

EXPLANATORY MEMORANDUM TO
THE INVASIVE NON-NATIVE SPECIES (AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2019

2019 No. [XXXX]

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.

2. Purpose of the instrument

- 2.1 The purpose of the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019 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. This instrument makes corrections to one piece of directly applicable EU legislation and the implementing and delegated legislation under it, and also corrects an operability issue in the Destructive Imported Animals Act 1932. There is no change to policy.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Regulation (EU) No 1143/2014 of the European Parliament and the Council (“the EU Regulation”) laid down rules on the prevention and management of the introduction and spread of invasive non-native species across the European Union. Invasive non-native species are referred to as invasive alien species in the European Union. It provides for a set of measures to be taken in relation to the forty-nine invasive non-native species that are currently on the list of species of Union concern.
- 2.3 The Destructive Imported Animals Act 1932 made provision for prohibiting or controlling the importation into and the keeping within Great Britain of destructive non-indigenous animals. EU Member States are currently excluded from the restriction on imports of species to which the Act applies. The instrument will remove this exclusion as when the UK exits the EU this differing of treatment of Member States may no longer be appropriate.

Why is it being changed?

- 2.4 The EU Regulation is directly applicable in the UK. It will be converted into UK law and this instrument corrects certain aspects of it to ensure that the legislation remains operable after we leave the EU and that the strict protections that are in place for invasive non-native species are maintained.
- 2.5 The amendments made by this instrument do not amount to a change in policy. The instrument only corrects deficiencies that arise as a result of EU exit so that the legislation works effectively. The amendments include removing or replacing EU terminology, for example replacing references to Member States with references to the United Kingdom or the constituent UK territories, as appropriate, and replacing references to the European Commission with references to Ministers, as appropriate.

2.6 A number of provisions have no relevance to the operation of the regime in a UK only context so will be revoked. For example the listing of species of regional concern and species native to the Union is an existing provision that is dependent on co-ordination and facilitation of co-operation between Member States by the European Commission.

What will it now do?

2.7 The intention is to ensure that the safeguards against invasive non-native species and other measures and functions set out in the EU Regulation are maintained when the UK leaves the EU. There is no change to policy.

2.8 This statutory instrument (SI) will make consequential amendments to EU Implementing Regulation (EU) 2016/1141 which adopted a list of invasive alien species of Union concern.

2.9 The SI will also revoke:

- Implementing Regulation (EU) 2017/1454 which specified the technical format for reporting by Member States.
- Implementing Regulation (EU) 2016/145 which adopted the format of the document serving as evidence for the permit issued by the competent authorities of Member States.
- Commission Delegated Regulation (EU) 2018/968 which specified the methodology for risk assessments for invasive alien species.

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 is to England, Wales and Northern Ireland and, where provisions relate to controls on imports and exports, to Scotland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 24 of the European Union (Withdrawal) Act 2018 and the territorial application of the instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The extent and application of this instrument varies between provisions.

4.2 Regulations 1, 2 and 11 extend to the UK.

4.3 Regulations 3 and 12a extend to Great Britain. This is because the Destructive Imported Animals Act 1932 does not extend to Northern Ireland.

4.4 Regulations 4 to 10 extend to the UK, but in respect of Scotland only in so far as the instrument amends any provision which applies to controls on imports to, and exports from, the European Union and the offshore marine area. The instrument therefore only extends to Scotland in respect of amendments relating to the reserved matter of import and export within the meaning of section C5 of Part 2 of Schedule 5 to the

Scotland Act 1998, and the offshore marine area which falls outside Scottish legislative competence.

4.5 The territorial application is the same as the instrument's extent.

5. European Convention on Human Rights

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

“In my view the provisions of the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

6.1 The EU Regulation set out strict protections which prevent and manage the introduction and spread of invasive non-native species. Existing domestic legislation which contains provisions relating to invasive non-native species includes the Wildlife and Countryside Act 1981 and the Destructive Imported Animals Act 1932.

6.2 Without these amendments the UK would be unable to continue to apply the measures provided by the EU Regulation or manage our border controls appropriately with regard to EU Member States.

7. Policy background

What is being done and why?

7.1 In order to maintain existing environmental and biosecurity protections when the UK exits the EU and for the regulatory framework to operate effectively any deficiencies in existing legislation arising from the UK's exit need to be corrected.

7.2 This Statutory Instrument (SI) addresses those deficiencies which arise in the EU Regulation. It ensures the UK will continue to meet its international commitments in particular under The Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention).

7.3 Part 1 of this SI provides a short introduction.

7.4 In Part 2 a small amendment is made to section 11 of the Destructive Imported Animals Act 1932 by omitting subsection (2). At present EU Member States are excluded from the restriction on imports of species to which this Act applies. The instrument will remove this exclusion as when UK exits the EU this differing of treatment of Member States may no longer be appropriate

7.5 Part 3 amends the EU Regulation. Paragraphs 7.6 to 7.16 provide additional information and detail the main changes.

7.6 References throughout these regulations are re-defined in a UK only context. For example references to the territory of the EU become references to the UK and references to the list of species of Union concern becomes references to the list of species of special concern.

7.7 The regulations use the term the 'appropriate authority' to mean the Secretary of State in relation to England, the offshore marine area, and the regulation of imports into, and exports from, the United Kingdom; the Welsh Ministers in relation to Wales and

the Department of Agriculture, Environment and Rural Affairs in relation to Northern Ireland.

