EXPLANATORY MEMORANDUM TO

THE ENVIRONMENT AND WILDLIFE (LEGISLATIVE FUNCTIONS) (EU EXIT) REGULATIONS 2019

2019 No. 473

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 transfers a series of legislative functions that are currently conferred by European Union ("EU") legislation upon the European Commission ("the Commission"), to be exercisable instead by public authorities in the United Kingdom ("UK"), so that they can be exercised at national level after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The EU Regulations concerned cover persistent organic pollutants ("POPs"); timber; the European Pollutant Release and Transfer Register; transfrontier shipments of waste; the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits; mercury; leghold traps; and the Convention on the International Trade in Endangered Species ("CITES"). This instrument also concerns one legislative function contained in a Directive relating to industrial emissions.

2.3 In each case, the legislative function is conferred upon the Commission so that it can develop the technical details of the specific regime, without the frequent need to refer back to the EU Council and EU Parliament. Examples of these functions include specifying forms to be used, amending technical annexes to reflect advances in scientific and technical knowledge, and updating annexes to reflect international agreements.

Why is it being changed?

2.4 This instrument does not make changes to substantive policy content. It provides for the legislative function in each case to be exercisable by the appropriate UK authority. This is to ensure that the regimes continue to function smoothly, without the need for primary legislation every time a change in technical matters is required.

What will it now do?

2.5 The regimes will continue to function in a similar way to how they did previously. This instrument changes the identity of the bodies carrying out the specified functions and converts the EU procedures to UK procedures as appropriate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument provides for the exercise by UK bodies of a number of legislative functions currently carried out by the Commission. These functions fall within the environment and wildlife policy areas of Defra. Defra has decided to deal with these in a single instrument, which is subject to the affirmative resolution procedure. This is done in order to maximise efficiency and save Parliamentary time, allowing the "home" instruments, which would otherwise separately transfer each legislative function, to be 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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire UK (see section 24 of the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK.

4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

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

"In my view the provisions of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 are compatible with the Convention rights".

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 converts EU law as it stands at the moment of exit into domestic law. It also confers temporary powers to make secondary legislation, to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU. This instrument relies upon those correcting powers to allow functions exercisable by the Commission to be exercisable instead by UK bodies, as this is an aspect of the law that will otherwise not work properly after exit.

7. Policy background

What is being done and why

7.1 As part of the corrections necessary to make the EU legislation covered by this instrument operate properly after exit, it is necessary to remove references to the Commission and the delegated and implementing acts that it can make (EU tertiary legislation), since they will no longer mean anything in UK law. Where appropriate, the legislation will allow UK authorities to exercise these legislative functions in the UK after exit. This means that primary legislation will not be required for such changes.

7.2 **Persistent organic pollutants (POPs) (regulation 2)**: Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants aims to phase out the use of POPs as soon as possible, or restrict their production, placing on the market and use; to minimise releases of POPs; and to establish provisions regarding POPs waste. The Commission has the power, for the purpose of adapting to scientific and technical progress, to amend POPs waste concentration limits in the Annexes to the Regulation; and to amend Annexes to the Regulation to ban/restrict/modify the use of POPs in accordance with international agreements. These functions are transferred to the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs to exercise in their respective areas. The Secretary of State may exercise the functions on behalf of a Devolved Administration with its consent. The provisions in this instrument are related to amendments made by the Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1405).

7.3 **Timber (regulations 3 and 6)**: this instrument transfers legislative functions from two EU Regulations. First, Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community establishes a licensing scheme for the import of timber into the EU. The Commission has the power to recognise existing schemes in a partner country to form the basis of licensing; make provisions for the form, acceptance and verification of licences; amend the Annexes to the Regulation that list licensing partner countries; and amend the list of timber products to which the licensing scheme applies. These functions are transferred to the Secretary of State. Second is Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market. The Commission has the power to adopt further risk assessment criteria, taking into account market developments and experience gained in the operation of the Regulation, with a view to ensuring the effectiveness of the due diligence system; and amend the list of timber and timber products covered by the Regulation, set out in the Annex. These functions are transferred to the Secretary of State. The provisions in this instrument are related to amendments made by the Timber and Timber Products and FLEGT (EU Exit) Regulations 2018 (S.I. 2018/1025).

