

EXPLANATORY MEMORANDUM TO

THE ENVIRONMENT (LEGISLATIVE FUNCTIONS FROM DIRECTIVES) (EU EXIT) REGULATIONS 2019

2019 No. 1350

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

2. Purpose of the instrument

- 2.1 This instrument transfers a series of legislative functions that are currently conferred by European Union (“EU”) Directives upon the European Commission (“the Commission”), to be exercisable instead by public authorities in the United Kingdom (“the UK”), so that they can be exercised at national level after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The EU Directives concerned relate to a number of environmental policy areas: air quality, environmental noise, infrastructure for spatial information, marine and water quality.
- 2.3 The relevant Directives confer, in each case, one or more legislative functions on the Commission, so that it can develop the technical details of the specific regime, and amend them whenever necessary, without the frequent need for additional amending Directives.
- 2.4 Examples of these functions include specifying technical methods to be used and updating technical annexes to reflect advances in scientific and technical knowledge.

Why is it being changed?

- 2.5 While it is not possible to amend Directives, the powers in the European Union (Withdrawal) Act 2018 enable the legislative powers they confer on the Commission to be transferred into domestic law. Without doing this, there would be no, or a limited, ability to make the kind of minor, technical changes to legislation that the powers cover without having to use primary legislation on every occasion. This would make changing such details very slow and cumbersome, and would remove flexibility to respond to scientific and technical changes. This instrument does not itself make any substantive policy changes.

What will it now do?

- 2.6 The instrument will enable the domestic law which implements the various Directives to continue to function in a similar way to how it does now. This instrument confers powers on the Secretary of State and, in relation to devolved matters, the “appropriate authority” (see paragraph 7.4 below), instead of the Commission, to exercise the

specified legislative functions which will be able to make or amend domestic legislation, and converts the EU procedures to UK procedures as appropriate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument creates legislative powers for the Secretary of State or, where matters are devolved, for the “appropriate authority” (see paragraph 7.4 below) in line with powers of the Commission in the relevant Directives. These functions fall within the environment policy areas of Defra. Defra has decided to deal with these in a single instrument, which is subject to the affirmative resolution procedure. This is done in order to allow the “home” instruments, which would otherwise separately transfer each legislative function, to be subject to the negative resolution procedure (in most cases), and for the conferral of these similar functions to be considered together.

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 The territorial application of this instrument includes Scotland and Northern Ireland.
- 3.3 The powers under which this instrument is made cover the entire UK (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the UK.
- 4.2 The territorial application of this instrument, other than Part 5, is the UK.
- 4.3 The territorial application of Part 5 is the marine strategy area. This area includes territorial seas, including coastal waters as defined by the Water Framework Directive (Directive 2000/60/EC), and offshore waters out to the limits of the UK’s renewable energy zone. The marine strategy area also includes areas of the UK’s Continental Shelf beyond the renewable energy zone, but for these areas the instrument applies only to the seabed and not the water column above it.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 The European Union (Withdrawal) Act 2018 converts much of EU law into domestic law on exit day. It also confers temporary powers to make secondary legislation, to enable deficiencies in retained EU law to be addressed. This instrument relies upon those powers, in sections 8(1) of, and paragraph 21 of Schedule 7 to the Act, to allow the creation of regulation-making powers, similar to those conferred on the Commission by Directives, as the lack of these powers in retained EU law is considered a deficiency (see section 8(2)(f)).

7. Policy background

What is being done and why?

