EXPLANATORY MEMORANDUM TO

THE ENVIRONMENT (AMENDMENT ETC.) (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.

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

2. Purpose of the instrument

2.1 This instrument ensures that cross-cutting, environmental laws in the United Kingdom ("UK") function legally after our exit from the European Union ("EU"). It does this in three ways: (1) by amending cross-cutting, environmental Acts; (2) by amending cross-cutting, environmental statutory instruments; and (3) by preventing some EU environmental Regulations and Decisions, which are out-of-date or will have no further function once we have left the EU, being brought into UK law by the automatic operation of the EU (Withdrawal) Act 2018 ("EUWA 2018"); together with domestic designation orders as regards England and Wales which are redundant in light of the amendments to Acts elsewhere in the instrument.

Explanations

What did any relevant EU law do before exit day?

2.2 The Environmental Protection Act 1990 ("EPA 1990"), the Environment Act 1995 ("EA 1995") and the Pollution Prevention and Control Act 1999 ("PPCA 1999") refer to our obligations as an EU Member State, and to EU legislation.

2.3 The Contaminated Land (England) Regulations 2006 (SI 2006/1380), the Environmental Noise (England) Regulations 2006 (SI 2006/2238) and the Environmental Damage (Prevention and Remediation) (England) Regulations 2015. (SI 2015/810) make similar references to those made by the Acts mentioned in paragraph 2.2. The Environmental Noise Regulations transpose EU Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise. This Directive establishes a common approach intended to avoid, prevent or reduce the harmful effects of exposure to environmental noise from transport and industry. The Environmental Damage Regulations transpose Directives 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage; and Article 38 of Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC. These Directives establish a framework based on the polluter pays principle to prevent and remedy environmental damage.

2.4 Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community ecomanagement and audit scheme ("EMAS") establishes an EU scheme which

promotes continuous improvements in the environmental performance of organisations by their establishing, implementing and periodically reviewing environmental management systems. The Regulation was amended by Commission Regulation (EU) 2017/1505 of 28 August 2017 amending Annexes I, II and III to Regulation (EC) No 1221/2009 of the European Parliament and of the Council on the voluntary participation by organisations in EMAS.

2.5 Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel establishes a voluntary scheme, under which producers, importers and retailers can choose to apply for the EU label for their products. The aim of the scheme is to make it simple for consumers to know that a product or a service is both environmentally friendly and good quality. This Regulation was amended by: Commission Regulation (EU) No 782/2013 of 14 August 2013 amending Annex III to Regulation (EU) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel; and Commission Regulation (EU) 2017/1941 of 24 October 2017 amending Annex II to Regulation (EC) No 66/2010 of the European Parliament and of the Council on the EU Ecolabel.

2.6 The EU Decisions covered by this instrument relate to: (a) EU Environmental Action Programmes, the overarching policy statements that set the EU's objectives for a number of years; (b) technical aspects of the EMAS and Ecolabel schemes.

Why is it being changed?

2.7 In the case of the national primary legislation and statutory instruments, this instrument makes technical, legal amendments to ensure that the law continues to function after EU Exit. For example, references to our status as a Member State, and certain cross-references to EU legislation are either inappropriate after we leave, or will no longer work legally without amendment.

2.8 In the EPA1990, references to obligations under EU law are omitted and where appropriate replaced with references to retained EU law and retained EU obligations.

2.9 In the EA1995, powers to make directions and regulations for the purposes of implementing EU law are adjusted to refer to retained EU obligations, with appropriate savings in Part 4. There are also amendments to the power for appropriate agencies to impose charges in relation to retained EU law.

2.10 In the PPCA1999, the power to make regulations under section 2 is adjusted so as to substitute references to retained EU obligations for existing references to the UK's obligations under the EU Treaties, and to replace the provisions, whereby relevant Directives may be designated from time to time, with provisions on the face of the Act which specify a closed list of Directives in connection with which regulations may be made.

2.11 The amendments to Acts have the same extent and application as the provisions being amended. The Devolved Administration in Northern Ireland is addressing separately any similar issues in its legislation. The statutory instruments amended by this instrument apply in England only, and the Devolved Administrations are addressing separately any similar issues in devolved legislation.

2.12 The provisions in this instrument relating to EU Regulations and Directions apply to the whole of the UK.

2.13 Much directly-applicable EU legislation (that is, law that currently applies in the UK without any further legislation by our parliaments, including EU Regulations and Decisions) will automatically be brought into national law by the EUWA 2018, as "retained EU law". Ministers will consider the use of an environmental labelling scheme under the new strategic approach to resources and waste.

2.14 The EU Decisions are out-of-date and/or will serve no ongoing purpose.

2.15 Preventing the EU Regulations and Decisions being brought into the UK statute book helps to avoid confusion for businesses and the public.

What will it now do?

2.16 The Acts and statutory instruments being amended will continue to operate substantively as they do at present. There is no change in policy or the impact on businesses or the public.

2.17 We will leave the EMAS and Ecolabel schemes when we cease to be a Member State. This SI does not itself cause that, but prevents the relevant EU legislation being unnecessarily brought into our national law, which would cause confusion.

2.18 The Schedule to this instrument prevents the relevant EU Regulations and Decisions, concerning Environmental Action Programmes, EMAS and Ecolabel from being brought into national law, so these will not have legal effect in the UK on or after exit day. Part 2 of the Schedule revokes domestic designation orders as regards England and Wales which are redundant in the light of the amendments to the Pollution Prevention and Control Act 1999 made in Part 2 of the instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument uses powers in the EUWA 2018 to amend primary legislation (Acts).

