

EXPLANATORY MEMORANDUM TO
THE IONISING RADIATION (BASIC SAFETY STANDARDS) (MISCELLANEOUS PROVISIONS) (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1278

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.

2. Purpose of the instrument

- 2.1 This instrument intends to address deficiencies in the operation of retained European Union (“EU”) law as provided for by the European Union (Withdrawal) Act 2018. Specifically, this instrument is intended to remedy two deficiencies in the Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018¹ (IRR (BSSD) 2018). These arise due to cross references to provisions in the European Council Directive 2013/59/Euratom², commonly referred to as the Basic Safety Standards Directive (“the Directive”) which will no longer be operable upon the United Kingdom’s withdrawal from the EU. The United Kingdom is leaving the Euratom Treaty on the same date as it is leaving the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Directive lays down basic safety standards for protection against the dangers arising from exposure to ionising radiation. The IRR (BSSD) 2018 transposed new requirements contained in the Directive concerning public exposures that did not fit within existing statutory regimes. The IRR(BSSD) 2018 did this in part by cross referring to provisions in the Directive.

Why is it being changed?

- 2.3 This instrument makes amendments to address two deficiencies in the IRR (BSSD) 2018 which would otherwise form part of EU retained law. These amendments are intended to ensure that these regulations continue to remain operable after the United Kingdom’s withdrawal from the EU.

What will it now do?

- 2.4 This instrument maintains the operability of the IRR (BSSD) 2018 after the United Kingdom’s withdrawal from the EU. This instrument results in no policy change.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None. This instrument was sent to the Sifting Committees on the 26th October 2018. This instrument was considered by both the Secondary Legislation Scrutiny

¹ S.I. 2018/482 - http://www.legislation.gov.uk/ukxi/2018/482/pdfs/ukxi_20180482_en.pdf.

² <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0059&from=EN>.

Committee in the House of Lords and the European Statutory Instruments Committee in the House of Commons on the 6th November 2018 and it was agreed by both Committees that the instrument should follow 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 The Directive is a Euratom directive which lays down basic safety standards for protection against the dangers arising from exposure to ionising radiation. The IRR (BSSD) 2018 transposed new requirements contained in the BSSD concerning public exposures that did not fit within existing statutory regimes.
6.2 This instrument is made to amend the IRR (BSSD) 2018 to correct two cross references to the Directive which will no longer be operable after the United Kingdom withdraws from the EU. This instrument maintains the operability of these provisions in the IRR (BSSD) 2018 post withdrawal from the EU.

7. Policy background

What is being done and why?

- 7.1 The IRR (BSSD) 2018 contains two cross references to the Directive which will become inoperable upon withdrawal from the EU.
7.2 The first of these is the definition of ‘orphan source’. An orphan source is a radioactive source which is no longer or has never been under the appropriate regulatory control. The definition of orphan source in IRR (BSSD) 2018 cross refers to the definition in the Directive and after the United Kingdom’s withdrawal from the EU, the reference to this particular definition will result in a deficiency. This instrument therefore amends the definition of an orphan source to set it out in full, so removing the need to cross refer to the Directive. The new definition replicates the legal effect of the definition within the BSSD and there is no policy change. Other definitions in the IRR (BSSD) 2018 which cross refer to definitions in the Directive will not result in deficiencies upon withdrawal from the EU and these definitions are therefore not being amended.
7.3 Regulation 6(4)(c) in IRR (BSSD) 2018 places an obligation on the appropriate ministers to meet the requirements in Article 102 of the Directive when managing certain radiation exposure situations. This instrument substitutes the obligation to

comply with Article 102 with an obligation to meet the requirements set out in a new Schedule. The new Schedule replicates the requirements of Article 102 and there is no policy change.

- 7.4 These minor amendments are intended to ensure the operability of these two provisions following the United Kingdom's withdrawal from the EU.

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 EU. 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 There are no plans to consolidate at this time.

10. Consultation outcome

- 10.1 No consultation has been undertaken for this instrument as the intent is purely to remove deficiencies in retained EU law. These deficiencies are a direct result of how domestic law will operate after the United Kingdom's withdrawal from the EU and these amendments do not involve any change in policy.

11. Guidance

- 11.1 No guidance has been provided for 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 it relates to the maintenance of existing regulatory standards.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that this legislation will not be monitored.
14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Harriet Fox at the Department of Business, Energy and Industrial Strategy, telephone: 02072155745 or email: harriet.fox@beis.gov.uk, can be contacted with any queries regarding the instrument.

- 15.2 Umran Nazir at the Department of Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Richard Harrington at the Department of 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/ESIC
Appropriateness	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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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

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 Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (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 7 of this Explanatory Memorandum, the amendments to the IRR (BSSD) 2018 are necessary to address legal deficiencies arising from the withdrawal of the United Kingdom from the European Union. These amendments ensure that the IRR (BSSD) 2018 will continue to be operable after exit, 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 Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate”.

2.2 This is the case because as detailed in section 7.2 and 7.3 of this Explanatory Memorandum, the two amendments to the IRR (BSSD) 2018 do not make any policy changes and only ensure the IRR (BSSD) 2018 continue to be operable after exit.

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 This is to ensure the IRR (BSSD) 2018 continue to be operable after the United Kingdom leaves the European Union.

4. Equalities

4.1 The Minister for Business and Industry, Richard Harrington has made the following statement:

“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.”

- 4.2 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 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.