the activities of electricity distributors and of the common services provider. In relation to electricity supply, there is in each only one item (relating to customer response times) which is clearly a supply standard. We would anticipate that this particular standard could migrate over to the codes of practice which exist under the licence and which deal with similar matters, leaving the Regulations to be entirely distribution related. To recognise this possibility, Article 42(a) should, after the words "ought to be achieved in individual cases" add the words "if any" and Article 43(1)(a) should also include the same qualification.</p> <p>Article 42(2) seems to state that Standards of Performance will only apply to a distributor in so far as its activities affect a customer of a supplier. Does this mean that a customer must have a complaint in relation to his supply to be subject to Standards of Performance or do they apply to any complaint regarding the activities carried on by the distributor?</p>	<p>Regulation 10 to allow the Authority to consult on Regulations made under Article 42 and Standards of Performance under Articles 43 and 43A in advance of Regulation 10 coming into operation.</p> <p>The Department considers that the currently proposed wording adequately provides for this without need for amendment. It will be for the Authority to determine whether such supply standards are to be included in the Regulations.</p> <p>The wording clearly states that the Authority has power to set standards in connection with any activities of a distributor to the extent that such activities affect customers or potential customers of suppliers. Those standards are imposed on distributors, not on customers and there is no requirement that a particular complaint in relation to a particular supply be raised in order for those standards to be capable of applying to a distributor.</p>
	Airtricity	Article 42(5) should include a mechanism whereby suppliers can reclaim the revenue spent on compensating customers on behalf of electricity distributors, or the costs of providing services to the distributors from the distributors within a time frame of X days. As it stands smaller suppliers will find themselves at risk of not being compensated for services rendered.	The Department considers that this is best addressed in the regulations to be made by the Authority under Article 42. The Authority have advised they are content that the power under Article 42 is sufficient to deal with the manner in which a distributor reimburses a supplier, including the cost of providing the service to the distributor.
	Airtricity	Article 42A(4) Orders in cases of dispute are said to be <i>"final and shall be enforceable as if it were a judgement of a county court"</i> in Paragraph 4. We believe this should entail a right of appeal, similar to judgements in a county court.	It is not clear why this is deemed necessary when such provision does not currently apply to orders under Article 42A. In any event, such an order would be susceptible to judicial review.
	Airtricity	Article 43B(3) should state that notice of the proposed performance standards will include publishing online. The current wording is vague: "shall be published in such manner as the Authority considers appropriate..."	The Department disagrees that the wording is vague. The current wording would in any event permit the Authority to specify online publishing if it considered that to be appropriate. The Authority have also confirmed that it is normal practice for them to publish consultations, such as the one set out in Article 43B, on its website.
	Airtricity	Article 43B(4) We support the requirement to consult suppliers on standards of performance under Articles 43 and 43A.	The Department welcomes the support for this provision.
12	NIE	There is currently no timescale for the Authority's approval of the property arrangements scheme. There is a need to clarify these timescales due to the tight timeframes within which the property transfer scheme may need to be implemented.	The Department notes the need for tighter timescales in relation to the operation of the property and licensing schemes, which has also been raised by others. The Department proposes that an

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			application for a property arrangement scheme should now be made either within 28 days of the coming into effect of Part III or such other date as the Authority may specify. It has also removed the delay of 21 days from the making of the scheme to its coming into effect. The Department does not, however, consider it appropriate to place a time limit on the Authority's assessment of the scheme application as third party rights are at stake.
12(4) and (5)	NIAUR	The requirement in paragraphs 4 and 5 of this regulation would unnecessarily fetter the discretion of the Authority and also conflicts with the licensing scheme provisions.	Given that powers are no longer considered required to reorder/modify the licences in order to facilitate the transfer of the supply licence to NIE Energy, these provisions are now proposed to be deleted.
	NIE	There will be more conditions than those that relate solely to supply and transmission activities to transfer. NIE queries whether Regulations 12(4) and 12(5) are necessary.	Given that powers are no longer considered required to reorder/modify the licences in order to facilitate the transfer of the supply licence to NIE Energy, these provisions are now proposed to be deleted.
