

EXPLANATORY MEMORANDUM TO

**THE GUARANTEES OF ORIGIN OF ELECTRICITY PRODUCED FROM
RENEWABLE ENERGY SOURCES AND HIGH-EFFICIENCY COGENERATION
(AMENDMENT) (EU EXIT) REGULATIONS**

2022 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 Explanatory Memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 This instrument amends the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003 (S.I. 2003/2562) (the “2003 Regulations”) and the Guarantees of Origin of Electricity Produced from High-Efficiency Cogeneration Regulations 2007 (S.I. 2007/292) (the “2007 Regulations”) (collectively the “GOO Regulations”) to address deficiencies arising from the United Kingdom’s withdrawal from the European Union (under section 8(2)(c) of the European Union (Withdrawal) Act 2018 (“EUWA”).

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.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England, Wales and Scotland.
- 4.2 The territorial application of this instrument is England, Wales and Scotland.

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

Coming into force dates

- 6.1 As noted in section 2 of this Explanatory Memorandum, this instrument is made under section 8 of EUWA. Section 8(8) of EUWA states that no regulations may be made under section 8 of EUWA after the end of the period of two years beginning with IP completion day. IP completion day was 31 December 2020, so the power to make regulations under section 8 of EUWA will lapse on 31 December 2022.
- 6.2 While, in compliance with section 8(8) of EUWA, this instrument will be made prior to 31 December 2022, Part 2 of this instrument (which amends the 2003 Regulations)

will not come into force until 1 April 2023. It has proved necessary to have a later coming into force date to ensure that the changes coincide with the start of the industry reporting year, which runs from 1 April to 31 March. This approach ensures that industry will not face unnecessary costs and administrative burdens as a result of the change and was supported by the majority of stakeholders as well as Ofgem (the UK energy regulator) in their responses to the public consultation (see section 10 of this Explanatory Memorandum). It also gives industry increased notice of the change and allows electricity suppliers to adapt their procedures and guarantees of origin (“GOO”) purchasing strategies appropriately.

- 6.3 Part 1 (citation, commencement and extent) and Part 3 (which amends the 2007 Regulations) of this instrument will come into force on 1 January 2023. This date will coincide with the start of the new certification cycle for the Combined Heat and Power (“CHP”) CHP Quality Assurance Scheme (“CHPQA”). High-efficiency cogeneration is referred to as CHP in the UK.¹

Section 8 of the European Union (Withdrawal) Act 2018

- 6.4 This instrument is made in exercise of the powers conferred by section 8(1) of EUWA. Specifically, it amends the GOO Regulations to address deficiencies under section 8(2)(c) of EUWA arising from the UK’s withdrawal from the European Union.
- 6.5 The 2003 Regulations were made under section 2(2) of the European Communities Act 1972 (“ECA 1972”) to implement the EU’s Renewable Energy Directive (i.e. Directive 2009/28/EC of the European Parliament and of the Council of 23rd April 2009 on the promotion of the use of energy from renewable sources) (“RED I”)². The 2007 Regulations were made under section 2(2) of the ECA 1972 to implement obligations in the EU’s Energy Efficiency Directive (Directive 2012/27/EU of the European Parliament and of the Council of 25th October 2012 on energy efficiency) (“EED”). The GOO Regulations therefore constitute retained EU law under section 2(1) of EUWA.
- 6.6 The GOO Regulations have already been amended using the power in section 8(1) of EUWA by the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1093) and the Guarantees of Origin of Electricity Produced from High-Efficiency Cogeneration (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1206³) (collectively the “2018 EU Exit SIs”).
- 6.7 However, the 2018 EU Exit SIs corrected a different deficiency in the GOO Regulations – they removed obligations on UK⁴ public authorities to notify the European Commission if a public authority decided not to recognise an EU GOO, and

¹ The CHPQA scheme is a voluntary annual assessment process that ensures all CHP plant than benefit from government support in the UK, through a variety of policies, meet a minimum level of energy efficiency.

² On 21st July 2021, RED I was repealed and replaced by Directive 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources. However, paragraph 2A(4) of Schedule 8 to EUWA applies to the references to RED I in the 2003 Regulations (i.e. they are non-ambulatory references to an EU instrument which must be treated as references to the EU instrument as it had effect in EU law as the time the reference was made).

³ Amended by S.I. 2020/849.

⁴ Energy is a transferred matter for Northern Ireland under section 4(1) of the Northern Ireland Act 1998. However, the 2018 EU Exit SIs applied to Northern Ireland because there was no Northern Ireland Executive in place at the time they were made, and the Northern Ireland statute book needed to be prepared for EU Exit.

to comply with Commission decisions about whether an EU GOO should be recognised. The 2018 EU Exit SIs did not change the underlying schemes for the issue of REGOs or CHP GOOs.

