

EXPLANATORY MEMORANDUM TO
THE WASTE (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS
2019

2019 No. [XXXX]

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 Act.

2. Purpose of the instrument

- 2.1 The Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 makes amendments to three waste-related Acts of Parliament and 14 related EU Regulations and Decisions. This will enable their continued operability as retained EU law under the European Union (Withdrawal) Act 2018, following the UK's withdrawal from the European Union. It also revokes some EU directly applicable legislation relating to waste which it is not necessary to retain in a domestic context because the requirements are already otherwise embedded in UK legislation or will be covered by other EU Exit legislation. See paragraph 7.8 for further information.

Explanations

What did any relevant EU law do before exit day?

- 2.2 EU Commission Regulations on waste being amended cover the following:

(EU) Nos. 1103/2010, 333/2011, 493/2012, 1179/2012 and 715/2013 concern labelling of batteries and accumulators, criteria for determining when certain materials (including glass cullet and certain scrap metals) cease to be waste, and calculations of the efficiency of recycling processes.

Commission Decisions on waste being amended cover the following:

2000/532/EC provides an EU-wide common terminology for waste classification to ease waste management, including for hazardous waste;

2001/171/EC and 2009/292/EC establish the conditions for derogations for glass packaging, plastic crates and plastic pallets in relation to heavy metal concentration levels;

2002/151/EC and 2003/138/EC on requirements for certificates of destruction of End of Life Vehicles ('ELVs') and for component and coding standards for vehicles to facilitate the identification of those components and materials which are suitable for reuse and recovery (with respect to the ELV Directive (Directive 2000/53/EC on end of life vehicles) which aims at making dismantling and recycling of ELVs more environmentally friendly);

2003/33/EC establishes criteria and procedures for the acceptance of waste at landfills;

2009/337/EC, 2009/360/E, 2009/359/EC and 2009/335/EC concerning management of waste from extractive industries, on the classification of waste facilities, the technical requirements for waste characterisation, conditions under which waste can

be considered as inert waste, and technical guidelines for the establishment of financial guarantees; and

2011/753/EU establishes rules and calculation methods for verifying compliance with recycling targets.

EU Commission Regulations on waste being revoked are:

Commission Regulation (EU) No. 1357/2014 regarding the classification of hazardous waste.

EC Commission Decisions on waste being revoked are:

94/741/EC, 97/622/EC, 2000/738/EC, 2001/753/EC, 2004/249/EC, 2009/851/EC, 2007/151/EC concerning questionnaires for Member States reports;

76/431/EEC setting up a Committee on Waste Management;

97/129/EC establishing an identification system for packaging materials;

2005/270/EC establishing database system formats;

2005/293/EC regarding rules on the monitoring of the reuse/recovery and reuse/recycling targets on end-of-life vehicles;

2003/138/EC establishing component and material coding standards for vehicles

2005/369/EC laying down rules for monitoring compliance on waste electrical and electronic equipment;

2008/350/EC concerning permit exemptions;

2008/763/EC on methodology for the calculation of annual sales of portable batteries and accumulators to end-users;

2015/1156 concerning an amendment to an agreement on Batteries and Accumulators

2009/358/EC on the harmonisation, the regular transmission of the information and the questionnaire on the management of waste from extractive industries]

Why is it being changed?

- 2.3 The changes made by this instrument will ensure that waste regulation will continue to be effectively managed after EU Exit.

What will it now do?

- 2.4 This instrument will address deficiencies in the converted Regulations and other associated retained direct EU legislation arising from EU Exit, and ensure that existing protections relating to: waste batteries and accumulators; end of waste criteria; packaging waste; end-of-life vehicle destruction certification; landfill acceptance criteria; the management of waste from extractive industries; and calculation methods for verifying recycling target compliance are maintained and continue to be operative once the United Kingdom has left the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24(1) of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument

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 United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Environment, Dr Thérèse Coffey MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972 (the ‘Withdrawal Act’), but section 2 saves EU derived domestic legislation so that it continues to have effect in domestic law on and after “Exit Day”. Exit Day is defined by section 20 of the European Union (Withdrawal) 2018 Act.
- 6.2 This instrument is made in exercise of powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) 2018 Act Section 8(1) of the European Union (Withdrawal) 2018 Act provides that a Minister of the Crown may by regulations make such provisions as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.

7. Policy background

What is being done and why?

