EXPLANATORY MEMORANDUM TO

THE GAS TARIFFS CODE (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 1393

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 The purpose of the instrument is to deal with deficiencies arising from the United Kingdom's withdrawal from the European Union. It does this by making amendments to Schedule 5 of the Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/531) ("the 2019 Regulations"). The 2019 Regulations make amendments to Commission Regulation (EU) 2017/460 which establishes a network code on harmonised transmission tariff structures for gas ("TAR"). This instrument is required as a result of changes to what will be retained EU law on exit day as a consequence of the postponement of exit day beyond 31 May 2019, the date from which Chapters II, III and IV of TAR apply.

Explanations

What did any relevant EU law do before exit day?

2.2 TAR applied as from entry into force on 6 April 2017, with some exceptions:

- Chapters VI (clearing price and payable price) and VIII (publication requirements) applied from 1 October 2017; and
- Chapters II (reference price methodologies); III (reserve prices) and IV (reconciliation of revenues) applied from 31 May 2019.

2.3 TAR is one of a series of network codes which sets out how EU gas networks are managed and the rules which govern cross-border gas trading. TAR sets out the methodology for calculating gas transmission tariffs based on Transmission System Operators' ("TSOs") revenues. The tariff structures cover the ways TSOs collect revenues associated with the provision of services at entry and exit points. TAR aims to increase the transparency and coherence of the tariff structures for gas trading and the procedures used to set them. It also includes requirements for consultation and publication regarding tariff levels. TAR contributes to achieving tariffs, or methodologies used to calculate them, which are transparent, non-discriminatory, facilitate efficient gas trade and competition, reflect the actual costs incurred, avoid cross-subsidies between network users, and provide incentives for investment.

2.4 By virtue of the European Union (Withdrawal) Act 2018, TAR is retained EU law. Schedule 5 to the 2019 Regulations amended TAR to deal with deficiencies arising

from withdrawal. This instrument amends schedule 5 to the 2019 Regulations as a result of the postponement of exit day beyond 31 May 2019, the date from which Chapters II, III and IV of TAR apply.

Why is it being changed?

2.5 The extension to Article 50 means that an additional three chapters of TAR will now be retained EU law on exit day, introducing new deficiencies and rendering some of the amendments made by the 2019 Regulations inappropriate.

2.6 The approach taken with the 2019 Regulations was to amend TAR using section 8 of the European Union (Withdrawal) Act 2018 to deal with deficiencies arising from withdrawal. These amendments were made on the assumption that the United Kingdom would exit the European Union without a deal on 29 March 2019. Following exit, the intention was to make a new statutory instrument to introduce and amend the three chapters of TAR that would not have applied on 29 March 2019 by using the powers introduced by regulation 9 of the Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1286).

2.7 However, now that the date for a potential no deal EU Exit has been moved to 31 October 2019, Chapters II, III and IV of TAR now apply and will be retained EU law on exit day. It is therefore necessary to amend the 2019 Regulations.

What will it now do?

2.8 This instrument will amend Schedule 5 of the 2019 Regulations which itself amends TAR. This is required as a result of changes to what will be retained EU law on exit day because of the postponement of exit day beyond 31 May 2019 (the date from which Chapters II, III and IV of TAR apply).

2.9 TAR will be amended as it applies in the UK to deal with deficiencies arising from withdrawal. Deficiencies in retained EU law include where there are functions in relation to EU entities which will no longer have a role and EU references which are no longer appropriate. The regime introduced by TAR is retained subject to these amendments.

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 of State, The Rt Hon Chris Skidmore MP has made the following statement regarding Human Rights:

"In my view the provisions of the Gas Tariffs Code (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.".

6. Legislative Context

6.1 This instrument amends Schedule 5 to the 2019 Regulations which amended TAR. These amendments are required as a result of changes to what will be retained EU law on exit day as a consequence of the postponement of exit day beyond 31 May 2019, the date from which Chapters II, III and IV of TAR apply.

7. Policy background

What is being done and why?

7.1 TAR aims to increase the transparency and coherency of the tariff structures for gas and the procedures used to set them. The tariff structures cover the ways TSOs collect revenues associated with the provision of services at entry and exit points, via capacity- and commodity-based transmission tariffs and non-transmission tariffs.

7.2 Chapters II, III and IV of TAR apply from 31 May 2019. As a consequence of the postponement of exit day beyond that date, these will be retained EU law on exit day and need to be amended to correct deficiencies. The purpose of this instrument is to correct those deficiencies. This ensures that on exit day TAR will operate effectively and regulatory certainty will be maintained.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 TAR affects gas policy in Northern Ireland which is a devolved matter.

8.2 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 deficiencies 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 Annex 1.

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 Ofgem, National Grid, the Northern Ireland Department for the Economy and the Utility Regulator.

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. Key stakeholders including Ofgem, National Grid, the Northern Ireland Department for the Economy, and the Utility Regulator have provided input and concluded that any direct impacts on business or public bodies 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 does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Department does not intend to monitor this instrument as no review is required.

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

15. Contact

15.1 Joan McGarvey at the Department for Business, Energy and Industrial Strategy (Telephone: 020 7215 3189 or email: Joan.McGarvey@beis.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Dave Buttery, Deputy Director of Energy Security, 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 Chris Skidmore 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. 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	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

		obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
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: 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, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft

			instrument, and, 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) Act 2018

1. Appropriateness statement

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

"In my view the Gas Tariffs Code (Amendment) (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 EU law will function effectively on exit from the European Union.

2. Good reasons

2.1 The Minister of State, the Rt Hon Chris Skidmore 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 the amendments to retained EU law made by this instrument are necessary to remedy deficiencies which would otherwise disrupt the operation of the UK's transmission tariff structures for gas as a consequence of the UK's exit from the EU.

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 Chris Skidmore MP has made the following statement(s):

"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 Chris Skidmore MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, the Minister of State, the Rt Hon Chris Skidmore 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.