

EXPLANATORY MEMORANDUM TO
THE AIR QUALITY (AMENDMENT OF DOMESTIC REGULATIONS) (EU EXIT)
REGULATIONS 2019

2019 No. 74

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 amends domestic legislation that implements EU air quality legislation to ensure it continues to be operable after the withdrawal of the UK from the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Regulations amended by this instrument are the Air Quality Standards Regulations 2010 (S.I. 2010/1001), which transpose the requirements of Directives 2008/50/EC and 2004/107/EC on ambient air quality; the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 (S.I. 2012/1715), which transposes requirements of Directive 2004/42/EC (VOCs in Paints Directive); and the National Emission Ceilings Regulations 2018 (S.I. 2018/129), which transpose requirements in the National Emission Ceilings Directive 2016/2284/EU.

Why is it being changed?

- 2.3 This instrument makes minor and technical amendments to the existing legislation described above to ensure the legislation is operable after EU Exit. The changes in this instrument include necessary fixes such as: amending cross references to EU legislation; amending references to the EU, EU institutions and EU administrative processes to domestic equivalents; updating legal references to refer to relevant domestic legislation; and adjusting the requirements for government reporting as is appropriate.

What will it now do?

- 2.4 This instrument will ensure that the legislation described above will operate effectively after the UK leaves the EU. Further description of the amendments being made are given below (Paragraph 7).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 22nd November 2018. On 6th December 2018 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 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 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 the United Kingdom.
- 4.2 The territorial application of this instrument is the same as in each of the relevant Regulations. The Air Quality Standards Regulations 2010 apply in England, except regulations 3(a), 23, 24, 25(4) and 32 which extend to the United Kingdom (this instrument only amends regulation 32). The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 and the National Emission Ceilings Regulations 2018 apply in the United Kingdom.

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 The UK is leaving the European Union and the related retained EU legislation in the field of air quality will not work in the UK without the amendments made by the instrument. Amendments to the Air Quality Standards Regulations 2010 in Part 1 of the instrument are made using section 2(2) of the European Communities Act 1972, transposing provisions that the Secretary of State previously applied at the point of reporting to the Commission.
- 6.2 In addition to the instrument which is the subject of this memorandum the Department will also introduce other related instruments as part of the exit process. These amend retained direct EU law in respect of air quality to ensure it continues to operate effectively after withdrawal and transfer certain legislative functions from the Commission to domestic authorities.

7. Policy background

- 7.1 The intention is to have air quality legislation continue to apply after the UK leaves the EU as it did before, subject to fixing certain deficiencies. On Exit day this will mean maintaining the substantive elements of the EU air quality legislative regime, but making necessary amendments through this instrument (and the other associated

instruments referred to above) to ensure it remains operable outside of the EU legal framework. The changes in this instrument include necessary fixes such as: amending cross references to EU legislation; amending references to the EU, EU institutions and EU administrative processes to domestic equivalents; updating legal references to refer to relevant domestic legislation; and adjusting the requirements for government reporting as is appropriate.

- 7.2 **The Air Quality Standards Regulations 2010** transpose the requirements of Directive 2008/50/EC (“the Ambient Air Quality Directive”) and Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (the 4th Daughter Directive).
- 7.3 Articles 20 and 21 of the Ambient Air Quality Directive sets out that the European Commission does not consider a ‘Zone’ to be in exceedance of limit values when the contribution is due to winter sand/salt or natural factors. In respect of English Zones, these provisions are currently applied at the point of reporting to the Commission, but the amendments made in Part 1 of this instrument transpose these provisions so that they are part of domestic law (these amendments will be made 21 days after the regulations are made under section 2(2) of the European Communities Act 1972, bringing over provisions that we were previously allowed to apply through EU law, ensuring continuity in our legislation when we leave the EU). Amendments to those provisions are also made for the purpose of operability under the Withdrawal Act powers, which will come into force on Exit day.
- 7.4 References to UK National Reference Laboratories taking part in Union-wide quality assurance programmes have been amended as UK laboratories will no longer have access to these EU-level programmes. National level quality assurance obligations are preserved.
- 7.5 Obligations that relate to consultation between EU Member States on remedial action to address exceedances significantly related to transboundary air pollution have been amended as this obligation would no longer apply to EU Member States with respect to the UK. The obligation has been amended so that the Secretary of State may consult EU Member States where considered appropriate.
- 7.6 **The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012** do not apply to products that will be used outside of the EU customs area. As the UK will no longer be a member of the EU customs area, an amendment provides that the Regulations will not apply to products that will be used outside of the UK.
- 7.7 **The National Emission Ceilings Regulations 2018** transposes requirements in the National Emission Ceilings Directive 2016/2284/EU. The changes in this instrument include necessary fixes described in Section 7.1.
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 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 None.

10. Consultation outcome

- 10.1 This instrument does not introduce any substantive policy change and it imposes no new obligations on external bodies so no public consultation has been carried out. The purpose of the instrument is solely to enable the current legislative and policy framework to remain consistent following the withdrawal from the European Union.
- 10.2 Devolved administrations were engaged in the development of the instrument and are content with the instrument.

11. Guidance

11.1 No guidance is being provided at the time of laying 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 because there is no significant new impact per business as the instrument relates to maintenance of existing regulatory standards.

13. Regulating small business

13.1 While the legislation listed in this instrument does apply to activities that are undertaken by small businesses, the amendments made do not affect their activities.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 William Smith at the Department of Environment, Food and Rural Affairs Telephone: 02080269942 or email: william.smith@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Harriet Wallace at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP at the Department of 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/ESIC
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 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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 Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Air Quality (Amendment of Domestic Regulations) (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 does not fall into the category of regulations identified in schedule 7 Part 1 paragraph 1(2) as requiring approval in draft by resolution of both Houses of Parliament. This instrument makes minor and technical amendments to the legislation described above to ensure it is operable after Exit. No substantive policy changes are brought in by this instrument.

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 does no more than is appropriate”.

2.2 This is the case because this instrument corrects deficiencies as necessary to ensure that European air quality legislation and standards are maintained after withdrawal from the EU.

3. Good reasons

3.1 The Parliamentary Under Secretary of State for the Environment, 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 This is the case because, without this instrument, there would be deficiencies in air quality legislation.

4. Equalities

4.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement(s):

“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, 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 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”.

4.3 The amendments made by the instrument do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because they are minor and technical and do not alter the operation of the underlying schemes or impose any new liabilities or obligations on any relevant persons.

5. Explanations

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