

EXPLANATORY MEMORANDUM TO

THE AIR QUALITY (MISCELLANEOUS AMENDMENT AND REVOCATION OF RETAINED DIRECT EU LEGISLATION) (EU EXIT) REGULATIONS

2018 No. 1407

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument amends retained direct EU legislation relating to air quality, to ensure that it continues to operate effectively following withdrawal of the United Kingdom from the European Union (EU). This includes addressing deficiencies, such as references to EU authorities (e.g. the Commission) being replaced with domestic equivalents (e.g. Secretary of State). The amendments made by this instrument do not change the substantive requirements of the legislation.

What did any relevant EU law do before exit day?

- 2.2 Regulation (EC) No 166/2006 establishes the European Pollutant Release and Transfer Register (E-PRTR). The E-PRTR is an EU electronic database that is available to the public and provides easily accessible environmental data in respect of certain industrial facilities. The Regulation meets the requirements of the United Nations Economic Commission for Europe Protocol on Pollutant Release and Transfer Registers, which was signed by the EU in May 2003.
- 2.3 Decision 2004/279/EC sets out guidance concerning the development of short term actions plans to address ozone in ambient air.
- 2.4 Decision 2011/850/EC establishes rules with regards to the technical specifications for EU Member States' monitoring and reporting of ambient air quality, as well as for the reciprocal exchange of information between Member States.
- 2.5 Decision 2012/115/EU lays down rules concerning transitional national plans (TNPs) for the purposes of the Industrial Emissions Directive (2010/75/EU). TNPs allow combustion plants additional time to comply with emission limits set under the Industrial Emissions Directive if certain conditions are met.
- 2.6 Decision 2012/249/EU concerns the determination of start-up and shut down periods for the purposes of combustion plants covered by Chapter III (special provisions for combustion plants) of the Industrial Emissions Directive.
- 2.7 Decision 2014/768/EU establishes the type, format and frequency of information to be made available on emissions management techniques applied in mineral oil and gas refineries for the purposes of the Industrial Emissions Directive.
- 2.8 Decision 2015/6674/EU establishes a common format for reports on limitation of emissions of volatile organic compounds (VOC) due to the use of organic solvents in

certain paints and varnishes and vehicle refinishing products for the purposes of the VOC in Paints Directive (2004/42/EC).

- 2.9 Decision 2018/1135/EU establishes the type, format and frequency of information to be reported for the purposes of the implementation of the Industrial Emissions Directive.
- 2.10 Decision 2018/1522/EU establishes a common format for national air pollution control programmes under Directive (EU) 2016/2284 on the reduction of national emissions of certain atmospheric pollutants (“the National Emission Ceilings Directive”).
- 2.11 There are 14 EU Decisions that establish Best Available Techniques (BAT) Conclusions, which are the reference for setting permit conditions for installations covered by the Industrial Emissions Directive.
- 2.12 The contents page to the instrument provides a full list of the retained direct EU legislation that the instruments covers.

Why is it being changed?

- 2.13 This instrument makes minor and technical changes to the legislation referred to above to ensure that it functions correctly after the UK has left the EU. It addresses deficiencies that will arise in that legislation as a result of the UK leaving the EU.

What will it now do?

- 2.14 The instrument will ensure that the legislation described above will operate effectively in the UK after leaving the EU. Further description of the amendments being made are given below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018 were presented to the Sifting Committees for consideration on 22nd November 2018. On 6th December 2018 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in parliament, though one may still occur. The instrument will therefore remain 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 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 UK is leaving the EU and the related retained direct EU legislation in the field of air quality will not work in the UK without the amendments made by the instrument.
- 6.2 In addition to the instrument which is the subject of this memorandum, the Department will also introduce other related instruments as part of the exit process. These will amend relevant domestic regulations in respect of air quality to ensure they operate effectively after withdrawal and transfer certain legislative functions from the Commission to UK authorities.

