

EXPLANATORY MEMORANDUM TO
THE RENEWABLES OBLIGATION (AMENDMENT) (EU EXIT) REGULATIONS
2019

2019 No. 35

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 is being made under the European Union (Withdrawal) Act 2018 in order to make minor and technical changes to UK secondary legislation relating to the Renewables Obligation (RO) scheme to correct deficiencies arising from the withdrawal of the UK from the European Union.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The RO scheme incentivises the deployment of large-scale renewable electricity generation in the UK. It imposes strict sustainability requirements on bioliquid fuels. These fuels are used solely for the generation of electricity and/or heat. They include crop-derived bioliquids such as biodiesel made from oilseed rape.
- 2.3 In addition, in the case of bioliquids derived from crops grown in the EU, the RO scheme requires that support for renewable electricity generated using that fuel is given only where the crops were grown in accordance with certain requirements and standards referred to in Regulation (EU) No. 1306/2013 on the financing, management and monitoring of the common agricultural policy (“the 2013 EU Regulation”).
- 2.4 The RO legislation for England and Wales and for Scotland also refers to decisions made by the European Commission and the Court of Justice of the European Union in connection with the interaction between the RO scheme and investment contracts under the Final Investment Decision Enabling for Renewables programme.

Why is it being changed?

- 2.5 If the current RO legislation was left unchanged, the UK's withdrawal from the European Union would mean that support under the RO scheme could be given for renewable electricity generated from bioliquids derived from UK-grown crops that were not grown in accordance with the requirements and standards referred to in the 2013 EU Regulation. This is because the wording in the current RO legislation applies this requirement only to crops “cultivated in the EU”.
- 2.6 Following the UK's withdrawal from the European Union, decisions of the European Commission and the Court of Justice of the European Union in relation to investment

contracts will no longer be relevant in relation to the UK, and this should be made clear in RO legislation for England and Wales and for Scotland.

What will it now do?

- 2.7 This instrument amends the RO legislation to ensure that the current requirements referred to in the 2013 EU Regulation for supporting renewable electricity generated from bioliquid fuels derived from crops grown in the UK are maintained.
- 2.8 On exit from the European Union, the 2013 EU Regulation will form part of domestic UK law under section 3 of the European Union (Withdrawal) Act 2018. This domesticated version will apply in relation to UK-grown crops. The 2013 EU Regulation itself will continue to apply where the crops are grown in the EU.
- 2.9 This instrument also removes references in RO legislation for England and Wales and for Scotland to decisions of the European Commission and the Court of Justice of the European Union in relation to investment contracts.

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 on 27 November 2018 for sifting under the European Union (Withdrawal) Act 2018. It was considered by the European Statutory Instruments Committee on 11 December 2018, which recommended it for the negative procedure. It was considered by the Secondary Legislation Scrutiny Committee (Sub-Committee B) on 11 December 2018, and no recommendation to upgrade to the affirmative procedure was made.

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 The RO is governed by separate legislation for each of the three jurisdictions of the UK, which together create a UK-wide RO scheme. The relevant Orders are the Renewables Obligation Order 2015 (S.I. 2015/1947) (for England and Wales), the Renewables Obligation (Scotland) Order 2009 (S.S.I. 2009/140) and the Renewables Obligation Order (Northern Ireland) 2009 (S.R. 2009/154) (together, the “RO Orders”).

- 6.2 The requirement that support may not be given for renewable electricity generated by bioliquids derived from crops grown in the EU unless the crops were grown in accordance with certain requirements and standards referred to in the 2013 EU Regulation, is contained in Article 17(6) of Directive 2009/28/EC of the European Parliament and of the Council¹. This requirement is transposed by article 62 of the Renewables Obligation Order 2015, article 22B of the Renewables Obligation (Scotland) Order 2009 and article 21B of the Renewables Obligation Order (Northern Ireland) 2009.

7. Policy background

What is being done and why?

- 7.1 This instrument corrects deficiencies in the RO Orders as a result of the UK's withdrawal from the European Union. It does not alter the operation of the RO scheme and it does not impose any new liabilities or obligations on anyone.
- 7.2 The RO scheme has been the main financial mechanism to incentivise large-scale renewable electricity generation in the UK since 2002. It is now closed to most new projects. Existing projects will continue to receive support for 20 years or until the final closure of the scheme on 31 March 2037, whichever is the earlier.
- 7.3 The RO scheme supports a range of technologies, including wind, solar, hydro, wave, tidal, landfill gas, sewage gas and biomass. Biomass can be used in its liquid, solid or gaseous forms. Since 2011, strict sustainability criteria have been in place under the RO to ensure biomass delivers real carbon savings and is sourced sustainably.
- 7.4 In addition, in the case of bioliquids derived from crops grown in the EU, the RO scheme requires that support for renewable electricity generated using that fuel is given only where the crops were grown in accordance with the European Union's Standards for good agricultural and environmental condition of land. These standards are set out in the 2013 EU Regulation, which will form part of domestic law on and after exit day in accordance with section 3 of the European Union (Withdrawal) Act 2018.
- 7.5 The policy intent is that after the UK's withdrawal from the European Union, the current requirements will be maintained unchanged. But if the current RO Orders are unamended by exit day, the provisions would not prevent support being given to electricity generated from bioliquids derived from UK-grown crops that were not grown in accordance with the standards. This is because the wording in the current legislation applies the provision to crops “cultivated in the EU”. The amended legislation will change this to “cultivated in the United Kingdom or the EU”.
- 7.6 The RO legislation for England and Wales and for Scotland also refers to decisions of the European Commission and the Court of Justice of the European Union in connection with the interaction between the RO and investment contracts under the Final Investment Decision Enabling for Renewables programme. These contracts

