

EXPLANATORY MEMORANDUM TO

THE PLANNING (ENVIRONMENTAL ASSESSMENTS AND MISCELLANEOUS AMENDMENTS) (EU EXIT) (NORTHERN IRELAND) REGULATIONS 2018

2018 No. 1235

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Infrastructure Northern Ireland and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument uses powers in the European Union (Withdrawal) Act 2018 (“the Act”) to make necessary changes, which arise as a result of the UK leaving the European Union, in the following pieces of legislation:
- The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999, S.R. 1999 No.73
 - The Planning (Local Development Plan) Regulations (Northern Ireland) 2015, S.R. 2015 No.62
 - The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015, S.R. 2015 No.66
 - The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015, S.R. 2015 No.74
 - The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015, S.R. 2015 No.85
 - The Planning (General Development Procedure) Order (Northern Ireland) 2015, S.R. No.115
 - The Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015, S.R. 2015 No.344
 - The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017, S.R. 2017 No.83

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument principally concerns the Environmental Impact Assessment, Management of Waste from Extractive Industries and Hazardous Substances regimes.

Environmental Impact Assessment

- 2.3 Directive 2011/92/EU¹ of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment, (as amended), (“the EIA Directive”) is implemented, as respects developments of land, by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017 No.83), (“the EIA Regulations”). The EIA Directive requires that development consent for public or private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of these projects has been carried out. The EIA Regulations apply to the environmental impact assessment of certain public or private projects which are given development consent through the planning regime. The EIA Regulations provide that development consent must not be granted until an assessment has been carried out. The EIA Regulations set out what an environment impact assessment is, what it must identify, describe and assess, what is to be included in any environmental report prepared and the public consultation and other procedures relating to environmental impact assessments. The Instrument also amends previous versions of the EIA Regulations, namely the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 (S.R. 2015 No.74) and the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 (S.R. 1999 No.73), which remain extant by virtue of Regulation 48 of the current EIA Regulations.

Management of Waste from Extractive Industries

- 2.4 Directive 2006/21/EC² of the European Parliament and of the Council on the management of waste from extractive industries (“the Mining Waste Directive”) is implemented, as respects to the development of land, by the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015, (S.R. 2015 No.85), (“the Waste Regulations”). The Mining Waste Directive sets out the requirements which apply to applications for planning permission relating, in whole or in part, to an extractive waste area, waste facility or an area which will be developed to contain extractive waste. The Waste Regulations place requirements on operators in the onshore extractive industry to manage extractive waste so as to prevent or reduce as far as possible any adverse effects on the environment and human health. The Waste Regulations sets out that planning permission cannot be granted until a waste management plan has been approved and permission may also be subject to conditions. The conditions which may apply to the granting of planning permission relate to financial guarantees, construction and the management of facilities, along with procedures to be followed regarding the final closure of a facility. The Waste Regulations also detail obligations relating to consultation and ongoing after closure procedures.

Hazardous Substances

- 2.5 Articles 13 and 15 of Directive 2012/18/EU³ of the European Parliament and of the Council on the control of major-accident hazards involving dangerous substances (the Seveso III Directive) is implemented, in respect of land-use planning obligations, by the Planning (Hazardous Substances) (No.2) Regulations (Northern Ireland) 2015

¹ OJ No L 26, 28.1.2012, p. 1.

² OJ No L 102, 11.4.2006, p. 15-34.

³ OJ No L 197, 24.7.2012, P. 1.

(S.R. 2015 No.344) (“the Hazardous Substance Regulations”). The Seveso III Directive aims to prevent major-accidents involving dangerous substances and to limit the consequences of such accidents for human health and the environment. Section 108 of the Planning Act (Northern Ireland) 2011 (“the 2011 Act”) provides that the presence on, over or under land, of a hazardous substance equal to or in excess of the controlled quantity (as specified by regulations) requires the consent of the council. The Hazardous Substance Regulations specify the substances which are hazardous substances for the purposes of the 2011 Act and the controlled quantities of those substances. They also lay down the procedure for applications for consent and the determination of applications. In addition they make provision for hazardous substances contravention notices, specify matters to be included in such notices and apply certain provisions of the 2011 Act with modifications to appeals against such notices, penalties for non-compliance, works required by and the effect of such notices.

2.6 The Statutory Instrument also contains a number of other consequential legislative amendments which will be impacted by EU Exit in relation to the Northern Ireland planning regime including:

- removing the term “European Parliamentary” from the Planning (Control of Advertisements) Regulations (Northern Ireland) 2015;
- removing references to Directives contained in the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 and the Planning (General Development Procedure) Order (Northern Ireland) 2015.

Why is it being changed?

2.7 This instrument uses powers in the Act to make necessary changes to the above legislation to ensure that the law functions correctly after Northern Ireland, as part of the UK, has left the European Union. No substantive changes are being made by this instrument to the way the Environmental Impact Assessment, Hazardous Substances, Management of Waste from Extractive Industries regimes and other legislation amended by this instrument operate. The changes remove unnecessary references, for example to Northern Ireland as part of the United Kingdom being a Member State.

What will it now do?