- 7.1 As part of the corrections to address deficiencies in the domestic legislation which implements the relevant EU environmental Directives, it is desirable for the Secretary of State or the “appropriate authority” (see paragraph 7.4 below) to have regulation-making powers to make minor and technical changes to the regimes in the same way that the Commission can currently do. The Commission’s powers in the Directives include enabling Annexes to Directives to be updated, usually as a result of scientific and technical progress, and allowing the Commission to specify various technical rules and standards. Giving the Secretary of State or the “appropriate authority” these powers means that primary legislation will not be required when such changes to the domestic regimes are needed, for example to keep up to date with the latest scientific understanding.
- 7.2 The way the powers are drafted reflects the circumstances of the particular regime. For example, where the Commission’s power was to issue an EU Decision or Regulation, which is incorporated into domestic law (by operation of the European Union (Withdrawal) Act 2018), the power includes the ability to amend that Decision or Regulation. Examples are in Part 4 where the Commission’s powers in the INSPIRE Directive were used to adopt a number of Decisions and Regulations which will form part of retained EU law, and therefore should be amendable in the future by the Secretary of State or the “appropriate authority”. In other cases, Annexes to an EU Directive have been transposed into domestic law either by copying out their content, or by cross-referring to them. Where the Commission’s power is to amend those Annexes, the power for Ministers includes the ability to amend domestic legislation which corresponds to the content of the relevant Annex, or to modify a cross-reference to that Annex as a way of updating it. Examples are in Part 6, where the powers enable changes to be made in a number of ways.
- 7.3 Where matters are devolved, except where specifically indicated otherwise below, the powers are to be exercised in each case by the “appropriate authority”, by regulations which are subject to the negative resolution procedure. The negative procedure is appropriate due to the minor and technical nature of the scope of the powers.
- 7.4 “Appropriate authority”, except where indicated below, means: in relation to England, the Secretary of State; in relation to Wales, the Welsh Ministers; in relation to Scotland, the Scottish Ministers; and in relation to Northern Ireland, the Department for Agriculture, Environment and Rural Affairs.
- 7.5 In most cases, where a power is to be exercised by a Devolved Administration, it will also be possible for the Secretary of State to exercise the power on behalf of one or more Devolved Administrations, but only where the relevant Devolved Administration consents. This will facilitate efficient and consistent legislation to implement shared policy.
- 7.6 **Part 2** of these Regulations covers Directives relating to air quality. These Directives cover emissions of volatile organic compounds (“VOCs”), ambient air quality, industrial emissions, emissions from medium combustion plants and the reduction of national emissions from certain atmospheric pollutants. A list of the provisions of the Directives where the Commission’s powers are found is set out below. Chapter 1 of Part 2 (regulations 3 and 4) sets out interpretative and definitional provisions.

- 7.7 Chapter 2 of Part 2 covers Directive 2004/42/CE of the European Parliament and of the Council on the limitation of emissions of VOCs, which aims to reduce VOCs in certain paints and varnishes, and vehicle refinishing products, in order to prevent or reduce air pollution resulting from the contribution of VOCs to the formation of tropospheric ozone. Regulations 5 and 6 confer powers to specify the format for monitoring data, and to update specified technical details of the Directive in light of technical progress. These are reserved matters, and the powers are therefore conferred upon the Secretary of State to be exercised for the whole of the UK.
- 7.8 Chapter 3 of Part 2 covers Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe, which sets legally binding limits for concentrations in outdoor air of major air pollutants that impact public health, such as particulate matter (PM_{2.5}) and nitrogen dioxide (NO₂). Regulation 7 confers a power on the appropriate authority (see paragraphs 7.4 and 7.5 above) to update certain Annexes to the Directive, limited to what the Directive describes as “non-essential elements”. Regulation 7 also lists a series of issues, in relation to which this power *cannot* be exercised, such as changes to limit values and exposure reduction targets, reflecting the limits on the Commission’s power in the Directive.
- 7.9 Chapter 4 of Part 2 covers Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), which lays down rules on integrated prevention and control of pollution arising from certain industrial activities. Regulations 8, 9 and 10 confer powers on the appropriate authority (see paragraphs 7.4 and 7.5 above) to amend legislation which transposes certain Annexes for the purpose of updating them due to scientific and technical progress; a power to specify rules for determining start-up and shut-down periods for the purpose of certain plants covered by the Directive; and a power to make provision in respect of the type, format and frequency of certain information that has to be prepared by appropriate authorities in accordance with the relevant Commission Implementing Decision.
- 7.10 Chapter 5 of Part 2 covers Directive 2015/2193/EU of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from medium combustion plants, which lays down rules to control emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x) and dust into the air from medium combustion plants, and rules to monitor emissions of carbon monoxide (CO). Regulation 11 confers a power on the appropriate authority (see paragraphs 7.4 and 7.5 above) to update legislation transposing certain annexes in light of scientific and technical progress.
- 7.11 Chapter 6 of Part 2 covers Directive 2016/2284/EU of the European Parliament and the Council on the reduction of national emissions of certain atmospheric pollutants, which establishes the emission reduction commitments for the Member States' anthropogenic atmospheric emissions of specified pollutants, requires that national air pollution control programmes be drawn up, adopted and implemented, and that emissions of specified pollutants, as well as their impacts, be monitored and reported. Regulations 12 and 13 confer powers on the Secretary of State to specify detailed rules for the purposes of derogations permitted under the Directive, and to set the format of the national air pollution control programme that must be prepared under the Directive; and a power to update legislation transposing certain annexes to the Directive in light of scientific and technical progress. Regulation 14 provides that the

