EXPLANATORY MEMORANDUM TO

THE UTILITIES ACT 2000 (AMENDMENT OF SECTION 105) ORDER 2026

2026 No. 149

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Lord Whitehead, Minister of State in the Department for Energy Security and Net Zero, confirms that this Explanatory Memorandum meets the required standard.

2.2 Ben Pledger, Deputy Director for Energy Bills Delivery at the Department for Energy Security and Net Zero, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Bryn Francis at the Department for Energy Security and Net Zero, email: LowerBillsTeam@energysecurity.gov.uk, can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Section 105 of the Utilities Act 2000 prohibits the disclosure of certain information unless an exemption under that section applies.

4.2 This instrument adds further exceptions to section 105 to allow for the disclosure of information in certain circumstances when functions under section 13, 19 or 22 of the Energy Prices Act 2022 ("the EPA") are exercised.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Scotland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The renewables obligation ("the RO") provides support to renewable electricity generation. It closed to new generators in 2017. Under the RO in Great Britain, Ofgem provide relevant renewable electricity generators with Renewables Obligation Certificates (ROCs) in proportion to the amount of electricity they generate from renewable sources. All electricity suppliers are obliged to present a certain number of ROCs back to Ofgem. To meet this obligation, suppliers can either enter into agreements with renewables generators to purchase ROCs at a negotiated price, or

they can pay Ofgem directly in lieu of buying ROCs. If choosing the second option, suppliers pay a 'buy-out price' set by Ofgem.

5.2 Electricity suppliers pass on the costs of meeting their obligations under the RO to consumers via energy bills. Ofgem considers these costs when setting the price cap for standard variable tariffs for domestic energy consumers.

5.3 The Secretary of State intends to provide grant funding to electricity suppliers to cover 75% of the cost of their obligation to the extent the obligation is attributable to electricity supplied to domestic customers. This will be referred to in this memorandum as the "RO to Exchequer policy". The intent of the RO to Exchequer policy, together with discontinuing the Energy Company Obligation (ECO) scheme, is to reduce domestic energy bills for consumers by an average of £150.

5.4 The RO to Exchequer policy involves offsetting a proportion of the cost of complying with the RO in respect of domestic supply. In order to determine the payments to be made to suppliers, the Secretary of State will need to know the volume of electricity supplied by a supplier to domestic customers. Ofgem already obtains data regarding the volume of domestic supply from suppliers. That is because suppliers are subject to a ringfencing obligation which applies only in respect of domestic supply volumes. The intention is to rely on this data, already obtained by Ofgem, to deliver the RO to Exchequer policy. Further data already obtained by Ofgem could also be used for audit purposes in relation to the scheme.

5.5 This information is subject to the general prohibition on the disclosure of information in section 105 of the Utilities Act 2000. As such an exemption is required to allow that information to be disclosed to the Secretary of State.

What was the previous policy, how is this different?

5.6 The RO to Exchequer policy is a new policy. However, previously, data sharing for the purposes of schemes set up under the EPA has been achieved by either relying on narrow exceptions in section 105 which relate to other EPA powers, or by relying on the exception which applies where the disclosure is required by a condition of an energy licence.

6. Legislative and Legal Context

How has the law changed?

6.1 The RO to the Exchequer policy is given effect under three powers provided for in the EPA. Section 13 of the EPA allows the Secretary of State to take such steps as the Secretary of State considers appropriate to, amongst other things, provide support for meeting costs related to the use of energy. The steps that may be taken include the provision of financial assistance.

6.2 Section 22 confers on the Secretary of State the power to direct persons who hold an energy licence. The Secretary of State intends to use that power to impose obligations on suppliers in relation to the payments made to them – i.e. to use the money received to provide a discount to domestic customers.

6.3 Section 19 allows the Secretary of State to make regulations requiring persons who receive energy price support to pass on the benefit to the end user of that energy. This would for example allow regulations to require that landlords pass on the discount to tenants.

6.4 This instrument enables the disclosure of information for the purposes of all three powers.

6.5 Section 105 of the Utilities Act 2000 prohibits the disclosure of information where the information has been obtained under or by virtue of certain energy legislation and where the information relates to the affairs of any individual or any particular business. Unless an exception applies, disclosure of such information during the lifetime of the individual or as long as the business continues to be carried on is an offence.

6.6 This instrument provides an exception where disclosure is made for the purpose of facilitating the Secretary of State taking steps under section 13. Under the RO to Exchequer policy, the data disclosed by Ofgem to the Secretary of State will facilitate the provision of financial assistance by allowing the appropriate amount of that assistance to be calculated.

6.7 The instrument also provides an exception where disclosure is made for the purpose of facilitating the performance of any functions conferred by regulations made under section 19 of the EPA.

6.8 Finally, the instrument provides an exception where disclosure is made by a person who is subject to a direction given under section 22 of the EPA for the purpose of complying with that direction.

Why was this approach taken to change the law?

6.9 This was the only approach available to enable the various forms of information sharing necessary to give effect to the RO to the Exchequer policy.

6.10 Under section 22(5) of the EPA, if the Secretary of State were to direct suppliers to provide information as part of the RO to Exchequer policy, that information sharing would be exempt from the section 105 prohibition. However, as set out above, Ofgem (as opposed to suppliers) must share ringfencing data with the Secretary of State to give effect to the RO to Exchequer policy. Further data already obtained by Ofgem could also be used for audit purposes in relation to the scheme.

6.11 Therefore, it was considered clearer and more cohesive to make express provision to exempt the various information sharing required to effect the policy.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation has been undertaken for this instrument, as it enables sharing of pre-existing data and does not change policy relating to external stakeholders.

7.2 We are engaging with Ofgem, devolved governments, energy suppliers, and energy consumer representatives on a regular basis regarding the wider RO to Exchequer policy.

8. Applicable Guidance

8.1 This instrument does not require guidance as it removes a prohibition on data sharing and does not create any new processes for which guidance would be required.

8.2 Guidance on the wider RO to Exchequer policy will be published on Gov.uk ahead of 1 April.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument. This legislation will enable the data sharing which needs to take place between Ofgem and the Secretary of State for the purposes of the RO to Exchequer scheme. It is expected there will be a very small burden to Ofgem from sharing the data. The RO to Exchequer policy is expected to reduce household electricity bills in 2026/27 by £87 on average with suppliers receiving a grant from the Exchequer. The data will be used to determine the grant payments to suppliers and will also be used to inform the reconciliation process for the scheme, without this legislation the RO to Exchequer scheme would not be deliverable.

Impact on businesses, charities and voluntary bodies

9.2 There is no impact on charities or voluntary bodies because we expect the disclosure facilitated by this instrument to be disclosure by Ofgem and the Secretary of State. There may be some small impact on energy suppliers who may be required to share data with the Secretary of State. However, it is anticipated that most data which may be shared is already collected by Ofgem as part of pre-existing processes.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no significant impact on the public sector because Ofgem already collects the ringfencing data from suppliers on a quarterly basis, and therefore there is limited additional burden from sharing it.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause. The Department considers that the duty to review regulatory provisions in secondary legislation in section 28(2) of the Small Business, Enterprise, and Employment Act 2015 does not apply to this instrument. This is because the instrument does not make any regulatory provision under the meaning given by section 32(4) of that Act.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The instrument does not relate to any matters of special interest to Parliament.

12. European Convention on Human Rights

12.1 The Minister of State in the Department for Energy Security and Net Zero has made the following statement regarding Human Rights:

"In my view the provisions of 'The Utilities Act (Amendment of Section 105) Order 2026' are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").