- 7.1 Amendments are made to three waste-related Acts of Parliament, the Environmental Protection Act 1990, the Waste and Emissions Trading Act 2003 and the Control of Pollution (Amendment) Act 1989, and a number of waste related EU Regulations and Decisions (see section 2.2 of this explanatory memorandum for descriptions).
- 7.2 Without these amendments the retained EU law would not be effective in UK law due to the deficiencies within the provisions arising from the withdrawal of the United Kingdom from the European Union. The instrument makes minor and technical amendments to the existing legislation described above to ensure the legislation is operable after EU Exit. The changes include amending references to the EU, EU institutions and EU administrative processes to UK equivalents and updating legal references to refer to relevant UK legislation.

7.3 Representative examples of amendments:

In amendments to two Decisions made under Directive 94/62/EC on packaging and packaging waste relating to derogations for glass packaging and plastic crates and pallets, references to ‘Member States’ are to be replaced by ‘Secretary of State’, references to ‘Community’ are to be replaced with ‘United Kingdom’ and ‘appropriate agency’ is defined as the Environment Agency in England, the Scottish Environment Protection Agency in Scotland, the Natural Resources Body for Wales in Wales and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

7.4 Amendments to various Decisions made under Directives 1999/31/EC and 2006/21/EC relating to landfilling of waste and waste from the extractive industry respectively. These amendments include references to ‘Member States’ to be replaced by ‘Secretary of State’, references to ‘Community’ to be replaced with ‘United Kingdom’ and providing certainty on definitions and defining ‘appropriate agency’ (the Environment Agency in England, the Scottish Environment Protection Agency in Scotland, the Natural Resources Body for Wales in Wales and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland). These amendments also remove the requirement to report on implementation of the directives to the European Commission.

7.5 In amendments to three Regulations made under Directive 2008/98/EC of the European Parliament and of the Council on end of waste criteria for certain types of scrap metal, glass cullet, and copper scrap, include replacing references to Member States such that a provision imposing an obligation on, or providing discretion to, a Member State is to be read as a reference to the appropriate authority, appropriate agency or local authority which, immediately before exit day, was responsible for the United Kingdom’s compliance with that obligation or able to exercise that discretion. The amendments provide certainty on definitions and in defining ‘appropriate agency’ (Environment Agency in England, the Scottish Environment Protection Agency in Scotland, the Natural Resources Body for Wales in Wales and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland).

In further amendments to the above three Regulations, references to the Eco-Management and Audit Scheme (EMAS) Regulation (Regulation (EC) No 1221/2009) (an organisational management instrument developed by the European Commission for organisations to evaluate, report, and improve their environmental performance) will be omitted. Only Member States, European Free Trade Association countries and those with a free trade agreement with European Free Trade Association may register organisations with European Eco-Management and Audit Scheme. When the UK exits the EU, the UK Competent Body for European Eco-Management and Audit Scheme will lose its status and the registrations it awarded will no longer be valid, so this Regulation is considered redundant in UK context (note that although EMAS will not be replaced by a separate system in the UK. UK organisations wishing to remain registered with EMAS will still be able to do so via EMAS Global registration which is available to organisations in third countries through the Competent Body of one of the Member States offering the service).

We are, therefore, planning on omitting references to the EMAS Regulation in the retained versions of the end of waste Regulations and we propose to make an alternative provision for references to the certification of environmental management standards by retaining a reference to a conformity assessment body (an independent

body that performs conformity assessment activities including calibration, testing, certification and inspection.), as defined in Regulation (EC) No 765/2008. The End of Waste regulations provide options for accrediting such bodies. The UK uses the accreditation system described in Regulation (EC) 765/2008. The accreditation is done by the United Kingdom Accreditation Service (UKAS). Transitional provisions are also proposed that will ensure that certifications granted to quality management systems will continue to be recognised as valid.

- 7.6 In amendments to Commission Decision 2011/753/EU establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of the Waste Framework Directive 2008/98/EC, references to Member States are amended to the appropriate authority (the Secretary of State in relation to England, the Welsh Ministers in relation to Wales, the Scottish Ministers in relation to Scotland and in relation to Northern Ireland the Department for Agriculture, Environment and Rural Affairs).
- 7.7 In further amendments to Decision 2011/753/EU (establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of the Waste Framework Directive), it makes modifications to how the Waste Framework Directive should be read for the purposes of the Decision. It removes references to exports to other Member States and exports “out of the union” in relation to export of materials from the UK. This simply removes the distinction between exports to EU Member States and those outside of the EU. Finally it requires the Secretary of State to publish a report called “the progress report” on whether the current UK target to recycle 50% of household waste by 2020 set in article 11(2) of the Waste Framework Directive have been met in respect of England. This progress report must be published before 1 January 2022 and in a manner which the Secretary of State considers appropriate. This instrument does not create an obligation on the Devolved Administrations to publish such a report.
- 7.8 It also revokes some directly applicable EU legislation relating to waste which it is not necessary to retain in a domestic context, or because the requirements are already otherwise embedded in UK legislation Representative examples here include:

Commission Decision 2003/138/EC, which covers material and component coding standards for end-of-life vehicles, and Commission Decision 2002/151/EC, which relates to minimum standards for the Certificate of Destruction. In both cases, the requirements are already set out fully in The End-of-Life Vehicles Regulations 2003 (Schedules 2 and 3 respectively).

