

EXPLANATORY MEMORANDUM TO
THE DETERGENTS (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to ensure the UK meets its obligations under the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement (“the NI Protocol”) in respect of Regulation (EC) No 648/2004 on detergents (the “EU Detergents Regulation”), as required at the end of the transition period. This will be done by amending the Detergents (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/612), the Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/671) (“the Detergent EU Exit SIs”) and the Detergents Regulations 2010 (S.I. 2010/740) (“2010 Enforcement Regulations”).

2.2 This instrument will also provide for the continued access of detergents or surfactants for detergents from Northern Ireland into the Great Britain market.

Explanations

What did any relevant EU law do before exit day?

2.3 The EU Detergents Regulation establishes common rules to enable detergents and surfactants to be sold and used across the EU, while providing a high degree of protection for the environment and human health. It stipulates that surfactants used in detergents must be fully biodegradable and imposes a restriction on phosphates in domestic laundry and dishwasher detergents. In addition, it regulates how products should be labelled with ingredient and dosage information in order to protect human health (e.g. skin allergies) and avoid overuse of detergents.

2.4 The 2010 Enforcement Regulations provide for measures to be taken to enforce the EU Detergents Regulation and for penalties for breaching that Regulation.

Why is it being changed?

2.5 Article 5(4) of the NI Protocol requires that certain EU legislation, including the EU Detergents Regulation, continues to apply in Northern Ireland after the end of the transition period. However, the Detergent EU Exit SIs set up a regulatory regime by amending the EU Detergents Regulation on a UK wide basis. Amendments are therefore necessary to ensure that the EU Detergents Regulation as it has effect in EU law continues to apply in Northern Ireland and the amendments to the retained EU law version of the EU Detergents Regulation extend to Great Britain only.

2.6 Amendments to the Detergent EU Exit SIs will also ensure continued access for movements of detergents or surfactants for detergents from Northern Ireland into Great Britain.

What will it now do?

- 2.7 This instrument will ensure that necessary amendments are made to the EU Exit SIs to ensure that the EU Detergents Regulation applies in Northern Ireland as provided for by the NI Protocol whilst the retained EU law version of the EU Detergents Regulation (as amended by the Detergent EU Exit SIs) applies in Great Britain only.
- 2.8 This instrument also provides for the continued access of detergents and surfactants for detergents from Northern Ireland into the Great Britain market as well as continuing to provide a high degree of protection for the environment and human health.

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 set out in paragraph 4.2.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom. Regulation 4 extends to England, Wales and Scotland whilst Regulation 5 extends to Northern Ireland.
- 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 Rebecca Pow has made the following statement regarding Human Rights:

“In my view, the provisions of the Detergents (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the Detergent EU Exit SIs, to implement and deal with matters arising out of, or related to the NI Protocol, and to ensure the continued effective regulation of detergents and surfactants for detergents in the UK. The Detergent EU Exit SIs amend the EU Detergents Regulation and the 2010 Enforcement Regulations to ensure the regulatory regime for detergents continue on after the end of the transition period.
- 6.2 The amendments in this instrument also give effect to the unfettered access of detergents and surfactants for detergents from Northern Ireland into Great Britain. It makes special provision in respect of qualifying Northern Ireland goods, as defined in regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018. These amendments will create a category of Protected Imports from Northern Ireland,

enabling them to enter the Great Britain market with minimal regulatory disruption whilst maintaining standards of protection for the environment and human health.

- 6.3 This instrument also amends the 2010 Enforcement Regulations ensuring the Northern Ireland enforcement authorities can continue to enforce the EU Detergents Regulation as they have effect in EU law, whilst the retained EU law version of the EU Detergents Regulations can continue to be enforced in Great Britain.

7. Policy background

What is being done and why?

