

EXPLANATORY MEMORANDUM TO

THE GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED FROM HIGH-EFFICIENCY COGENERATION AND RENEWABLES OBLIGATION (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 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 the references to 'exit day' in the Guarantees of Origin of Electricity Produced from High-Efficiency Cogeneration (Amendment) (EU Exit) Regulations 2018 ("the 2018 Guarantees of Origin SI") and the Renewables Obligation (Amendment) (EU Exit) Regulations 2019 ("the 2019 Renewables Obligation SI"), to ensure that the drafting intent of these regulations is preserved, following the United Kingdom's withdrawal from the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Guarantees of Origin ("GOOs") are used to track and account for electricity generated in the UK from high-efficiency cogeneration sources (referred to as combined heat and power or CHP). EU Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources requires Member States to issue GOOs when requested to do so and to recognise GOOs issued in other Member States of the EU ("EU GOOs").
- 2.3 The RO scheme incentivises the deployment of large-scale renewable electricity generation in Great Britain and all renewable electricity generation in Northern Ireland. Where electricity generation uses liquid fuels derived from crops grown in the EU, support for that generation is only given if the crops were grown in accordance with certain sustainability requirements and standards referred to in Regulation (EU) No. 1306/2013 on the financing, management and monitoring of the common agricultural policy ("the 2013 EU Regulation").

Why is it being changed?

- 2.4 The 2018 Guarantees of Origin SI and the 2019 Renewables Obligation SI will come into force on implementation period ("IP") completion day and are intended to ensure consistency with the approach prior to the UK's withdrawal from the EU.
- 2.5 As a result, the UK will continue to recognise GOOs issued in the UK and EU GOOs with limited exceptions.
- 2.6 For the RO, support for renewable electricity generated from crop-derived liquid fuels will continue to be given only where crops grown in the UK or the EU comply with the EU sustainability requirements. Under the 2019 Renewables Obligation SI, the

2013 EU Regulation will form part of domestic UK law from Exit day, under section 3 of the European Union (Withdrawal) Act 2018. This domesticated version will apply in relation to UK-grown crops. The 2013 EU Regulation itself will continue to apply where the crops are grown in the EU.

- 2.7 For both the 2018 Guarantees of Origin SI and the 2019 Renewables Obligation SI, the 'exit day' commencement date will be on IP completion day by virtue of the 'mass deferral' of "exit day" under the European Union (Withdrawal Agreement) Act 2020. But the internal references to 'exit day' in the body of the 2018 and 2019 SIs are not covered by the mass deferral and will remain unchanged as meaning 31 January 2020.
- 2.8 As a result, without this amendment, when the 2018 Guarantees of Origin SI and the 2019 Renewables Obligation SI come into force on IP completion day, they would effectively backdate to 31 January 2020 the distinction between the EU Directive or Regulation and their domestic shadow.

What will it now do?

- 2.9 The 2020 SI will amend both the 2018 Guarantees of Origin SI and the 2019 Renewables Obligation SI by defining internal references to 'exit day' as meaning immediately before IP completion day.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees]

- 3.1 This instrument has been laid for sifting before the relevant House Committees pursuant to the European Union (Withdrawal) Act 2018. Accordingly, it contains relevant information for those 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 The 2018 Guarantees of Origin SI applies across the UK and was made under section 2(2) of the European Communities Act 1972, and section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018. It 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. Those regulations

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).

- 6.2 The 2019 Renewables Obligation SI applies across the UK and was made under section 8(1) of the European Union (Withdrawal) Act 2018. It amends the separate legislation for England and Wales, Scotland and Northern Ireland, which together create a UK-wide RO scheme. The relevant Orders are the Renewables Obligation Order 2015 (S.I. 2015/1947) (for England and Wales), the Renewables Obligation (Scotland) Order 2009 (S.S.I. 2009/140) and the Renewables Obligation Order (Northern Ireland) 2009 (S.R. 2009/154) (together, the "RO Orders").
- 6.3 The requirement under the RO for crops used to produce liquid fuels to comply with the 2013 EU Regulation is contained in Article 17(6) of Directive 2009/28/EC. This requirement is transposed by article 62 of the Renewables Obligation Order 2015, article 22B of the Renewables Obligation (Scotland) Order 2009 and article 21B of the Renewables Obligation Order (Northern Ireland) 2009.

