EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (WITHDRAWAL AGREEMENT) (EU EXIT) (RELEVANT INTERNATIONAL AGREEMENTS) REGULATIONS 2020

2020 No. 992

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument ensures that the Withdrawal Agreement is a relevant international agreement for the nuclear safeguards purposes of the Office for Nuclear Regulation (ONR), implementing the civil nuclear section in Part 3, Title IX (Euratom related issues) of the Withdrawal Agreement.

2.2 Title IX includes provisions relating to the UK's future nuclear safeguards regime as well as a provision relating to oversight of EU-owned Special Fissile Material (EU SFM). EU SFM is highly enriched uranium and plutonium which is (a) present in the UK at the end of the Transition Period and (b) owned by an EU Member State, or a person or undertaking based in an EU Member State. The ONR is the UK's civil nuclear regulator and responsible for the UK's nuclear safeguards regime, including in respect of EU SFM, after the end of the Transition Period. The majority of special fissile material in the UK is UK-owned. The limited amount of EU-owned material in the UK will be referred to as EU SFM throughout this Memorandum.

2.3 This instrument will help the UK meet its obligations under Part 3 of the Withdrawal Agreement. The instrument adds the Withdrawal Agreement to the list of relevant international agreements in The Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019. The purpose of this measure is for the ONR's nuclear safeguards purposes to include ensuring the UK's compliance, or enabling or facilitating the Government's compliance with the Withdrawal Agreement provisions relating to nuclear safeguards.

Explanations

What did any relevant EU law do before exit day?

2.4 Under the terms of the Euratom (European Atomic Energy Community) Treaty, Euratom applied nuclear safeguards in the UK and had certain rights over EU SFM present in the UK; when the UK was part of the Community, this also included UK SFM. This was to ensure continuity of supply and Euratom oversight and approval of movements and storage of EU material and included the right, *in extremis,* to repatriate EU SFM back to the Member State from which it originated. All these Euratom rights will cease from the end of the Transition Period in respect of UK-owned SFM. But under the terms of the Withdrawal Agreement, some rights continue in respect of EU (that is, non-UK) SFM. At the same time, the ONR will take over responsibility for the UK's domestic nuclear safeguards regime, including the level of safeguards applied to EU SFM.

Why is it being changed?

2.5 At the end of the Transition Period, Euratom will lose the right to apply safeguards to nuclear materials in the UK, including EU SFM. Title IX of the Withdrawal Agreement makes provisions relating to the UK's future nuclear safeguard regime (Article 80) and in relation to EU SFM (Article 83). This includes provision for Euratom to retain limited residual rights over the small amount of EU SFM still present in the UK at the end of the Transition Period. This Statutory Instrument gives the ONR as the UK's independent nuclear regulator a purpose to ensure or facilitate the UK's compliance with the nuclear safeguards aspects Withdrawal Agreement.

What will it now do?

2.6 The instrument will add the Withdrawal Agreement to the list of relevant international agreements in The Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019 ("the 2019 Regulations"). This will ensure that the ONR is empowered to ensure or facilitate the UK's compliance with the Withdrawal Agreement.

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 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 the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 On 31 January 2020, the UK ended its membership of the European Union and Euratom and entered into a Transition Period as set out in the Withdrawal Agreement. From 1 January 2021 the UK will have sole responsibility for ensuring that all nuclear materials that were covered by the Euratom Treaty, and are present in the UK, are handled in accordance with the UK's obligations under relevant international treaties and conventions.

6.2 Both the UK and EU agreed that it was necessary to include Euratom separation issues in the Withdrawal Agreement to provide certainty to all sides on the legal and practical issues arising from the UK's withdrawal from the Euratom Treaty. This was set out in the respective UK and EU position papers published on 13 July 2017.

6.3 It was agreed that some residual rights over the small amount of SFM owned by a person or undertaking based in an EU Member State but present in the UK at the end of the Transition Period would be retained by Euratom. This agreement resulted in Article 83(3) of the Withdrawal Agreement.

6.4 The 2019 Regulations set out a list of relevant international agreements for the purposes of the Energy Act 2013. The ONR is responsible for ensuring compliance with the nuclear safeguards obligations contained in these agreements. This instrument will add the Withdrawal Agreement to the list of relevant international agreements in the 2019 Regulations.

