



Department for
Business, Energy
& Industrial Strategy

The Rt Hon Claire Perry MP
Minister of State for Energy and Clean Growth

Department for Business, Energy &
Industrial Strategy
1 Victoria Street
London
SW1H 0ET

House of Commons
London
SW1A 0AA

T +44 (0) 20 7215 5000
E enquiries@bis.gov.uk
W www.gov.uk

14 Dec 2018

Dear Colleague,

I am writing to inform you of my Department's plans to bring to Parliament, before the upcoming recess, five statutory instruments to be made under the European Union (Withdrawal) Act 2018 ('the Withdrawal Act'), which will be proposed for the negative procedure. These instruments will amend elements of retained European Union (EU) law in the field of electricity and gas markets to ensure that the energy market continues to operate effectively in the unlikely event of the UK leaving the EU without an agreement. I am writing to you because of your interest in EU exit and energy policy.

This letter provides an overview of the purpose of these instruments and their broad impact, with additional detail on each instrument provided in the attached annex. A wider overview of how electricity and gas trading would function, in a 'No Deal' scenario was provided by the Technical Notices on electricity and gas trading, published on 12th October.

Purpose of the instruments: Legislating for EU exit

It is anticipated that on leaving the EU on the 29th March 2019, the UK will enter an implementation period lasting until the end of 2020. As a responsible government, however, we will continue to proportionately prepare for all scenarios, including the unlikely outcome that we leave the EU without any deal in March 2019. This legislation is a sensible contingency to ensure that domestic and retained EU legislation in the field of energy would continue to operate effectively. To ensure that all parts of the UK have a functioning statute book after exit day, and in the absence of a Northern Ireland Executive which would normally legislate on energy matters, necessary amendments to Northern Ireland legislation are being made through the UK Parliament.

The Withdrawal Act will convert, at the point of the UK's exit from the EU, directly applicable EU legislation into 'retained EU law', to minimise disruption to the statute book. Secondary legislation is required to ensure this new retained EU law will be functional after exit, by fixing 'inoperabilities' such as obligations binding on EU 'Member States'. The Withdrawal Act limits the extent of amendments which can be made to address inoperabilities, consequently the instruments described here make the minimal possible changes to ensure continued operability of the UK's energy market statute book.

The aim of this legislation is to minimise disruption to the UK's energy markets as we leave the EU. Doing so ensures legislative continuity for UK industry. For example, by maintaining the operability of Northern Ireland's energy legislation these instruments will facilitate the continued operation of the Single Electricity Market (SEM) on the island of Ireland, which the Government is committed to doing in any eventuality.

Key changes to electricity and gas market legislation

The legislation these instruments will amend is a mixture of primary and secondary domestic legislation, EU regulations, and EU tertiary legislation (Network Codes and Guidelines). These amendments will ensure that 'retained EU law' will remain operable once brought into UK law by the Withdrawal Act. This requires, for example, the removal of: formal roles for EU bodies in UK legislation, obligations which only fall on bodies outside the UK (such as the Agency for the Cooperation of Energy Regulators), and provisions describing the formal role of UK bodies in EU energy institutions.

These instruments will also make a range of other changes, including removing references and obligations to participating in coordinated EU energy trading arrangements (i.e. market coupling), which will mean that trading will need to continue through mechanisms which do not rely on EU legislation. In addition, the instruments will ensure that regulators and system operators of gas and electricity markets in the UK have clear roles and responsibilities after the UK leaves the EU by removing their status as 'designated' organisations which are obliged to follow EU law. Alongside this, the instruments will ensure UK regulators can continue to prevent market abuse in wholesale energy markets by incorporating into UK law functions currently held by the European Commission.

I am confident that all of the amendments these instruments make fall within the scope of the negative statutory instrument procedure. The changes they will make continue technical functions carried out pre-exit, where practical, and do not create new bodies or regulatory frameworks. Furthermore, the amendments made do not include the types of changes listed in schedule 7 of the Withdrawal Act (such as creating new criminal offences) which require an instrument to be made through the affirmative procedure.

