

EXPLANATORY MEMORANDUM TO
THE TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE AND SPENT
FUEL (EU EXIT) REGULATIONS 2019

2019 No. 156

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Act.

2. Purpose of the instrument

- 2.1 This instrument corrects the deficiencies in retained EU law within the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2008 (the “2008 Regulations”). The 2008 Regulations implemented Council Directive 2006/117/Euratom (the “2006 Directive”) on the supervision and control of shipments of radioactive waste and spent fuel. The UK wishes to maintain an operable regime in this area following EU Exit. This instrument achieves this by revoking the 2008 Regulations but also largely replicating them by laying down broadly equivalent procedures for the import, export and transit of radioactive waste and spent fuel into and out of the UK.
- 2.2 This instrument also revokes Commission Decision 2008/312/Euratom (the “2008 Decision”) which established standard EU-wide documentation for the supervision and control of shipments of radioactive waste and spent fuel referred to in the 2006 Directive.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The 2008 Regulations laid down a set of procedures for the regulation and authorisation of shipments of radioactive waste and spent fuel within the Euratom community and a different set of procedures for shipments entering or exiting the community, i.e. movements to and from third countries. It also cross-referred in part to more detailed intra-community and extra-community procedural provisions contained within the 2006 Directive.

Why is it being changed?

- 2.4 Following the UK’s withdrawal from the EU and Euratom, the procedures laid down in the 2008 Regulations will become inoperable since they treat Euratom as a single bloc including the UK. This will leave the UK without a functioning set of procedural provisions to allow it to authorise or consent to shipments of radioactive waste and spent fuel. This could result in the cessation of shipments entirely if not replaced with an operable regime, because radioactive waste and spent fuel cannot be moved between countries without these authorisations. In addition, an inoperable regime, or no regime at all, would not be in alignment with the UK’s commitments to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of the Radioactive Waste Management.

What will it now do?

- 2.5 The instrument revokes the 2008 Regulations but also largely replicates them by laying down broadly equivalent procedures for the import, export, and transit of radioactive waste and spent fuel into and out of the UK. The procedural provisions that previously treated Euratom as a single bloc with mutual recognition of one another's authorisations are discontinued, since they cannot apply to the UK when it becomes a third country.
- 2.6 This instrument will ensure that the UK has an operable regime for the regulation and authorisation of transfrontier shipments of radioactive waste and spent fuel thereby ensuring that safe and regulated shipments can continue.

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 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 Minister for Business and Industry, Richard Harrington, has made the following statement regarding Human Rights:

“In my view the provisions of the Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 On 29 March 2017, the Prime Minister triggered Article 50 of the Treaty on European Union and started the UK's exit from the European Union. To give effect to the UK's exit in domestic law, the European Union (Withdrawal) Act 2018 (the “2018 Act”) provides that the UK will cease to be a Member State of the EU at 11pm on 29th March 2019. However, to ensure business and legislative continuity for the UK, following over 40 years of EU membership, the 2018 Act will preserve EU-derived domestic legislation (such as the 2008 Regulations) so that it continues to have effect in domestic law after EU exit.
- 6.2 This instrument is being laid to address specific inoperabilities within retained EU law arising from the UK's withdrawal from the EU and Euratom. In particular, it revokes the 2008 Regulations but uses the power in section 8(1) of the 2018 Act to largely

replicate them by laying down broadly equivalent procedures for the import, export, and transit of radioactive waste and spent fuel into and out of the UK.

- 6.3 The instrument also relies on the power in section 8(5) of the 2018 Act to provide the Secretary of State with powers to prescribe the procedural forms that must be completed by persons seeking a transfrontier shipment authorisation under the provisions of this instrument. Furthermore, it relies on paragraph 21(b) of Schedule 7 of the 2018 Act to create transitional and saving provisions to ensure that the criminal offence created under regulation 4 is not committed by persons relying on extant authorisations granted under the 2008 Regulations. The provisions of the 2008 Regulations governing the rights, obligations, offences and penalties attaching to extant authorisations continue to have effect by virtue of section 16 of the Interpretation Act 1978.
- 6.4 References in the 2008 Regulations to provisions of Council Directive 96/29/Euratom laying down basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation have been updated to the corresponding provisions contained in Council Directive 2013/59/Euratom. These cross-references are key to the scope and application of the instrument as they define the quantities and concentrations of consignments that trigger the need for a transfrontier shipment authorisation.

