

EXPLANATORY MEMORANDUM TO

THE ELECTRICITY NETWORK CODES AND GUIDELINES (SYSTEM OPERATION AND CONNECTION) (AMENDMENT ETC.) (EU EXIT) (NO. 2) REGULATIONS 2019

2019 No. 1104

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.
- 1.2 This instrument was laid for sifting by the Sifting Committees on 18 June 2019 with no recommendation to upgrade to the affirmative resolution procedure.

2. Purpose of the instrument

- 2.1 This instrument amends statutory instrument, Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/533) and will help ensure that legislation governing the UK's energy systems will function effectively in the event that the UK leaves the European Union ('EU') without a withdrawal agreement in place on 31 October 2019. It ensures that three Commission Regulations for electricity connection codes become retained EU law. These codes did not apply in full before an exist date of 29 March 2019 but they will now apply in full before exit as a result of the Article 50 extension to 31 October 2019.
- 2.2 The Requirements for Generators (RfG) is established by Commission Regulation (EU) 2016/631 and will become retained direct EU law in full as it has a compliance date of 27 April 2019.
- 2.3 In addition, the Demand Connection Code (DCC) is established by Commission Regulation (EU) 2016/1388 and will become retained direct EU law in full as it has a compliance date of 17 August 2019.
- 2.4 The High Voltage Direct Current (HVDC) code is established by Commission Regulation (EU) 2016/1447 and will become retained direct EU law in full as it has a compliance date of 26 August 2019.

Explanations

What did any relevant EU law do before exit day?

- 2.5 The Codes set out technical and functional requirements that different types of generation and infrastructure connecting to the electricity network (both transmission and distribution) will need to meet, as well as responsibilities on electricity Transmission System Operators and Distribution Network Operators.
- 2.6 The Codes came into force in Spring 2016. However, other than to a very limited extent, they will only apply from 27 April, 17 August and 26 August 2019.

Why is it being changed?

- 2.7 Anticipating an exit day of 29 March 2019, the Codes are revoked by the Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019 (the ‘revoking SI’), to the extent that they would be retained EU law. Had exit day fallen on 29 March, the revoking SI would only have revoked the few applicable parts of the Codes – which on their own would have been inoperable. The Government’s intention was to use powers conferred on the Secretary of State by the Electricity and Gas (Powers to Make Subordinate Legislation) (EU Exit) (Amendment) Regulations 2018 to mirror the Codes in domestic law, following EU exit, and ensure a complete set of the Codes regulations applied in domestic law.
- 2.8 With an Article 50 extension to 31 October 2019, the Codes will now apply in full at the time of exit day and would become retained EU law, therefore. The revocation provisions relating to the Codes in the revoking SI will accordingly not only be unnecessary but result in the revocation of the entirety of the Code. This instrument prevents that revocation, allowing the Codes to form part of the body of retained EU law (and therefore domestic law, as intended).

What will it now do?

- 2.9 This instrument will ensure that the Codes are able to form part of retained EU law now that Exit day has been moved to 31 October 2019.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument was presented to the Sifting Committees for consideration on 4th June 2019. On 18th June 2019 the Sifting Committees agreed with the Government that this instrument does not require a debate in parliament. The instrument will, therefore, remain subject to the negative resolution 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 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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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

Withdrawal Act will incorporate directly applicable EU legislation and EU derived legislation as it applied immediately before exit day.

- 6.2 This instrument is one of a series that will ensure that domestic and retained EU law governing the UK's electricity and gas markets will function effectively in the event the UK leaves the European Union without a deal.
- 6.3 On the 14 March 2019 Parliament voted to request an extension to the Article 50 period which was implemented, initially to 12 April 2019, and then to 31 October 2019. An extension changes the scope of the legislation which will be brought into domestic law as retained EU law under the Withdrawal Act and will see legislation, previously intended to be revoked as inoperable, be eligible for amendment.

7. Policy background

What is being done and why?

- 7.1 Following an extension to the Article 50 period, exit day will fall after the point at which the Codes apply in full. In light of this, this instrument prevents the revocation of the Codes.
- 7.2 In common with other EU Network Codes, the Codes are an EU Regulation and, pre-exit, will be directly applicable to the UK without having to be transposed into domestic law. The UK already has existing national technical codes and standards (known as 'Industry Codes') for parties that want to connect to the electricity transmission system. The process of ensuring that the Industry Codes reflect the Codes has been largely completed, as have preparations by the GB and NI energy sectors to comply with it.
- 7.3 There is widespread industry support for the maintenance of these codes. Now that they will apply (in their entirety) before exit, unnecessarily revoking the codes is likely to undermine industry confidence and cause uncertainty. Industry parties, including generators, grid operators and manufacturers have made it clear that they value certainty. The Government would be unable to legislate via the Electricity and Gas (Powers to Make Subordinate Legislation) (EU Exit) (Amendment) Regulations 2018 to reintroduce the codes, as had been the intention with a no deal EU Exit on 29 March 2019 because these powers only extend to those codes which did not apply in EU law prior to exit day. Therefore, the only route to restoring the codes would be primary legislation and so uncertainty for the industry could be long-standing in these circumstances.
- 7.4 This uncertainty will have particular significance in the context of the all-island Single Electricity Market (SEM) shared between Northern Ireland and Ireland, the Single Electricity Market on the island of Ireland is based on regulatory alignment between Northern Ireland and Ireland. This alignment would be undermined by an open-ended absence of these Codes from the statute books in Northern Ireland.
- 7.5 This 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 devolved government 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, UK Government Ministers 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 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 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. 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 impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

13. Regulating small business

13.1 This instrument does not apply to activities that are undertaken by 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 European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Miles French at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 6525 or email: Miles.French@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Buttery, Deputy Director for Energy Security, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State, the Rt Hon Lord Henley 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 Parliamentary Under Secretary of State, the Rt Hon Lord Henley has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 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 effect of this instrument is limited to a single amendment which prevents the unnecessary revocation of the legislation in question in the event exit day is delayed to 31 October 2019. In those circumstances, the amendment ensures that the said legislation forms part of retained EU law.

1.3 Furthermore, the instrument does not:

- Provide for any function of an EU entity or public authority in a Member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom,
- Relate to a fee in respect of a function exercisable by a public authority in the United Kingdom,
- Create, or widen the scope of, a criminal offence, or
- Create or amend a power to legislate, or
- Contain any other provision which falls within the scope of Schedule 7, Paragraph 1(1) of the Act.

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State, the Rt Hon Lord Henley has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 do no more than is appropriate”.

2.2 This is the case because:

- The instrument makes only those changes necessary to ensure that the legislation in question forms part of retained EU law and is incorporated into domestic legislation.

3. Good reasons

3.1 The Parliamentary Under Secretary of State, the Rt Hon Lord Henley 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 In the event of exit on 31 October 2019, those reasons are:

- In the absence of this instrument, the legislation in question will be unnecessarily revoked in its entirety.
- The prevention of such revocation will allow the legislation to form part of the body of retained EU law and preserve industry confidence and regulatory certainty.

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

4. Equalities

4.1 The Parliamentary Under Secretary of State, the Rt Hon Lord Henley has made the following statements:

“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 Parliamentary Under Secretary of State, the Rt Hon Lord Henley has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Parliamentary Under Secretary of State, the Rt Hon Lord Henley 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.”

4.3 This instrument has no, or no significant, differential impact on those with protected characteristics 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.