

EXPLANATORY MEMORANDUM TO

THE ELECTRICITY AND GAS (INTERNAL MARKETS) REGULATIONS 2020

2020 No. 96

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to electricity and gas legislation and licences in order to address matters arising out of, or related to Regulation (EU) 2019/942 establishing a European Union Agency for the Cooperation of Energy Regulators (recast) (“the Agency Regulation”) and Regulation (EU) 2019/943 on the internal market for electricity (recast) (“the Electricity Regulation”). These instruments are part of the European Union Clean Energy Package and revoke Regulation (EC) No 713/2009 and Regulation (EC) No 714/2009.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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.
- 4.2 The territorial application of this instrument varies according to the instruments it amends. The amendments made by Part 1 apply to the United Kingdom. The amendments made by Parts 2, 3 and 5 apply to Great Britain only. The amendments made by Part 4 apply to Northern Ireland only.

5. European Convention on Human Rights

- 5.1 Minister Kwasi Kwarteng has made the following statement regarding Human Rights: “In my view the provisions of the Electricity and Gas (Internal Markets) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Regulations are made under Section 2(2) of the European Communities Act 1972 to implement EU law on common rules for the internal market in gas and electricity and to address matters arising out of or relating to those rules. The European

Communities Act 1972 is repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1).

- 6.2 They make amendments to the electricity and gas regulatory regimes in the United Kingdom in order to implement, and address matters arising out of or related to, the coming into force of the Agency Regulation and the Electricity Regulation, respectively.
- 6.3 The Clean Energy Package comprises the Agency Regulation the Electricity Regulation ; Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) and five other dossiers: Directive (EU) 2018/844 (energy performance in buildings); Directive (EU) 2018/2001 (renewable energy); Directive (EU) 2018/2002 (energy efficiency); Regulation (EU) 2018/1999 (governance of energy union); and Regulation (EU) 2019/941 (on risk preparedness).
- 6.4 Regulation (EC) 713/2009 has been repealed and recast in the Agency Regulation with a correlation table identifying the recast provisions in Annex II of the Regulation; and Regulation (EC) 714/2009 has been repealed and recast in the Electricity Regulation with a correlation table identifying the recast provisions in Annex III of that regulation.
- 6.5 Regulation (EC) 713/2009 and Regulation (EC) 714/2009 formed part of the Third Energy Package and were implemented through the Electricity and Gas (Internal Markets) Regulations 2011.
- 6.6 Part 1 of the Regulations covers the citation and commencement of the Regulations. The amendments made have the same extent and application as the provisions being amended.
- 6.7 Part 2 relates to amendments made to primary legislation, namely the Gas Act 1986, Electricity Act 1989 and Utilities Act 2000, which currently makes references to Regulation (EC) 713/2009 and Regulation (EC) 714/2009, so as to replace those references with the applicable provisions in the Electricity Regulation and Agency Regulation.
- 6.8 Part 3 relates to amendments made to subordinate legislation in Great Britain, namely the Electricity and Gas (Internal Markets) Regulations 2011 which currently makes references to Regulation (EC) 713/2009 and Regulation (EC) 714/2009, so as to replace those references with the applicable provisions in the Electricity Regulation and the Agency Regulation.
- 6.9 Part 4 relates to the amendments of Northern Ireland electricity and gas legislation. The Regulations amend the Electricity (Northern Ireland) Order 1992 and the Energy (Northern Ireland) Order 2003. The amendments replace the references to Regulation (EC) 713/2009 and Regulation (EC) 714/2009, with the corresponding applicable provisions in the Electricity Regulation and Agency Regulation. In addition, regulation 7(6) inserts a new Article 12A into the Energy (Northern Ireland) Order 2003 which provides the Authority with the function of determining an estimate of the value of lost load for Northern Ireland, in accordance with Article 11 of the Electricity Regulation, in connection with setting a reliability standard in accordance with Article 25 of the Electricity Regulation.

- 6.10 Part 5 makes provisions regarding the modification of standard conditions of supply, transmission, distribution and interconnector licences to update references to the Electricity Regulation and the Agency Regulation. The modification to the licence conditions is specified in the Schedule (modifications of standard conditions of licences granted under the Gas Act 1986 and standard conditions of licences granted under the Electricity Act 1989) of the Regulations. The power to amend the relevant licence conditions through section 2(2) of the European Communities Act 1972 are contained in the Energy Act 2004, sections 137(3), 146(5) and 150(5); and the Utilities Act 2000, section 33(1).

