
DRAFT STATUTORY INSTRUMENTS

2019 No.

**The Electricity and Gas etc. (Amendment
etc.) (EU Exit) Regulations 2019**

PART 2

Amendment of primary legislation

Energy Act 1976

2. The Energy Act 1976⁽¹⁾ is amended as follows.
3. In section 3 (implementation of reserve powers), in subsection (1)(a), omit “the European Union or”.
4. In section 18 (administration, enforcement and offences), in subsection (2)—
 - (a) omit paragraph (c) and the “or” following it;
 - (b) omit paragraph (d)(i) and the “or” following it.
- 5.—(1) Schedule 2 (administration and other matters) is amended as follows.
 - (2) In paragraph 1 (power to obtain information), in sub-paragraph (2), omit “the European Union or”.
 - (3) In paragraph 7 (non-disclosure of information), in paragraph (c), omit “to any institution of the European Union, or”.
6. Omit Schedule 3 (EU obligations of which breach is punishable under this Act).

Gas Act 1986

7. The Gas Act 1986⁽²⁾ is amended as follows.
- 8.—(1) Section 4AA (the principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority) is amended as follows.
 - (2) In subsection (1A)(c)—
 - (a) for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;
 - (b) for the words from “objectives” to “Directive” substitute “designated regulatory objectives”.
 - (3) In subsection (5B), at the appropriate place insert—

⁽¹⁾ 1976 c. 76. Relevant amendments were made by [S.I. 2011/1043](#).

⁽²⁾ 1986 c. 44. Relevant amendments were made by the Utilities Act 2000 (c. 27) sections 9 and 12, the Energy Act 2010 (c. 27) section 16, and by [S.I. 2000/1937](#), [2009/1349](#), [2011/1043](#), [2011/2704](#) and [2014/3333](#).

““the designated regulatory objectives” means the objectives set out in Article 40(c) to (h) of the Gas Directive but read with the following modifications—

- (a) in Article 40(c), for the words from “between” to the end substitute “, including enabling the development of appropriate cross-border transmission capacities to meet demand;”,
- (b) in Article 40(d), omit “, in line with general energy policy objectives;”,
- (c) in Article 40(f), omit “and foster market integration”, and
- (d) in Article 40(g), for “their national market” substitute “the energy market in Great Britain”;”.

9. In section 4B (exceptions from sections 4AA to 4A), in subsection (4), after “any”, in the second place it occurs, insert “retained”.

10.—(1) Section 4C (duty of the Gas and Electricity Markets Authority as regards binding decisions of the Agency or European Commission) is amended as follows.

(2) Renumber the existing section as subsection (1).

(3) After subsection (1) insert—

“(2) For the purposes of subsection (1), a binding decision does not include a decision that is not, or so much of a decision as is not, retained EU law.”.

11.—(1) Section 4D (Gas and Electricity Markets Authority to consult and cooperate with other authorities) is amended as follows.

(2) In subsection (1)—

- (a) for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;
- (b) in paragraph (a), for the words from “Agency” to “States” substitute “Northern Ireland Authority”;
- (c) in paragraph (b)—
 - (i) for the words from “Agency and” to “States” substitute “Northern Ireland Authority”;
 - (ii) for “they” substitute “it”;
 - (iii) for the words from “their” to “to gas” substitute “its designated regulatory functions”.

(3) In subsection (2)—

- (a) for the words from “designated” to “Britain” substitute “Northern Ireland Authority”;
- (b) omit “, within that region;”;
- (c) omit paragraph (a);
- (d) in paragraph (d)—
 - (i) for “cross-border trade in gas” substitute “trade in gas between Great Britain and Northern Ireland”;
 - (ii) for “cross-border capacity” substitute “capacity between Great Britain and Northern Ireland”;
- (e) omit paragraph (f) (but not the “and” following it).

(4) In subsection (3)—

- (a) omit the definition of “network code”;
- (b) omit the definition of “region” and the “and” following it.

12. In section 8D (application for certification), in subsection (3)—

- (a) omit “on or after 3 March 2013”;
- (b) for “third country”, in both places, substitute “country outside the United Kingdom”;
- (c) in paragraph (a), omit “and the European Commission”;
- (d) in paragraph (b)—
 - (i) omit “to the Secretary of State”;
 - (ii) omit “or any other EEA state”.

13.—(1) Section 8E (report where applicant connected with a country outside the European Economic Area) is amended as follows.

- (2) In the heading, for “European Economic Area” substitute “United Kingdom”.
- (3) In subsection (1), for “third country”, in both places, substitute “country outside the United Kingdom”.
- (4) In subsection (2), omit “or any other EEA state”.
- (5) In subsection (5)(b), omit “third”.

14. Notwithstanding the amendments of sections 8D and 8E of the Gas Act 1986 made by regulations 12 and 13, if an application under section 8D is made before exit day and the applicant is a person from an EEA state or a person controlled by a person from an EEA state—

- (a) the Gas and Electricity Markets Authority is not required to notify the Secretary of State of the application under section 8D(3), and
- (b) the Secretary of State is not required to prepare a report under section 8E in relation to the application.

15.—(1) Section 8F (certification) is amended as set out in paragraphs (2) to (5).

