EXPLANATORY MEMORANDUM TO

THE GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED FROM HIGH-EFFICIENCY COGENERATION (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1206

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Business, Energy and Industrial Strategy and is laid before Parliament by Act.

1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

2.1 This instrument amends the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007 and the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations (Northern Ireland) 2008 (together, the "GOO Regulations") in consequence of the United Kingdom's withdrawal from the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The GOO Regulations provide for the Secretary of State for Business, Energy and Industrial Strategy (in Great Britain) and the Department for the Economy (in Northern Ireland) to issue guarantees of origin ("GOOs") in respect of electricity generated from high-efficiency cogeneration sources (referred to as combined heat and power or CHP) in the UK, when requested to do so by generators. The GOO Regulations also require public bodies in Great Britain and in Northern Ireland to (1) recognise GOOs issued in the UK and in other Member States of the EU ("EU GOOs") unless requested not to by the issuing authority or where satisfied that there is a good reason to doubt the accuracy, reliability or veracity of the GOO; (2) notify the European Commission if the public body decides not to recognise an EU GOO; and (3) comply with Commission decisions about whether an EU GOO should be recognised.

Why is it being changed?

2.3 After the UK leaves the EU, the European Commission will have no jurisdiction in respect of the UK. Accordingly, the Commission will no longer have a role in the recognition of EU GOOs by UK public authorities, and this is made clear in the GOO Regulations.

What will it now do?

2.4 The GOO Regulations no longer require UK public authorities to notify the European Commission if a public authority decides not to recognise an EU GOO or for UK public authorities to comply with Commission decisions about whether an EU GOO should be recognised if there is a dispute about the EU GOO's validity between the holder of the GOO and a UK public authority.

2.5 Public authorities in Great Britain and in Northern Ireland will continue to be required to recognise GOOs issued in the UK and EU GOOs (with limited exceptions).

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 This instrument was laid in draft for sifting under the European Union (Withdrawal) Act 2018 on 17 October 2018. The Sifting Committees agreed with the government that this statutory instrument should follow the negative resolution procedure.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England & Wales and Scotland in respect of regulations 1(3) and 3, and Northern Ireland in respect of regulations 1(2), 2 and 4.

4.2 The territorial application of this instrument is Great Britain in respect of regulations 1(3) and 3, and Northern Ireland in respect of regulations 1(2), 2 and 4.

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 The GOO Regulations were made under section 2(2) of the European Communities Act 1972. They implement obligations in the Energy Efficiency Directive (Directive 2012/27/EU of the European Parliament and of the Council of 25th October 2012 on energy efficiency. Member States are required to issue GOOs in respect of electricity generated from high-efficiency cogeneration (referred to as combined heat and power (CHP) in the UK) in their own territory, when requested to do so, and to recognise GOOs issued by other Member States. Where the European Commission finds that a Member State's decision not to recognise a GOO is unfounded, the Commission can require the Member State to recognise it under Article 14(10) of the Directive. As noted in paragraph 2.4, this instrument is being made to remove the requirement for UK public authorities to notify the European Commission if a public authority decides not to recognise an EU GOO or for UK public authorities to comply with Commission decisions about whether an EU GOO should be recognised if there is a dispute about the EU GOO's validity between the holder of the GOO and a UK public authority.

6.2 As noted in paragraph 2.5 UK public authorities will continue to be required to recognise EU GOOs issued in accordance with the Energy Efficiency Directive as it has effect in EU law (with limited exceptions). This will include EU GOOs issued under the current Energy Efficiency Directive and the revised Energy Efficiency Directive to 2030 which is expected to come into force in or around January 2019, prior to Exit day.

7. Policy background

What is being done and why?

7.1 The GOO Regulations provide for the Secretary of State for Business, Energy and Industrial Strategy (in Great Britain) and the Department for the Economy (in Northern Ireland) to issue GOOs in respect of electricity from high-efficiency cogeneration in the UK, when requested to do so. Public bodies in Great Britain and Northern Ireland are required to recognise guarantees of origin issued in both parts of the UK, and those issued in accordance with the Energy Efficiency Directive by EU Member States, unless requested not to by the issuing body or where satisfied that there is good reason to doubt the accuracy, reliability or veracity of the GOO. Where a public body decides not to recognise a GOO issued in a Member State, the public body must notify the European Commission and in the event of a refusal the Commission may require the public body to recognise it, under Article 14(10) of the Energy Efficiency Directive.

7.2 GOOs are used to increase transparency, so that customers for electricity can differentiate between electricity generated by high-efficiency combined heat and power and electricity produced using other techniques. GOOs do not by themselves imply any right to public support. Indeed, they are not and have not been used in the UK as the basis for providing public support for combined heat and power.

7.3 When the United Kingdom leaves the EU, it will no longer be appropriate for the European Commission to be able to require public bodies in the United Kingdom to recognise GOOs issued in EU Member States. This instrument gives effect to this.

