EXPLANATORY MEMORANDUM TO

THE COMBINED HEAT AND POWER QUALITY ASSURANCE REGULATIONS 2016

2016 No. 1108

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 memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The energy efficiency requirements that underpin the Combined Heat and Power Quality Assurance (CHPQA) Programme are set by the European Union and were revised at the end of 2015. The revised energy efficiency requirements have been incorporated into the CHPQA Standard and Guidance Note 44, resulting in new issues of the CHPQA Standard and Guidance Note 44 (both now Issue 6). This instrument amends eight statutory instruments under which combined heat and power (CHP) plants may receive certain policy benefits, by updating relevant references to the CHPQA Standard and Guidance Note 44 to reflect the latest versions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument is made under section 2(2) of the European Communities Act 1972 ('the ECA') rather than specific legislative powers under which the changes might otherwise be made because:

- it would be inefficient to use multiple statutory instruments with different parliamentary procedures to make the changes, in particular given the minor, technical and considered to be non-contentious nature of the changes being made;
- by its nature, Combined Heat and Power straddles different government incentive schemes, such as the Renewable Heat Incentive Scheme and Renewables Obligations. Plants are also located across the UK. Accordingly, it is logical to make the required changes simultaneously and in one instrument to make it easier for affected stakeholders to understand fully how the changes will affect them and to ensure they occur simultaneously; and
- in respect of the Renewables Obligation, using section 2(2) allows the Secretary of State to efficiently implement changes on behalf and with the agreement of the Scottish and Northern Irish Devolved Administrations, who may otherwise find it difficult to implement the changes within a reasonable time under separate legislative procedures, and would otherwise require three separate instruments (for England & Wales, Scotland and Northern Ireland).

3.2 Legislation made under section 2(2) may adopt either the draft affirmative or the negative resolution procedure. The negative resolution procedure has been adopted for this instrument taking into account the guidance of past JCSI/Joint Committees on Delegated Legislation reports. It is noted that the changes will not increase administrative burden on plants (and in fact will make it easier for some plants first certified from 2016 on-wards to meet the Standard). Moreover, it will affect only a small population in limited ways, as the CHPQA Programme is a voluntary scheme and the changes are only relevant to CHP plants first certified from 2016 onwards who want to receive certain policy benefits. Given the minor, technical and non-contentious nature of the changes to the Standard and associated legislative amendments, it is considered legitimate and preferable in these circumstances to use the negative procedure.

Other matters of interest to the House of Commons

3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Secretary of State makes this instrument in exercise of powers conferred by section 2(2)(a) of the European Communities Act 1972 for the purpose of enabling the implementation of an EU obligation of the United Kingdom.

4.2 Article 14(11) of Directive 2012/27/EU on Energy Efficiency (the 'Energy Efficiency Directive') requires that Member States ensure support for cogeneration (also known as Combined Heat and Power) is subject to the electricity produced originating from high-efficiency cogeneration and the waste heat being efficiently used to achieve primary energy savings.

4.3 Annex II of the Energy Efficiency Directive contains a methodology for determining the efficiency of the cogeneration process and the calculation of primary energy savings. This determination is made, in part, by reference to 'efficiency reference values' for the separate production of heat and electricity.

4.4 The second sub-paragraph of Article 14(10) of the Energy Efficiency Directive empowers the European Commission to review, by means of delegated acts, the efficiency reference values laid down in Implementing Decision 2011/877/EU, which applied from 2011-2015. Commission Delegated Regulation (EU) 2015/2402 (the 'Delegated Regulation') was made using that power and provided new efficiency reference values applicable from 1st January 2016 onwards.

4.5 The Combined Heat and Power Quality Assurance ('CHPQA') scheme, through the CHPQA Standard (and Guidance Notes, as applicable) aims to help ensure the requirements in Article 14(11) of the Energy Efficiency Directive are met. Revised versions of the CHPQA Standard and Guidance Note 44 (Issue 6 of both documents) have been published by the Department for Business, Energy and Industrial Strategy to reflect the new efficiency reference values introduced by the Delegated Regulation.

