

EXPLANATORY MEMORANDUM TO

THE OZONE-DEPLETING SUBSTANCES AND FLUORINATED GREENHOUSE GASES (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. 1616

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.

2. Purpose of the instrument

- 2.1 This instrument implements the Protocol on Ireland / Northern Ireland (“the Protocol”) for restricting the use of ozone depleting substances (“ODS”) and fluorinated greenhouse gases (“F gases”), as required for implementation period completion day. This will be done by making changes to the previous EU Exit SI (The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/583), so that the UK can properly implement relevant EU law in Northern Ireland only. It also amends dates to prevent errors of law caused by dates currently falling before the end of the implementation period.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument will help ensure the UK meets its obligations under the Protocol in respect of restricting the use of F gases and ODS, by amending the previous EU Exit SI which amended the principal EU Regulations for F gases and ODS (Regulation (EU) No 517/2014 on fluorinated greenhouse gases (“the F gas Regulation”) and Regulation (EC) No 1005/2009 on substances that deplete the ozone layer (“the ODS Regulation”)) (and related implementing legislation), so that the UK can properly implement relevant EU law in Northern Ireland only. The EU ODS and F gas Regulation restrict the use of ODS and F gases, in order to protect the ozone layer and mitigate climate change.
- 2.3 We are laying this instrument now to amend the previous EU Exit SI because we need to provide the legislative framework for regulating F gases and ODS in Great Britain. This is necessary to ensure the implementation of the Protocol.
- 2.4 The ODS Regulation bans all ODS, with derogations for essential uses and where no technically feasible alternatives are available. Producers and users of ODS must apply to the European Commission each year for a quota which, if granted, sets a quantitative limit on the amount they can use for certain permitted uses. All imports and exports of ODS between the EU and third countries must be licensed by the Commission and companies must report to the Commission on their use of ODS annually. Through the ODS Regulation, the EU and the UK comply with their legally binding UN obligations under the UN Montreal Protocol on Substances that Deplete the Ozone Layer (“the Montreal Protocol”).
- 2.5 The F gas Regulation requires a 79% cut in the use of hydrofluorocarbons (“HFCs”), which are the main group of F gases and are potent greenhouse gases, between 2015

and 2030 in order to mitigate climate change. The F gas Regulation is phasing down the amount of HFCs that can be placed on the EU market by allocating steadily-reducing quotas to HFC producers and importers. This quota allocation process is the main mechanism by which the EU and the UK will meet their international obligations to phase down HFCs under the Kigali Amendment to the Montreal Protocol, which came into force in 2019.

- 2.6 The F gas Regulation also bans F gases in certain applications and sets requirements for leak checks, leakage repairs and recovery of used gas. In addition, all technicians handling F gases must be trained in their safe use and be certified.

Why is it being changed?

- 2.7 The Protocol requires that the EU F gas and ODS Regulations will remain applicable to and in the United Kingdom in respect of Northern Ireland. This instrument makes necessary amendments to the previous EU Exit SI to implement the Protocol, so that the UK retained EU legislation on F gas and ODS does not apply in Northern Ireland and only applies to and in Great Britain. This instrument will also amend dates that fell before the end of the implementation period to prevent errors of law.

What will it now do?

- 2.8 This instrument corrects operability deficiencies necessary for the implementation of the Protocol. In particular it amends the previous EU Exit SI (The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/583). The previous EU Exit SI, as amended by this instrument, will transfer powers previously held by the EU Commission to England, Scotland and Wales.
- 2.9 This instrument introduces provisions to control the movement of F gases and ODS between Great Britain and Northern Ireland. These provisions define that this movement will be deemed as imports/exports for the purposes of F gas and ODS trade. Controlling F gas and ODS trade between Great Britain and Northern Ireland is vital to maintain the integrity of the Great Britain (and EU) F gas and ODS systems, implement the Protocol and to ensure the UK remains compliant with its international obligations under the Montreal Protocol.
- 2.10 The Scottish and Welsh Devolved Administrations have the power under the previous EU Exit SI, as amended by this instrument, to establish and operate their own systems if they choose to.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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.

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.
- 4.3 The retained law listed at paragraph 2.2 above is incorporated into domestic law under the European Union (Withdrawal) Act 2018 except insofar as it applies to Northern Ireland for the purposes of the Protocol. The Protocol instead applies the EU law provisions in Northern Ireland.

