

EXPLANATORY MEMORANDUM TO
THE INTERNATIONAL WASTE SHIPMENTS (AMENDMENT) (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 Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

This instrument amends Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, the Transfrontier Shipment of Waste Regulations 2007, and related direct EU legislation to enable their continued operability as retained EU law under the European Union (Withdrawal) Act 2018, following the UK's withdrawal from the European Union.

Explanations

What did any relevant EU law do before exit day?

- 2.1 [Regulation \(EC\) No 1013/2006](#) of the European Parliament and of the Council of 14 June 2006 on shipments of waste makes provisions for the supervision and control of shipments of waste within its borders and with the countries of the European Free Trade Association (EFTA), the Organisation for Economic Cooperation and Development (OECD) and non-EU countries that have signed the Basel Convention.

It lays down rules for controlling waste shipments in order to improve environmental protection. It also incorporates the provisions of the [Basel Convention](#) and the revision of the [OECD's 2001 decision](#) on the control of transboundary movements of wastes destined for recovery operations (i.e. where a waste is processed to recover a usable product or converted into a fuel) in EU law.

[The Transfrontier Shipment of Waste Regulations 2007](#) ensure full implementation and enforcement of the Waste Shipments Regulation (EC 1013/2006). These regulations detail the UK procedures, offences, penalties and relevant enforcement authorities.

Why is it being changed?

- 2.2 As retained EU law, the current EC Regulation and domestic Regulations would not be effective in UK law due to the deficiencies within the provisions of the Regulations, arising from the withdrawal of the UK from the European Union. The instrument makes technical amendments to the existing legislation described above to ensure the legislation is operable after Exit. These amendments are necessary to ensure the UK's rules governing shipments between the UK and the European Union are aligned with the European Union rules governing shipments between the EU and

the UK and reflect that the EU will treat the UK as a third country following its withdrawal from the European Union.

- 2.3 The changes include amending references to the EU, EU institutions and EU administrative processes to UK equivalents; removing provisions which have no practical application to the UK or are redundant; correcting out-of-date references; updating legal references to refer to relevant UK legislation; and amending the requirement for the government to report annually to the European Commission to the Basel Secretariat only.

What will it now do?

- 2.4 The instrument will ensure that the legislation described above will operate in the UK, as effectively as it does now, after we leave the EU.

Following the UK's withdrawal from the EU the legislation described above, as amended by this instrument, will continue to implement the UK's obligations as a Party to the Basel Convention/OECD member and provide a regulatory framework for the control of waste shipments between the UK and the rest of the world.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The International Waste Shipments (Amendment) (EU Exit) Regulations 2018 were presented to the Sifting Committee on the 22 November 2018. The Commons sifting committee agreed with the government that this statutory instrument did not have to have a debate in parliament. However, the Lords sifting committee disagreed with the government and recommended that this statutory instrument should be debated in parliament; the recommendation was published on gov.uk on the 6 December 2018.
- 3.2 The House of Lords Secondary Legislation Scrutiny Committee (Sub-Committee B) made this recommendation because of concerns expressed over a publication issued by the European Commission which relates to approvals issued by UK and European Union competent authorities which authorise the shipments of notified waste¹ spanning a period which extends beyond 29 March 2019. Shipments of notified wastes between the UK and other EU Member States (of which England exported just under 4 million tonnes to the EU in 2017) are subject to a procedure of prior notification and approval according to rules set out in EU legislation.
- 3.3 The publication entitled "[Withdrawal of the United Kingdom and EU Waste Law](#)" stated that subject to any transitional arrangement that may be contained in a possible withdrawal agreement, as of the 29 March 2019, EU waste law will no longer apply to the United Kingdom and approvals to export notified waste, which currently apply past 29 March 2019, will no longer be valid on 29 March 2019. The publication also sets out a re-approval process. The process for re-approval set out therein allows the relevant competent authorities to exercise discretion to continue to treat these approvals as valid or to require new notifications and approval in regard to any shipments scheduled to take place after 29 March. The committee was therefore concerned that any refusal by a competent authority to treat an existing approval as valid could have an impact on the UK's ability to export notified wastes.

¹ Notified waste comprises all wastes which are destined for disposal operations, hazardous wastes destined for recovery or recycling operations and any mixed household wastes destined for recovery operations.

