

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL IMPACT ASSESSMENT (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 123

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Purpose of the instrument

- 2.1 This instrument will make necessary changes, which arise as a result of the United Kingdom (“UK”) leaving the European Union (“EU”), to domestic legislation which governs the process for Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA) in Northern Ireland. It will specifically make amendments to regulations in respect of SEA and three sets of EIA regulations covering the following Department of Environment, Agriculture and Rural Affairs (DAERA) policy areas; forestry, agriculture and water resources. The principal regulations being amended are:
 - The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004;
 - The Environmental Impact Assessment (Forestry) Regulations (Northern Ireland) 2006;
 - The Environmental Impact Assessment (Agriculture) Regulations (Northern Ireland) 2007; and
 - The Water Resources (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This Instrument amends our existing implementation of Directive 2001/42/EC of the European Parliament and of the Council of 27 January 2001 (“the SEA Directive”) on the assessment of certain plans and programmes on the environment. The SEA Directive sets out the principles that Member States must adopt in assessing and mitigating the environmental impacts of public plans and programmes. This instrument also amends, in part, our existing implementation of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 (“the EIA Directive”) on the assessment of certain public and private projects on the environment. The EIA Directive sets out principles that Member States must adopt in assessing and mitigating the environmental impacts of a project before consent is given.

Why is it being changed?

- 2.3 This instrument makes minor and technical changes to ensure that the above legislation works sensibly in a UK-only context. The instrument makes no substantive changes to the way the existing legislation operates. All changes make only the technical drafting fixes required to maintain continuity of approach after EU exit. More information on the changes being made is at section 7.

What will it now do?

- 2.4 The four regimes, as detailed in Section 2.1, amended by this instrument will continue to function as they did before EU exit.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 20 November 2018. On 4 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 Northern Ireland.
4.2 The territorial application of this instrument is Northern Ireland.

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 principle SEA Regulation (listed in section 2 above), implements Council Directive 2001/42/EC (“the SEA Directive”) on the assessment of the effects of certain plans and programmes on the environment.
6.2 The principle EIA regulation (listed in section 2 above) implements, in part, Council Directive 2011/92/EU (“the EIA Directive”) on the assessment of the effects of certain public and private projects on the environment. The EIA Directive was previously amended by EU Directive 2014/52/EU to incorporate changes made at EU level, to simplify the rules for assessing the potential effects of projects on the environment. In May 2017, the amendments were transposed into national legislation and incorporated into the three regulations amended by this instrument.
6.3 The regulations amended by this instrument are concerned with SEA and EIA’s in the

context of forestry agriculture and water resources. The amendments to these regulations will be made under the powers in the European Union (Withdrawal) Act 2018.

- 6.4 The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972 on the day the UK leaves the EU. It converts EU law as it stands at the moment of exit into domestic law, and preserves laws made in the UK to implement EU obligations.
- 6.5 The European Union (Withdrawal) Act 2018 also creates temporary powers, in section 8, to make secondary legislation, to enable corrections to be made to retained EU law that will not operate appropriately once the UK has left the EU.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to policy areas which are a transferred matter for Northern Ireland under the Northern Ireland Act 1998. No change is being made to policy. This instrument provides the continued ability to ensure environmental protection in the UK when it leaves the EU. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for EU Exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for EU Exit day in the absence of a Northern Ireland Executive. In the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have, therefore, decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.
- 7.2 The SEA Directive requires plans or programmes likely to have significant effects on the environment to undergo an environmental assessment before being adopted. This instrument makes the minimum changes required to ensure that the requirements in terms of SEA, within the policy areas for which DAERA has responsibility in Northern Ireland, remains operable after exit.
- 7.3 The amendments can be broadly categorised as:
- Removing references to provisions being ‘in accordance with EU legislation’ and other references to EU law/obligations, and instead referring to retained EU law/obligations;
 - Copying out definitions within the regulations themselves, instead of referring to definitions that sit within EU Directives, or specifying that references should be to specific ‘versions’ of pieces of EU legislation;
 - Updating references to other sets of legislation that will be changed following EU exit or where an update was required anyway due to the reference being to an out of date piece of legislation;
 - Changing references from ‘Member State level’ to ‘any law of any part of the UK; and

- Updating the provision which requires DAERA to notify ‘other EU Member states’ about transboundary environmental impacts to reflect NI’s new status outside of the EU.

