

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENT, FOOD AND RURAL AFFAIRS (MISCELLANEOUS
AMENDMENTS) (ENGLAND) REGULATIONS 2018

2018 No. 575

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“the Department”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes miscellaneous amendments to a number of pieces of secondary legislation within the remit of the Department. These largely deal with out of date references to domestic and EU instruments but two of the amendments also reflect changes to EU law in relation to fruit juices and hazardous waste.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 One of the amendments in this instrument (to the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 2015/810)), at regulation 11(2), corrects an error in the Environmental Damage (Prevention and Remediation) (England) (Amendment) Regulations 2017 (S.I. 2017/1177). That instrument was reported for defective drafting as a result of this error by the Joint Committee on Statutory Instruments in its Ninth Report of Session 2017-19.
- 3.2 There are two other amendments (at regulations 10(3) and 14) which are also corrections. The SI Registrar has agreed with the Department that the procedure for free issue of the instrument is not required in this case, since it would be disproportionate given that the vast bulk of the instrument contains new provisions which are not corrections.

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument makes various amendments, the majority of which update out of date references to domestic and EU instruments. There are also amendments to reflect changes to EU law in relation to fruit juices and hazardous waste.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England. Regulation 12 applies to England and the sea adjacent to England out as far as the seaward boundary of the territorial sea.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The amendments within this instrument cover legislation in the fields of agriculture, animal health and welfare, environmental protection, food, horticulture, plant health, sea fisheries, seeds, waste and water.
- 7.2 The instrument primarily amends out of date references to domestic legislation and to EU instruments. This includes omitting provisions that have become spent (regulations 24(2) and 38(4)).
- 7.3 The instrument also makes three drafting corrections (regulations 10(3), 11(2) and 14). The amendment to the Nitrate Pollution Prevention Regulations 2015 (S.I. 2015/668) corrects a reference to the methodology used to calculate nitrate concentration in freshwaters, for the purposes of reviews by the Secretary of State of designated nitrate vulnerable zones. The amendment to the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 2015/810) corrects a cross-reference. The amendment to the Water Abstraction (Transitional Provisions) Regulations 2017 (S.I. 2017/1047) corrects an error in the description of what circumstances qualify as granting a more limited abstraction licence than that applied for.
- 7.4 All of these amendments ensure a functioning statute book, enabling the reader to understand what the law is.
- 7.5 This instrument also introduces a change to the Fruit Juices and Fruit Nectars (England) Regulations 2013 (S.I. 2013/2775) (“the Fruit Juices Regulations”). The amendment implements Commission Delegated Regulation (EU) No 1040/2014 amending Council Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption, so as to adapt its Annex I to technical progress (OJ No L 288, 2.10.2014, p 1). This amendment allows plant proteins from wheat, peas and potatoes to be used for the clarification of products to which the Fruit Juices Regulations apply. The amendment reflects technological progress and provides manufacturers with additional voluntary production options to be used during clarification.
- 7.6 Certain provisions (listed in regulation 1(2)(a) to (e)) also reflect an amendment to Annex 3 to Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3) in relation to the meaning of hazardous waste. It concerns the definition of hazardous property HP 14 ‘Ecotoxic’, following the recommendations of an EU study on the alignment of the assessment of the hazardous property HP 14 ‘Ecotoxic’ with the criteria laid down in Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ No L 353, 31.12.2008, p 1). The

amendment ensures that appropriate test methods are applied, ensuring that there is a suitable level of protection for human health.

Consolidation

7.7 The Department has no plans currently to consolidate the legislation that is amended by this instrument.

8. Consultation outcome

- 8.1 The amendments within the instrument consist primarily of updates to out of date references and so consultation on the majority of the content was not considered necessary. However, there is a statutory requirement to consult in relation to legislation concerning food.
- 8.2 Food-related amendments within the SI consist only of minor changes, with the exception of the amendment to the Fruit Juices Regulations. Department officials anticipated that this change would be seen as positive, offering further choice to manufacturers for clarification purposes. The most appropriate approach was therefore a targeted consultation with key stakeholder organisations on the food and drink related amendments only.
- 8.3 A targeted consultation by the Department on the food and drink related amendments was published on 6th March 2018 and ended on 2nd April 2018. To reach local authority stakeholders, officials also published details of the amendments on the Food Standard Agency's Knowledge Hub and Smarter Communications Platform on 9th March 2018.
- 8.4 The Department received six replies, none of which raised substantive or significant issues or indicated that the proposed changes required adjustment.
- 8.5 One response from the Hain Daniels Group sought further clarity on the changes and highlighted the need to keep stakeholders up to date once the instrument was finalised. This response was cleared by correspondence, and officials are now committed to emailing stakeholders a web link to the instrument once published.
- 8.6 Other responses were either endorsements of the proposed changes or unrelated to the issues set out in the consultation.

9. Guidance

9.1 It is not considered that guidance is required in respect of this instrument.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is expected to be minimal. The consultation indicated that changes to the Fruit Juices Regulations will have a positive impact. For the other changes there is no, or no significant, impact on business, charities or voluntary bodies anticipated.
- 10.2 The impact on the public sector is expected to be minimal.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

- 11.2 No specific action is proposed to minimise the impact on small businesses.
- 11.3 The basis for the final decision on what action to take to assist small businesses was that no additional regulatory burden is anticipated.

12. Monitoring & review

- 12.1 Much of the legislation being amended by this instrument already contains a review clause. Where it does not contain a review clause, the Minister considers that inserting a review provision is not appropriate, because there is not expected to be a significant annualised net impact on business (greater than +/- £5 million net annualised). It would not be proportionate to undertake a review in each case, given the costs of doing so and the limited scope for change, particularly in relation to out of date references.
- 12.2 In any event, the Department and its agencies will continue to monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to and implemented.

13. Contact

- 13.1 Robert Miller at the Department for Environment, Food and Rural Affairs, Telephone: 020 8026 1457 or email: robert.miller@defra.gsi.gov.uk, can answer any queries regarding the instrument.