

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL PROTECTION (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) 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 explanatory memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 This instrument makes necessary changes to a number of pieces of Northern Ireland environmental protection legislation, which arise as a result of the UK leaving the European Union. The changes are to legislation covering waste management and air and environmental quality control, for which the Department of Agriculture, Environment and Rural Affairs has responsibility. The amendments, made under section 8 of the European Union (Withdrawal) Act 2018, are mostly minor and technical operability changes that amend secondary domestic legislation which transposes EU Directives into Northern Ireland law. This instrument also modifies the interpretation of EU Directives to remove post-EU exit inoperabilities.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The EU Directives affected by this instrument put in place the regulatory regimes for the management of waste and the control of air and environmental pollution in Northern Ireland, with the primary aims of protecting the environment and human health.

This instrument amends secondary domestic transposing legislation and modifies retained EU Directives to ensure Day 1 operability post EU exit.

The domestic legislation being amended is as follows:

Waste:

- the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations (Northern Ireland) 1999;
- the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) Regulations (Northern Ireland) 2000;
- the Waste Management Licensing Regulations (Northern Ireland) 2003;
- the Landfill Regulations (Northern Ireland) 2003;
- the Landfill Allowances Scheme (Northern Ireland) Regulations 2004;
- the Hazardous Waste Regulations (Northern Ireland) 2005;
- the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007; and
- the Controlled Waste and Duty of Care Regulations (Northern Ireland) 2013.

Air:

- the Air Quality Standards Regulations (Northern Ireland) 2010; and
- the Pollution, Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013.

The retained EU Directives being modified are as follows:

- Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (the Air Quality Fourth Daughter Directive);
- Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (the Ambient Air Quality Directive);
- Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos (the Asbestos Directive);
- Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (the Basic Safety Standards Directive);
- Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (the Batteries Directive);
- Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles (the End of Life Vehicles Directive);
- Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (the Industrial Emissions Directive);
- Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (the Landfill Directive);
- Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (the Medium Combustion Plant Directive);
- Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (the Waste Framework Directive); and
- Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (the WEEE Directive).

Why is it being changed?

- 2.3 The instrument makes minor technical changes, which are necessary to ensure that legislation which gives effect to and provides for environmental protection continues to work on a Northern Ireland basis, post EU exit. The changes are necessary to ensure that the regulatory requirements in relation to the management of waste, air,

environmental quality and overall environmental protection remain in force post EU exit.

The instrument makes no substantive changes to the way the existing legislation operates. All changes make only the technical drafting fixes required to maintain continuity of approach after exit.

What will it now do?

- 2.4 The instrument will ensure the legislation listed above will operate effectively when the UK leaves the EU and that the regulatory regimes will continue to function as they did before EU exit. The operability amendments will ensure that Northern Ireland has a complete statute book from Day 1 of EU exit. It will provide Northern Ireland with the necessary regulatory requirements in relation to waste management activities and air quality controls to ensure that the protection of the environment and human health is maintained according to existing standards.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 This instrument is being laid for sifting pursuant to the European Union (Withdrawal) Act 2018.

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 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 Northern Ireland.
- 4.2 The territorial application of this instrument is Northern Ireland.

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 essential for Northern Ireland to have an operable legislative framework for environmental protection in relation to waste and air following EU exit. In order for this to occur, relevant EU legislation will become retained EU law by virtue of the European Union (Withdrawal) Act 2018. However, the retained EU legislation will not be operable in Northern Ireland without the modifications made by this instrument by way of Schedule 3.
- 6.2 This instrument addresses deficiencies in the retained EU legislation that relates to the regulation of waste activities and air and environmental quality controls. The relevant EU retained legislation and the domestic secondary legislation that implemented the requirements of the EU retained legislation are listed in paragraph 2.2.

