
DRAFT STATUTORY INSTRUMENTS

2018 No.

The Electricity and Gas (Powers to Make Subordinate
Legislation) (Amendment) (EU Exit) Regulations 2018

PART 2

Amendments to retained direct EU legislation

CHAPTER 1

Amendment of the Electricity Regulation

Amendment of the Electricity Regulation

3. The Electricity Regulation is amended as follows.

Amendment of Article 6

4. For Article 6 (establishment of network codes) substitute—

“Article 6

Establishment of provision corresponding to network codes or guidelines

1. In this Article—

- (a) “the Withdrawal Act” means the European Union (Withdrawal) Act 2018;
- (b) “corresponding provision”, in relation to a relevant provision, has the meaning given by paragraphs 2 and 3;
- (c) “deficiency” is to be interpreted in accordance with subsections (2) to (4) and subsection (9) of section 8 of the Withdrawal Act (with references in those subsections to retained EU law being read as if they included references to relevant provisions);
- (d) an “electricity network code or guideline” means—
 - (i) a network code adopted by the Commission before exit day, under this Article as it has effect in EU law; or
 - (ii) guidelines adopted by the Commission before exit day, under Article 18 as it has effect in EU law;
- (e) “national authority” means—
 - (i) the Secretary of State, in relation to Great Britain;
 - (ii) the Secretary of State or the Northern Ireland department, in relation to Northern Ireland;
- (f) “the Northern Ireland department” means the Department for the Economy;

- (g) “permitted amendment”, in relation to a relevant provision, means an amendment to that provision which would not prevent it from having effect as a corresponding provision; and
 - (h) a “relevant provision” means a provision of an electricity network code or guideline which—
 - (i) although in force immediately before exit day, is stated to apply from a time after exit day (a “relevant non-operative provision”); or
 - (ii) was in force and applied before exit day, but is revoked or amended by regulations under section 8(1) of the Withdrawal Act in consequence of another provision being a relevant non-operative provision.
2. A national authority may, by regulations, make provision which corresponds to a relevant provision of an electricity network code or guideline (a “corresponding provision”).
3. For this purpose, a provision corresponds to a relevant provision if—
- (a) the national authority considers that it has the same or substantially the same effect as the relevant provision; or
 - (b) it is different from the relevant provision, other than in respects that fall within subparagraph (a), only to such extent as the national authority considers appropriate for the purpose in paragraph 4.
4. That purpose is to prevent, remedy or mitigate—
- (a) any failure of a provision to operate effectively; or
 - (b) any other deficiency in a provision,
- arising from the withdrawal of the United Kingdom from the EU.
5. Regulations under paragraph 2 may, in particular—
- (a) amend the electricity network code or guideline so that it contains the corresponding provision; or
 - (b) if all the provisions of the electricity network code or guideline are relevant provisions, provide that the electricity network code or guideline has effect in domestic law, with such permitted amendments (if any) as are specified in the regulations.
6. Regulations under paragraph 2—
- (a) may include provision of a kind which may be made in regulations under section 8(1) of the Withdrawal Act by virtue of subsection (5) or (6) of that section;
 - (b) may not include provision of a kind specified in subsection (7) of that section.
7. The following provisions in Part 3 of Schedule 7 to the Withdrawal Act (general provision about powers under Act) apply to regulations made under paragraph 2 as they do to regulations under section 8(1) of the Withdrawal Act—
- (a) paragraph 21 (power to make supplementary provision, etc.);
 - (b) paragraph 27 (disapplication of certain review provisions);
 - (c) paragraph 36 (hybrid instruments).
8. An electricity network code or guideline which has effect in domestic law by virtue of provision made under paragraph 5(b) (as modified under this Regulation or by other domestic law from time to time) is to be treated as—
- (a) retained EU law, for the purposes of—

- (i) section 6 of the Withdrawal Act (interpretation of retained EU law); and
 - (ii) section 15(2) of, and Part 2 of Schedule 5 to, the Withdrawal Act (rules of evidence);
- (b) retained direct minor EU legislation, for the purposes of—
- (i) section 7(3) of the Withdrawal Act (status of retained EU law);
 - (ii) paragraph 30 of Schedule 8 to the Withdrawal Act (Human Rights Act 1998).
9. No regulations may be made under this Article after the end of the period of two years beginning with exit day.”.

