EXPLANATORY MEMORANDUM TO
THE ELECTRICITY NETWORK CODES AND GUIDELINES (SYSTEM OPERATION AND CONNECTION) (AMENDMENT ETC.) (EU EXIT) (NO. 2) REGULATIONS 2019
2019 No. XXXX

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 Act.
1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument
2.1 This instrument amends statutory instrument, Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/533) and will ensure that legislation governing the UK’s energy systems will function effectively in the event that the UK leaves the European Union (‘EU’) without a withdrawal agreement in place. It ensures that Commission Regulation (EU) 2016/631 of 14 April 2016 establishing a network code on requirements for grid connection of generators (the ‘Code’) will become retained direct EU law in the event that the Article 50 period is extended beyond 26 April 2019.

Explanations

What did any relevant EU law do before exit day?

2.2 The Code sets technical and functional requirements that new generators with a capacity of 800 watts or more connecting to the network (both transmission and distribution) will need to meet, as well as responsibilities on Transmission System Operators and Distribution Network Operators.

2.3 The Code came into force on 17 May 2016. However, other than to a very limited extent, it will only apply from 27 April 2019. An obligation which does apply before 27 April 2019, for example, is for ENTSO-E (the European Network of Transmission System Operators for Electricity) to publish non-binding guidance on implementation of the Code.

Why is it being changed?

2.4 Anticipating an exit day of 29 March 2019, the Code is revoked by the Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) Regulations 2019 (the ‘revoking SI’), to the extent that it would be retained direct EU law. Had exit day fallen on 29 March, the revoking SI would only have revoked the few applicable parts of the Code – which on their own would have been inoperable. The Government’s intention was to use powers conferred on the Secretary of State by the Electricity and Gas (Powers to Make Subordinate Legislation) (EU Exit) (Amendment) Regulations 2018 to mirror the Code in domestic law, once it applied in full, and ensure a complete set of the Code’s regulations applied in domestic law.
2.5 With an Article 50 period beyond 26 April 2019, the Code will now apply in full at the time of exit day. The revocation provisions relating to the Code in the revoking SI will accordingly not only be unnecessary but result in the revocation of the entirety of the Code. This instrument prevents that revocation, allowing the Code to form part of the body of retained direct EU law.

What will it now do?

2.6 This instrument will ensure that the Code is able to form part of retained direct EU law in circumstances where exit day is moved beyond 26 April.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 This instrument is laid for sifting by the Sifting Committees.

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 the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

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 On 29 March 2017 the Prime Minister triggered Article 50 of the Treaty on European Union and started the UK’s exit from the European Union. To ensure business and legislative continuity for the UK, following over 40 years of EU membership, the Withdrawal Act will incorporate directly applicable EU legislation and EU derived legislation as it applied immediately before exit day.

6.2 This instrument is one of a series that will ensure that domestic and retained EU law governing the UK’s electricity and gas markets will function effectively in the event that the UK leaves the European Union without a deal.

6.3 On the 14 March 2019 Parliament voted to request an extension to the Article 50 period which was implemented. An extension changes the scope of the legislation which will be brought into domestic law as retained EU law under the Withdrawal Act and will see legislation, previously revoked as inoperable, be eligible for amendment.
7. **Policy background**

*What is being done and why?*

7.1 Following an extension to the Article 50 period, exit day will fall after the point at which the Code applies in full. In light of this, this instrument reverses the revocation of the Code.

7.2 In common with other EU Network Codes, the Code is an EU Regulation and, pre-exit, will be directly applicable to the UK without having to be transposed into domestic law. The UK already has existing national technical codes and standards (known as ‘Industry Codes’) for parties that want to connect to the electricity transmission system. The process of ensuring that the Industry Codes reflect the Code has been largely completed, as have preparations by the UK energy sector to comply with it.

7.3 Failure to incorporate the Code, will adversely impact industry confidence and create regulatory uncertainty, as the UK energy industry will be unsure of the Code’s future status (something Government has previously committed to preserve in a no deal scenario).

7.4 This uncertainty will have particular significance in the context of the all-island Single Electricity Market (SEM) shared between Northern Ireland and Ireland, as this would likely cause inconsistencies in how some aspects of the electricity system are managed. While it is anticipated that the impact of these inconsistencies would ordinarily be minor in scale, in a no deal scenario the operation of the SEM and its market participants are expected to be especially sensitive to regulatory inconsistencies. Government is seeking to avoid such inconsistencies with this instrument, in line with the Government’s strong commitment to support the continued operation of the SEM in all EU Exit scenarios.