7.4 **European Pollutant Release and Transfer Register (regulation 4)**: Regulation (EC) No 166/2006 of the European Parliament and of the Council concerning the establishment of a European Pollutant Release and Transfer Register establishes an integrated pollutant release and transfer register in the form of a publicly accessible electronic database and lays down rules for its functioning. This is in order to implement a United Nations Economic Commission for Europe (UNECE) Protocol, and to facilitate public participation in environmental decision-making, as well as contributing to the prevention and reduction of pollution of the environment. The Commission has the power to take measures to initiate reporting on releases of relevant pollutants from diffuse sources where no data exists and to adopt guidelines for the monitoring and reporting of emissions: these functions are transferred to the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs to exercise in their respective areas. The Secretary of State can also exercise the function for a Devolved Administration with its consent. The Commission also has a power to amend technical Annexes to the Regulation in light of scientific and technical progress or international agreements. This function has been transferred to the Secretary of State to make regulations for the

UK with the consent of the Devolved Administrations. The provisions in this instrument are related to amendments made by the Air Quality (Miscellaneous Amendment and Revocation of Retained Direct EU Legislation) (EU Exit) Regulations 2018 (S.I. 2018/1407).

7.5 **Transfrontier shipments of waste (regulation 5)**: Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination. The Commission has the power to establish the technical and organisational requirements for the practical implementation of electronic data interchange for the submission of documents and information; establish procedures governing the export of wastes listed in Annexes 3 and 3A to the Regulation; adopt and maintain a correlation table to support enforcement in Member States; and amend technical Annexes to the Regulation to reflect international agreements and changes in other EU legislation. These functions are transferred to the Secretary of State. The provisions in this instrument are related to amendments made by the International Waste Shipments (Amendment) (EU Exit) Regulations 2019 (see: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-international-waste-shipments-amendment-eu-exit-regulations-2018).

7.6 **Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits (regulation 7)**: Regulation (EU) No 511/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union establishes rules governing compliance with access and benefit-sharing for genetic resources and traditional knowledge associated with genetic resources, in accordance with the provisions of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity. The Commission has the power and a duty to establish a register of collections; establish procedures for monitoring user compliance; and establish procedures for recognising best practice. These functions are transferred to the Secretary of State. The provisions in this instrument are related to amendments made by the Nagoya Protocol (Compliance) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1393).

7.7 **Mercury (regulation 8)**: Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury establishes measures and conditions concerning the use and storage of, and trade in, mercury, mercury compounds and mixtures of mercury, and the manufacture and use of, and trade in, mercury-added products, and the management of mercury waste, in order to ensure a high level of protection of human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. The Commission has the power to specify forms to be used for export and import restrictions; set out technical requirements for environmentally-sound interim storage of mercury, mercury compounds and mixtures of mercury; authorise new mercury-added products or manufacturing processes; extend the period allowed for temporary storage of mercury waste; and amend Annexes 1 to 4 to the Regulation in line with international agreements. These functions are transferred to the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs to exercise in their respective areas. The Secretary of State may exercise the functions on behalf of a Devolved Administration with its consent. The provisions in this instrument are related to amendments made by

the Control of Mercury (Amendment) (EU Exit) Regulations 2019 (see: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-control-of-mercury-amendment-eu-exit-regulations-2018).

7.8 **Industrial emissions (regulation 9)**: Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) ("the IED") lays down rules on integrated prevention and control of pollution arising from specified industrial activities. Chapter 2 of the IED applies pollution prevention and control requirements to activities listed in Annex 1 to the IED. Article 13 of Chapter 2 gives the Commission the power to determine Best Available Techniques ("BAT") for these activities. This function is transferred to the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs to exercise in their respective areas. The Secretary of State may exercise the functions on behalf of a Devolved Administration with its consent. In England and Wales, the provisions in this instrument are related to amendments made by the Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019 (see: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-environmental-permitting-england-and-wales-amendment-eu-exit-regulations-2018). Corresponding legislation in Scotland and Northern Ireland is expected to be amended as necessary in due course.