- 3.4 Consequently, Thérèse Coffey MP, Parliamentary Under-Secretary of State for the Environment agreed for this instrument to be made subject to the affirmative procedure.
- 3.5 No substantive policy changes have been made to this instrument since it was presented to the Sifting Committees. Some minor drafting errors have been corrected.
- 3.6 In a scenario where an agreement with the EU is not reached the position set out in the aforementioned European Commission publication would affect 556 UK approvals to export notified waste to the EU with an associated tonnage of just over 25 million tonnes.
- 3.7 The UK's competent authorities (the Environment Agency, the Scottish Environment Protection Agency, the Northern Ireland Environment Agency and Natural Resources Wales) have written to their counterparts in other Member States to agree that the process of waste shipments would continue as normal in a no-deal scenario. As of the 1 February 2019 the UK competent authorities have obtained agreement that 545 of these approvals can continue in their current form and no new application will be required to allow the export of the waste to the EU. Defra officials are working with Spanish government officials to achieve a resolution on the outstanding 11 approvals which authorise the shipment of UK waste to Spain. Given the progress made with other Member States on this issue the government is confident that it will be possible to obtain re-approval of the remaining shipments before 29 March 2019.

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)

- 3.8 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.9 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal Act) 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 This instrument applies to all of the United Kingdom including the territorial sea adjacent to the United Kingdom, including the area on the landward side of the baselines submerged at mean high water springs, the seabed and subsoil situated within the areas designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 and the waters superjacent to the seabed and the seabed and its subsoil situated within the area designated by Order in Council under section 84(4) of the Energy Act 2004.

5. European Convention on Human Rights

- 5.1 Thérèse Coffey MP has made the following statement regarding Human Rights:
- 5.2 “In my view the provisions of the International Waste Shipments (Amendment)(EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 On 23rd June 2016, a referendum on the United Kingdom's membership of the EU took place which concluded in a vote to leave the EU. The Government's intention is that the UK will cease to be a member state of the EU on 29 March 2019.
- 6.2 To ensure that the UK has a working statute book on the day it leaves the EU the Withdrawal Act incorporates EU law as it stands, into domestic law. It also creates temporary powers to make secondary legislation to correct laws that would otherwise no longer work appropriately once the UK has left the EU.
- 6.3 This SI amends Regulation (EU) 1013/2006 of the European Parliament and of the Council on shipments of waste and the Transfrontier Shipment of Waste Regulations 2007 in order to ensure that these remains operable after the UK leaves the European Union.
- 6.4 Provisions within Articles 26(4), 37(2), 50(4)(e), 53, 58(1) and 59a of Regulation (EC) No 1013/2006 on waste shipments, which transfer legislative powers from the European Commission to the Secretary of State, are included in a separate cross-cutting transfer of legislative functions instrument relating to the environment.

7. Policy background

What is being done and why?

- 7.1 Under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, shipments of waste are controlled to make sure they are managed in an environmentally sound manner. The provisions include preventing shipments to countries where environmentally sound management is not guaranteed and a notification procedure for the transboundary movements of waste. An OECD decision (C(2001)107FINAL) provides the framework for the transboundary movement of wastes for recovery between OECD countries.
- 7.2 Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste implements the Basel Convention and the OECD decision into EU law.
- 7.3 When we leave the EU, the UK will remain a party to the Basel Convention and a member of the OECD, and will continue to implement the international rules contained in these agreements.
- 7.4 In the event the UK leaves the EU without a deal, the UK would be treated in the same way as any other OECD country, or any country that is party to the Basel Convention, looking to export waste to an EU country. UK exporters will need to familiarise themselves with the [customs guidelines](#) the EU has laid down for imports of waste from outside the EU.
- 7.5 The UK has additional domestic legislation on waste shipments: the Transfrontier Shipment of Waste Regulations (2007) and the UK Plan for Waste Shipments. The UK Plan provides a general prohibition on the movement of waste for disposal to or from the UK unless it falls under specific exceptions as set out in the UK Plan.
- 7.6 The intention is to retain the EU control regime for waste shipments on Exit Day and make the proposed changes through this statutory instrument to ensure it remains operable outside the EU legal framework. The changes covered in this instrument are:

1. Amending references to the EU and EU institutions and administrative processes to UK equivalents;
2. Updating legal references to refer to relevant UK legislation and/or the Basel Convention as appropriate; and
3. Retaining the requirements for the government to report data on waste shipments.

