EXPLANATORY MEMORANDUM TO

THE FLUORINATED GREENHOUSE GASES AND OZONE-DEPLETING SUBSTANCES (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 281

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 command of Her Majesty.

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

2. Purpose of the instrument

2.1 The purpose of the instrument is to ensure that the relevant legal provisions on fluorinated greenhouse gases and ozone-depleting substances remain operable in law in Northern Ireland, after the United Kingdom ("UK") withdraws from the European Union ("EU").

Explanations

What did any relevant EU law do before exit day?

2.2 The laws for Northern Ireland on fluorinated greenhouse gases and ozone-depleting substances currently allow for provisions to limit industrial emissions of gases which could otherwise exacerbate the greenhouse effect and damage the ozone layer. The Department of Agriculture, Environment and Rural Affairs ("DAERA") is the Northern Ireland Department responsible for these environmental functions. The sectors of industry concerned include refrigeration, air conditioning and fire protection equipment.

Why is it being changed?

2.3 It is being changed to make drafting fixes to no longer refer to Northern Ireland or the UK as being a Member State of the EU.

What will it now do?

2.4 The provisions, ensuring that emissions of fluorinated greenhouse gases and ozone-depleting substances are controlled in Northern Ireland, will remain extant. However, the provisions will no longer refer to Northern Ireland or the UK as a Member State of the EU.

3. Matters of special interest to Parliament

Matters of special interest to Joint Committee on Statutory Instruments

3.1 The Fluorinated Greenhouse Gases and Ozone-Depleting Substances (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 28th January 2019. On 14th February 2019 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 Northern Ireland.

4.2 The territorial application of this instrument is 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 Laws have already been brought into operation for Northern Ireland on the control of emissions of ozone-depleting substances and fluorinated greenhouse gases. These were the result of European Union requirements.

6.2 The purpose of this draft legislation is to ensure that the provisions on the control of Northern Ireland's emissions are retained, but also that the references to Northern Ireland and the UK being part of the EU are removed.

7. Policy background

What is being done and why?

7.1 This instrument applies to policy areas which are a transferred matter for Northern Ireland under the Northern Ireland Act 1998. No change is being made to policy. This instrument provides the continued ability to ensure environmental protection in the UK when it leaves the EU. 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 the necessary actions to prepare Northern Ireland for EU exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for EU exit day in the absence of a Northern Ireland Executive. In the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for EU 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 the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

7.2 This draft instrument only removes references to Northern Ireland and the UK being part of the EU.

8. European Union (Withdrawal) Act 2018/ Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made to address a deficiency in retained EU law but relates to the withdrawal of the UK from the EU because it is being made under paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018. The Minister has made any relevant statements in Part 2 of the Annex to this explanatory memorandum.

9. Consolidation

9.1 This is not applicable, as no consolidation is being done.

10. Consultation outcome

10.1 No formal consultations were carried out in respect of the instrument as its purpose is to resolve operability issues in order to preserve and protect the existing policy regime; it will not introduce any new policy.

11. Guidance

11.1 This is not applicable as no guidance would be required for any stakeholders.

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 no effects upon people, businesses or the environment are anticipated. This is because the draft instrument only removes references to Northern Ireland and the UK being part of the EU.

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 European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Colin Nugent at the Department of Agriculture, Environment and Rural Affairs (DAERA) Telephone: 028 9056 9550 or email: colin.nugent@daera-ni.gov.uk can be contacted with any queries regarding the instrument.

15.2 David Small, Head of Environment, Marine and Fisheries Group at the Department of Agriculture, Environment and Rural Affairs (DAERA) can confirm that this explanatory memorandum meets the required standard.

15.3 Dr Thérèse Coffey MP, Parliamentary Under Secretary of State for the Environment 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. 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 the European Union (Withdrawal) Act 2018.	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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	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) European Communities Act 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) European Communities Act 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) European Communities Act 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) European Communities Act 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) European Communities Act 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. Sifting statement(s)

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

"In my view The Fluorinated Greenhouse Gases and Ozone-Depleting Substances (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 the instrument does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. This instrument will maintain the operability of the relevant legal provisions on fluorinated greenhouse gases and ozone-depleting substances in Northern Ireland, arising from the withdrawal of the UK from the EU, as detailed in the main body of this explanatory memorandum.

2. Appropriateness statement

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

"In my view The Fluorinated Greenhouse Gases and Ozone-Depleting Substances (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate".

2.2 This is the case because, as described in section 6.2 above, the provisions on the control of Northern Ireland's emissions of fluorinated greenhouse gases and ozone-depleting substances are retained, whilst also ensuring that the references to Northern Ireland and the UK being part of the EU are removed.

3. Good reasons

3.1 The Parliamentary Under Secretary of State for the Environment, Dr 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 allowing the provisions in Northern Ireland on fluorinated greenhouse gases and ozone-depleting substances to remain in operation after EU exit Day.

4. Equalities

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