5. European Convention on Human Rights

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

“In my view the provisions of the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the previous EU Exit SI, which amended Regulation (EU) No 517/2014 on fluorinated greenhouse gases, Regulation (EC) No 1005/2009 on substances that deplete the ozone layer, related EU implementing legislation, The Ozone-Depleting Substances Regulations 2015 (SI 2015/168) and The Fluorinated Greenhouse Gases Regulations 2015 (SI 2015/310). This is necessary to implement the Protocol and update dates that fell before the implementation period completion day. Specifically, the main changes to the previous EU Exit SI are to implement the Protocol:

- Where relevant, references to “the United Kingdom” have been replaced with “Great Britain”. In some instances this instrument substitutes the changes made in the previous EU Exit SI and makes direct amendments to the principal EU Regulations. For example, changing references from “the customs territory of the Community” and “the Union” to “Great Britain”;
- Provisions relating to the UK-wide quota, licensing and reporting systems have been amended to enable the UK, Scottish and Welsh Governments to set up their own systems within Great Britain;
- The F-gas baseline reference period (used to set quota levels) has been amended from 2015-2017 to 2015-2019;
- Placing on the market has been limited from UK to Great Britain;
- Maximum limit values for the use and emission of certain ozone depleting substances have been reduced to 12.0% of the EU values, on the basis that when the EU ODS Regulation was made in 2009, the population of Great Britain comprised 12.0% of the population of the EU; and
- Introduction of provisions to control the movement of gases, substances and equipment between Northern Ireland and Great Britain, as it is necessary to secure compliance with the UK’s international obligations under the Montreal Protocol. Control of movement between Northern Ireland and Great Britain is also critical to ensure that the integrity of the Great Britain and EU F gas and ODS quota and licensing systems are maintained.

- 6.2 Other changes have been included to make minor, technical amendments to the previous EU Exit SI. Specifically, these changes update dates that fall before the end

of the implementation period to ensure that the measures to which they relate continue to operate effectively.

7. Policy background

What is being done and why?

- 7.1 Under the Montreal Protocol, ODS have largely been phased out in developed countries. ODS are permitted only in essential applications where no alternatives are available, such as fire extinguishers in ships and aircraft, laboratory and analytical uses, and as feedstock for other chemicals. Their use is tightly controlled and monitored: imports and exports must be licensed and annual reports on production and consumption must be submitted to the UN Ozone Secretariat. At present, the European Commission undertake most of these control functions on behalf of the UK, including submitting aggregated EU data to the UN Ozone Secretariat.
- 7.2 F gases largely replaced ODS and although they do not harm the ozone layer they are powerful greenhouse gases. They are used in refrigeration, air-conditioning, insulation foams, electrical equipment, aerosol sprays, medical inhalers, solvents, fire extinguishers and other industrial applications. The 2016 Kigali Amendment to the Montreal Protocol requires developed countries to begin to phase down HFCs (the main group of F gases) from January 2019. The EU decided to take action before the Kigali Amendment was agreed at the UN and began reducing the use of HFCs from 2015 through the F gas Regulation. The EU F gas Regulation fulfils our UN Montreal Protocol obligations. The emission reductions that the F gas Regulation will deliver are factored into the UK's carbon budget calculations and emissions reduction targets under the UK Climate Change Act 2008, and Scotland's targets under the Climate Change (Scotland) Act 2009.
- 7.3 The UK will continue to restrict the use of ODS and to phase down the use of HFCs after end of the implementation period by transferring as closely as possible the requirements of the ODS and F gas Regulations into UK law. This will enable us to continue to meet international and domestic obligations in a way that minimises disruption to business.
- 7.4 Failure to make this instrument would have the effect of creating uncertainty about the operation of retained EU law in Great Britain (because the existing EU Exit amendments assumed the retained law would apply throughout the UK). In addition, there would be no controls on the movement of gases etc. from Northern Ireland into Great Britain. There would also be some errors in law relating to out of date provisions in the previous EU Exit SI.
- 7.5 There would also be some errors in law relating to out of date provisions in the previous EU Exit SI. This would have particular impact on calculating reference values and quota allocations for F gases (specifically HFCs) in Great Britain. This would have a real world impact on businesses, as some companies might not receive quota who should be entitled to it and quota allocated for some companies would be higher than it should.

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(1) and section 8C of the European Union (Withdrawal) Act 2018, in order to implement the Protocol and

correct dates that fall before the end of the implementation period to prevent errors in law. 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 No consolidation is required.

