

**EXPLANATORY MEMORANDUM TO**

**THE AQUATIC ANIMAL HEALTH AND ALIEN SPECIES IN AQUACULTURE,  
ANIMALS, AND MARKETING OF SEED, PLANT AND PROPAGATING  
MATERIAL (LEGISLATIVE FUNCTIONS AND MISCELLANEOUS PROVISIONS)  
(AMENDMENT) (EU EXIT) REGULATIONS 2020**

**2020 No. [XXXX]**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) 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 This instrument provides for legislative functions that are currently conferred by European Union (“EU”) legislation upon the European Commission (“the Commission”) and the Council of the European Union (“the Council”) to be exercisable instead by appropriate authorities in Great Britain (“GB”), so that they can be exercised at national level after the end of the transition period. It amends previously made EU Exit statutory instruments (“EU Exit SIs”) in order to reflect the change in legislative position following the Withdrawal Agreement, the Protocol of Ireland / Northern Ireland (“the Protocol”). It also makes amendments to reflect changes to EU Regulations since the EU Exit SIs were made and for new directly applicable EU legislation that will be retained and must be made operable.
- 2.2 This instrument contains provisions relating to seven policy areas: seed, plant and plant propagating material; aquatic animal health; Transmissible Spongiform Encephalopathies (“TSEs”) and Animal By-Products (“ABPs”); livestock; zoonotic diseases; pet travel; and the use of alien and locally absent species in aquaculture.

***Explanations***

***What did any relevant EU law do before exit day?***

- 2.3 The marketing of seed and plant propagating material is regulated at Union level by the EU Directives listed in Annex 2, section 1.1. These Directives, confer, in each case, one or more legislative functions on the Commission or the Council, so that it can develop the technical details specific to the marketing of seed, other propagating and planting material including forest reproductive material (“FRM”), and can amend the Directives when necessary via a Decision, without the frequent need for additional amending Directives and referring back to the Council and European Parliament. These functions are described in section 2.19 and examples of these functions include making changes to the lists of regulated species in seed marketing legislation to reflect developments in scientific or technical knowledge, production techniques or agronomic practices and prescribing labelling requirements. The Directives also confer a legislative function on the Council so that it can recognise the equivalence of FRM and seed certification processes of countries outside of the EU.

- 2.4 For aquatic animal health, the legislative function of amending detailed lists and control measures is conferred upon the Commission so that it can develop the technical details of the EU regime for the prevention, control and eradication of aquatic animal disease, and for maintaining biosecurity standards, without the frequent need to refer back to the EU Council and Parliament. Examples of these functions include amending the list of notifiable diseases and lists of third countries.
- 2.5 For TSEs and ABPs, the legislative function of amending the detailed control measures is conferred upon the Commission so that it can develop the technical details of the EU regime for the prevention, control and eradication of TSEs in cattle, sheep and goats, and for the use and disposal of ABPs and their derived products, without the frequent need to refer back to the EU Council and Parliament. Examples of these functions include specifying forms to be used and amending technical annexes.
- 2.6 To ensure that livestock species are traceable for the purposes of disease control, the EU Regulations listed in Annex 2, section 1.4 set out how these species must be identified, what records their keepers must maintain, how they must report their animals' movements, and how central competent authorities must record this information on central databases.
- 2.7 The EU Regulations being amended by this instrument set out controls on salmonella and other specified food-borne zoonotic agents. Zoonotic diseases are those that may transfer from animals to humans.
- 2.8 On pet travel, the EU Regulations governed movement into, and within, the EU to ensure animal and public health are safeguarded.
- 2.9 The EU Regulations on the use of alien species in aquaculture provide a framework for the control the introduction of alien species into aquaculture in order to manage the associated environmental risks.

