EXPLANATORY MEMORANDUM TO

THE INSPIRE (AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1338

1. Introduction

1.1 This explanatory memorandum has been prepared by 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 amends The INSPIRE Regulations 2009 (SI 2009/3157) which incorporated into UK law Directive 2007/2/EC of the European Parliament and of the Council. The directive established a European spatial data infrastructure (SDI) by requiring member states to operate national SDIs. The amendments are being made to enable the continued operability of the INSPIRE Regulations as retained EU law under the European Union (Withdrawal) Act 2018, following the UK's withdrawal from the European Union.

2.2 There are corrections to some provisions of the EU legislation relating to legislative functions which will be made in a subsequent statutory instrument.

Explanations

What did any relevant EU law do before exit day?

2.3 The INSPIRE Regulations 2009 require public authorities to make available under harmonised conditions spatial data falling under one of 34 data themes which were set out in the directive. The rationale for the directive is to improve environmental decision making at all levels of government.

Why is it being changed?

2.4 As retained EU law, the current Regulation would not be effective in UK law due to the deficiencies within the provisions of the Regulation, arising from the withdrawal of the United Kingdom from the European Union. The instrument makes amendments to the existing legislation described above to ensure the legislation is operable after Exit. The changes include amending references to the EU, EU institutions and EU administrative processes to UK equivalents and updating legal references to refer to relevant UK legislation. Requirements to report to the Commission on implementation, costs and benefits and on use of the SDI have also been amended to requirements on appropriate authorities to publish reports.

What will it now do?

2.5 Following the UK's withdrawal from the European Union the retained EU Regulation, as amended by this instrument, will continue to implement a spatial data infrastructure in the UK under harmonised conditions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument is being laid in draft for sifting pursuant to the European Union (Withdrawal) Act 2018.

The INSPIRE (Amendment) (EU Exit) Regulations 2018 2018 were presented to the Sifting Committees for consideration on 8th November 2018. On 21st November 2018 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 the United Kingdom.

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

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 On 23rd June 2016, a referendum on the United Kingdom's membership of the EU took place which concluded in a vote to the leave the EU. The UK Government's intention is that the UK will cease to be a member state of the EU on 29th March 2019.

6.2 To ensure that the UK has a working statute book on the day it leaves the EU the Withdrawal Act incorporates EU law as it stands, into domestic law. It also creates temporary powers to make secondary legislation to correct laws that would otherwise no longer work appropriately once the UK has left the EU.

6.3 This SI amends UK Regulation SI 2009/3157 and the INSPIRE (Scotland) Regulations (SSI 440/2009). EU implementing rules that were directly applicable are incorporated into UK law. These implementing rules are Commission Regulation (EC) No. 1205/2008; Commission Decision 2009/442/EC; Commission Regulation (EC) 976/2009; Commission Regulation (EU) No. 1089/2010

6.4 Commission decision Commission Regulation (EU) No. 268/2010 is revoked.

6.5 Corrections to some provisions of the EU legislation relating to legislative functions which will be made in a subsequent statutory instrument.

7. Policy background

What is being done and why?

7.1 In order to allow the UK to continue to operate the spatial data infrastructure established by the INSPIRE Directive deficiencies in the INSPIRE Regulations 2009 and associated retained EU law that arise as a consequence of EU Exit are being corrected. This ensures legal operability of the INSPIRE Regulations 2009 and the retained EU law after EU Exit.

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 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 Consolidation is not required.

10. Consultation outcome

10.1 Government informally engaged stakeholders on the proposed approaches. No substantive comments or issues were raised.

10.2 The devolved administrations were closely consulted on the approach taken during the drafting of the SI and were given the opportunity to propose amendments to the text.

11. Guidance

11.1 No guidance specific to this SI or the amendments is required. Comprehensive guidance on INSPIRE is available at https://data.gov.uk/location/inspire-tools.

12. Impact

12.1 There is no, or no significant impact on business, charities or voluntary bodies as existing regulatory standards have not changed.

12.2 There is no, or no significant impact on the public sector as existing regulatory standards have not changed.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private or voluntary sector is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is by way of a 5 year review (Better Regulations).

15. Contact

15.1 John Dixon is the policy lead at the Department of Environment, Food and Rural Affair tel: 03459 33 55 77 or email: uk-inspire-ncp@defra.gsi.gov.uk.

15.2 Jan Booth, Deputy Director for data transformation at the Department of 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, Dr Thérèse Coffey MP at the Department of 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 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 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	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 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	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 Food and Rural Affairs, Thérèse Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the INSPIRE (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

2. This is the case because, as stated in paragraph 7.1 above, its purpose is to address deficiencies in the INSPIRE Regulations 2009 and associated retained EU law that arise as a consequence of EU Exit, and to ensure legal operability of the INSPIRE Regulations 2009 and that retained EU law after EU Exit.

3. Appropriateness statement

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

"In my view the INSPIRE (Amendment) (EU Exit) Regulations 2018 do no more than is appropriate".

3.2 This is the case because: this instrument only corrects deficiencies within the retained EU legislation as necessary to ensure the continued effect of the INSPIRE Regulations.

4. Good reasons

4.1 The Parliamentary Under Secretary of State for the Environment Food and Rural Affairs, Thérèse Coffey, 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".

4.2 These are: this instrument, in line with section 8(1) of the European Union (Withdrawal) Act 2018, corrects deficiencies as necessary to ensure retained EU legislation operates efficiently after we leave the EU.

5. Equalities

5.1 The Parliamentary Under Secretary of State for the Environment Food and Rural Affairs, Thérèse Coffey has made the following statement(s):

"The INSPIRE (Amendment) (EU Exit) Regulations 2018 do 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.

5.2 The amendments made by the instrument do not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because they are minor and technical and do not alter the operation of the underlying schemes or impose any new liabilities or obligations on any relevant persons.

6. Explanations

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