- 7.8 The term ‘the responsible authorities’ means the three appropriate authorities.
- 7.9 We will retain the criteria and principles currently set out in the EU regulation for the species listing process. The list of species of Union concern which is in force on exit day will be the list of species which applies after EU exit. We are substituting the Commission’s function to make implementing acts amending this list with a power for the Secretary of State to make regulations to change that list. This power can only be exercised with the consent of Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland; and with the consent of the Scottish Ministers for the purposes of imports and exports.
- 7.10 The requirement to review the list of species every six years will be retained. All other subsidiary species listing provisions that exist currently within the EU Regulation will be omitted.
- 7.11 We are transferring the functions of the EU’s Invasive Alien Species Committee (a committee of Member States’ representatives) and the Invasive Alien Species Scientific Forum (representatives of the scientific community appointed by Member States) to existing bodies. The responsible authorities acting jointly will appoint the members of the replacement Committee and it will determine its own rules of procedures. The responsible authorities will appoint members to the replacement Scientific Forum and decide its rules of procedure.
- 7.12 The requirements and criteria for risk assessing and listing species will remain unchanged. The replacement Scientific Forum will be responsible for undertaking those risk assessments and the replacement Committee will make recommendations to the responsible authorities about species listing. The function of the Commission in specifying the type of evidence that is acceptable to support those risk assessments will be transferred to the responsible authorities acting jointly.
- 7.13 Permits for derogations from the measures applying to species on the list of Union concern, for example to allow research to be carried out on invasive non-native species, will continue to be assessed and issued by the appropriate authority where they meet the same existing conditions in the EU Regulation.
- 7.14 The power to issue authorisations to allow other activities for compelling public interest reasons, including those of a social or economic nature will be transferred from the Commission to the appropriate authority. However, due to the exceptional nature of applications for authorisations, there will be an obligation on the appropriate authority to consult and have regard to the opinions of the other responsible authorities as well as the UK replacements for the EU’s Invasive Alien Species Committee and Scientific Forum.
- 7.15 In addition the range of measures in the EU Regulation become the responsibility of the appropriate authority or the responsible authorities. These include the obligations to: establish a surveillance system; undertake official controls; establish action plans for priority pathways; undertake management or emergency measures; and undertaking rapid eradication measures or deciding to derogate from the obligation to do so.
- 7.16 The UK is intending to continue to co-operate with the EU and Member States on invasive non-native species after we leave the EU and there will be a requirement on

the appropriate authorities to endeavour to ensure co-ordination with other EU countries, where appropriate.

- 7.17 The obligation to report to the Commission by 1 June 2019 and every six years thereafter, including on the distribution of species, action plans and permits issued, will be replaced with an obligation for the Ministers to make and publish a report on the same timescales.
- 7.18 A number of functions currently exercised by the Commission, such as specifying the technical format for reporting, will be undertaken jointly by the responsible authorities.

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 and paragraph 21 of Schedule 7 to 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 Annex.

9. Consolidation

- 9.1 This instrument is not consolidating any provisions.

10. Consultation outcome

- 10.1 No formal public consultation has been undertaken. Policy officials have held limited informal discussions with key stakeholders from different sectors, including the Invasive Non-Native Species Working Group of Wildlife and Countryside Link, the British Association for Shooting and Conservation (BASC), the Ornamental Aquatic Trade Association (OATA) and the Sustainable Users Network (SUN).
- 10.2 Regular discussions have been held with policy officials from the Devolved Administrations who were kept informed of the development of this SI and provided with the opportunity to comment and raise concerns as appropriate.

11. Guidance

- 11.1 Guidance about the legislation and invasive non-native species is currently available on the [gov.uk](https://www.gov.uk), [Great Britain Non-native Species Secretariat](#) and the [European Commission](#) websites. This guidance will continue to be available after exit.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is expected to be little or none. This measure does not introduce any new duties or burdens on business, and businesses will not need to change their current practices. There may be some minimal familiarisation costs associated with changes from EU to domestic processes.
- 12.2 The impact on the public sector is low. The proposed amendments will require some consequential amendment to the functions of domestic governance and advisory bodies. The associated cost will be the result of some additional resource to address these points and some familiarisation costs. The assessment of the impacts on these

bodies is that change will be relatively limited and straightforward to implement. Such costs are expected to be minimal and below the +/- £5m threshold

- 12.3 There is no expected change in the Equivalent Annual Net Direct Costs to Business (EANDCB). The regulations apply equally to small and micro businesses as to medium and large businesses and they cannot be exempted from the regulations but as any costs are anticipated to fall to government there will be no disproportionate effect on small and microbusinesses.
- 12.4 An Impact Assessment has not been prepared for this instrument because there is little or no impact on business as the SI relates to maintenance of existing regulatory standards.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is by means of a ministerial review of the application of this Regulation by 1 June 2021.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Lyndon Baker at the Department for Environment, Food and Rural Affairs Telephone: 020 8225 6839 or email: Lyndon.Baker@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Richard Pullen, Deputy Director at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State 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/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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a 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. Appropriateness statement

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

“In my view the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because: the amendments to retained direct EU legislation and domestic legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

2. Good reasons

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner 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: ensuring that the retained EU law regarding invasive non-native species continues to function correctly once the UK has left the EU and ensuring that the regulation of invasive non-native species is maintained after exit day.

3. Equalities

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

“In relation to the draft instrument, I, The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner 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.