EXPLANATORY MEMORANDUM TO

THE DETERGENTS (SAFEGUARDING) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

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.

2. Purpose of the instrument

2.1 Together with the Detergents (Amendment) (EU Exit) Regulations 2019, this instrument amends Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents to enable its continued operability following the United Kingdom's (UK) withdrawal from the European Union (EU). This will ensure the continuation of standards and requirements in relation to the placing on the market of detergents, while at the same time, maintaining a high degree of protection for the environment and human health. This instrument does not make any policy changes beyond the intent of ensuring continued operability of the relevant legislation.

Explanations

What did any relevant EU law do before exit day?

2.2 Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents (the "Detergents Regulation") establishes common rules to enable detergents and surfactants to be sold and used across the EU, while providing a high degree of protection to the environment and human health. It stipulates that surfactants used in detergents must be fully biodegradable and imposes a restriction on phosphates in domestic laundry and dishwasher detergents. In addition, it regulates how products should be labelled with ingredient and dosage information in order to protect human health (e.g. skin allergies) and avoid overuse of detergents.

2.3 A safeguard clause was introduced in the Detergents Regulation to ensure the protection of the environment and human health from unforeseen risks of detergents. This safeguard clause was designed to allow the European Commission to analyse the justification of national measures restricting the free movement of detergents within the Single Market (products presumed to comply with requirements). Secondly, it provided a means to inform all national competent authorities about dangerous detergents, and, accordingly, to have the necessary restrictions extended to all Member States to ensure an equivalent level of protection throughout the European Union.

2.4 The safeguard clause in the Detergents Regulation (Article 15) may only be used by Member States for those detergents which fully comply with the Detergents Regulation, but which nevertheless pose a risk to the safety of humans or of animals or a risk to the environment. The safeguard clause may only be used on a case-bycase basis for a specific product, not for a class of product. The safeguard clause therefore cannot be used to introduce risk management measures of a general nature.

2.5 Member States intending to use the safeguard clause must immediately inform the Commission and the other Member States, documenting the reasons for this decision. If the European Commission considers the national action to be justified, it informs the other Member States who are required to take the necessary measures on their territory.

Why is it being changed?

2.6 The changes made by this instrument address deficiencies arising from the UK's withdrawal from the EU to ensure that retained EU law continues to operate effectively and coherently. The safeguard clause in the Detergents Regulation is inoperable as its stands as it refers to Member States and the European Commission so its retained version will need to be amended to reflect UK arrangements.

What will it now do?

2.7 This instrument amends the retained safeguard clause to ensure that existing protections and regulatory frameworks are maintained and continue to operate effectively at the point at which 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 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 are made cover the entire United Kingdom (see section 24(1) 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 of State for the Environment Dr Thérèse Coffey MP has made the following statement regarding Human Rights:

"In my view the provisions of the Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights".

6. Legislative Context

6.1 This instrument is being made to correct deficiencies in detergents legislation as a result of the UK's withdrawal from the EU. The European Union (Withdrawal) Act 2018 ("the Withdrawal Act") contains a power to make secondary legislation to prevent, remedy or mitigate deficiencies that will arise in retained EU law. This includes both domestic law and directly applicable EU law. The Withdrawal Act only

allows corrections to be made that are appropriate to ensure the national regimes will work effectively after EU Exit.

6.2 As a directly applicable EU Regulation requiring no transposition into UK law, the Detergents Regulation will be retained under section 3(1) of the Withdrawal Act. This instrument makes corrections to this Regulation using Withdrawal Act powers.

6.3 This instrument, together with the Detergents (Amendment) (EU Exit) Regulations 2019, amends the Detergents Regulation to enable a legal framework that allows the free movement of detergents and surfactants for detergents in the UK market while, at the same time, ensuring a high degree of protection of the environment and human health.

7. Policy background

What is being done and why?

7.1 This instrument makes provision for the interests and roles of the UK Government and all the devolved administrations. It sets out how the returning EU powers in relation to the safeguard clause will return to the UK after EU Exit.

7.2 The aim of the proposals is to ensure that the Secretary of State and the devolved administrations have the full powers currently held by the European Commission and Member States to initiate safeguarding action across the UK in relation to detergents. The Secretary of State and devolved administrations will be able to take urgent, temporary restrictive action in relation to a product through a safeguard clause. Safeguard measures may be taken when an appropriate authority has justifiable grounds for believing that a specific detergent, although complying with the requirements of the Detergents Regulation, constitutes a risk to the safety or health of humans or of animals or a risk to the environment. The appropriate authority is the Secretary of State for England and the UK where the matter is reserved, and the devolved administrations where the matter is devolved such as in areas of environment and public health. The safeguard measures are to be commensurate with the nature of the risk, including restricting the availability of the product or withdrawing it from the market, and may not be imposed for more than ninety days.

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 Not applicable to this instrument.

10. Consultation outcome

10.1 As this instrument does not make any policy changes beyond the intent of ensuring continued operability of the relevant legislation, formal consultation on this instrument has not been undertaken.

10.2 Devolved administrations were engaged in the development of the Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019.

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 relates to the maintenance of existing regulatory standards and so will have no impact on business. The purpose of this instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the UK from the EU.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No substantial impact on small businesses is foreseen as a result of this instrument.

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 Barbara Anning at the Department for Environment, Food and Rural Affairs, Telephone: 0208 026 2784 or email: barbara.anning@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Margaret Read, Head of Water Services at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Dr Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment 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. Appropriateness statement

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

"In my view the Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because the instrument makes minor and technical amendments to correct deficiencies which arise from withdrawal to ensure the continued regulation of detergents and surfactants for detergents placed on the UK market while, at the same time, ensuring a high degree of protection of the environment and human health.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for the Environment Dr 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".

2.2 These are: that this instrument corrects deficiencies to ensure that legislation for the regulation of detergents and surfactants for detergents in the UK continues to operate effectively after UK withdrawal from the EU.

3. Equalities

3.1 The Parliamentary Under Secretary of State for the Environment Dr Thérèse Coffey MP has made the following statement(s):

"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 Environment Dr 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, 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".

3.3 The amendments made by this instrument do not raise any issues relevant to the public sector equality duty because they are minor and technical.

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.