

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH AND SAFETY (AMENDMENTS AND REVOCATION)**  
**(EU EXIT) REGULATIONS (NORTHERN IRELAND) 2020**

**S.R. 2020 No. 330**

## **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above), which is laid before the Northern Ireland Assembly.
- 1.2. The Rule is made in exercise of the powers conferred by sections 11 and 22 of, and paragraph 1(1) and (3) of Schedule 2 to, and paragraph 21 of Part 3 of Schedule 7 to, the European Union (Withdrawal) Act 2018<sup>(1)</sup>.
- 1.3. The Rule is subject to the negative resolution procedure and comes into operation on IP completion day<sup>(2)</sup>, except for regulation 13 which comes into operation immediately before IP completion day.

## **2. Purpose**

- 2.1 The Statutory Rule ensures that European Union ('EU') derived health and safety protections will continue to be available in Northern Ireland domestic law following the United Kingdom's ('UKs') withdrawal from the EU. The Regulations amended are detailed in sections 3 and 4 of this Explanatory Memorandum.
- 2.2 The Rule does not make any policy changes beyond the intent of ensuring continued operability of the relevant legislation and will ensure that the statute book operates properly following IP completion day, at the end of the Transition Period.

## **3. Background**

- 3.1 The Statutory Rule introduces amendments to 11 existing sets of Northern Ireland Regulations. It corrects deficiencies arising from the UK's withdrawal from the EU and maintains the protections afforded by Northern Ireland health and safety legislation and does not impose any new liabilities or obligations on relevant persons.
- 3.2 The Rule amends the following Regulations to clarify that references to "Community obligation" and "Communities" only refer to provisions imposed by the European Communities up to IP completion day:
  - the Offshore Installations and Pipeline Works (Management and Administration) Regulations (Northern Ireland) 1995<sup>(3)</sup>;
  - the Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations (Northern Ireland) 1995<sup>(4)</sup>;
  - the Borehole Sites and Operations Regulations (Northern Ireland) 1995<sup>(5)</sup>; and
  - the Offshore Installations and Wells (Design and Construction, etc.)

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(1) [2018 c. 16](#), as amended by 2020 c. 1

(2) [2020 c.1, Article 39\(1\)\(h\)](#), "IP completion day" means 31 December 2020 at 11.00 p.m.

(3) [S.R. 1995 No. 340](#)

(4) [S.R. 1995 No. 345](#)

(5) [S.R. 1995 No. 491](#)

Regulations (Northern Ireland) 1996<sup>(6)</sup>.

- 3.3 The Health and Safety (Safety Signs and Signals) Regulations (Northern Ireland) 1996<sup>(7)</sup> are amended to remove a redundant reference to [European] ‘Community’; and to replace a reference to a Directive with a reference to the domestic legislation which implements that Directive.
- 3.4 The Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003<sup>(8)</sup> are amended to replace a reference to Member State with the Executive (the Health and Safety Executive for Northern Ireland).
- 3.5 The Control of Artificial Optical Radiation at Work Regulations (Northern Ireland) 2010<sup>(9)</sup> are amended to clarify definitions in Directive 2006/25/EC and to amend a definition for consistency with the domestic regime.
- 3.6 The Control of Major Accident Hazards Regulations (Northern Ireland) 2015<sup>(10)</sup>, the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations (Northern Ireland) 2016, and the Ionising Radiations Regulations (Northern Ireland) 2017 are amended to make it clear that once the UK leaves the EU it will no longer be a Member State.
- 3.7 The Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2015<sup>(11)</sup> are amended to remove a redundant reference and to amend requirements to notify European Economic Area (‘EEA’) States and report to the European Union which will no longer be appropriate once the UK leaves the EU.
- 3.8 The Control of Major Accident Hazards Regulations (Northern Ireland) 2015 are amended to remove requirements to provide information to and advise Member States, report and provide information to the European Commission which will no longer be appropriate once the UK leaves the EU. A new definition of “international organisation” is also inserted by these Regulations for consistency under the domestic regime.
- 3.9 The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations (Northern Ireland) 2016<sup>(12)</sup> are amended to remove a redundant reference to the European Union Offshore Oil and Gas Authorities Group to which the UK will no longer belong once it leaves the EU.

