

EXPLANATORY MEMORANDUM TO
THE FLUORINATED GREENHOUSE GASES (AMENDMENT) (EU EXIT)
REGULATIONS 2021

2021 No. 543

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and 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 corrects deficiencies in two European Union Implementing Regulations relating to restrictions on the use of fluorinated greenhouse gases (“F-gases”). These corrections are necessary to ensure that the legislation continues to operate effectively following the United Kingdom’s exit from the EU and now that the Transition Period has ended.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument focuses on two EU F-gas Implementing Regulations: Regulation (EU) 2019/661 on ensuring the smooth functioning of the electronic registry for quotas for placing hydrofluorocarbons (“HFCs”) on the market; and Regulation (EU) No 1191/2014 on determining the format and means for submitting the report referred to in Article 19 of Regulation (EU) No 517/2014 on fluorinated greenhouse gases (“the F-gas Regulation”).
- 2.3 Regulation (EU) 2019/661 sets out what information undertakings are required to provide when applying to be registered on the HFC registry, powers of the registry operator and treatment of undertakings with the same beneficial owner that applies for quota. Undertakings with the same beneficial owner will be considered as one for the purposes of HFC quota allocations. Regulation (EU) 2019/661 is necessary to ensure an effective implementation of quota allocations, avoid distortion of quota allocations, and prevent any circumvention or abuse of the requirements for quota allocations.
- 2.4 Article 19 of the F-gas Regulation establishes the reporting obligations concerning the production, import, export, feedstock use, and destruction of the substances listed in Annex I and II of the F-gas Regulation. Undertakings must submit the information required under Article 19 as set out in the established format of Regulation (EU) No 1191/2014.
- 2.5 Regulation (EU) No 1191/2014 is amended by Regulation (EU) 2019/522 as regards the reporting of data on production, imports and exports of polyols containing HFCs pursuant to Article 19 of the F-gas Regulation. In particular, Regulation (EU) 2019/522 introduces new reporting format requirements in order to align the existing reporting format to that which is set out in Decision XXX/10(3) of the Parties to The

Montreal Protocol on Substances that Deplete the Ozone Layer (“the Montreal Protocol”).

Why is it being changed?

- 2.6 This instrument corrects deficiencies in the retained EU law by omitting articles and references where they are not relevant and substituting for alternatives where appropriate. The changes made by this instrument ensure that the requirements of two Implementing Regulations can continue to operate in Great Britain following the UK’s exit from the EU and now that the Transition Period has ended. This will deliver the Government’s objectives of maintaining the same environmental outcomes and minimising disruption to businesses. The EU Implementing Regulations on F-gases will remain directly applicable to, and in, the United Kingdom in respect of Northern Ireland, in accordance with the terms of the Protocol on Ireland / Northern Ireland (“the Protocol”).
- 2.7 We are laying this instrument now to ensure the requirements of the two Implementing Regulations remain operable in Great Britain following the UK’s exit from the EU and now that the Transition Period has ended. We were unable to include the changes made by this instrument in The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2019, SI 2019/583 (“the 2019 EU Exit SI”) because Regulation (EU) 2019/661, and the amendments to Regulation (EU) 1191/2014 made by Regulation (EU) 2019/522, came into force after the 2019 EU Exit SI was laid. The decision to deal with these operability issues separately from action to implement the terms of the Protocol (as addressed by The Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc.) (EU Exit) Regulations 2020, SI 2020/1616) (“the 2020 EU Exit SI”) has been taken in accordance with the parliamentary procedures relating to Protocol legislation.

What will it now do?

- 2.8 This instrument corrects operability deficiencies in two EU Implementing Regulations, specifically Regulation (EU) 2019/661 and Regulation (EU) No 1191/2014. In particular, it provides the appropriate regulators in Great Britain the competence to obtain necessary information from undertakings in order to identify the relevant beneficial owner(s) for quota allocation; and it implements revisions to the reporting format, aspects of which are required under the Montreal Protocol.
- 2.9 In practice, the UK, Scottish and Welsh Governments have agreed to a single GB-wide F-gas registration, quota and reporting system under the overarching F-gas Regulation, administered by the Environment Agency. The Scottish Government and Welsh Government have the power to establish and operate separate systems if they choose to in the future.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 On 29th April 2021 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 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 this 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 Great Britain.
4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument corrects deficiencies in two EU Implementing Regulations relating to F-gases: Regulation (EU) 2019/661 on ensuring the smooth functioning of the electronic registry for quotas for placing HFCs on the market; and Regulation (EU) No 1191/2014 on determining the format and means for submitting the report referred to in Article 19 of the F-gas Regulation.
- 6.2 The two EU Implementing Regulations covered by this instrument are relevant to the F-gas Regulation, which restricts the use of F-gases, in order to mitigate climate change. The F-gas Regulation is retained in UK law as it applies to Great Britain.
- 6.3 The F-gas Regulation requires a 79% cut in the use of HFCs, which are the main group of F-gases and are potent greenhouse gases, between 2015 and 2030 in order to mitigate climate change. This is achieved by phasing down the amount of HFCs that can be placed on the GB market by allocating steadily reducing quotas to HFC producers and importers. This quota allocation process (along with the EU quota allocation process that continues to apply in Northern Ireland in accordance with the Protocol) is the main mechanism by which the UK will meet its international obligations to phase down HFCs under the Kigali Amendment to the Montreal Protocol, which came into force in 2019.
- 6.4 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.
- 6.5 The 2019 EU Exit SI corrects operability deficiencies in the retained F-gas Regulation and related EU implementing acts and returns powers and functions exercised by European Institutions to the Secretary of State, devolved Ministers and regulators. The 2020 EU Exit SI corrects operability deficiencies necessary for the implementation of the Protocol.
- 6.6 This instrument corrects deficiencies in Regulation (EU) 2019/661 and Regulation (EU) No 1191/2014 by omitting references and substituting for appropriate alternatives where necessary, and by returning non-legislative powers and functions exercised by the European Commission to regulatory bodies in each part of Great Britain (appropriate regulators).
- 6.7 The main changes to Regulation (EU) 2019/661 are:

- The definition of “beneficial owner” has been substituted for the relevant definition in UK law;
- Where relevant, references to “Union” have been replaced with “United Kingdom” or “national”;
- Where relevant, references to “Commission” have been replaced with “appropriate regulator”;
- Where relevant, the reference “and the competent authority of the relevant Member State” has been omitted; and
- Where relevant, articles or paragraphs have been omitted where they are not relevant for the operability of the regulations in Great Britain.

6.8 The main changes to Regulation (EU) No 1191/2014 are:

- Where relevant, articles or paragraphs have been omitted where they are not relevant for the operability of the regulations in Great Britain;
- Where relevant, the reference to “Member State” has been replaced with “part of Great Britain”;
- Where relevant, the reference to “EU market” has been replaced with “market”; and
- Where relevant, references to “the EU” have been replaced with “Great Britain”.

6.9 Some changes made by this instrument to Regulation (EU) 2019/661 replace references to “Union” with “United Kingdom” not “Great Britain”. This is due to the requirements on establishing an Only Representative in order for an undertaking to be registered on the GB HFC registry. Undertakings established in Northern Ireland do not require an Only Representative in Great Britain in order to be registered on the registry. Undertakings established outside of Great Britain and Northern Ireland are required to establish an Only Representative in order to be registered on the registry.

7. Policy background

What is being done and why?

7.1 F-gases 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 took action before agreement was reached at the United Nations and began reducing the use of HFCs within the EU from 2015 through the F-gas Regulation. The F-gas Regulation also includes other measures to restrict the release of F-gases.

7.2 The UK will continue to phase down the use of HFCs and implement the wider controls on F-gases following the UK’s exit from the EU through retaining the F-gas Regulation in UK law as it applies in Great Britain. 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, Scotland’s targets under the Climate Change (Scotland) Act 2009, and Wales’ Low Carbon Delivery Plan 2019.

7.3 Failure to make this instrument would mean two Implementing Regulations could not be fully operationalised following the UK's exit from the EU and now that the Transition Period has ended. Regulation (EU) 2019/661 is necessary to ensure effective implementation of quota allocations, avoid distortion of quota allocations and prevent any circumvention or abuse of the requirements for quota allocations. Regulation (EU) No 1191/2014 establishes the format and means for submitting the report referred to in Article 19 of the F-gas Regulation. Operationalising Regulation (EU) 2019/522 which amends Regulation (EU) No 1191/2014 is necessary for UK compliance with Montreal Protocol reporting.

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 No consolidation is required.

10. Consultation outcome

10.1 The Devolved Administrations were consulted throughout the development of this instrument and agreement between officials on its provisions was reached.

11. Guidance

11.1 Detailed guidance on how the F-gas system would operate in Great Britain from the end of the Transition Period was issued in 2020 to businesses by Defra, the Environment Agency and the Devolved Administrations. This explained what businesses need to do for registration and application to the Great Britain HFC quota system.

11.2 Further guidance relating to the provisions of this instrument will be issued to businesses by the appropriate regulator when the regulations come into force. The registration and reporting forms that businesses are required to submit will be updated in accordance with the requirements of the two Implementing Regulations covered by this instrument. Guidance will be provided on .GOV.UK, within the updated registration and reporting forms, and by email to registered businesses.

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 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).
- 13.2 For most small businesses, there is no additional regulatory burden as the requirements remain the same as under the EU F-gas Regulation and related implementing acts. Small businesses producing or importing F-gas will have to use the new GB quota and reporting system, to which the two Implementing Regulations covered by this instrument are relevant.

14. Monitoring & review

- 14.1 There is no requirement to review the two Implementing Regulations covered by this statutory instrument. Changes to the F-gas Regulation and related implementing legislation, including the regulations covered by this instrument, may be required in the future as a result of a decision by the Parties to the Montreal Protocol or following a review of the F-gas Regulation.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Abbie Lee at the Department for Environment, Food and Rural Affairs, Telephone: +44 (0)7824810141 or email: Abbie.Lee@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 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.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

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

Part 2

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

1. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for the 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 Fluorinated Greenhouse Gases (Amendment) (EU Exit) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: this instrument does not fall into the category of regulations identified in schedule 7 Part 1 paragraph 1(2) as requiring approval in draft by resolution of both Houses of Parliament. This instrument makes minor and technical amendments to ensure the retained EU law is operable. No substantive policy changes are brought in by this instrument.

2. Appropriateness statement

- 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 The Fluorinated Greenhouse Gases (Amendment) (EU Exit) Regulations 2021 does no more than is appropriate”.

- 2.2 This is the case because this instrument only makes changes to Regulation (EU) 2019/661 and Regulation (EU) No 1191/2014 necessary for continued operability in line with the provisions of the European Union (Withdrawal) Act 2018.

3. Good reasons

- 3.1 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”.

- 3.2 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 mitigate climate change.

4. Equalities

- 4.1 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.”

- 4.2 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”.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.