In preparing this legislation, my Department has worked closely with Ofgem in Great Britain and the Department for the Economy and the Northern Ireland Authority for Utility Regulation in Northern Ireland. The instruments described in this letter, and in greater detail in its annexes, address a range of inoperabilities that are often highly technical and complex and do no more than is strictly necessary to ensure the continued and efficient operation of the UK's vital energy markets. These instruments are an important and necessary way to ensure that the UK will continue to have a well-functioning statute book and well-functioning energy system in the unlikely event that the UK leaves the EU without a deal.

Yours Ever,

A handwritten signature in black ink, appearing to be 'CP', with a long horizontal flourish extending to the right.

THE RT HON CLAIRE PERRY MP
Minister of State

The Electricity and Gas etc. (Amendment etc.) (EU Exit) Regulations 2019 - Summary

Issue

1. The UK's energy regulatory framework is made up of a complex mix of domestic and European legislation, reflecting the key role the UK has had in developing the EU energy market. Significant elements of our domestic legislation have been amended or supplemented as a result of our obligations in EU law, and these are complemented by directly applicable European legislation. Both domestic and EU legislation in this field will become retained EU law within the meaning of the EU Withdrawal Act 2018 ('the Withdrawal Act') and continue to have effect in the UK purely as a part of our domestic law on exit day. If the UK leaves the EU without an agreement, as prepared for by this SI, we will no longer be able to participate in the mechanisms this legislation is designed to facilitate, and at that point, without amendment, it would become inoperable.

How does the SI resolve this?

2. In response, this SI will use the powers under the Withdrawal Act to amend and make 'workable' retained EU energy law created to harmonise energy markets across the EU (known as the 'third energy package'). This legislation can be divided broadly into two categories: legislation originating in the UK (such as the Electricity Act 1989) and, legislation originating from the EU (such as the Electricity Regulation). It will achieve this through removing inoperabilities while retaining regulatory functions and frameworks needed to keep Great Britain's (GB) and Northern Ireland's (NI) energy markets working effectively.
3. The majority of these inoperabilities are minor, such as redundant references to EU institutions and cross-border processes. The number of inoperabilities dealt with by this instrument are numerous and it would not be practical to list them all. However, examples of inoperabilities and how they are resolved are set out below. This instrument will:
 - Amend the 'Certification Process' (regulator review of Interconnectors and Transmission System Operators to check for undue market influence) set out in the Electricity Act 1989, Gas Act 1986, Electricity (Northern Ireland) Order 1992, Gas (Northern Ireland) Order 1996, Electricity Regulation and Gas Regulation to remove the role of the European Commission and its power of veto.
 - Revoke the Agency Regulation and amend the Energy (Northern Ireland) Order 2003 and Electricity and Gas Acts to end UK energy organisations' recognition of binding decisions made by the Agency for the Cooperation of Energy Regulators.
 - Amend UK regulators' high-level statutory objectives, set out in domestic law, to reflect the UK's exit from the EU and removal of their status as 'National Regulatory Authorities' (an EU concept only applicable to Member State energy regulators).
 - Revoke the majority of the guidelines for trans-European energy infrastructure (known as the 'TEN-E Regulation') which sets out processes to facilitate development of infrastructure that will be redundant in a domestic setting.
 - Remove articles detailing the creation of the European Network of Transmission Systems Operators for Gas and for Electricity (cross-European coordination bodies) and the rules governing them which will be redundant when the UK leaves the EU.
 - Revoke the European Energy Programme for Recovery Regulation (known as 'EEPR') which provided funding packages (now spent) to a limited number of UK energy projects in the wake of the 2007-9 financial crisis.
4. Amendments made by this instrument are largely but not exclusively mirrored in legislation applying to NI and GB. This will ensure a consistent approach to retained EU legislation that previously applied across the UK while still recognising the unique nature of the Single Electricity Market.

