

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENT (MISCELLANEOUS AMENDMENTS AND REVOCATIONS)
(EU EXIT) REGULATIONS 2019

2019 No. 559

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 Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes a number of miscellaneous amendments and revocations to ensure certain environmental laws function legally after our exit from the European Union (“EU”). This is also acting as a ‘wash up’ SI to make any additional amendments that are either consequential or correcting of other EU Exit regulations, to make them operable. Regulations 2 to 7 make minor amendments to provisions of other Regulations made under section 8(1) of the European Union (Withdrawal) 2018 Act, relating to wildlife, environmental permitting, chemicals, water resources and pesticides. Regulation 8 amends retained direct EU legislation relating to wildlife, and regulations 9 to 11 amend retained direct EU legislation relating to pesticides. Regulation 12(1) and the Schedule revoke various retained direct EU legislation relating to pesticides, eco-management and audit and ecolabelling, and regulation 12(2) contains a saving provision in relation to some of the revoked legislation relating to pesticides.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Commission Regulation (EC) No 865/2006 of 4 May 2006 and Commission Implementing Decision (EU) No 792/2012 of 23 August 2012 are part of a set of regulations which implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Article 44j of Commission Regulation (EC) No 865/2006 provides authority for the regulator (Management Authority) to issue a certificate authorising cross-border movement of musical instruments.
- 2.3 The Industrial Emissions Directive (2010/75/EU) of the European Parliament and of the Council of 24 November 2010 contains requirements relating to the issue of permits, which are implemented in England and Wales by the Environmental Permitting (England and Wales) Regulations 2016 (“EPR 2016”). Article 9 of the Directive relates to provision about emissions of greenhouse gases in permits for certain installations.
- 2.4 Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 regulates the imports and exports of mercury between the EU and non-Member States, restricts the use of dental amalgam, sets requirements for the storage, disposal

and reporting of mercury and mercury wastes, and restricts the creation of new mercury-added products or new manufacturing processes involving mercury.

- 2.5 Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 sets EU Maximum Residue Levels ('MRLs') for pesticides in food and feed and measures to ensure their compliance. This enables trade in treated produce by providing a basis for confirming whether pesticides have been used correctly, through the setting of MRLs for the relevant active substances that are approved to be included in the formulation of pesticides for use on food and feed. The retained direct EU legislation listed in paragraphs 9 and 14 of the Schedule to this instrument contains individual decisions of the European Commission as to the setting of MRLs under Regulation (EC) No 396/2005.
- 2.6 Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009, and its underpinning EU Regulations, regulate the placing of plant protection products on the market, including the approval of active substances, authorisation of plant protection products, and management of associated risks. Article 46 of Regulation (EC) No 1107/2009 allows a Member State, where that Member State withdraws or amends an authorisation for a plant protection product or does not renew it, to grant a grace period for the disposal, storage, placing on the market and use of existing stocks of that product.
- 2.7 The Annex to Commission Regulation (EU) No 546/2011 of 10 June 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council sets uniform principles for EU Member States to follow in the evaluation and authorisation of plant protection products under Regulation (EC) No 1107/2009. In that Annex, point 2.6.2(v) of Part 1C sets limits of determination for the sensitivity of methods proposed for the analysis of residue of pesticide related substances in treated plants, plant products, foodstuffs, feedingstuffs or products of animal origin as part of that evaluation process.
- 2.8 Commission Implementing Regulation (EU) No 844/2012 of 18 September 2012 establishes the procedure for renewing approval of active substances. The retained direct EU legislation listed in paragraphs 2 to 7 and 15 to 17 of the Schedule to this instrument contains individual decisions of the European Commission as to the approval (or otherwise) of active substances under Regulation (EC) No 1107/2009.
- 2.9 The retained direct EU legislation listed in paragraphs 1, 8 and 10 to 13 of the Schedule to this instrument amends, or is subsidiary to, Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme ("the EMAS Regulation") or Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 ("the EU Ecolabel Regulation").

Why is it being changed?

