

EXPLANATORY MEMORANDUM TO

THE PIPE-LINES, PETROLEUM, ELECTRICITY WORKS AND OIL STOCKING (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2018

2018 No. 1325

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Business, Energy and Industrial Strategy (“BEIS”) and is laid before Parliament by Act.
- 1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Instrument will fix certain provisions that would not work or remain appropriate ‘post-exit’ within nine sets of existing legislation (see paragraph 2.2) in relation to: (i) onshore and offshore oil and gas licensing; (ii) offshore oil and gas developments including pipe-lines; (iii) onshore pipe-lines; (iv) major offshore and onshore electricity works developments (i.e. generation stations and overhead lines); and (v) the stockholding of oil.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Prior to exit day, the following legislation was introduced to implement the obligations of the Hydrocarbons Licensing Directive 94/22/EEC; Environmental Impact Assessment Directive 2011/92/EU; Industrial Emissions Directive 2010/75/EU (including relevant provisions of the Medium Combustion Plant Directive (EU) 2015/2193) plus the Oil Stocks Directive 2009/119/EC:

(i) The Hydrocarbons Licensing Directive Regulations 1995 set conditions for onshore and offshore oil / gas licensing rounds (as issued by the Oil & Gas Authority for which BEIS is the Sponsorship Department) and the subsequent determining of applications to explore for, and exploit, hydrocarbon reserves. The Regulations currently allow the refusal of applications on grounds of national security where the applicant is effectively controlled by, or by nationals of, a State other than a Member State.

(ii) The Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010 (similar to the 1995 Regulations referred to above) set conditions for onshore oil / gas licensing in Northern Ireland. See related issue in paragraph 6.2 item (b).

(iii) The Petroleum Licensing (Applications) Regulations 2015 set out the requirements for petroleum licensing applications (e.g. what information needs to be included in applications and how to submit them). The Regulations also

introduced improvements to the application process for petroleum licences by enabling the submission of electronic applications via an online portal and proportionately reducing the amount of information required from applicants (in particular unnecessary financial information).

(iv) The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999; Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999; Pipe-line Works Environmental Impact Assessment Regulations 2000 and Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 established regimes to assess the potential environmental effects of certain offshore developments (e.g. oil / gas production and gas and carbon dioxide unloading / storage operations) including pipe-lines; onshore pipe-line developments; and major electricity works developments (e.g. offshore renewable energy generation stations and onshore overhead lines) prior to BEIS:

(a) either granting or refusing consent for major onshore and offshore electricity works developments to proceed (local authorities are responsible for considering consent applications for smaller electricity works developments and onshore wind farms);

(b) either granting or refusing consent for onshore pipe-line developments to proceed; and

(c) providing ‘environmental’ advice to the Oil & Gas Authority so that it can decide whether to grant consent for offshore hydrocarbon developments (including pipe-lines) to proceed or refuse consent.

(v) The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013, in accordance with Chapters I, II, III and VII of the Industrial Emissions Directive, put in place a permitting regime for controlling certain atmospheric emissions from eligible “combustion plants” on offshore hydrocarbon installations (comprising individual or linked fixed and floating structures). Emissions covered include sulphur dioxide and other sulphur compounds, oxides of nitrogen and other nitrogen compounds, carbon monoxide, and volatile organic compounds.

Combustion plants are taken to be any technical apparatus in which fuels are oxidised in order to use the heat generated. Eligible combustion plants include: large combustion plants (≥ 50 MW rated thermal input), but exclude gas turbines, gas engines, the technical apparatus used for propulsion and combustion plants in which the gaseous products of combustion are used for the direct heating, drying or any other treatment of objects or materials; and, medium combustion plants (> 1 and < 50 MW rated thermal input), but exclude gas turbines, gas engines, diesel engines, and combustion plants in which the gaseous products of combustion are used for the direct heating, drying or any other treatment of objects or materials.

(vi) **The Oil Stocking Order 2012** made changes to the UK's existing oil stocking regime (which imposes obligations on designated companies to maintain specified levels of oil stocks to ensure security of supply) to implement the Oil Stocks Directive. The changes included establishing an authorisation regime to enable oil stocks to be held in the UK on behalf of other Member States (including provisions to protect those stocks).

2.3 Paragraphs 6.1 and 6.2 contain information relevant to the details provided above.

Why is it being changed?

