

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENT AND RURAL AFFAIRS (AMENDMENT) (EU EXIT)
REGULATIONS 2019

2019 No. 1078

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 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 corrects a number of minor errors in other instruments, and makes some additional amendments to correct deficiencies in domestic legislation arising as a result of the UK's exit from the European Union. It amends:
- the Environment, Food and Rural Affairs (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/25) (“the EIA (EU Exit) Regulations”), which relates to Environmental Impact Assessment (EIA), in the fields of agriculture and marine works;
 - the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/39) (“the EPR (EU Exit) Regulations”);
 - the Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 (S.I. 2019/188) (“Waste (EU Exit) (No. 2) Regulations”);
 - the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/620) (“the Waste (EU Exit) Regulations”).

Explanations

What did any relevant EU law do before exit day?

- 2.2 Each of the four instruments listed in section 2.1 correct EU Exit related deficiencies in domestic legislation so that it continues to operate as intended after EU Exit. The EIA (EU Exit) Regulations correct deficiencies in domestic legislation that implemented, in the field of environment, food and rural affairs, Directive 2011/92/EU of the European Parliament and of the Council (“the EIA Directive”). The EPR (EU Exit) Regulations correct deficiencies in the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154). The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations (S.I. 2019/188) correct deficiencies in waste related domestic subordinate legislation, and the Waste (EU Exit) Regulations correct deficiencies in waste related domestic primary legislation, and directly applicable EU Regulations and Decisions.
- 2.3 Paragraph 4 of Schedule 1 to the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) (“the 2011 Regulations”) lists the objectives of waste management plans. One of those objectives (originating from Article 16 of Directive 2008/98/EC of the European Parliament and of the Council on waste – “the Waste Framework

Directive”) has been to ensure that, for the purposes of waste management planning, the principles of self-sufficiency and proximity were reflected in waste management plans effectively so that the European Union could become self-sufficient in waste disposal and in the recovery of mixed municipal waste collected from households.

- 2.4 Regulation 33 of the End-of-Life Vehicles Regulations 2003 (S.I. 2003/2635) (“the ELV Regulations”) makes provision in relation to certificates of destruction issued in EEA States or Gibraltar.

Why is it being changed?

- 2.5 Regulation 2 of this instrument corrects a minor error in the EIA (EU Exit) Regulations. In that instrument the definition of “public” as contained in the EIA Directive has been inserted, with amendment, into the principal regulations being amended by that instrument. It has since been reported that the definition of “public” differs across the individual regulations. The definition of “public” in regulations 5(2)(a)(ii) (for agriculture) and 6(2)(b) (for marine works) is, therefore, being amended so that it is consistent with the clearer definition in regulations 2(2)(a)(ii) (for land drainage improvement works) and 4(2)(c) (for water resources).
- 2.6 Regulation 3 of this instrument makes amendments to the EPR (EU Exit) Regulations. It updates cross-references to the Medical Devices Regulations 2002 (S.I. 2002/618) (“the 2002 Regulations”). The Medical Devices (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/791) created additional definitions of “medical device”, “in vitro diagnostic medical device” and “active implantable medical device” in the 2002 Regulations. Regulation 3 of this instrument updates the cross-references in those definitions in Schedule 1A to the Environmental Permitting (England and Wales) Regulations 2016 so that in each case both definitions in the 2002 Regulations are referenced. This is consistent with regulation 4T of the Medical Devices Regulations 2002, which modifies the same definitions in regulation 2(1) of the Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113) in the same way.
- 2.7 Regulation 4 of this instrument makes amendments to the Waste (EU Exit) (No. 2) Regulations as follows :
- Regulation 4(2) of this instrument amends regulation 9(10) of the Waste (EU Exit) (No. 2) Regulations. Regulation 9(10) amends regulation 33 of the ELV Regulations. Regulation 4(2) of this instrument inserts new amendments into regulation 9(10) in order to correct additional deficiencies resulting from EU Exit in regulation 33 of the ELV Regulations;
 - Regulation 4(3) of this instrument omits regulation 13(3) of the Waste (EU Exit) (No. 2) Regulations. Regulation 13(3) amends regulation 3(1) of the Batteries and Accumulators (Placing on the Market) Regulations 2008 by inserting a reference to “regulation 2A”. However, regulation 13(3) was included in error and is to be omitted;
 - Similarly, regulation 4(3) of this instrument omits regulation 14(2)(b) of the Waste (EU Exit) (No. 2) Regulations. Regulation 14(2)(b) purports to amend the definition of “the Waste Directive” in regulation 2 of the Waste Batteries and Accumulators Regulations 2009. However, there is no such definition. Regulation 14(2)(b) was included in error and is to be omitted;

