EXPLANATORY MEMORANDUM TO

THE IONISING RADIATION (ENVIRONMENTAL AND PUBLIC PROTECTION) (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

2019 No. 24

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 Act.

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

2. Purpose of the instrument

2.1 This instrument intends to address deficiencies in the operation of retained European Union ("EU") law as provided for by the European Union (Withdrawal) Act 2018. Specifically, this instrument is intended to remedy deficiencies in:

- The Justification of Practices Involving Ionising Radiation Regulations 2004 ("the Justification Regulations");
- The Radioactive Contaminated Land (Enabling Powers) (England) Regulations 2005, and The Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006 (together "the RCL Regulations");
- The Radioactive Contaminated Land Regulations (Northern Ireland) 2006 ("the NI RCL Regulations");
- The Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 ("the EIAD Regulations").

Explanations

What did any relevant EU law do before exit day?

2.2 The Justification Regulations implement elements of Council Directive 2013/59/Euratom of 5 December 2013 ("the 2013 Directive) relating to the justification of classes and types of practice involving ionising radiation. The 2013 Directive requires that Member States ensure that new classes or types of practice resulting in exposure to ionising radiation are 'justified' before being adopted. For these purposes, 'justified' means that the individual or societal benefit resulting from the practice outweighs the health detriment that it may cause.

The RCL Regulations and the NI RCL Regulations implement elements of the 2013 Directive relating to contaminated areas and optimised protection strategies. These Regulations set out the regulatory framework for the management of land contaminated with radioactivity as a result of a past practice, or from the after effects of an emergency, and place duties to identify and remediate radioactive contaminated land.

The EIAD Regulations implement EU Directive 2011/92/EU (the "EIA Directive") as amended by EU Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment in relation to nuclear power stations

and nuclear reactor dismantling and decommissioning projects. The purpose of the EIAD Regulations is to ensure that projects relating to the decommissioning or dismantling of nuclear power stations and other nuclear reactors which are likely to have a significant effect on the environment are assessed for environmental impacts before consent for them is granted. The Office for Nuclear Regulation (ONR) is responsible for granting consent.

Why is it being changed?

2.3 This instrument makes amendments to address deficiencies which would otherwise form part of EU retained law. These amendments are intended to ensure that the above regulations continue to remain operable after the United Kingdom's withdrawal from the EU. The United Kingdom is leaving the Treaty establishing the European Atomic Energy Community (Euratom Treaty) at the same time as it is leaving the EU.

What will it now do?

2.4 This instrument maintains the operability of the above regulations after the United Kingdom's withdrawal from the EU. This instrument results in no policy change.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument was sent to the Sifting Committees on 4 December 2018. This instrument was considered by both the Secondary Legislation Scrutiny Committee in the House of Lords and the European Statutory Instruments Committee in the House of Commons on 18 December 2018 and it was agreed by both Committees that the instrument should follow 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 extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom, though different provisions have different application depending on the application of the legislation that is the subject of amendment.

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 The 2013 Directive is a Euratom directive which lays down basic safety standards for protection against the dangers arising from exposure to ionising radiation. The UK will be withdrawing from the EU and Euratom on 29th March 2019. The Justification Regulations transposed requirements contained in the 2013 Directive concerning

justification of classes and types of practice involving ionising radiation. The RCL Regulations and the NI RCL Regulations transposed elements of the 2013 Directive relating to contaminated areas and optimised protection strategies for England and Northern Ireland respectively.

6.2 This instrument is made to amend the Justification Regulations, the RCL Regulations and the NI RCL Regulations to correct cross references to the 2013 Directive to ensure that these regulations remain operable post withdrawal from the EU.

6.3 The EIA Directive applies to the dismantling or decommissioning of nuclear power stations and other nuclear reactors, and in this regard, is currently implemented in Great Britain through the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, as amended by the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2006 and Nuclear Reactors (Environmental Impact Assessment for Decommissioning) (Amendment) Regulations 2018. This instrument will further amend the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999 (as amended) in order to ensure these regulations remain operable post withdrawal from the EU.

7. Policy background

What is being done and why?

7.1 Technical amendments are being made to address inoperabilities in five separate pieces of legislation relating to ionising radiation.

7.2 The Justification Regulations provide a framework in which justification decisions regarding classes and types of practices involving ionising radiation are made. Justification decisions determine whether a class or type of practice involving ionising radiation is justified in advance of being approved. In addition, it may be determined that an existing class or type of practice is no longer justified as a result of a review. 'Justified' for these purposes means the individual or societal benefit resulting from a class or type of practice outweighs the health detriment it causes.

7.3 The Justification Regulations contain a number of references to the 2013 Directive. Regulation 2 currently provides that the Justification Regulations only apply to practices involving ionising radiation to the extent that the 2013 Directive applies to them. On exit from the European Union and Euratom, the Directive will no longer apply to activities carried out in the United Kingdom and so, by virtue of regulation 2 of the Justification Regulations, the Justification Regulations would also cease to apply to practices carried out in the UK. This instrument will correct this by linking the application of the Justification Regulations to the application of the Directive 'immediately before exit day'.