The Gas (Security of Supply and Network Codes) (Amendment) (EU Exit) Regulations 2019 – Summary

Issue

1. European Union legislation governing security of gas supply including the Gas Regulation and various gas network codes, contains numerous processes, definitions and obligations that refer to or give roles to EU institutions and member states. This legislation will become retained EU law within the meaning of the EU Withdrawal Act 2018 ('the Withdrawal Act') and will continue to have effect in the UK as part of our domestic law on exit day. Much of the coordinated trading arrangements in this legislation rely on bilateral cross border engagement and are drafted such that they apply to non UK entities. Without amendment, these provisions would become inoperable domestically.

How does this statutory instrument ('SI') resolve this?

2. This SI will use the powers under the Withdrawal Act to amend energy legislation in order to make it operable in a 'No Deal' scenario. It will do this by removing inoperabilities, while retaining the regulatory functions and frameworks needed to keep the Great Britain ('GB') and Northern Ireland ('NI') gas markets working effectively, facilitating continuity for UK industry and consumers.
3. The SI will amend the Security of Gas Supply Regulation. The SI will maintain alignment with the Regulation in so far as possible, including providing for the clear definition and attribution of responsibilities among natural gas undertakings and transparent mechanisms concerning the coordination of planning for, and response to, emergencies. The SI will revoke inoperabilities such as requiring the UK to facilitate 'solidarity' (gas sharing) with EU Member States in the event of a gas emergency or where an EU Member State can no longer supply its 'protected customers'.
4. The SI will also amend the Network Codes on Interoperability and Data Exchange Rules ('INT'), Harmonised Transmission Tariffs for Gas ('TAR') and Gas Balancing of Transmission Networks ('BAL') to ensure that they are operable when incorporated into domestic legislation.
5. This SI will maintain alignment with INT, but provisions requiring the GB and NI system operators to share information with other EU Transmission System Operators (TSOs) or EU institutions, and obligations to adopt specific practices are removed. Much of the remainder of the code would be inoperable as it provides for cooperation between TSOs of the EU.
6. This SI will maintain alignment with TAR as much as possible. Some parts of TAR do not come into force until after EU exit and therefore will not be incorporated into domestic law at the time of EU exit. The recently approved Electricity and Gas (Powers to make subordinate legislation) (Amendment) (EU Exit) Regulations 2018 provides powers for the Government to align in these areas after exit.
7. This SI will preserve BAL principles so that they will remain in place at all balancing zones within the UK or UK marine area. Northern Ireland currently implements interim measures under BAL. This SI will not change how NI applies interim measures. The SI will remove obligations on UK bodies to share information with EU bodies and the European Commission.
8. The SI will amend the Network Code on Capacity Allocation Mechanisms in the Gas Transmission System (CAM) by removing inoperabilities that would otherwise arise from their incorporation into domestic law e.g. references to processes and relationships with EU institutions. The SI will maintain alignment with CAM standards, rules, principles and technical specifications facilitating business continuity for market participants and allow for cross border gas trading and maintain the status quo.

The Electricity Network Codes and Guidelines (Markets and Trading) (Amendment etc.) (EU Exit) Regulations 2019 - Summary

Issue

1. European Union legislation underpinning the wholesale electricity markets provides for a range of mechanisms for the co-ordinated cross-border trade in electricity and the allocation of capacity on interconnectors to enable electricity to flow efficiently across them. This legislation will become retained EU law within the meaning of the EU Withdrawal Act 2018 ('the Withdrawal Act') and will continue to have effect in the UK as part of our domestic law on exit day. If the UK leaves the EU without a deal, we will no longer be able to participate in the mechanisms it is designed to facilitate and at that point, without amendment and in some cases revocation, the legislation would become inoperable.

How does this statutory instrument ('SI') resolve this?

