**EXPLANATORY MEMORANDUM TO**

**THE WASTE AND ENVIRONMENTAL PROTECTION (AMENDMENT) (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 Command of Her Majesty.

## 2. Purpose of the instrument

2.1 This instrument corrects operability amendments made by three other Northern Ireland European Union ("EU") Exit instruments and amends: one piece of Northern Ireland primary legislation to correct deficiencies arising as a result of the UK's exit from the EU; and current legislation in Northern Ireland that transposes Article 16 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste ("the Waste Framework Directive"). It amends:

- The Waste and Contaminated Land (Northern Ireland) Order 1997.
- The Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019.
- The Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019.
- The Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

***Explanations***

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

2.2 The three EU Exit instruments listed in section 2.1 corrected EU Exit-related deficiencies in domestic legislation so that it continues to operate as intended after exit day. This instrument makes corrections to these instruments thereby updating subordinate and primary legislation in respect of waste. Further amendments of the same nature are also included in respect of the Waste and Contaminated Land (Northern Ireland) Order 1997.

2.3 The Waste and Contaminated Land (Northern Ireland) Order 1997 sets out provisions relating to waste on land, the collection and disposal of waste, land contamination by pollution, the controlled use, supply or storage of prescribed substances and articles and the obtaining of information on potentially hazardous substances. The relevant provision in the context of this instrument is paragraph 4 of Schedule 3 which transposes Article 16 of the Waste Framework Directive in respect of the objectives of waste strategies.

2.4 The Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 make amendments to a number of pieces of legislation covering waste management, air and environmental quality and modifications of EU Directives for the purposes of interpretation post EU Exit. The relevant amendments for the

purpose of this instrument are in Schedule 3 paragraph 11(10) relating to modifications of Article 16 of the Waste Framework Directive.

2.5 The Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 make amendments to a number of pieces of legislation in the area of waste management. The relevant amendment for the purpose of this instrument is in respect of the insertion of new regulation 9D into the Waste Regulations (Northern Ireland) 2011.

2.6 The Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 make amendments to a number of pieces of legislation covering waste, industrial pollution, genetically modified organisms, noise and environmental liability. The relevant amendment for the purpose of this instrument is in respect of Schedule 3 to the Waste and Contaminated Land Order (Northern Ireland) 1997.

*Why is it being changed?*

2.7 Corrective amendments are necessary to update previous operability amendments made by the three Northern Ireland EU Exit instruments listed in section 2.1 of this explanatory memorandum and to ensure that the same amendments are made to the equivalent provision within the Waste and Contaminated Land (Northern Ireland) Order 1997.

2.8 Regulations 2, 3, 4 and 5 of this instrument make amendments to domestic legislation to ensure the objectives relating to the principles of self-sufficiency and proximity in national waste management plans continue to apply, are fully operable at a United Kingdom (UK) level and that there is a consistent approach to the modifications made to Article 16 of the Waste Framework Directive and the amendments made to domestic legislation following exit day. The amendments remove the inoperable elements caused by Article 16 of the Waste Framework Directive by removing the references to "best available techniques" and to the requirements which apply in respect of the EU as a whole, updating these with the appropriate requirements which will apply to the UK once it exits the EU.

2.9 Regulation 2 of this instrument corrects an omission to earlier amendments made to paragraph 4 of Schedule 3 to the Waste and Contaminated Land (Northern Ireland) Order 1997 by the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019.

2.10 Regulation 3 of this instrument corrects an amendment in regulation 5(3) of the Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 which inserts new regulations 9A to 9E into the Waste Regulations (Northern Ireland) 2011.

2.11 Regulation 4 of this instrument corrects an amendment in Schedule 3 to the Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 by substituting a new sub-paragraph (10) into paragraph 11.

2.12 Regulation 5 of this instrument corrects an amendment in regulation 14(a) of the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019.

*What will it now do?*

2.13 The amendments will correct earlier operability amendments made through the Waste (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019, the Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations

2019 and the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 ensuring consistency with amendments made through other UK EU Exit SIs and that deficiencies in the legislation amended by those Regulations are addressed as intended. The amendments will also ensure that a similar relevant provision within the Waste and Contaminated Land (Northern Ireland) Order 1997 is similarly updated.

## 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 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.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the same as the provisions that the instrument amends. Consequently, the instrument extends to 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, Parliamentary Under Secretary of State for the Environment, has made the following statement regarding Human Rights:

5.2 "In my view the provisions of the Waste and Environmental Protection (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights."

## 6. Legislative Context

6.1 This instrument makes corrections to provisions of three other Northern Ireland EU Exit instruments relating to waste, made under section 8(1) of the European Union (Withdrawal) Act 2018, in order to ensure the appropriate functioning of the legislation amended by those instruments after the UK leaves the EU. The instrument also makes similar amendments to a relevant provision within the Waste and Contaminated Land (Northern Ireland) Order 1997 for the same purpose.

## 7. Policy background

***What is being done and why?***

7.1 This instrument is being made in order to make corrections to three Northern Ireland EU Exit SIs and an amendment to one piece of Northern Ireland primary legislation to ensure the effectiveness and continuity of UK legislation following our exit from the EU.

7.2 Part 2 of this instrument makes amendments to primary legislation. Part 3 of this instrument makes amendments to subordinate legislation. The amendments in both parts ensure better consistency with the wording in Article 16 of the Waste

Framework Directive and ensure the effectiveness and continuity of UK legislation following our exit from the EU.

7.3 This instrument makes minor amendments, which are legally necessary to achieve its objectives. It represents no changes of policy, nor will it produce any impact on businesses or the public. Sections 2.7 to 2.12 of this explanatory memorandum describe the changes made by this instrument.

## 8. European Union (Withdrawal) Act 2018/ 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 UK from the EU. 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.

## 10. Consultation outcome

10.1 We have not consulted specifically on this instrument, because it contains only minor technical amendments and represents no change of policy and has no impact of itself on businesses or the public.

## 11. Guidance

11.1 Guidance is not being provided in relation to this instrument.

## 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 as there is expected to be no, or no significant, impact on business as a direct result of this legislation. This is because it relates to the maintenance of existing legislation.

## 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.

## 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 European Union (Withdrawal) Act 2018, no review clause is required.

## 15. Contact

15.1 Anthony Courtney at the Department of Agriculture, Environment and Rural Affairs (telephone: 028 9056 9485; or email: Anthony.courtney@daera-ni.gov.uk) can be contacted with any queries regarding the instrument.

15.2 David Small, Head of Environment, Marine and Fisheries Group 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, Parliamentary Under Secretary of State for the Environment 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.<br><br>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<br>In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all European Union Withdrawal Act 2018 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 s. 2(2) European Communities Act 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) of the European Communities Act 1972. | Statement explaining the good reasons for modifying the instrument made under section 2(2) European Communities Act 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law. |
| Scrutiny statement where amending regulations under s. 2(2) European Communities Act 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) of the European Communities Act 1972. | Statement setting out:<br>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;<br>b) containing information about the relevant authority's response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument; and<br>(ii) any other representations made to the relevant authority about the published draft instrument; and<br>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 Waste and Environmental Protection (Amendment) (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. There are no changes in policy or impact on businesses or the public.

### 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 This is the case because the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable.

### 3. Equalities

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

"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, 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 draft instrument, I, Dr 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 There is no reason to believe there will be any impact on equalities.

### 4. Explanations

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