7.4 The EIA Directive requires projects likely to have significant effects on the environment to undergo an EIA before being authorised. This instrument makes the minimum changes required to ensure that all regimes for EIA, within the policy areas for which DAERA is responsible in Northern Ireland, remain operable after exit.

7.5 The amendments can be broadly categorised as:

- Removing references to provisions being ‘in accordance with EU legislation’ and other references to EU law/obligations, and instead referring to retained EU law/obligations;
- Copying out definitions within the regulations themselves, instead of referring to definitions that sit within EU Directives, or specifying that references should be to specific ‘versions’ of pieces of EU legislation;
- Updating references to other sets of legislation that will be changed following Exit or where an update was required anyway due to the reference being to an out of date piece of legislation;
- Changing references from ‘Member State level’ to ‘any law of any part of the UK’; and
- Under the regimes for agriculture, forestry and water resources, updating the provision which requires DAERA to notify ‘other EU Member states’ about transboundary environmental impacts to reflect NI’s new status outside of 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 UK from the EU. The instrument is also made under paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018. 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 current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 No formal consultations were carried out in respect of the SI as its purpose is to resolve operability issues in order to preserve and protect the existing policy regime- it will not introduce any new policy. The instrument helps to fulfil an agreed approach between DAERA and environmental stakeholders in Northern Ireland to make the technical changes necessary to maintain the current approach and standards to environmental protection.

11. Guidance

11.1 There is no associated guidance.

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 A full Impact Assessment has not been prepared for this instrument because we expect it to have no impact on business. The instrument simply maintains existing laws in a way that works for Northern Ireland once the UK leaves the EU. No substantive policy changes will be brought in through this legislation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. There is no substantial impact on small businesses.

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 Mark Preston, Department of Agriculture, Environment and Rural affairs (DAERA) Telephone: 02890569314 or email Mark.Preston@daera-ni.gov.uk and Ken Bradley, Department of Agriculture, Environment and Rural affairs (DAERA) Telephone: 02890569597 or email Ken.Bradley@daera-ni.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Small, Head of Environment, Marine and Fisheries Group at the Department of Agriculture, Environment and Rural Affairs, can confirm that this explanatory memorandum meets the required standard.

15.3 Dr Thérèse Coffey MP, Parliamentary Under Secretary of State for Environment at the Department for Environment, Food and Rural Affairs (Defra) 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 European Union (Withdrawal) Act 2018	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.

		instruments	
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) of the European Communities Act 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) of the European Communities Act 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) of the European Communities Act 1972, 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) of the European Communities Act 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) of the European Communities Act 1972.	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 Environment, Dr Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 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 the instrument does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. These corrects deficiencies in retained legislation in the fields of environmental impact assessment in agriculture, forestry and water resources, along with the environmental assessment of plans and programmes, arising out of the UK’s withdrawal from the EU. The instrument makes changes of a minor and technical nature only, to ensure the continued effective operability of the legislation after exit.”

2. Appropriateness statement

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

“In my view the Environmental Impact Assessment (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate.”

- 2.2 This is the case because the amendments the instrument makes are minor and do no more than is strictly necessary to ensure the legislation amended functions correctly once the UK has left the EU.

3. Good reasons

- 3.1 The Parliamentary under Secretary of State for Environment, Dr 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 The provisions will ensure that the legislation amended by this instrument continue to function effectively in Northern Ireland once the UK has left the EU.

4. Equalities

- 4.1 The Parliamentary under Secretary of State for Environment, Dr Thérèse Coffey MP, 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 Parliamentary under Secretary of State for Environment, Dr 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, Dr Thérèse Coffey, 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.”