7. Policy background

What is being done and why?

- 7.1 GOOs are certificates used by electricity suppliers to demonstrate that a portion of supplied electricity is renewable or from a high-efficiency cogeneration (or CHP). In Great Britain, GOOs for renewable electricity (“REGOs”) and CHP (“CHP GOOs”) operate under separate schemes⁵.
- 7.2 In Great Britain, REGOs are issued by Ofgem and then used by electricity suppliers to back up the renewable and/or green electricity tariffs offered to consumers.
- 7.3 In Great Britain, CHP GOOs are issued by the Secretary of State for Business, Energy and Industrial Strategy and can be used by electricity producers to increase transparency, so that customers for electricity can differentiate between electricity generated by high-efficiency cogeneration (or CHP) and electricity produced using other techniques. CHP 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 CHP (the CHPQA scheme administrates government support for CHP).
- 7.4 On 23rd July 2020, the European Commission confirmed in a “Notice to Stakeholders⁶” that:

“[REGOs] that have been issued by designated bodies in the United Kingdom in accordance with Article 15(2) of [RED I] will no longer be recognised by the EU Member States after the end of the transition period.”

“[CHP] Guarantees of Origin that have been issued by designated bodies in the United Kingdom in accordance Article 14(10) of Directive 2012/27/EU will no longer be recognised by the EU Member States after the end of the transition period.”

Therefore, as of 1st January 2021 and as a result of the UK’s withdrawal from the EU, GOOs issued in the UK were no longer recognised by EU member States.

- 7.5 However, in Great Britain, Ofgem (in respect of REGOs) and any public authority⁷ (in respect of CHP GOOs), continued to recognise GOOs issued in EU member States in accordance with regulation 9(2) of the 2003 Regulations and regulations 10(3)(a) and (5) of the 2007 Regulations. The GOO Regulations were therefore deficient within the meaning of s8(2)(c) of EUWA, as they made provision for, or in connection with, reciprocal arrangements between (i) the UK or a public authority in the UK, and (ii) the EU, an EU entity, a member State or a public authority in a member State, which no longer exist (i.e. the reciprocal recognition of GOOs between the UK and the EU). This instrument remedies this deficiency in Great Britain by removing the obligations

⁵ Northern Ireland operates its own schemes with separate regulations under which Ofgem and Secretary of State for Energy and Industrial Strategy issue renewable energy and CHP Northern Ireland GOOs respectively.

⁶ https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/energy_origin_en.pdf

⁷ Regulation 10(2) of the 2007 Regulations defines a public authority as “...any Minister, government department, public body of any description or any person holding public office.”

to recognise GOOs issued in an EU member State and by removing references to such GOOs being recognised in Great Britain.

- 7.6 This instrument does not impose any new policies, liabilities or obligations and therefore low public interest is expected as this is non contentious.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.7 The 2003 Regulations provide for Ofgem to issue GOOs in respect of electricity generated from renewable energy sources. Regulation 9 required a “competent authority” to recognise GOOs issued in EU member States unless the authority that issued the GOO requests the competent authority to refuse recognition or the competent authority is satisfied that there is good reason to doubt the accuracy, reliability or veracity of the GOO.
- 7.8 The 2007 Regulations provide for the Secretary of State for Business, Energy and Industrial Strategy to issue GOOs in respect of electricity generated for high-efficiency cogeneration (or CHP). Regulation 10 required a “public authority” to recognise GOOs issued in EU member States in accordance with Article 14(10) of the EED.

Why is it being changed?

- 7.9 As of 1st January 2021, and as a result of the UK’s withdrawal from the European Union, GOOs issued in the UK were no longer recognised by EU member States. However, the UK continued to recognise GOOs issued in EU member States.
- 7.10 The UK Government has a long-standing commitment, made on 31 December 2020, to review this lack of reciprocity so that, longer term, domestic recognition of GOOs issued in EU countries will take place only on a reciprocal basis⁸.

What will it now do?

- 7.11 This instrument amends the GOO Regulations to remove the obligation on designated authorities in Great Britain to recognise GOOs issued in EU member States (while still providing for the recognition of GOOs issued in Northern Ireland).

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is being made using the power in section 8(1) 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 UK 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 current plans to consolidate the GOO Regulations.

