EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (CONNECTION CHARGES) (AMENDMENT) REGULATIONS 2022

2022 No. 1265

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 His Majesty.

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

2. Purpose of the instrument

2.1 This instrument amends the Electricity (Connection Charges) Regulations 2017 ("the 2017 Regulations") to align with changes by the energy regulator, Ofgem, to the connection charging framework to come into effect from 1 April 2023. Under the Ofgem changes, people connecting to the network will have reduced liability to contribute towards network reinforcement costs to accommodate their connections.

2.2 The 2017 Regulations ensure that costs of connecting to an electricity distribution network are shared fairly between first and subsequent connecting parties. They require that a person/persons who has/have contributed towards a first connection be reimbursed part of those costs by other persons subsequently connecting and using the capacity created by the first connection. This instrument amends the Regulations to preserve this fair treatment between first and subsequent connectees regarding network reinforcement costs under the new connection charging framework to be set by Ofgem.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 In the twenty-sixth Report of Session 2016-17, the Joint Committee on Statutory Instruments (JCSI) reported the 2017 Regulations (SI 2017/106)[1] for making an unexpected use of the enabling powers (in Regulation 7). In response, the Department committed to keep the operation of the provisions under review and consider whether any changes were required when the 2017 Regulations were next reviewed[2]. Regulation 5 of this instrument now addresses the point raised by the JCSI.

4. Extent and Territorial Application

4.1 The extent of this instrument is England and Wales and Scotland.

4.2 The territorial application of this instrument is England and Wales and Scotland.

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[1] https://publications.parliament.uk/pa/jt201617/jtselect/jtstatin/152/15203.htm#_idTextAnchor016

[2] https://publications.parliament.uk/pa/jt201617/jtselect/jtstatin/152/15213.htm#_idTextAnchor050

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 amends the 2017 Regulations where they apply to reimbursement for network reinforcement costs where a connection application to an electricity distribution network is made on or after 1 April 2023.

6.2 The amendments to the 2017 Regulations, and the reasons for them, are described in section 7.

6.3 Provision for determination of disputes arising is made in section 23 of the Electricity Act 1989, as amended by section 52 of the Infrastructure Act 2015.

6.4 Duties imposed on licensed electricity distributors by this instrument will, by virtue of paragraph 5(2) of Schedule 6A to the Electricity Act 1989, be 'relevant requirements' that are subject to Ofgem's enforcement powers in sections 25 to 28 of that Act.

7. Policy background

What is being done and why?

What did any law do before the changes to be made by this instrument?

7.1 Under Ofgem's connection charging framework, when a person, such as a renewable generation project, housing development, or electric vehicle charging hub connects to the electricity distribution network they are expected to pay the costs of any assets provided for their sole use and a proportion of the costs of any reinforcement of the distribution network that may be required to make the connection. The 2017 Regulations ensure there is a fair sharing of costs for those connecting to the electricity distribution network by requiring any subsequent connectees also known as "second comer"[3], who share the use of such assets or take advantage of such network reinforcement, to pay a proportion of the costs incurred at the time of the first connection, and for persons who incurred those costs to receive a reimbursement payment.

Why is it being changed?

7.2 This instrument is amending the 2017 Regulations to reflect forthcoming changes by Ofgem to the connection charging framework, which will reduce the liability for network reinforcement costs for people connecting to the electricity network. Without this amendment, under the 2017 Regulations, electricity distributors would require, in certain scenarios, subsequent connectees to contribute to reinforcement costs that they would no longer be liable for under the revised connection charging framework. The Department believes this amendment is necessary to ensure electricity distributors can implement Ofgem's changes while preserving the fair treatment between first and subsequent connectees regarding reinforcement costs.

[3] Second comer- meaning any person connecting to the electricity distribution network after an initial connection is made.

What will it now do?