2.4 The Instrument makes, pursuant to section 8 of the European Union (Withdrawal) Act 2018, certain amendments to the existing legislation identified in paragraph 2.2 so that the legislation will remain effective and appropriate from day one of the UK's exit from the EU. The fundamental reason why the amendments are needed is that some provisions in the legislation would not work on exit because, for example, they contain references to specific provisions of EU Directives which would no longer be applicable. To this end, some of the fixes to the existing legislation in question relate to the regulatory obligations placed on the Government and the Department for the Economy in Northern Ireland (see paragraph 6.2 item (b)) so that they can continue to effectively undertake statutory functions after the UK has exited the EU.

What will it now do?

2.5 As explained in paragraph 2.4, the Instrument will make certain amendments to existing legislation to ensure the legislation remains effective and appropriate 'post-exit'. See related information in paragraphs 6.1, 6.2 and 7.1.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Instrument was laid for sifting on 15 November 2018. The Sifting Committees considered the Instrument and both confirmed on 29 November 2018 that they were content for it to remain subject to the Negative Resolution procedure.

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 the 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 amendments made by the Instrument have the same extent and application as the legislation it amends (set out below) with the exception of the amendments to the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, which do not apply to Northern Ireland.

- 4.2 The Hydrocarbons Licensing Directive Regulations 1995 extend to Great Britain. The Regulations apply to licences (and applications for licences) for searching and boring for and getting petroleum in Great Britain, the United Kingdom (UK) territorial sea or any area designated under section 1(7) of the Continental Shelf Act 1964, with the exception of licences in respect of an area within the Scottish or Welsh onshore areas (as defined by section 8A of the Petroleum Act 1998).
- 4.3 The Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999 extend to the UK and apply to UK waters adjacent to the UK from low water line out to seaward limits of the territorial sea and waters adjacent to the UK within the area designated under the Continental Shelf Act 1964 (see definition of “the relevant area” in regulation 3).
- 4.4 The Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999 extend to Great Britain. The Regulations apply to the assessment of the effects of certain public and private projects on the environment insofar as it relates to proposed pipe-line works by a public gas transporter on land in Great Britain.
- 4.5 The Pipe-line Works (Environmental Impact Assessment) Regulations 2000 extend to the UK. The Regulations apply to the assessment of the effects of certain public and private projects on the environment insofar as it relates to authorisations for the construction of oil, gas or chemical pipe-lines on land in Great Britain.
- 4.6 The Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010 extend to Northern Ireland. The Regulations apply to licences (and applications for licences) for searching and boring for and getting petroleum in Northern Ireland, excluding the territorial sea.
- 4.7 The Oil Stocking Order 2012 extend and apply to the UK.
- 4.8 The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 extend to the UK. The Regulations apply to waters around England out to the baseline; territorial waters around the UK (except those waters around Scotland, Wales and Northern Ireland out to 3 nautical miles from the baseline); and UK waters adjacent to the UK within an area designated under the Continental Shelf Act 1964 (see definition of “offshore area” in regulation 2).
- 4.9 The Petroleum Licensing (Applications) Regulations 2015 extend to the UK. The Regulations apply to applications for licences for searching and boring for and getting petroleum in Great Britain, the UK territorial sea or any area designated under section 1(7) of the Continental Shelf Act 1964, with the exception of licences in respect of an area within the Scottish or Welsh onshore areas (as defined by section 8A of the Petroleum Act 1998).
- 4.10 The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 extend to England and Wales. The Regulations apply in relation to applications for consents under sections 36 and 37 of the Electricity Act 1989 in England, Wales and the territorial sea adjacent to England and Wales and the

Renewable Energy Zone (other than an area in relation to which the Scottish Ministers have functions).

5. European Convention on Human Rights

5.1 As the Instrument is subject to the Negative Resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Instrument will fix provisions - which would otherwise be deficient after the UK's exit from the EU - within existing legislation that implements the obligations of the Hydrocarbons Licensing Directive; Environmental Impact Assessment Directive ("the EIA Directive"); Industrial Emissions Directive ("the IED") including relevant provisions of the Medium Combustion Plant Directive ("the MCPD"); and the Oil Stocks Directive. The Instrument will do this by, for example:

(a) Replacing references to "another Member State" or "other Member States" with "a Member State" or "Member States".

(b) Replacing references to "another EEA State" or "other EEA States" with "an EEA State" or "EEA States" or otherwise omitting them.

(c) Replacing broad references to "EU legislation" with suitable terminology such as "retained EU law".

(d) Replacing references to specific provisions of EU Directives with the relevant domestic implementing legislation.

