EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (RISK-PREPAREDNESS) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. XXXX

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 This instrument is required in order to deal with failures of retained direct European Union ("EU") legislation to operate effectively, and other deficiencies, arising from the withdrawal of the United Kingdom ("UK") from the EU.

2.2 It amends Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector and repealing Directive 2005/89/EC ("Regulation (EU) 2019/941").

2.3 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

Explanations

What did any relevant EU law do before exit day?

2.4 Regulation (EU) 2019/941 came into force and applied from July 2019. It establishes an EU-wide framework to prevent, prepare for and manage electricity crises.

2.5 Regulation (EU) 2019/941 requires that Member States, using common methods, identify all possible electricity crisis scenarios at national and regional levels and then prepare risk preparedness plans based on those scenarios. This preparation requires Member States to cooperate and coordinate with neighbouring Member States in a spirit of solidarity. It also establishes a framework for managing security of supply issues via the Electricity Coordination Group. Regulation (EU) 2019/941 sits within the wider Clean Energy for all European package, which is a package of EU legislation focused on improving energy efficiency, securing energy supply, improving consumer protections, and increasing the use of renewables in the energy system.

Why is it being changed?

2.6 On the implementation period ("IP") completion day, the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") will incorporate into UK law those pieces of EU legislation that directly apply immediately before the IP completion day. This includes Regulation (EU) 2019/941.

2.7 If left unamended, this retained EU law will contain numerous deficiencies as defined by section 8 of the Withdrawal Act. These deficiencies include references to Member States, obligations on EU bodies and institutions, and obligations to submit plans and crisis scenarios to EU bodies.

2.8 Failure to address these deficiencies will create uncertainty for market participants, including regarding roles and responsibilities of domestic and EU bodies in an electricity crisis scenario.

What will it now do?

2.9 This instrument will amend Regulation (EU) 2019/941 to make it operable by correcting any deficiencies arising from withdrawal, whilst retaining relevant functions with a view to preventing, preparing for and managing electricity crises.

2.10 Notable changes made by this instrument include: removing provisions relating to the role of the cross-European coordination body ENTSO-E; removing obligations on GB institutions to share information with EU institutions on risk preparedness plans and electricity crisis scenarios; and removing obligations to include regional and bilateral measures in risk preparedness plans.

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.

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 The Minister of State, the Rt Hon Kwasi Kwarteng MP has made the following statement regarding Human Rights: "In my view the provisions of the Electricity (Risk-Preparedness) (Amendment etc.) (EU Exit) Regulations 2020 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, starting the UK's withdrawal from the EU. After securing a Withdrawal Agreement on 17 October 2019, the UK officially left the EU on 31 January 2020 and subsequently entered the IP. To ensure business and legislative continuity for the UK, following over 40 years of EU membership, the Withdrawal Act will incorporate directly applicable EU legislation and EU derived legislation as it applied immediately before the IP completion day into domestic law.

6.2 This instrument uses powers set out in section 8(1) of the Withdrawal Act to resolve 'deficiencies' caused by the withdrawal of the UK from the EU in EU legislation relating to electricity. The instrument amends the Regulation (EU) 2019/941.

6.3 This instrument does not amend EU energy law as it applies in Northern Ireland ("NI"). Energy is mostly a transferred matter in NI. Following the restoration of the NI Executive, legislative decisions are now being made by the relevant NI Minister and legislation is expected to pass through Stormont rather than Westminster.

7. Policy background

What is being done and why?

7.1 The aim of this instrument is to ensure that retained EU law, namely Regulation (EU) 2019/941, remains operable after the end of the IP to ensure that the GB energy market continues to operate effectively. The deficiencies dealt with in this instrument are numerous, and it would not be practical to list them all. The following paragraphs highlight examples of typical deficiencies described above.

