EXPLANATORY MEMORANDUM TO

THE RENEWABLE ENERGY, ENERGY EFFICIENCY AND MOTOR FUEL EMISSIONS (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2021

2021 No. 1115

1. Introduction

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.

This memorandum contains information for the Joint Committee on Statutory Instruments

2. Purpose of the instrument

This instrument remedies deficiencies arising in the following EU-derived domestic legislation as a result of EU Exit:

(a) The Renewable Transport Fuel Obligations Order 2007 as amended (SI 2007/3072) (the "RTFO Order")

(b) The Promotion of the Use of Energy from Renewable Sources Regulations 2011 (SI 2011/243) (the "PUERS Regulations")

(c) The Motor Fuel (Road Vehicle and Mobile Machinery) Greenhouse Gas Emissions Reporting Regulations 2012 as amended (SI 2012/3030) (the "Motor Fuel Regulations")

(d) Energy Efficiency (Building Renovation and Reporting) Regulations 2014 (SI 2014/952) (the "Building Renovation and Reporting Regulations")

(e) Energy Efficiency (Encouragement, Assessment and Information) Regulations 2014 (SI 2014/1403) (the "Encouragement, Assessment and Information Regulations")

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

This instrument was laid for sifting on 22 March 2021. The Sifting Committees agreed that the instrument should follow the negative resolution procedure. The sifting period finished on 21 April 2021.

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)

Not applicable.

4. Extent and Territorial Application

The territorial extent of this instrument is the United Kingdom.

The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

Since the end of the Transition Period, on the 1st January 2021, the FQD, RED and EED have no longer applied to the UK. This instrument fixes deficiencies that arise from the UK's withdrawal from the EU in Regulations transposing these Directives.

Regulation 2 of this instrument amends Article 16 of the RTFO, fixing a small deficiency in reference to EEA States, substituting "another" for "an" to reflect that the UK is no longer an EU Member State. It also fixes deficiencies by changing a reference to "a Member State or a group of Member States" to "an EEA state or a group of EEA states or the UK", for the same reason.

Regulation 3 of the instrument amends regulations 1(6), 10(3), 11 and 13 of the PUERS Regulations. The instrument fixes a small deficiency in reference to Member States, substituting "responsible authority" for "Member State or a group of Member States" in the definition of "support scheme" in regulation 10(3) of the PUERS Regs. Because the RED does not apply following the end of the Transition Period, the regulation 11 duty to ensure that public buildings fulfil an exemplary role in the context of the Directive is amended to be in the context of "the promotion of the use of energy from renewable sources". The regulation 13 requirement to recognise certification of installers of certain microgeneration technologies from EEA states is removed, as the change in the UK's relationship with the EU means it is no longer appropriate to maintain a duty to unilaterally recognise EEA installers. As regulation 13 is removed, a reference to it in regulation 1 is also removed.

Regulation 4 of the instrument removes regulation 25 of the Motor Fuel Regulations. It removes a requirement to keep under review measures required under the FQD relating to quality of petrol and diesel fuels and to take steps necessary in order to meet the requirements of the Directive. As the UK is no longer required to meet the objectives of the FQD it is not appropriate to continue this obligation to review.

Regulation 5 of the instrument amends regulations 3(4) and (5), 4, and 5(b) of the Building Renovation and Reporting Regulations 2014. These changes remove requirements for the UK to submit to the European Commission every three years a National Energy Efficiency Action Plan (NEEAP) accompanied by a Building Renovation Strategy. A requirement to report to the European Commission each year on progress against energy efficiency targets under EU legislation and other statistical information on energy efficiency is also removed. As EU energy efficiency targets and legislation no longer apply to the UK, and the European Commission has no oversight role over UK energy efficiency policy, it would not be appropriate to maintain these obligations in UK law.

Regulation 6 amends the Encouragement, Assessment and Information Regulations. The definition of the EED in regulation 2 is fixed so that it refers to the Directive as it stood immediately before the Transition Period ended. The reference to euros in the regulation 3(1) definition of small and medium-sized enterprises, used for the purposes of determining which enterprises should be encouraged to undergo energy audits, is converted to pounds sterling to reflect the UK's withdrawal from the EU. The amendments to regulations 4(1), (3), (5), (6) and (7) mean the Secretary of State will be required to continue to update and publish an assessment of the potential for high-

