

DRAFT EXPLANATORY MEMORANDUM TO
THE PUBLIC HEALTH ENGLAND (DISSOLUTION) (CONSEQUENTIAL
AMENDMENTS) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care ('DHSC') and is laid before Parliament by Command of His 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 regulations in consequence of the dissolution of Public Health England (PHE). The various regulations amended by this instrument contain references to PHE and these references are in each case substituted with a reference to the United Kingdom Health Security Agency (UKHSA). UKHSA was established on 1st April 2021 and assumed the health protection responsibilities and functions previously undertaken by PHE, as provided for in the various regulations amended by this instrument, when PHE ceased operating on 30th September 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Regulations 2, 4, 5 and 6 make consequential amendments to regulations previously made under section 2(2) of the European Communities Act 1972. The procedural and publication requirements under Schedule 8 to the European Union (Withdrawal) Act 2018 have been complied with.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Primary Care and Public Health, Neil O'Brien MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Public Health England (Dissolution) (Consequential Amendments) Regulations 2023 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The instrument makes amendments to subordinate legislation in consequence of the dissolution of PHE and the assumption by UKHSA of certain of PHE's responsibilities and functions. The instruments being amended by the Public Health England (Dissolution) (Consequential Amendments) Regulations 2023 are:

- the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 (S.I. 2009/1927),
- the Local Authorities (Public Health Functions and Entry to Premises by Local Healthwatch Representatives) Regulations 2013 (S.I. 2013/351),
- the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483),
- the Private Water Supply (England) Regulations 2016 (S.I. 2016/618), and
- the Water Supply (Water Quality) Regulations 2016 (S.I. 2016/614).

6.2 All of the amendments substitute a reference to UKHSA for the references to PHE.

7. Policy background

What is being done and why?

- 7.1 In August 2020, the then Prime Minister announced the Government's intention to reform the core institutions that lead public health nationally. These changes were driven by learning from the experiences of COVID-19, but more broadly by the need to ensure we have a public health system fully fit for the future.
- 7.2 The Government's reforms to the public health system in England aimed to ensure our national health protection capabilities are equipped for the future, put health promotion at the heart of government, and more deeply embed prevention and health improvement expertise across local and national government and the NHS.
- 7.3 With effect from the 1st October 2021:
- the health protection capabilities of PHE and NHS Test & Trace were assumed by UKHSA – an executive agency of DHSC;
 - a new Office for Health Improvement and Disparities (OHID) was established within DHSC, incorporating PHE's functions that directly support national health improvement policy; and
 - the rest of PHE's health improvement and healthcare public health functions moved to NHS England and NHS Digital. (On 1st February 2013 Health Education England, NHS Digital and NHS England merged into a single organisation. These changes do not affect these regulations).
- 7.4 As a consequence of this transfer, and of the dissolution of PHE, legislation which refers to PHE must be amended. This instrument makes amendments to references to PHE in regulations (such as requirements to consult PHE or to send information to PHE) replacing them with a reference to UKHSA.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the United Kingdom from the European Union because it is affected by paragraphs 13 to 15 of Schedule 8 to the European Union (Withdrawal) Act 2018. The Minister has made the relevant statements as detailed in the Annex.
- 8.2 This instrument is being made under sections 15(1), (2) and 82(3) of, and paragraph 15(1) of Schedule 3 to, the Health and Safety at Work etc. Act 1974, sections 67, 69, 77(3) and (4) and 213(2) of the Water Industry Act 1991, section 2 of, and paragraph

20(1)(b) and (2)(s) of Schedule 1 to, the Pollution Prevention and Control Act 1999 and sections 6C(1) to (3) and 272(8) of the National Health Service Act 2006.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 Consultation has been carried out in relation to the amendments to the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009, where there is a statutory duty to consult in accordance with section 2(4) of the Pollution Prevention and Control Act 1999. The Secretary of State for the Environment, Food and Rural Affairs has consulted the Environment Agency, the Welsh Ministers, the Natural Resources Body for Wales, the Local Government Association, the Mineral Products Association, the Health and Safety Executive, the Office for Nuclear Regulation and UK Onshore Oil and Gas in accordance with its statutory duty to consult. No objections were raised during this consultation process.

