EXPLANATORY MEMORANDUM TO

THE ELECTRICITY (CONNECTION CHARGES) REGULATIONS 2017

2017 No. 106

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 helps to ensure that costs of obtaining a connection to an electricity distribution network are shared fairly between different connecting parties, by making provision for a person who has paid for a first connection to a distribution network to be reimbursed part of those costs when other persons subsequently obtain a connection to the network, and for subsequent connectees to pay a charge to fund such reimbursement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 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 This instrument is principally made under section 19(3A) of and Schedule 5B to the Electricity Act 1989, as inserted by section 52 of the Infrastructure Act 2015. It applies where a first connection to an electricity distribution network is made on or after 6th April 2017, and replaces the Electricity (Connection Charges) Regulations 2002 ("the 2002 Regulations") in relation to such cases.

4.2 The 2002 Regulations were made under section 19(2) and (3) of the Electricity Act 1989, which are repealed by section 52(2)(a) of the Infrastructure Act 2015. The Infrastructure Act 2015 (Commencement No. 6 and Savings) Regulations 2017, which commence section 52, contain a savings provision by virtue of which the 2002 Regulations will remain in force in relation to cases where a first connection was made before 6th April 2017.

4.3 The provision for connection charges made by this instrument differs from that in the 2002 Regulations in several respects. The principal changes, and the reasons for them, are described in section 7 below.

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

4.5 Duties imposed on distribution network operators 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.

5. Extent and Territorial Application

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

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

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 When a person connects to the electricity 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. These Regulations ensure there is a fair sharing of costs for those connecting to the electricity distribution network by requiring any subsequent connectees 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.

7.2 The 2002 Regulations only provide for such payments to be made if the original connection was made by a distribution network operator. Since 2002 competition has increased in the connections market and now approximately 32% of connections are made by independent connection providers. These Regulations will extend these payments to persons who connect via an independent connection provider.

7.3 These Regulations also extend the period, in which an initial connectee can receive payments from subsequent connectees, from 5 to 10 years. The Regulations also seek to provide clarity on various points of detail that were raised when we consulted about amending legislation on connection charges in the Infrastructure Act 2015.

7.4 The Department believe these changes will help to further facilitate a level playing field in the electricity connections market which will help to reduce the cost of electricity connections and improve customer service. These Regulations are also expected to provide assurance to those funding reinforcement as part of their connection that they are more likely to obtain reimbursement of a fair proportion of their costs from future connectees.

7.5 As explained in section 4 above, these Regulations will operate in parallel with the 2002 Regulations for a transitional period. This approach has been taken to help to ensure that those who made a decision to connect to the electricity network before these Regulations were brought into force are not subject to unexpected requests for payment.

8. Consultation outcome

8.1 The consultation on these Regulations ran from 28th October to 20th November 2015. This consultation was published on the gov.uk website and was sent to over 60 individuals and companies, mainly consisting of developers, distribution network operators and independent connection providers. This supplemented a previous consultation on taking powers within the Infrastructure Act 2015 which ran from 1st to 28th July 2014.

8.2 We received 14 responses to the consultation, and all the respondents were broadly in favour of the changes proposed. The comments received were mainly technical in nature and requesting further clarity within the Regulations. The Department have revised the Regulations to take account of most of the comments received.

8.3 One matter on which no action has been taken was a request by some distribution network operators to place obligations within the Regulations on independent connection providers. Independent connection providers are not currently regulated by Ofgem so there would not be any existing mechanism for enforcing obligations on them, and we were not persuaded that extending the scope of regulation was necessary.

9. Guidance

9.1 The independent regulator (Ofgem) will provide guidance to the distribution network operators to assist them in exercising their functions under these Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to the additional administrative costs to business resulting from these Regulations. The Department estimates this figure to be £0.06 million per year. As payments under the Regulations are transfers between businesses, there is no net cost to business as a result of extending the circumstances in which payments are required to be made.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific actions are proposed to minimise regulatory burdens on small business.

11.3 The basis for this decision is that the main burden of administering the Regulations will remain with distribution network operators, which are not small businesses. Independent connection providers, some of which may be small businesses, are expected to benefit from their inclusion within this regime.

12. Monitoring & review

12.1 Regulation 14 of this instrument requires the Secretary of State to carry out a review of these Regulations and publish a report of the conclusions at intervals not exceeding five years. This will assess whether competition has increased in the electricity connections market.

13. Contact

13.1 Robert Kinnaird at the Department for Business, Energy and Industrial Strategy, Telephone: 030 0068 5956 or email: robert.kinnaird@beis.gov.uk can answer any queries regarding the instrument.