2.8 The Environmental Impact Assessment, Hazardous Substances and Management of Waste from Extractive Industries regimes, along with the other legislation amended by this instrument will continue to function as they did before Exit. The changes are:

- references to Directives are amended to make clear to readers they are referring to the version in force immediately before exit day (regulations 5(2), 6(2), 8(2), 9(2), 9(4), and 9(11)(a)(i))
- references to Northern Ireland as part of the UK as a Member State are amended (regulations 2(2)(a), 2(2)(c)(ii), 2(3), 5(3)(a), 5(3)(c)(ii), 5(4), 6(9), 6(10), 6(11)(a), 6(11)(b), 6(11)(c), 9(5)(a), 9(5)(c), 9(6)(a), 9(6)(b)(i) and 9(8))
- references to requests made and documents provided, pursuant to EU law, to Northern Ireland as part of the UK from other Member States are amended (regulations 2(2)(b), 5(3)(b), 7(a), 7(b), 9(5)(b) and 9(6)(b)(iv))

- references to complying with EU obligations have been replaced with references to complying with retained EU law (regulations 3(b), 5(5)(a), 5(5)(b), 5(6), 6(3)(b), 6(4), 6(5), 6(6)(a), 6(6)(b), 6(7)(a), 6(7)(b), 6(7)(c), 6(8), 8(3)(a), 8(3)(b), 8(4)(a), 8(4)(b), 8(5), 8(6), 8(7)(a), 8(7)(b), 9(3)(b), 9(3)(c), 9(7), 9(9)(a), 9(9)(b), 9(10), 9(11)(a)(ii), 9(11)(b)(i) and 9(11)(b)(ii))

2.9 In relation to the other amendments in this Statutory Instrument they relate to references to obligations or terms in EU law which are redundant or no longer appropriate (regulations 2(2)(c)(i), 3(a), 3(c), 4, 5(3)(c)(i), 6(3)(a), 6(12), 6(13), 9(3)(a), 9(6)(b)(ii), 9(6)(b)(iii) and 9(6)(c)).

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 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 application of this instrument is Northern Ireland. The amendments made by these Regulations have the same extent and territorial application as the provisions which they amend.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and is not subject to parliamentary procedure, no statement is required.

6. Legislative Context

6.1 This instrument is made in exercise of powers in section 8 of the Act.

6.2 The Act makes provision for repealing the European Communities Act 1972 and will preserve EU law, as it stands at the moment of exit, in UK law. The Act creates a new body of domestic legislation from directly applicable EU law being brought into domestic legislation, as well as saving EU-derived domestic legislation which was made to implement the UK's obligations as a member of the European Union; together this will be retained EU law.

6.3 The Act contains a temporary power to make secondary legislation to deal with deficiencies in this retained EU law. This instrument makes a number of amendments to legislation in the field of environmental assessments and the planning regime in order to ensure that the legislation continues to function properly following the exit of Northern Ireland as part of the United Kingdom from the European Union. These amendments relate to matters which have been identified as deficiencies in the legislation arising from that withdrawal from the European Union.

7. Policy background

What is being done and why?

- 7.1 This instrument makes amendments to correct deficiencies in certain environmental and planning related legislation. The purpose of the amendments is to ensure that the relevant legislation is still operable i.e. it remains coherent and workable following the exit from the European Union of Northern Ireland as part of the United Kingdom.

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 Act in order to address deficiencies in retained EU law arising from the withdrawal of Northern Ireland as part 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 the Annex to this memorandum.

9. Consolidation

- 9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

- 10.1 A public consultation was not considered necessary because the instrument makes minor technical amendments to an existing regime to maintain the status quo as far as possible. No impact upon stakeholders is envisaged.

11. Guidance

- 11.1 No guidance is necessary.

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, or no significant, impact on the private or voluntary sector is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses, however the amendments introduced by this instrument seek only to maintain the way the current regimes function, as such it is not necessary to take any steps to minimise impacts. The approach of this instrument (i.e. to ensure the continuation of the relevant regimes as they currently function) will be communicated to the public in order to mitigate the risk of confusion or costs incurred.

14. Monitoring & review

- 14.1 As this instrument is made under the Act, no monitoring or review clause is required.

15. Contact

- 15.1 Linda Buick at the Department for Infrastructure can be contacted with any queries regarding the instrument. Telephone: 028 90540564 or email: Linda.Buick@infrastructure-ni.gov.uk
- 15.2 Brian Gorman at the Department for Infrastructure can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for Housing, Communities and Local Government, Mr Kit Malthouse MP, 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	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 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 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) 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 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) 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 Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 In my view, the Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)". This is the case because the instrument does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. These Regulations correct deficiencies in retained planning legislation arising out of Northern Ireland's, as part of the UK, withdrawal from the European Union. The instrument makes changes of a minor and technical nature to ensure the continued effective operability of the relevant legislation

2. Appropriateness statement

- 2.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 "In my view, the Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018 do no more than is appropriate". This is the case because the amendments the instrument makes are minor and do no more than is strictly necessary to ensure the legislation amended functions correctly once the UK has left the European Union.

3. Good reasons

- 3.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 "In my view, there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". These are ensuring that the legislation amended by this instrument continues to function correctly once the UK has left the European Union and ensuring clarity for the public and stakeholders.

4. Equalities

- 4.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement "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 for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.3 “In relation to the instrument, I, Kit Malthouse 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. This Act does not extend to Northern Ireland, and as this instrument extends only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland.”

5. Explanations

5.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.