**EXPLANATORY MEMORANDUM TO**

**THE ELECTRICITY NETWORK CODES AND GUIDELINES (SYSTEM OPERATION AND CONNECTION) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019**

**2019 No. 0000**

## 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 is one of a package of statutory instruments that will ensure that legislation governing the UK's energy systems will function effectively in the event that the UK leaves the European Union ('EU') without a withdrawal agreement in place. It amends two retained EU regulations relating to electricity system operation to ensure that they will function effectively once incorporated in domestic law by the European Union (Withdrawal) Act 2018. It further revokes three retained EU regulations on the grounds that they would be inoperable if incorporated into domestic law.

***Explanations***

*What did any relevant EU law do before exit day?*

2.2 Commission Regulation (EU) 2017/1485 of 2 August 2017 establishing a guideline on electricity transmission system operation ('the System Operation Guideline') sets common standards for the activities of transmission system operators ('TSOs'), who operate the electricity transmission system in real-time. The System Operation Guideline harmonises the approach taken by TSOs to key elements of electricity system operation as well as providing for cross-border processes in areas such as data exchange, the sharing of energy reserves across borders and the training of technical staff. The System Operation Guideline also introduces common standards for the interactions between TSOs and other companies involved in the energy system.

Commission Regulation (EU) 2017/2196 of 24 November 2017 establishing a network code on electricity emergency and restoration ('the Emergency and Restoration Network Code') creates common standards relating to the prevention, management and recovery from electricity system emergencies, such as blackouts. As well as introducing common technical standards, the Emergency and Restoration Network Code requires EU TSOs to assist neighbouring TSOs who are experiencing a system emergency.

There are three European Network Codes (collectively referred to here as the 'Connection Codes') that define the technical requirements for connections to the electricity transmission and distribution systems:

- Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators sets technical and functional requirements that new generators with a capacity of 800 Watts or more connecting to the network (both transmission and distribution) will need to meet, as well as responsibilities on TSOs and Distribution Network Operators

('DNOs'). It could also be relevant to existing generators in some very limited cases.

- Commission Regulation (EU) 2016/1388 of 17 August 2016 establishing a network code on Demand Connection sets technical and functional requirements for new demand users and DNOs connecting to the transmission system and includes demand-side response capabilities, as well as responsibilities on TSOs and DNOs.
- Commission Regulation (EU) 2016/1447 of 26 August 2016 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules sets technical and functional requirements for new long distance direct current connections, new links between different synchronous areas (e.g. interconnectors) and new direct current connected generation (e.g. offshore wind farms).

*Why is it being changed?*

2.3 On 29th March 2019, the European Union (Withdrawal) Act 2018 will incorporate into UK law directly applicable EU law and EU derived legislation as it applies immediately before exit day. If unamended, this retained EU law would contain numerous inoperabilities. These inoperabilities range from, for example, references to EU Member States, to more significant issues, such as obligations for UK bodies to accept binding decisions from the European Commission. Failure to remedy these inoperabilities could create significant uncertainty around energy market regulation, the role and functions of UK and EU bodies in the market, and requirements for market participants. Together this uncertainty could threaten the continued secure and efficient operation of energy markets across the UK, including the Single Electricity Market in Northern Ireland and Ireland. Further detail on the inoperabilities resolved by this instrument can be found in Section 7.

*What will it now do?*

2.4 This instrument will amend energy legislation captured by the European Union (Withdrawal) Act 2018 to make it 'workable' by remedying inoperabilities whilst retaining regulatory functions and frameworks needed to keep energy markets working effectively. This instrument will ensure the operability and integrity of UK energy legislation and promote continuity for UK industry and consumers.

The System Operation Guideline and the Emergency and Restoration Network Code are amended as they will apply in Great Britain to remove obligations relating to EU institutions and bodies provisions requiring cross-border cooperation as these would be inoperable if incorporated into domestic law. The many technical standards they introduce that can operate effectively in a domestic context are however retained.

