

EXPLANATORY MEMORANDUM TO

THE ANIMAL HEALTH, ALIEN SPECIES IN AQUACULTURE AND INVASIVE NON-NATIVE SPECIES (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 813

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 Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to make technical corrections to four EU Exit instruments relating to the withdrawal of the UK from the EU that have been laid after approval by both Houses of Parliament.
- 2.2 The first amended instrument, the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019 (“the Imports instrument”), makes operability amendments to forty-six EU Regulations, Decisions and implementing and delegated instruments in relation to trade in animals and animal related products.
- 2.3 The second amended instrument, the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019 (“the Invasive Species instrument”), makes operability amendments to the main 2014 EU Regulation (1143/2014), and implementing and delegated instruments under it, relating to the prevention and management of the introduction and spread of invasive non-native species.
- 2.4 The third and fourth amended instruments relate to aquatic animal health and alien and locally absent species in aquaculture (“the Aquatics instruments”). These are (a) the Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/452), which makes operability amendments to the Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2009/463), and (b) the Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/451), which amends retained direct EU legislation and makes modifications to Directive 2006/88/EC for the purposes of references to that Directive in any enactment.
- 2.5 No policy changes are being introduced by the corrective amendments in this instrument, which are technical in nature to ensure that retained EU law operates as intended.

Explanations

What did any relevant EU law do before exit day?

- 2.6 This instrument amends the Imports instrument, which was laid as a draft affirmative instrument, approved through debates in both Houses and made in the first week of April. After it was approved but before being made, a number of errors were identified that were necessary to correct before exit day for the instrument to work

correctly as intended. This instrument corrects these errors in the Imports instrument to ensure that it works as intended and the EU regulations and decisions are transposed correctly.

- 2.7 The retained EU legislation amended by the Imports instrument are related to the importation into, and transit through, the EU of live animals, products of animal origin, germplasm (semen, ova and embryos) and the non-commercial movement of pet animals, circus animals and equines. The EU legislation provides for the continuation of the existing legal framework under EU law which relates to the importation into, and transit through, the UK of live animals and animal products from the EU and from approved listed third countries on exit day. They ensure that veterinary controls on EU trade and imports of live animals and animal products safeguard animal and public health. They also ensure that those controls will continue to meet the specific import conditions laid down in the relevant EU legislation.
- 2.8 This instrument also amends the Invasive Species instrument, which was approved through debates in both Houses and made on 7 February 2019. The purpose of the Invasive Species instrument is to ensure that legislation relating to the prevention and management of the introduction and spread of invasive non-native species remains operable after we leave the EU and that the strict protections that are in place for these species are maintained. A small number of minor errors have been identified in the drafting of the Invasive Species instrument, which this instrument corrects. It makes no changes to policy, although it aligns the cost recovery position with the new enforcement provisions.
- 2.9 Lastly, this instrument amends the Aquatics instruments. Of these, S.I. 2019/452 was approved through debates in both Houses. Both instruments were made on 5 March 2019. S.I. 452/2019 makes operability amendments to (a) the Aquatic Animal Health (England and Wales) Regulations 2009 (S.I. 2019/463), concerning animal health requirements for aquaculture animals, fish and shellfish and products thereof, and the prevention and control of certain diseases in aquatic animals, and (b) the Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 (S.I. 2011/2292). It makes no changes to policy. This instrument amends two minor errors that have been identified in S.I. 2019/452, to ensure that these regulations can function as intended. It also makes an amendment to both S.I.2019/452 and S.I.2019/451 to clarify how Directive 2006/88/EC is to be read for certain purposes.

Why is it being changed?