Amendment of Article 7

5. For Article 7 (amendments of network codes) substitute—

“Article 7

Amendments of network codes or guidelines

1. A national authority may, by regulations, amend an electricity network code or guideline.
2. The power in paragraph 1 includes power to—
 - (a) insert into the electricity network code or guideline new provision about the same subject-matter as, or related subject-matter to, an existing provision of the electricity network code or guideline; or
 - (b) revoke the electricity network code or guideline or any provision of it, either with or without making replacement provision.
3. Regulations under this Article must be consistent with the objectives of contributing to non-discrimination, effective competition and the efficient functioning of the market.
4. Regulations under this Article may—
 - (a) include supplementary, incidental, consequential, transitional, transitory or saving provision; and
 - (b) make different provision for different cases.
5. In this Article, “electricity network code or guideline” and “national authority” have the same meanings as in Article 6.”.

Amendment of Article 18

6. For Article 18 (guidelines) substitute—

“Article 18

Amendment of Annex I

1. A national authority may, by regulations, amend Annex I to this Regulation.
2. Regulations under paragraph 1 must be in accordance with the principles in Articles 15 and 16.
3. In this Article, “national authority” has the same meaning as in Article 6.”.

Omission of Article 23

7. Omit Article 23 (committee procedure).

Insertion of new Articles 23A and 23B: regulations: consultation and procedure

8. After Article 23 insert—

“Article 23A

Regulations made by the Secretary of State: consultation and procedure

1. Any power to make regulations conferred on the Secretary of State by this Regulation is exercisable by statutory instrument.
2. Before the Secretary of State makes regulations under Article 6 which apply to Northern Ireland, the Secretary of State must consult the Northern Ireland department.
3. Before the Secretary of State makes regulations under Article 7 or Article 18 which apply to Great Britain, the Secretary of State must consult—
 - (a) the Gas and Electricity Markets Authority;
 - (b) persons who are certified, within the meaning given in section 100 of the Electricity Act 1989⁽¹⁾; and
 - (c) such other persons as the Secretary of State considers appropriate.
4. Before the Secretary of State makes regulations under Article 7 or Article 18 which apply to Northern Ireland, the Secretary of State must consult—
 - (a) the Northern Ireland department;
 - (b) the Northern Ireland Authority for Utility Regulation;
 - (c) persons who are certified, within the meaning given in Article 10L of the Electricity (Northern Ireland) Order 1992⁽²⁾; and
 - (d) such other persons as the Secretary of State considers appropriate.
5. A statutory instrument containing regulations by the Secretary of State may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
6. In this Article, “the Northern Ireland department” has the same meaning as in Article 6.

Article 23B

Regulations made by the Northern Ireland department: consultation and procedure

1. Any power to make regulations conferred on the Northern Ireland department by this Regulation is exercisable by statutory rule for the purpose of the Statutory Rules (Northern Ireland) Order 1979⁽³⁾.
2. Before the Northern Ireland department makes regulations under Article 7 or Article 18, it must consult—
 - (a) the Northern Ireland Authority for Utility Regulation;

(1) 1989 c. 29. Section 100 was inserted by S.I. 2011/2704.

(2) S.I. 1992/231 (N.I. 1). Article 10L was inserted by S.R. 2011 No. 155.

(3) S.I. 1979/1573 (N.I. 12).

- (b) persons who are certified, within the meaning given in Article 10L of the Electricity (Northern Ireland) Order 1992; and
 - (c) such other persons as it considers appropriate.
3. Regulations may not be made by the Northern Ireland department under this Regulation unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
4. In this Article, “the Northern Ireland department” has the same meaning as in Article 6.”.