- Regulation 4(4) of this instrument amends regulation 16 of the Waste (EU Exit) (No. 2) Regulations. Regulation 16 amends the 2011 Regulations. Regulation 4(4)(b) of this instrument inserts new amendments to paragraph 4 of Schedule 1 to the 2011 Regulations to correct deficiencies resulting from EU Exit in that paragraph. Following exit from the EU, it is no longer appropriate for the objectives relating to the principles of self-sufficiency and proximity in national waste management plans to refer to the EU. Therefore the amendments ensure that the principles of self-sufficiency and proximity will continue to apply at a UK level. Regulation 4(4)(a) amends regulation 16(3) of the Waste (EU Exit) No. 2 Regulations by replacing new regulation 3D(8)(b)(i) of the 2011 Regulations to ensure a consistent approach between the modification of Article 16 of the Waste Framework Directive and the amendment made by regulation 4(4)(b) of this instrument;
 - Regulation 4(5) of the instrument amends regulation 18(25)(c) of the Waste (EU Exit) (No. 2) Regulations. Regulation 18(25)(c) inserts a new Part 4 into Schedule 1 to the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012. New paragraph 26(c)(vi) is unnecessary in light of new paragraphs 26(c)(iv) and 26(c)(v) of Part 4. New paragraph 26(c)(vi) was included in error and is to be omitted.
- 2.8 Regulation 5 of the instrument amends regulation 17(3) of the Waste (EU Exit) Regulations. Regulation 17(3) inserts new Articles 1A to 1F into Commission Decision 2009/335/EC on technical guidelines for the establishment of the financial guarantee in accordance with Directive 2006/21/EC of the European Parliament and of the Council concerning the management of waste from extractive industries. Regulation 5 of this instrument replaces new Article 1B(8)(b)(i), which modifies Article 16 of the Waste Framework Directive, to ensure a consistent approach with the amendments made by regulation 4(4) of the instrument as outlined above.

What will it now do?

- 2.9 The EIA (EU Exit) Regulations, EPR (EU Exit) Regulations, the Waste (EU Exit) (No. 2) Regulations and the Waste (EU Exit) Regulations as amended by this instrument will ensure that deficiencies in the legislation amended by those Regulations are addressed as intended.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was presented to the Sifting Committees for consideration on 23rd May 2019. On 18th June 2019 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament, though one may still occur. This instrument will therefore remain subject to the negative resolution procedure.
- 3.2 Regulations 2 and 4(3) and (5) of this instrument amend other EU exit statutory instruments to correct minor errors in them, and this instrument is being published under the free issue procedure. Regulation 2 corrects errors in the EIA EU Exit Regulations previously reported by the JCSI in the forty-eighth Report of Session 2017-19 Regulation 4(3) and (5) corrects errors in the Waste (EU Exit) (No. 2) Regulations that were previously reported by the JCSI in report HL 316 HC 542-iii. The Department considered whether to revoke and remake the instruments containing

errors, or to withdraw and re-lay in the case of the affirmative instrument. It decided not to do so in view of the minor nature of the errors.

