

EXPLANATORY MEMORANDUM TO
THE COMMUNICATION OF INVESTMENTS (REVOCATION) (EU EXIT)
REGULATIONS 2018

2018 No. 1147

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 This instrument intends 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 revokes two Euratom Regulations associated with Article 41 of the Euratom Treaty. These are Council Regulation (Euratom) No 2587/1999 of 2 December 1999 and Council Regulation (Euratom) No 1209/2000 of 8 June 2000.

Article 41 requires operators within Euratom member states to communicate new nuclear investment projects and significant changes to existing projects to the European Commission. Article 41 will cease to apply to the UK when it exits from the EU and operators will no longer have to comply with this requirement. However, the two Euratom Regulations (Regulation 2587/1999 and Regulation 1209/2000) that underpin the Article, by defining the type of investment covered and way in which the communication to the Commission should be made, will be retained in UK law as a result of the European Union (Withdrawal) Act 2018. This instrument revokes these two Regulations in order to remove the deficiency in the statute book on exit.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Article 41 of the Euratom Treaty requires operators within Euratom member states to communicate new nuclear investment projects and significant changes to existing projects to the European Commission. The Commission then communicates its views on the project. The aim of the Article 41 process is to ensure that new projects and significant changes to existing ones are in line with the objectives of the Euratom Treaty to contribute to the development of a sustainable energy mix. While Article 41 will cease to apply to the UK when it exits the EU, Regulation 2587/1999 and Regulation 1209/2000 will be retained in UK law under the European Union (Withdrawal) Act 2018. Regulation 2587/1999 defines the investment projects to be communicated to the Commission, and Regulation 1209/2000 determines the procedures for effecting the communication to the Commission. The maintenance of these two Regulations leaves a deficiency in place in the UK statute book on exit.

Why is it being changed?

- 2.3 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 obligation to comply with the Article 41

requirement to communicate new nuclear investments in the UK to the European Commission will cease to apply. This instrument addresses a deficiency in retained EU law, by revoking two Euratom Regulations associated with Article 41 which would otherwise be retained in UK law.

Revoking these two regulations provides clarity for the nuclear industry. Without revoking the regulations, operators who are developing new nuclear investments in the UK may be unsure whether they need to continue to comply with the obsolete reporting process.

While the Article 41 reporting requirement will cease to apply to the UK on exit in any event, it is worth noting that the process provides no additional benefit for the UK Government or the operator, as the Government works closely with operators embarking on major new nuclear investments and will continue to do so. The UK has robust and comprehensive domestic arrangements in place including as part of the planning process for nuclear installations, such as the Development Consent Order (DCO), an application for which contains significantly more detail than an Article 41 submission.

What will it now do?

- 2.4 The requirement for operators to comply with Article 41 in relation to investments in the UK will cease when the UK leaves the EU. After this date, operators will continue to comply with existing domestic requirements and work closely with the Government and other bodies on the development of any new nuclear investments in the UK.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committees on Statutory Instruments

- 3.1 This instrument was laid for sifting on the 28th September 2018. The Sifting Committees considered the instrument and confirmed on the 16th October 2018 that they are content for it to remain subject to the negative 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 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 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 section 2 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 EU law. This deficiency is a direct result of how domestic law operates after the UK's withdrawal from the Euratom Treaty and removing it does not involve interpretation or decision by Government. The instrument has no policy implications in its own right, as the requirement for operators to report on new major investments in the UK to the European Commission will cease to apply on exit in any event and therefore regulations setting out how this should be done and in respect of which types of investment are no longer needed.

11. Guidance

- 11.1 No guidance is provided alongside 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 business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 The requirement to communicate investments in the UK under Article 41, and as such the costs of doing so, will fall away on exit from the EU in any event, and are not affected by this instrument. There will be only very minor business familiarisation costs (essentially to read the instrument) for a limited number of enterprises building nuclear power plants or other major nuclear infrastructure. Using an assumption of enterprises needing between one to three hours to familiarise themselves, and a range

of hourly wage rates from ONS (using “Professional, Scientific and Technical Activities” sector), we estimate one-off familiarisation costs of between £90-£560. As such, an Impact Assessment has not been prepared for this instrument as only very limited costs to businesses are expected.

13. Regulating small business

- 13.1 The legislation does not impact on activities that are undertaken by small businesses. Under the Regulation 2587/1999, the cost threshold for requiring an investment project to be communicated to the European Commission is €10m, we do not expect small businesses to make this scale of investment.

14. Monitoring & review

- 14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Abigail White at the Department for Business, Energy and Industrial Strategy, Telephone: 020 7215 3942 or email: abigail.white@beis.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Katrina McLeay, Deputy Director for the Euratom Exit Programme at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Richard Harrington, Minister for Business and Industry 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	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. Sifting statement(s)

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

“In my view the Communication of Investments (Revocation) (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 section 2.2 of this Explanatory Memorandum, the revocations this instrument makes are necessary to address legal deficiencies arising from the withdrawal of the United Kingdom from the European Union. These revocations improve legal certainty for operators, 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 MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Communication of Investments (Revocation) (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 arrangements to comply with obligations imposed under the Euratom Treaty which no longer apply to the UK are not 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 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, as set out in section 2.3 of this Explanatory Memorandum, that once the UK is outside the Euratom Treaty, the obligation for operators to comply with the Article 41 requirement to report on new nuclear investments in the UK to the European Commission will cease to apply. This SI addresses a deficiency in retained EU law, by revoking two Euratom Regulations associated with the Article which would otherwise be retained in UK law. Revoking these two regulations provides important clarity for the nuclear industry. Without revoking the regulations, operators who are developing new nuclear investments in the UK may be unsure whether they need to continue to comply with the reporting process. Furthermore, the Article 41

reporting requirement provides no additional benefit for the UK Government or the operator, as the Government works closely with operators embarking on major new nuclear investments and will continue to do so.

4. Equalities

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