

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENT (MISCELLANEOUS AMENDMENTS) (EU EXIT)
REGULATIONS 2020

2020 No. 1313

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.
- 1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to environmental laws to address minor errors and to ensure they continue to operate effectively after the end of the implementation period. It also makes necessary amendments to directly applicable retained EU law. Regulations 2, 3 and 4 make changes to secondary legislation that implemented EU environmental laws relating to air quality and endangered species. Regulations 5 and 6 make minor changes to Regulations made under section 8(1) of the European Union (Withdrawal) Act 2018, relating to air quality and chemicals.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Air Quality Standards Regulations 2010 (SI 2010/1001) and the National Emission Ceilings Regulations 2018 (SI 2018/129) (see Regulations 2 and 3) implement, respectively, the requirements of Directive 2008/50/EC on ambient air quality and cleaner air for Europe and Directive 2016/2284/EU on the reduction of national emissions of certain atmospheric pollutants. The Air Quality Standards Regulations apply in the United Kingdom but further regulations in Scotland, Wales and Northern Ireland also implement the air quality Directive in those countries.
- 2.3 The Control of Trade in Endangered Species (Miscellaneous Amendments) Regulations 2019 (SI 2019/1354) (“COTES Regulations”) (see Regulation 4) is the UK legislation that supports the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”). COTES Regulations operate in conjunction with the EU Wildlife Trade Regulations (“EU WTR”) which implement CITES in the EU and will become retained EU law in the UK at the end of the implementation period. The EU WTR include the Basic Regulation (Council Regulation (EC) 338/97 on the protection of species of wild fauna and flora by regulating trade therein).
- 2.4 The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018 (SI 2018/1407) (see Regulation 5) makes changes to retained direct EU legislation relating to air quality, to ensure that it continues to operate effectively. This instrument introduces further changes to that legislation, in particular, in so far as it makes changes to Regulation (EC) No 166/2006, which establishes the European Pollution Release and Transfer Register

("E-PRTR"). The E-PRTR is an EU database that provides easily accessible environmental data in respect of certain industrial facilities. This instrument also makes changes to pieces of retained EU law that have been made at the EU level since the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018 were made, namely Decision 2019/2031, Decision 2019/1713, Decision 2019/1741 and Decision 2020/4050. These Decisions concern reporting requirements and establish the Best Available Technique ("BAT") Conclusions, which are the reference for setting permit conditions for installations covered by the Industrial Emissions Directive (2010/75/EU).

- 2.5 Regulation (EC) No 1907/2006 (see Regulation 6) of this instrument concerns the Registration, Evaluation, Authorisation and Restriction of Chemicals and establishes a European Chemicals Agency ("REACH"). REACH sets out controls on the use of chemicals.

Why is it being changed?

- 2.6 Regulation 2 of this instrument updates the Air Quality Standards Regulations 2010 to include the limit value for "PM_{2.5}", a type of pollutant, from 2020. At the time that the Air Quality Standards Regulations 2010 were made this level was under review by the European Commission.
- 2.7 Regulation 3 amends the National Emission Ceiling Regulations 2018 to address a minor typographical error, changing the applicable percentage ceiling reduction commitment for PM_{2.5} from "49%" to "46%". This amendment ensures that the correct Directive obligation applies in the United Kingdom.
- 2.8 Regulation 4 removes an unnecessary change to Regulation 43 of The Conservation (Natural Habitats, &c.) Regulations 1994 contained in The Control of Trade in Endangered Species (Miscellaneous Amendments) Regulations 2019, to ensure the UK CITES regime functions properly after the end of the implementation period. Regulation 43 of the Conservation (Natural Habitat, & c.) Regulations 1994 only applied in Scotland and had already been changed by the Scottish Government in the Conservation (Natural Habitat, & c.) Amendment (Scotland) Regulations 2007. This was not recognised when the COTES 2019 Regulations were drafted.
- 2.9 Regulation 5 makes changes to the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018, so that it addresses changes necessary to directly applicable retained EU law in the field of air quality, made (or amended at the EU level) after those regulations were made, to ensure it operates effectively.
- 2.10 Regulation 6 changes several dates in the REACH etc. (Amendment etc.) (EU Exit) Regulations 2019 ("REACH 2019"), which in turn amends the legislation outlined in paragraph 2.5 of this Explanatory Memorandum. REACH 2019 ensures that REACH will operate effectively in the United Kingdom following the end of the implementation period. Regulation 6 made transitional provisions to minimise disruption to existing supply chains following EU Exit. This instrument substitutes references to "exit day" with references to "IP completion day" and makes related amendments to defined terms, particularly in relation to various rules in REACH 2019 which place obligations on duty holders and regulators.