12(7)	Airtricity	The definitions of "supply" and "distribution" taken from Directive 2003/54/EC should appear in Part II, Amendments to the 1992 Order and this paragraph deleted. The existing definition of "supply" in the Part II of the existing 1992 Order (Interpretation of Part II) should be removed. Using definitions from the Directive throughout the proposed NI 2007 Electricity Regulations will better harmonise the two.	<p>The definitions of supply and distribution in Regulation 12 are used for a specific and time limited purpose. Once the relevant schemes have been made they will have no further application. There is therefore no need to harmonise the two.</p> <p>Moreover, the definitions of supply and distribution elsewhere in the legislation have continued application and are based on current precedent. The amendment suggested could potentially create confusion rather than remedy it.</p>
13	NIAUR	Allowing the relevant parties three months to submit an application is too long given that the Authority needs to publish the scheme at least 28 days prior to Go-Live. We consider that the application needs to be made within 28 days of the relevant provision coming into force but that the Authority could direct a later date if necessary.	The Department is proposing to amend this provision to address this issue.
	NIE	The provision for the application for the scheme to be made within 3 months of the coming into operation of the Part may need to be considered in terms of practicality, and also there should be the ability to make a subsequent nomination (after Go-Live) should that be required to ensure that all property, rights and liabilities have been properly transferred and to the extent that any are identified subsequently these can also be properly captured.	<p>The three month limit to the making of the scheme has been removed.</p> <p>The Department does not consider that a "second bite of the cherry" is appropriate given that third party rights are at issue. NIE and the Authority should ensure that the scheme put in place is fit for purpose.</p>

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14	NIAUR	<p>The property arrangements scheme could be used as the vehicle under which the public electricity supply licence is transferred to the nominated associate. This would alleviate the need for a separate licensing scheme. The PES licence could be converted, with the necessary modifications, into a supply licence under the transfer scheme and the transmission licence, which will remain with NIE plc, also modified accordingly. However, if this approach was to be adopted the relevant provisions would need to clarify that in making the scheme the Authority could make modifications to the terms and conditions of both licences i.e. the new supply licence and the existing transmission licence.</p>	<p>The licence is not capable of being assigned. Therefore it is not something that could be transferred under a property arrangement scheme, hence the need for a separate licensing scheme (for which there is precedent in similar legislation). The Department is proposing to incorporate the conversion of the PES licence into a supply licence in the licensing scheme</p>
	NIE	<p>To ensure that the scheme proceeds quickly to finalisation, we would anticipate that the Authority's role would be to formally approve the property arrangements scheme where NIE has agreed the scheme with its nominated associate. Regulation 14(1) implies the Authority 'may' make the scheme without further clarification in this paragraph. This implies a review of the scheme in some detail, which given the timescales and the nature of the matters dealt with by the scheme, would we believe be impractical in the circumstances. We have assumed that this is not intended, and indeed Regulation 16(2) seeks to provide that agreed provisions would be automatically included. To clarify this further, we propose amending Regulation 14(1) to: "14. – (1) The Authority shall, on application made under regulation 13 and subject to Regulation 16 and 17(2), make a scheme providing for –     (a) the transfer to a nominated associate of, or     (b) the creation in favour of the associate of any rights in relation to, property, rights or liabilities of,     the nominating licensee."</p> <p>Regulation 14 also needs to recognise that not only will arrangements that are being transferred be impacted, but arrangements that will remain with NIE plc may also require amendment. For example, distribution connection agreements remaining with NIE may require amendment to reflect the restructuring of NIE for Directive implementation purposes. While this could be captured in the phrase in 14(2) "supplemental, incidental and consequential provisions" this is not absolutely clear. We therefore propose that subparagraph (d) be amended to say "supplemental, incidental and consequential provisions, including modifications to any property, rights or liabilities (including contracts) remaining with the nominating licences and not being transferred to the nominating associate."