*Why is it being changed?*

- 2.10 EU Directives will not be incorporated into UK law. However, the European Union (Withdrawal) Act 2018 ("EUWA") provides that functions (including of a legislative character) conferred by EU Directives upon the Commission and the Council may be transferred to UK authorities, where it is considered appropriate to remedy a deficiency in retained EU law due to the withdrawal of the UK from the EU.
- 2.11 The Plant Varieties and Seeds Act 1964 provides powers to regulate the marketing of seed, propagating material and FRM, however those powers are considered deficient in that they do not extend to plants for planting. Without transferring the powers contained in this instrument, there would be no ability after 31 December 2020 to make changes to domestic legislation that transposed the Directives (in Annex 2, section 1.1) for fruit, vegetable and ornamental plant material in relation to the lists of regulated species, conditions for marketing and labelling requirements nor derogate from that legislation in the event of temporary difficulties in the supply of plant material. This instrument also transfers the power from the Directives to Ministers to recognise a country's certification processes on an administrative basis, rather than via legislation, for reasons described in section 7.3.
- 2.12 As a result of the effect of the Protocol, the domestic legislation that transposed powers in the Directive which lays down aquatic animal health regime from the Commission to relevant UK authorities only has GB extent. The main aim of the

amendments made in this instrument is to ensure that the final text of this legislation reflects its GB extent.

- 2.13 The changes in this instrument will ensure that the TSE and ABP regimes described at paragraph 2.5 continue to function smoothly, without the need for primary legislation every time a change to technical matters is required. This instrument amends the Animals (Legislative Functions) (EU Exit) Regulations 2019 (SI 2019/588) for the function in each case to be exercisable by GB authorities. Minor corrections are also being made.
- 2.14 Regulations (EC) 21/2004 on the identification and registration of ovines and caprine (sheep and goats) animals, and Regulation (EC) 1760/2000 on the identification and registration of bovine animals are listed in Annex 2 to the Protocol as legislation which shall apply to and in the UK in respect of Northern Ireland. This necessitates the amendment of the Animals (Legislative Functions) (EU Exit) Regulations 2019 (SI 2019/588) to ensure that the final text of this retained EU legislation properly reflects its application to GB.
- 2.15 As a result of the Protocol, the changes made by the Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019 to retained EU law on the control of zoonotic diseases now need further amendment to ensure they extend only to GB.
- 2.16 The corrections within this instrument will help ensure that movements of non-commercial pet animals continue to function correctly, and the legislation remains fully operable after the transition period. If the amendments were not made, the impacts would be lack of clarity for the owners of approximately 300,000 pet animals who move into the UK annually through the Pet Travel Scheme. The amendments contained in this instrument also remove redundant references.
- 2.17 The amendments and corrections within this instrument will ensure that domestic legislation regulating the use of alien species in aquaculture remains operable.

What will it now do?

- 2.18 Retained EU law relating to the policy areas cited in section 2.2 will continue to function at the end of the transition period in a similar way to how it did previously. This instrument removes redundant provisions relating to EU law, enables the UK to stand by commitments it has made in the Withdrawal Agreement, and converts EU procedures to UK procedures, as appropriate.
- 2.19 In relation to seed, plant and plant propagating material including FRM, this instrument brings across powers to grant equivalence recognition on an administrative basis, by Ministers, for fodder plant seed, cereal seed, beet seed, vegetable seed, seed potatoes, seed of oil and fibre plants and FRM through an authorisation. This instrument confers functions on GB authorities which are equivalent to legislative functions exercisable by the Commission and the Council in relation to EU marketing legislation for fruit, vegetable and ornamental plant material legislation so that changes can be made to fruit, vegetable and ornamental plant material domestic legislation in relation to:
- Conditions with which material must comply with; and
  - Labelling requirements.

And to fruit and vegetable plant material domestic legislation in relation to:

- Derogations from requirements in the event of temporary difficulties in supply; and
  - Regulated species.
- 2.20 This instrument will ensure that legislation for aquatic health, TSEs and ABPs, traceability of livestock, zoonotic diseases and locally absent species in aquaculture continues to operate effectively in GB at the end of the transition period. For locally absent species, this instrument will also correct some minor drafting errors and correct outdated reference; a revised reference for the definition of ornamental facilities is provided, as the previous reference is obsolete.
- 2.21 The pet travel amendments in this instrument will ensure that the regime continues to operate effectively after the end of the transition period. In conjunction with the Animals, Aquatic Animal Health and Seeds (Amendment) (EU Exit) Regulations 2020, the amendments will ensure that the EU Member States are considered to be a 'Part 1' listed third country for the purpose of the Pet Travel Scheme, and consequential amendments ensure that pets travelling to GB can continue to use their current EU-issued Pet Passport. This will ensure that there are no substantive impacts on the ability of pet owners to move from current third countries (including the EU) to GB.