- (2) In subsection (1)—
 - (a) omit “preliminary”;
 - (b) for “it should” substitute “to”.
- (3) In subsection (4)—
 - (a) omit “preliminary”;
 - (b) after paragraph (a) insert “and”;
 - (c) omit paragraph (c) and the “and” before it.
- (4) Omit subsections (5) to (8).
- (5) After subsection (8) insert—

“(9) The Authority must publish its decision to certify or to refuse to certify the applicant, together with the reasons for it, in such manner as it considers appropriate.”.

(6) Where, immediately before exit day, the Gas and Electricity Markets Authority has made a preliminary decision under section 8F of the Gas Act 1986 on an application for certification, but not a final decision under Article 3 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(7) If a preliminary decision of the Gas and Electricity Markets Authority is treated as a final decision to certify, or to refuse to certify, an applicant because of paragraph (6), the Authority must

publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

16.—(1) Section 8G (grounds for certification) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a)—

(i) omit “preliminary”;

(ii) for “an applicant should be certified” substitute “to certify an applicant”;

(b) omit paragraph (b).

(3) In subsection (2)—

(a) omit “decide that the applicant should be certified, or”;

(b) omit “six”.

(4) Omit subsection (6).

(5) In subsection (7)(b), for the words from “requirement” to the end substitute—

“requirement—

(i) in accordance with Article 36 of the Gas Directive (new infrastructure) before exit day and remains entitled to the benefit of it, or

(ii) on the basis set out in Article 36(1) to (3) and (6) of the Gas Directive and remains entitled to the benefit of it.”.

(6) In subsection (9)—

(a) omit paragraph (a);

(b) in paragraph (b)—

(i) omit “must not decide that the applicant should be certified, and”;

(ii) omit “or any other EEA state”;

(c) omit paragraph (c).

(7) After subsection (9) insert—

“(10) For the purposes of subsection (4), Article 9(9) of the Gas Directive is to be treated as if the comparison with the provisions of Chapter 4 of the Gas Directive were a comparison with the provisions of Chapter 4 as they applied in relation to a member State immediately before exit day.

(11) The references in subsection (5) to Article 14(1) and (2) of the Gas Directive are to be treated as references to those provisions with the following modifications—

(a) Article 14(1) is to be read as if “Such designation shall be subject to approval by the Commission” were omitted;

(b) Article 14(2)(b) is to be read as if after “Article 13” there were inserted—

“as implemented in relation to Great Britain immediately before exit day, disregarding for this purpose—

(i) paragraph 2,

(ii) paragraph 3 so far as relating to Article 41(6)(c), and

(iii) paragraph 4 except as it relates to such minimum standards, if any, as apply in Great Britain”;

(c) Article 14(2)(e) is to be read as if—

(i) for “Regulation (EC) No 715/2009” there were substituted “the Gas Regulation”, and

(ii) the words from “including” to the end were omitted.”.

17.—(1) Section 8J (designation for the purposes of EU gas legislation) is amended as set out in paragraphs (2) to (5).

(2) In the heading, for “EU gas legislation” substitute “the Gas Regulation”.

(3) In subsection (2)—

(a) omit “fourth,”;

(b) for the words from “Article” to “operators)” substitute “the Gas Regulation”.

(4) In subsection (3), for “that Article” substitute “the Gas Regulation”.

(5) In subsection (4)—

(a) after paragraph (a) insert “and”;

(b) omit paragraph (c) and the “and” preceding it.

(6) A person who is designated as a gas transmission system operator under section 8J of the Gas Act 1986 for the purposes of Article 10(2) of the Gas Directive immediately before exit day is to be treated, on and after exit day, as a person who is designated as a gas transmission system operator under section 8J for the purposes of the Gas Regulation, if and for so long as the person designated or (as the case may be) the person who nominated the person designated continues on and after exit day to hold a licence under section 7 or 7A of the Gas Act 1986 and to be certified under section 8F of that Act.

(7) In paragraph (6)—

“the Gas Directive” means Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC(3);

“the Gas Regulation” means Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.

18.—(1) Section 8K (monitoring and review of certification) is amended as follows.

(2) In subsection (2)—

(a) omit “on or after 3 March 2013,”;

(b) for “third country” substitute “country outside the United Kingdom”;

(c) in paragraph (a), omit “and the European Commission”;

(d) in paragraph (b), omit “or any other EEA state”.

(3) Omit subsections (3) and (4).

(4) In subsection (5), omit “also”.

(5) In subsection (10), omit “(4),”.

19.—(1) Section 8M (report as to any connection of certified person with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “outside the European Economic Area” substitute “outside the United Kingdom”.

(3) O.J. L 211, 14.8.2009, p. 94.

(3) In subsection (2), omit “or any other EEA state”.

(4) In subsection (5)(b), omit “third”.

20.—(1) Notwithstanding the amendments of sections 8K and 8M of the Gas Act 1986 made by regulations 18 and 19, if and for so long as the condition in paragraph (2) is satisfied in relation to the person—

- (a) the Gas and Electricity Markets Authority is not required to notify the Secretary of State under section 8K(2) about a person from a country outside the United Kingdom who has taken control of a certified person before exit day, and
- (b) the Secretary of State is not required to prepare a report under section 8M in relation to the certified person.