</p>	<p>The Department has reconsidered this wording in the light of comments from the Authority. In particular, the Department is concerned that the current wording does not give the Authority sufficient control over the scheme to ensure that it would enable NIE's supply businesses to be adequately unbundled so as to ensure Directive compliance. The Department is equally aware, however, of the practicalities involved in drawing up a scheme in such a tight timescale and also the impact that such a scheme has on NIE and NIE Energy. In view of all of these considerations, the Department is proposing to amend the current drafting to enable the Authority to make amendments to any scheme proposed by NIE as is necessary or expedient for the purposes of ensuring compliance with the Directive. NIE would still propose the scope and terms of the scheme. It would also have a right of appeal to the CAT if it objected to any change which the Authority made to the scheme it proposed. The Department considers that this approach provides the right balance between Viridian's interests and the need to ensure Directive compliance.</p> <p>The Department considers that the current wording adequately provides for this. It would point out that it is based upon precedent in the Energy Act 2004 and is consistent with similar provision in the Utilities Act 2000.</p>

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		In addition we propose the addition of the following paragraph (6) to Regulation 14: “(6) Provisions that may be included in a property arrangements scheme made pursuant to regulation 14 shall be only those that are - (a) agreed by the nominating licensee and the nominated associate, or (b) where the nominated licensee and nominated associate have failed to agree a provision of the scheme, as that provision shall be determined by the Authority.”	For the reasons described above, the Department is not minded to make this change.
16 and 17	NIAUR	The property arrangements scheme must be as approved by the Authority. It is unacceptable that as presently proposed the Authority would be obliged to make a scheme which has been agreed between the relevant licensees – irrespective of whether it considers the scheme to be appropriate. The scheme is being effected for Directive compliance purposes to effectively separate the networks business from the supply and generation businesses. The process should be one whereby the nominating licensee submits a scheme which has to be approved by the Authority. In giving any such approval the Authority can make such modifications as it considers appropriate for compliance purposes. In other words the Authority has the final say (subject to CAT appeal). Also in order for the CAT appeal provisions to be meaningful it would be necessary for the scheme to be published and to allow parties longer than 7 days within which to make the appeal.	The provisions now enable the Authority to amend the scope and the terms of the scheme proposed by the licensee to the extent the Authority considers necessary or expedient for directive compliance purposes. The Department is proposing to amend this provision to address these issues. It is also proposing inclusion of a duty to publish both the application for the scheme and the scheme to facilitate third party rights. Finally, it is proposing to allow 14 days from publication of the scheme for parties to appeal to the CAT.
23	NIAUR	This [Regulation] provides for a person to appeal against any determination made by the Authority under Part III. It would be more appropriate (and a simpler process) for it to provide that appeal can be made in respect of the transfer scheme as made by the Authority and require the Authority to publish the scheme for. As presently drafted any aggrieved person can apply to the CAT for a review of a determination by the Authority within 7 days of the Authority making that determination but any such person would not know (i) what was in the original application made by the nominating licensee or (ii) when the Authority had made any such determination.	The Department considers the grounds for appeal set out in the draft regulations to be appropriate. As referred to above (see Regulation 16 and 17 comment), it is proposing inclusion of a duty to publish both the application for the scheme and the scheme to facilitate exercise of rights of appeal. Finally, it is proposing to allow 14 days from publication of the scheme for parties to appeal to the CAT. It considers that these changes deal adequately with the points raised by the Authority.
23(1)-(3)	Airtricity	The 7 days permitted to apply for a review of any determination regarding property arrangement schemes is grossly insufficient. It does not allow organisations sufficient time to prepare a convincing application for the Competition Appeal Tribunal.	The Department is proposing to amend the time limit to 14 days from publication of the scheme in order to address this point.
35(2)	NIE	The reference to the Departments’ direction in Regulation 35(2) is not clear.	The Department proposes to change this to a reference to the Authority’s direction.