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument includes amendments which correct errors in S.I. 2019/451 and S.I. 2019/588. Due to the length of the instrument and the minor nature of the amendments it is not considered proportionate to provide a free issue in this case. The Department has complied with the requirement stated in paragraph 4.7.6 of the Statutory Instrument Practice to consult with the SI Registrar.

#### *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 powers under which this instrument is made cover the entire United Kingdom (section 24 of the EUWA) and the territorial application of this instrument is not limited either by the Act or by the instrument.

### **4. Extent and Territorial Application**

- 4.1 The territorial extent and application of this are as follows.
- 4.2 As regards regulations 2, 4, 6 and 7 the territorial extent is the United Kingdom, the territorial application is England and Wales and Scotland.
- 4.3 As regards regulation 3, the territorial extent and application are England and Wales.
- 4.4 As regards regulation 5, the territorial extent and application are the United Kingdom
- 4.5 As regards regulations 8 to 26, the territorial extent and application are England and Wales, and Scotland.
- 4.6 The retained direct EU legislation amended by regulations 9 and 10 of S.I. 2019/451, regulations 3 to 5 and 8 of S.I. 2019/588, regulations 3, and 6 to 10 of S.I. 2019/740, regulation 42 of S.I. 2019/753, which this instrument amends, and by regulations 8 to

10 of this instrument, are incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 save insofar as it applies to Northern Ireland for the purposes of the Northern Ireland Protocol. Accordingly, this instrument will only have practical application in Northern Ireland in relation to regulation 5.

## **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 Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 The EUWA will convert directly applicable EU law as it applies at the end of the transition period into domestic law. It also confers temporary powers to make secondary legislation to enable corrections to be made to domestic and directly applicable EU law that would otherwise no longer operate appropriately after the end of the transition period. This instrument relies upon those correcting powers to allow legislative functions exercisable by the Commission or the Council to be exercisable instead by UK authorities. The amendments take account of the UK’s obligations under the Protocol and the Withdrawal Agreement.

## **7. Policy background**

*What is being done and why?*

- 7.1 This instrument will allow appropriate authorities in GB to exercise legislative functions in GB after the end of the transition period which are equivalent to various legislative functions exercisable by the Commission and the Council under the marketing directives for propagating material of ornamental plants, vegetable propagating and planting material (other than seed) and fruit plant propagating material and fruit plants intended for fruit production referred to in Annex 2, section 1.1. These regulation-making powers will enable GB authorities to amend marketing requirements after the end of the transition period to ensure those statutory requirements can keep pace with scientific and technical knowledge and can be responsive to market conditions.
- 7.2 This instrument will allow appropriate authorities in GB to authorise, on an administrative basis, the marketing of fodder plant seed, cereal seed, beet seed, vegetable seed, seed potatoes, seed of oil and fibre plants and FRM, from a country outside of the British Islands where the appropriate authority, as defined in Part 4 of the instrument, is satisfied that material is produced under conditions equivalent to the appropriate authority’s domestic legislation.
- 7.3 An authorisation made on an administrative basis rather than via legislation is considered appropriate because:
- This approach will align with provisions which already exist for making authorisations on an administrative basis at regulation 4A of the Marketing of Vegetable Plant Material Regulations 1995 and regulation 5(3) of the Marketing of Fruit Plant and Propagating Material (England) Regulations

2017. Those provisions exist because the EU has not adopted an EU approach for these sectors for granting equivalence, leaving it instead to Member States.