7. Policy background

- 7.1 The intention is to have air quality legislation continue to apply after the UK leaves the EU as it did before, subject to fixing certain deficiencies. On exit day this will mean maintaining the substantive elements of the EU air quality legislative regime, but making necessary amendments through this instrument (and the other associated instruments referred to above) to ensure it remains operable outside of the EU legal framework. The changes in this instrument include necessary fixes such as: amending cross references to EU legislation; amending references to the EU, EU institutions and EU administrative processes to domestic equivalents; updating legal references to refer to relevant domestic legislation; and adjusting the requirements for government reporting as is appropriate.
- 7.2 A number of corrections are not included in this instrument but will instead be contained within a different instrument attracting affirmative procedure. This includes amending Article 8, 9, 18 and 19 of Regulation (EC) No 166/2006 as the legislative functions in these provisions are being transferring from the Commission to appropriate alternative UK bodies, and the function to make BAT Conclusions (in Article 13 of the Industrial Emissions Directive). Existing BAT Conclusions are amended by this instrument to ensure they continue to apply across the UK once we leave the EU.
- 7.3 Further policy background to the amendments being made in this instrument are given below.
- 7.4 **Regulation (EC) No 166/2006:** This instrument makes amendments to this Regulation to establish a UK Pollution Release and Transfer Register, in order to ensure that the UK continues to meet its obligations under the international Protocol on such registers (which the UK has already ratified). It will ensure that there continues to be a database that is accessible to the public which holds the relevant environmental data from UK industrial facilities covered by the Regulation.¹ The relevant competent national authority (appointed by the Secretary of State, Welsh Ministers, Scottish Ministers and relevant Northern Ireland Department) will be required to obtain the necessary information from the operators of the installations concerned. That information must then be provided to the Secretary of State for inclusion into the UK register by specified deadlines.
- 7.5 **Decision 2011/850/EC:** At present the UK submits data on ambient air quality to the European Commission through a data repository managed by the European Environment Agency. This instrument makes necessary amendments so that the Secretary of State, Ministers in the Devolved Administrations and relevant Northern Ireland Department must each continue to make the same data available in their own

¹ <https://www.gov.uk/guidance/uk-pollutant-release-and-transfer-register-prtr-data-sets>

data repositories (in practice there are no current plans to move away from a single UK repository, namely the [UK-Air website](#)²).

- 7.6 **Decision 2012/115/EU:** The UK already implements the United Kingdom TNP that was prepared in accordance with this Decision and the Large Combustion Plants (Transitional National Plan) Regulations 2015 (S.I. 2015/1973). Only those provisions that continue to be relevant have been retained.
- 7.7 **Decision 2018/1135/EU:** This Decision covers information on the implementation of the Industrial Emissions Directive, including on the application of best available techniques. This data is not published at European level once reported by the Member States. This instrument amends the Decision to provide that the appropriate authorities across the UK are required to prepare the data by the relevant deadlines, and that a summary of that data can be published or an indication given as to where the data is already publically available.
- 7.8 **14 Decisions that establish Best Available Techniques (BAT) Conclusions:** This instrument ensures that existing EU Implementing Decisions that adopt BAT Conclusions for the purposes of the Industrial Emissions Directive continue to apply across the United Kingdom.
- 7.9 **Several other technical Commission Decisions** are amended and others have been revoked as they have either expired or no longer have any relevance. For example, Commission Decision 2010/205/EU covering the submission of triennial reports under Article 16 of the E-PRTR Regulation is revoked as the Commission have confirmed that they no longer expect the submission of triennial reports (which require the questionnaire set out in decision 2010/205/EU) under Article 16 of the E-PRTR Regulation.³⁴

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. The instrument is also made under paragraph 21(b) of Schedule 7 to that Act. 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 is not consolidating any provisions.

10. Consultation outcome

- 10.1 This instrument does not introduce any substantive policy change and it imposes no new obligations on external bodies so no public consultation has been carried out. The purpose of the instrument is solely to enable the current legislative and policy framework to remain consistent following the withdrawal of the United Kingdom from the EU.

² <https://uk-air.defra.gov.uk/>

³ <https://rod.eionet.europa.eu/obligations/540/overview>

⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2017:0810:FIN:EN:PDF>

10.2 Devolved administrations were engaged in the development of the instrument and are content.

11. Guidance

11.1 Defra published a ‘Technical Notice’ which sets out how the Industrial Emissions BAT regime would be affected in the scenario that the UK leaves the EU without an agreement.⁵

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 there is no significant new impact per business as the instrument relates to maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. No significant impacts 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 William Smith at the Department of Environment, Food and Rural Affairs email: william.smith@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Harriet Wallace at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

⁵ [Industrial emissions standards \('best available techniques'\) if there's no Brexit deal](#)

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(s)

- 1.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (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 this instrument does not fall into the category of regulations identified in schedule 7 Part 1 paragraph 1(2) as requiring approval in draft by resolution of both Houses of Parliament. This instrument makes minor and technical amendments to the legislation described above to ensure retained direct EU law is operable after Exit. No substantive policy changes are brought in by this instrument.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because this instrument corrects deficiencies as necessary to ensure that European air quality legislation and standards are maintained in the UK after withdrawal from the EU”.

3. Good reasons

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

- 3.2 This is the case because, without this instrument, there would be deficiencies in retained European air quality legislation.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement(s):

“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 Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I 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 The amendments made by the instrument do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because they are minor and technical and do not alter the operation of the underlying schemes or impose any new liabilities or obligations on any relevant persons.

5. Explanations

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