(e) Including - as necessary - new provisions whereby any obligations of an EU Directive referred to within relevant existing legislation is to be read as if the requirements imposed under the obligations on Member States were requirements imposed on the Secretary of State.

(f) Replacing the provisions relating to the publishing by the Oil & Gas Authority (OGA) of hydrocarbon licensing round notices in the Official Journal of the European Union with an obligation on the OGA to:

- publish notices on a public website; and
- publish notices about offshore licensing rounds in the London, Edinburgh and Belfast Gazettes, and in the London Gazette about onshore rounds in England.

Similar requirements would also apply to any onshore hydrocarbon licensing notices that may be issued in the future by the Department for the Economy in Northern Ireland - see related issues in paragraph 6.2 item (b).

(g) Extending the ability of the OGA - and the Department for the Economy in Northern Ireland (see paragraph 6.2 item (b)) - to refuse future licensing

applications on grounds of national security to include applicants controlled by, or by nationals of, an EU State. EU State companies that typically apply for licences are operating, or have previously operated, in the UK, however, the UK does not anticipate having national security concerns with EU States.

6.2 With respect to the amendments being made to existing legislation, these additional factors apply to the Instrument:

(a) Competence for aspects of the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 (as amended) and the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 are devolved to Welsh Ministers. It was agreed between BEIS and the Welsh Government that the Instrument would cover Welsh Ministers' areas of competence in connection with the 2013 and 2017 Regulations.

(b) Due to the current absence of a Northern Ireland Assembly, and following engagement between BEIS and the Department for the Economy in Northern Ireland, the Instrument incorporates suitable 'post-exit' deficiency fixes to the Hydrocarbons Licensing Directive Regulations (Northern Ireland) 2010.

7. Policy background

What is being done and why?

7.1 The Instrument will amend the existing legislation (see paragraph 2.2) implementing EU Directives as it applied before exit day, to ensure the legislation remains effective and appropriate after exit. Some of the Instrument's amendments to the existing legislation apply to the Government's and the Department for the Economy in Northern Ireland's regulatory obligations so that they can continue performing statutory functions 'post-exit'.

8. European Union (Withdrawal) Act / Withdrawal of the United Kingdom from the European Union

8.1 The Instrument is being made using the powers 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 UK from the EU. 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 There is not, at present, any intention to consolidate relevant legislation that is being amended by the Instrument.

10. Consultation

10.1 Given the nature of the legislative changes being introduced by the Instrument, a public consultation on a draft of the policy proposals was not deemed warranted.

Nonetheless, over 2017 and 2018, BEIS engaged with stakeholders such as Oil & Gas UK and also with other Government Departments and the Devolved Administrations via meetings and / or correspondence to keep them informed of progress on, and the scope of, the ‘post-exit’ regulatory proposals.

- 10.2 Whilst not constituting a consultation, on 13 September 2018, BEIS distributed notifications to relevant stakeholders informing them of the publication of a Technical Notice which set out the rationale (post-exit) for the Instrument and the link to which is: <https://www.gov.uk/government/publications/running-an-oil-or-gas-business-if-theres-no-brex-it-deal/running-an-oil-or-gas-business-if-theres-no-brex-it-deal>. On 24 September, BEIS additionally circulated to the Devolved Administrations an initial draft version of the Instrument.

11. Guidance

- 11.1 Where appropriate, existing legislative guidance documents will be updated in due course to reflect the amendments made by the Instrument. Relevant energy sector stakeholders and other interested parties will be notified once revised guidance has been published.

12. Impact

- 12.1 The changes being introduced by the Instrument will have no impact on energy sector businesses, whose residual obligations under the existing legislation covered will remain unaltered. There will also be no impacts on charities or voluntary bodies.

- 12.2 The impacts on the public sector will be trivial and are linked to:

(i) The need for the Oil & Gas Authority (OGA) to publish notices about future oil and gas licensing rounds in the relevant Gazettes (the OGA already publishes information about licensing rounds on its website). The costs to publish in the Gazettes are £63.75 (+VAT) for offshore rounds and £21.25 (+VAT) for onshore rounds. Over a ten-year timescale, the total costs to the OGA of publishing notices in the Gazettes would be around £850 - £1,000.

(ii) The need for the Department for the Economy in Northern Ireland (DfE-NI) to publish notices in the Belfast Gazette and on its website about any changes in onshore hydrocarbon licensing areas - for which the associated costs would be low e.g. a few thousand pounds to initially develop the webpages plus subsequent costs of around £200 (+ VAT) to publish notices in the Belfast Gazette.