The bulk of the System Operation Guideline and the Emergency and Restoration Network Code are revoked with respect to Northern Ireland, with the exception of provisions requiring Northern Ireland TSOs to endeavour to conclude an agreement with TSOs in Ireland providing for secure system operation in the Northern Ireland and Ireland synchronous area and applying the System Operation Guideline and the Emergency and Restoration Network Code in Northern Ireland.

The Connection Codes are revoked by this instrument as they are inoperable in the absence of provisions not incorporated by the Act, further detail on the reasoning for this is provided in paragraphs 7.10-7.12. It is the Department's intention to make further

regulations under the powers of The Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018 that will incorporate the Connection Codes into domestic law. Further detail of the changes made by this instrument is provided in Section 7 below.

## 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 The territorial application of this instrument includes Scotland and Northern Ireland.

## 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 The Minister for State, The Rt Hon Claire Perry MP has made the following statement regarding Human Rights:

"In my view the provisions of the Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

## 6. Legislative Context

6.1 On 29 March 2017 the Prime Minister triggered Article 50 of the Treaty on European Union and started the UK's exit from the European Union. To ensure business and legislative continuity for the UK, following over 40 years of EU membership, the European Union (Withdrawal) Act 2018 will incorporate directly applicable EU legislation as it applied immediately before exit day.

6.2 This instrument is one of a series of statutory instruments laid by the Department for Business, Energy and Industrial Strategy which will ensure that domestic and retained EU law governing the UK's electricity and gas markets will function effectively in the event that the UK leaves the European Union without a deal.

6.3 The retained EU laws amended by this instrument are European Network Codes and Guidelines ('Network Codes'), produced under the enabling powers given to the European Commission by the Electricity Regulation, which forms part of the third energy package. The third energy package was introduced in order to further integrate and facilitate the efficient operation of the EU's Internal Energy Market. Network Codes are technical instruments which govern the operation of the EU's interconnected gas and electricity systems.

## 7. Policy background

***What is being done and why?***

7.1 The aim of this instrument is to remove or amend legal deficiencies in direct EU legislation to ensure the UK's energy markets continue to operate effectively should the UK leave the EU without a Withdrawal Agreement.

7.2 The retained EU laws amended by this instrument concern the operation of electricity TSOs. In Great Britain the TSO with responsibility for the real-time operation of the electricity system is National Grid ESO, the GB System Operator. In Northern Ireland the relevant TSO is SONI (System Operator for Northern Ireland).

7.3 This instrument applies to energy, 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 absent a Northern Ireland Executive. With exit day approaching, 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.

*The System Operation Guideline and the Emergency and Restoration Network Code - Great Britain*

7.4 The System Operation Guideline and the Emergency and Restoration Network Code are amended in respect of Great Britain to remedy a large number of inoperabilities that would otherwise arise from their incorporation into domestic law. In particular, the amendments:

- Remove obligations for companies and authorities in Great Britain relating to EU institutions.
- Restrict the scope of the instruments to Great Britain and remove provisions on cross-border cooperation that it would not be possible to provide for unilaterally in domestic law.
- Amend cross-references to other EU laws.

7.5 The following specific changes are made to the System Operation Guideline:

- References to the establishment of Regional Security Coordinators are removed as they are non-UK bodies and provisions relating to their creation would therefore not be operable if incorporated into domestic law. A domestic equivalent to Regional Security Coordinators is not provided for as their role revolves around coordinating system operation activities across borders and would be redundant in a purely domestic context.
- Provisions requiring the GB System Operator to share information with other EU TSOs or EU institutions are removed.
- Provisions relating to regional outage coordination are removed as it would not be possible to provide for such cross-border coordination unilaterally in domestic law.

- Provisions relating to cross-border imbalance settlement (through which market participants pay or are paid for differences between the amount of energy contracted for and the amount actually consumed or delivered) and the activation, sharing and exchange of cross-border reserve energy products (products purchased by TSOs in order to enable them to balance supply and demand on their systems) are removed as it would not be possible to provide for such cross-border processes unilaterally in domestic law.

