

EXPLANATORY MEMORANDUM TO

THE WASTE (MISCELLANEOUS AMENDMENTS) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 271

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes minor operational and technical amendments to subordinate legislation under section 8 of the European Union (Withdrawal) Act 2018. It mirrors provisions in Defra’s Waste (Miscellaneous Amendments) (EU Exit) (No.2) Regulations 2019. It amends domestic waste Regulations that implement certain European Directives related to waste management to ensure that the waste regime continues to be operable after the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”). The European Directives which these domestic waste Regulations implemented are:

- Directive 91/689/EEC of 12 December 1991 on hazardous waste;
- Directive 94/62/EC of 20 December 1994 on packaging and packaging waste as amended by Council Regulation (EC) No 1882/2003, Directive 2004/12/EC of 11 February 2004 on amending Directive 94/62/EC on packaging and packaging waste and Directive 2005/20/EC of 9 March 2005 on amending Directive 94/62/EC on packaging and packaging waste; and
- Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The instrument is a continuation of existing waste policies, it amends domestic law to ensure that statutory regulations (that apply to Northern Ireland only) function legally after EU Exit. No environmental standards are being removed or amended.

Why is it being changed?

- 2.3 After EU Exit, amendments are required to the text of Northern Ireland domestic legislation by removing or amending references to EU Directives and associated EU terms to ensure that waste legislation continues to operate as intended.

What will it now do?

- 2.4 The instrument will ensure that existing protections and regulatory frameworks are maintained in Northern Ireland legislation and will continue to operate after EU Exit as they do now.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments]

- 3.1 The Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 16 January 2019. On 29 January 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. The instrument will therefore remain subject to 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 The territorial application of this instrument is Northern Ireland.
- 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.
- 3.4 The Department has reached this view because the SI is made under powers in section 8(1) of the European Union (Withdrawal) Act 2018 and makes only technical amendments to Northern Ireland Statutory Rules to ensure operability after the UK leaves the EU.

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 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 operational and technical amendments to Northern Ireland legislation relating to waste management to ensure continued operability after EU Exit. The instrument does not introduce any new policies but simply ensures that the legislation continues to operate in the same way after exit day as it does now.

7. Policy background

What is being done and why?

- 7.1 This instrument makes amendments to the relevant pieces of domestic legislation to allow them to operate properly after EU Exit.
- 7.2 This instrument applies to policy areas which are a transferred matter for Northern Ireland under the Northern Ireland Act 1998. No change is being made to policy. This instrument provides the continued ability to ensure environmental protection in the UK when it leaves the EU. 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 the

absence of a Northern Ireland Executive. In the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for 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/ 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 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 are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 This instrument was not subject to formal consultation as the amendments are technical in nature and make no policy changes.

11. Guidance

11.1 There is no associated guidance.

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 the proposed amendments are minor and technical in nature, relating to the maintenance of existing regulatory standards and will have no, or no significant, impact on the private, voluntary or public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

13.2 The proposed amendments are minor and technical in nature and no disproportionate impacts are expected to affect small and micro businesses. No mitigating actions for small businesses were deemed necessary for his instrument.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Department of Agriculture, Environment and Rural Affairs will 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.

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

15. Contact

- 15.1 Janis Purdy at the Department of Agriculture, Environment and Rural Affairs, Northern Ireland. Telephone: 02890 569531 or email: Janis.purdy@daera-ni.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 David Small, Head of Environment, Marine and Fisheries Group at the Department of 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 the 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 all European Union (Withdrawal) Act 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	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. Sifting statement(s)

- 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 Waste (Miscellaneous Amendments) (Northern Ireland) (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 the instrument makes minor and technical amendments to ensure retained EU law and preserved Northern Ireland law is operable following EU Exit. No environmental standards are being removed or amended.

2. Appropriateness statement

- 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 the Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 2.2 This is the case because this instrument makes minor amendments to Northern Ireland domestic legislation to ensure that the legislation remains operable following EU Exit. No environmental standards are being removed or amended.

3. Good reasons

- 3.1 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”.

- 3.2 These Regulations correct deficiencies to ensure that Northern Ireland waste legislation continues to be operative as intended after EU Exit. The instrument makes no change to any environmental standards.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for the Environment, Dr Thérèse Coffey 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 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 instrument, I, Dr Thérèse Coffey MP, Parliamentary under Secretary of State for the Environment, 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.