Secretary of State may make regulations under regulations 12 and 13 for Wales, Scotland or Northern Ireland only with the consent of the relevant Devolved Administration. The Secretary of State must also have regard to requests from Devolved Administrations to make regulations under regulations 12 and 13.

- 7.12 Chapter 7 of Part 2 (regulation 15) provides that, before making any regulations under Part 2, the Secretary of State or the appropriate authority (as the case may be) must consult such bodies or persons as appear representative of interests likely to be substantially affected by any proposed regulations; and any other persons considered appropriate.
- 7.13 The Commission's powers which are being transferred by Part 2 are set out in the following table:

<i>Provision of this SI</i>	<i>Directive</i>	<i>Location of Commission power</i>	<i>Relevant EU tertiary legislation</i>
Regulation 5	The VOCs in Paints Directive (2004/42/CE)	Article 7 (second to last sentence)	Commission Implementing Decision 2015/6674/EU
Regulation 6	As above	Article 11	
Regulation 7	The Ambient Air Quality Directive (2008/50/EC)	Article 28(1)	
Regulation 8	The Industrial Emissions Directive (2010/75/EU)	Article 74	
Regulation 9	As above	Article 41(a)	Decision 2012/249/EU
Regulation 10	As above	Article 72(2)	Decision 2018/1135/EU
Regulation 11	The Medium Combustion Plants Directive (2015/2193/EU)	Article 13	
Regulation 12	The National Emission Ceilings Directive (2016/2284/EU)	Article 5(7)	Decision 2018/1522
Regulation 13	As above	Article 6(8), 8(7), 9(3)	

- 7.14 **Part 3** of these Regulations covers Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise, which defines a common approach intended to avoid, prevent or reduce on a prioritised basis the harmful effects, including annoyance, due to exposure to environmental noise. Regulation 16 confers a power on the appropriate authority (see paragraphs 7.4 and 7.5 above) to update specified technical aspects of the Directive in the UK's transposing legislation (supplementary noise indicators and assessment methods for noise indicators) in light of scientific and technical progress. The relevant Commission power which is being transferred is found in Article 12 of the Directive.

- 7.15 **Part 4** of these Regulations covers Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), which lays down general rules aimed at the establishment of INSPIRE, for the purposes of Community environmental policies and policies or activities which may have an impact on the environment. Chapter 1 of Part 4 (regulations 17 and 18) sets out interpretative and definitional provisions for Part 4. Regulation 18 defines “appropriate authority” for Part 4 as the Secretary of State in relation to England, Wales and Northern Ireland; and Scottish Ministers in relation to Scotland. This is because INSPIRE is devolved only in relation to Scotland. The Secretary of State may also make regulations that apply to Scotland if Scottish Ministers consent.
- 7.16 Chapter 2 of Part 4 (regulations 19 to 22) confers a power on the appropriate authority to make provision in relation to: metadata for spatial data sets and services; interoperability and harmonisation of spatial data sets and services; network services for spatial data sets and services; and monitoring and reporting of infrastructures for spatial information. Each of these includes power to amend the relevant EU Decisions and Regulations which will be incorporated into domestic law on exit day. As the Directive specified the matters that must be included by the Commission in those Decisions and Regulations, the powers conferred by Chapter 2 ensure that any provision made using those powers must continue to satisfy that requirement.
- 7.17 The Commission’s powers which are being transferred by Part 4 are set out in the following table:

<i>Provision of this SI</i>	<i>Directive</i>	<i>Location of Commission Power</i>	<i>Relevant EU tertiary legislation</i>
Regulation 19	Directive 2007/2/EC establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)	Article 5(4): metadata	Commission Regulation (EC) No 1205/2008
Regulation 20	As above	Articles 7(1), (4) and (5) and 8(2) to (4): interoperability of spatial data sets and services	Commission Regulation (EU) No 1089/2010
Regulation 21	As above	Articles 12 and 16: network services	Commission Regulation (EC) No 976/2009
Regulation 22	As above	Article 21(2) to (4): monitoring and reporting of infrastructures for spatial information	Commission Decision 2009/442/EC

- 7.18 **Part 5** of these Regulations covers marine strategy and Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for

community action in the field of marine environmental policy. The Marine Strategy Regulations 2010 (“the MSR”) transpose the Directive for the whole of the UK.

- 7.19 Regulation 23 amends the MSR to provide the Secretary of State with powers to make regulations: (i) laying down specifications and standardised methods for monitoring and assessment (regulation 21 of the MSR); (ii) specifying indicative lists of ecosystem elements, anthropogenic pressures and human activities, an indicative list of characteristics for setting environmental targets, and requirements for monitoring programmes (this power can only be used to reflect scientific and technical developments, and having considered periods for reviewing and updating the marine strategy) (regulation 22 of the MSR); and (iii) specifying standardised methods for the application of qualitative descriptors for determining good environmental status, ecosystem elements, anthropogenic pressures and human activities relevant to marine waters, characteristics to be taken into account for setting environmental targets, and monitoring programmes (regulation 23 of the MSR).
- 7.20 Regulations may be made by the Secretary of State in relation to the whole marine strategy area (see paragraph 4.3 above), to ensure continued high-level consistency. Regulations may be made in relation to Scotland, Wales and Northern Ireland only with the consent of the Scottish Ministers, Welsh Ministers and Department of Agriculture, Environment and Rural Affairs in Northern Ireland, respectively. Regulations which affect or are likely to affect devolved functions may be made only with the consent of the relevant devolved policy authority (defined in the MSR as the Scottish Ministers, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland). The Secretary of State must have regard to any devolved policy authority’s request to make regulations. The Secretary of State has a duty to consult before making any regulations, and a duty to report following consultation.
- 7.21 The Commission’s powers being transferred by Part 5 are set out in the following table:

<i>Provision of the MSR (as inserted by regulation 23 of this SI)</i>	<i>Directive</i>	<i>Location of Commission power</i>
Regulation 21 of the MSR	Marine Strategy Framework Directive (2008/56/EC)	Article 11(4)
Regulation 22 of the MSR	As above	Article 24(1)
Regulation 23 of the MSR	As above	Article 24(2)(a)

- 7.22 **Part 6** of these Regulations covers a series of Directives relating to the water environment (other than marine areas). This is a devolved subject matter. Chapter 1 of Part 6 (regulations 24 to 26) sets out interpretative provisions for Part 6.
- 7.23 Chapter 2 of Part 6 covers Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, which aims to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater. Regulation 27 confers a power on the appropriate authority (see paragraphs 7.4 and

