

**EXPLANATORY MEMORANDUM TO**  
**THE ENVIRONMENT (AMENDMENT ETC.) (EU EXIT) (AMENDMENT)**  
**(ENGLAND AND WALES) REGULATIONS 2020**

[2020] 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.
- 1.2 This explanatory memorandum contains information for the Sifting Committees.

**2. Purpose of the instrument**

- 2.1 This instrument allows the Secretary of State for Environment, Food, and Rural Affairs (“Secretary of State”) and Welsh Ministers in devolved areas to continue to exercise certain powers in the ‘Pollution Prevention and Control Act (PPCA)’ after the implementation period ends. The power is to regulate activities which are capable of causing environmental pollution in connection with certain EU Directives designated by the Secretary of State and Welsh Ministers.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 Section 7(9)(a) of, and paragraph 20(2)(c) of Schedule 1 to, the Pollution Prevention and Control Act 1999 (the ‘PPCA’) enabled the Secretary of State and Welsh Ministers to designate EU directives as “relevant Directives”. Under regulation 2 of, and paragraph 20(1)(b) of Schedule 1 to the PPCA, the Secretary of State and Welsh Ministers could make regulations in UK domestic law, by Statutory Instrument, in connection with those designated relevant Directives. Specifically, the regulations they are allowed to make are defined as corresponding or being ‘similar to any provision made, or capable of being made, under section 2(2) of the European Communities Act 1972 (c.68)’ (the ‘ECA’). This section of the ECA enabled the Secretary of State and Welsh Ministers to make regulations that allow the United Kingdom to fulfil EU treaty obligations: in the case of the PPCA, to incorporate EU environmental directives into domestic law.

Why is it being changed?

- 2.3 The Environment (Amendments etc.) (EU Exit) Regulations 2019 amended the power to make regulations that were made or capable of being made under section 2(2) of the ECA in the PPCA so as to remove the reference to section 2(2) of the ECA. It also replaced the provisions whereby relevant directives may be designated from time to time, with provisions on the face of the Act which specified a closed list of directives in connection with which domestic regulations may be made.
- 2.4 This list of relevant directives was added to by The Pollution Prevention and Control (Designation of Directives) (England and Wales) Order 2019 (S.I. 1417/2019) (‘PPCO’). The PPCO continues to operate under the powers granted in the PPCA under paragraph 20(2)(b) of Schedule 1 to that Act. In order for the Secretary of State and Welsh Ministers to continue to be able to make regulations in connection with the

Directives designated under the PPCO after the implementation period, the list of the face of the PPCA in paragraph 20(2) of Schedule 1 must be added to.

*What will it now do?*

- 2.5 The PPCA will continue to operate substantively as it does at present. There is no change in policy or impacts on business or the public.
- 2.6 This instrument will enable the Secretary of State and Welsh Ministers to continue making regulations in connection with the directives listed in the PPCO (as well as other directives previously designated) after the implementation period ends. The directives designated relate to: waste; water quality; air quality; asbestos pollution; public participation in environmental plans and programmes; environmental liability (to prevent or remedy environmental damage); environmental noise; and chemicals.

### **3. Matters of special interest to Parliament**

*Matters of special interest to the Sifting Committees*

- 3.1 This 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 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 England and Wales.
- 4.2 The territorial application of this England and Wales.

### **5. European Convention on Human Rights**

- 5.1 The Parliamentary Under Secretary of State at the Department for Environment, Food, and Rural Affairs, Rebecca Pow MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Environment (Amendment etc.) (EU Exit) (Amendment) (England and Wales) Regulations 2020 are compatible with the Convention rights.”

### **6. Legislative Context**

- 6.1 This instrument is being made to address deficiencies arising from the withdrawal of the UK from the EU using the power in section 8 of the European Union (Withdrawal) Act 2018 (“EUWA 2018”), in order to ensure the appropriate functioning of legislation to which it relates at the end of the implementation period.
- 6.2 This instrument does not create powers or amend any existing powers. The Secretary of State and Welsh Ministers’ power to designate directives will be revoked at the end of the implementation period by the Environment (Amendments etc.) (EU Exit) Regulations 2019 and replaced by a closed list of designated directives. The Secretary of State and Welsh Ministers can continue to make regulations in connection with that closed list of EU Directives after the implementation period ends. The PPCO

designated further Directives as relevant Directives. This instrument ensures that the Secretary of State and Welsh Ministers can continue to make regulations in connection with those additional Directives designated by the PPCO after the end of the implementation period.

## **7. Policy background**

### *What is being done and why?*

- 7.1 This instrument is being made in order to maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable/unable to function legally following our exit from the EU.
- 7.2 This instrument makes only those amendments that 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 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 EU. This instrument is also made under the power in paragraph 21 of Schedule 7 of that Act. 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 This instrument does not consolidate any legislation.

## **10. Consultation outcome**

- 10.1 We have not consulted specifically on this instrument, because it represents no change of policy and has no impact of itself on businesses or the public. Individual Defra policy teams have engaged with stakeholders where appropriate.
- 10.2 We have liaised actively with Devolved Administrations in relation to the elements of this instrument that extent to Wales.

## **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 existing regulatory standards.

## **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 European Union (Withdrawal) Act 2018, no review clause is required.

## **15. Contact**

- 15.1 Sam Kitchener at the Department for Environment, Food, and Rural Affairs Telephone: 07715921544 or email: samuel.kitchener@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 Equality 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 2018 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 SI.	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 s. 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 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under s. 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 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 and Rural Life Opportunities, 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 (Amendment etc.) (EU Exit) (Amendment) (England and Wales) 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 sections 6.1 and 6.2 of this explanatory memorandum.

#### **2. Appropriateness statement**

- 2.1 The Parliamentary Under Secretary of State for Environment and Rural Life Opportunities, 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 (Amendment etc.) (EU Exit) (Amendment) (England and Wales) 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 for Environment and Rural Life Opportunities, 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, 6.2, 7.1, and 7.3 of this explanatory memorandum.

#### **4. Equalities**

- 4.1 The Parliamentary Under Secretary of State for Environment and Rural Life Opportunities, Rebecca Pow 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 and Rural Life Opportunities, Rebecca Pow 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, 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.