- 2.10 Regulations 2, 4 and 5 of this instrument amend other EU Exit SIs to correct minor errors, or consequential changes needed, in the amendments made by those instruments to retained direct EU legislation or domestic legislation relating to CITES, control of mercury and water abstraction, as follows:
- In the Trade in Endangered Species of Wild Fauna and Flora (Amendment) (EU Exit) Regulations 2018, in regulation 6, paragraph (9)(a)(vi) box number

19 tick box (e) of Annex V Regulation (EC) 792/2012 was omitted in error. Tick box (e) is necessary to allow certificates to be issued for movement of CITES specimens within the UK (pursuant to Article 8 of Regulation (EC) 338/97). A reference to 'the Union' is changed to 'the United Kingdom' to make it operable after exit.

- In the Control of Mercury (Amendment) (EU Exit) Regulations 2019, regulation 12(5) substitutes a new paragraph 4 in Article 8 of the Mercury Regulation, but also retains some of the text of an earlier draft of those Regulations which amended rather than substituted that paragraph. Regulation 4 omits this superfluous text.
- A minor amendment is being made to regulation 21 of the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 as a consequence of amendments being made to the Conservation of Habitats and Species Regulations 2017. Regulation 21 will now provide for the definition of conservation site in the Water Abstraction and Impounding (Exemptions) Regulations 2017 to be consistent with the amended Conservation of Habitats and Species Regulations 2017.

- 2.11 Regulation 3 amends the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019. This amendment is being made to reflect future greenhouse gas emissions trading policy, which has now been clarified, including how the installations covered by this amendment will continue to be regulated. For this reason the existing derogation that this provision concerns will continue to operate as it does presently. It will ensure that there is continuity in the approach.
- 2.12 Regulation 6 makes two amendments to the transitional provisions in Schedule 1 to the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 as a result of subsequent changes to Regulation (EC) No 396/2005. This takes into account Regulations published by the EU Commission since the SI was laid.
- 2.13 Regulation 7 amends the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019, principally as a result of amendments made on active substances by the EU Commission since the SI was finalised to Regulation (EC) No 1107/2009 and Commission Implementing Regulation (EU) No 844/2012 by Commission Implementing Regulation (EU) 2018/1659, but also amended to resolve some minor numbering errors in cross-references. Regulation 7(7)(a) inserts some missing words into the transitional provision in the Schedule to the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019. Regulation 9 amends Article 46 of Regulation (EC) No 1107/2009 and the Annex to Commission Regulation (EU) No 546/2011 which governs plant protection product grace periods. The original amendment inadvertently altered the operation of that Article, and the amendment made by regulation 9 rectifies this. Regulation 10 makes a minor amendment to the Annex to Commission Regulation (EU) No 546/2011, in place of a previous amendment which contained a minor error. The original amendments of those provisions by the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 are also omitted from those Regulations. Regulation 11 amends provisions which are inserted into Commission Implementing Regulation (EU) No 844/2012 by Commission Implementing Regulation (EU) 2018/1659, in order to ensure the operability of those provisions following EU exit.

- 2.14 Regulation 8 amends Article 44j of Commission Regulation (EC) No 865/2006 to correct a deficiency arising from EU exit. Other provisions of that Regulation are amended by the Trade in Endangered Species of Wild Fauna and Flora (Amendment) (EU Exit) Regulations 2018.
- 2.15 The retained direct EU legislation listed in the Schedule is revoked as it will be redundant following EU exit. In the case of the legislation relating to the EMAS and EU Ecolabel schemes, this is because the EMAS Regulation and the EU Ecolabel Regulation which establish those schemes are revoked by the Environment (Amendment etc.) (EU Exit) Regulations 2019.

What will it now do?

