

EXPLANATORY MEMORANDUM TO
THE SPECIAL FISSILE MATERIALS (RIGHT OF USE AND CONSUMPTION) (EU
EXIT) REGULATIONS 2018

2018 No. 1094

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to address a deficiency in the operation of retained European Union (EU) law as provided for by the European Union (Withdrawal) Act 2018. Specifically, this instrument removes from UK law directly effective rights and associated obligations conferred by a provision of the Euratom Treaty in relation to special fissile materials (enriched uranium and plutonium). The Euratom Treaty provision in question confers on persons (including operators) the unlimited right of use and consumption to special fissile materials they have lawful possession of, subject to complying with Euratom Treaty obligations, including on safeguarding.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Under Article 86 of the Euratom Treaty all special fissile material (SFM) present on the territory of the Member States of the Euratom Community is collectively owned by Euratom. In the context of the Euratom Treaty, “ownership” refers to a sovereign right of the Euratom Community to ultimately dispose of special fissile materials in accordance with the Treaty and this right sits above the normal commercial and property rights associated with the materials.
- 2.3 The commercial and property rights of operators are dealt with in Article 87 of the Euratom Treaty which sets out that “Member States, persons and undertakings shall have the unlimited right of use and consumption to special fissile material, which have properly come into their possession, subject to the obligations imposed on them by this Treaty, in particular those relating to safeguards, the right of option conferred on the Agency and health and safety”

Why is it being changed?

- 2.4 The UK is leaving the Euratom Treaty on the same date as it is leaving the EU. Once the UK is outside the Euratom Treaty, the Article 86 provisions on Euratom Community ownership over special fissile materials present in the UK will cease to apply. However, the specific right conferred on operators by Article 87 to use and consume special fissile materials is directly effective in UK law. It will therefore be retained under the European Union (Withdrawal) Act 2018 if no action is taken by the UK Government.

- 2.5 This is undesirable as the retained right is defective because its exercise is subject to operators' compliance with Euratom Treaty obligations which will no longer apply to the UK. This instrument is therefore needed to revoke any rights and obligation conferred by Article 87 of the Euratom Treaty as retained in domestic law to ensure that the rights of operators over their material in the UK do not remain subject to Euratom Treaty obligations after the UK has left Euratom and the EU.

What will it now do?

- 2.6 When the UK leaves the Euratom Treaty, Euratom Community ownership rights over special fissile material present in the UK will cease. This instrument comes into force on the same date to ensure that those entities (i.e. nuclear operators) who have lawful possession of special fissile materials in the UK can exercise the commercial and property rights under which they hold the materials without those rights being subject to compliance with obligations in the Euratom Treaty.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid for sifting by the Sifting Committees on 31 August 2018. The Sifting Committees agreed with the government that this instrument should be subject to the negative resolution procedure.

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 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 the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister for Business and Industry has made the following statement regarding Human Rights:

“In my view the provisions of the Special Fissile Materials (Rights of Use and Consumption) (EU Exit) Regulations 2018 are compatible with the Convention rights.” This instrument helps to clarify the commercial and property rights of operators over special fissile materials in the UK after the UK leaves Euratom and the EU. This is consistent with Article 1 of the 1952 Protocol to the European Convention on Human Rights on the protection of property, which states that natural and legal persons are entitled to the peaceful enjoyment of their possessions.

6. Legislative Context

- 6.1 This instrument is being made using the power in section 8(1) 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.

7. Policy background

What is being done and why?

- 7.1 Information on the background of and necessity for this instrument can be found in sections 2.2-2.4 of this Explanatory Memorandum.

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(1) 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 This instrument does not involve consolidation.

10. Consultation outcome

- 10.1 No consultation has been undertaken for this instrument as the intent is purely to remove a deficiency in retained Euratom law. This deficiency is a direct result of how domestic law operates after the UK's withdrawal from Euratom and removing it does not involve interpretation or decision by government.

11. Guidance

- 11.1 No guidance is provided with this instrument as it does not require action or interpretation by operators in order to be effective.

