

**EXPLANATORY MEMORANDUM TO**  
**THE INTERNATIONAL WASTE SHIPMENTS (AMENDMENT) (EU EXIT)**  
**REGULATIONS 2021**

**2021 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 This instrument amends Regulation (EC) No 1013/2006 on shipments of waste and related legislation to implement the Protocol on Ireland / Northern Ireland (“the Protocol”), and to enable their continued operability as retained EU law under the European Union (Withdrawal) Act 2018, following the UK’s withdrawal from the European Union.

***Explanations***

*What did any relevant EU law do before exit day?*

- 2.2 Regulation (EC) No 1013/2006 makes provisions for the supervision and control of shipments of waste within its borders and with the countries of the European Free Trade Association (“EFTA”), the Organisation for Economic Cooperation and Development (“OECD”) and non-EU countries that have signed the Basel Convention.
- 2.3 It lays down rules for controlling waste shipments in order to improve environmental protection. It also incorporates in EU law the provisions of the Basel Convention and the revision of the OECD’s 2001 decision on the control of transboundary movements of wastes destined for recovery operations (i.e. where a waste is processed to recover a usable product or converted into a fuel).
- 2.4 The Transfrontier Shipment of Waste Regulations SI 2007 (“TFS Regulations 2007”) ensures full implementation and enforcement of Regulation (EC) No 1013/2006. The TFS Regulations 2007 details the UK procedures, offences, penalties and relevant enforcement authorities.
- 2.5 The International Waste Shipments (Amendment) (EU Exit) Regulations 2019 amends Regulation (EC) No 1013/2006 so that it will continue to function as part of retained EU law after the end of the Transition Period.

*Why is it being changed?*

- 2.6 Under the terms of the Protocol to the Withdrawal Agreement, Northern Ireland will continue to apply Regulation (EC) No 1013/2006 for the duration of the Protocol. This means GB will treat Northern Ireland as an EU Member State in the context of the transport of waste from GB to Northern Ireland.

What will it now do?

- 2.7 This instrument establishes regulatory and administrative controls on the movement of waste from GB to Northern Ireland which are necessary to give effect to the Protocol.

**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 Great Britain (see section 24 of the European Union (Withdrawal) Act 2018) and the European Union (Withdrawal Agreement) Act 2020, the territorial application of this instrument is not limited either by the Act or by this instrument.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of Parts 1 and 2 is the United Kingdom.
- 4.3 The territorial application of Part 3, which amends retained law incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018, save insofar as it applies to Northern Ireland for the purposes of the Northern Ireland Protocol, is Great Britain.

**5. European Convention on Human Rights**

- 5.1 The Parliamentary Under Secretary of State, Rebecca Pow MP has made the following statement regarding Human Rights:
- “In my view the provisions of the International Waste Shipments (Amendment) (EU Exit) Regulations 2021 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 On 23 June 2016, a referendum on the United Kingdom’s membership of the EU took place which concluded in a vote to leave the EU. On 31 January 2020 the UK left the EU and under the terms of the Withdrawal Agreement and entered into a Transition Period until 31 December 2020.
- 6.2 To ensure that the UK has a working statute book after the end of the Transition Period the EU Withdrawal Act incorporates EU law as it stands, into domestic law. It also creates temporary powers to make secondary legislation to correct laws that would otherwise no longer work appropriately after the Transition Period, and to give effect to the Protocol.
- 6.3 During the Transition Period, the UK continues to apply Regulation (EC) No 1013/2006.
- 6.4 After the Transition Period, GB will cease to apply Regulation (EC) No 1013/2006 whilst, under the terms of the Protocol, Northern Ireland will continue to apply Regulation (EC) No 1013/2006.