(2) The condition is that the person was a person from an EEA state at the time of taking control and has continued to be such a person.

21.—(1) Section 8N (continuation or withdrawal of certification) is amended as set out in paragraphs (2) to (9).

(2) In subsection (1)—

- (a) for “8K(3) or (5)” substitute “8K(5)”;
- (b) for “8K(4) or (6)” substitute “8K(6)”;
- (c) in paragraph (a)—
 - (i) omit “preliminary”;
 - (ii) for “that the certification should be continued” substitute “to continue the certification”;
- (d) in paragraph (b)—
 - (i) omit “preliminary”;
 - (ii) for “that the certification should be withdrawn” substitute “to withdraw the certification”.

(3) In subsection (2)—

- (a) omit “preliminary”;
- (b) for “that the certification should be continued” substitute “to continue the certification”.

(4) In subsection (3)—

- (a) in paragraph (a)—
 - (i) omit “preliminary”;
 - (ii) for “that the certification should be continued” substitute “to continue the certification”;
- (b) in paragraph (b)—
 - (i) omit “preliminary”;
 - (ii) for “that the certification should be withdrawn” substitute “to withdraw the certification”.

(5) In subsection (4)—

- (a) omit “preliminary”;
- (b) for “that the certification should be continued” substitute “to continue the certification”.

(6) In subsection (5)—

- (a) omit “preliminary”;
- (b) omit paragraph (b) and the “and” before it.
- (7) Omit subsections (6) to (9).
- (8) After subsection (9) insert—
 - “(9A) The Authority must publish its decision to continue a certification, or to withdraw a certification, together with the reasons for it, in such manner as it considers appropriate.”.
- (9) In subsection (10)—
 - (a) in the words before paragraph (a), for “8G(9)(a) and (b)” substitute “8G(9)(b)”;
 - (b) in paragraph (a), for “8G(9)(a) and (b)” substitute “8G(9)(b)”.
- (10) Where, immediately before exit day, the Gas and Electricity Markets Authority has made a preliminary decision under section 8N of the Gas Act 1986 on a review under section 8K(5) or (8), but not a final decision under Article 3 of Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.
- (11) If a preliminary decision of the Gas and Electricity Markets Authority is treated as a final decision to continue a certification, or to withdraw a certification, because of paragraph (10), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

- 22.** In section 8Q (interpretation of sections 8C to 8Q), in subsection (1)—
- (a) in the definition of “certified”, for the words from “taken” to “certified) by” substitute “certified by”;
 - (b) in the definition of “person from a third country”, for “third country”, in both places, substitute “country outside the United Kingdom”;
 - (c) omit the definition of “third country”.

- 23.—**(1) Section 8R (independence of storage facilities) is amended as follows.
- (2) In subsection (2), for “an EEA state” substitute “the United Kingdom”.
 - (3) In subsection (3), for “an EEA state” substitute “the United Kingdom”.
 - (4) In subsection (4), for “an EEA state” substitute “the United Kingdom”.

- 24.** In section 19A (application of section 19B to storage facilities), omit subsection (2C).

25.—(1) Section 19AA (review and revocation of exemptions under section 19A) is amended as follows.

- (2) In the heading, omit “Review and”.
- (3) Omit subsection (1).
- (4) Omit subsection (2).
- (5) In subsection (4)—
 - (a) in paragraph (a)—
 - (i) after “if” insert “before exit day”;
 - (ii) after “(1)” insert “(as it then had effect)”;
 - (b) in paragraph (b), after “if,” insert “before exit day and”;
 - (c) for paragraph (c) substitute—

“(c) if—

- (i) before exit day the Authority sent the European Commission a copy of the exemption and terms under subsection (1) (as it then had effect), and
- (ii) the European Commission does not act as described in paragraph (a) or (b) before exit day,

the date 4 months after the Authority sent the European Commission a copy of the exemption and terms under subsection (1) or exit day, whichever is the sooner;”;

(d) after paragraph (c) insert—

“(d) if the decision to give the exemption was published under section 19A(11) on or after exit day, the date on which the decision was published under section 19A(11).”.

26. In section 19C (application of section 19D to LNG facilities), omit subsection (2C).

27.—(1) Section 19CA (review and revocation of exemptions under section 19C) is amended as follows.

(2) In the heading, omit “Review and”.

(3) Omit subsection (1).

(4) Omit subsection (2).

(5) In subsection (4)—

(a) in paragraph (a) —

(i) after “if” insert “before exit day”;

(ii) after “(1)” insert “(as it then had effect)”;

(b) in paragraph (b), after “if,” insert “before exit day and”;

(c) for paragraph (c) substitute—

“(c) if—

- (i) before exit day the Authority sent the European Commission a copy of the exemption and terms under subsection (1) (as it then had effect), and
- (ii) the European Commission does not act as described in paragraph (a) or (b) before exit day,

the date 4 months after the Authority sent the European Commission a copy of the exemption and terms under subsection (1) or exit day, whichever is the sooner;”;

(d) after paragraph (c) insert—

“(d) if the decision to give the exemption was published under section 19C(10) on or after exit day, the date on which the decision was published under section 19C(10).”.

28.—(1) Section 19D (acquisition of rights to use LNG facilities) is amended as follows.