7.5 This instrument applies to energy, which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolved government 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 approaching, and in the continued absence of a Northern Ireland Executive, UK Government Ministers 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 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. 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.

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. A letter notifying the Northern Ireland Department for the Economy, detailing the intention to legislate and the content of the statutory instruments, has been sent, and a response from the Department noting the intention to legislate has been received.

11. **Guidance**

11.1 Guidance has not been produced for this instrument.

12. **Impact**

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

12.2 There is no impact on the public sector.

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.

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 Jane Walker, Deputy Director for Energy Markets and Affordability, 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 Claire Perry 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.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Where the requirement sits</th>
<th>To whom it applies</th>
<th>What it requires</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sifting</td>
<td>Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7</td>
<td>Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI</td>
<td>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</td>
</tr>
<tr>
<td>Appropriateness</td>
<td>Sub-paragraph (2) of paragraph 28, Schedule 7</td>
<td>Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2</td>
<td>A statement that the SI does no more than is appropriate.</td>
</tr>
<tr>
<td>Good Reasons</td>
<td>Sub-paragraph (3) of paragraph 28, Schedule 7</td>
<td>Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2</td>
<td>Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.</td>
</tr>
<tr>
<td>Equalities</td>
<td>Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7</td>
<td>Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2</td>
<td>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.</td>
</tr>
<tr>
<td>Explanations</td>
<td>Sub-paragraph (6) of paragraph 28, Schedule 7</td>
<td>Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2</td>
<td>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.</td>
</tr>
<tr>
<td>Criminal offences</td>
<td>Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7</td>
<td>Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2</td>
<td>Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.</td>
</tr>
<tr>
<td>Section</td>
<td>Paragraph, Schedule</td>
<td>Description</td>
<td>Reason</td>
</tr>
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<tr>
<td>Sub-delegation</td>
<td>Paragraph 30, Schedule 7</td>
<td>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.</td>
<td>State why it is appropriate to create such a sub-delegated power.</td>
</tr>
<tr>
<td>Urgency</td>
<td>Paragraph 34, Schedule 7</td>
<td>Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.</td>
<td>Statement of the reasons for the Minister’s opinion that the SI is urgent.</td>
</tr>
<tr>
<td>Explanations where amending regulations under 2(2) ECA 1972</td>
<td>Paragraph 13, Schedule 8</td>
<td>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</td>
<td>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.</td>
</tr>
<tr>
<td>Scrutiny statement where amending regulations under 2(2) ECA 1972</td>
<td>Paragraph 16, Schedule 8</td>
<td>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</td>
<td>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.</td>
</tr>
</tbody>
</table>
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, 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 Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 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 effect of this instrument is limited to a single amendment which prevents the unnecessary revocation of the legislation in question in the event exit day is delayed beyond 26 April 2019. In those circumstances, the amendment ensures that the said legislation forms part of retained direct EU law.

1.3 Furthermore, the instrument does not:

- Provide for any function of an EU entity or public authority in a Member State of making an instrument of a legislative character to be exercisable instead by a public authority in the United Kingdom,
- Relate to a fee in respect of a function exercisable by a public authority in the United Kingdom,
- Create, or widen the scope of, a criminal offence, or
- Create or amend a power to legislate, or
- Contain any other provision which falls within the scope of Schedule 7, Paragraph 1(1) of the Act.

2. Appropriateness statement

2.1 The Minister of State, 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 Electricity Network Codes and Guidelines (System Operation and Connection) (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 do no more than is appropriate.”

2.2 This is the case because:

- The instrument makes only those changes necessary to ensure that the legislation in question forms part of retained direct EU law and is incorporated into domestic legislation.

3. Good reasons

3.1 The Minister of State, 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 In the event the Article 50 period is extended beyond 26 April 2019, those reasons are:

- In the absence of this instrument, the legislation in question will be unnecessarily revoked in its entirety.
- The prevention of such revocation will allow the legislation to form part of the body of retained direct EU law and preserve industry confidence and regulatory certainty.

Further information about the reasons for the provisions in this instrument is provided in Section 7 above.

4. **Equalities**

4.1 The Minister of State, the Rt Hon Claire Perry MP has made the following statements:

“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.

4.2 The Minister of State, 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 instrument, I, Minister of State, the Rt Hon Claire Perry 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.”

4.3 This instrument has no, or no significant, differential impact on those with protected characteristics 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.