7. Policy background

What is being done and why?

7.1 This instrument implements a separation issue set out in the Withdrawal Agreement in respect of civil nuclear, necessitated by the UK's withdrawal from Euratom.

7.2 Adding the Withdrawal Agreement to the list of relevant international agreements in the 2019 Regulations will give the ONR a role in the UK's compliance with the Withdrawal Agreement. This will help ensure that the UK complies with the provisions relating to nuclear safeguards in the Withdrawal Agreement when Euratom regulations no longer apply in the UK.

7.3 It is necessary to legislate before the end of the Transition Period to ensure that the UK is implementing its international obligations under the Withdrawal Agreement.

7.4 The Regulations will be supplemented by administrative arrangements in respect of Article 83(3) of the Withdrawal Agreement in order to ensure a consistent approach with industry. These administrative arrangements will be kept as close to current administrative procedures as possible to minimise industry burden.

7.5 Article 83(3) of the Withdrawal Agreement retains limited Euratom rights over EU SFM as follows:

- Euratom has the right to repatriate any EU SFM
- All EU SFM contracts must be approved by the Euratom Supply Agency.
- Operators must notify Euratom when exporting EU SFM from the UK.
- An export licence from the competent authority in the relevant Member State must be obtained before export from the UK to another third country.

7.6 It should be noted that:

- No new rights have been created. All these "ownership" rights already apply across the Euratom Community and therefore up until this point, have applied to UK owned material and EU27-owned material. When the Transition Period ends, they will cease to apply to UK owned material, but will continue to apply to EU SFM in the UK. This requires new legislation.
- In practice the right of repatriation has never been exercised by Euratom.
- Both parties are clear that material owned by UK subsidiaries of an EU27 undertaking is not covered by the provision.

7.7 Article 83(3) applies only to that EU SFM which is 'stranded' in the UK at the end of the transition period. Any new EU SFM entering the UK after the end of the transition period will be covered under the Nuclear Safeguards Regulations 2019.

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 8B of the European Union (Withdrawal) Act 2018 (Power in connection with certain other separation issues) in order to implement Part 3 of the Withdrawal Agreement. 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 legislation amends the Nuclear Safeguards (Fissionable Material and Relevant International Agreements) (EU Exit) Regulations 2019 but the intention is not to consolidate at this time.

10. Consultation outcome

10.1 Informal consultation has been conducted with the four operators that hold EU SFM since April 2020. A full formal consultation was considered unnecessary given the small number of affected operators and the limited impact on their administrative reporting requirements. A concern was raised by operators regarding the obligation in Article 83(3)(d) to organise export licences from EU competent authorities. BEIS engaged closely with operators and the Department for International Trade to develop an administrative approach that would cause minimal disruption.

10.2 BEIS has collaborated with the ONR with regards to its role in facilitating the UK's compliance with the provisions set out in Article 83(3) of the Withdrawal Agreement.

10.3 The Devolved Administrations have been engaged and expressed no concerns.

11. Guidance

11.1 Administrative guidance will be agreed between BEIS, the ONR and the four operators by 31 December 2020.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies. There are four operators that hold EU SFM in the UK and will therefore be affected by this legislation. They have been consulted with and all agree that the practical implications are minimal.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument due to the limited administrative impacts and the small number of operators affected by the planned administrative arrangements. Any costs will be associated with the familiarisation of the operators to the administrative arrangements.

12.4 We do not anticipate any impacts on small businesses, families or people with protected characteristics. There will be no significant wider economic impacts and transfers caused by this SI.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small 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 Evelyn Tilly at the Department for Business, Energy and Industrial Strategy Email: evelyn.tilly@BEIS.gov.uk can be contacted with any queries regarding the instrument.

15.2 Stewart Agnew at the Department for Business, Energy and Industrial Strategy Email: stewart.agnew@BEIS.gov.uk can be contacted with any queries regarding the instrument.

15.3 David Wagstaff, Deputy Director for the Europe Nuclear Negotiations Team at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.4 Minister Nadhim Zahawi at the Department for Business, Energy and Industrial Strategy 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 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.

		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 14, 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 15, 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: 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. Explanations

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