(2) In subsection (11B), for the words from “, within” to “that paragraph,” substitute “which applies to the owner;”.

(3) After subsection (12) insert—

“(13) An obligation is a public service obligation for the purposes of this section if—

- (a) it is imposed by or under a provision of an Act, and
- (b) the provision is identified in a notice issued by the Secretary of State as a provision imposing, or enabling the imposition of, a public service obligation within the

meaning of Article 3(2) of the Gas Directive (as it had effect immediately before exit day).

(14) For the purposes of subsection (13), the reference to Article 3(2) is to be read as if the reference in that provision to natural gas undertakings of the Community were a reference to natural gas undertakings of the United Kingdom.”.

29.—(1) Section 19DZA (duty to allow others to use LNG import or export facilities: exemptions in relation to take-or-pay commitments) is amended as follows.

(2) In subsection (5)(b)(ii), for the words from “, within” to “that paragraph,” substitute “which applies to the owner;”.

(3) After subsection (5) insert—

“(5A) In subsection (5)(b)(ii) “public service obligation” has the same meaning as in section 19D.”.

(4) Omit subsection (7).

(5) Omit subsection (9).

30. In the italic heading preceding section 27B, for “Article 41 Disputes” substitute “Section 27B disputes”.

31.—(1) Section 27B (meaning of “Article 41 dispute”) is amended as follows.

(2) In the title, for ““Article 41”” substitute ““section 27B””.

(3) In subsection (1)—

(a) for “an “Article 41 dispute”” substitute “a “section 27B dispute””;

(b) in paragraph (b), for the words from “under” to “Directive” substitute “which falls within subsection (2A)”.

(4) After subsection (2) insert—

“(2A) An obligation of the person complained against falls within this subsection if it is—

(a) an obligation under a relevant condition or relevant requirement in relation to that person imposed before exit day for the purpose of implementing the Gas Directive, including such an obligation as modified on or after exit day, or

(b) an obligation under a relevant condition or relevant requirement in relation to that person imposed on or after exit day which, if it had been imposed immediately before exit day, would have been an obligation imposed for the purpose of implementing the Gas Directive.”.

32.—(1) Section 27C (determination of disputes) is amended as follows.

(2) In subsection (1), for “An Article 41” substitute “A section 27B”.

(3) In subsection (2), for “An Article 41” substitute “A section 27B”.

(4) In subsection (3), for “an Article 41” substitute “a section 27B”.

33.—(1) Section 27D (time limit for determinations) is amended as follows.

(2) In subsection (1), for “an Article 41” substitute “a section 27B”.

(3) In subsection (4)(a), for “an Article 41” substitute “a section 27B”.

34.—(1) Section 34 (general functions of the Gas and Electricity Markets Authority) is amended as follows.

(2) In subsection (2A)—

- (a) in paragraph (b), for “and (r) to” substitute “, (r) and”;
- (b) omit paragraph (d) (but not the “and” following it).

(3) After subsection (2A) insert—

“(2B) For the purposes of subsection (2A)(c), the reference to Article 41(3)(a) is to be read as if the reference in that provision to Article 41 were a reference to Article 41 as implemented in Great Britain immediately before exit day.”.

35.—(1) In section 48 (interpretation of Part 1 and savings), subsection (1) is amended as follows.

- (2) Omit the definition of “designated regulatory authority”.
- (3) Omit the definition of “designated regulatory authority for Great Britain”.
- (4) At the appropriate place insert—

““designated regulatory function” means a function of the Authority or the Northern Ireland Authority conferred by—

- (a) a provision of retained EU law, as amended from time to time on or after exit day, or
- (b) a condition in a licence under section 7, 7ZA or 7A or Article 8 of the Gas (Northern Ireland) Order 1996 ([S.I. 1996/275 \(N.I. 2\)](#)), as that condition is modified from time to time on or after exit day,

where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 39 of the Gas Directive;”.

(5) At the appropriate place insert—

““Northern Ireland Authority” means the Northern Ireland Authority for Utility Regulation;”.

36. In Schedule 2AB (duties of supply exemption holders), in paragraph 7 (determination of disputes), for “an Article 41” substitute “a section 27B”.

37.—(1) Schedule 4B (provisions imposing obligations enforceable as relevant requirements) is amended as set out in paragraphs (2) and (3).

(2) In paragraph 3 (persons required to be certified as to independence), in paragraph (d), omit sub-paragraphs (i) to (iv).

(3) In paragraph 9 (gas undertakings which are relevant producers or suppliers)—

- (a) omit paragraph (e);
- (b) omit paragraph (f).

(4) For the purposes of sections 30A to 30O and 38 of the Gas Act 1986, a reference in Schedule 4B to the Gas Act 1986 to a provision of retained direct EU legislation is to be treated on or after exit day as including a reference to that provision as it had effect in EU law at any time before exit day.

Electricity Act 1989

38. The Electricity Act 1989(4) is amended as follows.

39.—(1) Section 3A (the principal objective and general duties of the Secretary of State and the Gas and Electricity Markets Authority) is amended as follows.

(4) 1989 c. 29. Relevant amendments were made by the Utilities Act 2000 (c. 27) sections 13 and 16, the Energy Act 2010 (c. 27) section 17, and by [S.I. 2009/1349](#), [2011/1043](#), [2011/2704](#), [2014/3333](#) and [2017/493](#).