7.3 This instrument will amend the 2017 Regulations so that, from 1 April 2023, subsequent connectees will only be required to contribute to reinforcement costs if they would also have been liable for these costs had they been the first person connecting under Ofgem's revised connection charging framework. The Regulations also amend the 2017 Regulations to make it clear that distributors should not demand a reimbursement payment (or the appropriate part of any such payment) from a second comer where any recipient would receive less than £300[4].

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument does not consolidate legislation.

10. Consultation outcome

10.1 In accordance with paragraph 3(1) of Schedule 5B to the Electricity Act 1989 the Department has consulted with the Gas and Electricity Markets Authority before making this instrument. The Department has also written directly to nearly 200 interested stakeholders setting out the proposed approach to amending the 2017 Regulations. This instrument contains minor amendments, supports Ofgem's decision which has been extensively consulted upon, and, in itself, has negligible net impacts. This instrument will also affect far fewer connection customers than Ofgem's changes. The Department therefore selected stakeholders who would be interested in, or affected by, the proposed amendments. This mirrored the approach taken for gathering views as part of the Statutory Post-Implementation Review of the 2017 Regulations published in April 2022. The letter was dated 26 July 2022 and the closing date for comments was 2 September 2022.

10.2 Nine responses were received to the letter and were generally in favour of the changes proposed. The comments received were mainly technical in nature and requesting further clarity. In light of the comments, the Department has made a minor change to the approach when applied to expensive network reinforcement fully funded by first connection customers. Ofgem requires such customers to fund the reinforcement in full to protect electricity billpayers (who would normally contribute to these costs). Initially, it was proposed that second comers should be required to reimburse these customers. However, doing so would weaken Ofgem's safeguard. The Department has therefore decided that, under these circumstances, first connection customers will not be reimbursed. Some distribution network operators suggested that the amending Regulations should apply to subsequent connections **made** from 1 April 2023 rather than the proposed approach of applying to subsequent connection **applications** from 1 April 2023. While recognising that the proposed approach would present greater administrative challenges to distribution network operators, it aligns with Ofgem's connection charging changes (which also apply to applications from 1 April 2023) and retains the approach in the 2017 Regulations in applying the prevailing

[4] the threshold deemed to be significant (de minimis provision) in the 2017 Regulations

connection charging framework to subsequent connectees. Ofgem agrees with these decisions.

10.3 The Department will write to the same stakeholders responding to comments received, explaining the rationale for the final approach, and directing them to the published instrument.

11. Guidance

11.1 The Department understands that distribution network operators will update their existing guidance on the 2017 Regulations[5] at the earliest opportunity, to take account of the changes made by this instrument and ensure consistency in implementation.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 This instrument is exempt from requiring an impact assessment as it concerns a Government direction being administered by electricity distributors to reimburse costs from one party to another. A small reduction in administrative costs for electricity distributors may be incurred as network companies will not be requiring as many reimbursements from second comers as currently. This is well below the threshold for an Impact Assessment.

13. Regulating small business

13.1 The legislation 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 main burden of administering the amending Regulations will remain with distribution network operators, which are not small businesses. Small businesses will benefit from the legislation as fewer will be required to pay reimbursement for network reinforcement.

14. Monitoring & review

14.1 A statutory review clause is included in Regulation 14 of the 2017 Regulations, and this is not affected by the amending instrument. The 2017 Regulations were reviewed in 2022 and the 2017 Regulations, as amended by this instrument, will be reviewed within the next five years as required under Regulation 14.

15. Contact

15.1 Freddie Saunders at the Department for Business, Energy and Industrial Strategy Telephone: 07920 219280 or email: freddie.saunders@beis.gov.uk can be contacted with any queries regarding the instrument.

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5 https://www.energynetworks.org/assets/images/ENA%20Electricity%20(Connection%20Charges)%20Regulations%202017%20Guidance%20October%202020.pdf

15.2 Paul van Heyningen, Deputy Director for Net Zero Electricity Networks, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Graham Stuart, Minister for Energy and Climate at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.