EXPLANATORY MEMORANDUM TO

THE ELECTRICITY SUPPLIER OBLIGATIONS (EXCLUDED ELECTRICITY) (AMENDMENT) REGULATIONS 2023

2023 No. 415

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The SI enables minor changes to be made to the legislation underpinning the Energy Intensive Industries (EII) Exemption Scheme that offers an exemption for eligible companies to receive a discount from their electricity costs and therefore address high energy costs and potential market failures.

2.2 The SI covers two changes to the eligibility criteria. One change would give companies applying for the exemption an opportunity to exclude two years of the last five (2020 and 2021) to reflect the impact of the Covid-19 pandemic. The other change would also allow new businesses to apply with one quarter rather than two quarters of trading data making it easier for them to access relief.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. European Convention on Human Rights

5.1 The Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Electricity Supplier Obligations (Excluded Electricity) (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 This amendment is being made through the powers conferred by sections 6(1); 6(6)(c) and (d); and 17 of the Energy Act 2013

7. Policy background

What is being done and why

7.1 The EII exemption provides relief to around 315 eligible businesses in electricity intensive sectors. It provides a discount on their electricity bills for a percentage of the costs of funding renewable electricity policies. It aims to reduce the risk of carbon leakage by supporting UK based EIIs. The scheme was launched in November 2017 and at that time around 170 companies applied. These companies need to be reassessed this year under the scheme's rules. We decided to consult on possible change to the scheme and this SI implements two minor scheme changes to improve the operation of the scheme and its accessibility to eligible companies.

What did any law do before the changes to be made by this instrument?

7.2 The original Regulations required companies to apply with three-years of data (where available) as this was believed to provide an appropriate and relatively recent basis for judging eligibility. However, this limited flexibility to account for the Covid-19 pandemic. The Regulations also mandated that companies would have to wait until they had two quarters of trading data before applying for relief. This could be a potential barrier to new applicants.

Why is it being changed?

7.3 The amendments are designed to improve accessibility to the EII relief scheme and to account for the Covid-19 pandemic.

What will it now do?

7.4 The instrument will allow companies applying under the exemption from the indirect costs of funding Contracts for Difference (CFD), the Renewables Obligation (RO) and the small-scale Feed in Tariff (FIT) to be able to submit three of the previous five years accounts for reassessment to account for possible lower trading and electricity usage during the 2020 and 2021 pandemic years and allow new applicants to apply with only one quarter of trading data available, instead of two.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to carry out a consolidation at present.

10. Consultation outcome

10.1 On 12th August 2022, BEIS launched a consultation to consider whether there was a rationale for increasing the subsidy level of the current scheme to provide energy intensive industries with a greater exemption from the indirect costs of funding renewable electricity policies.

10.2 The consultation was part of a wider review to consider the increased risk of carbon leakage due to higher costs of industrial electricity prices.

10.3 The consultation also considered the cumulative burden of the scheme on eligible companies through the requirements to provide regular business accounts.

10.4 Through the consultation, BEIS sought views and evidence from both existing recipients and non-recipients on:

- How recipients benefit from the scheme and how this helps reduce the risk carbon leakage
- The sufficiency of support of the scheme at its current level
- Whether existing Government decarbonisation and net zero strategies support industry to decarbonise
- The design of the scheme if there continues to be a rationale for the scheme to continue

10.5 BEIS sought views from a wide range of audiences, including energy intensive industries (whether currently benefitting or not benefitting from the compensation schemes), trade bodies, consumer associations, the devolved administrations and other interested parties.

10.6 Stakeholders were provided with an opportunity to provide their views and evidence in response to the questions posed.

10.7 The consultation was available on the gov.uk website and was emailed directly to a number of stakeholders who had previously expressed an interest in this issue. There were also stakeholder events to encourage responses.

10.8 This consultation ran for 5 weeks and closed on the 16 September 2022. A total of 63 responses were received from stakeholders, including energy intensive companies, trade associations, and non-governmental organisations, among others.

10.9 The Scottish Government ran a parallel consultation due to the Renewable Obligation policy in Scotland being a devolved matter and the original intent was to increase the level of the exemption, requiring a change to the 2015 Renewable Obligation Order.

10.10 As the Renewable Obligation Order in not being amended by this SI, Scottish Government will not have to lay a parallel legislation.

10.11 Following an assessment of the consultation responses, the Government identified two specific amendments that could be made to improve access to relief for new companies and to account for the Covid-19 pandemic.

11. Guidance

11.1 Guidance will be published ahead of the draft legislation coming into force to explain the changes set out and how they affect recipients of the Scheme.

12. Impact

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

12.2 There is no impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the impact is minimal. The SI relates only to making administrative changes to the scheme.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken ensures that there will be no additional administrative burden for small businesses that wish to benefit for the changes being made to the Scheme.

14. Monitoring & review

14.1 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Secretary of State has made the following statement "Given the minor nature of the amendments a review clause is not appropriate"

15. Contact

15.1 Tim Young at the Department for Business and Trade email: timothy.young@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Neil Hodgson, Deputy Director for Energy Intensive Industries, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Secretary of State for the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.