- (2) In subsection (1A)(c)—
 - (a) for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;
 - (b) for the words from “objectives” to “Directive” substitute “designated regulatory objectives”.
- (3) In subsection (5B), at the appropriate place insert—

““the designated regulatory objectives” means the objectives set out in Article 36(c) to (h) of the Electricity Directive but read with the following modifications—

 - (a) in Article 36(c), for the words from “between” to the end substitute “, including enabling the development of appropriate cross-border transmission capacities to meet demand;”,
 - (b) in Article 36(d), omit “, in line with general energy policy objectives,”,
 - (c) in Article 36(f), omit “and foster market integration”, and
 - (d) in Article 36(g), for “their national market” substitute “the energy market in Great Britain”;”.

40. In section 3D (exceptions from sections 3A to 3C), in subsection (5), after “any”, in the second place it occurs, insert “retained”.

41.—(1) Section 3E (duty of the Gas and Electricity Markets Authority as regards binding decisions of the Agency or European Commission) is amended as follows.

- (2) Renumber the existing section as subsection (1).
- (3) After subsection (1) insert—

“(2) For the purposes of subsection (1), a binding decision does not include a decision that is not, or so much of a decision as is not, retained EU law.”.

42.—(1) Section 3F (Gas and Electricity Markets Authority to consult and cooperate with others) is amended as follows.

- (2) In subsection (1)—
 - (a) for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;
 - (b) in paragraph (a), for the words from “Agency” to “States” substitute “Northern Ireland Authority”;
 - (c) in paragraph (b)—
 - (i) for the words from “Agency and” to “States” substitute “Northern Ireland Authority”;
 - (ii) for “they” substitute “it”;
 - (iii) for the words from “their” to “to electricity” substitute “its designated regulatory functions”.
- (3) In subsection (2)—
 - (a) for the words from “designated” to “Britain” substitute “Northern Ireland Authority”;
 - (b) omit “, within that region,”;
 - (c) omit paragraph (a);
 - (d) omit paragraph (f) (but not the “and” following it).
- (4) In subsection (3)—
 - (a) omit the definition of “network code”;

(b) omit the definition of “region” and the “and” following it.

43. In section 10B (application for certification), in subsection (3)—

- (a) omit “on or after 3 March 2013”;
- (b) for “third country”, in both places, substitute “country outside the United Kingdom”;
- (c) in paragraph (a), omit “and the European Commission”;
- (d) in paragraph (b)—
 - (i) omit “to the Secretary of State”;
 - (ii) omit “or any other EEA state”.

44.—(1) — Section 10C (report where applicant connected with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In subsection (1), for “third country”, in both places, substitute “country outside the United Kingdom”.

(4) In subsection (2), omit “or any other EEA state”.

(5) In subsection (5)(b), omit “third”.

45. Notwithstanding the amendments of sections 10B and 10C of the Electricity Act 1989 made by regulations 43 and 44, where an application under section 10B is made before exit day and the applicant is a person from an EEA state or a person controlled by a person from an EEA state—

- (a) the Gas and Electricity Markets Authority is not required to notify the Secretary of State of the application under section 10B(3), and
- (b) the Secretary of State is not required to prepare a report under section 10C in relation to the application.

46.—(1) Section 10D (certification) is amended as set out in paragraphs (2) to (5).

(2) In subsection (1)—

- (a) omit “preliminary”;
- (b) for “it should” substitute “to”.

(3) In subsection (4)—

- (a) omit “preliminary”;
- (b) after paragraph (a) insert “and”;
- (c) omit paragraph (c) and the “and” before it.

(4) Omit subsections (5) to (8).

(5) After subsection (8) insert—

“(9) The Authority must publish its decision to certify or to refuse to certify the applicant, together with the reasons for it, in such manner as it considers appropriate.”.

(6) Where, immediately before exit day, the Gas and Electricity Markets Authority has made a preliminary decision under section 10D of the Electricity Act 1989 on an application for certification, but not a final decision under Article 3 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network of cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(7) If a preliminary decision of the Gas and Electricity Markets Authority is treated as a final decision to certify, or to refuse to certify, an applicant because of paragraph (6), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

47.—(1) Section 10E (grounds for certification) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a)—

(i) omit “preliminary”;

(ii) for “an applicant should be certified” substitute “whether to certify an applicant”;

(b) omit paragraph (b).

(3) In subsection (2), omit “decide that the applicant should be certified, or”.

(4) In subsection (8)—

(a) omit paragraph (a);

(b) in paragraph (b)—

(i) omit “must not decide that the applicant should be certified, and”;

(ii) omit “or any other EEA state”;

(c) omit paragraph (c).

(5) After subsection (8) insert—

“(9) For the purposes of subsection (4), Article 9(9) of the Electricity Directive is to be treated as if the comparison with the provisions of Chapter 5 of the Electricity Directive were a comparison with the provisions of Chapter 5 as they applied in relation to a member State immediately before exit day.