#### 4. Detail

- 4.1 These Regulations correct deficiencies arising from the UK’s withdrawal from the EU as detailed below.
- 4.2 **The Offshore Installations and Pipeline Works (Management and Administration) Regulations (Northern Ireland) 1995.** Regulation 20 allows for exemption certificates to be granted by the Health and Safety Executive for Northern Ireland (“HSENI”), subject to ‘any Community obligation (in respect of the encouragement of improvements in the safety and health of workers at work...’). However, the UK will not be subject to those obligations after the end of the transition period. This means that the regulations need to be amended to make clear that the power to issue exemption certificates will only be subject to obligations imposed by the

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(6) [S.R. 1996 No. 228](#)

(7) [S.R. 1996 No. 119](#)

(8) [S.R. 2003 No. 34](#)

(9) [S.R. 2010 No.180](#)

(10) [S.R. 2015 No. 325](#)

(11) [S.R. 2015 No. 339](#)

(12) [S.R. 2016 No. 406](#)

EU up to IP completion day. This will ensure exemptions can continue to be made without being subject to obligations imposed by the EU following the end of the transition period. It also clarifies that reference to Directive 2004/35/EC means that Directive as it had effect immediately before IP completion day.

- 4.3 **The Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations (Northern Ireland) 1995.** Regulation 22 allows for exemption certificates to be granted by HSENI, subject to ‘any Community obligation (in respect of the encouragement of improvements in the safety and health of workers at work...’). However, the UK will not be subject to those obligations after the end of the transition period. This means that the regulations need to be amended to make clear that the power to issue exemption certificates will only be subject to obligations imposed by the EU up to IP completion day. This will ensure exemptions can continue to be made without being subject to obligations imposed by the EU following the end of the transition period. It also clarifies that reference to Directive 2004/35/EC means that Directive as it had effect immediately before IP completion day.
- 4.4 **The Borehole Sites and Operations Regulations (Northern Ireland) 1995.** Regulation 6(8) allows for exemption certificates to be granted by HSENI, subject to ‘any of the provisions imposed by the ‘Communities’ in respect of the encouragement of improvements in the safety and health of workers at work...’). However, the UK will not be subject to those provisions after the end of the transition period. This means that the regulations need to be amended to make clear that the power to issue exemption certificates will only be subject to provisions imposed by the Communities up to IP completion day. This will ensure exemptions can continue to be made without being subject to provisions imposed by the Communities following the end of the transition period.
- 4.5 **The Health and Safety (Safety Signs and Signals) Regulations (Northern Ireland) 1996.** Paragraph 2.1 of Part II of Schedule 1 relates to the positioning and installation of signboards together with the provision of improvements (phosphorescent colours, reflective materials or artificial lighting) where the level of natural light is poor. This applies without prejudice to the requirements of Directive 89/654/EEC<sup>(13)</sup>, which requires workplaces to have sufficient natural light. The requirement for natural light is transposed in another set of regulations, the Workplace (Health, Safety and Welfare) Regulations (Northern Ireland) 1993<sup>(14)</sup> (S.R 1993 No. 37) (‘the 1993 Regulations’). As the UK will no longer be bound by EU law after the end of the transition period, the reference to the Directive needs to be replaced with a reference to regulation 8 of the 1993 Regulations to ensure that the same provision continues to have effect. These changes will continue to ensure the protection of workers.

The amendment in regulation 5(2)(b) of these Regulations removes the reference to “Community” level codes in the preliminary remark and retains the requirement to continue to have reference to other codes, which could include those at Community level as well as Internationally that are used for the same manoeuvres in certain sectors. Removing the reference to “Community level” will therefore not change the signals that are used, or will continue to be used, by UK and EU drivers etc.

- 4.6 **The Offshore Installations and Wells (Design and Construction, etc.) Regulations (Northern Ireland) 1996.** Regulation 23 allows exemptions certificates to be granted by HSENI, subject to ‘any of the provisions imposed by the ‘Communities’ in respect of the encouragement of improvements in the safety and health of workers at work...’). However, the UK will not be subject to those provisions after the end of the transition period. This means that the regulations need to be amended to make clear that the power to issue exemption certificates

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(13) [EUR-Lex - 31989L0654 - EN - EUR-Lex \(europa.eu\)](#)

(14) [S.R. 1993 No. 37](#)

will only be subject to provisions imposed by the Communities up to IP completion day. This will ensure exemptions can continue to be made without being subject to provisions imposed by the Communities following the end of the transition period. It also clarifies that reference to Directive 2004/35/EC means that Directive as it had effect immediately before IP completion day.