efficiency cogeneration and efficient district heating and cooling. The requirement to notify the European Commission of the assessments is removed because this would be inappropriate now the UK is no longer in the Transition Period. The ability of the European Commission to request updates of assessments is likewise removed and replaced by a requirement for the Secretary of State or, as the case may be, the Scottish Ministers, to carry out an update by 31 December 2025 and every 5 years thereafter, or to otherwise publish a statement setting out the reasons why this assessment has not been published. References to the requirements for the assessment are updated to refer to the latest version of the EED, with amendments to address the deficiencies in EU law - for example, removing references to EU legislation/targets/standards. The definition of "cost benefit analysis" is also amended to refer to the new Annex 8 requirements. The requirement in Annex 8 of the EED to publish the procedures used for the economic analysis required by this Annex is removed and instead has been expressly imposed on Ministers via new regulation 4(8)(c). The regulation 9 requirement to submit to the European Commission a review of the energy services market every three years is removed, for the same reasons set out above regarding the NEEAP and Building Renovation Strategy.

7. Policy background

What is being done and why?

Following the end of the Transition Period, as of the 1st January 2021, the RED and EED no longer apply to the UK. This instrument will fix deficiencies that result from EU exit.

This instrument will tidy up existing UK legislation so that references to the EU and its institutions, EU legislation and Member States will be amended where appropriate so that they apply to the UK. For example, the RTFO is amended by fixing a small deficiency in reference to EEA States, substituting "another" for "an" because the UK is no longer a Member State. It also replaces terms that will be deficient because of EU exit.

The instrument also removes requirements to send certain reports and statistics to the European Commission under the EED that are obsolete following the end of the Transition Period (detailed fully in the legislative context section above), and to carry out a review of compliance with the FQD.

The instrument removes requirements to recognise European Economic Area certification of microgeneration technologies, such as solar photovoltaics (PV), because it would not be appropriate to maintain a legal requirement for this when no longer a Member State.

Explanations

What did any relevant EU law do before IP completion day?

The regulations being amended transpose requirements under Directive 98/70/EC relating to the quality of petrol and diesel fuels (the Fuel Quality Directive or "FQD"), Directive 2015/652 laying down calculation methods and reporting requirements pursuant to Directive 98/70/EC, Directive 2009/28/EC on the promotion of the use of energy from renewable sources (the Renewable Energy Directive or "RED") and Directive 2012/27/EU on energy efficiency (the Energy Efficiency Directive or "EED"). These requirements were made at an EU level and applied in the UK as the UK was a Member State. Below is a summary of the regulations relevant to the amendments made by this statutory instrument that are transposed by these Directives.

The RED establishes a policy framework for the production and promotion of renewables in the EU. It sets a target for the EU of a 20% share of energy consumption for renewable sources in 2020. To help achieve this, it also sets binding Member State renewable energy targets for 2020. There are also obligations to report to the European Commission on progress towards national targets under the RED.

The EED establishes a policy framework for the encouragement and uptake of energy efficiency measures in the EU. It sets an energy efficiency target for the EU of reducing primary energy consumption by 20% in 2020, compared to a 2007 baseline projection. It also sets energy efficiency targets for 2020 for Member States. As with the RED, there are also obligations to report to the European Commission on progress towards national targets under the EED.

The FQD requires Member States to ensure that suppliers of fuel to road transport and non-road mobile machinery reduce the greenhouse gas intensity of fuels by a minimum of 6% by 2020 compared to a 2010 baseline. Together with the RED, it also regulates the sustainability of biofuels. There are also obligations for Member States to report annually to the European Commission on fuel characteristics and compliance with the greenhouse gas emission reduction target.

The RTFO Order places an obligation on transport fuel suppliers to supply a certain amount of renewable fuel, providing a market-based incentive mechanism to deliver reductions in greenhouse gas emissions from transport.

The PUERS Regulations transpose Articles 3(1), 3(2), 13(5), 14 and 16(4) of the RED. Among other provisions, the Regulations include requirements to introduce measures that will ensure that the UK meets its renewables target of at least 15% for 2020. The Regulations also require the Government to make available guidance about support schemes and about the optimal combination of renewable energy, energy efficient technologies and district heating and cooling. The Government must also ensure certain public buildings fulfil an exemplary role in the context of the RED. Certification or qualification schemes for installers of certain small scale equipment are established and the UK must also recognise any such certification issued by an European Economic Area (EEA) State.

The Motor Fuel Regulations set targets and provide an incentive mechanism for the reduction of greenhouse gas emissions from fuels for road transport and non-road mobile machinery in 2019 and 2020. They also set requirements for fuel suppliers to report the greenhouse gas intensity of their fuels and other characteristics including fuel type and amount, and sustainability information in the case of biofuels.

