EXPLANATORY MEMORANDUM TO

THE CLIMATE AND ENERGY (REVOCATION) (EU EXIT) REGULATIONS 2021

2021 No. 519

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 Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to revoke retained direct EU legislation that has no practical application in relation to the United Kingdom. This instrument covers climate and energy related legislation.

Explanations

What did any relevant EU law do before exit day?

2.2 Council Decision 2015/1339 sets out the conclusion on behalf of the European Union, of the Doha Amendment to the Kyoto Protocol. The Kyoto Protocol is a protocol to the United Nations Framework Convention on Climate Change, which is an international climate change treaty. The Kyoto Protocol sets out carbon emission reduction obligations for certain countries, including the EU Member States, Iceland and the UK.

2.3 The EU Effort Sharing Decision ("ESD") (406/2009), The EU Land Use Land Use Change and Forestry ("LULUCF") Decision (529/2013), The Mechanism for Monitoring and Reporting Regulation ("MMR") (525/2013) and their associated implementing regulations/decisions (666/2014/EU, 749/2014/EU, 2013/162/EU, 2016/2132/EU, 2017/1471/EU, 2017/2377/EU, 2018/1855/EU, 2019/2005/EU, 2020/1834/EU) set a framework for Member States to meet the EU wide 2020 emissions reduction commitment under the Kyoto Protocol. This includes setting individual emissions targets for Member States and greenhouse gas accounting and reporting obligations.

2.4 The Effort Sharing Regulation (2018/842) and the LULUCF Regulation (2018/841) are part of the EU wide climate and energy framework created in part to meet the EU wide 2021-2030 emissions reduction commitment under the Paris Agreement. The regulations set individual emissions reduction targets for Member States and greenhouse gas accounting and reporting obligations.

2.5 The Governance Regulation (2018/1999) and its associated implementing regulation ((EU) 2020/1294) are also part of the EU wide 2021-2030 climate and energy framework, setting greenhouse gas and energy reporting obligations. It also requires Member States to determine their own contributions to the EU wide renewable and energy efficiency targets.

2.6 Decision (EU) 2017/684 is an information exchange mechanism which helps ensure energy agreements Member States negotiate with third countries or international organisations are compatible with EU law. It includes a requirement that Member States keep the EU Commission informed about agreements they are negotiating and to consider the EU Commission's views on a draft agreement's compatibility with EU law before entering into it.

Why is it being changed?

2.7 The instrument will revoke the instruments of retained direct EU legislation identified above, relating to the EU energy and climate framework, because they are only relevant to EU Member States and therefore no longer have any practical application in relation to the UK.

2.8 Most of the retained direct EU legislation referred to in section 2.2 and 2.3 cover pre-2020 commitments only. A few articles relating to finalising pre-2020 reporting and accounting obligations in the MMR and ESD apply beyond 2020, and the UK agreed in the Withdrawal Agreement with the EU that those provisions would continue to apply in relation to 2019/20 emissions. Revoking the MMR and ESD on our domestic statute book does not impact on the UK's commitment under the Withdrawal Agreement to comply with these provisions, as these provisions continue to take effect in EU and international law.

2.9 The retained direct EU legislation referred to in section 2.4 and 2.5 have no practical application on the UK as they relate to the emissions reduction targets, reporting obligations and energy obligations that apply to Member States. As the UK is no longer a Member State it is not necessary or appropriate for the UK to participate in an EU framework or continue reporting to the Commission (see section 7.1 for more detail). In any case, the UK has its own domestic climate change legal framework in the form of the Climate Change Act (2008).

2.10 As the UK is no longer a Member State it is not necessary or appropriate to refer international energy agreements it negotiates to the EU Commission for review under the retained direct EU legislation referred to in section 2.6.

What will it now do?

2.11 The relevant retained direct EU legislation will be revoked. The UK will continue to meet its domestic and international climate obligations.

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 23rd March 2021 for sifting by the relevant House Committees pursuant to the European Union (Withdrawal) Act 2018. The Sifting Committees agreed with the government that this statutory instrument should follow 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 whole of 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 This instrument revokes EU climate and energy legislation retained under section 3(1) of the European Union (Withdrawal) Act 2018, using the power set out in section 8(1) of that Act. This retained direct EU legislation places obligations on Member States, setting a legislative framework for distributing effort towards an EU-wide target between Member States, as well as imposing reporting obligations between Member States and the EU Commission. As the UK is no longer a Member State the legislation has no practical application in the UK, and as such is 'deficient' within the meaning of section 8(2)(a) of the Act.

