

EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PERMITTING (ENGLAND AND WALES) (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 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 Act.

2. Purpose of the instrument

- 2.1 This instrument amends the Environmental Permitting (England and Wales) Regulations 2016 (the “EPR 2016”) to ensure that, on the United Kingdom’s (“UK”) exit from the European Union (“EU”), they remain fully operable.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The EPR 2016 establish a cross-cutting environmental permitting and compliance system in England and Wales. The EPR 2016 are a framework, through which the permitting requirements of more than twenty EU Directives (in whole or part), and some domestic legislation, are implemented in England and Wales. The EPR 2016 ensure that relevant permitting requirements are delivered via conditions in environmental permits, and give regulators the power to ensure compliance with those conditions.

Why is it being changed?

- 2.3 The EPR 2016 contain more than 300 cross-references to the EU Directives which are implemented via the EPR 2016. Not all of these cross-references will function legally once we leave the EU. There are also other elements that will not function, such as references to “Member States”, and our obligations as a “Member State”.
- 2.4 The amendments to the EPR 2016 made by this instrument ensure that the law continues to function in the same way after we have left the EU. There are no substantive or policy changes, and no change in how operators are regulated.

What will it now do?

- 2.5 The EPR 2016 will continue to function as before, delivering regulatory continuity.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 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 England and Wales.
4.2 The territorial application of this instrument is England and Wales.

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 The European Union (Withdrawal) Act 2018 (“EUWA 2018”) converts EU law as it stands at the moment of exit into domestic law before the UK leaves the EU. It also confers temporary powers to make secondary legislation, to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU.
- 6.2 This instrument is being made in order to ensure the legal functioning of the EPR 2016 after EU exit. The EPR 2016 transpose a large number of EU Directives. The EPR 2016 contain many references to EU Directives and also to the UK’s obligations as a Member State. These will no longer function after we cease to be a Member State, and need correction to make the reference legally correct for future purposes.
- 6.3 The main change is the insertion of a new Schedule (Schedule 1A) into the EPR 2016. This new Schedule contains modifications of the various EU Directives transposed by the EPR 2016. It modifies the effect of the EU Directives, cross-referred to in the EPR 2016, so that the cross-references continue to work after EU exit.

7. Policy background

What is being done and why?

- 7.1 See paragraphs 6.1 to 6.3 above. There are no changes in policy or in impact on businesses or the public. The changes go no further than is necessary to deliver functionality.

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 EUWA 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU. The instrument is also made under paragraph 21(b) of Schedule 7 to the EUWA 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 The EPR 2016 were a consolidation of frequently-amended earlier versions of the Environmental Permitting Regulations. They have been subject to two significant amendments since 2016, and more amendments are planned within the next two years, primarily to bring additional functions into the EPR framework. Defra does not consider it appropriate to consolidate the EPR 2016 at this point, but will review the situation after these further amendments.

10. Consultation outcome

- 10.1 There has been no public consultation on this instrument. This instrument introduces no changes in policy or impact on businesses or the public that would make consultation appropriate.
- 10.2 Defra has worked closely with Welsh Government in developing this instrument. This is because the EPR 2016 apply in both England and Wales, and most amendments to date have been made for both countries, to promote consistency of regulation. This instrument is likewise being made for both England and Wales.

11. Guidance

- 11.1 There is a long-standing and comprehensive suite of Defra EPR 2016 guidance, explaining the Government's policies and interpretation of legal issues. We are not amending any of these documents at this stage, because this instrument reflects no change in policy. Regulators are reviewing their detailed technical and regulatory 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 this instrument relates to maintenance of existing regulatory standards.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 We propose no specific action to minimise regulatory burdens on small businesses, as these will not change as a result of this instrument.

14. Monitoring & review

- 14.1 As this instrument involves no changes in policy or impact on regulated businesses, Defra is not undertaking monitoring.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Duncan Mitchell at the Department for Environment, Food and Rural Affairs (telephone: 07887 821369; or email: duncan.mitchell@defra.gsi.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Sarah Swash, Deputy Director for EU Exit and Environmental Regulations at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Thérèse Coffey MP, Parliamentary Under Secretary of State for Environment at Defra, 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) Act 2018

1. Sifting statements

- 1.1 The Parliamentary Under Secretary of State for Environment, Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the EU (Withdrawal) Act 2018:

“In my view the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2018 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 this instrument makes purely technical amendments to existing legislation, to ensure its continuing legal functioning after EU exit. There are no changes in policy or impact on businesses or the public.

2. Appropriateness statement

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

“In my view the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.

- 2.2 This is the case because this instrument does no more than make the necessary and appropriate amendments to the EPR 2016 to ensure their continued legal functioning after EU exit.

3. Good reasons

The Parliamentary Under Secretary of State for Environment, 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”.

- 3.1 These are that, without these amendments, the existing legislation would become partially inoperable when we leave the EU. In particular, existing cross-references in the EPR 2016 to EU Directives would not be operable without the modifications added in new Schedule 1A by this instrument.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Environment, Thérèse Coffey MP has made the following statement:

“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”.

4.2 The Parliamentary Under Secretary of State for Environment, Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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