

EXPLANATORY MEMORANDUM TO
THE DETERGENTS (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 Act.

2. Purpose of the instrument

2.1 Together with the Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019, this instrument amends Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents to enable its continued operability following the United Kingdom's (UK) withdrawal from the European Union (EU). This will ensure the continuation of standards and requirements in relation to the placing on the market of detergents, while at the same time, maintaining a high degree of protection for the environment and human health. This instrument does not make any policy changes beyond the intent of ensuring continued operability of the relevant legislation.

Explanations

What did any relevant EU law do before exit day?

2.2 Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents (the "Detergents Regulation") establishes common rules to enable detergents and surfactants to be sold and used across the EU, while providing a high degree of protection to the environment and human health. It stipulates that surfactants used in detergents must be fully biodegradable and imposes a restriction on phosphates in domestic laundry and dishwasher detergents. In addition, it regulates how products should be labelled with ingredient and dosage information in order to protect human health (e.g. skin allergies) and avoid overuse of detergents.

2.3 The Detergents Regulations 2010 (S.I. 2010/740) are domestic regulations made under section 2(2) of the European Communities Act 1972 which provide for measures to be taken to enforce the Detergents Regulation and for penalties for breach of that Regulation. The Detergents Regulations 2010 were amended by the Detergents (Amendment) Regulations 2013 (S.I. 2013/1244), reflecting Regulation (EU) No 259/2012 which imposed a restriction on inorganic phosphates in domestic laundry and dishwasher detergents.

Why is it being changed?

2.4 The changes made by this instrument address deficiencies arising from the UK's withdrawal from the EU to ensure that retained EU law, including both directly applicable EU law and EU-derived domestic legislation, continue to operate effectively and coherently.

2.5 This instrument will continue to allow the free movement of detergents and surfactants for detergents in the UK market while, at the same time, ensuring a high

degree of protection of the environment and human health. It will continue to prohibit manufacturers placing detergents and surfactants for detergents in the UK market unless all the requirements of the Detergents Regulation are met (including composition, labelling, data sheets, testing) and continue to impose restrictions or bans on surfactants on grounds of biodegradability.

What will it now do?

- 2.6 This instrument amends the relevant legislation to ensure that existing protections and regulatory frameworks are maintained and continue to operate effectively at the point at which the UK leaves the EU. It provides for UK companies to be able to continue to carry out the same activities in relation to detergents as they currently can under the Detergents Regulation. Details on specific changes are listed in section 7 of this explanatory memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which the instrument is made cover the entire United Kingdom (see section 24(1) 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 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP has made the following statement regarding Human Rights:

“In my view the provisions of the Detergents (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 This instrument is being made to correct deficiencies in detergents legislation as a result of the UK’s withdrawal from the EU. The European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) contains a power to make secondary legislation to prevent, remedy or mitigate deficiencies that will arise in retained EU law. This includes both domestic law and directly applicable EU law. The Withdrawal Act only allows corrections to be made that are appropriate to ensure the national regimes will work effectively after EU Exit.
- 6.2 As a directly applicable EU Regulation requiring no transposition into UK law, the Detergents Regulation will be retained under section 3(1) of the Withdrawal Act. This instrument makes corrections to this Regulation using Withdrawal Act powers.

- 6.3 This instrument amends the Detergents Regulation to enable a legal framework that allows the free movement of detergents and surfactants for detergents in the UK market while, at the same time, ensuring a high degree of protection of the environment and human health.
- 6.4 This instrument also amends the Detergents Regulations 2010 (as amended) to address deficiencies arising from the UK's withdrawal from the EU.
- 6.5 As part of the withdrawal process, the Department for Environment, Food and Rural Affairs will introduce other instruments to amend EU legislation affecting chemicals regulations. In regulation 7 of this instrument, the references to regulations 8A and 24A of Regulation 528/2012 (the Biocidal Products Regulations) are contingent on the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (EU Exit) (Amendment etc.) Regulations 2019 being made before this instrument is made.

7. Policy background

What is being done and why?

- 7.1 This instrument establishes technical standards and requirements in relation to detergents and surfactants for detergents designed to achieve the free movement of those products throughout the United Kingdom while, at the same time, ensuring a high degree of protection for human health and the environment. Detergents are defined as any substance or preparation containing soaps and/or other surfactants intended for washing and cleaning processes. Detergents may be in any form and marketed for or used in household, or institutional or industrial purposes.
- 7.2 This instrument remedies deficiencies that will arise in the retained Detergents Regulation and the implementing domestic legislation to ensure that:
- a) there is free movement of detergents and surfactants for detergents in the UK while ensuring a high degree of protection of the environment and human health;
 - b) manufacturers placing detergents and surfactants for detergents on the market in the UK are prohibited from doing so unless all requirements of the Detergents Regulation are met (including composition, labelling, data sheets, and testing);
 - c) restrictions or bans are imposed on surfactants on grounds of biodegradability;
 - d) manufacturers of industrial or institutional detergents that fail the test for ultimate biodegradability but pass the less stringent primary biodegradability tests can be granted a derogation following an application;
 - e) the placing on the market of consumer laundry detergents with phosphorous content greater than 0.5 grams in the recommended quantity or consumer automatic dishwasher detergents with a phosphorous content greater than 0.3 grams in the standard dosage is prohibited;
 - f) provision is made for additional labelling of detergents including fragrance, allergens and information that manufacturers must hold at the disposal of the competent authorities and medical personnel;
 - g) there is an option for the HSE, acting as the competent authority for the