10.2 The Health and Safety Executive have carried out a four week public consultation on the amendments to the Control of Major Accident Hazards Regulations 2015, in compliance with its duty to consult under section 50(3) of the Health and Safety at Work etc. Act 1974.

10.3 No other consultation was carried out on account of the consequential nature of the amendments.

11. Guidance

11.1 Not applicable as the amendments contained in this instrument are consequential and do not impose any new obligations.

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 there is no, or no significant impact on business, charities or voluntary bodies from the amendments being made as there are no substantive changes to the obligations in the regulations being amended.

13. Regulating small business

13.1 This instrument does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this instrument is that monitoring will not be necessary as these are consequential amendments only.

14.2 This instrument does not include a statutory review clause.

15. Contact

- 15.1 Paul Jenkins at the Department of Health and Social Care Telephone: 020 7210 4393 or email: paul.jenkins@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Simon Reeve, Deputy Director of Public Health Systems and Workforce at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Neil O'Brien (Parliamentary Under-Secretary of State for Primary Care and Public Health) at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

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Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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) or 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 section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

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Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

- 1.1 This section will be completed after the instrument has been published in draft in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018.

2. Explanatory statements

- 2.1 The Parliamentary Under-Secretary of State for Primary Care and Public Health at the Department of Health and Social Care has made the following statements in accordance with paragraph 15(3) of Schedule 8 to the European Union (Withdrawal) 2018 Act:

“Paragraph 15(3)(a): Law which is relevant to the amendment:

The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 (“the 2009 Regulations”) require competent authorities (defined in regulation 2 of the 2009 Regulations as the fire and rescue authority under the Fire and Rescue Services Act 2004 for the area) to prepare an off-site (external) emergency plan (“off-site emergency plan”) for certain “Category A” mining waste facilities. Mining waste facilities are classified as Category A if they contain hazardous waste or dangerous substances above a certain threshold, or where failure or incorrect operation of the facility could give rise to a major accident. The off-site emergency plan must specify the measures to be taken off-site in the event of an accident, in accordance with the objectives in regulation 5 of the 2009 Regulations. The 2009 Regulations implement Article 6 of Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries.

- 2.2 The Control of Major Accident Hazard Regulations 2015 (“the 2015 Regulations”) are intended to prevent on-shore industrial major accidents and to limit their consequences to people and the environment. These Regulations and the 2009 Regulations were made, in part, under section 2(2) of the European Communities Act 1972 and therefore constitute EU-derived domestic legislation (which is retained EU law) within the meaning of the European Union (Withdrawal) Act 2018. The 2015 Regulations implement the majority of Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major accident hazards involving dangerous substances.

- 2.3 Paragraph 15(3)(b): Effect of the amendment or revocation on retained EU law:

- 2.4 The Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 (“the 2009 Regulations”) require the competent authority to consult Public Health England in preparing any off-site emergency plan if the mining waste facility is situated in England. They also require a fee to be paid by the operator of a mining waste facility to the competent authority if Public Health England perform a function on behalf of the competent authority in relation to the 2009 Regulations.
- 2.5 The Control of Major Accident Hazards Regulations 2015 require operators of upper tier establishments to consult Public Health England in preparing internal emergency plans if the establishment is situated in England. They also require a local authority to prepare an external emergency plan for upper tier establishments in their area and to review them at intervals not exceeding three years. In preparing and reviewing the external emergency plans, local authorities must consult Public Health England if the establishment is situated in England.
- 2.6 The relevant functions carried out by Public Health England under the 2009 Regulations and 2015 Regulations have been taken over by the UK Health Security Agency, an executive agency of the Department of Health and Social Care (with effect from 1 October 2021). These amendments ensure that the relevant functions under the 2009 Regulations and the 2015 Regulations reflect this change.

3. Good reasons

- 3.1 The Parliamentary Under-Secretary of State for Primary Care and Public Health at the Department of Health and Social Care has made the following statement in accordance with paragraph 15(2) of Schedule 8 to the European Union (Withdrawal) Act 2018:

“In my opinion there are good reasons for The Public Health England (Dissolution) (Consequential Amendments) Regulations 2023 to amend the Major Accident Off-Site Emergency Plan (Management of Waste from Extractive Industries) (England and Wales) Regulations 2009 and the Control of Major Accident Hazards Regulations 2015. This is because the UK Health Security Agency has assumed Public Health England’s emergency planning functions from 1 October 2021.”