

EXPLANATORY MEMORANDUM TO
THE CONSERVATION (NATURAL HABITATS, ETC.) (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument makes changes to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (“the 1995 Regulations”) which transpose Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) and certain elements of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (the Wild Birds Directive) so that they continue to work (are operable) upon the UK’s exit from the European Union (EU). This instrument also amends the Wildlife (Northern Ireland) Order 1985 to ensure existing protections continue and makes minor technical amendments to two Articles of the Water (Northern Ireland) Order 1999.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 transpose the Habitats Directive and the Wild Birds Directive commonly referred to as the Nature Directives, into domestic law in Northern Ireland. The Nature Directives lay down rules for the protection and management of habitats and species.

Why is it being changed?

- 2.3 The 1995 Regulations fulfil the objectives of the Nature Directives in Northern Ireland by ensuring that activities are carried out in a manner that is consistent with the Directives. This instrument provides changes to those parts of the 1995 Regulations which would no longer work when the UK leaves the EU.

What will it now do?

- 2.4 The intention is to ensure habitat and species protection and standards as set out under the Nature Directives are implemented in the same way or an equivalent way when the UK exits the EU. There is no change to policy.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 The territorial application of this instrument is limited to Northern Ireland.
- 3.3 This instrument amends Regulations and Orders that are limited to Northern Ireland and are within devolved competence.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Environment, Dr Thérèse Coffey MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Conservation (Natural Habitats, etc.) (Northern Ireland) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument corrects deficiencies in the 1995 Regulations which will arise when the UK exits the EU. It also amends the Wildlife (Northern Ireland) Order 1985 to maintain existing protections and enforcement for species of wild birds. This instrument also makes minor technical amendments to two Articles of the Water (Northern Ireland) Order 1999 to replace references to Community obligations with references to retained EU obligations. This instrument is being made using the powers in section 8 (1) and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. Without these amendments the UK would be unable to continue to apply some of the protection measures provided by the EU Habitats Directive (Council Directive 92/43/EEC) and certain elements of the EU Wild Birds Directive (Directive 2009/147/EC).

7. Policy background

What is being done and why?

- 7.1 In order to maintain existing environmental protections when the UK exits the EU and for regulations to operate effectively any deficiencies in existing legislation arising from the UK’s exit need to be corrected. This SI makes those changes in the 1995 Regulations, the Wildlife (Northern Ireland) Order 1985 and the Water (Northern Ireland) Order 1999 and ensures that Northern Ireland will continue to contribute to the UK meeting its international commitments including under The Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention) and The Convention on the Conservation of Migratory Species of Wild Animals (the Bonn Convention).
- 7.2 Part 1 of this SI provides a short introduction.
- 7.3 In Part 2 a minor amendment is made to the Wildlife (Northern Ireland) Order 1985 (WO). Currently “wild bird” is defined in the WO in terms of species found in or visiting the European territory of a Member State. On exiting the EU this would mean that species of wild birds found in the UK but not elsewhere in the EU would no

longer be protected. To ensure such species of wild birds continue to be protected the definition is amended to add the UK. Species of wild birds found in or regularly visiting either the UK or the European territory of a Member State will continue to be protected.

- 7.4 Part 2 also contains minor technical amendments to two Articles of the Water (Northern Ireland) Order 1999, which currently prescribe powers to give effect to Community and international obligations. This change is required in order to update references to ‘Community’ obligations with references to retained EU obligations.
- 7.5 Part 3 amends the 1995 Regulations. Paragraphs 7.6 to 7.12 provide additional information and detail the main changes.
- 7.6 References throughout these regulations are re-defined in a UK only context. For example:-
- References to the territory of the EU become references to the “the territory of the United Kingdom”.
 - Sites designated under the Nature Directives previously contributed to the EU’s Natura 2000 network. A national site network is created to retain the concept of a UK network of sites. The ‘national site network’ is defined as including Natura 2000 sites designated prior to EU exit and those Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) designated post EU exit.
 - There is also clarification that any guidance that refers to Natura 2000 is construed as referring to the national site network.
 - Various terms in the Habitats and Wild Birds Directives that relate to the EU are amended to be relevant to the UK after EU exit. It also clarifies that any reference to the “the requirements of the Directive” should be understood to include the management objectives of the national site network. A power is also provided for the Department to provide guidance to interpret these requirements should there be a need for further clarification.
- 7.7 Current references to “European site”, “European Marine Site”, “Special Area of Conservation” and “Special Protection Area” are retained as there is no operability reason for these to change.
- 7.8 Reporting requirements are transposed by these Regulations and reporting will no longer be to the European Commission. The Department will report publically on the implementation of the Regulations within six years from the date of exit and every six years thereafter. Biennial reporting on the use of exemptions/derogations from protections is maintained.
- 7.9 At present the European Commission considers the designation of new SACs in a 2-stage process based on criteria set out in Annex III of the EU Habitats Directive. The European Commission’s role is removed by transferring the assessment function to the Department acting on the advice of the Joint Nature Conservation Committee (JNCC). Where a site may be part way through designation at the time of exit the means is provided to either complete the designation process or explain why that process will not now go ahead.
- 7.10 Management objectives are established for the national site network. The Department is required to manage, and where necessary, adapt the national site network to meet the network’s management objectives.

