EXPLANATORY MEMORANDUM TO

THE AIR QUALITY (AMENDMENT) (NORTHERN IRELAND PROTOCOL) (EU EXIT) (NO. 2) REGULATIONS 2020

2020 No. 1352

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 The purpose of this instrument is to implement the Protocol to the Withdrawal Agreement on Ireland/Northern Ireland ("the Protocol"). The Protocol sets out that certain provisions of Union law listed in the Protocol shall apply under certain conditions in the United Kingdom in respect of Northern Ireland. At Annex 2 of the Protocol, which concerns customs and the movement of goods, the Protocol lists Directive 2004/42/EC on the limitation of emissions of volatile organic compounds from certain paints and varnishes and vehicle refinishing products (the "VOCs in Paints Directive"). At Annex 4, which concerns the supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity, the Protocol lists Directive 2010/75/EU ("the Industrial Emissions Directive").

2.2 This instrument will ensure that the UK meets its obligations under the Protocol in respect of the products covered by the VOCs in Paints Directive and activities that come within the Industrial Emissions Directive (in so far as they meet the limitations set out in the Protocol). It does this by amending the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018 (2018/1407) and the Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 (2019/74) so that the legislation amended by those instruments continues to apply in the UK in respect of Northern Ireland in a manner which reflects the requirements of the Protocol.

Explanations

What did any relevant EU law do before exit day?

2.3 The Industrial Emissions Directive is the main EU instrument regulating pollutant emissions from industrial installations. It requires environmental permits to operate certain types of industrial installation and that these permits use the Best Available Techniques ("BAT"). Permit conditions must include emission limit values based on the most effective and advanced stage in the development of activities and their methods of operation. BAT requirements are adopted at the EU level by the Commission adopting Implementing Decisions (known as BAT Conclusion Decisions).

2.4 The VOCs in Paints Directive limits the total content of VOCs in certain paints, varnishes and vehicle refinishing products and stipulates labelling requirements. It has been transposed into UK law by the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 (2012 No 1715) ("the

2012 Regulations"). The VOC in Paints Directive does not apply to products that will be used outside of the EU customs area.

Why is it being changed?

2.5 The Protocol requires that the VOC in Paints Directive is implemented in Northern Ireland as it is in the EU 27 Member States. The Protocol provides that the Industrial Emissions Directive continues to apply in Northern Ireland insofar as it applies to the generation, transmission, distribution, and supply of electricity trading in wholesale electricity or cross-border exchanges in electricity. This instrument amends two EU Exit SIs made for the purpose of correcting deficiencies as a result of the United Kingdom's departure from the European Union to ensure the Protocol obligations are met.

What will it now do?

2.6 This instrument will ensure that necessary amendments are made to the relevant domestic and directly applicable retained EU law as required by the Protocol.

2.7 It amends the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018, to reflect that certain EU tertiary legislation will apply in respect of Northern Ireland in accordance with the Protocol.

2.8 It amends the Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019, as although the UK is no longer a part the EU customs area, it ensures that in Northern Ireland the 2012 Regulations will continue to apply to relevant products where they are intended for use in a country or the customs territory of the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This SI is substantially the same form as the original instrument, The Air Quality (Amendment) (Northern Ireland Protocol) (EU Exit) regulations 2020, which was laid in error.

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 the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 These Regulations are made in substantially the same form as the Air Quality (Amendment) (Northern Ireland Protocol) (EU Exit) Regulations 2020, which were revoked shortly after being laid by the Air Quality (Amendment) (Northern Ireland Protocol) (EU Exit) (Revocation) Regulations 2020 due to a procedural error.

6.2 The Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018 and the Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019 made amendments to the 2012 Regulations and to directly applicable EU law to correct deficiencies ensuring that they would work following the UK's exit from the EU. However, because of Protocol obligations, we are now laying this instrument which will ensure that the changes made by those EU Exit SIs are amended to appropriately ensure that the United Kingdom meets its obligations in respect of Northern Ireland under the Protocol.

6.3 Under the Protocol, the VOCs in Paints Directive and the provisions of the Industrial Emissions Directive as it applies to the generation, transmission, distribution, and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity will continue to apply in Northern Ireland after the end of the Transition Period.