Two directly applicable Commission Decisions (2004/249/EC: which relates to a questionnaire for Member States reports on the implementation) and (2005/369/EC – which relates to laying down rules for monitoring compliance of Member States and establishing data formats) in relation to the Waste Electrical and Electronic Equipment (WEEE) Directive which relate to reporting on compliance with the Directive and formats of data reporting by Member States to the European Commission. The provisions in both of these Decisions are not necessary to be retained in a domestic context, since compliance with the wider retained legislation in relation to the WEEE Directive will be covered by other EU Exit legislation.

The full list of EU legislation being revoked is:

Commission Regulation (EU) No. 1357/2014 regarding the classification of hazardous waste.

94/741/EC, 97/622/EC, 2000/738/EC, 2001/753/EC, 2004/249/EC, 2009/851/EC, 2007/151/EC concerning questionnaires for Member States reports;

76/431/EEC setting up a Committee on Waste Management;

97/129/EC establishing an identification system for packaging materials;

2005/270/EC establishing database system formats;

2005/293/EC regarding rules on the monitoring of the reuse/recovery and reuse/recycling targets on end-of-life vehicles;

2003/138/EC establishing component and material coding standards for vehicles

2005/369/EC laying down rules for monitoring compliance on waste electrical and electronic equipment;

2008/350/EC concerning permit exemptions;

2008/763/EC on methodology for the calculation of annual sales of portable batteries and accumulators to end-users;

2015/1156 concerning an amendment to an agreement on Batteries and Accumulators

2009/358/EC on the harmonisation, the regular transmission of the information and the questionnaire on the management of waste from extractive industries.

7.9 Amendments to Primary Legislation

(i) Amendment to the Waste and Emissions Trading Act 2003:

One amendment updates the Section 37 which defines “waste” for the purposes of the Act, to refer directly to Council Regulation (EU) 2017/997 which amended Annex III to Directive 2008/98/EC in relation to the definition of HP 14 ‘Ecotoxic’, and ensures that the changes made by the Council Regulation remain valid after exit day.

A further amendment ensures that landfill targets set using powers under Section 1 of the Waste and Emissions Trading Act 2003, will continue to apply after exit day. Section 1 requires the Secretary of State to consult the appropriate authority for each country of the UK before these amounts are set. As waste is a devolved matter a further amendment ensures that the Devolved Administrations must consent to any future changes to landfill targets that effects the whole of the UK.

(ii) Amendment to the Control of Pollution (Amendment) Act 1989:

An amendment to the Control of Pollution (Amendment) Act 1989 removes the specific power for the Secretary of State to exempt a carrier of waste operating in the UK from registering based solely on meeting the legal requirements in other EU Member States. The existing general power to exempt registering when prescribed conditions are met will remain. The specific power has not been used and all waste carriers operating in the UK currently need to meet the requirements set by the competent authorities in the UK, which will continue to be the case.

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, and paragraph 21 of Schedule 7 to, 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.

Alongside the EU (Withdrawal) Act 2018 powers, in relation to Part 2, the instrument is also being made under section 2(2) of the European Communities Act 1972(a).

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 A consultation was not required because no policy changes are being made via this instrument

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 because this instrument only amends deficiencies arising from the UK's withdrawal from the EU.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The effect of this instrument is to maintain the status quo, therefore no specific action was required to minimise the impact of the requirements 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 Kathryn Arnold at the Department for Environment, Food and Rural Affairs, Telephone: 02080 255306 or email: Kathryn.arnold@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Chris Preston, Deputy Director for Resources and Waste Policy, at the Department for 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 Dr Thérèse Coffey MP 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising 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. Appropriateness statement

- 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) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because it does no more than prevent, remedy or mitigate deficiencies in retained EU law arising from the withdrawal of the UK from EU examples of which are mentioned in section 7 in the main body of this explanatory memorandum.

2. Good reasons

- 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 there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 These Regulations correct deficiencies in the waste regulatory regime to ensure that it can continue to operate from exit day. This instrument does not impose any new liabilities or obligations on any relevant persons.

3. Equalities

- 3.1 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”.

- 3.2 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, Thérèse Coffey, 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. Explanations

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