- The assessment to determine whether plant material from outside the British Islands can be authorised for marketing is wholly technical in nature and relies on analysis carried out by officials with expert knowledge of certification processes. Certification processes provide consumer assurance that material being placed on the market for crop production meets certain quality standards. It is not concerned with issues of public health or biosecurity where a legislative process is more appropriate.
- It will enable Ministers to publish and amend the lists of countries whose plant material has been authorised for marketing quickly in the future rather than requiring legislation each time a change is needed.

- 7.4 Aquatic animals are fish, molluscs and crustaceans, which are considered aquaculture animals when reared in a farm or mollusc farming area or if from the wild and intended for a farm or mollusc farming area. The previous EU Exit SI listed in Annex 2, section 1.3 transferred legislative powers to amend the list of diseases listed in retained EU legislation and to draw up and update lists of third countries or parts of third countries from which aquaculture animals and related products can be introduced into the UK from the Commission to relevant UK Ministers. These powers are crucial for the UK to be able to control aquatic animal diseases and maintain a high health status, and to be able to continue trade with the EU. This instrument makes further amendments to reflect the requirements of the EUWA and the Protocol, in particular by removing Northern Ireland from the definition of appropriate authorities and constituent nations and to make minor corrections.
- 7.5 TSEs are fatal brain diseases which include bovine spongiform encephalopathy (BSE) in cattle and scrapie in sheep and goats. Exposure to BSE through the consumption of infected meat is believed to be the primary cause of variant Creutzfeldt-Jakob Disease which can cause fatal brain diseases in humans. The removal of Specified Risk Material (the parts of the animal most likely to contain TSE infection) and regulation of the use and disposal of ABPs are key public health controls. The amendments made by this instrument to a previous EU Exit SI reflect the requirements of the Protocol by removing Northern Ireland from the definition of appropriate authorities and constituent nations; and make minor corrections.
- 7.6 EU legislation sets out rules on the identification and registration of cattle, and on the identification and registration of sheep and goats. In 2019, amendments were made to retained EU legislation to ensure the operability of these systems following EU Exit. This instrument makes minor amendments to make the 2019 Regulations compatible with the Protocol.
- 7.7 EU legislation sets out controls that protect public health from zoonotic disease, particularly from salmonella. The Government wishes to retain those standards of health protection after the transition period and in 2019 made amendments to retained EU legislation to allow this. This instrument makes minor changes to make the 2019 Regulations compatible with the Protocol.
- 7.8 This instrument ensures that the movement of pet animals can continue with minimum disruption whilst maintaining biosecurity and welfare standards following the end of the transition period. Currently, the UK has access to the 'EU Pet Travel Scheme' which allows UK-based owners of pet dogs, cats and ferrets to travel with their pets

with the minimum disruption within the EU, and between EU Member States and certain listed third countries, subject to compliance with the applicable health and documentary requirements. This instrument replicates the existing scheme for non-commercial movements of relevant pet animals into GB, so that such movements can continue in the same way as they do now, as far as possible. The decision to list the EU as a third country in the context of the Pet Travel rules is technical only and there will be no changes for the health or documentary preparation that pet animals from the EU must undergo before entering GB.

- 7.9 The alien species in aquaculture regulations in this instrument provide a framework for balancing the environmental risks associated with cultivating alien species in aquaculture, with the economic benefits of doing so. It is necessary to ensure that domestic legislation remains operable after the end of the transition period