6.4 The 2012 Regulations sets out the regulatory requirements for the placing on the market of paints and varnishes. Amendments need to be made to the 2012 Regulations so that they continue to be properly implemented in Northern Ireland after the end of the Transition Period. The amendments in this instrument ensures that in Northern Ireland where paints are intended for use in a country in the European Union or the territory of the EU customs area that the regulations continue to apply.

6.5 Amendments need to be made to certain pieces of directly applicable retained EU law as regards the Industrial Emissions Directive. This covers legislation made under the Industrial Emissions Directive that apply to activities that generate, transmit, distribute, and supply electricity. This includes the BAT Conclusion Decisions for large combustion plants and waste incineration. The retained EU law versions of these BAT Conclusion Decisions have been amended to make clear that the Protocol ensures that they will apply in respect of Northern Ireland directly.

6.6 This instrument will ensure that by Transition Period completion day the UK will meet its international obligations under the Protocol in respect of the legislation this instrument covers.

7. Policy background

What is being done and why?

7.1 Under the Protocol, certain EU rules concerning the placing of goods on the market will still apply in Northern Ireland. This includes product safety legislation, designed to ensure that products that are placed on the market are safe and compliant with relevant regulatory requirements. To this end, EU legislation places obligations to ensure that products meet certain standards and carry certain information on the label.

7.2 Under the Protocol certain EU rules concerning IED activities involved in generation, transmission, distribution and supply of electricity, trading in wholesale electricity or cross-border exchanges in electricity will still apply in Northern Ireland.

7.3 The relevant EU legislation in the field of air quality that will continue to apply in Northern Ireland at the end of the Transition Period is listed in Annex 2 of the Protocol (the VOC in Paints Directive, see paragraph 26), and Annex 4 of the Protocol (the Industrial Emissions Directive).

7.4 The purpose of this instrument is to assist in ensuring that the UK meets its international obligations under the Protocol by allowing for the proper implementation of the VOCs in Paints Directive in Northern Ireland (only) at the end of the Transition Period, and to recognise that certain directly applicable EU law (i.e. law which does not require an act of parliament in a member state to become law) under the Industrial Emissions Directive will apply directly.

7.5 The instrument amends the 2012 Regulations so that they apply in Northern Ireland as they do in the European Union. Therefore, the Protocol will be implemented in Northern Ireland in respect of the Directive. It also makes necessary amendments to directly applicable retained EU law i.e. law that previously applied directly without the need for implementing national legislation to recognise that it will apply to certain activities that generate electricity.

7.6 These amendments will ensure that paints and varnishes intended for use on the island of Ireland meet the same standards and that where an activity generates electricity for the purpose of the single energy market on the island of Ireland relevant parts of directly applicable retained EU law will apply,

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is made using powers under section 8C of the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 The Government did not undertake a formal public consultation given that this instrument's provisions are limited to implementing the Protocol and ensuring that Northern Ireland continues to properly implement EU law in the field of air quality.

10.2 There has been engagement with the Northern Ireland Executive on this instrument. This has included sharing draft legislation and receiving their acknowledgment of the proposed instrument in areas which apply and extent to Northern Ireland.

11. Guidance

11.1 Defra published a 'Technical Notice' which sets out how the Industrial Emissions BAT regime would be affected in the scenario that the UK left the EU without an agreement. https://www.gov.uk/government/publications/industrial-emissions-standards-best-available-techniques-if-theres-no-brexit-deal/industrial-emissions-standards-best-available-techniques-if-theres-no-brexit-deal

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 no impacts are expected on businesses as this instrument maintains existing regulatory standards.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the regulatory burdens on small businesses as no new operational costs are anticipated.

14. Monitoring & review

14.1 Defra does not intend to monitor this instrument.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Melanie King Telephone: 02080261476 or email: melanie.king@defra.gov.uk at the Department of Environment, Food and Rural Affairs can be contacted with any queries regarding this instrument.

15.2 Anjana Krishnan Telephone: 02084152790 or email: Anjana.krishnan@defra.gov.uk at the Department of Environment, Food and Rural Affairs can be contacted with any queries regarding this instrument.

15.3 The Parliamentary Under Secretary of State for the Environment, Rebecca Pow MP at the Department of Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.