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)

- 3.3 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 extent of this instrument is England and Wales, Scotland and Northern Ireland; and is the same as the provisions it is amending.

- 4.2 The territorial application of the regulations is the same as the provisions it is amending. More specifically:

- Under the EIA (EU Exit) regulations - the territorial application of the regulations for agriculture (regulation 5) is England only; and the territorial application of the regulations for marine works (regulation 6) is the English inshore region, English offshore region, Scottish inshore region (with respect to certain reserved projects), Scottish offshore region, Welsh inshore region, Welsh offshore region, Northern Ireland inshore region and Northern Ireland offshore region;
- The territorial application of the EPR (EU Exit) Regulations is England and Wales only;
- Under the Waste (EU Exit) (No. 2) Regulations, the territorial application is England and Wales, Scotland and Northern Ireland, except for the regulation amending the Waste (England and Wales) Regulations 2011 (regulation 16) which applies to England and Wales only;
- The territorial application of the Waste (EU Exit) Regulations is England and Wales, Scotland and Northern Ireland.

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

- 6.1 This instrument makes minor amendments to provisions of four other EU Exit instruments made under section 8(1) of the European Union (Withdrawal) Act 2018, relating to EIA and waste, in order to ensure the appropriate functioning of the legislation amended by those other instruments after the UK leaves the EU.
- 6.2 The EIA (EU Exit) Regulations corrects EU Exit related deficiencies in the domestic regulations that implemented the EIA Directive in the field of: land drainage improvement works, forestry, water resources, agriculture and marine works.
- 6.3 The EPR (EU Exit) Regulations corrects EU Exit related deficiencies in the Environmental Permitting (England and Wales) Regulations 2016 to ensure that relevant permitting requirements are delivered as intended via conditions in environmental permits, and give regulators the power to ensure compliance with those conditions.

- 6.4 The Waste (EU Exit) (No. 2) Regulations and the Waste (EU Exit) Regulations were part of three EU Exit instruments (along with the International Waste Shipments (Amendment) (EU Exit) Regulations 2019 (SI 2019/590)) which taken together ensure that the UK's waste regime continue to operate as intended after the UK leaves the EU.

7. Policy background

What is being done and why?

- 7.1 This instrument is being made to ensure the effectiveness and continuity of UK legislation following our exit from the EU.
- 7.2 The instrument makes minor amendments, which are legally necessary to achieve its objectives. It represents no changes of policy, nor will it produce any impact on businesses or the public. Sections 2.5 to 2.9 describe the changes made by this 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. 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 We have not consulted specifically on this instrument, because it contains only minor technical amendments and represents no change of policy and has no impact of itself on businesses or the public.
- 10.2 We have liaised with Devolved Administrations in relation to the devolved and reserved UK-wide elements of this instrument.

11. Guidance

- 11.1 Guidance is not being provided in relation to this instrument.

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 is expected to be no, or no significant, impact on business as a direct result of this legislation. This is because it relates to the maintenance of existing legislation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is no specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Iain Notman at the Department for Environment, Food and Rural Affairs (telephone: 020 8026 3258; or email: iain.notman@defra.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Sarah Swash, Deputy Director for EU Exit and Environmental Regulations, at the Department for Environment, Food 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.
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 2018 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 s. 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 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s. 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 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. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State, 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 Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019 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 makes purely technical amendments to existing legislation, to ensure its continuing legal functioning after EU exit. There are no changes in policy or impact on businesses or the public.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State, 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 Environment and Rural Affairs (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case for the reasons explained in sections 2 and 7 in the main body of this Explanatory Memorandum.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, 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”.

- 3.2 These are explained in sections 2 and 7 in the main body of this Explanatory Memorandum.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State, Dr Thérèse Coffey MP, has made the following statement:

“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 Parliamentary Under Secretary of State, 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, Dr Thérèse Coffey 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”.

5. Explanations

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