7.4 UK public bodies remain under a general obligation to recognise Guarantees of Origin issued in EU Member States, except where the public body is requested not to by the issuing body or where satisfied that there is good reason to doubt the accuracy, reliability or veracity of the GOO. Any decision of a public body not to recognise a guarantee of origin will be subject to the control of the courts.

7.5 The amendments made by this instrument seek to preserve the status quo as far as possible. They do not change the underlying scheme for the issue of GOOs or for the recognition of EU GOOs in the UK, except to remove the European Commission from the process, which is an inevitable consequence of the UK's withdrawal from the EU. Other amendments make it clear that, after the UK's withdrawal from the EU, the existing mutual obligation to recognise GOOs issued in Great Britain and in Northern Ireland by public bodies in the other part of the UK will continue and correct what would otherwise be inaccurate references to the UK as a member State of the EU.

7.6 This instrument applies to energy which is a transferred matter for Northern Ireland under section 4(1) of 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 less than one year away, 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.

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 deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the power in paragraph 21(b) of Schedule 7 to the Withdrawal Act 2018. 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.

8.2 Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made under section 2(2) of the European Communities Act 1972 to make a minor change to update the definition of the Combined Heat and Power Quality Assurance scheme and related guidance notes in the Northern Ireland regulations to the most recent issues.

9. Consolidation

9.1 This Department has no plans to consolidate the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007. The Department is not responsible for the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations (Northern Ireland) 2008.

10. Consultation outcome

10.1 No consultation was required for this instrument as no significant impacts on business or the public or voluntary sectors are foreseen. The devolved administrations in Northern Ireland Scotland and Wales have been consulted about the amendments made by this instrument.

11. Guidance

11.1 No guidance is required 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 as no significant impacts on business or the public or voluntary sectors are foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, but the amendments made are unlikely to affect small businesses in any significant respect.

14. Monitoring & review

14.1 No monitoring is required for this instrument as no significant impacts on business or the public or voluntary sectors are foreseen. However, the Department for Business, Energy and Industrial Strategy intends to monitor the question of whether the continuing general obligation on public bodies to recognise EU GOOs remains

appropriate in circumstances where there may be no equivalent obligation on EU member States in respect of GOOs issued in UK.

14.2 No statutory review clause is required in respect of the amendments made under the EU (Withdrawal) Act 2018.

14.3 The instrument does not include a statutory review clause in relation to the amendment made under s2(2) of the European Communities Act 1972. In line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Rt. Hon Claire Perry MP, Minister of State for Energy and Clean Growth, has made the following statement:

"In my view the inclusion of a statutory review clause in the Guarantees of Origin of Electricity Produced from High-Efficiency Cogeneration (Amendment) (EU Exit) Regulations 2018 is not appropriate."

14.4 This is because the amendment made is a minor change to bring a reference to the Combined Heat and Power Quality Assurance scheme Standard and associated Guidance Notes up to date, as described in paragraph 8.2. A review would be disproportionate when taking into account the nominal economic impact of the regulatory provision on the qualifying activity, and there are no other relevant factors that would make a review desirable.

15. Contact

15.1 Elizabeth Cooper at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 3712 or email: elizabeth.cooper@beis.gov.uk, or alternatively Barbara Garnier at the Department for Business, Energy and Industrial Strategy Telephone: 0300 068 5347 or email: barbara.garnier@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Michael Rutter, Deputy Director for Business Energy Use, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Claire Perry MP, the Minister of State for Energy and Clean Growth 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 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: 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) 2018 Act

1. Sifting statement(s)

1.1 The Minister of State for Energy and Clean Growth, 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 Guarantees of Origin of Electricity Produced from High-Efficiency Cogeneration (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure).".

1.2 This is the case because the amendments made by the instrument seek to preserve the status quo as far as possible and do not change the underlying scheme for the issue of GOOs or the recognition of EU GOOs in the UK, except to the limited extent set out in paragraphs 7.3 and 7.5 of the main body of this explanatory memorandum.

2. Appropriateness statement

2.1 The Minister of State for Energy and Clean Growth, 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 Guarantees of Origin of Electricity Produced from High-Efficiency Cogeneration (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate.".

2.2 This is the case because the amendments made by the instrument seek to preserve the status quo as far as possible and do not change the underlying scheme for the issue of GOOs or the recognition of EU GOOs in the UK, except to remove the European Commission from the process of recognising EU GOOs in the UK, which is an inevitable consequence of the UK's withdrawal from the EU.

3. Good reasons

3.1 The Minister of State for Energy and Clean Growth, 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.".

3.2 These are that, following the UK's withdrawal from the EU, the European Commission will no longer have a role in the process for the recognition of EU GOOs in the UK and that it is therefore important that the relevant legislation reflects this.

4. Equalities

4.1 The Minister of State for Energy and Clean Growth, the Rt Hon Claire Perry MP, has made the following statement(s):

"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.".

4.2 The Minister of State for Energy and Clean Growth, 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 draft instrument, I, Claire Perry, 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.".

5. Explanations

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