10. Consultation outcome

- 10.1 Detailed, technical guidance will be published on how the ODS and F-Gas systems will operate in Great Britain from the end of the implementation period and issued to businesses by Defra, the Environment Agency and the Devolved Administrations. Officials will also conduct targeted engagement with industry, including the relevant sector trade bodies, EU quota holders, equipment manufacturers and environmental groups to answer any questions/concerns raised.
- 10.2 The Environment Agency contacted relevant EU HFC quota holders requesting data on how much gas they placed on the market in Great Britain. The data provided by those companies wishing to continue placing F gas on the market in Great Britain will be used to calculate their new Great Britain quota.
- 10.3 The Devolved Administrations were consulted throughout the development of this instrument and agreement between officials on its provisions was reached.
- 10.4 Gibraltar was consulted during the development of the previous EU Exit SI, further consultation with Gibraltar on amendments to the previous EU Exit SI was not needed as these amendments have no impact on Gibraltar or its domestic legislation.
- 10.5 No other Crown Dependency or Overseas Territories of the UK are subject to the EU ODS or F gas Regulations, or affected by this instrument.

11. Guidance

- 11.1 Detailed, technical guidance will be published on how the ODS and F-Gas systems will operate in Great Britain from the end of the implementation period in October 2020. This will be issued to businesses by Defra, the Environment Agency and the Devolved Administrations. This will explain what businesses need to do for registration and application to the new Great Britain ODS and HFC quota systems.

12. Impact

- 12.1 In most cases, the requirements of the EU Regulations and the previous EU Exit SI will remain unchanged, with no additional impact on Great Britain businesses, charities or voluntary bodies. For those aspects where changes must be made, the total aggregate impact is estimated at £686,000 per annum. This estimate comprises the extra administrative burdens on businesses as a result of applying and reporting under separate Great Britain quota, licencing and reporting systems (£61,000), additional only representative costs (£110,000) and the charges which the Environment Agency may decide to levy to recover its administrative costs for running the Great Britain systems (£515,000).
- 12.2 The additional costs on the public sector to maintain IT operations, which will not be recovered through charges, is approximately £200,000 per annum. This estimate will be revisited in more detail once the full life model for the IT system is available.

12.3 A full Impact Assessment has not been prepared for this instrument because the estimated business impact is below the +/- £5m equivalent annual net direct cost to business threshold.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses (employing up to 50 people). For most businesses, there is no additional regulatory burden because the requirements remain the same as under the EU ODS and F gas Regulations. Small businesses producing or importing ODS or F gases will have the extra administrative burden associated with using the new quota, licensing and reporting systems.
- 13.2 All businesses may be charged by the Environment Agency for using the new systems. All charges issued by the Environment Agency must meet the requirements of HM Treasury's Managing Public Money guidance and are not expected to affect small businesses disproportionately.
- 13.3 Many F gas certified technicians work for small businesses. F gas qualifications issued in the UK or EU Member States, will continue to be recognised in Great Britain. Technicians certified in the EU can continue working in Great Britain without needing to re-certify with a UK certification body.

14. Monitoring & review

- 14.1 The F Gas Regulation stipulates that the European Commission must review the Regulation by 2022. This review requirement will be maintained in UK law with the review conducted by the Secretary of State and Scottish and Welsh Devolved Administrations jointly or separately. This review will be used, in particular, to assess the need for further action in light of the availability of alternative chemicals and in order to meet the Montreal Protocol Kigali Amendment requirement to phase down HFCs by 85% by 2036, which goes beyond the EU Regulation phase down of 79% by 2030.
- 14.2 As this instrument is made under the European Union (Withdrawal Act) 2018, no other review clause is required.

15. Contact

- 15.1 Samantha Bedry at the Department for Environment, Food and Rural Affairs Telephone: +44 (0)7867 443405 or email: Samantha.Bedry@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Nick Barter, Deputy Director for Climate, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rebecca Pow MP, Parliamentary Under Secretary of State for the Domestic Environment at the Department for Environment, Food and Rural Affairs 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. |

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| 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) 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. Appropriateness statement

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

“In my view the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because this instrument only makes changes to SI 2019/583 necessary for continued operability and to implement the Protocol in line with the provisions of the European Union (Withdrawal) Act 2018.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for the Domestic Environment, Rebecca Pow 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 These are necessary to ensure operability of the retained EU legislation in UK law, in order for the UK to maintain compliance with domestic and international obligations to protect the ozone layer and mitigate climate change.

3. Equalities

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

“In relation to the instrument, I, Rebecca Pow 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.