

EXPLANATORY MEMORANDUM TO
THE FEED-IN TARIFFS AND CONTRACTS FOR DIFFERENCE (AMENDMENT)
(EU EXIT) REGULATIONS 2018

2018 No. 1092

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (“BEIS”) and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is made using powers in the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Feed-in Tariff (FIT) and Contracts for Difference (CFD) schemes support the deployment of low-carbon electricity generation in GB. Both schemes are funded through a compulsory levy on electricity suppliers in proportion to their share of the GB supply market.
- 2.3 The relevant legislation sets out certain criteria which electricity supplied in GB must satisfy in order to be excluded for the purposes of calculating an individual supplier’s liability in respect of the costs of the schemes (subject in each case to a cap on the total amount of electricity capable of being excluded for these purposes). In the case of both schemes one of those requirements is for the electricity to be generated in a member State of the European Union ‘other than the United Kingdom’.

Why is it being changed?

- 2.4 The UK ceasing to be a member State of the European Union will result in references to the UK as a ‘member State’ being out of date.

What will it now do?

- 2.5 This instrument amends the relevant legislation to remove what would otherwise be outdated references to the UK as a member State of the European Union. These Regulations do not alter the operation of the FIT or CFD schemes or the means by which they are funded and do not impose any new liabilities or obligations on any relevant persons. (See section 7 of the Explanatory Memorandum).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid in draft for sifting under the European Union (Withdrawal) Act 2018 on 23 July 2018. It was considered by the Secondary Legislation Scrutiny Committee on 4 September 2018, and no recommendation to upgrade to the affirmative procedure was made. It was considered by the European Statutory Instruments Committee on 5 September 2018, which recommended it for the negative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom, other than Regulation 2 which does not extend to Northern Ireland.
- 4.2 The territorial application of this instrument is Great Britain. The FIT and CFD schemes do not operate in Northern Ireland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 These Regulations amend two statutory instruments; one made under the Energy Act 2008 in respect of the FIT scheme, and the other made under the Energy Act 2013 in respect of the CFD scheme. The FIT and CFD schemes support the deployment of low-carbon electricity generation.
- 6.2 These Regulations amend The Feed-in Tariffs Order 2012 (as amended) (the “2012 Order”) by removing a reference to the United Kingdom as a member state of the European Union which would otherwise be out of date following the withdrawal of the United Kingdom from the European Union.
- 6.3 Similarly, these Regulations amend The Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015 (as amended) (the “2015 Regulations”) by removing a reference to the United Kingdom as a member state of the European Union which would otherwise be out of date following the withdrawal of the United Kingdom from the European Union.

7. Policy background

What is being done and why?

- 7.1 This is an EU Exit SI under section 8 of the European Union (Withdrawal) Act 2018. This instrument corrects drafting deficiencies arising as a result of the UK no longer being a member State of the European Union. It does not alter the operation of the FIT

or CFD schemes or the means by which they are funded and does not impose any new liabilities or obligations on any relevant persons.

FIT and CFD schemes

- 7.2 The Energy Act 2008 provides powers enabling the Secretary of State to establish a scheme of financial incentives to encourage small-scale low-carbon generation of electricity. The 2012 Order was made under section 41(4), 43(3)(a) and 104(2) of that Act and sets out the functions of the Gas and Electricity Markets Authority (“the Authority”) and the Secretary of State in connection with the administration of the FIT scheme including the procedure in which the Authority will accredit installations applying to the scheme.
- 7.3 The Energy Act 2013 provides powers enabling the Secretary of State to implement measures to reform the electricity market in order to encourage low carbon electricity generation and ensure security of supply. One such measure is the CFD scheme, a financial support mechanism for new renewable electricity projects in the UK made under Part 2 of that Act.
- 7.4 Both the FIT and CFD schemes are funded by a compulsory levy on electricity suppliers in proportion to their market share of the GB supply market.
- 7.5 The 2012 Order and 2015 Regulations set out certain criteria which electricity supplied in GB must satisfy in order to be excluded for the purposes of calculating an individual supplier’s in respect of the costs of FIT scheme and CFD scheme respectively.
- 7.6 In the case of both the 2012 Order and 2015 Regulations one of those requirements is for the electricity to be generated in a member State of the European Union ‘other than the United Kingdom’.

8. European Union (Withdrawal) Act

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 There was no consultation on addressing this minor drafting deficiency. The change is solely to enable the current legislative and policy framework for the exemptions to remain unchanged by the withdrawal of the United Kingdom from the European Union.

11. Guidance

- 11.1 The schemes’ administrators (the Gas and Electricity Markets Authority in respect of the FIT scheme and the Low Carbon Contracts Company in respect of the CFD

scheme) engage in regular communication with suppliers to inform them of their real and expected liabilities.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no significant impacts on business, charities or voluntary bodies or the public sector are foreseen as it maintains the current legislative and policy framework.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, but these activities will not be affected by the legislation. It does not impact on the substantive operation of either the FIT scheme or CFD scheme or the means by which either is funded.

14. Monitoring & review

- 14.1 This instrument makes minor, one-off amendments to the legislation to reflect the UK's exit from the EU. Accordingly, the amendments do not require monitoring.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Fiona Shand at the Department for Business, Energy and Industrial Strategy, Telephone: 0300 068 6108 or email: fiona.shand@beis.gov.uk can be contacted with any queries regarding the FIT section of this instrument.
- 15.2 Kieran Power at the Department for Business, Energy and Industrial Strategy, Telephone: 0300 068 6189 or email: kieran.power@beis.gov.uk, can be contacted with any queries regarding the CFD section of this instrument.
- 15.3 Vicky Dawe, Deputy Director for Renewable Electricity Support Schemes, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 The Minister of State for Energy and Clean Growth, Claire Perry, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

- 1.1 The Minister of State for Energy and Clean Growth, Claire Perry, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the Feed-in Tariffs and Contracts for Difference (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 1.3 This is the case because these Regulations do not fall into the category of regulations identified in schedule 7 Part 1 paragraph 1(2) as requiring approval in draft by resolution of both Houses of Parliament. These Regulations correct what would otherwise have been an outdated reference to the UK as a member State in legislation relating to the funding of the Feed-in Tariff (FIT) and Contracts for Difference (CFD) schemes only. We do not consider that there is any reason why they should not be subject to negative procedure.

2. Appropriateness statement

- 2.1 The Minister of State for Energy and Clean Growth, Claire Perry, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view the Feed-in Tariffs and Contracts for Difference (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.
- 2.3 This is the case because these Regulations correct drafting deficiencies arising as a result of the UK no longer being a member State of the European Union in legislation relating to the funding of the FIT and CFD schemes only. This instrument does not alter the operation of the FIT or CFD schemes or the means by which they are funded and does not impose any new liabilities or obligations on any relevant persons.

3. Good reasons

- 3.1 The Minister of State for Energy and Clean Growth, Claire Perry, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.3 These are that these Regulations correct what would otherwise have been outdated references to the UK being a member State of the European Union in legislation relating to the funding FIT and CFD schemes only. These Regulations do not alter the operation of the FIT or CFD schemes or the means by which they are funded and do not impose any new liabilities or obligations on any relevant persons.”

4. Equalities

- 4.1 The Minister of State for Energy and Clean Growth, Claire Perry, has made the following statement: “The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”
- 4.2 The Minister of State for Energy and Clean Growth, Claire Perry, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 4.3 “In relation to the draft instrument, I, Claire Perry have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”
- 4.4 The amendments made by these regulations do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because they are minor and technical and do not alter the operation of the underlying schemes or impose any new liabilities or obligations on any relevant persons.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.