EXPLANATORY MEMORANDUM TO

THE ENVIRONMENT (MISCELLANEOUS AMENDMENTS) (NORTHERN IRELAND) (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 (Defra) and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 The Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 makes minor and technical amendments to primary and subordinate legislation under section 8 of the European Union (Withdrawal) Act 2018. It mirrors provisions in Defra's The Environment (Amendment etc.) (EU Exit) Regulations 2019. The purpose of the amendments is to ensure that the relevant legislation remains operable after the United Kingdom ("UK") withdraws from the European Union ("EU").

Explanations

What did any relevant EU law do before EU exit day?

2.2 This legislation is a continuation of existing policies, which ensures that statutory instruments (that apply only in Northern Ireland) function legally after EU exit.

Why is it being changed?

2.3 After EU exit, without amendment, the legislation would not operate properly and it would disrupt areas such as waste, producer responsibility, environmental provisions, noise regulations and environmental liability.

What will it now do?

2.4 This instrument will ensure the Northern Ireland legislation will continue to operate after EU exit as it does now.

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 is limited to Northern Ireland.

3.3 As the instrument is subject to affirmative 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.

3.4 The Department has reached this view because the SI is made under powers in section 8(1) of the EU (Withdrawal) Act 2018 and makes only minor, technical amendments to Northern Ireland Statutory Rules to ensure operability after the United Kingdom leaves the European Union.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Northern Ireland only.

4.2 The territorial application of this instrument is Northern Ireland only.

5. European Convention on Human Rights

5.1 Dr Thérèse Coffey MP has made the following statement regarding Human Rights:

"In my view the provisions of the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The SI makes minor, technical amendments to Northern Ireland legislation, relating to waste, producer responsibility, environmental provisions, noise regulations and environmental liability, to ensure operability after EU exit. The SI does not introduce any new policies but simply ensures that the legislation continues to operate in the same way on EU exit day as it does now.

7. Policy background

What is being done and why?

7.1 This instrument makes amendments to the relevant pieces of domestic legislation to allow them to operate properly after EU exit.

7.2 This instrument applies to policy areas which are a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for EU exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for EU exit in the absence of a Northern Ireland Executive. With EU exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for EU exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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

10. Consultation outcome

10.1 This instrument was not subject to formal consultation. The Environment (Miscellaneous Amendments) (Northern Ireland) Regulations 2019, are technical in nature, and make no policy changes.

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 the proposed amendments are minor and technical in nature, relating to the maintenance of existing regulatory standards and will have no, or no significant, impact on the private, voluntary or public sector.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

13.2 The proposed amendments are minor and technical in nature and no disproportionate impacts are expected to affect small and micro businesses. No specific action is proposed to minimise regulatory burdens on small businesses

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Department of Agriculture, Environment and Rural Affairs will monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

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

15. Contact

15.1 Laurence McCann at the Department of Agriculture, Environment and Rural Affairs, Northern Ireland. Telephone: 028 90569 725 or email: laurence.mccann@daera-ni.gov.uk can be contacted with any queries regarding the instrument.

15.2 John Mills, Director of The Environmental Policy Division, at the Department of Agriculture, Environment and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Dr Thérèse Coffey MP at Defra 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 EU 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 section 2(2) European Communities Act 1972	Paragraph 13, Schedule 8	Anybody making an SI after EU exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under section 2(2) European Communities Act 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before EU exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under section 2(2) European Communities Act 1972	Paragraph 16, Schedule 8	Anybody making an SI after EU exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under section 2(2) European Communities Act 1972.	Statement setting out: 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, containing information about the relevant authority's response to— any recommendations made by a committee of either House of Parliament about the published draft instrument, and 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 for Department for Environment, Food and Rural Affairs, 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 Environment (Miscellaneous amendments) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

2. Good reasons

2.1 The Parliamentary Under-Secretary for Department for Environment, Food and Rural Affairs, 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: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable.

3. Equalities

3.1 The Parliamentary Under-Secretary for Department for Environment, Food and Rural Affairs, 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 for Department for Environment, Food and Rural Affairs, 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."