12. Impact

- 12.1 There is no significant impact on businesses, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no ongoing costs to businesses are expected as a result of this instrument. This SI is purely a legislative tidying-up exercise to remove deficient provisions from UK law as a consequence of the decision to leave the Euratom Treaty. It has no policy implications in its own right. Its impact will be to provide clarity to nuclear industry operators (most prominently EDF and URENCO) who use and consume SFM on the legal status of the material.
- 12.4 Although this regulation will have no impact on the way that business operates, we expect them to prudently familiarise themselves with it. As such, there will be very minor familiarisation costs associated with this SI for businesses, essentially related to the need for an official at each enterprise affected to read the SI. There are around 100 entities that possess SFM in the UK. Using an assumption of enterprises needing between 15 mins and 1 hour to familiarise themselves, and a range of hourly wage rates from ONS (using "Professional, Scientific and Technical Activities" sector), we estimate a range of familiarisation costs between £410-£3,430. This cost would be even lower if, as expected, the trade association (the Nuclear Industry Association)

informs its members of this change and reassures them that no further action is required and that it has no impact on the running of their business (other than to remove a potential legal uncertainty).

13. Regulating small business

- 13.1 The instrument applies to activities that are undertaken by small businesses.
- 13.2 Although the instrument applies to small businesses, there is no change in policy and the overall impact will be very minor.
- 13.3 SFM in the UK is possessed by some small research laboratories. All businesses, regardless of size, will be required to familiarise themselves with these regulatory changes. There is no alternative way of implementing the measure other than by making changes to legislation. However, the overall impact on businesses will be very minor and familiarisation with the changes will be a one-off activity. The SI will impose no ongoing impacts on small businesses for the reasons stated above.

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 Daniel Wylie at the Department for Business, Energy and Industrial Strategy
Telephone: 0300 068 5329 or email: Daniel.wylie1@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Wagstaff, Deputy Director for Euratom Exit Negotiations and Strategy at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Richard Harrington, Minister at the Department for Business, Energy and Industrial Strategy 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 Minister for Business and Industry, Richard Harrington has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Special Fissile Materials (Right of Use and Consumption) (EU Exit) Regulations 2018 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: as detailed in paragraph 2.2 of the memorandum, the instrument makes only minor changes necessary to address deficiencies arising from the withdrawal of the United Kingdom from the European Union. These changes are uncontroversial and make no changes to policy beyond addressing those deficiencies.

2. Appropriateness statement

- 2.1 The Minister for Business and Industry, Richard Harrington has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Special Fissile Materials (Right of Use and Consumption) (EU Exit) Regulations 2018 does no more than is appropriate.”

- 2.2 This is the case because the instrument is purely designed to fix a legal deficiency in UK law stemming from the UK’s exit from the Euratom Treaty, to ensure that obsolete requirements to comply with elements of the Euratom Treaty are no longer retained in UK law. No further policy decisions have been taken in this instrument.

3. Good reasons

- 3.1 The Minister for Business and Industry, Richard Harrington 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: Euratom ownership of special fissile materials present in the UK will fall away once the UK exits the Euratom Treaty. However, associated rights for operators to use and consume special fissile materials, subject to compliance with Euratom Treaty requirements, have direct effect in UK law and are therefore retained after the UK leaves Euratom. This is undesirable as it would mean that the rights of operators over this material would remain subject to their compliance with Euratom Treaty obligations, even though these will no longer apply to the UK. The instrument is therefore needed to revoke these provisions as retained in UK domestic law, ensuring that the rights of operators over their material in the UK do not remain subject to Euratom Treaty obligations after we leave Euratom and the EU. This will help ensure

that operators have clarity over the legal status of the special fissile materials they possess.

4. Equalities

4.1 The Minister for Business and Industry, Richard Harrington 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.”

4.2 The Minister for Business and Industry, Richard Harrington has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Richard Harrington, 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.”

4.3 This instrument does not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because the measures it implements do not have a human or social policy dimension.

5. Explanations

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