Detergents Regulation under an Agency Agreement with the Secretary of State, to charge a fee for processing derogation applications for the use of industrial and institutional surfactants; and

- h) the Detergents Regulation can continue to be enforced by the relevant enforcing authorities, and penalties for non-compliance remain in place.
- 7.3 The amendments which remedy deficiencies include corrections to inappropriate references or references which would have no practical application in relation to the UK after EU Exit.
- 7.4 The Detergents Regulation cross-refers to a number of other pieces of EU legislation, including the Biocidal Products, Cosmetic Products, Classification, Labelling & Packaging and REACH Regulations and the Good Laboratory Practice and Protection of Animals used for Scientific Purposes Directives. The directly applicable legislation (EU Regulations) referred to will become part of retained EU law, while other legislation (EU Directives) referred to will not. This instrument amends many of these cross-references so they will continue to work on exit day. In some cases, references have been amended so that they refer to the relevant domestic transposing legislation. Where references were out of date they have been updated.
- 7.5 This instrument sets out how the returning EU powers, including the decision-making powers currently exercised by the European Commission, will return to the UK after EU Exit. The Secretary of State as the competent authority for detergents for the UK will exercise those powers, taking expert advice as appropriate. An agency agreement will transfer the functions of the competent authority to the HSE so that in practice, work would effectively be undertaken by HSE. Relevant functions include: the power to consider granting a derogation for a product and the power to determine disputes about testing methods for a product. Function has also been transferred to the Secretary of State to update the technical Annexes to the Regulation in line with scientific and technical progress.
- 7.6 With regard to the derogation and determinations on testing, provision is included for the manufacturer to appeal that decision by the Secretary of State to a court.
- 7.7 The Detergents Regulation includes matters that are reserved in the United Kingdom (product standards, consumer protection and labelling). Occupational health and safety is a reserved matter in Great Britain.

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 to this instrument.

10. Consultation outcome

- 10.1 As this instrument does not make any policy changes beyond the intent of ensuring continued operability of the relevant legislation, formal consultation on this instrument has not been undertaken,

11. Guidance

- 11.1 There is no associated guidance.

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 the maintenance of existing regulatory standards and so will have no impact on business. The purpose of this instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the UK from the EU.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. No substantial impact on small businesses is foreseen as a result of this instrument.

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 Barbara Anning at the Department for Environment, Food and Rural Affairs, telephone: 0208 026 2784 or email: barbara.anning@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Margaret Read, Deputy Director for Water Services 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 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 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 Detergents (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because the instrument makes minor and technical amendments to correct deficiencies which arise from withdrawal to ensure the continued regulation of detergents and surfactants for detergents placed on the UK market while, at the same time, ensuring a high degree of protection of the environment and human health.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for the Environment 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”.

- 2.2 These are that this instrument correct deficiencies to ensure that legislation for the regulation of detergents and surfactants for detergents in the UK continues to operate effectively after UK withdrawal from the EU.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP has made the following statement:

“This 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 Dr Thérèse Coffey MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to this instrument, I, 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”.

- 3.3 The amendments made by this instrument do not raise any issues relevant to the public sector equality duty because they are minor and technical.

4. Explanations

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

5. Legislative sub-delegation

5.1 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP has made the following statement:

“In my view it is appropriate to create relevant sub-delegated powers in the Detergents (Amendment) (EU Exit) Regulations 2019”.

5.2 This instrument amends Articles 5 and 6 of the Detergents Regulation which concern the granting of a derogation by the European Commission. The Commission must update the Annexes to the Regulation when this is done. This power is transferred to the Secretary of State who must publish a list of surfactants that have obtained a derogation and a list of those detergent surfactants which have been identified as not complying with the provisions of the Regulation. This list will not be made by legislation. In practice this function will be carried out by the HSE through an agency agreement between the Department and HSE. HSE acts as the competent authority in the UK responsible for examining derogation applications and evaluating compliance with the conditions for the derogation on behalf of the Secretary of State.

5.3 This instrument amends Articles 7 and 10 of the Regulation on the testing of surfactants and control measures for detergents placed on the market. The European Commission currently takes a decision on cases where there is doubt or dispute about testing methods or if a test produced a false positive result in accordance with the procedure in Article 12(2) of the Regulation. These will now be functions conferred on the Secretary of State (again conducted by the HSE as regulator) to make a decision as to whether relevant tests may be accepted or as to whether the test concerned produced a false positive result, with an appeal mechanism against that decision for the manufacturer. It also amends Annex IV to the Regulation as to disputes about the extent of additional information required from a manufacturer relating to specific risk assessment concerns. The Commission’s ability to take a decision on this is also transferred to the Secretary of State to make a decision (thereby exercised by the HSE).

5.4 For all of these functions it is considered that it is not appropriate for these decisions to be made by way of legislation due to the highly technical considerations involved, that in practice these decisions are made by the HSE and because of the need to give expedient decisions to the manufacturer.