- 2.16 The amendments made by this instrument will ensure that CITES legislation continues to operate effectively. Annex V of Commission Implementing Regulation (EC) No 792/2012 will allow certificates to be issued for movement of CITES specimens within the UK, and Article 44j of Commission Regulation (EC) No 865/2006 will allow musical instrument certificates to be issued.
- 2.17 There will be no change to the present position as regards whether permits for relevant installations which are currently within the scope of the Industrial Emissions Directive are to include provision about emissions of greenhouse gases.
- 2.18 The Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 and the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019, will address deficiencies in retained direct EU legislation relating to Pesticides arising from EU Exit, and ensure that existing protections and regulatory framework are maintained and continue to work in the same way once the United Kingdom has left the European Union. Article 46 of Regulation (EC) No 1107/2009 will continue to allow the UK competent authorities to set grace periods where authorisations for plant protection products are amended or withdrawn. Commission Regulation (EU) No 546/2011 will continue to set uniform principles for evaluation and authorisation of plant protection products in the United Kingdom. Commission Implementing Regulation (EU) No 844/2012 will continue to contain the procedure for renewing approval of active substances in the UK.
- 2.19 The amendments to correct errors in other EU exit SIs will ensure that deficiencies in the legislation amended by those SIs are addressed as intended.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was presented to the Sifting Committees for consideration on 12th February 2019. On 28th February 2019 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament, though one may still occur. This instrument will therefore remain subject to the negative resolution procedure.
- 3.2 Regulations 2, 4 and 5 and 7 (in part) of this instrument amend other EU exit statutory instruments to correct minor errors in them, and this instrument is being published under the free issue procedure. The Department considered whether to revoke and remake the instruments containing errors, or to withdraw and re-lay them in the case of affirmative instruments. It decided not to do so in view of the minor nature of the errors.

- 3.3 This instrument was laid before Parliament fewer than 21 days before it comes into force, and the Department regrets the necessity to break the 21-day rule. This arose because this instrument could not be made until after all the instruments amended by regulations 2 to 7 had been made, but the amendments to those instruments must come into force before exit day (when those instruments come into force) or they would be ineffective.
- 3.4 Each of the instruments amended by regulations 2 to 7 had either been made (in the case of negative instruments) or completed its Parliamentary procedure (in the case of affirmative instruments) by 28th February 2019, when this instrument completed sifting. However, the Floods and Water (Amendment etc.) (EU Exit) Regulations 2019, which are amended by regulation 5, could not be made until after the making of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (“the Habitats Regulations”), due to an interdependency with those Regulations. The Habitats Regulations were approved by the House of Lords on 11th March 2019 and by the House of Commons on 12th March 2019. All three instruments have been made, and this instrument has been laid before Parliament, as expeditiously as possible after that.

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)

- 3.5 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 that regulations 1, 2, 4 and 6 to 12 and the Schedule extend to the United Kingdom, and regulations 3 and 5 extend to England and Wales.
- 4.2 The territorial application of this instrument is that regulations 1, 2, 4, and 6 to 12 and the Schedule apply to the United Kingdom, and regulations 3 and 5 apply to 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 This instrument makes minor amendments to provisions of other Regulations made under section 8(1) of the European Union (Withdrawal) Act 2018, relating to wildlife, environmental protection, water resources and pesticides, in order to ensure the appropriate functioning of the legislation amended by those other Regulations after the UK leaves the EU. It also makes amendments to retained direct EU legislation relating to wildlife and pesticides, and revocations of various retained direct EU legislation relating to the environment. A saving provision is also included in relation to some of the revoked legislation relating to pesticides – the reason for this is to ensure that any grace periods for the use of plant protection products which contain active substances for which approval has been withdrawn, where those grace periods expire after exit day, continue to remain in force in the United Kingdom after exit

until their ordinary expiry date. In this way the pesticides legislation will continue to function appropriately.

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. It is also being made to prevent the otherwise automatic incorporation of EU legislation into our national law, where to do so would be inappropriate.
- 7.2 The instrument makes only minor amendments, which 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/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.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 We have not consulted specifically on this instrument, because it contains only minor technical amendments and represents no change of policy and has no impact of itself on businesses or the public.
- 10.2 We have liaised with Devolved Administrations in relation to the UK-wide elements of this instrument.

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 as there is expected to be no, or no significant, impact on business as a direct result of this legislation. This is because it relates to the maintenance of existing legislation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is no specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Adam Lavis at the Department for Environment, Food and Rural Affairs (telephone: 020 8225 6112; or email: adam.lavis@defra.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 Dr Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment 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 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) 2018 Act

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State, 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 Environment (Miscellaneous Amendments and Revocations) (EU Exit) 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 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, 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 Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case for the reasons explained in sections 2 and 7 in the main body of this Explanatory Memorandum.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State, 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 are explained in sections 2 and 7 in the main body of this Explanatory Memorandum.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State, Dr 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, 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 draft instrument, I, Dr 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”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.