**EXPLANATORY MEMORANDUM TO**

**THE DRAINAGE (ENVIRONMENTAL IMPACT ASSESSMENT) (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019**

**2019 No. 31**

## 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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 ensure that the legislation relating to drainage projects and associated environmental impact assessment, will continue to be operable in the United Kingdom after the UK leaves the EU.

The instrument addresses deficiencies in the retained EU law arising from the UK's withdrawal for the EU. The purpose of the instrument is to preserve and protect the existing policy regime; it will not introduce any new policy.

The instrument will amend:

- The Drainage (Northern Ireland) Order 1973 (N.I. 116) ("the 1973 Order"); and
- The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017 No.88) ("the Drainage EIA Regulations").

The instrument makes technical amendments to the above legislation. Part 2 amends a Northern Ireland Order in Council and Part 3 amends a Northern Ireland Statutory Rule.

***Explanations***

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

2.2 The Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (S.R. 2017 No.88) transposed Council Directive 2011/92/EU (as amended by Council Directive 2014/52/EU) ("the EIA Directive"), on the assessment of the effects of certain public and private projects on the environment, in respect of drainage schemes and drainage works.

The EIA Directive requires that consent for drainage schemes and drainage works which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant effects of these schemes or works has been carried out. The Directive also sets out the process for an environmental impact assessment. The EIA Regulations set out what the environmental impact assessment must identify, describe and assess, what must be included in the assessment report and the public consultation and publication procedures.

*Why is it being changed?*

2.3 This instrument uses powers within the European Union (Withdrawal) Act 2018 to amend the legislation listed at 2.3 in order to address deficiencies arising from the UK's withdrawal from the EU. The instrument makes no substantive changes to the way the existing legislation operates. All changes make only the technical drafting fixes required to maintain continuity of approach after exit. More information on the changes being made is at section 7.

*What will it now do?*

2.4 This instrument makes only minor and technical amendments to the EU derived law in this area to ensure that drainage legislation continues to operate effectively in the UK after we leave the EU. Among other modifications, the instrument removes or amends references to 'another EEA State' and definitions such as 'another Member State' to ensure that the law functions correctly after exit. The instrument will maintain continuity of approach by clarifying references to Directives in retained EU law.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 The Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 15 November 2018. On 27 November 2018, the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament, though one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

***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 negative 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 limited to Northern Ireland.

4.2 The territorial application of this instrument is limited to Northern Ireland.

## 5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

6.1 The legislative context for this instrument is set out at paragraph 2 above.

6.2 This instrument amends the 1973 Order and the Drainage EIA regulations which implement, in part, Council Directive 2011/92/EU ("the EIA Directive") on the assessment of the effects of certain public and private projects on the environment. The EIA Directive was previously amended by EU Directive 2014/52/EU to incorporate changes made at EU level, to simplify the rules for assessing the potential

effects of projects on the environment. In May 2017, the amendments were transposed into domestic law by the Drainage (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 which relate to EIAs in the context of drainage schemes and drainage works.

6.3 The instrument makes these amendments under section 8(1) of the European Union (Withdrawal) Act 2018 (c. 16) to enable corrections to be made to retained EU law that will not operate appropriately once the UK has left the EU.

## 7. Policy background

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

7.1 The EIA Directive requires projects likely to have significant effects on the environment to undergo an EIA before the development is allowed to proceed. This instrument makes the minimum changes required to ensure that all EIA requirements for drainage projects remain operable after exit.

7.2 This instrument applies to drainage services 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 necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day in the absence of a Northern Ireland Executive. With 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 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 necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

The amendments can be broadly categorised as:

- Removing references to provisions being 'in accordance with EU legislation' and other references to EU law/obligations, and instead referring to retained EU law/obligations;
- Amending references to 'another EEA State' and definitions such as 'another Member state' to reflect the UK's new status outside of the EU; and
- Updating the provision which requires the UK to notify 'other EU Member states', or similar terminology, about transboundary environmental impacts to reflect the UK's new status.

These drafting fixes are the extent of this instrument's purpose; the intention is to maintain the status quo and keep the regimes functioning as they do now. As a result there are not expected to be any significant impacts arising from this 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 plans to consolidate this instrument.

## 10. Consultation outcome

10.1 This instrument has been prepared in discussion and collaboration with Northern Ireland officials who have engaged with the Departmental Solicitor's Office in Northern Ireland in drafting the text. Northern Ireland officials did not consider further consultation necessary as the instrument is making minor, technical changes due to the UK withdrawal from the EU and makes no policy changes.

## 11. Guidance

11.1 No guidance issued.

## 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 has no impact on business or charities.

## 13. Regulating small business

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

## 14. Monitoring & review

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

## 15. Contact

15.1 Julie Ann Dutton at the Department for Infrastructure (DfI) Northern Ireland Telephone: 028 9054 0836 or email: ju lie-ann.dutton@infrastructure-ni.gov.uk can be contacted with any queries regarding the instrument.

15.2 Linda MacHugh at the Department for Infrastructure (DfI) Northern Ireland can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary for the Environment Thérèse Coffey MP at the Department for Environment, Food and Rural Affairs (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.<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 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. |

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|---|---|---|---|
| | | 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:<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. Sifting statement(s)**

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

*"In my view the Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".*

1.2 This is the case because it is considered to be low risk, as it is simply making the minimum changes required to correct deficiencies in retained legislation in relation to EIAs for drainage projects to maintain the operability of the relevant regimes. The instrument makes changes of a minor and technical nature only, to ensure the continued effective operability of the legislation after exit. In addition, given that this instrument is not acting beyond the scope of the Withdrawal Act's operability powers, it is unlikely it will attract a debate.

**2. Appropriateness statement**

2.1 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, Thérèse Coffey MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

*"In my view the Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate".*

2.2 This is the case because the amendments that the instrument makes are minor and only correct deficiencies in retained legislation. They do no more than is appropriate to ensure that the relevant regimes remain operable after the UK withdraws from the European Union. The changes are of a minor and technical nature only and will reflect the UK's new status after exit

**3. Good reasons**

3.1 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, 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".*

3.2 These are that failure to progress this legislation would result in an incomplete statute book on Day 1 of the UK's withdrawal from the EU. This could have a negative impact on the function and operations of the Departments concerned.

## 4. Equalities

4.1 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs, Thérèse Coffey MP, has made the following statement:

*"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".*

4.2 The Parliamentary Under Secretary of State for Environment, Food and Rural Affairs 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, the Parliamentary Under Secretary of State for Environment, Food and Rural Affairs 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. This Act does not extend to Northern Ireland, and as the Drainage (Environmental Impact Assessment) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in relation to Northern Ireland."*