

EXPLANATORY MEMORANDUM TO
THE GAS (SECURITY OF SUPPLY AND NETWORK CODES) (AMENDMENT)
(EU EXIT) REGULATIONS 2019

2019 No. 0000

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 is one of a package of statutory instruments that will ensure that legislation governing the UK's energy systems will function effectively if the UK leaves the European Union ('EU') without a withdrawal agreement in place.

On 29 March 2019, the European Union (Withdrawal) Act 2018 will incorporate directly applicable EU legislation into UK law. In response, this instrument amends five pieces of retained EU law relating to energy to correct or remove inoperable provisions. Specifically, this piece of legislation amends Regulation (EU) No 2017/1938 of the European Parliament and the Council concerning measures to safeguard the security of gas supply (hereafter 'the Security of Gas Supply Regulation') in order to ensure that it is operable when incorporated into domestic legislation.

It also amends provisions of four pieces of directly applicable EU tertiary legislation (collectively, "the network codes"), namely Commission Regulation (EU) 2015/703 establishing a network code on Interoperability and Data Exchange Rules ('INT'), Commission Regulation 2017/460 establishing a network code on Harmonised Transmission Tariff Structures for Gas ('TAR'), Commission Regulation 312/2014 establishing a network code on Balancing of Transmission Networks ('BAL') and Commission Regulation (EU) 2017/459 establishing a network code on Capacity Allocation Mechanisms in Gas Transmission Systems ('CAM') (gas transmission systems being the gas pipeline system and associated facilities designed for transporting gas).

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Security of Gas Supply Regulation ensures that all the necessary measures are undertaken by member States to safeguard security of supply of gas throughout the EU, particularly to protected customers in the event of disruptions to gas supply. It includes a provision to facilitate 'solidarity' (gas sharing) between member States in the event of a gas emergency and in circumstances where a member State can no longer supply households and essential services. Additionally, the regulation established the Gas Coordination Group ('GCG'), which provides advice and assists implementation of the EU Security of Gas Supply Regulation. The regulation also created a duty for member States to collaboratively assess the risks to EU security of gas supply and create plans to mitigate against them.

The four network codes set out how the EU gas networks are managed and the rules which govern cross-border gas trading.

INT was introduced to facilitate commercial and operational cooperation between neighbouring Transmission System Operators ('TSOs'). TSOs are the companies that own and operate the transmission pipelines across the gas transmission network, or companies that own the interconnectors that facilitate cross-border gas trade. INT's rules on interoperability and data exchange contribute to the security of gas supply and creation of competitive prices for customers through measures that ease the flow of gas. Its provisions set out ways in which TSOs should manage gas flows across interconnection points (a physical or virtual point connecting adjacent entry-exit systems or connecting an entry-exit system with an interconnector), and include arrangements for interconnection agreements, common units that should be adopted in all operative measures, gas quality and odourisation (addition of odorant so that the presence of gas in air is readily detectable), and data exchange rules.

TAR sets out the methodology for calculating gas transmission tariffs based on the TSOs' revenues. It also includes requirements for consultation and publication regarding tariff levels.

The BAL code sets out a market-based approach to balancing the gas system. Balancing refers to the processes used to maintain the amount of gas in a gas transmission system within acceptable operational tolerances. When the gas transmission system is not sufficiently balanced, or expected flow patterns cannot be accommodated in the transmission system, TSOs intervene using standardised pan-EU processes in BAL.

The CAM code provides standardised gas capacity allocation procedures for allocating gas that is transported between gas transmission systems and across borders. CAM also sets out how TSOs must cooperate with one another in order to facilitate the trade of gas and support more efficient gas markets (such as offering interruptible capacity, harmonised auction dates, the use of online booking platforms and rules for long-term capacity products).

Why is it being changed?

- 2.3 On 29 March 2019, the European Union (Withdrawal) Act 2018 will incorporate into UK law directly applicable EU law and EU derived legislation as it applies immediately before exit day. If unamended, this retained EU law would contain numerous inoperabilities. These inoperabilities range from, for example, references to EU Member States, to more significant issues, such as obligations for UK bodies to accept binding decisions from the European Commission. Failure to remedy these inoperabilities could create significant uncertainty around energy market regulation, the role and functions of UK and EU bodies in the market, and requirements for market participants. This uncertainty could threaten the continued secure and efficient operation of energy markets across the UK. Further detail on the deficiencies resolved by this instrument can be found in Section 7.

What will it now do?

- 2.4 This instrument will amend retained EU law relating to gas by removing deficiencies and failures of the law to operate effectively but substantially retains the regulatory frameworks to keep the UK gas market working effectively. The objective of this

instrument is to maintain the operability and integrity of the retained EU gas legislation and to maximise continuity for UK industry and consumers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments or the Select 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 The territorial application of this instrument includes Scotland and Northern Ireland.

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 is the United Kingdom.

5. European Convention on Human Rights

5.1 Claire Perry MP has made the following statement regarding Human Rights:

“In my view the provisions of The Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention Rights.”