(10) For the purposes of subsection (5), the references to Article 13(1) and (2) of the Electricity Directive are to be treated as references to those provisions with the following modifications—

(a) Article 13(1) is to be read as if “Such designation shall be subject to approval by the Commission” were omitted;

(b) Article 13(2)(b) is to be read as if the reference to Article 12 of the Electricity Directive were a reference to Article 12 with the omission of point (h);

(c) Article 13(2)(e) is to be read as if—

(i) for “Regulation (EC) No 714/2009” there were substituted “the Electricity Regulation”, and

(ii) the words from “including” to the end were omitted.”.

48.—(1) Section 10H (designation for the purposes of EU electricity legislation) is amended as set out in paragraphs (2) to (5).

(2) In the heading, for “EU electricity legislation” substitute “the Electricity Regulation”.

(3) In subsection (2), for the words from “Article” to “operators” substitute “the Electricity Regulation”.

(4) In subsection (3), for “that Article” substitute “the Electricity Regulation”.

(5) In subsection (4)—

(a) after paragraph (a) insert “and”;

(b) omit paragraph (c) and the “and” preceding it.

(6) A person who is designated an electricity transmission system operator under section 10H of the Electricity Act 1989 for the purposes of Article 10(2) of the Electricity Directive immediately before exit day is to be treated, on and after exit day, as a person who is designated as an electricity transmission system operator under section 10H for the purposes of the Electricity Regulation, if and for so long as the person designated or (as the case may be) the person who nominated the person designated continues on and after exit day to hold a licence under section 6(1)(b) or (e) of the Electricity Act 1989 and to be certified under section 10D of that Act.

(7) In paragraph (6)—

“the Electricity Directive” means [Directive 2009/72/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing [Directive 2003/54/EC](#)(5);

“the Electricity Regulation” means Regulation [\(EC\) No 714/2009](#) of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation [\(EC\) No 1228/2003](#).

49.—(1) Section 10I (monitoring and review of certification) is amended as follows.

(2) In subsection (2)—

- (a) omit “on or after 3 March 2013,”;
- (b) for “third country” substitute “country outside the United Kingdom”;
- (c) in paragraph (a), omit “and the European Commission”;
- (d) in paragraph (b), omit “or any other EEA state”.

(3) Omit subsections (3) and (4).

(4) In subsection (5), omit “also”.

(5) In subsection (10), omit “(4),”.

50.—(1) Section 10K (report as to any connection of certified person with a country outside the European Economic Area) is amended as follows.

(2) In the heading, for “European Economic Area” substitute “United Kingdom”.

(3) In subsection (2), omit “or any other EEA state”.

(4) In subsection (5)(b), omit “third”.

51.—(1) Notwithstanding the amendments of sections 10I and 10K of the Electricity Act 1989 made by regulations 49 and 50, if and for so long as the condition in paragraph (2) is satisfied in relation to the person—

- (a) the Gas and Electricity Markets Authority is not required to notify the Secretary of State under section 10I(2) about a person from a country outside the United Kingdom who has taken control of a certified person before exit day, and
- (b) the Secretary of State is not required to prepare a report under section 10K in relation to the certified person.

(2) The condition is that the person was a person from an EEA state at the time of taking control and has continued to be such a person.

52.—(1) Section 10L (continuation or withdrawal of certification) is amended as set out in paragraphs (2) to (9).

(2) In subsection (1)—

(5) O.J. L 211, 14.8.2009, p. 55.

- (a) for “10I(3) or (5)” substitute “10I(5)”;
- (b) for “10I(4) or (6)” substitute “10I(6)”;
- (c) in paragraph (a)—
 - (i) omit “preliminary”;
 - (ii) for “that the certification should be continued” substitute “to continue the certification”;
- (d) in paragraph (b)—
 - (i) omit “preliminary”;
 - (ii) for “that the certification should be withdrawn” substitute “to withdraw the certification”.
- (3) In subsection (2)—
 - (a) omit “preliminary”;
 - (b) for “that the certification should be continued” substitute “to continue the certification”.
- (4) In subsection (3)—
 - (a) in paragraph (a)—
 - (i) omit “preliminary”;
 - (ii) for “that the certification should be continued” substitute “to continue the certification”;
 - (b) in paragraph (b)—
 - (i) omit “preliminary”;
 - (ii) for “that the certification should be withdrawn” substitute “to withdraw the certification”.
- (5) In subsection (4)—
 - (a) omit “preliminary”;
 - (b) for “that the certification should be continued” substitute “to continue the certification”.
- (6) In subsection (5)—
 - (a) omit “preliminary”;
 - (b) omit paragraph (b) and the “and” before it.
- (7) Omit subsections (6) to (9).
- (8) After subsection (9) insert—

“(9A) The Authority must publish its decision to continue a certification, or to withdraw a certification, together with the reasons for it, in such manner as it considers appropriate.”.
- (9) In subsection (10)—
 - (a) in the words before paragraph (a), for “10E(8)(a) and (b)” substitute “10E(8)(b)”;
 - (b) in paragraph (a), for “10E(8)(a) and (b)” substitute “10E(8)(b)”.

(10) Where, immediately before exit day, the Gas and Electricity Markets Authority has made a preliminary decision under section 10L of the Electricity Act 1989 on a review under section 10I(5) or (8), but not a final decision under Article 3 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network of cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, the Authority’s preliminary decision is to be treated on and after exit day as if it were a final decision under Article 3 made immediately before exit day.