The management objectives are to:

- i. maintain or restore habitats and species listed in the Habitats Directive to a favourable conservation status; and
- ii. contribute, in their area of distribution, to ensuring the survival and reproduction of wild birds and securing compliance with the overarching aims of the Wild Birds Directive.

The Department must also have regard to the importance of protected sites for achieving the aims of the Directives; to the coherence of the national site network as well as to the threats of degradation or destruction (including deterioration and disturbance of protected features) to which protected sites may be exposed.

- 7.11 We remove the role of the European Commission in giving an opinion as to whether imperative reasons of overriding public interest (IROPI) apply in relation to plans and projects adversely affecting priority habitats or species (as listed in Annex I and II of the EU Habitats Directive), where the overriding public interest reasons do not relate to human health, public safety or beneficial consequences of primary importance to the environment. Priority habitats and species are those which are considered to be under threat of disappearance. A competent authority (e.g. a planning authority) would now seek an opinion from the Department as to whether their reasons to proceed are to be considered imperative reasons of overriding public interest. The appropriate authority would need to take account of the national interest and consult widely, seeking advice from DEFRA and the other Devolved Administrations, JNCC and any other person the Department considers appropriate.
- 7.12 Annexes to the Directives list those habitats, plants and animals to which the Directives apply and to which the European Commission can propose amendments. They also list other conditions such as the criteria for selecting SACs and prohibited methods of killing. We provide a new power to make regulations to make amendments as necessary for adapting the annexes in the Directives and schedules in the Regulations to technical and scientific progress. We transfer prohibited methods of capturing and killing of wild animals, currently listed in the body of the Regulations, into new schedules to allow for future amendments for scientific or technical reasons using the same regulation making power.
- 7.13 This instrument applies to policy areas which are a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution 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 EU exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for EU exit day in absence of a Northern Ireland Executive. In the continued absence of the Northern Ireland Executive, the window to prepare Northern Ireland's statute book for EU exit is narrowing. UK Government Ministers have 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 close consultation with the Northern Ireland departments. This is one such instrument.

8. European Union (Withdrawal) Act 2018/ 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. The instrument is also made under the powers in paragraph 21 of Schedule 7 of the European Union (Withdrawal) Act 2018. 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 applicable.

10. Consultation outcome

10.1 There was no requirement for a statutory consultation as the purpose of this instrument is to amend regulations to maintain continuity of the policy approach in the context of the UK leaving the EU and is not intended to change policy.

10.2 This SI extends to Northern Ireland and is similar to another EU Exit SI with corresponding provisions for England and Wales. In agreeing a common approach to these operability fixes on EU Exit, frequent meetings have been held with the Devolved Administrations which have been provided with the opportunity to comment and raise concerns as appropriate.

11. Guidance

11.1 Various guidance produced by the Northern Ireland Environment Agency, Joint Nature Conservation Committee, government departments and the European Commission already exists.

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 as there are no significant impacts on business or the public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Ken Bradley, Department for Agriculture, Environment and Rural Affairs (DAERA) Telephone: 02890569597 or email: ken.bradley@daera-ni.gov.uk and Mark Preston, Department of Agriculture, Environment and Rural Affairs (DAERA) Telephone

02890569314 or email mark.preston@daera-ni.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 David Small at the Department for Agriculture, Environment and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Dr Thérèse Coffey MP, Parliamentary under Secretary of State for the Environment, at the Department for Environment, Food and Rural Affairs 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.
Appropriateness	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 the European Union (Withdrawal) Act 2018.	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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	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) European Communities Act 1972	Paragraph 13, 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) European Communities Act 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) European Communities Act 1972, 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) European Communities Act 1972	Paragraph 16, 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) European Communities Act 1972.	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. Appropriateness statement

- 1.1 The Parliamentary under Secretary of State for the Environment, Dr Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Conservation (Natural Habitats, etc.) (Northern Ireland) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because: the Government has stated its intention that there should be no increase in cost or protection; there are no powers to introduce changes other than those which facilitate operability.

2. Good reasons

- 2.1 The Parliamentary under Secretary of State for the Environment, Dr Thérèse Coffey 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”.

- 2.2 These are: to ensure the regulations continue to operate effectively and maintain protections for habitats and species when the UK exits the EU and are set out at paragraphs 2.1, 2.2, 2.3 and 2.4 of this explanatory memorandum.

3. Equalities

- 3.1 The Parliamentary under Secretary of State for the Environment, Dr Thérèse Coffey MP 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.

- 3.2 The Parliamentary under Secretary of State for the Environment, Dr Thérèse Coffey 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, Thérèse Coffey 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.”

- 3.3 There is no reason to believe there will be any impact on equalities.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.