35-37	NIAUR	As mentioned above, it may not be necessary to have a separate ‘licensing scheme’ if the property arrangements scheme provisions were amended to provide for the transfer, conversion and modification of the PES licence and for the modification of the existing transmission licence.	As indicated in our comments on Regulation 14, the licence is not capable of being assigned. Therefore it is not something that could be transferred under a property arrangement scheme, hence the need for a separate licensing scheme (for which there is precedent in similar legislation). The Department is proposing to incorporate the conversion of the PES licence into a supply licence in the licensing scheme
36	Airtricity	There is no Paragraph 3, which seems to be a formatting error.	Noted with thanks.

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38	Airtricity	The requirement to provide information gives the Authority excessive scope to obtain information in carrying out its duties under Regulation 35 & 36. This power should be subject to a test of reasonableness.	The use of this power is subject to general principles of administrative law which require the Authority not to act unreasonably. It is based on precedent in the Utilities Act 2000 and is of limited application only, in that it relates to provision of information in relation to the operation of the licensing scheme only. The Department therefore does not consider that the proposed amendment is required.
39	Airtricity	This requirement is robbed of its force by the inclusion of the phrase “ <i>as it considers appropriate</i> ”. Deleting this clause and the word “ <i>such</i> ” from sub-paragraph (c) ensures that the necessity to consult is binding. This will augment stakeholder confidence and ensure suppliers’ inclusion.	The Department disagrees. The licensing scheme relates to the transfer of NIE’s supply licence to NIE Energy. Some licensees may be affected by this, others may not. The wording allows the Authority the discretion to refrain from consulting licensees who are not affected by the transfer scheme. The Department considers this to be reasonable.
41	NIAUR	The PES licence is to be transferred separately (either under the property arrangements scheme or under the proposed licensing scheme). This means that regulation 41 only needs to provide for the conversion of licences granted under Article 10(2) of the Order. Also given that the Authority is responsible for the NIE licence and property transfer schemes, it would also be appropriate, in terms of co-ordination, for the Authority to be responsible for the conversion of such licences.	The Department is proposing to amend this provision to address these issues.
	NIE	There is a need to understand how the process as envisaged under Regulation 41 would inter-relate with the process set out in the transition consultation recently published by the Authority. Under that consultation, there would be a conversion of the existing transmission and public electricity supply licence into a licence that incorporates both the existing, transitional and enduring conditions that would apply to NIE transmission and distribution, NIE supply and NIE power procurement. The practicalities of implementing this scheme in parallel to the Authority’s process for implementing the licensing arrangements from both SEM Go Active and SEM Go Live need to be considered further.	The Department now proposes that the conversion of NIE’s licence from a PES licence to a supply licence should be incorporated within the licensing scheme set out in Part III of the Regulations. It is therefore proposing to delete the power to convert PES licences from this regulation.
41(5)	Airtricity	Delete “ <i>as it considers appropriate</i> ” to ensure that the inclusion of suppliers in the process. This will increase stakeholder confidence in the transparency of the process.	The Department disagrees. The words relate to the manner in which the Authority carries out its consultation, not whom the Authority should consult. The Department would wish the Authority to have discretion in this regard.
42	NIE	It is vital that a valid enforceable contract is put in place. The operative provision is Regulation 42(2) and NIE require assurance that this provision does create a valid and enforceable contract.	This is the Department’s intention.
		The Scheme to be made and presumably the Terms and Conditions of Supply are to be published in the Belfast Gazette under Regulation 42(9). It is not clear why this is necessary if it has been approved by NIAUR? We would suggest that Regulation 42(9) be deleted unless there is a specific and essential reason why this is required.	The Department considers that such notification is appropriate so as to ensure sufficient publicity for the terms and conditions.
44	NIE	A provision is required which says that any connections made pursuant to the old	The Department accepts this comment and proposes to make

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		Article 19 are to be regarded with effect from the introduction of the Regulations as having been made under the new Article 19. This would replicate the arrangements in GB under the Utilities Act 2000 (Transitional Provisions) (No.2) Regulations 2001	appropriate provision in the Regulations.
