EXPLANATORY MEMORANDUM TO

THE FLOODS AND WATER (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 558

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.

2. Purpose of the instrument

2.1 The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 ensure that floods and water legislation will continue to be operable in the United Kingdom after the UK leaves the EU. The instrument addresses deficiencies in retained EU law arising from the UK's withdrawal from the EU. The purpose of the instrument is to preserve and protect the existing policy regime rather than to introduce new policy.

Explanations

What did any relevant EU law do before exit day?

2.2 The function of the EU law in this area is to protect and improve the water environment from various sources of pollution e.g. from agriculture and urban sources; it is also about protecting human health by preventing contamination of drinking water and bathing waters.

2.3 The main directive is Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy ("Water Framework Directive" or "WFD"). It is the cornerstone of EU water policy. Through a system of integrated planning, it establishes a framework for the protection of inland surface waters (rivers and lakes), transitional waters, coastal waters and groundwater, in order to prevent and reduce pollution, promote sustainable water use, protect the aquatic environment, improve the status of aquatic ecosystems and mitigate the effects of floods and droughts. It requires Member States to assess the condition of water and devise accurate ways to classify, measure and monitor water quality and to introduce appropriate measures to improve it where technically feasible and not disproportionately costly.

2.4 There are two so-called 'daughter' Directives of the WFD, the Groundwater Directive (Directive 2006/118/EC) and the Environmental Quality Standards Directive (Directive 2008/105/EC) ("the EQSD"). These EU Directives focus on the protection of the water environment from chemical pollution. Groundwater ecosystems are sensitive to such pollutants and groundwater supplies a significant proportion of our drinking water in the UK. The EQSD focuses on maintaining a list of substances considered harmful to the surface water environment that must be monitored and the setting of environmental standards for them.

2.5 In addition, there are other EU Directives designed to protect the water environment and contribute to meeting the water quality objectives of the WFD. The Urban Waste Water Treatment Directive (Directive 91/271 EEC) protects the water environment from discharges of waste water from domestic and some industrial sources. The

Nitrates Directive (Directive 91/676/EEC) concerns the control of diffuse nitrate pollution from agriculture and the Bathing Waters Directive (Directive 2006/7/EC), Drinking Water Directive (Directive 98/83/EC) and Sewage Sludge Directive (Directive 86/278/EEC) protect both the environment and public health.

2.6 In addition to the above, relevant EU law in this area includes directly applicable EU Decisions. These Decisions are technical in nature, for example they set out symbols to use for bathing water signage, reporting formats, and values for classification of some water bodies. One EU Decision 2018/840/EU establishes a watch list of chemical substances for EU-wide monitoring to support future reviews of the list of priority substances contained in the EQSD.

Why is it being changed?

2.7 This instrument makes minor and technical amendments to fix deficiencies in the transposing legislation for the EU Directives described above and some other pieces of domestic legislation to ensure the legislation works effectively after EU Exit. The principal changes are described in the following paragraphs.

2.8 Where there was a reference in an EU Directive to a Member State reporting to the European Commission, for example the requirement in the Urban Waste Water Treatment Directive to provide a situation report on the disposal of urban waste water and sludge, this is being replaced by a requirement in the domestic legislation that such an environmental report is to be made publicly available. This is being done as the Department wishes to remain transparent about its environmental performance.

2.9 There are many cross-references in domestic legislation to the water Directives (and other EU instruments) which are deficient and are therefore amended by this EU Exit instrument. For example, there are obligations on the Secretary of State (and the Welsh Ministers) to act in compliance with an EU Directive, for example the Bathing Waters Directive, or a provision of it. These obligations need to be amended so that they are read with appropriate modifications. The main ways in which such cross-references have been modified are explained in sections 2.10 to 2.12.

2.10 Cross-references in domestic legislation to UK obligations as a Member State in EU Directives are instead to be read as an obligation on the appropriate Minister or regulator responsible for complying with that obligation before exit day.

2.11 Cross-references to provisions in EU Directives where the UK, as a Member State, engages in EU-wide exercises and processes, for instance under the intercalibration exercise in the Water Framework Directive, including obligations to collaborate with other Member States, have been removed. This change has been made as the UK will no longer be mandated by, or have a mechanism to take part in, EU procedures and processes.

2.12 Some amendments remove cross-references to provisions in Directives requiring Member States to inform the European Commission of certain actions, for instance informing the European Commission under the Drinking Water Directive where the UK grants a third derogation under the Water Supply (Water Quality) Regulations 2016. It would no longer be appropriate to receive any direction from the EU Commission to grant that derogation after EU Exit. Instead provision is inserted for the Secretary of State to be able to grant it.

