

EXPLANATORY MEMORANDUM TO
THE TRANSFRONTIER SHIPMENT OF RADIOACTIVE WASTE AND SPENT
FUEL (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1115

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 Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Transfrontier Shipment of Radioactive Waste and Spent Fuel (EU Exit) Regulations 2019 (the “2019 Regulations”) to implement the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement (“the Protocol”). The Protocol requires that EU Council Directive 2006/117/Euratom (the “Euratom Directive”) shall continue to apply to the UK with respect to Northern Ireland from the end of the transition period. This instrument amends the 2019 Regulations to provide for continued application of the Euratom Directive in Northern Ireland and to change references to “exit day” in the 2019 Regulations to “IP completion day”.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Transfrontier Shipment of Radioactive Waste Regulations 2008 (the “2008 Regulations”) transposed the Euratom Directive into UK law. They laid down a set of procedures for the regulation and authorisation of shipments of radioactive waste and spent fuel within the European Atomic Energy Community (“Euratom Community”), and a different set of procedures for shipments entering or exiting the Euratom Community, i.e. movements to and from third countries.

Why is it being changed?

- 2.3 Following the UK’s withdrawal from the EU and Euratom, the procedures laid down in the 2008 Regulations would become inoperable since they treat Euratom as a single bloc including the UK. The 2019 Regulations were therefore made to revoke and replace the 2008 Regulations to correct these deficiencies in retained EU law, thereby ensuring that an operable regime following EU Exit was maintained, and that safe and regulated shipments could continue.
- 2.4 However, the 2019 Regulations do not account for the provisions of the Protocol contained in the Withdrawal Agreement. This instrument amends the 2019 Regulations to ensure that when they come into force at the completion of the transition period, the UK complies with its international obligations under the Withdrawal Agreement.

What will it now do?

- 2.5 This instrument amends the 2019 Regulations so that the Euratom Directive (as amended from time to time) continues to apply in Northern Ireland, through applying

the Euratom Directive's requirements for intra-community shipments between Northern Ireland and EU Member States. This ensures that beyond the end of the transition period, regulation of these shipments will reflect the regulatory process as it was before IP completion day, with no additional authorisation requirement. For more detail on how the regulatory process for shipments will differ between Northern Ireland and the rest of the UK, please see section 7.4 of this Memorandum.

- 2.6 This instrument also updates the 2019 Regulations to replace references to “exit day” with “IP completion day” to account for the end of the transition period.
- 2.7 The instrument does not introduce any new regulatory requirements for shipments between Northern Ireland and the rest of the UK. It ensures that there is unfettered access for Northern Ireland businesses i.e. the regulatory processes for shipping radioactive waste originating in Northern Ireland to the rest of the UK for disposal remain the same, without any additional processes or paperwork.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 On 31 January 2020, the UK ended its membership of the European Union and Euratom Community, and entered into a transition period as set out in the Withdrawal Agreement. Included within the Withdrawal Agreement is the Protocol, which establishes a single regulatory zone on the island of Ireland to eliminate regulatory checks at the Ireland-Northern Ireland land border. Article 5(4) of the Protocol provides that specific provisions of EU law continue to apply to the UK in respect of Northern Ireland after the completion of the transition period. During the negotiations of the Withdrawal Agreement, it was agreed that the Euratom Directive be included in the list of applicable EU law in Annex 2 of the Protocol, therefore its provisions will continue to apply to Northern Ireland from the end of the transition period.
- 6.2 The Euratom Directive lays 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. The provisions for shipments within the Euratom Community are more streamlined since they treat the Euratom Community as a single bloc, with mutual recognition of one another's authorisations. This instrument amends the domestic 2019 Regulations to provide for continued application of the Euratom Directive (as amended from time to time) in Northern Ireland. This will ensure that the UK meets its international obligations under the Withdrawal Agreement.

- 6.3 The 2019 Regulations lay down regulatory procedures for the supervision and control of shipments between the UK and other countries, which largely replicate the procedures that exist between the Euratom Community and third countries. This is inconsistent with the Protocol, since it requires the process for shipments within the Euratom Community (“intra-community shipments”) which is set out in the Euratom Directive to continue to apply between Northern Ireland and the Euratom Community. Therefore, these regulations amend the 2019 Regulations to apply the Euratom Directive's requirements for intra-community shipments to the following types of shipment, with Northern Ireland continuing recognition of authorisations granted in the Euratom Community:
- (i) When importing into Northern Ireland from a Euratom Community state;
 - (ii) When a shipment is transiting through Northern Ireland from a third country to a Euratom Community state; and
 - (iii) When a shipment is transiting through Northern Ireland from a Euratom Community state to a third country.

7. Policy background

What is being done and why?