(11) If a preliminary decision of the Gas and Electricity Markets Authority is treated as a final decision to continue a certification, or to withdraw a certification, because of paragraph (10), the Authority must publish, in such manner as it considers appropriate, a document setting out that decision and the reasons for it.

53. In section 100 (interpretation of sections 10A to 10O), in subsection (1)—

- (a) in the definition of “certified”, for the words from “taken” to “certified) by” substitute “certified by”;
- (b) in the definition of “person from a third country”, for “third country”, in both places, substitute “country outside the United Kingdom”;
- (c) omit the definition of “third country”.

54. In section 25 (orders for securing compliance), in subsection (8), in the definition of “regulated person”, omit paragraph (e).

55. In the italic heading preceding section 44B, for “Article 37 Disputes” substitute “Section 44B disputes”.

56.—(1) Section 44B (meaning of “Article 37 dispute”) is amended as follows.

(2) In the title, for ““Article 37”” substitute ““section 44B””.

(3) In subsection (1)—

- (a) for “an “Article 37 dispute”” substitute “a “section 44B dispute””;
- (b) in paragraph (b), for the words from “under” to “Directive” substitute “which falls within subsection (2A)”.

(4) After subsection (2) insert—

“(2A) An obligation of the person complained against falls within this subsection if it is—

- (a) an obligation under a relevant condition or relevant requirement in relation to that person imposed before exit day for the purpose of implementing the Electricity Directive, including such an obligation as modified on or after exit day, or
- (b) an obligation under a relevant condition or relevant requirement in relation to that person imposed on or after exit day which, if it had been imposed immediately before exit day, would have been an obligation imposed for the purpose of implementing the Electricity Directive.”.

57.—(1) Section 44C (determination of disputes) is amended as follows.

(2) In subsection (1), for “An Article 37” substitute “A section 44B”.

(3) In subsection (2), for “An Article 37” substitute “A section 44B”.

(4) In subsection (3), for “an Article 37” substitute “a section 44B”.

58.—(1) Section 44D (time limit for determinations) is amended as follows.

(2) In subsection (1), for “an Article 37” substitute “a section 44B”.

(3) In subsection (6)(a), for “an Article 37” substitute “a section 44B”.

59. In section 47 (general functions of the Gas and Electricity Markets Authority), after subsection (1C) insert—

“(1D) The references in subsection (1C) to the following provisions of the Electricity Directive are to be treated as references to those provisions with the following modifications—

- (a) Article 37(1)(q) is to be read as if for “Regulation (EC) No 714/2009” there were substituted “the Electricity Regulation”;
- (b) Article 37(1)(s) is to be read as if—
 - (i) the words “Community and third country” were omitted, and
 - (ii) after “operators” there were inserted “in the United Kingdom and transmission system operators in countries outside the United Kingdom”;
- (c) Article 37(1)(t) is to be read as if the reference to Article 42 were to Article 42 with the omission of the words from “must cause” to “market and”;
- (d) Article 37(3)(f) is to be read as if for “Regulation (EC) No 714/2009” there were substituted “the Electricity Regulation”.

60.—(1) In section 64 (interpretation of Part 1), subsection (1) is amended as follows.

- (2) Omit the definition of “the CACM Regulation”.
- (3) Omit the definition of “designated regulatory authority”.
- (4) Omit the definition of “designated regulatory authority for Great Britain”.
- (5) Omit the definition of “nominated electricity market operator”.
- (6) At the appropriate place insert—

““designated regulatory function” means a function of the Authority or the Northern Ireland Authority conferred by—

 - (a) a provision of retained EU law, as amended from time to time on or after exit day, or
 - (b) a condition in a licence under section 6 or Article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), as that condition is modified from time to time on or after exit day,

where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 35 of the Electricity Directive;”.
- (7) At the appropriate place insert—

““Northern Ireland Authority” means the Northern Ireland Authority for Utility Regulation;”.

61. In Schedule 2ZB (duties of supply exemption holders), in paragraph 8 (determination of exempt supply disputes), for “an Article 37” substitute “a section 44B”.

62.—(1) Schedule 6A (provisions imposing obligations enforceable as relevant requirements) is amended as set out in paragraphs (2) to (4).

- (2) In paragraph 4 (persons required to be certified as to independence)—
 - (a) in paragraph (d), omit sub-paragraphs (i) to (v);
 - (b) in paragraph (e)—
 - (i) in sub-paragraph (i), for “1.9” substitute “1.7”;
 - (ii) omit sub-paragraph (iii);
 - (iii) in sub-paragraph (iv), for “4.4” substitute “4.3”;
 - (iv) in sub-paragraph (vi), omit “6.3.”.
- (3) In paragraph 9 (electricity undertakings which are relevant producers or suppliers)—
 - (a) omit paragraph (e);
 - (b) omit paragraph (f).
- (4) Omit paragraph 9B (nominated electricity market operators).

(5) For the purposes of sections 27A to 28 of the Electricity Act 1989, a reference in Schedule 6A to the Electricity Act 1989 to a provision of retained direct EU legislation is to be treated on and after exit day as including a reference to that provision as it had effect in EU law at any time before exit day.