6. Legislative Context

6.1 On 29 March 2017 the Prime Minister triggered Article 50 of the Treaty on European Union and started the UK’s exit from the European Union. To ensure business and legislative continuity for the UK, following over 40 years of EU membership, the European Union (Withdrawal) Act 2018 will incorporate directly applicable EU legislation into domestic law as it applied immediately before exit day.

6.2 This instrument is one of a series of statutory instruments laid by the Department for Business, Energy and Industrial Strategy which will ensure that domestic and retained EU law governing the UK’s electricity and gas markets will function effectively if the UK leaves the European Union without a deal.

6.3 The retained EU law amended by this Instrument are the Security of Gas Supply Regulation and the four network codes listed in paragraph 2.3. The network codes were developed by the EU to meet the conditions set out within Regulation (EC) No 715/2009 of the European Parliament and the Council on conditions of access to the natural gas transmission networks and are part of the implementation of the Third Energy Package. The Third Energy Package is a suite of legislation introduced by the EU in 2009 which aimed to deepen the Internal Energy Market by liberalising European energy markets, encouraging cooperation between actors in European energy markets, and establishing common EU frameworks for regulating the electricity and gas markets.

7. Policy background

What is being done and why?

- 7.1 The aim of this instrument is to remove or amend legal deficiencies in direct EU legislation to ensure the UK's energy markets continue to operate effectively should the UK leave the EU without a Withdrawal Agreement.
- 7.2 European Union laws governing security of gas supply and the four gas network codes contain processes, definitions and obligations that will be inoperable following the UK's exit from the EU. Removing deficiencies, while retaining regulatory functions and frameworks needed to keep the UK gas markets working effectively, will maximise continuity for UK industry and consumers.
- 7.3 The instrument maintains alignment with the EU Security of Gas Supply Regulation in so far as possible, including in relation to the attribution of responsibilities among natural gas undertakings that carry out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas. It provides for transparent mechanisms concerning the coordination of planning for, and response to, emergencies.
- 7.4 The four retained network codes amended by this instrument primarily concern the operation of gas Transmission System Operators ('TSOs'), the companies that own and operate the transmission pipelines across the gas transmission network, including interconnector TSOs that facilitates cross-border gas trade. The deficiencies include requirements for UK bodies or entities to share information with EU institutions, legal obligations on non-UK entities and references to EU member States.
- 7.5 Amendments made by this instrument will come into force at the same time as the European Union (Withdrawal) Act 2018. This will ensure that retained directly applicable EU legislation is amended when it becomes part of domestic law.
- 7.6 The amending instrument applies to energy, which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day approaching, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

Regulation (EU) 2017/1938 concerning measures to safeguard the security of gas supply Security of Gas Supply Regulation'

- 7.7 The Security of Gas Supply Regulation was introduced to safeguard security of supply of gas throughout the EU. In order to achieve this objective, the Regulation included a new provision to facilitate 'solidarity' between interconnected member States in the event of a gas emergency. This instrument removes the legal obligations for solidarity cooperation between the UK and member States because the reciprocity it relies on to function is not possible to provide for unilaterally in domestic law. However, this

does not affect non-legislative co-operation arrangements for gas emergencies that sit outside the regulation

- 7.8 In addition, the Security of Gas Supply Regulation established the Gas Coordination Group (GCG), who provide advice and coordinate implementation of the EU Security of Gas Supply Regulation. The provisions of the regulation relating to the establishment and duties of the GCG are revoked by this instrument as they would be inoperable if incorporated into domestic law.
- 7.9 The duty to collaboratively assess the risks to EU security of gas supply and create plans to mitigate against them is also revoked because this reciprocal obligation with EU Member States becomes inoperable on exit. The revoked provisions include the creation of a common risk assessment, common aspects of preventative action plans and a regional emergency response.
- 7.10 The transparency measures that are applicable to gas transmission contracts, including an obligation on member States to notify the European Commission of their gas undertakings in the event of the conclusion or amendment of a long-term supply contract that contribute significantly to security of gas supply, will also be inoperable. It is inoperable to retain obligations in UK law on other Member States.

Commission Regulation (EU) 2015/703 establishing a network code on interoperability and data exchange rules ('INT')

- 7.11 This instrument will maintain alignment with the INT code but general obligations applying to EU TSOs have been amended and narrowed to only apply to UK TSOs. To facilitate continued domestic and international cooperation, obligations are amended such that UK TSOs must cooperate with other UK TSOs and must endeavour to cooperate with non-UK TSOs.

Commission Regulation (EU) No 312/2014 establishing a network code on gas balancing of transmission networks ('BAL')

- 7.12 Obligations on TSOs have been amended to ensure that the obligations only apply to UK TSOs. To facilitate continued domestic and international cooperation, obligations are amended such that UK TSOs must cooperate with other UK TSOs and must endeavour to cooperate with non-UK TSOs.