7.4 Regulation 3(2) of the Justification Regulations provides that expressions and words used in the Justification Regulations have the same meaning as those in the Directive, whether or not they are defined in the Directive. This results in a deficiency in the term "inspection" which relies on the definition of "competent authority", which in turn relies on the UK being a Member State. Post EU exit, the UK will no longer be a Member State and therefore how the definition of "inspection" in the 2013 Directive is to be read for the purposes of the Justification Regulations is being modified by this instrument to ensure that it will continue to work post EU exit.

7.5 Without correction of the above, the UK would not have an operating justification regime and new practices involving ionising radiation (e.g. new nuclear reactor designs) could not be justified (approved), nor could practices determined to be a risk to public health be found to be not justified. Other amendments to the Justification Regulations to address other deficiencies in that legislation arising from EU exit are expected to be made in a separate instrument.

7.6 The RCL Regulations and the NI RCL Regulations all impose a duty to inspect land for the purpose of keeping the condition of the land under review. The RCL regulations all cross refer to the 2013 Directive definition of "inspection" which contains a cross reference to the Directive definition of “competent authority”. As discussed above, the definition of "competent authority" will not work post-exit as the UK will no longer be a Member State, and a “competent authority” cannot be designated for the purposes of the Directive which could delay the land remediation process. The definition of "competent authority" in the Directive for the purposes of the RCL Regulations and the NI RCL Regulations is therefore being modified by these Regulations to ensure that it will continue to work post EU exit.

7.7 The EIAD Regulations currently contain references to ‘another EEA State’, and certain EU Directives and environmental assessments undertaken under EU law obligations (defined as “EU environmental assessments” in the Regulations) which will be deficient once the UK leaves the EU. Amendments are necessary in order to make clear that the Secretary of State’s obligations under the Regulations, such as consultation with EEA States on projects that are likely to have a significant effect on the environment, will continue to apply post exit. It will also ensure that EU Directive requirements will be read with the effect they had immediately prior to exit day or refer instead to relevant domestic legislation.

7.8 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 exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day in the absence of a Northern Ireland Executive. With exit day only a few months away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for 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. The amendments being made to the NI RCL Regulations in this instrument are one such example.

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 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 There are no plans to consolidate at this time.

10. Consultation outcome

10.1 No consultation has been undertaken for this instrument as the intent is purely to remove deficiencies in retained EU law. These deficiencies are a direct result of how domestic law will operate after the United Kingdom's withdrawal from the EU and these amendments do not involve any change in policy.

11. Guidance

11.1 No guidance has been provided for this instrument.

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 it relates to the maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision to take no action to assist small businesses is due to the fact the legislation makes only technical changes to address deficiencies arising from EU exit and will result in no additional burden for small businesses in comparison to the burden to which they are currently subject.

14. Monitoring & review

14.1 The Department does not intend to monitor this instrument.

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

15. Contact

15.1 Emily James at the Department for Business, Energy & Industrial Strategy Telephone: 02072151186 or email: Emily.james@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Umran Nazir, Deputy Director for Nuclear Decommissioning & Radioactive Waste, at the Department of Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Richard Harrington at the Department of 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 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]

1. Sifting statement(s)

1.1 The Minister for Business and Industry, Richard Harrington has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Ionising Radiation (Environmental and Public Protection) (Miscellaneous Amendments) (EU Exit) Regulations 2018 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 as detailed in section 7 of this Explanatory Memorandum, the amendments made in this instrument are necessary to address legal deficiencies arising from the withdrawal of the United Kingdom from the European Union. This ensures that the regulations this instrument amends will continue to be operable after exit, are uncontroversial and make no changes to policy beyond addressing those deficiencies.

2. Appropriateness statement

2.1 The Minister for Business and Industry, Richard Harrington has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Ionising Radiation (Environmental and Public Protection) (Miscellaneous Amendments) (EU Exit) Regulations 2018 does no more than is appropriate".

2.2 This is the case because as detailed in section 7 of this Explanatory Memorandum, the amendments do not make any policy changes and only ensure the regulations continue to be operable after exit.

3. Good reasons

3.1 The Minister for Business and Industry, Richard Harrington 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 to ensure the regulations continue to be operable after the United Kingdom leaves the EU. It is important for the UK to maintain a strong and effective statutory regime relating to ionising radiation and nuclear decommissioning in order to ensure the protection of people and the environment.

[1] The title of the Regulations referred to in paragraphs 1 and 2 is now "The Ionising Radiation (Environmental and Public Protection) (Miscellaneous Amendments) (EU Exit) Regulations 2019", reflecting the date the Regulations were made.

4. Equalities

4.1 The Minister for Business and Industry, Richard Harrington 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."

4.2 The Minister for Business and Industry, Richard Harrington has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Richard Harrington 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."

4.3 This instrument does not raise any issues relevant to the public sector equality duty under section 149(1) Equality Act 2010 because the measures it implements do not have a human or social policy dimension.

5. Explanations

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