

EXPLANATORY MEMORANDUM TO

THE GAS ACT 1986 AND ELECTRICITY ACT 1989 (ELECTRONIC COMMUNICATIONS) ORDER 2021

2021 No. 789

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 amends the Gas Act 1986 and the Electricity Act 1989 to enable the electronic service of notices and documents by the Office of Gas and Electricity Markets (“Ofgem”), acting on behalf of the Gas and Electricity Markets Authority, and by the Secretary of State.

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 extent of this instrument is the United Kingdom, in relation to Article 1, as the powers under which this instrument is made extend to the entire United Kingdom (see section 16 of the Electronic Communications Act 2000). Articles 2 and 3 extend to England and Wales and Scotland by virtue of Article 1(3) of the instrument as that is the extent of the provisions amended by those Articles.
- 4.2 The territorial application of this instrument is England and Wales and Scotland.

5. European Convention on Human Rights

- 5.1 The Minister for Business, Energy and Clean Growth, Anne-Marie Trevelyan, has made the following statement regarding Human Rights:

“In my view the provisions of the Gas Act 1986 and Electricity Act 1989 (Electronic Communications) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made under sections 8 and 9 of the Electronic Communications Act 2000 to enable the electronic service of notices and documents by Ofgem (the energy market regulator in Great Britain) and the Secretary of State under the Electricity Act

1989 and Part 1 of the Gas Act 1986. The Gas Act 1986's service provisions also apply to documents authorised or required to be served on or given to any person by virtue of any provision of the Utilities Act 2000.

7. Policy background

What is being done and why?

- 7.1 Section 46 of the Gas Act 1986 and section 109 of the Electricity Act 1989 currently allow for notices and documents to be served (or, in the case of the Gas Act 1986, given or delivered) by post or personal delivery only.
- 7.2 This instrument will amend the legislation to allow Ofgem (acting on behalf of the Gas and Electricity Markets Authority) and the Secretary of State to serve or give notices and documents by electronic means. At present, the process of serving notices and documents through physical copies is expensive, time-consuming, and environmentally costly. During the COVID-19 period (with the increase in remote working), this process has also placed additional burdens on the regulator and on companies in dealing with notices sent to their registered offices. To minimise the risk of physical copies of notices being missed by companies during the COVID-19 period, Ofgem temporarily began sending email copies of notices (in addition to physical copies) to stakeholders who had agreed in advance to accept electronic communications.
- 7.3 As businesses move to more “hybrid working”, the requirement for Ofgem to deliver notices and documents by post or personal delivery looks ever more cumbersome and costly. This instrument will allow Ofgem to be fit-for-future in delivering their regulatory responsibilities in an efficient way with future uncertainties about Covid-19 restrictions and increased remote working practices.
- 7.4 The instrument provides for a document sent by electronic means to be treated as served on the next working day after the day on which it is sent. This means that if a document or notice were to be sent on a Friday, the date of deemed service would normally be on the Monday (subject to bank holidays etc.).
- 7.5 The instrument only enables electronic service in cases where the recipient has indicated, to Ofgem or the Secretary of State, their willingness to receive documents electronically. There will thus be no adverse impacts on any person. The recipient may decide to withdraw their indication to receive documents electronically by giving a further indication to Ofgem or the Secretary of State, which takes effect on the fifth working day after the day on which it is received.
- 7.6 The instrument enables electronic service by the Secretary of State as well as by Ofgem. However, the Secretary of State's functions under the Acts do not require frequent service of documents and so this memorandum is focused primarily on the expected impacts on Ofgem.

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 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 Ofgem's views have been taken into consideration in development of the instrument.
- 10.2 Ofgem invited stakeholders to comment on the proposal to enable electronic service of documents to gauge informal views from the industry. They received comments from retail suppliers, and network and generator companies, who were largely very supportive of the proposal, with many stating that they preferred electronic communications. Ofgem also received some comments from stakeholders about the need to ensure Ofgem hold the correct electronic addresses for stakeholders. Ofgem have since reviewed their management of the electronic distribution list internally and will be asking companies to confirm their correct electronic address as they indicate their willingness to receive documents electronically.

11. Guidance

- 11.1 No guidance is to be issued in relation to 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 While costs and benefits have been assessed, a full impact assessment has not been prepared for this instrument because the impacts are below the threshold for producing such an assessment.
- 12.4 Ofgem has estimated the current monetary costs of serving notices and documents by post or personal delivery to be at least £16,000 per annum. Where businesses choose to receive electronic service of such notices or documents, there will be a cost saving both to the regulator, and to businesses which currently incur costs where they are required to scan and distribute copies or retrieve documents physically from offices.

13. Regulating small business

- 13.1 The legislation applies in relation to activities that are undertaken by small businesses. However, any impact on those businesses would be to reduce the burden on them, by allowing them to receive notices and documents electronically where more convenient.

14. Monitoring & review

- 14.1 The Minister for Business, Energy and Clean Growth, Anne-Marie Trevelyan, has made the following statement regarding a review provision:

“In my view it is not appropriate to make provision for review of the regulatory provision amended by this instrument, as a review would be disproportionate taking into account the economic impact of the provision made. The use of electronic communications enabled by the instrument is additional to existing options for service and requires businesses to indicate their willingness to receive documents electronically. It does not give rise to a significant annualised net impact on businesses.”

15. Contact

- 15.1 Amarinda Bazeley at the Department for Business, Energy and Industrial Strategy (email: Amarinda.Bazeley@beis.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Jane Walker, Deputy Director for Energy Markets and Affordability at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister for Business, Energy and Clean Growth, Anne-Marie Trevelyan, at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.