EXPLANATORY MEMORANDUM TO

THE INSPIRE (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 1352

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 Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument amends deficiencies in Commission Implementing Decision (EU) 2019/1372 implementing Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) which established a European spatial data infrastructure ("SDI"). Directive 2007/2/EC requires Member States to operate national SDIs. Commission Implementing Decision (EU) 2019/1372 replaced Commission Decision 2009/442/EC. Commission Implementing Decision (EU) 2019/1372 simplifies arrangements for monitoring the use of the SDI and reporting on the cost, benefits and governance of implementation.

2.2 This instrument also makes consequential amendments to the INSPIRE (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1338). This will ensure that amendments made to the UK INSPIRE Regulations 2009 (S.I. 2009/3157) which incorporated the INSPIRE Directive into UK law covering England, Wales and Northern Ireland reflect the new Commission Decision and will be operable after the UK exits the EU.

2.3 This instrument makes similar consequential amendments to the INSPIRE (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 103/2019), at the request of the Scottish Government.

2.4 This instrument also makes consequential amendments to The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019 [/2019] which are necessary as a result of the replacement of Commission Decision 2009/442/EC by Commission Implementing Decision (EU) 2019/1372. These amendments are made to ensure that the regulation making power in The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019 (2019/XXXX) can be used as necessary to amend Commission Implementing Decision (EU) 2019/1372.

2.5 These amendments are being made to enable the continued operability of the INSPIRE legislative architecture as retained EU law under the European Union (Withdrawal) Act 2018, following the UK's withdrawal from the EU. The INSPIRE Directive was implemented in England and Wales and Northern Ireland by INSPIRE Regulations 2009 (S.I. 2009/3157), and in Scotland by INSPIRE (Scotland) Regulations 2009 (S.S.I. 2009/440).

Explanations

What did any relevant EU law do before exit day?

2.6 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 INSPIRE Directive. The rationale for the INSPIRE Directive is to improve environmental decision making at all levels of government.

Why is it being changed?

2.7 As retained EU law, Commission Implementing Decision (EU) 2019/1372 would not be effective in UK law due to the deficiencies within its provisions which arise as a result of the withdrawal of the UK from the EU. This instrument makes amendments to the existing legislation described above in order to ensure the INSPIRE legislation is operable after EU Exit. The changes include amending references to EU terms, EU institutions and EU administrative processes to UK equivalent terminology, and updating cross-references to other legislation. Requirements to report to the Commission on implementation, costs and benefits and on use of the SDI have also been amended to require the appropriate UK authority to publish reports.

What will it now do?

2.8 Following the UK's withdrawal from the European Union, Commission Implementing Decision (EU) 2019/1372, as amended by this instrument, will continue to implement the SDI established by the INSPIRE Directive 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 This instrument is being made urgently using the made-affirmative procedure provided for in the European Union (Withdrawal) Act 2018. This is necessary to ensure the instrument is in force on exit day. A Ministerial statement concerning the need for urgency is included in Part 2 of the annex to this Explanatory Memorandum.

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, apart from regulation 3 which extends to England and Wales and Northern Ireland, and regulation 4 which extends to Scotland.

4.2 The territorial application of this instrument is the UK, apart from regulation 3 which applies to England, Wales and Northern Ireland, and regulation 4 which applies to Scotland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for the Environment and Rural Opportunities, Rebecca Pow MP, has made the following statement regarding Human Rights:

"In my view the provisions of The INSPIRE (Amendment) (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 EU 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 is made under the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, that Act, in particular to address the categories of deficiencies in retained EU law specified in section 8(2)(a), (b), (d) and (g) of that Act.

6.2 Regulation 5 amends the Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019. That instrument has been laid in draft but has not yet been made. However, it will be made before this amending instrument is made.

7. Policy background

What is being done and why?

7.1 The UK SDI was established by the INSPIRE Regulations 2009 which implemented the INSPIRE Directive. The Directive grants the European Commission powers to create and amend implementing rules laying down technical arrangements for: metadata; the interoperability and harmonisation of spatial data sets and services; network services; and reports of monitoring implementation and use of the SDI. The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019 (2019/XXXX) converted the Commission's powers to make and amend those implementing rules into domestic powers following EU Exit.

7.2 This instrument corrects deficiencies that arise in the INSPIRE Regulations 2009 as a consequence of EU Exit and from the repeal and replacement of Commission Decision 2009/442/EC by Commission Implementing Decision (EU) 2019/1372 (as regards monitoring and reporting) and the amendment of the INSPIRE Directive. This is done to ensure legal operability of the INSPIRE Regulations 2009 and the relevant retained EU law after EU Exit.

7.3 This instrument also amends The Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019 (2019/XXXX) to address deficiencies that arise from the amendments to the INSPIRE Directive.

7.4 Similar amendments are made to correct similar deficiencies in the INSPIRE Regulations (Scotland) (S.S.I. 2009/440), at the request of the Scottish Government.

7.5 The intention of the amendments made in this instrument is to ensure the UK has a set of regulations which, on EU Exit, set out the same technical arrangements for an SDI as the EU regulations do for EU Member States.

8. Commission Decision 2009/442 is revoked. 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 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 this instrument and were given the opportunity to propose amendments to the text.

11. Guidance

11.1 No guidance specific to this instrument or the amendments is required.

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 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 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.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 Rebecca Pow MP, Parliamentary Under Secretary of State for the Environment and Rural Opportunities, 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 procedure SI.	Explain why the SI 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 SI 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 Equality 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 SIt, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the SI, 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 SI.	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 and Rural Opportunities at the Department for the Environment Food and Rural Affairs, Rebecca Pow MP, 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 2019 do no more than is appropriate".

1.2 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.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for the Environment and Rural Opportunities at the Department for the Environment Food and Rural Affairs, Rebecca Pow 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: 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.

3. Equalities

3.1 The Parliamentary Under Secretary of State for the Environment and Rural Opportunities at the Department for Environment, Food and Rural Affairs, Rebecca Pow MP has made the following statement(s):

"The INSPIRE (Amendment) (EU Exit) Regulations 2019 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".

3.2 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.

4. Explanations

4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.

5. Criminal offences

5.1 No criminal offences are created by this instrument.

6. Legislative sub-delegation

6.1 No sub-delegated powers are created by this instrument.

7. Urgency

7.1 The Parliamentary Under Secretary of State for the Environment and Rural Opportunities at the Department for Environment, Food and Rural Affairs, Rebecca Pow MP, has made the following statement(s):

"In my view by reason of urgency, it is necessary to make The INSPIRE (Amendment) (EU Exit) Regulations 2019 without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament."

7.2 This is because: the Government considers it important to urgently have this instrument in place so as to provide confidence and certainty to the public and business and to ensure the effective functioning of the statute book after EU Exit. Using the made-affirmative procedure still allows for parliamentary scrutiny and Parliament will be required to approve its making for the instrument to remain in force.