- 6.5 The International Waste Shipment (Amendment) (EU Exit) Regulations 2019 amends Regulation (EC) 1013/2006 and the TFS Regulations 2007 in order to ensure that they remain fully operable in GB after the Transition Period.
- 6.6 This instrument establishes regulatory and administrative controls on the movement of waste from GB to Northern Ireland which are necessary to give effect to the Protocol.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, shipments of waste are controlled to make sure they are managed in an environmentally sound manner. The provisions include preventing shipments to countries where environmentally sound management is not guaranteed and a notification procedure for the transboundary movements of waste. An OECD decision (C(2001)107FINAL) provides the framework for the transboundary movement of wastes for recovery between OECD countries.
- 7.2 Regulation (EC) No 1013/2006 implements the Basel Convention and the OECD decision into EU law.
- 7.3 After the Transition Period, the UK will remain a party to the Basel Convention and a member of the OECD and will continue to implement the international rules contained in these agreements.
- 7.4 The EU control regime for waste shipments will be retained in UK law after the Transition Period. This instrument will make the necessary corrections to the retained legislation to implement controls on movements of waste from GB to Northern Ireland.
- 7.5 The system of controls established by Regulation (EC) No 1013/2006 on movements of notifiable waste (mainly hazardous or mixed wastes) for recovery between countries subject to the OECD decision (C(2001)107FINAL) is replicated to establish controls on the transport of waste from GB to Northern Ireland. These controls include the following requirements:
- The business arranging for the transport of waste must apply to the Competent Authorities of dispatch and destination for approval in advance of the waste being transported;
  - An application fee must be paid to the Competent Authority of dispatch in GB;
  - A financial guarantee or equivalent insurance must be put in place to cover the resulting costs if the waste cannot be recycled;
  - A contract must be put in place between the business arranging the transport of the waste and the destination facility; and
  - Confirmation that recovery has been completed must be sent by the destination facility to all Competent Authorities involved.
- 7.6 Failure to apply the controls as set out in regulations 19 and 20 of the TFS Regulations 2007, on the transport of waste from GB to Northern Ireland, will be an offence under those regulations.

- 7.7 This instrument will also make minor amendments to the retained legislation to reflect that Northern Ireland will continue to apply Regulation (EC) No 1013/2006 for the duration of the Protocol.

## **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 Consolidation is not required.

## **10. Consultation outcome**

- 10.1 The Government informally engaged stakeholders in online webinars during November and December 2020. No substantive comments or issues were raised, with questions mainly relating to the timeframe for when controls on the movement of waste between GB and Northern Ireland will be enforced.
- 10.2 The Devolved Administrations were consulted on the approach taken during the drafting of this instrument and were provided with an opportunity to propose amendments to the text.

## **11. Guidance**

- 11.1 The Government has published guidance for businesses that transport waste from GB to Northern Ireland on the arrangements for waste shipments after the Transition Period: <https://www.gov.uk/guidance/importing-and-exporting-waste-if-theres-no-brex-it-deal>
- 11.2 The Government sent letters in November 2020 to stakeholders that currently move waste from GB to Northern Ireland to notify them of the Government's intention to lay this instrument, and to explain the new requirement on businesses to apply for regulatory approval of planned shipments of certain categories of mixed or hazardous waste prior to the transport of the wastes.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies from the new measures relating to the implementation of the Protocol is largely confined to an estimated 45-55 businesses which currently transport an estimated 80,000 tonnes of hazardous or mixed wastes from GB to Northern Ireland annually. Under the controls set out in this instrument, businesses wishing to transport this waste from GB to Northern Ireland will be required to obtain prior consent from the competent authorities of dispatch in GB and destination in Northern Ireland. Businesses in GB that transport non-hazardous waste destined for recycling in Northern Ireland will be required to complete paperwork describing the waste and ensure this documentation accompanies the waste. They will also need to ensure they have a contract with the destination

facility in Northern Ireland. Prior regulatory approval of these waste movements will not be required.

- 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 equivalent annual net direct costs to businesses, charities or voluntary bodies has been assessed at less than +/-£5million.

### **13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by various size businesses including small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 This instrument gives effect to the Protocol with respect to the transport of waste from GB to Northern Ireland. No mitigating actions for small businesses were deemed necessary for this instrument.

### **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 Robert Taylor at the Department for Environment, Food and Rural Affairs, Telephone: 03459 33 55 77 or email: [WasteMovements@defra.gov.uk](mailto:WasteMovements@defra.gov.uk) to be contacted with any queries regarding this instrument.
- 15.2 Kay Williams, Head of 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 Rebecca Pow MP, Parliamentary Under Secretary of State for Domestic 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 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 at the Department for Environment, Food and Rural Affairs, Rebecca Pow, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The International Waste Shipments (Amendment) (EU Exit) Regulations 2021 does no more than is appropriate”.

- 1.2 This is the case because this instrument is necessary to ensure that the Protocol is implemented in regards to the transport of waste from GB to Northern Ireland.

#### **2. Good reasons**

- 2.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Rebecca Pow, 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: this instrument, in line with section 8(1) of the European Union (Withdrawal) Act 2018, corrects deficiencies as necessary to ensure the protections for the control of exports and imports of waste are maintained after the end of the Transition Period.

#### **3. Equalities**

- 3.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Rebecca Pow, has made the following statement:

“This 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 at the Department for Environment, Food and Rural Affairs, Rebecca Pow, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to this 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.



## **5. Criminal offences**

5.1 No criminal offences are created by this instrument.