7.2 The most significant amendments made by this instrument are:

- Updating references to obligations to be completed by a competent authority, to reflect that the Secretary of State will be exercising these functions to ensure operability in a non-EU context;
- Removing provisions relating to the role of the cross-European coordination body ENTSO-E, to ensure the operability of the Regulation when incorporated into the UK Statute Book, for example by removing reference to Articles obligating ENTSO-E to publish regional crisis scenarios and short-term and seasonal adequacy assessments;
- Removing obligations for GB to provide information on Crisis Scenarios and Risk Preparedness Plans to EU institutions, for example by amending the Article on identification of national electricity crisis scenarios and the Article on Commission assessments of risk preparedness plans to ensure operability by removing obligations to share this information with the Electricity Coordination Group and EU Commission;
- Amending requirements related to the development risk preparedness plans, for example by removing obligations to include regional and bilateral measures, and in terms of cooperation and assistance, recognising that these plans now need to operate in a domestic context;
- Making amendments to ensure the Regulation remains operable alongside market rules in compliance with other legislation as it will apply in retained EU law.

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 Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. 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 Consolidation is not required for this instrument.

10. Consultation outcome

10.1 Statutory instruments made under the powers in the Withdrawal Act 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 Ofgem and National Grid.

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 A full Impact Assessment has not been prepared for this instrument because the impacts are below the threshold required to carry out a full Impact Assessment. Key stakeholders including Ofgem, National Grid, have been informed of BEIS's conclusions, set out in the De Minimis that any direct impacts on business or public bodies that have been identified are considered to be negligible (less than the £5m total De Minimis threshold).

12.4 The counterfactual used to assess the impacts of EU Exit SIs states that the impacts are to be assessed against the UK statute book prior to exit day on 31 January 2020 (the static acquis), as per Government analytical guidance on Impact Assessments. The analytical guidance also states that impacts that occur as a direct consequence of our departure from the EU should not be quantified as this would overlap with the scope of the assessments made as part of the Withdrawal Act, which passed prior to exit day.

12.5 When these same changes are assessed against the do nothing counterfactual, a scenario in which an agreement on the future relationship is not reached, the SI will come into force and help ensure that the UK has a functioning statute book and that retained EU legislation remains operable at the end of the IP. This in turn will help to ensure that the regulatory framework is coherent and functions effectively.

13. Regulating small business

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

13.2 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 Withdrawal Act, no review clause is required.

15. Contact

15.1 Downstream Gas & Electricity Resilience at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 6001 or email: dger@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 The Deputy Director for Energy Resilience and Emergency Response, 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 Kwasi Kwarteng MP, at the Department for Business, Energy & 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
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.

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 Kwasi Kwarteng MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018 ('the Withdrawal Act'):

1.2 "In my view the Electricity (Risk-Preparedness) (Amendment etc.) (EU Exit) Regulations 2020 do no more than is appropriate".

1.3 This is the case because:

- The amendments made by this instrument are necessary to resolve deficiencies as defined in Section 8 of the Withdrawal Act.
- The amendments made by this instrument resolve deficiencies in the relevant legislation and ensures other Articles within the regulation are made operable through amendments.

2. Good reasons

2.1 The Minister of State, the Rt Hon Kwasi Kwarteng MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

These reasons are:

- Continued references to EU institutions and processes would create significant uncertainty in the operation of GB market regulation, the role and functions of domestic and EU bodies in the market, and requirements on market participants.
- In line with the Withdrawal Agreement, amendments made by this instrument are necessary to avoid defective legislation and remedy deficiencies which would otherwise disrupt the efficient operation of GB energy systems.

2.3 Further information about the reasons for the provisions in this instrument is provided in section 2 above.

3. Equalities

3.1 The Minister of State, the Rt Hon Kwasi Kwarteng MP has made the following statement(s):

3.2 "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.

3.3 The Minister of State, the Rt Hon Kwasi Kwarteng MP has made the following statement regarding use of legislative powers in the Withdrawal Act:

3.4 "In relation to the draft instrument, I, the Minister of State, the Rt Hon Kwasi Kwarteng 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.

3.5 This instrument has no, or no significant, 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.