The Building Renovation and Reporting Regulations transpose Articles 4 and 24 of the EED. Among other provisions, the Regulations require the UK to submit a long-term renovation strategy to the European Commission and to update and submit this strategy every three years. The Regulations also require the UK to submit annual reports covering the UK's progress towards meeting its energy efficiency targets, including statistics on co-generation, and district heating and cooling. The UK is also required to submit to the European Commission a National Energy Efficiency Action Plan (NEEAP) every three years. The Regulations also place an obligation on the UK to link financial support for energy efficiency of buildings to targeted or achieved energy savings.

The Encouragement, Assessment and Information Regulations transpose Articles 8, 14, 15, 17, 18 and 19 and Annexes II, VIII, IX and X of the EED. Among other provisions, the Regulations require the Secretary of State, the Scottish Ministers, the Welsh Ministers and the Northern Ireland departments to develop programmes to encourage small or

medium-sized enterprises (SMEs) to undergo energy audits and give them examples of how energy management systems may be beneficial to them. They require the competent authorities to undertake assessments of the potential for high-efficiency cogeneration and efficient district heating and cooling. Under the same Regulations, the competent authorities must also submit a review of the energy services market.

Why is it being changed?

On 31 January 2020 the UK left the EU, and the Transition Period ended on 31 December 2020. The RED, EED and FQD no longer apply to the UK. This instrument therefore makes necessary changes to domestic law deriving from these Directives to account for the UK's transition to a new relationship with the EU as an independent sovereign country.

What will it now do?

This instrument will ensure that necessary amendments are made to the EU-derived legislation set out at paragraph 2.1, to ensure that it continues to operate effectively. Paragraphs 6.1 – 6.6 explain in detail the changes being made and the reasons why.

8. European Union Withdrawal and Future Relationship

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 (at the time the instrument was laid for sifting, Minister Rt Hon Anne-Marie Trevelyan) has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

There are no plans to consolidate this statutory instrument.

10. Consultation outcome

A consultation has not been conducted for this instrument because its purpose is to remove deficiencies from the statute book rather than representing a significant policy change.

The Devolved Administrations have been consulted and have given consent to this legislation.

11. Guidance

There is no need to provide guidance for this SI.

12. Impact

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

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

An impact assessment has not been prepared for this instrument because the statutory instrument will have minimal impact on business, charities, voluntary bodies, or the public sector. As the regulation has a net direct impact on business or civil society organisations of less than £5 million annually, it qualifies for the de minimis threshold and a full regulatory impact assessment is not required. The de minimis assessment has found that there should not be any disproportionate costs placed on small businesses because this SI primarily affects the government's reporting and other obligations under the RED and EED.

13. Regulating small business

The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

The Department does not intend to monitor this instrument.

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

15. Contact

Oladipo Okusaga at the Department for Business, Energy and Industrial Strategy Telephone: 02072158708 or email: Oladipo.Okusaga@beis.gov.uk can be contacted with any queries regarding the instrument.

Marina Skrinar, Director for Climate and Energy Trade and Europe, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

The Minister of State for Business, Energy and Clean Growth, the Rt Hon Greg Hands, 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 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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) or	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 section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Sifting statement(s)

The Minister of State for Business, Energy and Clean Growth, the Rt Hon Anne-Marie Trevelyan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> "In my view the Renewable Energy, Energy Efficiency and Motor Fuel Emissions (Miscellaneous Amendments) (EU Exit) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

This is the case because: it does not meet the criteria for an affirmative procedure in the European Union (Withdrawal) Act 2018. The instrument only contains amendments to fix legislation that is now deficient following the end of the Transition Period and ensures that the law continues to operate effectively.

2. Appropriateness statement

The Minister of State for Business, Energy and Clean Growth, the Rt Hon Anne-Marie Trevelyan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

> "In my view the Renewable Energy, Energy Efficiency And Motor Fuel Emissions (Miscellaneous Amendments) (EU Exit) Regulations 2021 do no more than is appropriate".

This is the case because this instrument goes no further than making appropriate fixes to ensure that retained EU law is clear and operable, by fixing deficiencies to domestic legislation which transposes part of the obligations found in the EU Renewable Energy Directive, Energy Efficiency Directive and Fuel Quality Directive.

3. Good reasons

The Minister of State for Business, Energy and Clean Growth, the Rt Hon Anne-Marie Trevelyan 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".

This instrument fixes deficiencies in provisions of EU-derived domestic legislation. If this instrument were not made, the legislation would be unclear and incomplete in parts, and fail to operate effectively.

4. Equalities

The Minister of State for Business, Energy and Clean Growth, the Rt Hon Anne-Marie Trevelyan 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."

The Minister of State for Business, Energy and Clean Growth, the Rt Hon Anne-Marie Trevelyan MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Greg Hands, 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

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