EXPLANATORY MEMORANDUM TO

THE JUSTIFICATION DECISION POWER (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 215

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.

2. Purpose of the instrument

2.1 This instrument provides the Secretary of State and Devolved Administrations with a replacement power to make justification decisions in the form of regulations in respect of classes and types of practice involving ionising radiation for the purposes of the Justification of Practices Involving Ionising Radiation Regulations 2004 ("the 2004 Regulations") once the power currently used ceases to be available as a result of the repeal of the European Communities Act 1972 ("the 1972 Act").

Explanations

What did any relevant EU law do before exit day?

2.2 Section 2(2) of the 1972 Act provided the Secretary of State and Devolved Administrations with the power to make justification decisions for the purposes of the 2004 Regulations in the form of regulations. The 2004 Regulations implement elements of Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom ("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.

Why is it being changed?

2.3 Section 2(2) of the 1972 Act will be repealed upon the United Kingdom's exit from the European Union, necessitating a replacement power to allow the Justifying Authority to continue to make justification decisions in the form of regulations for the purposes of the 2004 Regulations.

What will it now do?

2.4 As set out in paragraphs 7.1 – 7.6, the Justification Decision Power (Amendment) (EU Exit) Regulations 2019 will allow the Justifying Authority to continue to make justification decisions in the form of regulations.

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 2004 Regulations cover a range of activities, some of which fall within devolved subject areas. However, to ensure consistency across the justification system, the Secretary of State has to date made single pieces of legislation covering all areas of the UK and all practices (including those that relate to devolved subject areas) and the Devolved Administrations are content with that approach for this instrument. The changes to be made by this instrument cut across the whole breadth of the justification system, because they relate to the power to make a justification decision for any class or type of practice (including those that relate to devolved subject areas).

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 The Minister for Business and Industry, Richard Harrington, has made the following statement regarding Human Rights:

"In my view the provisions of the Justification Decision Power (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 On 29 March 2017, the Prime Minister triggered Article 50 of the Treaty on European Union and started the UK's exit from the European Union. To give effect to the UK's exit in domestic law, the European Union (Withdrawal) Act 2018 ("the 2018 Act") will repeal the 1972 Act at the moment of EU exit. However, to ensure business and legislative continuity for the UK, following over 40 years of EU membership, the 2018 Act will preserve EU-derived domestic legislation, such as the 2004 Regulations, so that it continues to have effect in domestic law after EU exit.

6.2 In accordance with the requirements of regulation 14(1) of the 2004 Regulations, all justification decisions that determine that a class or type of practice is justified, determine that a class or type of practice is no longer justified or introduce or change conditions relating to the justification of a class or type of practice must be made in the form of regulations.

6.3 The power to make these decisions in the form of regulations has to date been provided by section 2(2) of the 1972 Act. This will no longer be available following the United Kingdom's exit from the European Union and the repeal of the 1972 Act. As such, this instrument ensures that the various bodies in the United Kingdom that can act as the 'Justifying Authority' for the purposes of the 2004 Regulations (i.e. the Secretary of State and, in some cases, the Devolved Administrations) retain the power to make justification decisions in the form of regulations.

7. Policy background

What is being done and why?

7.1 Justification is the first step in the regulatory process for ionising radiation. Before any new class or type of practice involving ionising radiation (such as a new type of nuclear reactor) can be introduced in the UK, the Government must first assess it to determine whether the individual or societal benefits outweigh the health detriment it may cause.

7.2 The 2004 Regulations, which implement aspects of the 2013 Directive relating to the justification of practices involving ionising radiation, govern this process. Decisions on justification are taken by the Justifying Authority and are required to be in the form of regulations. The power to make regulations for this purpose has to date been provided by the 1972 Act and will no longer be available once the 1972 Act is repealed.

7.3 If the Justifying Authority does not have a replacement power to make justification decisions in the form of regulations for the purposes of the 2004 Regulations, the Justifying Authority will be unable:

- to determine that a new class or type of practice is justified;
- to determine that an existing class or type of practice is no longer justified;
- to introduce or change conditions relating to the justification of a class or type of practice.

7.4 This instrument provides a replacement power so that the Justifying Authority continues to be able to make these decisions. This will help to maintain the important regulatory oversight function of the Justifying Authority once the United Kingdom has exited the European Union, allowing socially and economically beneficial practices to continue to be positively justified and preventing potentially damaging or dangerous ones from taking place.

