

EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED FROM RENEWABLE ENERGY SOURCES) (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1093

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 Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003 and the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations (Northern Ireland) 2003 (together, the “GOO Regulations”) in consequence of the United Kingdom’s withdrawal from the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The GOO Regulations provide for the Gas and Electricity Markets Authority (in Great Britain) and the Northern Ireland Authority for Utility Regulation (in Northern Ireland) to issue guarantees of origin (“GOOs”) in respect of renewable electricity generated in the UK, when requested to do so by generators. The GOO Regulations also require public bodies in Great Britain and in Northern Ireland (1) to recognise GOOs issued in both parts of the UK and GOOs issued in other member States of the EU (“EU GOOs”) unless the public body is requested not to do so by the issuing authority or is satisfied that there is a good reason to doubt the accuracy, reliability or veracity of the GOO; (2) to notify the European Commission if the public body decides not to recognise a EU GOO; and (3) to comply with Commission decisions about whether an EU GOO should be recognised.

Why is it being changed?

- 2.3 After the UK leaves the EU, the European Commission will have no jurisdiction in respect of the UK. Accordingly, the Commission will no longer have a role in the recognition of EU GOOs by UK public authorities, and this should be made clear in the GOO Regulations.

What will it now do?

- 2.4 The GOO Regulations no longer provide for UK public authorities to notify the European Commission if a public authority decides not to recognise an EU GOO or for UK public authorities to comply with Commission decisions about whether an EU GOO should be recognised.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid in draft for sifting under the European Union (Withdrawal) Act 2018 on 31 August 2018. It was considered by the Secondary Legislation Scrutiny Committee on 11 September 2018, and no recommendation to upgrade to the affirmative procedure was made. It was considered by the European Statutory Instruments Committee on 12 September 2018, which recommended it for the negative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The 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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The GOO Regulations were made under section 2(2) of the European Communities Act 1972. They implement obligations in the Renewable Energy Directive, i.e., Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources (which replaced Directive 2001/77/EC). Member States are required to issue GOOs in respect of renewable electricity generated in their own territory, when requested to do so, and to recognise GOOs issued by other member States. Where the European Commission finds that a member State's decision not to recognise a GOO is unfounded, the Commission can require the member State to recognise it under Article 15(10) of the Directive.

7. Policy background

- 7.1 The GOO Regulations provide for the Gas and Electricity Markets Authority (in Great Britain) and the Northern Ireland Authority for Utility Regulation (in Northern Ireland) to issue GOOs in respect of electricity generated in the UK from renewable energy sources when requested to do so by generators. Public bodies in Great Britain and Northern Ireland are required to recognise GOOs issued in both parts of the UK and GOOs issued in EU member States in accordance with the Renewable Energy Directive, unless the public body is requested not to do so by the issuing authority or is satisfied that there is a good reason to doubt the accuracy, reliability or veracity of the GOO. Where a public body decides not to recognise an EU GOO, the public body must notify the European Commission and, if the Commission decides under Article 15(10) of the Renewable Energy Directive that the public body's decision not to

recognise the EU GOO was unfounded, the Commission may require the public body to recognise it.