7.7 The Transfrontier Shipment of Waste Regulations 2007 include modifications to ensure these are consistent with changes made to the principal Regulation (EC) No 1013/2006 on waste shipments.

7.8 A number of amendments to the principal Regulation (EC) No 1013/2006 on waste shipments are not included in this instrument but will instead be contained within a separate cross-cutting statutory instrument relating to the environment which will hold a number of affirmative procedures. The following matters will be addressed in that latter instrument:

- a. Amending Article 26(4) on changes to the format of communication in accordance with international legislation (Regulation (EC) No 1013/2006);
- b. Amending Article 36(5) on the power to amend Annex V (Regulation (EC) No 1013/2006);
- c. Amending Article 37(2) on the transmission of a questionnaire to non-OECD countries on procedures for acceptance of wastes (Regulation (EC) No 1013/2006);
- d. Amending Article 50(4)(e) on the power to amend the Annexes (Regulation (EC) No 1013/2006);
- e. Amending Article 58(1) to allow changes to the Basel Convention and OECD decision to be reflected in the new Regulations (Regulation (EC) No 1013/2006);
- f. Amending Article 59(a) to retain the power to amend the Regulations via statutory instruments (Regulation (EC) No 1013/2006).

7.9 These amendments will be detailed in the Explanatory Memorandum to that instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers conferred by section 2(2) of the European Communities Act 1972 and section 8(1) of, and paragraph 21 of Schedule 7 to, 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 Consolidation is not required.

10. Consultation outcome

10.1 A formal consultation was not required because no policy changes are being made via this statutory instrument.

10.2 Government informally engaged stakeholders at a large face-to-face event on the proposed approaches. No substantive comments or issues were raised, with questions raised relating to clarification of how existing processes will function after the UK leaves the EU.

10.3 Waste shipments is a reserved policy, however the Government has informally consulted the devolved administrations on the 'fixes' to this statutory instrument.

11. Guidance

11.1 The Government has published a [Technical Notice](#) to cover a no-deal scenario on the 12 October 2018.

11.2 The attention of industry stakeholder and trade associations has been drawn to the Technical Notice via email communication.

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 no, or no significant impact on the private or voluntary sector is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by various size businesses including small businesses.

13.2 No specific action was required to minimise the impact of the requirements on small businesses (employing up to 50 people).

13.3 This SI retains current EC legislation, primarily maintaining existing regulatory standards. No mitigating actions for small businesses were deemed necessary for The International Waste Shipments (Amendment) (EU Exit) Regulations 2018.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Patrick McKell at the Department of Environment, Food and Rural Affairs, Telephone: 02080 263836 or email: Patrick.McKell@defra.gsi.gov.uk to be contacted with any queries regarding the instrument.

- 15.2 Holly Yates, Deputy Director Chemicals and Pesticides – Domestic, EU and International policy at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Dr Thérèse Coffey MP at the Department of 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
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. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for the Environment Food and Rural Affairs, Dr Thérèse Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The International Waste Shipments (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

1.2 This is the case because this instrument corrects deficiencies within the retained EU legislation and aligns the domestic legislation to the retained EU legislation as necessary to ensure the continued movement of waste to and from the UK after we leave the EU and that the UK continues to meet its international obligations under the Basel Convention and OECD Decision.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for the Environment Food and Rural Affairs, Dr Thérèse Coffey, 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”.

2.2 These are: this instrument, in line with section 8(1) of the European Union (Withdrawal) Act 2018, corrects deficiencies as necessary to ensure the protections for the control of exports and imports of waste are maintained after we leave the EU.

3. Equalities

3.1 The Parliamentary Under Secretary of State for the Environment Food and Rural Affairs, Dr Thérèse Coffey has made the following statement(s):

“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”.

3.2 The Parliamentary Under Secretary of State for the Environment Food and Rural Affairs, Dr Thérèse Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Therese Coffey 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”.

3.3 The amendments made by the instrument do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because they are minor and technical and do not alter the operation of the underlying schemes or impose any new liabilities or obligations on any relevant persons.

4. Explanations

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