- 4.7 **Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003.** These Regulations allow HSENI to make exemptions, by a certificate in writing, from the prohibitions imposed for certain substances. Currently, these exemptions are only permitted to the extent allowed by article 9 of Directive 98/24/EC. Article 9 sets out the circumstances in which exemptions may be granted and the information to be provided by the employer making the request. Article 9 makes reference to powers afforded to ‘Member States’; after the transition period, in order for article 9 to still apply, references to ‘Member States’ need to be read as meaning ‘the Executive’ (the Health and Safety Executive for Northern Ireland).
- 4.8 **The Control of Artificial Optical Radiation at Work Regulations (Northern Ireland) 2010.** The amendments qualify two references to ‘relevant European Directives’ by inserting the words ‘as they had effect immediately before IP completion day’. This is to make clear to business that Directives coming into force, or amendments to Directives having effect, from IP completion day are not relevant for the purposes of the Regulations because Directives are not being brought into domestic legislation after the end of the Transition Period.
- 4.9 **The Genetically Modified Organisms (Contained Use) Regulations (Northern Ireland) 2015.** Regulation 3(2)(b)(iii) provides an exemption from these Regulations for certain food and feed products that were on the market before EC Regulation 1829/2003<sup>(15)</sup> on genetically modified food and feed came into force. Due to the time limits specified by EC Regulation 1829/2003 on these food and feed products having run their course, this exemption is redundant and can be removed.

Regulation 27(b) requires that the competent authority immediately notify those EEA states which could be affected by an accidental release of a genetically modified organism (GMO). From IP completion day, it will not be appropriate for the competent authority to be under a duty to notify EEA states who could be affected by accidental releases of a GMO, so this duty will be removed. The UK will still retain an international obligation to notify affected or potentially affected states of accidental trans-boundary movements of GMOs by virtue of treaty obligations under Article 17 of the Cartagena Protocol<sup>(16)</sup>. DEFRA run the Biosafety Clearing House on behalf of UK where these notifications would be co-ordinated.

Regulation 27(d) requires that the competent authority send certain information to the European Commission where it is informed of an accident. From IP completion day, it will not be appropriate for the competent authority to be under a duty to provide information about accidents to the Commission, so this duty will be removed. The UK will still retain an international obligation to share certain information around accidental trans-boundary movements of GMOs by virtue of our treaty obligations under Article 17 of the Cartagena Protocol.

- 4.10 **The Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations (Northern Ireland) 2016.** Regulation 32 requires the exchange of knowledge, information and experience between the competent authority and authorities in other Member States and through the European Union Offshore Oil and Gas Authorities Group (EUOAG). From IP completion

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(15) [EUR-Lex - 32003R1829 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuri/cs/cs/2003/2003R1829/EN/2003R1829-01-01-20160101.pdf)

(16) <https://www.cbd.int/doc/legal/cartagena-protocol-en.pdf>

day, it will not be appropriate for the competent authority to be under a duty to share information with other Member States, including through EUOAG.

The amendment removes the reference to ‘authorities in other Member States’, and replaces it with a reference to ‘other authorities having such knowledge, information or experience’. This removes the specific references to EU Member States and EUOAG, while still allowing HSENI to continue to exchange knowledge and information with other authorities (which could still include EUOAG) as appropriate following the end of the Transition Period.

Regulation 34 requires UK-registered companies that are operating outside the European Union to report, on request from the competent authority, the circumstances of any major incident in which they have been involved. This regulation excludes operations in the European Union which are reported under other requirements in these Regulations. The amendment ensures that once the UK is no longer a member of the European Union this exclusion will continue to apply to Northern Ireland’s waters.

- 4.11 **The Control of Major Accident Hazards Regulations (Northern Ireland) 2015.** Regulations 17 and 20(1) require specified information to be made available to the public and to other EU Member States where they could be impacted by a major accident. From IP completion day this will no longer be appropriate. However, the UK will still be under an international obligation to share certain information around potential transboundary effects of major accidents due to being party to the United Nations Economic Commission for Europe (“UNECE”) Transboundary Effects of Industrial Accidents Convention (“TEIA”). From IP completion day, the reference therefore needs to be to “country”.