56	NIAUR	It would be appropriate to add that that any arrangement or scheme made under the Regulations, and the coming into operation of any such arrangement or scheme, are also not considered to be relevant changes of law.	The Department is proposing to amend this provision so as to provide that the making of any scheme under the Regulations or its coming into operation is not to be considered a relevant change in law. It does not consider it appropriate to extend this provision to cover “any arrangement” made under the regulations, however, as this is too wide and in any event there is scope for such arrangements to specify whether they are to be considered “relevant changes in law”.
	Airtricity	The Regulations do alter legislation, even within the narrow confines of this regulation. Therefore it is a change of law.	This provision is directed at particular provisions in certain agreements entered into between licensees other than Airtricity. It is not intended to affect Airtricity’s contractual arrangements.
Sch 1	NIE	NIE sought a number of amendments to the new Electricity Supply Code (inserted by Schedule 1 of the Regulations) to introduce the role of an electricity distributor in the provision of electricity meters and related duties.	The Department understands from the Authority that, although NIE's distribution business will supply the majority of meters to suppliers, it will not supply these direct to consumers. Instead, the consumer will contract with the supplier for a supply of electricity, which will include the supply by the supplier of a meter. It will be up to the supplier in question how to source the relevant meter. No change is needed therefore to the drafting suggested to accommodate the role of NIE's distribution business. Moreover, the changes suggested by NIE would be to the detriment of suppliers and consumers generally, in that it would make it more difficult for suppliers to obtain meters from sources other than NIE.
		We note that the current paragraph 1(1) has been deleted. Paragraph 1 states that: “1.—(1) Subject to sub-paragraph (2), a public electricity supplier may recover from a tariff customer any charges due to him in respect of the supply of electricity, or in respect of the provision of any electricity meter, electric line or electrical plant.” While under the new arrangements there will not be a public electricity supplier, this provision is important for the electricity distributor to allow the distributor to recover charges in relation to “the provision of any electricity meter, electric line or electrical plant” and to that extent should be retained.	The new Article 22 (inserted by Regulation 9) provides for expenses reasonably incurred by a distributor in providing an electric line or electrical plant under Article 19(1) to be defrayed by the person requiring the connection.  As outlined above, electricity meters will continue to be provided to customers by electricity suppliers.

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		<p>In paragraph 1, the previous position in which the public electricity supplier was required to alter or replace meters to meet the needs of a disabled person without charge has been allocated to electricity suppliers as a continuing obligation. However, in NI, electricity suppliers will not be carrying out activities of altering or replacing meters and this will be a responsibility of the electricity distributor as a common service. In particular, the logic of the public electricity supplier/distributor carrying out this function is that the cost can then be socialised as a social cost, whereas if a supplier was to carry out this activity it would have to bear the cost itself.</p>	<p>In line with the comments above, the Department is of the view that this function should continue to be exercised by suppliers.</p>
		<p>While Article 23 permits a distributor to seek security for connection charges it does not cover the situation where security is insufficient to cover the full costs and de-energisation is required to ensure payment. Paragraph 2 should therefore also grant the right to a distributor to cut off supply for non payment of any charges required to be paid by the customer to the distributor in respect of the provision of any electric line or electric plant.</p>	<p>The Department considers Article 23 to be adequate in providing sufficient security for a distributor when required to make a connection. In particular, Article 23(2) deals with the situation where the security provided by the person requiring a connection is, or becomes, inadequate.</p>
		<p>It is unclear whether paragraph 3(1) is of general application or is intended to apply only in a SOLR scenario as is inferred by the other sub-paragraphs of paragraph 3.</p>	<p>The provisions are of general effect.</p>
		<p>Paragraph 3(6) requires that each electricity supplier shall make a scheme for determining the deemed scheme applicable under paragraph 3(1) and paragraph 3(2). Sub-paragraphs 7, 8 and 9 then set out a process for the creation of such a scheme, among other things requiring that the scheme be notified to the Authority. In practice, the transitional obligations anticipated by the Authority would require the scheme to be approved by the Authority under the licences. There may be a need to reflect that in the provisions here.</p>	<p>The Department and the Authority do not consider it necessary to make provision in the regulations for something already provided for in licence conditions.</p>