- 2.10 The errors that were identified in the Imports instrument were as follows: Commission Decision 2006/146 was revoked in error, instead of a single Article from that Decision; lists of commodities subject to checks at Border Inspection Posts were not removed from Commission Decision 2007/275 to be published elsewhere, as was the intention; the Imports instrument attempted to amend Commission Implementing Regulation (EU) No 636/2014, which has been revoked in a separate instrument as it was not required as EU retained law. There were also a small number of further minor and typographical errors.
- 2.11 The errors in the Invasive Species instrument are drafting and typographical in nature, with the exception of the error in regulation 7(3)(e). The amendment made by this instrument to regulation 7(3)(e) of the Invasive Species instrument reflects and is consistent with Invasive Alien Species (Enforcement and Permitting) Order 2019. The 2019 Order puts in place supporting enforcement, permitting and licensing provisions

for Regulation (EU) No. 1143/2014 on the prevention and management of the introduction and spread of invasive alien species, and provides for recovery of enforcement-related costs from importers by enforcement authorities. This amendment provides certainty for those enforcing the EU Regulation at the border that importers are responsible for these costs.

- 2.12 The errors in the Aquatics instruments are minor, but are being corrected to improve clarity. The amendments correct references to modifications to provisions of Directive 2006/88/EC that relate to the conditions for designating disease-free zones for aquatic animal diseases. Two of these references were previously unclear, and in the third case the amendment is also intended to improve clarity.
- 2.13 The amendments within this instrument correct these errors before the four EU Exit instruments come into force, ensuring that when they come into force on exit day they will apply in their corrected forms.

What will it now do?

- 2.14 This instrument will not make any policy changes to the existing imports regime or protections against invasive non-native species or aquatic animal diseases. It will simply make technical corrections to allow the Imports instrument, the Invasive Species instrument and the Aquatics instruments to be fully operable after exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees.

- 3.1 This instrument is made subject to the urgent ‘made affirmative’ procedure. The Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

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 powers under which this instrument is made cover the entire United Kingdom.

4. Extent and Territorial Application

- 4.1 Different parts of this instrument have different territorial extent and application.
- 4.2 In respect of amendments to the Imports instrument, the territorial extent and application of this instrument is the UK.
- 4.3 The corrections to the Invasive Species instrument extend to the UK, but in respect of Scotland only in so far as they amend provisions relating to controls on imports to, and exports from, the European Union and the offshore marine area. The territorial application is the same as the instrument’s extent.
- 4.4 As regards the corrections to the Aquatics instruments, the amendments to S.I.2019/452 extend and apply to England and Wales, and the amendments to S.I. 2019/451 extend to the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:

“In my view the provisions of the Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. **Legislative Context**

- 6.1 This instrument amends four EU Exit instruments relating to the withdrawal of the UK from the EU.
- 6.2 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. The amendments being made by this instrument are solely connected to the UK’s exit from the EU in a ‘no deal’ scenario and are made under these powers.

7. **Policy background**

What is being done and why?

- 7.1 No change is being made to policy. This instrument makes important corrections to the four EU exit instruments to ensure that retained EU law is amended appropriately.
- 7.2 This instrument corrects the Imports instrument in respect of Commission Decision 2006/146/EC on certain protection measures with regard to certain fruit bats, dogs and cats coming from Malaysia (Peninsula) and Australia. The Imports instrument currently revokes this Decision in error. The Decision currently prohibits imports of dogs, cats and fruit bats from Malaysia (Peninsula) and cats from Australia, subject to derogations if certain conditions are met (such as quarantine). These prohibitions are intended to prevent the accidental introduction of the Nipah and Hendra viruses. A single Article from this Decision, Article 5, was intended to be revoked, but the entire Decision was revoked in error. The amendments in this instrument will reinstate the Decision in the Imports instrument and ensure that only Article 5 is revoked.
- 7.3 This instrument also corrects the Imports instrument in respect of Commission Decision 2007/275 EC concerning lists of animals and products to be subject to controls at border inspection posts. The Imports instrument was intended to remove lists of commodities subject to checks at border inspection posts from the annexes of this Decision so that they can be published elsewhere and amended more easily, but they were left in the legislation in error. This instrument will ensure that those lists are removed Annex 1 and 2 of the Decision, as was the original intention.
- 7.4 This instrument also removes operability amendments to Commission Implementing Regulation (EU) No 636/2014 on a model certificate for the trade of unskinned large wild game. It is not necessary to amend this regulation, which is being revoked by another EU Exit instrument, as the model certificate is not required for imports into the UK.
- 7.5 The instrument also amends regulation 7(3)(e) of the Invasive Species instrument to reflect and ensure consistency with related legislation and provide certainty.
- 7.6 This instrument also corrects other minor and typographical errors in the Imports instrument, and minor errors in the Invasive Species and Aquatics instruments.