¹ Article 17(6) of Directive 2009/28/EC refers to provisions of Council Regulation (EC) No 73/2009 of 19 January 2009, which was repealed by Regulation (EU) 2013/1307 of the European Parliament and of the Council. Annex XI (correlation table) of that Regulation provides for references to provisions of Council Regulation (EC) No 73/2009 in Article 17(6) to be construed as references to provisions of Regulation (EU) 2013/1306.

were an early form of Contracts for Difference to enable developers to take final investment decisions ahead of the full Contracts for Difference scheme² being in place. Generating stations that entered into an investment contract are not eligible for the RO. However, this restriction does not apply where the investment contract has been terminated by reason of a delay in the approval of an investment contract by the European Commission, the Commission's refusal to approve the contract or the Commission's addition of conditions to its approval; or (in the case of the RO legislation for England and Wales) a judgment of the Court of Justice of the European Union that invalidates an approval of the investment contract by the European Commission. Decisions of the European Commission and the Court of Justice of the European Union will no longer be relevant following the UK's withdrawal from the European Union. As all investment contracts have been approved by the European Commission, and the period for challenge for those approvals have expired, no transitional or replacement provision is necessary.

- 7.7 This instrument applies to a policy area 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 in the absence of a Northern Ireland Executive. With exit day less than three months 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 This instrument comprises the eighth amendment made to the Renewables Obligation Order 2015, the fourteenth amendment to the Renewables Obligation (Scotland) Order 2009, and the thirteenth amendment to the Renewables Obligation Order

² The RO scheme is being replaced by the Contracts for Difference support scheme. A Contract for Difference (CfD) is a private law contract between a low carbon electricity generator and the Low Carbon Contracts Company, a government-owned company. A generator with a CfD is paid the difference between the 'strike price' – a price for electricity reflecting the cost of investing in a particular low carbon technology – and the 'reference price' – a measure of the average market price for electricity in the GB market. It gives greater certainty and stability of revenues to electricity generators by reducing their exposure to volatile wholesale prices, whilst protecting consumers from paying for higher support costs when electricity prices are high. Contracts are awarded in a series of competitive auctions, with the lowest price bids being successful, which drives efficiency and cost reduction.

(Northern Ireland) 2009. Further consolidation of each Order is not proposed at this time.

10. Consultation outcome

- 10.1 No public consultation was undertaken on these minor amendments. The changes ensure the current legislative and policy framework remains unchanged by the withdrawal of the UK from the European Union.
- 10.2 The devolved administrations in Scotland and Northern Ireland have been consulted about the amendments to the Renewables Obligation (Scotland) Order 2009 and the Renewables Obligation Order (Northern Ireland) 2009 respectively. In the absence of an Executive, the Permanent Secretary of the relevant Northern Ireland Department has acknowledged that the UK Government will make the necessary changes to the Northern Ireland legislation on its behalf. The Scottish Government has confirmed that the Scottish Parliament has given its approval to the UK Government making the changes to the Scottish legislation on its behalf. The RO in Wales is not a devolved matter but the Welsh Government has been consulted and is content.

11. Guidance

- 11.1 No guidance is necessary for this instrument as it maintains the current legislative and policy framework. The scheme's administrator (the Gas and Electricity Markets Authority) has published guidance on the current RO scheme.

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 because no significant impacts on business, charities or voluntary bodies or the public sector are foreseen as it maintains the current legislative and policy framework.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, but these activities will not be affected by the legislation as it maintains the current legislative and policy framework.

14. Monitoring & review

- 14.1 This instrument makes minor, one-off amendments to the RO Orders to maintain the current legislative and policy framework. Accordingly, the amendments do not require monitoring.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Julie Whiting or Katherine Donne at the Department for Business, Energy and Industrial Strategy, Telephone: 0300 068 6194/6182 or email: Julie.whiting@beis.gov.uk or Katherine.donne@beis.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Vicky Dawe, Deputy Director for Renewable Electricity Support Schemes, 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 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
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 offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a 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 Renewables Obligation (Amendment) (EU Exit) 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, as explained in section 7 of the main body of this Explanatory Memorandum, this instrument only corrects deficiencies arising from the UK's withdrawal from the European Union. In doing so, it ensures that the current requirements for supporting renewable electricity generated from bioliquids derived from crops grown in the UK will continue to apply unchanged after exit from the European Union and removes references to decisions of the European Commission and the Court of Justice of the European Union that will no longer be relevant. It does not introduce new policy or change the operation of the RO scheme and it does not impose any new liabilities or obligations on anyone.

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 Renewables Obligation (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case because, as explained in section 7 of the main body of this Explanatory Memorandum, this instrument only corrects deficiencies arising from the UK's withdrawal from the European Union. It does not introduce new policy or change the operation of the RO scheme and it does not impose any new liabilities or obligations on anyone.

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 because, as explained in section 7 of the main body of this Explanatory Memorandum, this instrument only corrects deficiencies arising from the UK's withdrawal from the European Union. It does not introduce new policy or change the operation of the RO scheme and it does not impose any new liabilities or obligations on anyone.

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 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, 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.”

4.3 The Minister of State for Energy and Clean Growth, the Rt Hon Claire Perry MP, has made the following statement regarding Northern Ireland and the use of legislative powers in the European Union (Withdrawal) Act 2018:

“The Equality Act 2010 does not extend to Northern Ireland but as the draft instrument does extend to Northern Ireland, I, Claire Perry, have given equivalent due regard to the need to eliminate discrimination, harassment, and victimisation in relation to Northern Ireland.”

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.