

EXPLANATORY MEMORANDUM TO
THE ELECTRICITY AND GAS (INTERNAL MARKETS) (NO. 2) REGULATIONS
2020

2020 No. 1401

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.

2. Purpose of the instrument

- 2.1 This instrument modifies electricity licence conditions in order to implement and address matters arising out of, or related to, the entry into force of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity (recast) (the “Electricity Directive”). It also modifies gas licence conditions in a limited way to ensure that the relevant aspects of the billing regime are consistent across electricity and gas.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 England and Wales and Scotland.
4.2 The territorial application of this instrument is England and Wales and Scotland.

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 This instrument modifies the standard conditions of licences granted under the Electricity Act 1989 (c. 29) in order to implement, and address matters arising out of or related to, the entry into force of the Electricity Directive. It also modifies the standard conditions of licences granted under the Gas Act 1986 (c. 44) in a limited way to ensure consistency in relation to certain provisions concerning billing.
6.2 The Electricity Directive is part of a package of European energy measures collectively referred to as the “Clean Energy Package”.

- 6.3 The Clean Energy Package comprises Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (recast); Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast); Directive 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) and five other dossiers⁽¹⁾.

7. Policy background

What is being done and why?

- 7.1 The instrument modifies GB electricity industry licence conditions to implement the Electricity Directive, which was adopted in June 2019 as part of the EU’s Clean Energy package of legislative measures. It also modifies GB gas industry licence conditions to a limited extent to ensure consistency in relation to bills. The Clean Energy Package is a comprehensive update of the EU energy policy framework to facilitate the transition from fossil fuels towards sustainable energy and to help meet the EU’s Paris Agreement commitments for reducing greenhouse gas emissions.
- 7.2 The Electricity Directive, which has a transposition deadline of 31 December 2020, establishes rules for generation, transmission, distribution and supply of electricity, energy storage, demand side response and consumer protection.
- 7.3 The instrument modifies electricity transmission, distribution, supply and interconnector licences, together with gas supply licences.
- 7.4 The instrument introduces new requirements for electricity suppliers regarding billing information, supply contracts, including where energy may be bundled with other products and services, and customer service systems and processes for domestic customers. This includes domestic customers’ ability to access more accurate billing information where they have a meter and where access to remote readings for the licensee is enabled. This also includes restricting suppliers from charging domestic customers for using available payment options, particularly where these may be offered as an alternative to disconnection from supply.
- 7.5 The instrument amends gas supply licences to reflect amendments to electricity supply licences and to maintain consistency for the purposes of dual fuel supply contracts for domestic customers.
- 7.6 The instrument introduces new conditions to distribution licences to formalise existing processes for flexibility procurement, setting out requirements to ensure that processes are transparent, non-discriminatory and market-based. It introduces a reporting and approval process overseen by the Office of Gas and Electricity Markets (“Ofgem”).
- 7.7 The instrument introduces a new condition to distribution licences to require distribution network operators to produce Network Development Plans for continuous networks with 100,000 or more customers. The plans will cover a 5-10 year period and are in line with related distribution network operators’ activities on scenario planning and network development.
- 7.8 The instrument amends transmission, interconnector and distribution licence conditions for energy storage placing a prohibition, subject to a limited exception, on

⁽¹⁾ Directive (EU) 2018/844 (energy efficiency in buildings); Regulation (EU) 2018/1999 (governance for the energy union); Directive (EU) 2018/2001 (renewable energy); Directive (EU) 2018/2002 (energy efficiency); and Regulation (EU) 2019/941 (risk-preparedness).

Distribution Network and Transmission System Operators from owning storage facilities to ensure energy storage services are market-based and competitive.

- 7.9 The instrument will introduce new conditions to prevent Distribution Network Operators from owning and operating Electric Vehicle charging points. The new conditions provide an exemption from the requirement if certain conditions are satisfied.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 Not relevant.

10. Consultation outcome

- 10.1 A formal consultation exercise has not been undertaken for this instrument as alternative approaches for implementation have not been identified and significant impacts are not expected that would justify formal consultation. Significant technical and factual input relevant to this instrument has been provided by Ofgem, as the specialist regulator. Engagement has taken place with industry stakeholders.

11. Guidance

- 11.1 Guidance has not been produced for this instrument.

12. Impact

- 12.1 There is no significant impact on business, or on the public sector.
- 12.2 There is no, or no significant, impact on charities or voluntary bodies.
- 12.3 While costs and benefits have been assessed, a full impact assessment has not been prepared for these Regulations because the impacts are below the threshold required to carry out a full impact assessment.

13. Regulating small business

- 13.1 There is no significant impact on activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 This instrument will not be reviewed.
- 14.2 The instrument does not include a statutory review clause and in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Kwasi Kwarteng has made the following statement:
- 14.3 “A review of these modifications would be disproportionate when taking into account the economic impact of the relevant activity. A review would also be undesirable given the need for certainty for industry. Ofgem are responsible for keeping their licence conditions under review and have the power in legislation to amend them where appropriate”.

15. Contact

- 15.1 Sue Harrison at the Department for Business, Energy and Industrial Strategy, Telephone 0300 068 5366 or email: sue.harrison@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Marina Skrinar, Deputy Director for Climate and Energy; Trade and Europe, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Kwasi Kwarteng at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.