

## EXPLANATORY MEMORANDUM TO

### THE WATER (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 112

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid 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 The Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 ensure that water legislation will continue to be operable in the United Kingdom after the UK leaves the EU. The instrument addresses deficiencies in the retained EU law arising from the UK's withdrawal from the EU. The purpose of the instrument is to preserve and protect the existing policy regime - it will not introduce any new policy.

#### *Explanations*

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

- 2.2 The function of the EU law in this area is to protect and improve the water environment from various sources of pollution e.g. from agriculture and urban sources. It is also about protecting human health by preventing contamination of drinking water and bathing waters.
- 2.3 This instrument amends the transposing legislation of key EU water Directives. The main directive is the Water Framework Directive (WFD) (2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy). It is the cornerstone of EU water policy. Through a system of integrated planning, it establishes a framework for the protection of inland surface waters (rivers and lakes), transitional waters, coastal waters and groundwater, in order to prevent and reduce pollution, promote sustainable water use, protect the aquatic environment, improve the status of aquatic ecosystems and mitigate the effects of floods and droughts. It requires Member States to assess the condition of water and devise accurate ways to classify, measure and monitor water quality and to introduce appropriate measures to improve it where technically feasible and not disproportionately costly. It has been principally transposed in Northern Ireland by the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017.
- 2.4 The instrument also amends regulations which transpose the two so-called, 'daughter' Directives of the WFD, the Groundwater Directive (2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration), and the Environmental Quality Standards Directive (EQSD) (Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy.) These EU Directives focus on the protection of the water environment from

chemical pollution. The EQSD focuses on maintaining a list of substances considered harmful to the water environment that must be monitored and the setting of environmental standards for different types of water. The Groundwater Directive focuses on protecting groundwater from pollution.

- 2.5 In addition, the instrument amends the domestic legislation which transposed EU Directives designed to protect the water environment and contribute to meeting the water quality objectives of WFD. The Urban Waste Water Treatment Directive (91/271/EEC of 21 May 1991), transposed by the Urban Waste Water Treatment Regulations (Northern Ireland) 2007, protects the water environment from discharges of waste water from domestic and some industrial sources. This instrument also amends the transposing legislation of the Nitrates Directive (91/676/EEC of 12 December 1991), which concerns the control of diffuse nitrate pollution from agriculture, and the Bathing Water Directive (2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC) and Drinking Water Directive (Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption) which both protect the environment and public health.

Why is it being changed?

- 2.6 This instrument makes several minor and technical amendments to deficiencies in the existing legislation described above and some other pieces of domestic legislation to ensure the legislation works effectively after EU exit. The principal changes are described in the following paragraphs.
- 2.7 Where there was a reference in an EU Directive to a Member State reporting to the EU Commission, for example the requirement in the Urban Waste Water Treatment Directive to provide a situation report on the disposal of urban waste water and sludge, this is being replaced by a requirement in the domestic legislation that such an environmental report is to be made publically available. This is being done as the Department of Agriculture, Environment and Rural Affairs (Northern Ireland) wishes to remain transparent about its environmental performance.
- 2.8 References to the Department acting in compliance with another EU Directive, for example the Bathing Water Directive, are amended so they can be read with appropriate modifications. Similarly, for cross-references in domestic legislation to UK obligations as a Member State in EU Directives, such obligations will fall away as the UK will no longer be a Member State. These are instead to be read as an obligation on the Department responsible for complying with that obligation before exit day.
- 2.9 Cross-references in domestic legislation to provisions in EU Directives where the UK, as a Member State, engages in EU wide exercises and processes, for instance under the intercalibration exercise in the Water Framework Directive, including obligations to collaborate with other Member States have been removed. This change has been made as the UK will no longer be mandated by, or have a mechanism to take part in, EU procedures and processes.
- 2.10 Some amendments remove cross-references to provisions in Directives requiring Member States to inform the EU Commission of certain actions, for instance informing the EU Commission under the Nitrates Directive where a derogation is granted under the Nitrates Action Programme Regulations (Northern Ireland) 2014. It would no longer be appropriate to inform the EU Commission as to the grant of that

derogation after EU exit. Instead provision is inserted for the Department to review the overall position of those derogations are part of the four yearly review under those regulations.

*What will it now do?*

- 2.11 The instrument will ensure that the EU derived law in this area will operate effectively in Northern Ireland after the UK leaves the EU. The proposed instrument will maintain the existing policy regime, thereby providing businesses, environmental NGOs and the public with maximum certainty as the UK leaves the EU.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 4<sup>th</sup> December 2018. On 20<sup>th</sup> 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 The territorial application of this instrument is limited to Northern Ireland.

### **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 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 Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights.”*

### **6. Legislative Context**

- 6.1 The key legislative context for this instrument is set out at paragraph 2.2 above.  
6.2 This instrument is made in exercise of the powers in the European Union (Withdrawal) Act 2018 to make minor and technical amendments to relevant retained law in water to address deficiencies arising from the UK’s withdrawal from the EU.

### **7. Policy background**

*What is being done and why?*

- 7.1 The UK is currently part of an EU regime that sets standards regarding the quality of our water environment and this includes, for example, our rivers, lakes, groundwater, bathing and drinking water. The primary goal of this EU policy framework is to ensure a healthy and sustainable supply of water for people and the environment

across a range of uses. The policy framework therefore requires managing sources of pollution to our waters from chemicals, agriculture and urban sources.

- 7.2 This instrument applies to water quality which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. 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. The UK Government has 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. With the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for EU 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 2018/ 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. The instrument is also made under paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018. 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 Not applicable to this instrument.

## **10. Consultation outcome**

- 10.1 No formal consultations were carried out in respect of 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 instrument because we expect it to have no impact on business.

## **13. Regulating small business**

- 13.1 The legislation does apply to activities that are undertaken by small businesses. There is no substantial impact on small businesses.

**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 Anthony Courtney at the Department of Agriculture, Environment and Rural Affairs Telephone: 02890 569485 or email: [Anthony.Courtney@daera-ni.gov.uk](mailto:Anthony.Courtney@daera-ni.gov.uk) can be contacted with any queries regarding the instrument.

15.2 David Small, Deputy Secretary, 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, The Parliamentary Under Secretary of State for the 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 section 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 section 2(2) European Communities Act 1972.	Statement explaining the good reasons for modifying the instrument made under section 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 section 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 section 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 Water (Amendment) (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 does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. The instrument corrects deficiencies in retained legislation in the field of water quality, arising out of the UK’s withdrawal from the EU. The instrument makes changes of a minor and technical nature only, to ensure the continued effective operability of the legislation after EU exit.

#### 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 Water (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate”.*

- 2.2 This is the case because the instrument makes minor and technical amendments to correct deficiencies which arise from withdrawal to ensure that water legislation continues to operate effectively in Northern Ireland at the point at which the UK leaves the EU.

#### 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 This is the case because the instrument corrects deficiencies to ensure that water legislation in Northern Ireland continues to operate effectively after UK withdrawal from the EU.

#### 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, 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.”*