

EXPLANATORY MEMORANDUM TO
THE CRC ENERGY EFFICIENCY SCHEME (AMENDMENT) (EU EXIT)
REGULATIONS 2018

2018 No. 1336

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) 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 The purpose of this statutory instrument is to amend the CRC Energy Efficiency Order 2013 (S.I. 2013/1119) as amended by various instruments, and as saved by the provisions of S.I. 2018/841 (“the CRC Order”) to address legal inoperabilities that arise from the withdrawal of the United Kingdom from the European Union taken together with the operation of other provisions made under the European Union (Withdrawal) Act 2018.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The CRC Order provides an exemption from the CRC Scheme (see below) for energy use that is supplied for the operation of a European Union Emissions Trading Scheme (EU ETS) installation and another exemption for energy supplied for specified processes as per NACE Revision 2. NACE is the European Classification of Economic Activities. Supplies that are exempted by reference to NACE Revision 2 are those for mineralogical and metallurgical processes and are those involved in the manufacture of mineralogical or metallurgical products.

Why is it being changed?

- 2.3 The CRC Order is being amended to provide that that these supplies will continue to be exempted post EU Exit and qualifying organisations will not be required to purchase allowances for these supplies for those days between EU Exit day and 31st March 2019 which is the end of the current and final phase of the CRC scheme.

What will it now do?

- 2.4 The instrument will ensure that these exemptions continue to apply as they were prior to EU Exit day up until 31st March 2019.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 This instrument was laid on 22 November 2019 in draft for sifting under the European Union (Withdrawal) Act 2018. The Sifting Committees approved the instrument for decision by the negative procedure on 6 December 2018.

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 territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.
- 4.3 The definition of the extent of the United Kingdom in regard to this instrument is set out in section 89 of the Climate Change Act 2008.

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 Carbon Reduction Commitment (CRC) Scheme was introduced by the CRC Energy Efficiency Scheme Order 2010 (“the 2010 Order”) under powers conferred by sections 44, 46(3) and 48 of and Schedule 2 and paragraphs 9, 10, 11 of Schedule 3 to the Climate Change Act 2008. The CRC Order revoked the 2010 Order with savings and amendments for the purpose of the first phase of the scheme (as defined by the 2010 Order).
- 6.2 Closure of the scheme was announced by the Chancellor of the Exchequer on 16 March 2016. The CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018 (SI 2018/841) therefore brought about early closure by revoking the CRC Order, (subject to savings for the purpose of the initial phase established under the CRC Order) and made amendments to the 2010 Order to the extent it has been saved for the purpose of the first phase. Therefore, organisations will report under the CRC for the last time by the end of July 2019 and surrender allowances for emissions from energy supplied in the 2018-19 compliance year by the end of October 2019.
- 6.3 As noted in paragraph 2.4, this instrument amends certain paragraphs of Schedule 1 to the CRC Order to ensure that the scheme will continue to operate as it did prior to EU Exit up until 31st March 2019 by allowing certain supplies of energy to be treated after EU Exit as exempt supplies if they were exempt supplies before EU Exit.

7. Policy background

What is being done and why?

- 7.1 The CRC Energy Efficiency Scheme is a domestic mandatory UK-wide emissions trading scheme requiring the purchase and surrender of allowances to account for relevant carbon dioxide equivalent emissions. CRC operates in multi-year phases; the current phase covers specified gas and electricity supplies from April 2014 to March 2019. For each year of the scheme participants are required to report their relevant “CRC supplies” in an annual report by the end of the following July and to surrender sufficient allowances by the end of the following October.

- 7.2 Broadly, the CRC scheme applies to supplies of electricity and gas. Schedule 1 to the CRC Order sets out various rules for determining which supplies caught by the CRC scheme, including that supplies are made at the time they are received. The rules permit exemptions of supplies which would otherwise fall within the CRC scheme where supplies are for the purpose of operating an “EU ETS installation”; likewise, where the energy is consumed for the purposes of operating a metallurgical process or a mineralogical process - as defined by reference to NACE Revision 2.
- 7.3 The purpose of this instrument is therefore to continue to permit these exemptions so that any supply consumed between EU Exit and 31st March 2019 in circumstances which, had that supply been consumed before EU Exit, would have been treated as being exempted under the above rules can continue to be so.
- 7.4 This instrument applies to environmental issues 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.
- 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 The instrument makes amendments to the CRC Order as amended and saved as described above. The Department is not planning to consolidate these pieces of legislation.
- 10. Consultation outcome**
- 10.1 No consultation was required for this instrument as no significant impacts on business or the public or voluntary sectors are foreseen. 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 An Impact Assessment has not been prepared for this instrument as no significant impacts on business or the public or voluntary sectors are foreseen.

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 or review is required for this instrument as no significant impacts on business or the public or voluntary sectors are foreseen.
- 14.2 As this instrument is made under the European Union Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Andy Jackson at the Department for Business, Energy and Industrial Strategy
Telephone: 0300 068 5577 or email: Andy.Jackson@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Michael Rutter, Deputy Director for Business Energy Use, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 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/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. 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 CRC Energy Efficiency Scheme (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 maintain the status quo as far as possible and do not change the underlying scheme in the UK.

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 CRC Energy Efficiency Scheme (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because the amendments made by the instrument maintain the status quo as far as possible and do not change the underlying scheme in the UK.

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:

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

- 3.3 These are that, following the UK’s withdrawal from the EU, the provisions are designed to maintain the status quo as far as possible and do not change the underlying scheme in the UK.

4. Equalities

- 4.1 The Minister of State for Energy and Clean Growth, the Rt Hon Claire Perry MP, has made the following statement(s):

“The draft 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 draft instrument, I 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.”

5. Explanations

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