EXPLANATORY MEMORANDUM TO

THE AIR QUALITY (LEGISLATIVE FUNCTIONS) (AMENDMENT) REGULATIONS 2021

2021 No. 624

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 makes amendments to retained direct EU legislation relating to air quality, under section 8(1) of the European Union (Withdrawal) Act 2018, to ensure that it continue to operate effectively.

Explanations

What did any relevant EU law do before exit day?

2.2 This instrument amends Regulation 166/2006 concerning the establishment of the European Pollution Release and Transfer Register ("the PRTR Regulation"). Articles 8 and 18 of the PRTR Regulation conferred powers on the European Commission ("the Commission") to legislate to require reporting of releases of certain pollutants, and to amend technical annexes to the Regulation.

Why is it being changed?

2.3 Articles 8 and 18 of the PRTR Regulation were amended by article 4 of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (S.I. 2019/473) ("the 2019 Regulations"), with effect from IP completion day, to replace the legislative powers of the European Commission with corresponding powers for United Kingdom authorities to make regulations.

2.4 Articles 8 and 18 of the PRTR Regulation were amended in EU law after the 2019 Regulations had been made but before IP completion day. Because of those EU law changes, the amendments made by article 4 of the 2019 Regulations did not operate as intended. Consequently, Articles 8 and 18 require further amendment so that the deficiencies in those Articles arising from withdrawal from the EU are fully addressed, and their effect is clear.

What will it now do?

2.5 The PRTR Regulation will continue to function in a similar way to how it did before IP completion day, but with UK authorities now having legislative functions under the Regulation, corresponding with those of the Commission in EU law.

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.

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 United Kingdom.

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

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary for the Environment Rebecca Pow has made the following statement regarding Human Rights:

"In my view the provisions of the Air Quality (Legislative Functions) (Amendment) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 converted EU law as it stands at IP completion day into domestic law. It also confers temporary powers to make secondary legislation, to enable corrections to be made to the laws that do not operate appropriately. This instrument relies upon those correcting powers to re-state provisions that concern legislative functions.

6.2 The PRTR Regulation was amended with effect from IP completion day by regulation 2 of the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018 (S.I. 2018/1407) ("the 2018 Regulations"), and by regulation 4 of the 2019 Regulations. Regulation 2 of the 2018 Regulations was amended before it came into force by S.I. 2020/1313.

6.3 The PRTR Regulation was amended in EU law after the 2018 and 2019 Regulations were made, but before IP completion day, by Article 7 of Regulation (EU) 2019/1010 of the European Parliament and of the Council on the alignment of reporting obligations in the field of legislation related to the environment, and by Section 5, paragraph 4 of the Annex to Regulation (EU) 2019/1243 of the European Parliament and of the Council adapting a number of legal acts providing for the use of the regulatory procedure with scrutiny to Articles 290 and 291 of the Treaty on the Functioning of the European Union.

7. Policy background

What is being done and why?

7.1 The corrections being made by way of re-statement are necessary to clarify the retained direct EU law covered by this instrument. It will ensure that it operates properly. The instrument will allow UK authorities to exercise the specific legislative functions in the UK, in order to ensure that the regime of the retained direct EU law continues to function smoothly, without the need for primary legislation every time a

change is required. This instrument does not make changes to substantive policy content.

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 direct 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 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 This instrument has been developed in collaboration with the Devolved Administrations.

11. Guidance

11.1 Guidance is not being provided in relation to this instrument. Information on Pollution Release Transfer Registers can be found at https://www.gov.uk/guidance/uk-pollutant-release-and-transfer-register-prtr-data-sets.

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 relates to the maintenance of existing regulatory standards.

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 subject matter of this instrument concerns legislative functions exercised by government and therefore no disproportionate impacts are expected to affect small businesses.

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 EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Anjana Krishnan at the Department for Environment, Food and Rural Affairs Telephone: 07825365654 or email: anjana.krishnan@defra.gov.uk; Alex Giles at the Department for Environment, Food and Rural Affairs Telephone: 07557213946 or email: alex.giles@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Bill Parish, Deputy Director for Air Quality and Industrial Emissions, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

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

"In my view the Air Quality (Miscellaneous Amendments) Regulations 2021 does no more than is appropriate".

1.2 This is the case because they re-state provisions for the exercise of legislative functions by 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 Rebecca Pow 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 the case because, without this instrument, retained EU law will not work properly and it is appropriate for UK authorities to exercise the functions the instrument re-states.

3. Equalities

3.1 The Parliamentary Under Secretary of State for the Environment Rebecca Pow has made the following statement(s):

"The draft 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 Rebecca Pow made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Rebecca Pow 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.