		<p>In paragraph 4, the electricity distributor is entitled to recover from a person who illegally takes electricity “the value of the electricity so taken”. The ‘value of the electricity so taken’ would be a difficult amount to determine, if determinable at all. The value of the electricity is relatively small compared to the overall tariffs charged to customers in any event and, furthermore, fluctuates considerably and can be different depending on how it is defined. There would need to be a process to ensure that the amount that can be recovered under these circumstances is easily and clearly determinable. At present the recovery is by reference to the Bulk Supply Tariff, which will no longer exist in the new arrangements. Accordingly, wording such as “as determined by the electricity distributor and approved by the Authority” may provide this certainty.</p>	<p>The term “value” is defined in paragraph (5), as being equal to the amount which could have been charged in respect of the amount of electricity if it had been offtaken under a deemed contract. The Department therefore does not consider the proposed amendment as necessary.</p>
		<p>In relation to paragraph 11 as a whole, NIE practice is to apply for a Warrant from a Resident Magistrate except in RPU cases. There is a need to consider whether this paragraph needs updating in order to reflect the introduction of the Human Rights Act.</p>	<p>The Department is currently considering this comment and will ensure that the regulations are compliant with Human Rights legislation.</p>
		<p>Paragraph [11] should be amended, as a measure expedient for the extension of this provision to other entities under FEMO, so that 11(1)(c)(ii) is deleted and a new 11(1)(d) is created reading "the premises are unoccupied".</p>	<p>The Department disagrees. It does not consider it to be necessary in all circumstances for the premises to be unoccupied for a warrant to be given.</p>

Regulation	Consultee	Abbreviated Consultee Comments	DETI Response
		As a general point, there are various general references in the Schedule to accuracy, approved pattern, construction etc. of meters. For example, paragraphs 5, 6 and 7 which deal with meter examiners, certification of meters, sealing and testing. There are specific regulations dealing with these matters, namely Statutory Instruments 443 and 444 i.e. The Meters (Approval of Pattern or Construction and Manner of Installation) Regulations (NI) 1998 and The Meters (Certification) Regulations (NI) 1998. DETI may wish to consider whether It would be helpful to specifically reference these regulations in the Schedule, for clarity.	The Department does not consider this necessary.
Sch 2	NIE	In Article 47(a) we note that this provision, which previously related to the relationship between public electricity suppliers and tariff customers, has now been extended to apply to all billing disputes between all electricity suppliers and all customers. Such a general application is not appropriate. For example, for all industrial and commercial customers there would be contractual arrangements that would govern the approach to be taken. To ensure that the Order does not inadvertently cut across those arrangements, Article 47(a) should be subject to any contractual arrangements in place between the customer and the supplier dealing with the same. The term “distribution” should be added to Article 50.	The Department disagrees. Article 47(a) only provides a power for the making of regulations. It is for the Authority to decide the circumstances in which it would hear such disputes.
RIA B6	NIE	Should acknowledge the costs of establishing the supporting systems which are estimated at around £24m (and in addition there will be additional ongoing costs (which have yet to be determined)).	The Department proposes to make provision in this regard. The Department acknowledges that there are wider costs involved in delivering full electricity market opening.
RIA B8	Airtricity	States that second tier suppliers who supply domestics when the market is fully opened may incur additional costs due to these Regulations. In a situation where PES costs will be covered by the PSO; this is uncompetitive. Customers of independents pay for the costs of the incumbent through their PSO contribution, while independents pass on their costs through customer tariffs. Allowing all suppliers to evenly compete is in the best interests of the consumer. Efficient operators would gain a cost advantage and consumers would benefit from lower tariffs. All suppliers should be compelled to pass through the costs of complying with these Regulations in their customer tariffs.	Implementation of the Regulations will cause NIE to incur costs which may be taken into account in the setting of the transmission and distribution price control and other costs (to the Supply Business) which may be taken into account in the setting of the supply price control. The Authority have confirmed it is not the intention that costs will be recoverable through the PSO Levy that would put Suppliers other than NIE at a competitive disadvantage.