7. Policy background

What is being done and why?

- 7.1 The 2007 and 2008 SIs for GOOs provide for the Secretary of State for Business, Energy and Industrial Strategy (in Great Britain) and the Department for the Economy (in Northern Ireland) respectively 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 Following the UK's withdrawal from the EU, it will no longer be appropriate, after the end of the implementation period, for the European Commission to be able to require public bodies in the United Kingdom to recognise GOOs issued in EU Member States. The 2018 Guarantees of Origin SI gives effect to this.
- 7.4 UK public bodies remain under a general obligation to recognise GOOs 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 GOO will be subject to the control of the courts. However, the Department for Business, Energy and Industrial Strategy intends to keep under review 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.

- 7.5 The 2018 Guarantees of Origin SI preserves the status quo as far as possible. It does 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. The SI also makes 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 corrects what would otherwise be inaccurate references to the UK as a Member State of the EU.
- 7.6 Energy is a transferred matter for Northern Ireland under section 4(1) of the Northern Ireland Act 1998. In the absence of the Northern Ireland Executive in 2018, the relevant Northern Ireland department provided technical advice to support the development of the 2018 Guarantees of Origin SI which applies to amendments UK-wide. On the basis that the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration and Renewables Obligation (Amendment) (EU Exit) Regulations 2020 make only minor technical amendments to the 2018 Guarantees of Origin SI, the Northern Ireland Minister has agreed that it is appropriate for the Department for Business, Energy and Industrial Strategy to make this amendment on their behalf.
- 7.7 The RO scheme has been the main financial mechanism to incentivise large-scale renewable electricity generation in Great Britain since 2002 and all renewable electricity generation in Northern Ireland since 2005. It is now closed to new projects. Existing projects will continue to receive support for up to 20 or 25 years, depending on when they accredited. All support under the scheme finally ends on 31 March 2037. It supports a range of technologies, including wind, solar, hydro, wave, tidal, landfill gas, sewage gas and biomass. Since 2011, strict sustainability criteria have been in place to ensure biomass delivers real carbon savings and is sourced sustainably.
- 7.8 In the case of liquid fuels derived from crops grown in the EU, the RO scheme requires that support for renewable electricity generated using that fuel is given only where the crops were grown in accordance with the European Union's Standards for good agricultural and environmental condition of land. These standards are set out in the 2013 EU Regulation.
- 7.9 The policy intent is that the current requirements will be maintained unchanged. However, the wording in the RO Orders applied the provision to crops "cultivated in the EU". This meant that following the UK's withdrawal from the EU, support would have to be given where UK-grown crops were not grown in accordance with the EU standards. The 2019 Renewables Obligation SI amended the RO Orders so that the requirement applied to crops "cultivated in the United Kingdom or the EU".
- 7.10 The 2019 Renewables Obligation SI applies to a policy area which is a devolved matter for Scotland and Northern Ireland. With the agreement of the Scottish Parliament and, in the absence of the Northern Ireland Executive in 2019, with the agreement of the relevant Northern Ireland department, the 2019 Renewables Obligation SI applies amendments UK-wide. On the basis that the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration and Renewables Obligation (Amendment) (EU Exit) Regulations 2020 make only minor technical

amendments to the 2019 Renewables Obligation SI, the Northern Ireland Minister has agreed that it is appropriate for the Department for Business, Energy and Industrial Strategy to make this amendment on their behalf. The Scottish Government is currently consulting the Scottish Parliament on whether the UK Government should make the changes to the Scottish legislation on their behalf. The RO in Wales is not a devolved matter but the Welsh Government has been informed of the SI.

- 7.11 For both the 2018 Guarantees of Origin SI and the 2019 Renewables Obligation SI, the 'exit day' commencement date of the SIs will be on IP completion day by virtue of the 'mass deferral' of "exit day" under the European Union (Withdrawal Agreement) Act 2020. But there are internal references to 'exit day' in the body of the 2018 and 2019 SIs which are not covered by the mass deferral and will remain unchanged as meaning 31 January 2020.
- 7.12 As a result, when the 2018 Guarantees of Origin SI and the 2019 Renewables Obligation SI come into force on IP completion day, they would effectively backdate to 31 January 2020 the distinction between the EU Directive or Regulation and their domestic shadow.
- 7.13 This instrument therefore corrects a technical issue in the 2018 Guarantees of Origin SI and the 2019 Renewables Obligation SI that has arisen as a result of the implementation period following the UK's withdrawal from the EU. It does not alter the operation of either scheme and it does not impose any new liabilities or obligations on anyone.