- 2.11 Regulations 2, 3 and 4 are made using powers in the European Communities Act 1972 as these were the powers used to make the instruments being changed. The other changes are made using powers in the Withdrawal Act 2018.

What will it now do?

- 2.12 The amendments in this instrument to the Air Quality Standards Regulations 2010 and National Emission Ceiling Regulations 2018 will ensure that this legislation implements the relevant EU law as intended.
- 2.13 The amendments in this instrument will ensure that the COTES legislation referenced in paragraph 2.3 continues to operate effectively.
- 2.14 The amendments to correct errors or to update previous EU Exit instruments will ensure that deficiencies in the legislation amended by those instruments are addressed as intended.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was presented to the Sifting Committees for consideration on 24th September 2020. On 6th October the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament, though one may still occur. This instrument will therefore remain subject to the negative resolution procedure.
- 3.2 Regulations 3 and 4(2) of this instrument amend other statutory instruments to correct minor errors in them, and this instrument is being published under the free issue procedure. Regulation 3 corrects an error in the National Emission Ceilings Regulations 2018 (SI 2018/129). Regulation 4(2) corrects an error in the Control of Trade in Endangered Species (Miscellaneous Amendments) Regulations 2019 (SI 2019/ 1354). The Department considered whether to revoke and remake the negative instrument containing an error, or to withdraw and re-lay in the case of the affirmative instrument. It decided not to do so in view of the minor nature of the errors.

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)

- 3.3 As this 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 This instrument makes minor amendments to domestic secondary legislation implementing EU environmental law under section 2(2) of the European Communities Act 1972. It also makes minor and technical amendments to Regulations made under Section 8(1) of the European Union (Withdrawal) Act 2018 and section 41(1) of the European Union (Withdrawal Agreement) Act 2020, relating to air quality, endangered species, and chemicals. These changes ensure the legislation functions as intended after the end of the implementation period.

7. Policy background

What is being done and why?

- 7.1 This instrument is being made to maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable and unable to function legally after the end of the implementation period.
- 7.2 The instrument makes minor amendments, which are legally necessary to achieve its objectives. It represents no changes of policy, nor will it produce any impact on businesses or the public.

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 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.
- 8.2 Alongside the EU (Withdrawal) Act 2018 powers this instrument is also being made under section 2(2) of the European Communities Act 1972 and section 41(1) of the European Union (Withdrawal Agreement) Act 2020.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 We have not consulted specifically on this instrument, because it contains only minor technical amendments and represents no change of policy and has no impact on businesses or the public.
- 10.2 We have liaised with the Devolved Administrations in relation to the UK-wide elements of this instrument.

11. Guidance

- 11.1 Guidance is not being provided in relation to this instrument.

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 legislation.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 There is no substantial change in impact to small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of its standard policy-making procedures.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Iain Notman at the Department for Environment, Food and Rural Affairs (telephone: 020 8026 3258 or email: iain.notman@defra.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Sarah Swash, Deputy Director for Environmental Regulations 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 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 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. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State, Rebecca Pow MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 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 of the reasons explained in section 6.1 of this Explanatory Memorandum.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State, Rebecca Pow MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 2.2 This is the case because of the reasons explained in sections 7.1 and 7.2 of this Explanatory Memorandum.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, 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”.

- 3.2 These are given in sections 6.1, 7.1 and 7.2 of this Explanatory Memorandum.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State, Rebecca Pow 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, Rebecca Pow MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the 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.”

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.