## **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(1) of, and paragraph 21 of Schedule 7 to, the EUWA in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK 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.
- 8.2 Regulation 8 makes operable legislative functions in retained EU Regulation 576/2013 to enable the appropriate authority (the Secretary of State, Welsh Ministers or Scottish Ministers, as the case may be) to use a negative SI to make provision for matters in Articles 5(5) (maximum number of pets), 11(4) (declarations), 12(2) (declarations), 13 (listing of territories and third countries for Part A), 15 (establishing list of territories and third countries for Part B), 17(2) (marking or describing pet animals), 19 (species-specific preventative health measures), 25(2) (animal health certificate) and 38 (amendment of Annexes).
- 8.3 Regulations 13 to 22 enable the appropriate authority to use a negative SI to amend or modify specified domestic legislation or provisions in domestic legislation which correspond to the relevant provisions or Annexes in EU Directives.
- 8.4 Regulations 13 to 17 enable the appropriate authority to amend any enactment which corresponds to certain Articles or Annexes in the EU Directives relating to the conditions with which the material must comply, labelling and document requirements and the lists of species to be regulated. Regulations 13, 15 and 16 include a power to make provision in any enactment to refer to the relevant Annexes in the EU Directives, with modifications.
- 8.5 Regulations 18 and 22 enable an appropriate authority to amend, supplement, revoke or derogate from the provisions of the fruit marketing Regulations in the event of a temporary difficulty in supply of the relevant plant material. The powers are subject to an assessment carried out by the appropriate authority approved by the Secretary of State, Welsh Ministers and Scottish Ministers.
- 8.6 Regulations 19 to 21 enable the appropriate authority to use a negative SI to amend the relevant fruit marketing Regulations (to modify the regulated species of fruit plant material, set the conditions with which the material must comply and set labelling and

document requirements). Those powers are only exercisable insofar as the appropriate authority considers them necessary and appropriate.

- 8.7 Those powers are only exercisable insofar as the appropriate authority considers them necessary and appropriate.
- 8.8 Provisions within regulation 8 (due to the effect of new Article 39) and regulations 13 to 22 (due to the effect of regulation 28) include a power to make supplementary, incidental, consequential, transitional, transitory or saving provisions in any enactment, including revoke or repeal any enactment.
- 8.9 The negative procedure was considered appropriate for these powers due to the limited nature of the amendments that can be made under these provisions. While the power to make supplementary, incidental, consequential, transitional, transitory or saving provisions could be used to amend primary legislation, the nature of any such amendments is likely to be minor, taking into account the scope of the main power.

## **9. Consolidation**

- 9.1 This instrument is not consolidating any other provisions.

## **10. Consultation outcome**

- 10.1 This instrument was not subject to consultation. The amendments in the legislation are technical in nature. There are no policy changes so no public consultation has been undertaken.
- 10.2 This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials who support the amendments being made.

## **11. Guidance**

- 11.1 Once the appropriate authorities in GB have agreed to authorise the marketing of either of fodder plant seed, cereal seed, beet seed, vegetable seed, seed potatoes, seed of oil and fibre plants or FRM on an administrative basis, from a country outside of the British Islands, then this information will be published on gov.uk.

## **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 this instrument provides for technical measures already contained in transposed EU Directives.
- 12.4 There will be no change to monitoring and enforcement requirements.

## **13. Regulating small business**

- 13.1 This instrument 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. Therefore, no specific action is proposed to minimise regulatory burdens on small businesses.



#### **14. Monitoring & review**

- 14.1 As this instrument is made under the EUWA, no review clause is required.

#### **15. Contact**

- 15.1 Trine Andresen at the Department for Environment, Food and Rural Affairs email: [trine.andresen@defra.gov.uk](mailto:trine.andresen@defra.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Catherine Harrold, Deputy Director for Exotic and Endemic Disease Control (EEDC) 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, The 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	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 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 Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because it relates to maintenance of existing regulatory standards 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:

- That legislation on seed, other propagating material and planting material marketing is made operable after the end of the transition period so that it remains effective and functions correctly.
- Ensuring that the retained EU law regarding aquatic animal health and aquaculture continues to function correctly once the UK has left the EU and ensuring that aquatic animal health and aquaculture standards are maintained and trade can continue with EU member states and third countries after the end of the transition period.
- That there is real public concern about the risk to human and animal health from transmissible spongiform encephalopathies (TSEs) and safe use and disposal of animal by products and that the government should at least maintain the protections that currently exist. The public will also expect us to be able to take enforcement action to ensure that our key TSE controls on feed production and the removal of specified risk materials are maintained and that use and disposal of animal by-products is properly controlled to protect the food chain.
- That it is essential for government to ensure that the retained EU law on the identification and registration of cattle, sheep and goats continue to function correctly after the transition period, for the purposes of disease control and trade.