- 7.5 above) to change the requirements for the economic analysis Member States must carry out for river basin management planning. Regulation 28 confers a power on the appropriate authority to specify supplementary technical methods and standards relating to the monitoring of water quality. Both these powers can be used only to reflect scientific and technical developments.
- 7.24 Chapter 3 of Part 6 covers Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration, which establishes specific measures to prevent and control groundwater pollution and depletion. Regulation 29 confers a power on the appropriate authority (see paragraphs 7.4 and 7.5 above) to amend the procedure for establishing threshold values (the thresholds above which a risk of failing to achieve the required standard is indicated), and to amend the related information to be included in river basin management plans. Regulation 30 confers a power on the appropriate authority to make provision about the assessment procedure for determining the chemical status of groundwater bodies. Regulation 31 confers a power on the appropriate authority to make provision about identifying (including specifications about monitoring) upward trends in groundwater pollutants and about reversing those trends.
- 7.25 The powers in regulations 27 to 31 can be used only to reflect scientific and technical developments.
- 7.26 Chapter 4 of Part 6 covers Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, which lays down environmental quality standards (“EQS”) for priority substances and certain other pollutants as provided for in the Water Framework Directive (“the EQS Directive”), with the aim of achieving good surface water chemical status. Regulation 32 confers a power on the appropriate authority (see paragraphs 7.4 and 7.5 above) to amend the watch list of substances set out in Implementing Decision (EU) 2018/840, pursuant to the EQS Directive. This is a list of emerging pollutants which need to be monitored to gather further evidence of their impacts on the aquatic environment, and the substances on it need to be changed from time to time. The power can be used to amend the Decision to add or remove substances from the list, and specifications about monitoring of them. The changes must reflect new or emerging evidence of pollutants posing a risk. Regulation 33 confers a power on the appropriate authority to specify how the EQS for specified metals are to be applied. This can be used only to reflect scientific and technical progress.
- 7.27 Chapter 5 of Part 6 covers Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality, which aims to preserve, protect and improve the quality of bathing waters. Regulations 34 to 36 confer powers on the appropriate authority (see paragraphs 7.4 and 7.5 above) to specify symbols used to provide information to the public about bathing waters; to specify reference methods of analysis for microbiological methods; and about the handling of samples for microbiological analysis. The powers under regulations 35 and 36 can be exercised only to reflect scientific and technical progress.
- 7.28 Chapter 6 of Part 6 covers Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption, which aims to protect human health from the adverse effects of any contamination of water intended for human

consumption by ensuring that it is wholesome and clean. Regulation 37 confers a power on the appropriate authority (see paragraphs 7.4 and 7.5 above) to make provision specifying the requirements for monitoring programmes for drinking water, including the standards for sampling and the standards for the methods of analysis used for monitoring. This power can be exercised only to reflect scientific and technical progress. Before exercising this power, the appropriate authority must consult the drinking water regulator for the relevant part of the UK, and any other persons the appropriate authority considers appropriate.

- 7.29 Chapter 7 of Part 6 covers Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, which concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors and aims to protect the environment from the adverse effects of such waste water discharges. Regulation 38 defines terms used in Chapter 7. Regulations 39 to 41 confer powers on the appropriate authority (see paragraphs 7.4 and 7.5 above) to make provision about the collecting systems for urban waste water; and requirements for discharges from urban waste water treatment plants and of industrial waste water, reflecting the content of Annex I to the Directive, which the Commission is able to update.
- 7.30 Chapter 8 of Part 6 covers Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, which has the objective of reducing water pollution caused or induced by nitrates from agricultural sources and preventing further such pollution. Regulations 42 to 44 confer powers on the appropriate authority (see paragraphs 7.4 and 7.5 above) to specify the criteria for identifying waters vulnerable to nitrate pollution; to make provision about measures to be included in action programmes to reduce pollution by nitrates from agricultural sources; and to make provision about reference methods of measurement for nitrate concentration. These powers can be exercised only to reflect scientific and technical progress.
- 7.31 Chapter 9 of Part 6 covers Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture. The Directive aims to regulate the use of sewage sludge in agriculture in such a way as to prevent harmful effects on soil, vegetation, animals and humans. Regulation 45 confers a power on the appropriate authority to make provision about technical aspects of testing sludge and agricultural soil. The power can be exercised only to reflect scientific and technical progress.
- 7.32 Chapter 10 of Part 6 (regulation 46) provides that the appropriate authority must, before making regulations under any part of Part 6 (except for Chapter 6, which has its own consultation requirements), consult the appropriate agency (defined by regulation 26) and any other persons the appropriate authority considers appropriate.
- 7.33 The Commission’s powers which are being transferred by Part 6 are set out in the following table:

<i>Provision of this SI</i>	<i>Directive</i>	<i>Location of Commission power</i>	<i>Relevant EU Tertiary legislation</i>
Regulation 27	Water Framework Directive (2000/60/EC)	Article 20(1) - power to amend Annex 3	

Regulation 28	As above	Article 8(3), and Article 20(1) – power to amend section 1.3.6 of Annex 5	Commission Directive 2009/90/EC
Regulation 29	Groundwater Directive (2006/118/EC)	Article 8 - power to amend Parts A and C of Annex 2	
Regulation 30	As above	Article 8 – power to amend Annex 3	
Regulation 31	As above	Article 8 – power to amend Annex 4	
Regulation 32	Environmental Quality Standards Directive (2008/105/EC)	Article 8b(5)	Commission Implementing Decision (EU) 2018/840
Regulation 33	As above	Article 3(8) - power to amend Annex 1, Part B, point 3	
Regulation 34	Bathing Water Directive (2006/7/EC)	Article 15(1)(a) in relation to Article 12(1)(a) and (4)	Commission Implementing Decision 2011/321/EU
Regulation 35	As above	Article 15(2)(a) in relation to Article 3(9) Article 15(2)(b) in relation to Annex 1	Commission Decision (EU) 2017/1583
Regulation 36	As above	Article 15(2)(c) in relation to Annex 5	
Regulation 37	Drinking Water Directive (98/83/EC)	Article 11(2) in relation to Annexes 2 and 3	
Regulation 39	Urban Waste Water Treatment Directive (91/271/EEC)	Article 3(2) in relation to section A of Annex 1	
Regulation 40	As above	Article 4(3), 5(3) and 12(3) in relation to section B of Annex 1	
Regulation 41	As above	Article 11(2) in relation to section C of Annex 1	
Regulation 42	Nitrates Directive (91/676/EEC)	Article 8 in relation to Annex 1	
Regulation 43	As above	Article 8 in relation to Annex 3	
Regulation 44	As above	Article 8 in relation to Annex 4	
Regulation 45	Sludge Directive (86/278/EEC)	Article 13(2) in relation to the Annexes to the Directive	

7.34 **Part 7** (regulations 47 and 48) sets out the procedural requirements applicable to all the regulation-making powers in this instrument, and also provides that each power includes power to make consequential, supplemental, transitional etc. provision.

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. 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 consolidate any other provisions.

10. Consultation outcome

10.1 This instrument was not subject to consultation. Regulations made using the powers conferred by this instrument will be subject to the consultation requirements specified in the instrument.

10.2 This instrument and the policy reflected in it have been developed in collaboration with the Devolved Administrations.

11. Guidance

11.1 Guidance is not being provided in relation to 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 creates regulation-making powers rather than changing any policy. Regulations made using the powers conferred will be subject to impact assessments where appropriate.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was that the instrument creates regulation-making powers. When regulations come to be made using the powers conferred, the impacts on small business will fall to be considered and minimised at that stage.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that Defra, as well as the Devolved Administrations in relation to devolved matters, will monitor and review the impact of the instrument as part of their standard policy-making procedures.

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

15. Contact

- 15.1 Duncan Mitchell at Defra (telephone: 07887 821369; or email: duncan.mitchell@defra.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Sarah Swash, Deputy Director for EU Exit and Environmental Regulations at Defra, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment at 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 procedure 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 Equality 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 2018 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 s. 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 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s. 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 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. Appropriateness statement

- 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 Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because they create regulation-making powers for UK authorities as appropriate given the nature of the functions concerned.

2. Good reasons

- 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 there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 2.2 This is the case because, without this instrument, there would be a reduced ability to keep various domestic legislation implementing EU Directives up to date.

3. Equalities

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

- 3.2 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, Thérèse Coffey 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”.

4. Explanations

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