7.6 The following specific changes are made to the Emergency and Restoration Network Code:

- Requirements for the GB System Operator to provide assistance to neighbouring TSOs in emergency or blackout situations are limited to providing assistance to the Northern Ireland TSO.
- Requirements for the GB System Operator to ensure the consistency of their system defence plans and restoration plans with those of neighbouring TSOs are removed.
- Obligations under the Emergency and Restoration Network Code on the European Network of Transmission System Operators for Electricity ('ENTSO-E') and the EU Agency for the Cooperation of Energy Regulators ('ACER') to, respectively, monitor the implementation of the regulation and coordinate stakeholder involvement are transferred to the GB System Operator.
- Requirements for the GB System Operator to share information with non-GB TSOs are removed.

7.7 In addition to these changes, a small number of provisions of the Emergency and Restoration Network Code apply from a date after 29 March 2019. These provisions will therefore not be incorporated into domestic law by the Act. It is the Department's intention to make further regulations under the powers of the Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018 that will incorporate these provisions into domestic law.

*The System Operation Guideline and the Emergency and Restoration Network Code - Northern Ireland*

7.8 Both the System Operation Guideline and the Emergency and Restoration Network Code contain provisions that require EU TSOs sharing a synchronous area with a non-EU TSO to conclude an agreement with that non-EU TSO concerning secure system operation and applying both regulations in the control area of the non-EU TSO. As Ireland and Northern Ireland comprise a single synchronous area this provision will apply to EirGrid, the Ireland TSO, after EU Exit. This instrument therefore disapplies the bulk of the System Operation Guideline and the Emergency and Restoration Network Code to Northern Ireland and replaces it with provisions requiring Northern Ireland TSOs to endeavour to conclude such an agreement with TSOs in Ireland.

7.9 The obligation for Northern Ireland TSOs to endeavour to conclude an agreement with TSOs in Ireland would effectively mirror an equivalent requirement on Ireland TSOs arising from the instruments as it will apply in Ireland. An agreement between SONI and EirGrid covering secure system operation and applying the System Operation Guideline and the Emergency and Restoration Network Code in Northern Ireland would maximise continuity for system operation in Northern Ireland. Further, it would ensure that cross-border cooperation important for the effective operation of the Single

Electricity Market can continue as similarly as possible to its operation before exit day, helping to maintain the status quo. An agreement to apply the System Operation Guideline and the Emergency and Restoration Network Code in Northern Ireland would ensure that, insofar as is practical, identical rules covering system operation would apply across Northern Ireland and Ireland, contributing to the continued secure and efficient operation of the Single Electricity Market after UK's exit from the EU.

7.10 Whilst responsibility for concluding the agreement lies with Northern Ireland TSOs, the Northern Ireland Authority for Utility Regulation ('the Utility Regulator') has regulatory powers to provide for additional regulatory requirements connected to the agreement. We expect that the Utility Regulator will introduce licence conditions connected to this agreement to, for example, require their regulatory approval of any agreement concluded between SONI and EirGrid and any future amendments thereto.

*Connection Codes*

7.11 In common with other Network Codes, the Connection Codes are EU Regulations and hence are directly applicable to the UK without having to be transposed into national laws or regulatory frameworks. As the UK already has existing national technical codes and standards for parties that want to connect to the electricity transmission system, it was determined that the new EU requirements should be incorporated into the existing national regulatory frameworks in order to provide accessibility and familiarity to UK parties. The process of incorporation has been largely completed, as have preparations by companies in the UK energy sector to comply with the requirements of the Connection Codes.

7.12 Key elements of the Connection Codes apply from dates after 29 March 2019 and, as a result, are not incorporated into domestic law by the European Union (Withdrawal) Act 2018 despite currently being in force in the UK. This is the case because the European Union (Withdrawal) Act 2018 incorporates into domestic law directly applicable EU law and EU derived legislation so far as it applies immediately before exit day. Elements of direct EU law which are in force but applying from a date after exit day are therefore not incorporated by the European Union (Withdrawal) Act 2018.