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 The Department has no plans to consolidate either the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007 or the Renewables Obligation Order 2015.
- 9.2 The Department is not responsible for the Guarantees of Origin of Electricity Produced from High efficiency Cogeneration Regulations (Northern Ireland) 2008, the Renewables Obligation Order (Northern Ireland) 2009, or the Renewables Obligation (Scotland) Order 2009.

10. Consultation outcome

- 10.1 No public consultation was undertaken on these technical amendments which ensure the current legislative and policy framework remains unchanged by the UK's withdrawal from the European Union.
- 10.2 The devolved administrations in Northern Ireland, Scotland and Wales have been consulted about the amendment.

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 no significant impacts on business, charities or voluntary bodies or the public sector are foreseen as it maintains the current legislative and policy framework.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, but these activities will not be affected by the legislation as it maintains the current legislative and policy framework.

14. Monitoring & review

14.1 This instrument makes minor, one-off amendments to maintain the current legislative and policy framework. Accordingly, the amendments do not require monitoring.

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

15. Contact

15.1 Hannah Taylor for GOOs, Telephone: 0207 215 0742 or email: Hannah.Taylor@beis.gov.uk, or Katherine Donne for the RO, Telephone: 0300 068 6182 or email: Katherine.donne@beis.gov.uk, both at the Department for Business, Energy and Industrial Strategy, can be contacted with any queries regarding the instrument.

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

15.3 The Rt Hon Kwasi Kwarteng 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.

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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
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 14, 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 15, 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 Business, Energy and Clean Growth, the Rt Hon Kwasi Kwarteng 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 and Renewables Obligation (Amendment) (EU Exit) Regulations 2020 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, as explained in section 7 of the main body of this Explanatory Memorandum, this instrument only corrects deficiencies arising from the UK's withdrawal from the European Union. In doing so, it does not change the underlying scheme for the issue of GOOs or the recognition of EU GOOs in the UK. For the RO, it ensures that the sustainability requirements for liquid fuels will continue to apply unchanged. The instrument does not impose any new liabilities or obligations on anyone.

2. Appropriateness statement

- 2.1 The Minister of State for Business, Energy and Clean Growth, the Rt Hon Kwasi Kwarteng 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 and Renewables Obligation (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 2.2 This is the case because, as explained in section 7 of the main body of this Explanatory Memorandum, this instrument only corrects deficiencies arising from the UK's withdrawal from the European Union. It does not introduce new policy or change the operation of the GOO or RO schemes and it does not impose any new liabilities or obligations on anyone.

3. Good reasons

- 3.1 The Minister of State for Business, Energy and Clean Growth, the Rt Hon Kwasi Kwarteng 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 This is the case because, as explained in section 7 of the main body of this Explanatory Memorandum, this instrument only corrects deficiencies arising from the UK's withdrawal from the European Union. It does not introduce new policy or

change the operation of the GOO or RO schemes and it does not impose any new liabilities or obligations on anyone.

4. Equalities

- 4.1 The Minister of State for Business, Energy and Clean Growth, the Rt Hon Kwasi Kwarteng MP, has made the following statement:

“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 Business, Energy and Clean Growth, the Rt Hon Kwasi Kwarteng 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, Kwasi Kwarteng, 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 The Minister of State for Business, Energy and Clean Growth, the Rt Hon Kwasi Kwarteng MP, has made the following statement regarding Northern Ireland and the use of legislative powers in the European Union (Withdrawal) Act 2018:

"The Equality Act 2010 does not extend to Northern Ireland but as the draft instrument does extend to Northern Ireland, I, Kwasi Kwarteng, have given equivalent due regard to the need to eliminate discrimination, harassment, and victimisation in relation to Northern Ireland."

Officials in the Department for the Economy in Northern Ireland have given due regard to the impact on equality groups, in line with section 75 of the Northern Ireland Act 1998, and found the amendments to legislation has no diverse impacts on any groupings.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.