2. This SI will revoke the Guideline on Capacity Allocation and Congestion Management (CACM), and the Forwards Capacity Allocation ('FCA') Guideline. This instrument amends the Guideline on Electricity Balancing in respect of Great Britain ('GB') and revokes this Guideline in respect of Northern Ireland ('NI'). In addition, this instrument will amend the Inter-Transmission System Operator Compensation Mechanism Regulation ('ITC Regulation').
3. The CACM guideline provides for the 'market coupling' process, which is a pan-European trading process that improves the efficiency of trading electricity across interconnectors over shorter-term timescales. This process requires the harmonisation of processes and the cooperation of parties across participating markets. The FCA guideline harmonises the processes for the sale of interconnector capacity on longer-term timescales and sets up a single allocation platform for the sale of interconnector capacity. As these processes are pan-EU, requiring cooperation from connected countries, the UK cannot unilaterally choose to participate in them. Therefore, the CACM and FCA guidelines will be revoked by this SI. Trading arrangements can be put in place without the guidelines, as was the case before they came into force.
4. In respect of GB, the Guideline on Electricity Balancing will be largely retained, with amendments made to remove provisions relating to a European platform for the exchange of balancing energy. This platform is designed to allow transmission system operators (TSOs) to exchange energy across borders in order to ensure the systems which they run remain in balance in real time. In a No Deal scenario, the UK would not have access to this platform so provisions relating to it would be inoperable if incorporated into domestic law. Loss of access to the platform will not however threaten system security as system operators in the UK will retain access to existing domestic balancing markets.
5. In respect of NI, the Guideline on Electricity Balancing will be revoked. This is because Article 1(3) of the guideline sets out that it does not apply to islands not interconnected with the rest of the EU. This will be the case for Ireland after the UK leaves the EU. In order that the same rules governing balancing energy should apply across the Single Electricity Market in Ireland and NI, the guideline will be revoked in respect of NI.
6. The ITC Regulation governs the operation of the Inter-Transmission System Operator Compensation ('ITC') mechanism, under which TSOs pay and are paid for the costs of hosting cross-border flows of electricity. It is currently uncertain whether UK TSOs will be able to continue participating in the ITC mechanism after EU Exit as this decision ultimately lies with EU bodies. This SI will therefore amend the ITC Regulation to ensure that it will operate effectively whether UK TSOs continue to participate in the ITC mechanism or not. To do this, Article 1 and Annex A, which detail the operation of the ITC will be revoked. Annex B, which sets out harmonised approaches to transmission charging, will be retained with minor amendments to remedy inoperabilities such as references to other EU Member States.

The Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019 – Summary

Issue

1. European Union legislation governing the real-time operation of electricity systems by transmission system operators ('TSOs') contains numerous provisions relating to cross-border processes and references to EU institutions and member states. This legislation will become retained EU law within the meaning of the EU Withdrawal Act 2018 ('the Withdrawal Act') and will continue to have effect in the UK as part of our domestic law on exit day. If the UK leaves the EU without a deal, we will no longer be able to participate in the mechanisms the legislation facilitates and at that point, without amendment and in some cases revocation, it would become inoperable.
2. EU laws governing connections to electricity networks ('Connection Codes')¹ will only be partially incorporated by the Withdrawal Act as many of their provisions apply from a date after exit day.

How does this statutory instrument ('SI') resolve this?