7. Policy background

What is being done and why?

- 7.1 Article 27 of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (the “Convention”) required that contracting parties (including the UK) involved in transfrontier shipments should take appropriate steps to ensure that such shipments are undertaken in a manner consistent with the provisions of the Convention and relevant binding international instruments. The transfrontier shipment aspects of the Convention were implemented into EU law by the 2006 Directive which was in turn implemented into UK law by the 2008 Regulations. Following the UK’s decision to leave the EU and Euratom, UK domestic law implementing EU Directives will contain deficiencies relating to the UK’s former status as a member of the EU and Euratom. This instrument seeks to correct those deficiencies as described in paragraph 2 of this explanatory memorandum.
- 7.2 Furthermore, this instrument also revokes the 2008 Decision which contains the administrative guidance and forms required for the regulatory procedures. Replacement UK-wide documentation and forms will be prescribed by the Secretary of State outside of the instrument and hosted on the Gov.UK website as well as the websites of the competent authorities. Updated administrative guidance in relation to the completion of these forms will be published online outside of the instrument.
- 7.3 Should the Government not legislate, the UK will no longer have an operable regulatory framework to authorise the shipment of radioactive waste and spent fuel.
- 7.4 This instrument will ensure the continuation of the regulation and authorisation of shipments of radioactive waste and spent fuel. It will do so by laying down regulatory procedures for the supervision and control of shipments between the UK and other countries. These largely replicate the current regulatory procedures that exist between Euratom and third countries. This will in turn allow for the continuation of the UK’s nuclear activities, such as decommissioning legacy sites and returning radioactive

waste arising from the reprocessing of other nations' spent fuel to the relevant country of origin. In practice this will result in three operational changes for UK industry:

- Operators will need to request authorisation from the relevant competent authority in order to import radioactive waste and spent fuel from Euratom states.
- Operators will need to notify the relevant competent authority of the completion of shipments to Euratom states.
- When importing from a Euratom state, operators will need to provide evidence that they have made an arrangement with the exporter, and which has been accepted by the exporter's competent authority. The arrangement should oblige them to take back the radioactive waste or spent fuel if the shipment cannot be completed in accordance with the regulations.

- 7.5 It should also be noted that whilst the criminal offence relating to the import and export of radioactive waste or spent fuel into or out of the UK from third countries remains unchanged, the scope of the offence is widened due to the fact that EU Member States will be treated in the same way as third countries are under the 2008 Regulations. The same issue arises for the offence requiring a notification of arrival of a shipment at its destination.
- 7.6 Whilst the offence governed by regulation 9 of this instrument requiring a shipment to be accompanied by the appropriate documentation also remains unchanged, the documentation itself will change. This is because a new set of broadly equivalent UK standard documentation will be prescribed to replace the EU-wide standard documentation that was used under the 2008 Regulations.
- 7.7 The United Kingdom will continue to recognise extant authorisations to ship radioactive waste and spent fuel which have not yet expired on the date of EU Exit. Therefore, it will not be an offence to ship radioactive waste or spent fuel under such extant authorisations following the UK's departure from the EU and Euratom.
- 7.8 The procedures laid down in this instrument will be put into effect by the competent authorities responsible for environmental protection in the UK. These are, the Environment Agency in England, the Scottish Environment Protection Agency in Scotland, the Natural Resources Body for Wales in Wales, and the Northern Ireland Environment Agency in Northern Ireland.

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(1) of the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the European Union and Euratom. The power in section 8(5) of the 2018 Act is used to provide the Secretary of State with powers to prescribe the procedural forms that must be completed by persons seeking a transfrontier shipment authorisation under the provisions of this instrument. Finally, the instrument relies on the powers in paragraph 21(b) of Schedule 7 of the 2018 Act in order to provide for suitable transitional and savings provisions ensuring that criminal offences are not committed when relying on extant authorisations. In accordance with the requirements of the 2018 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 involve consolidation.

10. Consultation outcome

10.1 Officials have drafted the Regulations collaboratively with colleagues in the Devolved Administrations and in the UK's environment agencies. No public consultation has been undertaken for this instrument as it does no more than is necessary to correct a deficiency in retained EU law. This deficiency is a direct result of the inoperabilities that flow from the UK being outside the EU-wide regime which allows the mutual recognition of authorisations and procedures.