7.13 As the absence of the key elements of the Connection Codes which apply from dates after exit day would render the remainder of the codes inoperable, this instrument will revoke the Connection Codes. As the relevant requirements of the Connection Codes have already been implemented through existing national regulatory frameworks the practical effect of this revocation will be limited. It is the Department's intention that both the provisions not incorporated by the European Union (Withdrawal) Act 2018 and those revoked by this instrument will be created in domestic law under the powers of the Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018 as soon as practicable after exit day.

## 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 inoperabilities 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 Not relevant.

## 10. Consultation outcome

10.1 Statutory instruments made under the powers in the European Union (Withdrawal) Act 2018 do not require consultation, and a consultation has not been conducted for this instrument. Technical and factual input relevant to this instrument has been provided by the UK's energy regulators, Ofgem and the Northern Ireland Authority for Utility Regulation, and by the Northern Ireland Department for the Economy. A letter notifying the Northern Ireland Department for the Economy, detailing the intention to legislate and the content of the statutory instruments, has been sent, and a response from the Department noting the intention to legislate has been received.

## 11. Guidance

11.1 Guidance has not been produced 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.

12.3 An Impact Assessment has not been prepared for this instrument because the impacts are below the threshold required to carry out a full impact assessment. This instrument will not create any significant direct costs to business. This instrument transfers obligations from European bodies such as ENTSO-E and ACER to UK bodies such as the GB and Northern Ireland system operators, Ofgem, and the Utility Regulator. This instrument also removes several obligations on UK bodies to share information or co-ordinate with EU bodies.

In Great Britain, this instrument will transfer the obligation to produce a number of reports under the System Operation Guideline from ENTSO-E to the GB System Operator, generating a cost of up to £150,000 a year. The removal of an obligation on the GB System Operator to consult with neighbouring TSOs in relation to the System Operation Guideline could save them up to £10,000 a year. Key stakeholders including Ofgem, National Grid ESO, the Northern Ireland Department for the Economy, and the Utility Regulator have been consulted and concluded that all other direct impacts that have been identified are considered to be negligible (less than £100,000 per year in total).

## 13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for this decision is that the scale of the impacts identified in connection with this instrument is small and they do not fall disproportionately on small businesses.

## 14. Monitoring & review

14.1 The Department does not intend to monitor this instrument.

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

## 15. Contact

15.1 Josh Watts at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 0280 or email: josh.watts@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 of State, 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 |
| 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.<br><br>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<br>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 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:<br>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,<br>b) containing information about the relevant authority's response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and<br>(ii) any other representations made to the relevant authority about the published draft instrument, and,<br>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. Appropriateness statement

1.1 The Minister of State, 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 Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because:

- The instrument makes only those changes necessary to ensure that the relevant retained direct EU law will function effectively once incorporated into domestic legislation.
- This instrument preserves wherever possible existing policy related to electricity system operation, with changes limited to those unavoidable as a result of the UK's departure from the EU.

### 2. Good reasons

2.1 The Minister of State, 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".

2.2 These are:

- Legislation revoked by this instrument would be inoperable if retained, potentially disrupting the efficient operation of the UK's energy systems.
- The amendments to retained legislation made by this instrument are necessary to remedy inoperabilities which would otherwise disrupt the efficient operation of the UK's energy systems.

Further information about the reasons for the provisions in this instrument is provided in Section 7 above.

### 3. Equalities

3.1 The Minister of State, the Rt Hon Claire Perry MP has made the following statements:

"The 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.".

3.2 The Minister of State, 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 instrument, I, Minister of State, the Rt Hon Claire Perry MP 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.".

3.3 This instrument has no, or no significant, differential impact on those with protected characteristics under the Equality Act 2010.

## 4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.