3. The Guideline on Electricity Transmission System Operation ('TSOG') is a wide-ranging technical regulation introducing common standards relating to many of the activities of TSOs and facilitating cross-border cooperation between TSOs. As well as making numerous minor technical amendments, this SI will amend TSOG in respect of Great Britain ('GB') to:
 - Remove provisions establishing Regional Security Coordinators as they are non-UK bodies and provisions creating them would be inoperable if incorporated into domestic law.
 - Remove requirements to share information with EU institutions or TSOs.
 - Remove provisions relating to regional outage coordination and cross-border imbalance settlement as these cross-border processes would be inoperable in domestic law.
4. The Network Code on Electricity Emergency and Restoration ('ER') governs the measures TSOs take to prevent and respond to emergencies on their systems. As well as making numerous minor technical amendments, this SI will amend ER in respect of GB to:
 - Limit the scope of requirements for the GB System Operator to assist neighbouring TSOs in emergencies to assisting only the Northern Ireland ('NI') System Operator.
 - Remove requirements for the GB System Operator to ensure the consistency of their system defence and restoration plans with those of neighbouring TSOs.
 - Remove requirements for the GB System Operator to share information with non-GB TSOs.
5. TSOG and ER contain provisions governing cross-border cooperation in system operation which are important to the operation of the NI / Ireland synchronous area. These provisions would be inoperable if incorporated unilaterally into domestic law without an agreement. Both TSOG and ER contain provisions requiring EU TSOs sharing a synchronous area with a non-EU TSO to conclude an agreement with the non-EU TSO which would serve to apply the two instruments, including their cooperation provisions. This SI will revoke the bulk of both TSOG and ER in respect of NI, with the exception of provisions requiring NI TSOs to conclude such an agreement with Ireland TSOs, thereby preserving as far as possible the status quo in electricity system operation in NI. Engagement to conclude this agreement has already commenced.
6. This SI will revoke the Connection Codes as they are inoperable in the absence of provisions not incorporated by the Withdrawal Act as the provisions are stated to apply from a date after exit day. It is the Department's intention to make further regulations under the powers of The Electricity and Gas (Powers to Make Subordinate Legislation) (Amendment) (EU Exit) Regulations 2018 that will incorporate the Connection Codes into domestic law if required at a later date.

¹ The Network Code on Requirements for Grid Connection of Generators, the Network Code on Demand Connection, The Network Code on Requirements for Grid Connection of High Voltage Direct Current Systems and Direct Current-Connected Power Park Modules.

The Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019

Issue

1. European Union legislation relating to energy markets sets out a well-developed regime for the prevention of market abuse. This includes transparency measures, to ensure market participants have access to all relevant information, and surveillance to deter and detect abuse. The legislation also gives significant roles to EU institutions and imposes obligations on UK entities including regulators in relation to them. This legislation will become retained EU law within the meaning of the EU Withdrawal Act 2018 ('the Withdrawal Act') and will continue to have effect in the UK as part of our domestic law on exit day. If the UK leaves the EU without a deal, we will no longer be able to participate in the mechanisms it is designed to facilitate, and EU institutions will cease to have roles in relation to the UK. At that point, without amendment, the legislation would become operable.

How does this statutory instrument ('SI') resolve this?

2. This SI will modify three EU regulations; the Regulation on Wholesale Energy Market Integrity and Transparency ('REMIT'), the REMIT Implementing Regulation, and the Regulation on Submission and Publication of Data in Electricity Markets ('the Transparency Regulation') in order to ensure that they are operable when incorporated into domestic law by the European Union (Withdrawal) Act 2018. It will also make consequential amendments to the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013 and the Electricity and Gas (Market Integrity and Transparency) (Criminal Sanctions) Regulations 2015.
3. The modifications to retained EU law will ensure that Great Britain ('GB') and Northern Ireland ('NI') regulators can maintain effective market surveillance and enforcement and that market participants continue to publish relevant transparency data. The SI will address inoperabilities, so that regulatory functions and frameworks continue working effectively, post exit.
4. Prohibitions on insider trading and market manipulation will remain unchanged, as will domestic enforcement powers and penalties.
5. Energy market participants will be required to register with the appropriate national regulatory authority: the Gas and Electricity Markets Authority in relation to GB and the Northern Ireland Authority for Utility Regulation in relation to NI. The registration requirement will commence following a grace period of 4 weeks, to allow market participants to complete administrative steps. This will have no impact on the regulators' ability to maintain effective market surveillance. Further to this, to avoid duplication and unnecessary regulatory burden, the UK regulators will be able to choose to continue to recognise registrations under the European regime, and any new registrations made by their domestic counterpart.
6. The requirement to publish inside information and certain transparency data will continue as currently required, without onward transmission to European transparency platforms. However, other forms of data reporting, used for market surveillance, will not be commenced until national regulators have developed suitable secure platforms to receive this information. In the interim, national regulators will rely on alternative sources of market surveillance data and domestic powers. This will not lead to a loss of market surveillance capability. Regulators may choose not to commence the full data reporting requirements, as originally set out in the EU law, where they are satisfied that alternative surveillance methods provide them with comparable market oversight.