8. **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 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 Not applicable.
10. **Consultation outcome**
- 10.1 The amendments in the legislation are technical in nature. There are no policy changes so no public consultation has been undertaken.
11. **Guidance**
- 11.1 As no policy changes are included in the instrument no guidance specifically related to this instrument is required. However, guidance on the general aspects of future trade in this subject-matter after exit day will be considered in due course.
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 as it relates to the maintenance of existing regulatory standards and will not introduce new policy.
13. **Regulating small business**
- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 There is no additional impact on small businesses (employing up to 50 people) because this instrument maintains the status quo and does not introduce any policy change.
14. **Monitoring & review**
- 14.1 Defra and its agencies will monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.
- 14.2 As this instrument is made under the Withdrawal Act no review clause is required.
15. **Contact**
- 15.1 Sam Beckett or Louise Hill at the Department for Food Environment and Rural Affairs Telephone: 02078955283 or email: Samuel.Beckett@defra.gsi.gov.uk or Louise.Hill@defra.gsi.gov.uk
- 15.2 Sarah Sheridan, Deputy Director at the Department for Food Environment and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, can confirm that this explanatory memorandum meets the required standard.

Annex 1

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.
Appropriateness	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 2018 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 23(1) or jointly exercising	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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 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 Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

1.2 This is the case because: this instrument relates to maintenance of existing regulatory standards to ensure that domestic legislation remains operable immediately following EU exit and will not introduce any new policy.

2. **Good reasons**

2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, 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: to ensure that the amended instruments function as intended, and that existing regulatory standards will be maintained.

3. **Equalities**

3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement:

“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 Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lord Gardiner of Kimble, 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. **Explanations**

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

5. **Urgency**

5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view by reason of urgency, it is necessary to make the Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (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.”

- 5.2 This is because: the trade in animals and animal products that do not constitute a risk to human or animal health is of significant importance to the UK's food security and economy. It is necessary for this instrument to be made in time for the Commission's vote regarding the UK's application to be listed as a third country for the purposes of exporting animals and animal products into the EU in a no deal scenario. It is of significant importance to the UK's export trade and economy that this vote is not delayed due to this legislation not having been made and laid.
- 5.3 It is also essential for the continuation of the UK's current trade and import regime, and for minimum disruption to pet travel, that these technical amendments are in force on exit day. They are essential to ensure that the biosecurity controls with regards to animal trade are maintained at their current levels.
- 5.4 The errors identified in the affirmative Imports instrument require correction immediately before Exit day, particularly in relation to Commission Decision 2006/146/EC which was incorrectly revoked in the Imports instrument. This correction will allow the Decision to become retained EU law after Exit. The other corrections are also required to ensure that the retained EU legislation can operate as intended and that there is clarity for UK businesses.
- 5.5 The Invasive Species instrument ensures that existing environmental and biosecurity protections are retained when the UK leaves the EU. This instrument ensures that errors in that instrument do not jeopardise its effectiveness in meeting that aim. The correction to regulation 7(3)(e) is required to ensure that there is no uncertainty for officials enforcing invasive species controls at the UK border. Corrections to other minor errors in the Invasive Species instrument and the Aquatics instrument will also ensure that these instruments operate as intended on exit day.
- 5.6 The urgency procedure is required for this instrument to ensure that these changes can be made to these four EU Exit instruments immediately before exit day, so it is appropriate to correct it using this procedure in accordance with paragraph 34 of Schedule 7 to the 2018 Act.