- 7.2 GOOs are used to track and account for electricity generated by renewables, specifically in the fuel mix declaration (licensed energy suppliers certifying the origin of the energy they supply) and certification of green tariffs (providing evidence of the renewable origin of the energy), the production of reliable statistics and the operation of exemptions to the cost of various support schemes. In particular, where levy funded schemes allow an exemption for imported renewable electricity from another EU member state, verification is by means of EU GOOs which have been recognised under the GOO Regulations.
- 7.3 When the United Kingdom leaves the EU, the European Commission will no longer be able to require public bodies in the United Kingdom to recognise EU GOOs. This instrument removes references to this from the GOO Regulations and also removes the obligation on public bodies to notify the Commission if they refuse to recognise EU GOOs.
- 7.4 Public bodies remain under a general obligation to recognise EU GOOs, except where the public body is requested not to do so by the issuing authority or is satisfied that there is good reason to doubt the accuracy, reliability or veracity of the GOO. Any decision of a public body not to recognise a GOO (including an EU GOO) will be subject to the control of the courts.
- 7.5 The amendments made by this instrument seek to preserve the status quo as far as possible. They do not change the underlying scheme for the issue of GOOs or for the recognition of EU GOOs in the UK, except to remove the European Commission from the process, which is an inevitable consequence of the UK's withdrawal from the EU¹. Other amendments make it clear that, after the UK's withdrawal from the EU, the existing mutual obligation to recognise GOOs issued in Great Britain and in Northern Ireland by public bodies in the other part of the UK will continue and correct what would otherwise be inaccurate references to the UK as a member State of the EU.
- 7.6 This instrument applies to energy which is a transferred matter for Northern Ireland under section 4(1) of 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 less than one year away, 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.

¹ If before exit day the European Commission makes a decision under Article 15(10) of the Renewable Energy Directive requiring the UK to recognise an EU GOO, that decision will, as an "EU decision" as defined in section 20(1) of the European Union (Withdrawal) Act 2018, form part of domestic law on and after exit day as "direct EU legislation": see section 3 of that Act.

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. 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 This Department has no plans to consolidate the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003. The Department is not responsible for the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations (Northern Ireland) 2003.

10. Consultation outcome

- 10.1 No public consultation was undertaken for this instrument as there are no, or no significant, impacts on business or the public or voluntary sectors. The devolved administrations in Northern Ireland Scotland and Wales have been consulted about the amendments made by this instrument.

11. Guidance

- 11.1 No guidance is required 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 Accordingly, an impact assessment has not been prepared for this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, but the amendments made are unlikely to affect small businesses in any significant respect.

14. Monitoring & review

- 14.1 No monitoring is required in respect of the amendments made by this instrument.
14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, section 28 of the Small Business, Enterprise and Employment Act 2015 does not apply.
14.3 However, the Department for Business, Energy and Industrial Strategy intends to keep under review the question of whether the continuing general obligation on public bodies to recognise EU GOOs remains appropriate in circumstances where there may be no equivalent obligation on EU member States in respect of GOOs issued in UK.

15. Contact

- 15.1 Tim Warham at the Department for Business, Energy and Industrial Strategy
Telephone: 0300 0686732 or email: tim.warham@beis.gov.uk can answer any queries regarding the instrument.

- 15.2 Fiona Mettam, Deputy Director at the Department for Business, Energy and Industrial Strategy can confirm that this explanatory memorandum meets the required standard.
- 15.3 The Rt Hon Claire Perry MP, the Minister of State for Energy and Clean Growth 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/ESIC
Appropriateness	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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
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. Sifting statement(s)

- 1.1 The Minister of State for Energy and Clean Growth, 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 Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the amendments made by the instrument seek to preserve the status quo as far as possible and do not change the underlying scheme for the issue of GOOs or the recognition of EU GOOs in the UK, except to the limited extent set out in paragraph 7.5 of the main body of this explanatory memorandum.

2. Appropriateness statement

- 2.1 The Minister of State for Energy and Clean Growth, 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 Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.

- 2.2 This is the case because the amendments made by the instrument seek to preserve the status quo as far as possible and do not change the underlying scheme for the issue of GOOs or the recognition of EU GOOs in the UK, except to remove the European Commission from the process of recognising EU GOOs in the UK, which is an inevitable consequence of the UK’s withdrawal from the EU.

3. Good reasons

- 3.1 The Minister of State for Energy and Clean Growth, 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”.

- 3.2 These are that, following the UK’s withdrawal from the EU, the European Commission will no longer have a role in the process for the recognition of EU GOOs in the UK and that it is therefore important that the relevant legislation reflects this.

4. Equalities

- 4.1 The Minister of State for Energy and Clean Growth, 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.”

- 4.2 The Minister of State for Energy and Clean Growth, 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, Claire Perry, 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.”

5. Explanations

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