7. Policy background

What is being done and why?

- 7.1 The instrument aims to amend UK legislation for consistency with the Electricity Regulation and Agency Regulation that were adopted in June 2019 as part of the EU's Clean Energy package of legislative measures. The Clean Energy Package is a comprehensive update of the EU energy policy framework to facilitate the transition from fossil fuels towards sustainable energy and to help meet the EU's Paris Agreement commitments for reducing greenhouse gas emissions.
- 7.2 The Electricity Regulation, which applies in full from 1 January 2020, establishes rules to ensure the functioning of the internal market for electricity and includes requirements related to the development of renewable forms of energy. In particular, it specifies rules for electricity trading, balance responsibility and dispatch and redispatching of electricity.
- 7.3 The Agency Regulation, which applies from 4 July 2019, expands ACER's role for coordinating the action of national energy regulators, by giving it greater cross-border oversight. This is in response to the growth in cross-border trade in electricity between EU Member States.
- 7.4 GB's energy legislation contains references to EU Regulations that have been repealed by the Electricity Regulation and the Agency Regulation. This instrument aims to remove these obsolete references so that GB legislation is brought up to date and will help ensure compliance with the new EU regulations. For example, section 3F of the Electricity Act 1989 contains definitions of "network code" and "region"; those definitions refer to articles in the 2009 Electricity Regulation that need to be replaced with references to the relevant articles in the 2019 Electricity Regulation. This instrument will also update the references in those licence conditions, which contain references to the 2009 Electricity Regulation and 2009 Agency Regulation. Other modifications arising out of the implementation of the Electricity Regulation will be carried out administratively and will be separate to this instrument.
- 7.5 This instrument applies to energy, which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. Due to the Executive and sitting Assembly only very recently being restored, the UK Government is, at the request of the Northern Ireland Minister, including Northern Ireland in this SI on an exceptional basis in order to provide Northern Ireland with the necessary domestic legal framework in a timely manner that will allow alignment with the Electricity Regulation and the Agency Regulation and support the continued functioning of the Single Electricity Market, the wholesale electricity market shared between Northern Ireland and Ireland.

7.6 As with GB, updating the references in Northern Ireland legislation to the EU legislation that has been repealed is necessary. In addition, for Northern Ireland, the instrument places a duty on the regulator to calculate the Value of Lost Load (VoLL). However, this is a task that UR already undertakes. VoLL is an administratively set value, determined by the regulator, which represents an estimation of the maximum electricity price at which consumers are willing to pay in order to avoid an outage. This estimation is required for the purposes of setting a “reliability standard” which will indicate the necessary level of security of supply in a transparent manner in Northern Ireland.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Not relevant.

10. Consultation outcome

10.1 A formal consultation exercise has not been undertaken for this instrument as its scope is limited to making consequential changes to gas and electricity legislation in GB and Northern Ireland, and to licence conditions in GB, as a result of the Electricity Regulation and Agency Regulation. Alternative approaches for implementation have not been identified and significant impacts are not expected that would justify formal consultation. Technical and factual input relevant to this instrument has been provided by the Office of Gas and Electricity Markets and the Northern Ireland Authority for Utility Regulation. The Department for the Economy has been informed throughout the development of the NI content.

11. Guidance

11.1 Guidance has not been produced for this instrument.

12. Impact

12.1 There is no significant, impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 While costs and benefits have been assessed, a full Impact Assessment has not been prepared for this instrument because the impacts are below the threshold required to carry out a full impact assessment. Key stakeholders including Ofgem and National Grid have provided input. Information has been shared with the Utility Regulator and the Northern Ireland Department for the Economy. We have concluded that any direct impacts on business or public bodies that have been identified will be negligible, and will not exceed the £5m impact threshold required for a full impact assessment.

13. Regulating small business

13.1 There is no significant impact on activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 This instrument has been included in the review provision in regulation 51 of the Electricity and Gas (Internal Markets) Regulations 2011 as part of the review of the Internal Market Regulations. In relation to Part 4 (the amendments to the Northern Ireland legislation), the requirement does not apply.

15. Contact

- 15.1 Sue Harrison at the Department for Business, Energy and Industrial Strategy Telephone: 300 068 5366 or email: sue.harrison@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Mark Copley, Deputy Director for EU Exit Energy and Climate Change Directorate, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Kwasi Kwarteng at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.