The Northern Ireland Protocol

- 7.1 Under the terms of the Withdrawal Agreement between the UK and the EU, the NI Protocol was agreed to as a solution intended to preserve the unique relationship between the United Kingdom and Ireland and to prevent a hard border or splitting the UK customs territory.
- 7.2 The Detergent EU Exit SIs make corrections to the EU Detergents Regulation on a UK-wide basis. It is therefore necessary to amend these UK-wide EU Exit SIs so that the amendments to the retained EU law version of the EU Detergents Regulation only have practical application in Great Britain. This will ensure that the required legal framework remains in place for Northern Ireland.
- 7.3 Under the EU Detergents Regulation as it has effect in EU law, the Department of Agriculture, Environment and Rural Affairs will be designated to cooperate with the EU. The 2010 Enforcement Regulations as they extend to Northern Ireland will ensure that Northern Ireland enforcement authorities continue to have the necessary powers to enforce EU Detergents Regulation. The duty to co-operate with EU enforcement authorities will continue to apply in Northern Ireland.

The Northern Ireland Protocol – access to the Great Britain Market

- 7.4 Further provisions within this instrument will ensure that detergents and surfactants for detergents from Northern Ireland will have continued access to the Great Britain market. In the case of detergents and surfactants for detergents, this instrument retains the effective safeguard measures within Great Britain to protect human health and the environment.
- 7.5 Under the EU Detergents Regulation, manufacturers and importers are responsible for the compliance of goods placed on the market. In order to ensure that Northern Ireland manufacturers do not acquire the obligations associated with ‘placing on the market’ in Great Britain after first making the detergent available in Northern Ireland, this instrument makes special provision in respect of qualifying Northern Ireland goods, enabling them to enter the GB market with minimal regulatory disruption. This will ensure the unfettered access of detergents moving from Northern Ireland into the rest of the UK. These provisions will all apply in respect of qualifying Northern Ireland goods, as defined in regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018.

2010 Enforcement Regulations

7.6 This instrument amends the 2010 Enforcement Regulations with one set of amendments to the regulations as they extend to England, Wales and Scotland (regulation 4 of this instrument) and another set of amendments as they extend to Northern Ireland (regulation 5 of this instrument). The Great Britain version will apply in respect of the retained EU law version of the EU Detergent Regulation, and the other will apply in Northern Ireland in respect of the EU Detergent Regulation as it has effect in EU law.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers in sections 8(1) and 8C of the European Union (Withdrawal) Act 2018 to implement the NI Protocol, and deal with matters arising out of, or related to, the NI Protocol. 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 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 The changes being made are technical in nature or are in line with wider government policy relating to the United Kingdom's exiting of the European Union. We have not undertaken a formal public consultation.

10.2 Devolved administrations have been consulted on the approach taken throughout the drafting of this instrument and given the opportunity to propose amendments to the text.

11. Guidance

11.1 Guidance will be made available at gov.uk by 31 December 2020.

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 it relates to the maintenance of existing regulatory standards and so will have no impact on business. The purpose of this instrument is to enable the UK to meet its obligations under the NI Protocol in respect of detergents and surfactants for detergents within the current legislative and policy framework.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses. No substantial impact on small businesses is foreseen as a result of this instrument.

14. Monitoring & review

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

15. Contact

- 15.1 Rusty Odihiri, at the Department for Environment, Food and Rural Affairs, Telephone: 020 8026 3477 or email: rusty.odihiri@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Gabrielle Edwards, Deputy Director for EU Exit, Chemicals, Pesticides and Hazardous Waste, 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 Rebecca Pow MP, 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
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 Rebecca Pow MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Detergents (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate”.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for the Environment Rebecca Pow 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 are: that this instrument provides for the continued access of detergents and surfactants for detergents from Northern Ireland into the Great Britain market. They also ensure that the EU Detergents Regulation applies in Northern Ireland, as provided for by the Protocol, whilst the retained EU law version of the EU Detergents Regulation (as amended by the Detergent EU Exit SIs) applies in Great Britain only.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for the Environment Rebecca Pow 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”.

- 3.2 The Parliamentary Under Secretary of State for the Environment Rebecca Pow 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, Rebecca Pow 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.