At present, the DfE-NI already publishes in the Belfast Gazette and on its website information regarding the current onshore hydrocarbon licensing applications regime.

- 12.3 It is also the case that the amendments in the Instrument to the Oil Stocking Order 2012 will not, in themselves, result in any extra burdens on companies obligated under the UK’s Compulsory Stockholding of Oil (CSO) regime. Under separate policy measures for the CSO regime in the unlikely event of a ‘No Deal’ scenario,

BEIS will work to ensure that the UK continues to run a flexible system for oil stocking - making use of cross-border ticketing arrangements. Any future modifications that may be required to the CSO regime would be implemented through directions under section 6 of the Energy Act 1976.

- 12.4 Based on the above points, no Impact Assessment needs to be prepared for the Instrument as it will only result in very minor costs for the public sector.

13. Regulating small business

- 13.1 The Instrument does not directly apply to the activities of small business.

14. Monitoring & review

- 14.1 As the Instrument is being made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 David Foskett at BEIS, Tel: 0300 068 6063 or e-mail: David.Foskett@beis.gov.uk can answer any queries regarding the Instrument.
- 15.2 Emily Bourne, Director for the Energy Development and Resilience Directorate, at BEIS can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Claire Perry, Minister of State for Energy and Clean Growth at BEIS 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 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) Act 2018

1. Sifting statement(s)

- 1.1 The Right Honourable Claire Perry, Minister of State for Energy and Clean Growth has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018 (“the Instrument”) should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the Negative procedure).”.

- 1.2 This is the case because:

The Instrument is making amendments to fix certain ‘post-exit’ deficiencies within nine pieces of existing legislation - as identified in paragraph 2.2 of the Explanatory Memorandum - which implement the EU Directives as specified therein so that the legislation remains effective and appropriate from day one of the UK’s exit from the EU.

2. Appropriateness statement

- 2.1 The Right Honourable Claire Perry, Minister of State for Energy and Clean Growth has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018 (“the Instrument”) does no more than is appropriate.”.

- 2.2 This is the case because the Instrument only makes the necessary fixes to legal language and requirements ‘post-exit’ within the existing legislation - as identified in paragraph 2.2 of the Explanatory Memorandum - which implements the EU Directives as specified therein to ensure it remains effective and appropriate after the UK exits the EU.

- 2.3 Whilst the changes to hydrocarbons licensing legislation would extend the licensing authorities’ ability to refuse licence applications on grounds of national security to include applicants controlled by, or by nationals of, an EU State, it is a fact that companies in EU States which typically apply for licences are operating, or have previously operated, in the UK and, in this respect, the UK does not anticipate having national security concerns with EU States.

3. Good reasons

- 3.1 The Right Honourable Claire Perry, Minister of State for Energy and Clean Growth 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 the Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018 (“the Instrument”), and I have concluded that they are a reasonable course of action.”.

- 3.2 These reasons are:

(a) The provisions in the Instrument are proportionate in that they only make the necessary deficiency fixes to a suite of existing legislation - as identified in paragraph 2.2 of the Explanatory Memorandum - which implements the EU Directives as specified therein to ensure it remains effective and appropriate ‘post-exit’.

Even though the changes to hydrocarbons licensing legislation would extend the licensing authorities’ ability to refuse licence applications on grounds of national security to include applicants controlled by, or by nationals of, an EU State, it is the case that companies in EU States which typically apply for licences are operating, or have previously operated, in the UK and, in this regard, the UK does not anticipate having national security concerns with EU States.

(b) The principal consequence of not introducing the Instrument is that provisions within existing legislation would be deficient upon EU exit and in some cases to such an extent that the powers to continue carrying out statutory functions could be put in doubt. For instance, if the amendments are not made to hydrocarbons licensing legislation then it may not be possible for the Oil & Gas Authority (for which BEIS is the Sponsorship Department) to hold future oil and gas licensing rounds which could adversely impact investment for new hydrocarbon developments and have security of supply implications - both of which would also be counter to the UK’s Maximising Economic Recovery agenda.

4. Equalities

- 4.1 The Right Honourable Claire Perry, Minister of State for Energy and Clean Growth has made the following statement:

“The Pipe-lines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018 (“the Instrument”) do 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.

In relation to the Instrument, I 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. To this end, the policy underpinning the Instrument involves areas where there are no equality issues. For instance, the changes proposed to the existing legislation - as identified in paragraph 2.2 of the Explanatory Memorandum - have no equality impacts on any individuals or society in general.

5. Explanations

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