

EXPLANATORY MEMORANDUM TO
THE TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA
(AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 No. 1408

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

2. Purpose of the instrument

- 2.1 The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) protects wild fauna and flora from unsustainable trade.

The purpose of this instrument is to ensure that CITES legislation will continue to be operable in the United Kingdom (UK) after the UK leaves the European Union (EU).

Specifically, this instrument will amend both EU retained CITES legislation and UK CITES legislation to address deficiencies arising from the withdrawal of the UK from the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The provisions of the Convention have to be implemented uniformly in all EU Member States. CITES is implemented in the EU through a set of regulations known as the EU Wildlife Trade Regulations. These regulations contain stricter requirements than the Convention in some instances. The relevant regulations are:
- Principle regulation - Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (as last amended by Commission Regulation (EU) 2017/160);
 - Implementing regulation - Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 (as last amended by Commission Regulation (EU) No 2015/870);
 - Permit regulation- Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating the trade therein and amending Regulation (EC) No 865/2006 (as amended by Commission Implementing Regulation (EU) 2015/57); and
 - Commission Implementing Regulation (EU) 2017/1915 prohibiting the introduction into the Union of specimens of certain wild fauna and flora.
- 2.3 Note- Council Regulation (EEC) No 3626/82 on the implementation in the Community of the Convention on International Trade in Endangered Species of Wild

Fauna and Flora (the forerunner to Regulation (EC) No 338/97) was repealed by Article 21 of Regulation (EC) No 338/97 when this EU instrument came into force.

Why is it being changed?

- 2.4 The EU Wildlife Trade Regulations contain a number of references to the Commission, The Union and Member States. After transferring the regulations into UK law these references would be inappropriate and will be amended to UK equivalents. Powers vested in the Commission will be transferred to the Secretary of State.

What will it now do?

- 2.5 The amended CITES regulations will have the same legal effect within the UK as the original regulations did in the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument was presented to the Sifting Committees for consideration on 16th November 2018. On 27th November 2018 the Sifting Committees agreed with the Government that this instrument does not need 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 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey has made the following statement regarding Human Rights:

‘In my view the provisions of The Trade in Endangered Species of Wild Fauna and Flora (Amendment) (EU Exit) Regulations 2018 are compatible with the Convention rights’.

6. Legislative Context

- 6.1 The UK is leaving the EU and the related retained EU legislation and existing domestic legislation will not work in the UK without the amendments made by this instrument.
6.2 These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018

(c.16) in order to address failures of retained EU Law to operate effectively and correct other deficiencies, (in particular under paragraphs (a), (b), (c), (e) and (g) of section 8(2)), arising from the withdrawal of the UK from the EU. Regulation 4(5)(c)(ii) of this instrument amends Article 5(2)(c)(ii) of Regulation (EC) No 338/97 to correct a typographical mistake. There is no Annex 1 to the Convention, only an Appendix 1; and it should state "listed in" not "not listed in". The powers contained in paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018 are used for this correction.

7. Policy background

What is being done and why?

- 7.1 This correcting SI is required to ensure that CITES legislation remains operable in the UK after EU Exit.
- 7.2 CITES legislation includes both the EU Wildlife Trade Regulations and the UK regulations that contain enforcement powers, sanction and fees relating to CITES. These UK regulations are:
- The Control of Trade in Endangered Species Regulations (COTES) 2018; and
 - The Control of Trade in Endangered Species Regulations (fees).
- 7.3 This SI will provide corrections to ensure operability when we leave the EU, and is subject to the negative resolution procedure in Parliament. Corrections include amending references to the EU and EU institutions and administrative processes to UK equivalents, updating legal references to refer to relevant UK legislation; and modifying the requirement for the government to report, so that reports that are currently provided to the Commission will, in the future, be published.
- 7.4 Corrections that attract affirmative procedures (and are not included in this instrument) are those that transfer legislative powers from the European Commission to the Secretary of State. The transfer of these functions will be included in the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 which will be subject to an affirmative parliamentary procedure.
- 7.5 This SI does not alter policy and the way the CITES regulations currently operate in the UK, outside of limiting the scope of the territorial application of the regulations to the United Kingdom. CITES controls that previously applied within the EU and at the EU borders will, after EU Exit, apply within the UK and at the UK borders.

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 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 No consultation has been undertaken for this instrument as the intent is only to enable the current CITES legislative framework to remain operable in the UK after the withdrawal of the UK from the EU.
- 10.2 CITES is a reserved policy area.
- 10.3 Devolved administrations were engaged in the development of this instrument for information.

11. Guidance

- 11.1 A [technical notice](#) entitled ‘Trading and moving endangered species protected by CITES if there’s no Brexit deal’ was published on GOV.UK on 12 October 2018. Existing guidance will be updated where necessary to reflect amendments made by this instrument.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because there are no significant impacts on businesses, charities or voluntary bodies.

13. Regulating small business

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

14. Monitoring & review

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

15. Contact

- 15.1 Rhiannon Hudson-Jones at the Department for Environment, Food and Rural Affairs email: Rhiannon.hudson-jones@defra.gsi.gov.uk can answer any queries regarding the instrument.
- 15.2 Emma Williams and Tamsin Ballard, jointly Deputy Directors in the Wildlife, International, Climate and Forestry (WICAF) Directorate at the Department for 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, Thérèse Coffey MP at the Department for 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/ESIC
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	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 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, Thérèse Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Trade in Endangered Species of Wild Fauna and Flora (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)”.

- 1.2 This is the case because: this instrument does not fall into the category of regulations identified in Schedule 7, Part 1, paragraph 1(2), as requiring approval in draft by resolution of both Houses of Parliament. This instrument makes minor and technical amendments to the existing legislation described above to ensure retained EU law and preserved UK law is operable after Exit. No substantive policy changes are brought in by this instrument.

2. Appropriateness statement

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

“In my view The Trade in Endangered Species of Wild Fauna and Flora (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because: this instrument corrects deficiencies as necessary to ensure that protections for the trade in endangered species are maintained in the UK after we leave the EU.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for the Environment, 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”.

- 3.2 These are: this instrument corrects deficiencies as necessary to ensure that protections for the control of trade in endangered species are maintained in the UK after we leave the EU.

4. Equalities

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

“In relation to the instrument, I, Thérèse Coffey 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.”

5. Explanations

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