EXPLANATORY MEMORANDUM TO

THE WASTE AND AGRICULTURE (LEGISLATIVE FUNCTIONS) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs and is laid before Parliament by command of Her Majesty.

2. Purpose of the instrument

2.1 Following the UK's exit from the European Union, this instrument transfers some technical functions from the European Commission to the Secretary of State and the Devolved Administrations. It also corrects an error in the Agriculture (Payments) (Amendment, etc.) (EU Exit) Regulations 2020 ((SI 2020/1445), inserting a definition of 'appropriate authority' into Regulation (EU) No 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (EUR 2013/1306) for the purposes of financing, management and monitoring of rural development and common organisation of the markets schemes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom, subject to paragraph 4.3.

4.2 The territorial application of this instrument is the United Kingdom, subject to paragraph 4.3.

4.3 Regulations 10, 11, 12 and 13 extend and apply to England and Wales and Scotland, but not Northern Ireland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for the Environment (Jo Churchill) has made the following statement regarding Human Rights:

"In my view the provisions of the Waste and Agriculture (Legislative Functions) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made to transfer some remaining powers from the European Commission to the Secretary of State, and, where appropriate, their counterparts in the Devolved Administrations. These powers largely give the Secretary of State and

Devolved Administrations the ability to make regulations to set various technical standards, criteria, thresholds and conditions. These standards are currently all operational, and we do not anticipate needing to alter them soon. However, without the power to alter these standards, it would not be possible to update them if necessary. For example, if this SI were to fail and the powers were not transferred to the Secretary of State and Devolved Administrations, should better sampling techniques or waste treatment methods be developed in future, we would not be able to make regulations to take account of the new methods.

6.2 This instrument also amends EUR 2013/1306 insofar as it relates to the organisation of common markets (CMO) and rural development measures. That regulation contains similar regulation-making powers, which were transferred to the appropriate authorities i.e., the Secretary of State and the devolved administrations by SIs 2019/748, 2019/828, and 2020/1445. The effect of the interaction between those amending SIs has resulted in there no longer being a definition of "appropriate authority" in EUR 2013/1306, as far as it relates to the organisation of common markets and rural development measures. This instrument reinserts the definition into EUR 2013/1306 to remedy that deficiency. Accordingly, the free issue procedure applies.

7. Policy background

What is being done and why?

7.1 The European Commission has powers related to Directives concerning waste, including those covering end-of life vehicles, batteries and accumulators, and electrical and electronic equipment specifically, as well as the overarching Waste Framework Directive.

7.2 This instrument transfers several technical powers and functions relating to those resources and waste management Directives from the European Commission to the Secretary of State, and, depending on the power, to their Devolved Administration counterparts. This will allow for the correct functioning of the relevant retained EU legislation following the UK's departure from the EU. This will enable the UK and the Devolved Administrations to maintain their environmental standards on the safe handling of waste, levels of recovery, recycling and treatment of waste. These functions listed in this instrument are routine, and in several cases, the standards, requirements or other functions set out are already in place and working well – the powers are purely to be able to change them in future should it be necessary, rather than seeking to actively update or amend them at the moment.

7.3 Any regulations made under the new powers will also be made under the negative procedure, so will still be subject to individual Parliamentary scrutiny at that time.

7.4 Further, provision is made for the Secretary of State and, where relevant, the Devolved Administrations, to consult relevant regulatory agencies and anyone else they consider appropriate before the exercise of these powers.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 The EU Directives set out in Section 7.7 relate to several aspects of environmental policy relating to waste, and confer, in each case, one or more legislative functions on the European Commission, so that it can develop the technical details of the specific

regime, and amend them whenever necessary, without the frequent need for additional amending Directives. Examples of these functions include specifying technical methods to be used and updating technical annexes to reflect advances in scientific and technical knowledge. This instrument transfers these technical powers and functions relating to resources and waste management from the European Commission to the Secretary of State, and, depending on the power, to their Devolved Administration counterparts. These powers largely give the Secretary of State and the Devolved Administrations the ability to make regulations to set various technical standards, criteria, thresholds and conditions (broken down into specifics at section 7.7). This instrument transfers technical powers and functions from the Commission and does not amend the underlying waste management legislation.

Why is it being changed?

7.6 While it is not possible to amend Directives directly, as these are not retained EU law, the powers in the European Union (Withdrawal) Act 2018 enable the legislative powers they confer on the Commission to be transferred into domestic law. Without doing this, there would be no, or a limited, ability to make the kind of minor, technical changes to legislation that the powers cover without having to use primary legislation on every occasion. This would make changing such details very slow and cumbersome, and would remove flexibility to respond to scientific and technical changes. This instrument does not itself make any substantive policy changes. These standards are currently all operational, and we do not anticipate needing to alter them soon. However, without the power to alter these standards, it would not be possible to update them if necessary. For example, if this SI were to fail and the powers were not transferred to the Secretary of State and the Devolved Administrations, should better sampling techniques or waste treatment methods be developed in future, we would not be able to adapt the regulations to take account of the new methods.