Regulation 20(2) requires the competent authority to advise another Member State which could be impacted by a major accident if the site has been deemed to not require an external emergency plan. The provision to exempt a site from an external emergency plan is a rarely used power and it would not be appropriate to require the UK to provide such information to other Member States from IP completion day. The reference is therefore being removed. However, the UK will still be under an international obligation to share certain information around potential transboundary effects of major accidents due to being party to the TEIA Convention.

Regulation 26(3) places a duty on the competent authority to provide the European Commission with specified information about major accidents which meet the criteria in Schedule 5, within a specified period of time. From IP completion day, it will no longer be appropriate to require such information to be provided. The reference is therefore being removed. Under its membership of the Organisation for Economic Co-operation and Development (OECD) and as a party to the UNECE TEIA Convention the UK is required to share information for lessons learned and international best practise purposes using the Commission database. The amendment will remove the criteria and timescales and substitute international organisation for European Commission.

A definition of “international organisation” has been inserted in a new regulation 26(6) for the purposes of regulation 26(3).

Regulation 26(4) allows for information to be delayed if the outcome of an investigation has not been completed or if legal proceedings are ongoing. As the defined criteria and time limit will have been removed after IP completion day this will be a defunct provision and is therefore being removed.

Paragraph 2(g) of Part 2 of Schedule 4 uses the term ‘Member States’ implying that the UK is also a Member State in the context of an external emergency plan and a major accident with

possible trans-boundary consequences. From IP completion day, the amendment therefore changes this to “countries” as the UK will no longer be a part of the EU.

Schedule 5 prescribes the criteria to determine whether details of a major accident must be submitted to the European Commission. This will be rendered redundant due to the removal of the obligation in regulation 26(3) to report major accidents to the European Commission and is therefore being removed.

**4.12 The Ionising Radiations Regulations (Northern Ireland) 2017.** The Regulations contain provisions about the protection of contractors who work with radiation (known as “outside workers”). Some of the duties (for example, maintaining the contractor’s dose record) are placed on the contractor’s own employer. Where that employer is based in another Member State, the regulations allow that employer to comply with the equivalent provisions implementing the Directive in that Member State. Currently the regulations use the term “another Member State” implying that the UK is also a Member State. From IP completion day, the reference therefore needs to be to “a Member State” to reflect that the provisions remain equivalent to our domestic provisions but we will no longer be a part of the EU.

## **5. Consultation**

5.1 A consultation has not been undertaken as it is not a requirement of the European Union (Withdrawal) Act 2018<sup>(17)</sup>. The Rule is making simple technical amendments and the impact on business for complying with those changes has been assessed to be minimal.

## **6. Equality Impact**

6.1 The Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or, with the exception of age, differential impacts were identified.

## **7. Regulatory Impact**

7.1 There is no, or no significant impact on business, charities, voluntary bodies or the public sector.

7.2 A full Regulatory Impact Assessment has not been prepared for this Rule because it will maintain the status quo.

## **8. Financial Implications**

8.1 The Rule has no effect on business, and there are no cost implications for the Department for the Economy.

## **9. Section 24 of the NI Act 1998**

9.1 The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

## **10. EU Implications**

10.1 This Rule is being made under the European Union (Withdrawal) Act 2018 as amended by the European Union (Withdrawal Agreement) Act 2020 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU.

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(17) [European Union \(Withdrawal\) Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

## **11. Parity or Replicatory Measure**

11.1 In Great Britain, the corresponding Regulations are the Health and Safety (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1370) as amended by the Health and Safety (Consequential Amendments) (EU Exit) Regulations 2020 (S.I. 2020/660).<sup>(18)</sup>

## **12. Additional Information**

12.1 The Rule will not require specific guidance as the primary purpose is to ensure that the Statutory Rules listed above function as intended on IP completion day.

## **13. 21 Day Rule**

13.1 The Rule revokes the Health and Safety (Amendment) (Northern Ireland) (EU Exit) Regulations 2018<sup>(19)</sup> (“the 2018 Regulations”), which were due to come into operation on IP completion day - the legal wording for the end of the Transition Period.

13.2 Initially it had been intended to amend the 2018 Regulations. Proposals to do that were well advanced when updated legal advice clarified that in order to achieve the same policy objective the 2018 Regulations should be revoked and replaced. Unfortunately this left insufficient time to adhere to the 21 day rule.

13.3 In order to revoke the 2018 Regulations before they come into force it is necessary for the Rule to come into operation immediately before IP completion day.

Department for the Economy

December 2020

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(18) [S.I. 2020/660](#)

(19) [S.I. 2018/1377](#)