Commission Regulation (EU) 2017/460 establishing a network code on harmonised transmission tariff structures for gas ('TAR')

- 7.13 Chapters II (reference price methodologies), III (reserve prices) and IV (reconciliation of revenues) of TAR do not apply until 31 May 2019. While section 3 of the European Union (Withdrawal) Act 2018 incorporates into UK law directly applicable EU law so far as has effect in EU law immediately before exit day, these chapters of TAR will not be in effect at the time of EU exit and so will not be retained EU law incorporated into domestic law.
- 7.14 This instrument largely retains the portions of TAR that already apply. These include general provisions covering definitions, services and tariffs, rules on pricing and rules on public consultation, amongst others. These provisions have been amended where necessary to ensure that they are still operable without Chapters II, III and IV.
- 7.15 Obligations on TSOs have been amended to ensure that the obligations only apply to UK TSOs. To facilitate continued domestic and international cooperation, obligations

are amended such that UK TSOs must cooperate with other UK TSOs and must endeavour to cooperate with non-UK TSOs.

Commission Regulation (EU) 2017/459 establishing a network code on capacity allocation mechanisms in gas transmission systems ('CAM')

- 7.16 CAM concerns the cross-border trade of gas in energy markets. The CAM obligations harmonise the cross-border gas trade and are aimed at increasing the efficiency and transparency of gas markets.
- 7.17 Amendments to CAM include cross references to other retained directly applicable EU legislation, references to EU entities and obligations on entities outside the UK jurisdiction. The amendments aim to ensure that cooperation arrangements between UK entities and UK bodies continue to apply. Where cooperation is required with non-UK entities, CAM is amended, where appropriate, so that there is an obligation on UK entities and bodies to endeavour to cooperate with the non-UK bodies and entities.

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

- 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. The instrument is also made under paragraph 21 of Schedule 7 to that Act. 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 Not relevant.

10. Consultation outcome

- 10.1 Statutory instruments made under the powers in the European Union (Withdrawal) Act 2018 do not require consultation, and a consultation has not been conducted for this instrument. Technical and factual input relevant to this instrument has been provided by the UK's energy regulators, Ofgem and the Northern Ireland Authority for Utility Regulation, and by Northern Ireland Department for the Economy. A letter notifying the Northern Ireland Department for the Economy, detailing the intention to legislate and the content of the statutory instruments, has been sent, and a response from the Department noting the intention to legislate has been received.

11. Guidance

- 11.1 Guidance has not been produced for this instrument.

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 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 where one is

deemed necessary. This instrument itself will not create any significant direct costs to business. This legislation transfers some obligations from European bodies such as the European Network of Transmission System Operators for Gas and the Agency for the Cooperation of Energy Regulators to UK bodies such as TSOs responsible for system operation in Great Britain and Northern Ireland, and the UK's energy regulators, Ofgem and the Northern Ireland Authority for Utility Regulation. It also removes obligations on UK bodies to share information or co-ordinate with EU bodies. Key stakeholders including Ofgem, National Grid, the Northern Ireland Department for the Economy, the Northern Ireland Authority for Utility Regulation, and the Northern Ireland gas TSO (Premier Transmission Limited) have been consulted and concluded that all direct impacts that have been identified are considered to be negligible (less than £100,000 per year in total).

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for this decision is that the scale of the impacts identified in connection with this instrument is small and they do not fall disproportionately on small businesses.

14. Monitoring & review

- 14.1 The Department does not intend to monitor this instrument.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Joan McGarvey at the Department for Business, Energy and Industrial Strategy Telephone: 020 72153189 or email: joan.mcgarvey@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Jane Walker, Deputy Director for Energy Markets and Affordability, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State, the Rt Hon Claire Perry MP 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/Sifting Committees
Appropriate-ness	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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising 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. Appropriateness statement

1.1 The Minister of State, the Rt Hon Claire Perry MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

1.2 This is the case because:

- The instrument makes only those changes necessary to ensure that the relevant retained direct EU law will function effectively once incorporated into domestic legislation.
- This instrument preserves wherever possible existing policy related to security of gas supply and gas trading, with changes limited to those unavoidable as a result of the UK’s departure from the EU.

2. Good reasons

2.1 The Minister of State, the Rt Hon Claire Perry MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

2.2 These are:

- Legislation revoked by this instrument would be inoperable if retained, potentially disrupting the efficient operation of the UK’s energy systems.
- The amendments to retained legislation made by this instrument are necessary to remedy deficiencies which would otherwise disrupt the efficient operation of the UK’s energy systems.

Further information about the reasons for the provisions in this instrument is provided in Section 7 above.

3. Equalities

3.1 The Minister of State, the Rt Hon Claire Perry MP has made the following statement:

“The 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.

3.2 The Minister of State, the Rt Hon Claire Perry MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, the Minister of State, the Rt Hon Claire Perry MP 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.”

3.3 This instrument has no, or no significant, differential impact on those with protected characteristics under the Equality Act 2010.

4. Explanations

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