7.5 The power provided by this instrument is exercisable by the Justifying Authority. Unlike the wide power under section 2(2) of the 1972 Act, the replacement power is a narrow one that is limited to the making of justification decisions for the purposes of the 2004 Regulations. Subsequent regulations made using the power contained in this instrument will continue to be subject to the consultation requirements which the 2004 Regulations impose on the making of justification decisions. The power of the Devolved Administrations to make justification decisions in the form of regulations under this instrument is expressly limited to those decisions which fall within their respective devolved competences. Consistent with what the 2004 Regulations specify about the exercise of functions by the Secretary of State under those Regulations, no equivalent limitations apply to the exercise of the power by the Secretary of State, who will in principle have the power to make any justification decision.

7.6 The instrument sets out the scrutiny procedures that will apply to subsequent regulations made using the new power. Regulations that contain a justification decision that determines that a new class or type of practice is justified will be subject to the affirmative procedure (or equivalent for devolved legislatures). This is consistent with the scrutiny procedure used for the three justification decisions in the form of regulations that have been made to date under section 2(2) of the 1972 Act,

which all determined that a new class or type of practice was justified.[1] Regulations that contain other justification decisions made under the power provided by this instrument will be subject to the negative procedure (or equivalent for devolved legislatures).

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 Most elements of this instrument are standalone provisions, for which consolidation is not relevant. The changes which this instrument makes to the 2004 Regulations are small and the Department has no current plans for consolidating them.

10. Consultation Outcome

10.1 We do not consider the instrument to involve any change in substantive policy, and so a formal public consultation was not considered to be necessary or appropriate. The instrument will ensure that the Justifying Authority continues to have the power to make justification decisions for the purposes of the 2004 Regulations once the United Kingdom has exited the European Union, as it did during the UK's membership of the EU. Informal consultation has taken place with the Devolved Administrations at working level, since Departments in their Governments or Executive may in some circumstances act as the Justifying Authority and use the power contained in the instrument.

11. Guidance

11.1 This instrument makes no substantive change to the justification system or to the way in which justification decisions are made; it makes a purely technical change to ensure that those decisions can continue to be made after EU exit. It does not alter the requirement for the Secretary of State or Devolved Administration to make justification decisions in the form of regulations. The existing published guidance on the 2004 Regulations remains accurate and applicable, except that it will be updated to reflect the change of power under which justification decisions are made from section 2(2) of the 1972 Act to 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 the impacts are below the threshold required to carry out a full impact assessment. This

[1] S.I. 2010/2844, S.I. 2010/2845 and S.I. 2015/209.

instrument will not create any direct costs to business; effectively this instrument enables the UK to maintain the status quo.

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 Department does not intend to monitor this instrument.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Peter Barton-Wood at the Department for Business, Energy & Industrial Strategy Telephone: 0300 068 5261 or email: peter.barton-wood@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 for Business, Energy & Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Richard Harrington, Minister for Business and Industry, at the Department for Business, Energy & 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. Appropriateness statement

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 Justification Decision Power (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the instrument simply replaces the power currently provided by section 2(2) of the 1972 Act to make justification decisions in the form of regulations. The replacement power will be a narrow power that is restricted to the making of justification decisions for the purpose of the 2004 Regulations. This will maintain the operability of the 2004 Regulations, addressing a deficiency arising from the withdrawal of the United Kingdom from the European Union, as detailed in sections 7.2 and 7.3 of the main body of this explanatory memorandum.

2. Good reasons

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 there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 This is the case because the instrument addresses a deficiency arising from the withdrawal of the United Kingdom from the European Union and maintain the operability of the 2004 Regulations by providing a replacement power, so that the Justifying Authority continues to be able to make justification decisions in the form of regulations This will help to maintain the important regulatory oversight function of the Justifying Authority once the United Kingdom has exited the European Union, allowing socially and economically beneficial practices to continue to be positively justified and preventing potentially damaging or dangerous ones from taking place.

3. Equalities

3.1 The Minister for Business and Industry, Richard Harrington, has made the following statement(s):

"The draft 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 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 draft instrument, I, Minister for Business and Industry, 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."

3.3 This instrument has no, or no significant, impact on those with protected characteristics 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.