

EXPLANATORY MEMORANDUM TO

The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

2019 [No. [XXXX]]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 The Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 amends 12 domestic waste regulations, which implement different European directives related to waste management to ensure that the waste regime can continue to operate effectively after the UK leaves the EU. The European directives which these 12 domestic waste Regulations implemented are:
 - Directive 2000/53/EC on end-of-life vehicles
 - Directive 91/689/EEC on hazardous waste
 - Directive 94/62/EC on packaging and packaging waste as amended by Council Regulation (EC) No 1882/2003, Directive 2004/12/EC and Directive 2005/20/EC
 - Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC
 - Directive 2006/21/EC on the management of waste from extractive industries
 - Directive 2008/98/EC on waste
 - Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast)
 - Directive 2012/19/EU on waste electrical and electronic equipment

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument solely amends domestic law to ensure that UK waste legislation continues to operate as intended after EU exit. No environmental standards are being removed or amended. See section 7 for further information on how the 12 domestic waste legislations implemented the EU directives mentioned in section 2.1.

Why is it being changed?

- 2.3 Modifications are necessary to the text of the domestic legislation, removing or amending references to EU directives and associated EU terms to ensure that waste legislation continues to operate as intended after EU exit.

What will it now do?

- 2.4 This instrument will address deficiencies in domestic legislation arising from EU exit and ensure that existing protections and regulatory frameworks are maintained and continue to work in the same way once the United Kingdom has left the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 The instrument is being laid for sifting by the Sifting Committees.

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.
- 4.3 Amendments made to domestic Regulations by this instrument have the same extent and application as those Regulations.

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 is made in exercise of powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provisions as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.

7. Policy background

What is being done and why?

- 7.1 This instrument makes amendments to the following domestic legislation. The changes to these regulations will ensure the continued operability of the existing regulations largely through replacement of references to the EU or to Member State references. No substantive changes are introduced and they do not remove or amend any environmental standards.

The End-of-Life Vehicles Regulations 2003 – S.I. 2003 No. 2635

- 7.2 These Regulations partially implement Directive 2000/53/EC of the European Parliament and the Council on end-of-life vehicles. The Regulations outline the design requirements for materials and components of vehicles put on the market after the Regulations come into effect. They also introduce minimum treatment standards and the Certificate of Destruction, which deregisters a vehicle from the national vehicle database on notification by the Authorised Treatment Facility.

The End-of-Life Vehicles (Producer Responsibility) Regulations (ELV) 2005 – S.I. 2005 No. 263

- 7.3 These Regulations transpose the aspects of Directive 2000/53/EC (of the European Parliament and the Council on end-of-life vehicles) relating to producer responsibility for establishing collection systems to take back end-of-life vehicles free of charge from 2006 and the arrangements for meeting re-use, recycling and recovery targets, also from 2006.

The Hazardous Waste (England and Wales) Regulations 2005 – S.I. 2005 No. 894

- 7.4 These Regulations make provision for the controlled management of hazardous waste from the point of production to the final point of disposal or recovery.

The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 – S.I. 2007 No

- 7.5 These Regulations aim to implement Council Directive 94/62/EC on packaging and packaging waste, as amended by Council Regulation (EC) No 1882/2003, Council Directive 2004/12/EC and Council Directive 2005/20/EC. The aim is to harmonise the management of packaging waste and prevent or reduce the impact of packaging and packaging waste on the environment by encouraging minimisation and reuse and by setting recovery and recycling targets. At the same time, the aim is to avoid obstacles to trade and the distortion and restriction of competition within the Community.

The Batteries and Accumulators (Placing on the Market) Regulations 2008 – S.I. 2008 No. 2164

- 7.6 These Regulations partially implement Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances. The main purpose of these Regulations is to protect the environment and human health. They provide that new batteries (single use cells) and accumulators (commonly known as rechargeable batteries) or appliances containing batteries or accumulators that are placed on the market must not contain prohibited levels of heavy metals, and that they must be labelled to show the presence of lead-acid, cadmium or mercury and to promote recycling. They also provide that certain types of new electrical and electronic equipment must be designed in a way that facilitates the easy removal of waste batteries and accumulators for recycling purposes.

The Waste Batteries and Accumulators Regulations 2009 – S.I. 2009 No. 890

- 7.7 These Regulations partially implement Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances. These Regulations establish the scope of ‘producer responsibility’, requiring

producers of batteries and accumulators to take responsibility for separately collecting and recycling batteries and accumulators once they become waste.

The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 – S.I. 2009 No. 1927

- 7.8 The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 transpose specific elements of Article 6 of Directive 2006/21/EC on the management of waste from extractive industries (“the Mining Waste Directive”) in England and Wales. Article 6 of the Mining Waste Directive requires that measures are taken in respect of Category A facilities where the risks of harm to human health and the environment are greatest.

The Waste (England and Wales) Regulations 2011 – S.I. 2011 No. 988

- 7.9 These Regulations transpose Directive 2008/98/EC on waste (“the revised Waste Framework Directive”) in England and Wales by: revising or repealing the legislation in place to transpose its three predecessor directives in England and Wales; and by adding new freestanding provisions to the existing legislation to ensure compliance with the revised Waste Framework Directive.