4.6 The instrument therefore amends the following instruments, each of which refer to one or both of the CHPQA Standard or Guidance Note 44, to refer to Issue 6 of those documents:

- The Renewables Obligation Order 2015 (S.I. 2015/1947)

- The Renewables Obligation Closure Order 2014 (S.I. 2014/2388)
- The Renewables Obligation (Scotland) Order 2009 (S.S.I. 2009/140)
- The Renewables Obligation Order (Northern Ireland) 2009 (S.I. (NI) 2009/154)
- Contracts for Difference (Definition of Eligible Generator) Regulations 2014 (S.I. 2014/2010)
- The Renewable Heat Incentive Scheme Regulations 2011 (non-domestic) (S.I. 2011/2860)
- Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007 (S.I. 2007/292)
- The Emissions Performance Standard Regulations 2015 (S.I. 2015/933)

5. Extent and Territorial Application

5.1 The extent of this instrument is UK wide.

5.2 The territorial application of this instrument is, for each amendment, the same application as the instrument which is being amended.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Combined Heat and Power (CHP) is an energy efficient technique whereby fuel is converted into both useful heat and electricity in a single process. As CHP can deliver fuel and carbon savings of up to 30% relative to generating heat and power separately from the same fuel, government provides support through a variety of routes to overcome barriers to its cost-effective deployment.

7.2 The CHPQA Programme is a voluntary annual assessment process that ensures that all CHP plants that benefit from government support through a variety of policies meet a minimum level of energy efficiency.

7.3 The energy efficiency requirements underpinning the CHPQA Programme are derived from the EU Directive 2012/27/EU on Energy Efficiency (EED). Revisions to these efficiency reference values for the separate production of electricity and heat were published as Commission Delegated Regulation (EU) 2015/2402 of 12 October 2015 and confirmed 19 December 2016. The efficiency reference values provide the basis for determining the energy efficiency of CHP plants first certified from 2016 onwards as compared to generating heat and power separately from the same fuel.

7.4 The revised energy efficiency requirements have been incorporated into the CHPQA Standard and Guidance Note 44; this has resulted in new issues of the CHPQA Standard and Guidance Note 44 (both now Issue 6).

7.5 For certain types of CHP plant first certified from 2016 on-wards (mostly those fuelled by biomass) the energy efficiency requirements are now tighter, however, for most other CHP plants the requirements stay the same or are lessened.

7.6 As the CHPQA Scheme operates on an annual basis, with assessments based on the previous year's operational data, these new values apply to CHP plants first certified from 2016 onwards when they apply for certification from 2017.

7.7 This instrument makes necessary amendments to legislation that refers to the CHPQA Standard or Guidance Note 44, updating the references to the CHPQA Standard or Guidance Note 44 to reflect latest version.

8. Consultation outcome

8.1 Due to the technical nature of the changes and narrow stakeholder interest a stakeholder engagement exercise was considered proportionate. This was held by the CHPQA Authority on behalf of the Department for Energy and Climate Change (now constituted within the Department for Business, Energy and Industrial Strategy) between 28 April and 26 May 2016 in respect of proposals for revisions to the CHPQA Quality Index formulae to ensure consistency with the revised EU reference values.

8.2 Eight written responses were received as well as comments from three stakeholder events run by the CHPQA Authority. Stakeholders raised no major concerns about implementing the changes to the CHPQA Standard and Guidance Note 44 or updating relevant legislation.

9. Guidance

9.1 Issue 6 of the Combined Heat and Power Quality Assurance Scheme Standard can be found on https://www.gov.uk/government/publications/chpqa-standard. Further guidance on the Combined Heat and Power Quality Assurance Scheme including Guidance Note 44 can be found on https://www.gov.uk/guidance/chpqa-guidance-notes.

10. Impact

10.1 The Combined Heat and Power Quality Assurance Programme is a voluntary certification scheme. The impact on business, charities or voluntary bodies is only applicable if they are operators of combined heat and power plants first certified from 2016 on-wards and wish to claim government support.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses but does not increase the impacts on them substantially beyond the extent that the legislation that the Combined Heat and Power Quality Assurance regulations are amending applies.

12. Monitoring & review

12.1 No review provision is required for this instrument as a review would be disproportionate taking into account the negligible additional economic impact of these regulations. This instrument imposes no additional cost or administrative burden on business beyond that imposed by the secondary legislation that it is amending. The CHPQA is a voluntary scheme to which CHP plants do not have to apply unless they

wish to claim government support. The changes will encourage investment in more energy efficient CHP, saving businesses on energy costs and reducing CO_2 emissions.

12.2 It is the intention of the EU Commission to review the energy efficiency reference values four years after their entry into force at the latest; this is expected to be in 2019. Any change to the EU energy efficiency reference values may necessitate a revision to the CHPQA Standard and Guidance Note 44 and how they apply to the legislation that this instrument amends. This will be before the end of 5 years beginning with the commencement date.

13. Contact

13.1 Helena Crow at the Department for Business, Energy and Industrial Strategy Telephone: 0300 068 6917 or email: helena.crow@beis.gov.uk can answer any queries regarding the instrument.