What will it now do?

7.7 It will now allow the Secretary of State and the Devolved Administrations to make regulations to set or alter the various technical criteria referenced in each section, primarily to keep up with future scientific and technical progress. Specifically, it provides for the ability of the Secretary of State and the Devolved Administrations to retain functions from the following instruments:

- The Landfill Directive (Directive 1999/31/EC) (Regulation 5 of this instrument) – to set standards for waste sampling of waste going to landfill.
- The End-of-Life Vehicles Directive (Directive 2000/53/EC) (Regulations 6-9 of this instrument) - powers to update and modify exemptions covering the use of certain heavy metals in vehicles based on scientific or technical progress; to specify minimum requirements for the certificate of destruction; powers to modify conditions for storage and treatment in line with scientific or technical progress; and powers to specify material and component coding standards for vehicles.
- The Mining Waste Directive (Directive 2006/21/EC) (Regulations 10-11 of this instrument) – powers to modify non-essential elements such as guidelines for inspecting waste facilities and sampling methods, and to update regulations in line with scientific and technical progress.

- The Batteries Directive (Directive 2006/66/EC) (Regulations 12-13 of this instrument) – the power to specify export criteria and to grant exemptions from labelling requirements for batteries and accumulators.
- The Waste Framework Directive (Directive 2008/98/EC) (Regulations 14-17 of this instrument) – powers to prescribe criteria on the application of the by-products conditions; to prescribe criteria on the end of waste conditions; and to specify the application of the formula for incineration facilities.
- The Waste Electricals and Electronic Equipment (WEEE) Directive (Directive 2012/19/EU) (Regulations 18-20 of this instrument) - powers to update selective minimum treatment technologies; to update the technical requirements for WEEE treatment and storage operations and the non-exhaustive list of products listed as falling into each of the categories specified in the Directive; and to update the crossed out wheeled bin symbol.

7.8 Part 4 of these Regulations covers the definition of "appropriate authority" in EUR 2013/1306 insofar as it relates to rural development measures and the CMO. Among other things, EUR 2013/1306 lays down a framework for finance, management and monitoring of rural development and CMO schemes, and includes legislative functions to develop and refine the technical details required to operate schemes.

7.9 Regulation 24 reinserts the definition of "appropriate authority" into that Regulation and regulation 25 revokes the ineffective definition in SI 2020/1445.

8. European Union Withdrawal and Future Relationship

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 considered necessary for this instrument.

10. Consultation outcome

10.1 A consultation was not required as no policy changes are being made via this instrument.

10.2 The Department for the Environment, Food and Rural Affairs has worked with the Devolved Administrations in the development of this instrument. Consent letters were sent to relevant ministers in the Devolved Administrations, who have consented to this instrument as drafted.

11. Guidance

11.1 There is no associated guidance as this instrument only amends deficiencies arising from the UK's withdrawal from the EU relating to repatriation of powers to the UK.

12. Impact

12.1 There is no 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 this instrument only amends deficiencies arising from the UK's withdrawal from the EU, along with associated repatriation of powers to the UK.

13. Regulating small business

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

13.2 In transferring the powers, the effect of this instrument is only to maintain the ability to amend legislation, therefore no specific action was required to minimise the impact of the requirements on small businesses.

13.3 The impacts on small business will be considered and minimised if regulations are made using the powers conferred.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that no specific monitoring requirements are needed.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Heeran Buhecha Fordyce at the Department for the Environment, Food and Rural Affairs email: Heeran.buhechafordyce@defra.gov.uk can be contacted with any waste-related queries regarding the instrument.

Pamela Frost at the Department for the Environment, Food and Rural Affairs email: pamela.frost@defra.gov.uk can be contacted with any agriculture-related queries regarding the instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

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

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Appropriateness statement

1.1 The Parliamentary Under Secretary of State, Jo Churchill, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Waste and Agriculture (Legislative Functions) Regulations 2022 do no more than is appropriate".

1.2 This is the case because the transferred powers contained therein are narrow and only confer the ability to alter a limited set of technical standards. Regulations made under these powers will be subject to the negative procedure and thus will undergo Parliamentary scrutiny. Part Three also sets out a requirement on the Secretary of State or, if relevant, the DAs, to consult the appropriate regulator and any other persons necessary in the exercise of the powers.

2. Good reasons

2.1 The Parliamentary Under Secretary of State, Jo Churchill, 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 need to be able to transfer a necessary set of powers currently held by the European Commission to the Secretary of State and the Devolved Administrations, in order to be able to update various technical standards and criteria in line with scientific or technical progress. Further detail can be found at section 6.1 and section 7.

3. Equalities

3.1 The Parliamentary Under Secretary of State, Jo Churchill, 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, Jo Churchill, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Jo Churchill, 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

The explanations statement has been made in section 7 of the main body of this explanatory memorandum.