Utilities Act 2000

63. The Utilities Act 2000(6) is amended as follows.

64.—(1) Section 3A (designation of Gas and Electricity Markets Authority as regulatory authority for Great Britain) is amended as follows.

(2) For the heading substitute “Exercise of designated regulatory functions etc”.

(3) Omit subsection (1).

(4) In subsection (2)(a), for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”.

(5) Omit subsection (3).

65. Omit section 5ZA (report on activities as designated regulatory authority).

66. In section 33 (standard conditions of electricity licences), in subsection (1), omit paragraph (za).

67. In section 81 (standard conditions of gas licences), in subsection (2), omit “under section 2(2) of the European Communities Act 1972,”.

68.—(1) Section 105 (general restrictions on disclosure of information) is amended as follows.

(2) In subsection (4)—

(a) in paragraph (ga) —

(i) after “requirement” insert “or an EU REMIT requirement”;

(ii) after “of REMIT” insert “or any proceedings brought under or by virtue of EU REMIT in a member State”;

(b) in paragraph (h), for “an” substitute “a retained”.

(3) In subsection (6A), for “another national regulatory authority” substitute “a national regulatory authority of a member State”.

(4) In subsection (10)—

(a) at the appropriate place insert—

““EU REMIT” means Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p.1–16), as it has effect in EU law as amended from time to time;”;

(b) at the appropriate place insert—

““EU REMIT requirement” means a requirement imposed by any of Articles 3(1) and (5), 4(1), (2) and (3), 5, 8(1) and (5), 9(1), (4) and (5) and 15 of EU REMIT;”;

(c) in the definition of “national regulatory authority”, after “in” insert “EU”.

69.—(1) Section 105A (restrictions on disclosure in respect of cross-border exchanges of information) is amended as follows.

(6) 2000 c. 27. Relevant amendments were made by [S.I. 2011/2704](#) and [2015/862](#).

(2) In subsection (1)—

- (a) in paragraph (a), for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”;
- (b) in paragraph (b), for the words from “the designated” to “Gas Directive” substitute “the Northern Ireland Authority for Utility Regulation in the exercise of its designated regulatory functions”.

(3) After subsection (1) insert—

“(1A) This section also applies to any information provided to the Authority on or after exit day—

- (a) for the purpose of enabling it to carry out its designated regulatory functions; and
- (b) by an authority designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive.

(1B) This section also applies to any information provided to the Authority before exit day—

- (a) for the purpose of enabling it to carry out its functions as an authority designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive; and
- (b) by—
 - (i) the Northern Ireland Authority for Utility Regulation, or
 - (ii) an authority in another member State which is designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive, in accordance with Article 38(1) of the Electricity Directive or Article 42(1) of the Gas Directive.”.

(4) In subsection (2)(a), for “the originating authority”, in the first place it occurs, substitute “the authority that provided the information to the Authority (“the originating authority”)”.

(5) In subsection (3), for “Subsection (1)” substitute “Subsection (1), (1A) or (1B)”.

70. In section 106 (interpretation)—

- (a) omit the definition of “the Agency”;
- (b) omit the definition of “the Agency Regulation”;
- (c) omit the definition of “designated regulatory authority”;
- (d) omit the definition of “designated regulatory authority for Great Britain”;
- (e) at the appropriate place insert—

““designated regulatory function” means a function of the Authority or the Northern Ireland Authority for Utility Regulation conferred by—

- (a) a provision of retained EU law, as amended from time to time after exit day, or
- (b) a condition in—
 - (i) a licence under section 7, 7ZA or 7A of the Gas Act 1986 or Article 8 of the Gas (Northern Ireland) Order 1996 ([S.I. 1996/275 \(N.I. 2\)](#)), or
 - (ii) a licence under section 6 or Article 10 of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)),

as that condition is modified from time to time on or after exit day,

where that function was, immediately before exit day, one of its functions as a regulatory authority designated in accordance with Article 35 of the Electricity Directive or Article 39 of the Gas Directive;.”.

71. In Schedule 1 (the Gas and Electricity Markets Authority), in paragraph 2A (certain duties of members of the Authority), for “functions as designated regulatory authority for Great Britain” substitute “designated regulatory functions”.

Energy Act 2004

72. The Energy Act 2004(7) is amended as follows.

73. In section 137 (new standard conditions for transmission licences), in subsection (3), omit paragraph (za).

74. In section 146 (standard conditions for electricity interconnectors), in subsection (5), omit “under section 2(2) of the European Communities Act 1972,”.

75. In section 150 (standard conditions for gas interconnectors), in subsection (5), omit “under section 2(2) of the European Communities Act 1972,”.

76. In Schedule 21 (energy transfer schemes), in paragraph 4 (provision that may be made by a scheme), in sub-paragraph (2)(f), omit “, EU instrument”.

Consumers, Estate Agents and Redress Act 2007

77. In the Consumers, Estate Agents and Redress Act 2007(8), in section 19A (guidance for energy consumers), in subsection (2), after “Gas Directive” insert “which is in force immediately before exit day”.

(7) 2004 c. 20. Relevant amendments were made by S.I. 2011/1043 and 2011/2704.

(8) 2007 c. 17. Section 19A was inserted by S.I. 2011/2704.