The Controlled Waste (England and Wales) Regulations 2012 – S.I. 2012 No. 811

- 7.10 These Regulations revoke and replace the Controlled Waste Regulations 1992 (S.I. 1992/588, “the 1992 Regulations”). They classify waste as household, industrial or commercial waste, and also lists the types of waste for which local authorities may make a charge for collection and disposal. The instrument enables local authorities (as waste collection authorities under the Environmental Protection Act 1990) to charge, under section 45 of that Act, for the disposal of waste arising from a wider range of non-domestic premises than the 1992 Regulations permitted. The instrument also consolidates previous amendments, and includes some amended and updated definitions and classifications to improve the clarity of the Regulations and bring them into line with other legislation. It also provides that certain litter and refuse is to be treated under Part 2 of the Environmental Protection Act 1990 in the same way as waste collected under section 45 of that Act.

The Restrictions of the Use and Certain Hazardous Substances in Electrical and Electronic Equipment Regulations (RoHS) 2012 – S.I. 2012 No. 3032

- 7.11 These Regulations implement Directive 2011/65/EU of the European Parliament and Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast) (“RoHS Directive”), and revoke and replace the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2008 (S.I. 2008/37). They restrict the use of hazardous substances including some heavy metals and certain flame retardants in a defined number of categories of electrical and electronic equipment (“EEE”), requiring compliant products to be CE marked. They place obligations on economic operators to meet certain requirements and provide the Secretary of State with powers for the enforcement of those obligations.

The Waste Electronic and Electrical Equipment Regulations (WEEE) 2013 – S.I. 2013 No. 3113

- 7.12 These Regulations transpose the main provisions of Directive 2012/19/EU on waste electrical and electronic equipment (“WEEE”) which recasts Directive 2002/96/EC. The main purpose of the Directive is the protection of the environment and human health. They provide that producers of EEE will be financially responsible for managing the waste that arises from products they place on the EU market. Producers must also be registered with the national authorities in any Member State where they place EEE onto the market either directly or by appointing an authorised representative to act on their behalf. The Directive provides that Member States must establish systems for the collection, treatment, recovery and environmentally sound disposal of most types of WEEE; and that the costs of these systems must be largely borne by the producers of such equipment. Distributors of EEE also have obligations under the Directive to establish systems for the return of WEEE from private households (i.e. from consumers) free of charge.

The Packaging (Essential Requirements) Regulations 2015 – S.I. 2015 No. 1640

- 7.13 These Regulations specifically implement Articles 9 and 11 of Directive 94/62/EC of the European Parliament and Council on Packaging and Packaging Waste as amended by Directives 2004/12/EC, Commission Decision 2006/340/EC and Decision 2009/292/EC, Article 1 and the Annex of Directive 2013/2/EU and Article 1 of Directive (EU) 2015/720. They set the essential requirements that packaging must meet before it can be placed on the market. They provide enforcement authorities with powers for the enforcement of those obligations. They consolidate the amendments to the Packaging (Essential Requirements) Regulations 2003 (S.I. 2003/1941), (“the original Regulations”) that implemented these provisions and revoke and replace the original Regulations and amending legislation.
- 7.14 This instrument applies to waste which is a transferred matter for Northern Ireland under the Act 1998. In the continued absence of a Northern Ireland Executive, UK Government Ministers have 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.

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. 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, in relation to Part 2, the instrument is also being made under section 2(2) of the European Communities Act 1972(a).

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 A public consultation was not required because no policy changes are being made via this statutory instrument. Meetings have been held with relevant stakeholders to discuss waste shipments in connection with EU exit.
- 10.2 The devolved administrations were consulted in the development of this instrument. In the absence of a Northern Ireland Executive the Department for Environment, Food and Rural Affairs has worked closely with the Northern Ireland Department of Agriculture, Environment and Rural Affairs.

11. Guidance

- 11.1 There is no associated guidance.

12. Impact

- 12.1 As this instrument relates to maintaining existing waste management legislation after EU exit 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 the instrument relates to maintaining existing waste management legislation.
- 12.4 A full Impact Assessment has not been prepared for this instrument because no significant impact on business, charities or voluntary bodies is foreseen, with any costs or benefits falling below £5 million in any one year. This instrument only amends deficiencies arising from the UK's withdrawal from the EU.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This instrument amends current domestic legislation, maintaining existing regulatory standards. No mitigating actions for small businesses were deemed necessary for this instrument.

14. Monitoring & review

- 14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Kathryn Arnold at the Department for Environment, Food and Rural Affairs, Telephone: 02080 255306 or email: Kathryn.Arnold@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Chris Preston, Deputy Director for Resources and Waste Policy, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP, 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 | <p>Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p> |

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| 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. |
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| 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. |

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| <p>Scrutiny statement where amending regulations under 2(2) ECA 1972</p> | <p>Paragraph 16, Schedule 8</p> | <p>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</p> | <p>Statement setting out:</p> <ul style="list-style-type: none"> 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. |
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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 Waste (Miscellaneous Amendments) (EU Exit) (No. 2) 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 this instrument makes minor and technical amendments to the existing legislation described above to ensure retained EU law and preserved UK law is operable after EU exit. No environmental standards are being removed or amended.

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 Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 does no more than is appropriate”.

2.2 This is the case because this instrument makes minor and technical amendments to ensure that UK waste legislation continues to operate as intended after EU exit. No environmental standards are being removed or amended.

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 These Regulations correct deficiencies to ensure that UK waste legislation continues to be operative as intended after EU exit. The instrument makes no change to any environmental standards.

4. Equalities

4.1 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP, has made the following statement(s):

“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, Thérèse Coffey, 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.