6.2 As the UK is no longer a Member State, Decision (EU) 2017/684 also has no practical application, so is also 'deficient' under section 8(2)(a) of the Act. It is not necessary or appropriate to refer international energy agreements the UK negotiates to the EU Commission for review.

7. Policy background

What is being done and why?

7.1 EU climate and energy legislation imposes EU-wide emission reduction targets on Member States and contains obligations for Member States to report greenhouse gas emissions and energy obligations to the EU. These pieces of EU legislation serve the purpose of facilitating cooperation between Member States to meet overall EU-wide emissions reduction and energy obligations. As such the individual targets are only part of the legislation; the majority of the legislation is dedicated to reporting requirements and setting out how Member States can make use of intra-EU flexibilities to meet their individual and EU-level targets.

7.2 At the end of the Transition Period, the obligations contained in the retained direct EU legislation ceased to have any practical application in relation to the UK, because – to the extent that they continue to apply beyond 2020 – they are applicable to, and impose obligation on, Member States only. As the UK is no longer a Member State it is not necessary or appropriate for the UK to participate in an EU framework or continue reporting to the EU Commission, except to the extent it has specifically agreed to do so as, for example, with the 2019/2020 accounting and reporting obligations under the ESD/MMR. In revoking this legislation the UK is not reducing or weakening its climate commitments, as it has its own ambitious framework of climate protection:

(i) the UK has robust domestic legislation on greenhouse gas emissions reductions (the Climate Change Act 2008);

(ii) the UK will remain a Party in its own right to the UNFCCC, the Kyoto Protocol and the Paris Agreement, and will continue to be bound by international greenhouse gas emissions reduction and reporting commitments.

7.3 Under the Withdrawal Agreement with the EU, the UK agreed that specific reporting and accounting provisions of the MMR and ESD will continue to apply to the UK in relation to greenhouse gas emissions in 2019 and 2020. Revoking the MMR and ESD from the UK's domestic statute book does not impact on the UK's commitment under the Withdrawal Agreement to comply with these provisions, which continues to take effect in EU and international law.

7.4 The instrument also revokes retained direct EU legislation related to intergovernmental energy agreements between Member States and third countries or international organisations (Decision (EU) 2017/684). This legislation requires the Member State negotiating such an agreement to notify the EU Commission and to consider the EU Commission's views on a draft agreement's compatibility with EU law before entering into it. This is no longer appropriate now the UK is not a Member State.

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(1) 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 There are no plans for consolidation.

10. Consultation outcome

10.1 No public consultation has been undertaken for this instrument, as the revocation of this retained direct EU legislation will not change existing UK policy or affect businesses.

11. Guidance

11.1 Guidance is not 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. UK Government will continue to meet its domestic and international climate obligations.

12.3 An Impact Assessment has not been prepared for this instrument because the obligations set out in the relevant EU laws only place obligations on UK Government. Therefore, the legislation does not apply to activities undertaken by businesses.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Isabel Sloman at BEIS, Telephone: 02072154237 or email: Isabel.Sloman@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rachael Drake, Deputy Director for International Climate Strategy at BEIS can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon. Anne-Marie Trevelyan MP, the Minister of State for Business, Energy and Clean Growth at BEIS 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 14, 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 15, 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 Business, Energy and Clean Growth, Rt Honourable Anne-Marie Trevelyan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Climate and Energy (Revocation) (EU Exit) Regulations 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 instrument operates to correct a deficiency in retained EU law. Section 2 and 7 of this Explanatory Memorandum explain this in further detail.

2. Appropriateness statement

2.1 The Minister of State for Business, Energy and Clean Growth, Rt Honourable Anne-Marie Trevelyan has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Climate and Energy (Revocation) (EU Exit) Regulations do no more than is appropriate".

2.2 This is the case because the instrument revokes specific instruments of retained EU energy and climate law that have no practical application in relation to the United Kingdom. Sections 2 and 7 of this Explanatory Memorandum explain this in further detail.

3. Good reasons

3.1 The Minister of State for Business, Energy and Clean Growth, Rt Honourable Anne-Marie Trevelyan 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: The instrument revokes the EU energy and climate regulations that have no practical application in relation to the United Kingdom. Sections 2 and 7 of this Explanatory Memorandum explain this in further detail.

4. Equalities

4.1 The Minister of State for Business, Energy and Clean Growth, Rt Honourable Anne-Marie Trevelyan 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 Business, Energy and Clean Growth, Rt Honourable Anne-Marie Trevelyan has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Anne-Marie Trevelyan MP, 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.