3.2 The instrument attracts the affirmative resolution procedure under paragraph 1(2)(b) and (d) of Schedule 7 to the EUWA 2018. The amendments to sections 41 and 41A of the EA 1995 relate to a fee in respect of a function exercisable by a public authority in the United Kingdom. The amendments to the PPCA 1999 and section 156 of the EPA 1990 amend powers to legislate.

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)

3.3 The territorial application of this instrument varies between provisions.

3.4 Amendments to Acts apply to the whole of the UK with the exception of Northern Ireland. The provisions relating to directly-applicable EU legislation apply to the entire UK. The amendments of the England-only statutory instruments apply in England only.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom except for: Part 3 and Part 5 (in respect of Part 2 of the Schedule) which extend to England and Wales; Part 4, which extends to Great Britain; and the provisions in Part 2 and Part 5 (in respect of Part 3 of the Schedule) which have the same extent as the provisions being amended.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Environment, Thérèse Coffey MP, has made the following statement regarding Human Rights:

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

6. Legislative Context

6.1 This instrument is being made to address deficiencies arising from the withdrawal of the United Kingdom from the European Union using the power in section 8 of the EUWA 2018, in order to ensure the appropriate functioning of legislation to which it relates after the UK leaves the EU.

7. Policy background

What is being done and why?

7.1 This instrument is being made in order to maintain the effectiveness and continuity of UK legislation that would otherwise be left partially inoperable/able to function legally following our exit from the EU. It is also being made to prevent the otherwise automatic incorporation of EU legislation into our national law, where to do so would be inappropriate.

7.2 The instrument makes only those amendments that are legally necessary to achieve its objectives. It represents no changes of policy, nor will it produce any impact on businesses or the public.

7.3 To the extent that businesses are impacted, that is as a direct result of the UK leaving the EU, and not because of this SI. For example, when we cease to be a Member State, existing EMAS registrations and Ecolabels granted by UK bodies will no longer be valid. Businesses that hold EMAS registrations or Ecolabels will, if they wish to continue to hold them, need to re-register or re-apply to a competent authority in an EU Member State. This instrument does not itself have that effect, but prevents the relevant EU legislation being brought into national law by the automatic operation of the EUWA 2018, which could cause confusion.

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 EUWA 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. The instrument is also made under the power in paragraph 21 of Schedule 7 to that Act. 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 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 We have not consulted specifically on this instrument, because it represents no change of policy and has no impact of itself on businesses or the public. Individual Defra policy teams have engaged with stakeholders where appropriate.

10.2 We have liaised actively with Devolved Administrations in relation to the UK-wide elements of this instrument.

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. The only material impact will be on current holders of EMAS registrations or Ecolabels, but this is an effect of EU Exit, rather than of this instrument.

12.2 EMAS is an environmental reporting tool and those organisations registered with EMAS can use this to show its environmental credentials to customers and regulators. The impact of the EMAS Regulation no longer applying in the UK could affect businesses registered with EMAS operating in the EU market (which is considered out of scope) as well as in the UK market (which is considered in scope).

12.3 In the UK each organisation pays a registration fee of £840 to £2,160, or renewal fee of £420 to £1,080, depending on the size of the business. As a result of EU withdrawal, a company may wish to register via one of the eight EU Member States offering registration through EMAS Global (as a result paying two registration fees, or a renewal (UK) and a new registration (global) in the same year). Registration costs through the UK competent body, based on nineteen renewals for six large organisations and thirteen SMEs, is around £11,000. To register with EMAS Global UK organisations would need to pay full registration fees, rather than renewal fees. Comparative costs in two of the countries offering EMAS Global registration for six large organisations and thirteen SMEs would be €26,000, or around £23,008 in Ireland (which has one registration fee irrespective of organisation size); or €16,000 or around £14,159 in Finland. Considering the number of organisations registered with EMAS in the UK, the costs that may accrue to UK businesses are negligible. Regulating small business

12.4 The impact of the EU Ecolabel Regulation no longer applying in the UK affects businesses that are registered with the EU Ecolabel UK competent body and which sell into the EU market (which is considered out of scope); as well as those businesses registered with the EU Ecolabel UK competent body that sell into the UK market (which is considered in scope). There are only 49 businesses registered with the EU Ecolabel UK competent body, sixteen of which are foreign-based companies, and a total of 110 licensed products. Each business will pay an annual licence fee of between £450 and £2,250 (depending on the size of the business), with additional costs of between £290 and £1,650 per product licence, which can last for a number of years. As a result of EU exit, a company may wish to register in an EU Member State (as a result paying two licence fees that year) and may choose to re-register products, paying product fee licences earlier than otherwise. Considering the number of companies and products, the additional costs that may accrue to UK businesses are therefore negligible.

12.5 There is no, or no significant, impact on the public sector.

12.6 An Impact Assessment has not been prepared for this instrument because this instrument relates to maintenance of existing regulatory standards.

13. Regulating small business

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

13.2 There is no substantial change in impact on small businesses.

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 its standard policy-making procedures.

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

15. Contact

15.1 Duncan Mitchell at the Department for Environment, Food and Rural Affairs (telephone: 07887 821369; or email: duncan.mitchell@defra.gsi.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Sarah Swash, Deputy Director for EU Exit and Environmental Regulations, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Thérèse Coffey MP, Parliamentary Under Secretary of State for 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. 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 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) 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 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 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) 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 1972.	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 Environment, 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 (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case for the reasons explained in sections 7.1 to 7.3 in the main body of this Explanatory Memorandum.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Environment, 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 explained in sections 7.1 to 7.3 in the main body of this Explanatory Memorandum.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Environment, 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 Environment, 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".

4. Explanations

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