7.9 **Leghold traps (regulations 10 and 11)**: This instrument transfers legislative functions from two EU Regulations. First, Council Regulation (EEC) No 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards prohibits the use of leghold traps within the EU. The Commission has the power to grant derogations from the ban on the import of pelts and other products listed in Annexes 1 and 2 to the Regulation; and determine the appropriate forms for certification of imported goods incorporating pelts of listed species. These functions are transferred to the Secretary of State. Second is Commission Regulation (EC) No 35/97 laying down provisions on the certification of pelts and goods covered by Council Regulation (EEC) No 3254/91. Article 2 provides that the form set out in the Annex to the Regulation must be used. This instrument amends Article 2 to give the Secretary of State the power to prescribe a different form from time to time. The provisions in this instrument are related to amendments made by the Leghold Trap and Pelt Imports (Amendment etc.) (EU Exit) Regulations 2019 (see: https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-leghold-trap-and-pelt-imports-amendment-etc-eu-exit-regulations-2018).

7.10 **Convention in International Trade in Endangered Species (CITES) (regulation 12)**: Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein aims to protect species of wild fauna and flora and to guarantee their conservation by regulating their trade. The Commission has the power to establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the EU of species listed in Annex A; grant derogations from completion of the checks and presentation of import documents at the border customs office at the point of introduction; recommend restrictions on exports of certain species; establish derogations from certain provisions of the Regulation; establish restrictions on the holding or movement of live specimens; establish time limits for the issuance of permits and certificates; and set criteria for authorising

imports and exports through non-designated customs offices. These functions are transferred to the Secretary of State. The provisions in this instrument are related to amendments made by the Trade in Endangered Species of Wild Fauna and Flora (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1408).

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 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 This instrument was not subject to consultation.

10.2 This instrument and the policy reflected in it have been developed in collaboration with Devolved Administration officials.

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 because it relates to the maintenance of existing regulatory standards.

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.

13.3 The basis for the final decision on what action to take to assist small businesses was that the subject matter of this instrument concerns legislative functions exercised by government and therefore no disproportionate impacts are expected to affect 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 their 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 Defra (telephone: 07887 821369; or email: duncan.mitchell@defra.gov.uk) can be contacted with any queries regarding the instrument.

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

15.3 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 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 the 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 and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because they provide for the exercise of legislative functions by UK authorities as appropriate given the nature of the functions concerned.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for the 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 This is the case because, without this instrument, retained EU law will not work properly and it is appropriate for UK authorities to exercise legislative functions currently carried out by the Commission.

3. Equalities

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

3.2 The Parliamentary Under Secretary of State for the 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.

5. Legislative sub-delegation

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

"In my view it is appropriate to create a relevant sub-delegated power in the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019."

5.2 This is appropriate because: the relevant power in Article 7(6) of Regulation (EC) No 850/2004 on persistent organic pollutants concerns the EU Commission defining an EU-wide format for the submission of information about derogations from the requirement to dispose waste containing persistent organic pollutants. Given that the submission of information will now relate only to derogations within the United Kingdom, it is appropriate that the power to define the format is administrative.

5.3 Article 4 of Regulation 3254/91 on leghold traps currently provides for the EU Commission to determine, via tertiary legislation, the appropriate form for the certification of origin of pelts and pelt products. The form is currently found in Commission Regulation 35/97. These Regulations amend Article 4 and also Commission Regulation 35/97, with the result that the form is to be determined by the Secretary of State administratively (see regulation 11). The form does not contain substantive requirements, but rather asks for factual information about the goods which are being imported. The change from a legislative to an administrative procedure allows the form to be updated quickly where required without the need for legislation.