- That it is essential for government to ensure that the retained EU law on the eradication and control of zoonotic diseases continues to function correctly after the transition period.
- There is concern around the risk to human and animal health via the introduction of *Echinococcus multilocularis* (a species of tapeworm found in foxes, domestic dogs and canids) into GB. Current regulations ensure a robust system of protections to prevent this and this instrument replicates these controls to protect the biosecurity of Great Britain.
- That it is essential for government to ensure that the retained EU law on the alien species in aquaculture continue to function correctly after the transition period, so that the environmental risks associated with alien species continue to be managed effectively.

### **3. Equalities**

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

“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.”

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 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.”

3.3 Little or no impact on equalities is expected.

### **4. Explanations**

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

### **5. Legislative sub-delegation**

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

“In my view it is appropriate to create a relevant sub-delegated power in The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020”.

5.2 This is appropriate because it enables the Minister to publish and amend the list of countries whose plant material has been authorised for marketing quickly in the future by authorisation rather than by statutory instrument, noting the reasons given in sub-Section 7.3. In particular, that the assessment to determine whether plant material from a requesting country can be marketed is wholly technical in nature and relies on analysis carried out by officials with expert knowledge of certification processes. Certification processes provide consumer assurance that material being placed on the

market for crop production meets certain quality standards. It is not concerned with issues of public health or biosecurity where a legislative process is more appropriate.

# **Annex 2**

## **Further detail on the amendments made by this Statutory Instrument set out in the main body of this Explanatory Memorandum**

### **1. Further detail on relevant legislation.**

#### **1.1 Plant varieties and seeds marketing:**

- Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed
- Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed
- Council Directive 1998/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants
- Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material
- Council Directive 2002/54/EC of 13 June 2002 on the marketing of beet seed
- Council Directive 2002/55/EC of 13 June 2002 on the marketing of vegetable seed
- Council Directive 2002/56/EC of 13 June 2002 on the marketing of seed potatoes
- Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants
- Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed
- Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production.

#### **1.2 Aquatic Animal Health:**

- The Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations 2019 (SI 2019/817)

#### **1.3 ABP and TSE provisions:**

- Regulation (EC) No. 999/2001 of the European Parliament and the Council laying down rules for the prevention, control and eradication of certain TSEs, including BSE in cattle and scrapie in sheep and goats.
- Regulation (EC) No. 1069/2009 of the European Parliament and the Council laying down health rules as regards ABPs and derived products not intended for human consumption.
- Commission Regulation (EU) No. 142/2011 implements Regulation (EC) No. 1069/2009 of the European Parliament and the Council, which lays down health rules as regards ABPs and derived products not intended for human consumption.

- The Animals (Legislative Functions) (EU Exit) Regulations 2019 (SI 2019/588)

#### 1.4 **Livestock:**

- Regulation (EC) 1760/2000 of the European Parliament and the Council establishing a system for the registration and identification of bovine animals
- Council Regulation (EC) 21/2004 establishing a system for the registration and identification of ovine and caprine animals

#### 1.5 **Zoonotic diseases:**

- Council Regulation (EC) No 2160/2003 on the control of salmonella and other specified food-borne zoonotic agents and related tertiary legislation

#### 1.6 **Pet Travel:**

- Regulation (EU) No 576/2013 on the non-commercial movement of pet animals;
- Regulation (EU) No 577/2013 on the model identification documents for the non-commercial movement of dogs, cats and ferrets, the establishment of lists of territories and third countries and the format, layout and language requirements of the declarations attesting compliance with certain conditions
- Regulation (EU) No 2019/294 laying down the list of territories and third countries authorised for imports into the Union of dogs, cats and ferrets and the model animal health certificate for such imports

#### 1.7 **Locally Absent Species in Aquaculture:**

- Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture
- Commission Regulation (EC) No 535/2008 of 13 June 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 708/2007 concerning use of alien and locally absent species in aquaculture.