

EXPLANATORY MEMORANDUM TO
THE PLANNING (HAZARDOUS SUBSTANCES AND MISCELLANEOUS
AMENDMENTS) (EU EXIT) REGULATIONS 2018

2018 No. 1234

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument uses powers in the European Union (Withdrawal) Act 2018 to make necessary changes, which arise as a result of the UK leaving the European Union, in the following pieces of legislation:

The main part of this instrument amends the following:

- The Planning (Hazardous Substances) Regulations 2015, S.I. 2015/627

This instrument also contains amendments to:

- The Town and Country Planning (London Spatial Development Strategy) Regulations 2000, S.I. 2000/1491;
- The Town and Country Planning (Mayor of London) Order 2008, S.I. 2008/580;
- The Town and Country Planning (Local Planning) (England) Regulations 2012, S.I. 2012/767; and
- The Town and Country Planning (Development Management Procedure)(England) Order 2015 S.I. 2015/595.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument principally concerns the hazardous substances planning regime, as provided for by the Planning (Hazardous Substances) Regulations 2015 (“the 2015 Regulations”), which were made under powers in the Planning (Hazardous Substances) Act 1990 and section 2(2) of the European Communities Act 1972.
- 2.3 The 2015 Regulations implement the land-use planning obligations of Articles 13 and 15 of the control of major-accident hazards involving dangerous substances Directive 2012/18/EU (“the Directive”). Those obligations aim at the prevention of major accidents involving dangerous substances, and in the event an accident occurs, limiting its consequences in respect of human health and the environment. The Directive covers installations where dangerous substances may be present during processing or storage, and in quantities exceeding certain thresholds. The non-planning aspects of the Directive were implemented through the Control of Major Accident Hazards (COMAH) Regulations 2015 (S.I. 2015/483).

2.4 There are a number of references to the land-use planning obligations of the Directive in other legislation which this instrument either omits or amends to become references to domestic legislation. Namely, references in:

- regulation 6 of the Town and Country Planning (London Spatial Development Strategy) Regulations 2000;
- article 6 of the Town and Country Planning (Mayor of London) Order 2008;
- regulation 10 of the Town and Country Planning (Local Planning) (England) Regulations 2012; and
- schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Why is it being changed?

2.5 The 2015 Regulations contain a number of references to the Directive and other European legislation that will no longer function after the United Kingdom's withdrawal from the European Union on 29th March 2019 ("exit date"). This instrument amends these references.

2.6 No substantive changes will be made as to how the hazardous substances planning regime will operate. The amendments contained in this instrument are technical drafting changes necessary to maintain the 2015 Regulations' accuracy and consistency following the revocation of the European Communities Act 1972 and the United Kingdom's withdrawal from the European Union. For example by ensuring that ongoing requirements in England's hazardous substances planning regime refers to the version of the Directive that is retained EU law.

What will it now do?

2.7 The hazardous substances planning regime amended by this instrument will continue to operate as it did before exit date. The changes are:

- references to European Union Directives have been changed to identical references within the COMAH Regulations 2015 (regulations 2(a), 3(a), 4(b), 5, 10);
- omits references to definitions and objectives sitting within the Directive, (regulations 2(b), 3(b), 4(a), 4(c), 5);
- adds definitions related to changes effected by this instrument to domestic legislation (regulation 7);
- amends provisions in the 2015 Regulations so that references apply correctly to retained European Union law (regulations 8, 9, 11, 12).

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 As the instrument is subject to a 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 This instrument has the same territorial application as the instruments it amends. The territorial application is England, except for regulations 24 and 26 of the 2015 Regulations, which in limited circumstances can also apply to Wales and Scotland.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to a negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument is made in exercise of powers in section 8 of the European Union (Withdrawal) Act 2018 (“the Act”).
- 6.2 The Act makes provision for repealing the European Communities Act 1972 and will preserve European Union law, as it stands at the moment of exit, in United Kingdom law. The Act creates a new body of domestic legislation from directly applicable European Union law being brought into domestic legislation, as well as saving European Union derived domestic legislation which was made to implement the United Kingdom’s obligations as a member of the European Union; together this will be retained European Union law.
- 6.3 The Act contains a temporary power to make secondary legislation to deal with deficiencies in this retained European Union law. This instrument makes a number of amendments to legislation in the hazardous substances planning regime in order to ensure that the legislation continues to function properly following the withdrawal of the United Kingdom from the European Union. These amendments relate to matters which have been identified as deficiencies in the legislation arising from that withdrawal from the European Union. See paragraph 2 above for further details.

7. Policy background

What is being done and why?

- 7.1 This instrument makes amendments to correct deficiencies in Hazardous Substances and other planning related legislation. The purpose of the amendments is to ensure that the relevant legislation is still operable i.e. remains coherent and workable, following the exit from the European Union of the United Kingdom. Details of the amendments are set out in paragraph 2 above.

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 Act in order to address failures of retained EU law to operate effectively and 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 the Annex to this memorandum.

9. Consolidation

9.1 There are no current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A public consultation was not considered necessary because the instrument makes minor technical amendments to an existing regime to maintain the status quo as far as possible. No impact upon stakeholders is envisaged. The devolved administrations were consulted at an early stage and are content with the approach taken.

11. Guidance

11.1 No guidance is necessary. The existing planning practice guidance will be updated where necessary to reflect the amendments made by this instrument.

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 due to the nature of the operability fixes contained within this instrument. This conclusion has been verified by an internal panel of economists.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses, however, the amendments introduced by this instrument seek only to maintain the way the current hazardous substances planning regime functions, as such it has not been thought necessary to take steps to minimise impacts. The principal aim of this instrument (i.e. to allow for the continuation of the hazardous substances planning regime as it currently operates) will be communicated to the public in order to mitigate the risk of confusion or costs incurred.

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 David Hughes at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 0282 or email: david.hughes@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Simon Gallagher, Director for Planning at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kit Malthouse MP, Minister of State for Housing, Communities and Local Government 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 of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view, the Planning (Hazardous Substances and Miscellaneous Amendments) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”. This is because the instrument makes only minor technical drafting changes required to ensure the hazardous substances planning legislation continues to operate consistently and coherently after the United Kingdom’s withdrawal from the European Union.

2. Appropriateness statement

- 2.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view, the Planning (Hazardous Substances and Miscellaneous Amendments) (EU Exit) Regulations 2018 do no more than is appropriate”. This is because the instrument makes only minor technical drafting changes required to ensure that hazardous substances planning legislation continues to operate consistently and coherently after the United Kingdom’s withdrawal from the European Union.

3. Good reasons

- 3.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view, there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. These are:
- (a) ensuring that the legislation setting out how the hazardous substances planning regime works in the United Kingdom continues to function correctly after the United Kingdom withdraws from the European Union; and
 - (b) ensuring that there is clarity for operators of installations where hazardous substances may be processed or stored as to which legislation will apply once the United Kingdom withdraws from the European Union, and the requirements they are expected to meet.

4. Equalities

- 4.1 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement:

- 4.2 “The 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”.
- 4.3 The Minister of State for Housing, for the Ministry of Housing, Communities and Local Government, Mr Kit Malthouse MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 4.4 “In relation to this instrument, I, Kit Malthouse 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”.

5. Explanations

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