2.13 Amendments will ensure that after EU Exit, when the UK is no longer part of the EU, the Water Supply (Water Fittings) Regulations 2016 no longer give preferential

treatment to products with EU or EEA markings for use in plumbing systems, water fittings and other water-using appliances. Similarly, the Water Resources (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 are amended to allow products that are of equivalent standards to the British Standards to be installed. These amendments are to align with World Trade Organisation principles.

2.14 This instrument also amends relevant EU Decisions (which will form part of retained EU law) to make them operable, and revokes other EU Decisions which would be unnecessary or unworkable if they remained part of domestic law after EU Exit. For example, Decision 2014/431/EU provides a format for reports to the EU Commission on the implementation of the Urban Waste Water Treatment Directive. As the UK will no longer be reporting to the Commission on that Directive, it is appropriate to revoke that Decision.

What will it now do?

2.15 The instrument will ensure that the EU derived law in this area will operate effectively in the UK after we leave the EU. By making the proposed instrument, Defra will be maintaining the existing policy regime, thereby providing businesses, environmental NGOs and the public with maximum certainty as the UK leaves the EU.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24(1) of the European Union (Withdrawal) Act 2018). While most of the provisions apply to England and Wales or to England only, some provisions extend and apply to the whole of the United Kingdom.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is as follows. Part 1, regulation 17 and Part 4 extend to the United Kingdom. Regulations 2 to 4, 7 to 9, 12 to 16 and 18 to 22 extend to England and Wales. Regulations 5, 6, 10 and 11 extend to Great Britain.

4.2 The territorial application is as follows. The amendments and revocations in the instrument have the same application as the provisions amended or revoked, with the exception of the amendment in regulation 6 (to the Sludge (Use in Agriculture) Regulations 1989) which does not apply to Scotland. For the rest of the regulations, the territorial application is as follows:

- Much legislation in floods and water covers both England and Wales to reflect the geographical coverage of river basins and the Secretary of State is also making amendments to this legislation with the consent of the Welsh Government. Regulations 2 to 9, 12, 15 and 20 to 22 apply to England and Wales. Regulation 5 also applies in relation to so much of the River Esk as is situated in Scotland.

- Regulations 10 and 11 apply to the Northumbria and the Solway Tweed river basin districts, including the parts that are in Scotland.
- Regulations 13, 14, 16, 18 and 19 apply to England only.
- Regulation 17 which amends the Flood Reinsurance (Scheme Funding and Administration) Regulations 2015 applies to the whole of the UK; this is a reserved matter.
- Floods and water are devolved matters in Scotland and Wales and a transferred matter in Northern Ireland, however it has been agreed that the Secretary of State will make the amendments to and revocations of EU Decisions in this area with the consent of the devolved administrations. Therefore regulations 23 to 27 apply to the whole of 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 Floods and Water (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The key legislative context for this instrument is set out at paragraph 2.2 above.

6.2 This instrument is made in exercise of the powers in the European Union (Withdrawal) Act 2018 to make minor and technical amendments to relevant retained EU law about floods and water to address deficiencies arising from the UK's withdrawal from the EU.

7. Policy background

What is being done and why?

7.1 The UK is currently part of an EU regime that sets standards regarding the quality of our water environment. The primary goal of this EU policy framework is to ensure a healthy and sustainable supply of water for people and the environment across a range of uses. The policy framework therefore requires managing sources of pollution to our waters from chemicals, agriculture and urban sources. This instrument is required to fix the current legislation which protects the water environment so it is still operable after EU Exit. This will ensure that there are clear environmental obligations on government, regulators and water companies. More detail on what is being done and why is set out at paragraph 2 of this document.

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 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 Not applicable to this instrument.

10. Consultation outcome

10.1 The Government and its Arm's Length Bodies discussed the changes being introduced with interested parties including water company representatives; farming representatives, local government representatives and environmental NGOs (including WWF, RSBP and Angling Trust).

10.2 The devolved administrations (Scottish Government, DAERA and Welsh Government) have been consulted on the amendments contained in the instrument, and they are content with the approach being taken.

11. Guidance

11.1 There is no associated guidance.

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 we expect it to have no impact on business.

13. Regulating small business

13.1 While the legislation listed in this instrument does apply to activities that are undertaken by small businesses, the amendments made do not affect their activities.

14. Monitoring & review

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

15. Contact

15.1 William Wakefield at the Department for Environment, Food and Rural Affairs, Telephone: 0208 026 4275 or email: William.wakefield@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kirstin Green and Jan Dixon, Deputy Directors for the Policy area, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for the Environment Thérèse Coffey MP 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 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 Floods and Water (Amendments etc.) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the instrument makes minor and technical amendments to correct deficiencies which arise from withdrawal to ensure that floods and water legislation continues to operate effectively at the point at which the UK leaves the EU.

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 These are that this instrument corrects deficiencies to ensure that legislation for floods and water continues to operate effectively after UK withdrawal from the EU.

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.