

EXPLANATORY MEMORANDUM TO

THE WATER AND FLOODS (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 32

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 The Water and Floods (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 ensure that flood and water-related legislation will continue to be operable in the United Kingdom (UK) after it leaves the European Union (EU). The instrument addresses deficiencies in the retained EU law arising from the UK's withdrawal from the EU. The purpose of the instrument is to preserve and protect the existing policy regime, it will not introduce any new policy.

- The instrument amends:
- The Water and Sewerage Services (Northern Ireland) Order 2006 (N.I. 21) (“the 2006 Order”);
- The Water Supply (Water Fittings) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 255) (“the Water Fittings Regulations”); and
- The Water Environment (Floods Directive) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 376) (“the Floods Directive Regulations”).

The instrument makes technical amendments to the above legislation. Part 2 amends a Northern Ireland Order in Council and Part 3 amends Northern Ireland Statutory Rules.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The function of the EU law in this area is to protect and improve the water environment from various sources of pollution e.g. from agriculture and urban sources; it is also about protecting human health by preventing contamination of drinking water and bathing waters.

The Construction Products Regulation (305/2011/EU - CPR) establishes harmonised conditions for the marketing of construction products. The CPR ensures reliable information on construction products in relation to their performance. This is achieved by providing a “common technical language” and offering uniform methods for the assessment of construction products’ performance. This Regulation is implemented in Northern Ireland by the Water Supply (Water Fittings) Regulations (Northern Ireland) 2009 and this instrument amends those regulations.

This instrument also amends the transposing legislation of Directive 2007/60/EC on the assessment and management of flood risks namely; the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009. The Directive requires Member States to assess if all water courses and coast lines are at risk from flooding, to map the flood extent, to assess the risk to assets and humans in these areas, and to take adequate and coordinated measures to reduce this flood risk. This Directive also reinforces the rights of the public to access this information and to have a say in the planning process. The obligations of this Directive are to be carried out in coordination with the Water Framework Directive (WFD) 2000/60/EC, notably by the coordination of flood risk management plans and river basin management plans.

Why is it being changed?

- 2.3 This instrument makes several minor and technical amendments to deficiencies in the legislation listed at paragraph 2.1, and some other pieces of domestic legislation, to ensure the legislation works effectively after exit. Some of the changes are described in the following paragraphs.

Cross-references in domestic legislation to provisions in EU Directives where the UK, as a Member State, is obliged to collaborate with other Member States, have been removed. These changes have been made because the UK will no longer be mandated by, or have a mechanism to take part in, EU procedures and processes.

Amendments that will ensure that after EU exit, when the UK becomes a third country, regulations such as the Water Supply (Water Fittings) Regulations (Northern Ireland) 2009, reflect the UK's new status. This instrument removes the provision on preferential treatment given to products with EU or EEA markings for use in plumbing systems, water fittings and other water-using appliances.

Amendments are being made that will remove cross-references to provisions in Directives requiring Member States to inform the EU Commission of certain actions, for instance reporting to the EU Commission on the implementation of the Floods Directive. As the UK will no longer be reporting to the Commission on that Directive, it is appropriate to revoke that requirement.

What will it now do?

- 2.4 The instrument will ensure that the EU derived law, in relation to water and flooding, will operate effectively in the UK after it leaves the EU. By making the proposed instrument, the existing policy regime will be maintained and the certainty which this provides, as the UK leaves the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Water and Floods (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 21 November 2018. On 27 November 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 limited to Northern Ireland.
4.2 The territorial application of this instrument is limited to Northern Ireland.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, Thérèse Coffey MP, has made the following statement regarding Human Rights:
“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 key legislative context for this instrument is set out at paragraph 2 above.
6.2 This instrument amends the Water and Sewerage Services (Northern Ireland) Order 2006, the Water Supply (Water Fittings) Regulations (Northern Ireland) 2009, and the Water Environment (Floods Directive) Regulations (Northern Ireland) 2009 to address deficiencies arising from the UK’s exit from the EU. The instrument is made in exercise of the powers provided for by the European Union (Withdrawal) Act 2018 to make minor and technical amendments to the retained EU law in water and floods, listed in paragraph 2.1, to address deficiencies arising from the UK’s withdrawal from the EU.

7. Policy background

What is being done and why?

- 7.1 The UK is currently part of the EU that sets standards regarding the quality of Member State’s water environment which includes, for example, rivers, lakes, groundwater, bathing and drinking water. The primary goal of this EU policy framework is to ensure a healthy and sustainable supply of water for people and the environment across a range of uses. The policy framework, therefore, requires managing sources of pollution to water from chemicals, agriculture and urban sources.
7.2 This instrument applies to water and flooding which are transferred matters for Northern Ireland under the Northern Ireland Act 1998. 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 necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one year away, and 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 necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument. This instrument addresses deficiencies arising from the UK's withdrawal from the EU. Among other modifications, the instrument amends references to 'an EEA state' and 'EEA Agreement', to reflect the UK's new status when it exits the EU.

These amendments are the extent of this instrument's purpose; the intention is to maintain the status quo and keep the regimes functioning as they do now. As a result there are not expected to be any significant impacts arising from this instrument.

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 European Union. 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 this instrument.

10. Consultation outcome

10.1 This instrument has been prepared in discussion and collaboration with Department for Infrastructure officials in Northern Ireland who have engaged with the Departmental Solicitor's Office, Northern Ireland in drafting the text. Northern Ireland officials did not consider further consultation necessary as the instrument is making minor, technical changes due to the UK withdrawal from the EU.

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 An Impact Assessment has not been prepared for this instrument because it has no impact on business or charities.

13. Regulating small business

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

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 Julie Ann Dutton at the Department for Infrastructure (DfI) Northern Ireland Telephone: 028 9054 0836 or email: julie-ann.dutton@infrastructure-ni.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Linda MacHugh at the Department for Infrastructure (DfI) Northern Ireland can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Thérèse Coffey MP, Parliamentary Under Secretary for the 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 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

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

“In my view the Water and Floods (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 it is considered to be low risk, as it is simply making the minimum changes required to maintain the operability of the relevant regimes. In addition, given that this instrument is not acting beyond the scope of the Withdrawal Bill’s operability powers, it is unlikely it will attract a debate.

2. Appropriateness statement

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

“In my view the Water and Floods (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is because the purpose of this instrument is to ensure that the relevant regimes remain operable after the UK withdraws from the European Union. This will be achieved using the operability powers in the Withdrawal Bill in order to make simple drafting fixes to reflect the UK’s new status.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, 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 These are, if this legislation was not progressed this would result in an incomplete statute book on day one of the UK’s withdrawal from the EU. This could have a negative impact the function and operations of the Department for Infrastructure in Northern Ireland.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, 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, Food and Rural Affairs, 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, the Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, 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. This Act does not extend to Northern Ireland, and as the Water and Floods (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland.”