⁸ <https://www.gov.uk/government/publications/generating-low-carbon-electricity/generating-low-carbon-electricity>

10. Consultation outcome

- 10.1 In respect of REGOs, a public consultation⁹ (open from 29 March 2022 to 10 May 2022) was undertaken. As this instrument addresses deficiencies in the 2003 Regulations arising from the UK's withdrawal from the European Union, the consultation sought views on timings for implementation/ending non-mutual reciprocity only. A strong majority of those who responded (over 70%) chose 1 April 2023 as their preferred implementation date.
- 10.2 In respect of the CHP GOOs, BEIS ran a call for evidence¹⁰ (open from 27 September 2021 to 20 December 2021 - 'Combined Heat and Power: pathway to decarbonisation') which, in part, sought views on GOO certificates and to identify whether GOO certification is used to meet any standards or verify environmental claims. Responses to that call for evidence confirmed that whilst some respondents used REGO certificates, no respondents currently use CHP GOOs.
- 10.3 The devolved administrations in Scotland and Wales have been consulted about the amendments made by this instrument.

11. Guidance

- 11.1 It is not necessary to issue specific guidance with respect to this instrument as it does not impose new policies, liabilities or obligations. For the REGO scheme, Ofgem will update its guidance on the recognition of EU GOOs in due course. For CHP GOOs, updated guidance will be issued by the CHPQA scheme administrator in due course.

12. Impact

- 12.1 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.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, but the amendments made are unlikely to affect small businesses in any significant respect.

14. Monitoring & review

- 14.1 This instrument amends the GOO Regulations to end non-reciprocal recognition in Great Britain of GOOs issued in the EU. The GOO framework in Great Britain otherwise remains the same. Accordingly, the amendments do not require monitoring.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 For REGOs (the 2003 Regulations) contact Tim Alsop (telephone: 07881 251 573 or email: tim.alsop@beis.gov.uk), or for CHP GOOs (the 2007 Regulations) contact Vina Krishnarajah (telephone: 0207 215 6361 or email:

⁹ <https://www.gov.uk/government/consultations/feed-in-tariffs-and-contracts-for-difference-proposals-relating-to-guarantees-of-origin>

¹⁰ <https://www.gov.uk/government/consultations/combined-heat-and-power-pathway-to-decarbonisation-call-for-evidence>

vina.krishnarajah@beis.gov.uk), both at the Department for Business, Energy and Industrial Strategy.

- 15.2 Helena Charlton, Deputy Director and Jess Skillbeck, Director at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Greg Hands, Minister for Business, Energy and Clean Growth at the Department for Business, Energy & 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
Appropriateness	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)

- 1.1 The Minister for Business, Energy and Clean Growth, Greg Hands, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“The Guarantees of Origin of Electricity Produced from Renewable Energy Sources and High-efficiency Cogeneration (Amendment) (EU Exit) Regulations 2022 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 this instrument does not fall into the category of regulations identified in paragraph 1(2) of the Schedule 7 to the European Withdrawal Act 2018 as requiring approval in draft by resolution of both Houses of Parliament. This instrument amends the Electricity (Guarantees of Origin of Electricity Produced from Renewable Energy Sources) Regulations 2003 and the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007 following the UK’s withdrawal from the EU as set out in Section 7, Policy Background, of this Explanatory Memorandum. We do not consider that there is any reason why they should not be subject to the negative resolution procedure.

2. Appropriateness statement

- 2.1 The Minister for Business, Energy and Clean Growth, Greg Hands, 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 Renewable Energy Sources and High-efficiency Cogeneration (Amendment) (EU Exit) Regulations 2022 does no more than is appropriate”.

- 2.2 This is the case because this instrument only removes provision for a reciprocal arrangement between the UK and the EU which no longer exists, i.e. the mutual recognition of GOOs. The GOO Regulations will otherwise continue to have effect in the same way as they did prior to the making of this instrument.

3. Good reasons

- 3.1 The Minister for Business, Energy and Clean Growth, Greg Hands, 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 These are that EU has ceased to recognise UK GOOs as a result of the UK’s withdrawal from the EU, so it is appropriate for designated authorities in Great Britain to cease recognising EU GOOs in line with the UK government’s public commitments. This instrument does not impose any new policies, liabilities, or

obligations on any relevant persons. The policy rationale for the changes is set out in Section 7, Policy Background, of this Explanatory Memorandum.

4. Equalities

- 4.1 The Minister for Business, Energy and Clean Growth, Greg Hands, has made the following statement(s):

“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 for Business, Energy and Clean Growth, Greg Hands, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft 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.”

- 4.3 The revocation made by this instrument does not raise any issues relevant to the public sector equality duty under section 149(1) of the Equality Act 2010 because they are minor and technical and do not impose new policies, liabilities, or obligations on any relevant persons.

5. Explanations

- 5.1 The explanations statement has been made in section 7 of the main body of this Explanatory Memorandum.