10.2 There was no need to consult on the expansion of the offence to cover the import of radioactive waste and spent fuel into the UK from EU Member States without prior authorisation by a UK competent authority. The expansion was a natural consequence of correcting the deficiency and not a policy decision.

11. Guidance

11.1 Administrative guidance will be provided alongside the new standard documentation for the supervision and control of shipments of radioactive waste and spent fuel. The guidance will set out the administrative procedures for completing the documentation for the benefit of UK operators and the competent authorities responsible for the regulation and authorisation of shipments.

11.2 The administrative guidance will be published online alongside the new standard documentation referred to at paragraph 7.2 at least a month prior to the coming into force of this instrument. The guidance will be maintained by the Department for Business, Energy & Industrial Strategy.

11.3 The Government has published a Technical Notice to cover a no-deal scenario. Attention has been drawn to the Technical Notice via email communication to relevant stakeholders.

12. Impact

12.1 There is 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 of the low level of impact this instrument will have as it relates to maintaining existing regulatory standards. Instead a De Minimis assessment was performed. We expect minor one-off familiarisation costs per operator of between £100 and £900 as operators read and understand the SI. There will also be ongoing cost to business. The SI creates a duplication of the existing authorisation arrangements, when importing or exporting to Euratom members UK businesses will need to go through both domestic and Euratom procedures. Using historic data on the number of authorisations from 2008 to 2017, and assuming the numbers will not significantly fluctuate over the course of the next 10 years, we expect the cost to individual operators to be between £6,300 and £22,100 every three years.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. There is currently one authorised operator that is considered a small business.
- 13.2 No specific action was required to minimise the impact of the requirements on small businesses (employing up to 50 people).
- 13.3 This instrument largely replicates existing regulatory standards and procedures. No mitigating actions for small businesses were deemed necessary for the Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2019.

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 Tom Latham, TFS policy lead in the Euratom Exit Team at the Department for Business, Energy & Industrial Strategy, Telephone: 020 7215 4294 or email: tom.latham@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Stewart Agnew, Head of Domestic Implementation in the Euratom Exit Team at the Department for Business, Energy & Industrial Strategy, Telephone: 020 7215 4998 or email: stewart.agnew@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.3 Katrina McLeay, Deputy Director for the Euratom Exit Programme, at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Richard Harrington, Minister for Business and Industry at the Department for Business, Energy and Industrial Strategy 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
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 powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
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 Minister for Business and Industry, Richard Harrington, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because the instrument is designed solely to correct a deficiency in UK law stemming from the UK’s exit from the European Union. This will ensure that inoperable legislation is not retained on the UK statute book. No substantive policy changes are brought in by this instrument.

2. Good reasons

- 2.1 The Minister for Business and Industry, Richard Harrington, 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, in line with section 8(1) of the European Union (Withdrawal) Act 2018, corrects deficiencies as necessary to ensure the supervision and control of exports and imports of radioactive waste and spent fuel are maintained after we leave the EU.

3. Equalities

- 3.1 The Minister for Business and Industry, Richard Harrington, has made the following statement(s):

“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 Minister for Business and Industry, Richard Harrington, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Richard Harrington, 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.”.

- 3.3 This instrument does not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because the measures it implements do not have a human or social policy dimension.

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 The Minister for Business and Industry, Richard Harrington, 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 creation of a criminal offence and for the penalty in respect of it in the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2019”.

- 5.2 The offences created are a result of the revocation of the 2008 Regulations and their replication in broadly identical terms. However, they differ in that the previous offences for third country shipments did not cover shipments with EU Member States (in relation to which the procedures were different). In this instrument, material arriving from and going to all countries is treated in a uniform manner.

6. Legislative sub-delegation

- 6.1 The Minister for Business and Industry, Richard Harrington, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view it is appropriate to create a relevant sub-delegated power in the Transfrontier Shipment of Radioactive Waste and Spent Fuel Regulations 2019”.

- 6.2 The instrument contains provisions allowing the Secretary of State to prescribe the forms that must be completed by persons seeking and holding authorisations for transfrontier shipments. This is to permit the Secretary of State to work collaboratively with the competent authorities in the United Kingdom to design an appropriate set of UK-wide forms to replace the forms and paperwork that were previously prescribed by the EU in Commission Decision 2008/312/Euratom. It was not considered necessary or appropriate that the forms be prescribed by further regulations due to the constraints on Parliamentary time resulting from EU Exit.