- 6.3 Schedule 1 to the instrument amends secondary domestic waste provisions, which implement the requirements of the Asbestos, Basic Safety Standards, Batteries, End of Life Vehicles, Landfill, Waste Framework and WEEE Directives.
- 6.4 Schedule 2 to the instrument amends secondary domestic air and environmental quality provisions, which implement the requirements of the Air Quality Fourth Daughter Directive, Ambient Air Quality Directive, Integrated Emissions Directive and Medium Combustion Plant Directive.
- 6.5 The amendments can be broadly categorised as:
- removing references to provisions being ‘in accordance with EU legislation’ and other references to EU law/obligations, and instead referring to retained EU law/obligations;
 - copying out definitions within the regulations themselves, instead of referring to definitions that sit within EU Directives, or specifying that references should be to specific ‘versions’ of pieces of EU legislation;
 - updating references to other sets of legislation that will be changed following EU exit; and
 - changing references from ‘Member State’ or ‘competent authority’ to ‘the United Kingdom’ or ‘the Department’.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to policy areas which are transferred matters for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU exit where the preferred approach would be for devolved Ministers to take the necessary actions to prepare Northern Ireland for EU exit. The Government has been considering how to ensure a functioning statute book across the UK, including in Northern Ireland, for EU exit day in the absence of a Northern Ireland Executive. With EU exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland’s statute book for EU exit is narrowing. UK Government Ministers have, therefore, decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.
- 7.2 This instrument amends legislation relating to waste, air and environmental quality ensuring that after the UK leaves the EU, there is immediate continuity in regulation, enabling continued environmental protection.
- 7.3 The Regulations being amended relate to subject matters that are devolved issues and all Regulations are in force in Northern Ireland only.
- 7.4 The amendments do not constitute a change in policy.

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 UK 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.

9. Consolidation

9.1 There are no plans to consolidate the legislation.

10. Consultation Outcome

10.1 As this instrument does not involve any change in policy, no consultation has been undertaken.

11. Guidance

11.1 As these are technical changes to existing legislation there is no associated 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 it will not create any new costs to or burdens on business; it makes no substantive policy changes; and it effectively enables Northern Ireland and the UK to maintain the status quo.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. However, there is no substantial impact on small businesses.

14. Monitoring & review

14.1 The Department does not intend to monitor this instrument.

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

15. Contact

15.1 Mairéad Adams, Department of Agriculture, Environment and Rural Affairs (DAERA) Telephone: 02890 569573 or email: Mairead.adams@daera-ni.gov.uk can be contacted with any queries regarding the waste-related elements of this instrument.

15.2 Dr Barry McAuley, Department of Agriculture, Environment and Rural Affairs (DAERA) Telephone: 02890 569537 or email: barry.mcauley@daera-ni.gov.uk can be contacted with any queries regarding the air and environmental quality-related elements of this instrument.

- 15.3 David Small, Head of Environment, Marine and Fisheries Group at the Department of Agriculture, Environment and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.4 Dr Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment, at the Department for the 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), 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 the European Union (Withdrawal) Act 2018.	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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	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) European Communities Act 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) European Communities Act 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) European Communities Act 1972, 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) European Communities Act 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) European Communities Act 1972.	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 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 Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate and 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 the instrument does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. This instrument will maintain the operability of a number of environmental protection Regulations and correct deficiencies in retained EU legislation arising from the withdrawal of the United Kingdom from the European Union, as detailed in the main body of this explanatory memorandum.

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 Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate.”

- 2.2 This is the case because the amendments the instrument makes are mostly minor and technical operability changes, which do no more than is strictly necessary to ensure that the legislation amended functions correctly once the UK has left the EU.

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 This is the case because the instrument addresses a deficiency arising from the withdrawal of the United Kingdom from the European Union and maintains the operability of a number of environmental protection Regulations in relation to waste, air and environmental quality. These Regulations will ensure continued regulatory oversight in relation to the control of waste and maintenance of air and environmental quality in Northern Ireland once the United Kingdom has exited the European Union, thus protecting the Northern Ireland environment, whilst allowing socially and

economically beneficial practices to continue to be positively justified and preventing potentially damaging or dangerous ones from taking place.

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, Dr Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment, 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.”

- 4.3 This instrument has no, or no significant, impact on those with protected characteristics under the Equality Act 2010.