- 7.1 The UK is party to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (the “Convention”). Article 27 of the Convention requires that contracting parties 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 Euratom Directive, which was in turn implemented into UK law by the 2008 Regulations. Following the UK's decision to leave the EU and the Euratom Community, the 2019 Regulations were made in order to revoke and replace the 2008 Regulations to correct deficiencies relating to the UK's former status as a member of the EU and the Euratom Community. This instrument amends the 2019 Regulations so that they are compliant with the provisions of the Protocol.
- 7.2 The Protocol requires that the Euratom Directive continues to apply to Northern Ireland beyond the end of the transition period, with references to “Member States” being read as including Northern Ireland, except for the purpose of recognition by Euratom Community states of an authorisation issued by the Northern Ireland competent authority. Therefore, should the Government not legislate, the 2019 Regulations as currently drafted will not comply with the Protocol when they come into force, since they will not apply the procedure for intra-community shipments of radioactive waste and spent fuel set out in the Euratom Directive to Northern Ireland. It is worth noting in this context that there are no shipments of radioactive waste or spent fuel between Northern Ireland and other countries, therefore there are currently no operational consequences to this legislation.

- 7.3 This instrument will ensure that the regulation and authorisation of shipments of radioactive waste and spent fuel remains compliant with the UK's international obligations under the Withdrawal Agreement. It will do so by amending regulatory procedures for shipments between Northern Ireland and Euratom Community states, so that they broadly replicate those of the 2008 Regulations (which implement the Euratom Directive in UK law).
- 7.4 In practice these amendments will result in the following differences between the regulation in Northern Ireland and the rest of the UK:
- (a) Authorisation – Operators in Northern Ireland will not be required to request authorisation from the Northern Ireland competent authority when conducting a type of shipment set out in 6.3. These shipments can be conducted under the authorisation of the competent authority of a Euratom Community state, provided the Northern Ireland competent authority has provided consent. This reflects the authorisation requirements for shipments between Euratom Community states as prescribed in the 2008 Regulations. The requirement to obtain an authorisation from a UK competent authority for all other shipments will remain.
 - (b) Documentation – When conducting a type of shipment described in 6.3, operators will need to ensure that the documentation accompanying the shipment is the Euratom Directive standard documentation. For all other shipments, operators will use the UK-standard documentation.
 - (c) Evidence – When conducting a type of shipment described in 6.3, operators in Northern Ireland will not be required to provide evidence that they have made an arrangement with the exporter, and which has been accepted by the exporter's competent authority, obliging them to take back the radioactive waste or spent fuel if the shipment cannot be completed in accordance with the regulations. This evidence requirement will continue for all other shipments.
 - (d) Scope – Shipments are within the scope of the 2019 Regulations if a consignment exceeds levels set out in the Basic Safety Standards Directive (Council Directive 2013/59/Euratom) as it applies on IP completion day. However, with respect to shipments to or through Northern Ireland, the applicable levels will be those set out in that Directive as it applies at the time of shipment.
- 7.5 It should 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 narrowed due to the fact that Northern Ireland will continue to recognise the authorisations of Euratom Community states for certain shipments in the same way as they are under the 2008 Regulations.
- 7.6 These regulations do not introduce any new regulatory requirements for shipments between Northern Ireland and the rest of the UK. This reflects that since under the Protocol the EU-mandated process for authorisation and consent between Northern Ireland and the Euratom Community states will continue, there is no requirement to duplicate this authorisation and consent process between Northern Ireland and the rest of the UK. This regulatory approach meets the requirements on “unfettered access” set out in Article 6 of the Protocol.
- 7.7 These regulations do not affect the procedures for the import, export and transit of radioactive waste and spent fuel into and out of England, Wales and Scotland.

- 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 Chief Inspector appointed by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument is not being made to address a deficiency in retained EU law. This instrument is being made under the power in Section 8C of the European Union (Withdrawal) Act 2018 to implement the Protocol on Ireland/Northern Ireland in the withdrawal agreement. The Minister has made any relevant statements 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 this instrument collaboratively with colleagues in the Devolved Administrations and in the UK's environment agencies, with particular emphasis on collaborating with colleagues in the Department for Agriculture, Environment and Rural Affairs in Northern Ireland. No public consultation has been undertaken for this instrument as it does no more than is necessary to implement the Northern Ireland Protocol.
- 11. Guidance**
- 11.1 Administrative guidance for the supervision and control of shipments of radioactive waste and spent fuel is available on GOV.UK. This guidance sets 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 updated to reflect the amendments in these regulations at least a month prior to the coming into force of this instrument. The guidance will continue to be maintained by the Department for Business, Energy and Industrial Strategy. Attention will be drawn to the updates to the guidance via email communication to relevant stakeholders.
- 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 of the low level of impact this instrument will have as it relates to maintaining existing regulatory standards. This instrument will implement a Withdrawal Agreement provision and ensures that the UK complies with its international obligations with regard to transfrontier shipment of radioactive waste and spent fuel. It applies only to movement of waste between Northern Ireland and a Euratom Community state. There

are currently no such movements, and nor are any planned. Even if they were to take place in the future, the nature of the requirement is such that any administrative costs involved would fall well below the de minimis threshold for a full Impact Assessment.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by 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 Daniella Gallagher at the Department for Business, Energy & Industrial Strategy Telephone: 020 7215 4576 or email: Daniella.Gallagher@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Wagstaff, Deputy Director for Europe Nuclear Negotiations, at the Department for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nadhim Zahawi, 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 |
| 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 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 14, 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 15, 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. Explanations

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