

## EXPLANATORY MEMORANDUM TO

### THE EXOTIC DISEASE (AMENDMENT) (ENGLAND) (EU EXIT) REGULATIONS

2018 No. 1406

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid by Act of Parliament.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument is being made to amend ten England-only exotic disease statutory instruments using powers in the European Union (Withdrawal) Act 2018 in order to address deficiencies in those ten instruments arising from the withdrawal of the United Kingdom from the European Union, ensuring the legislation continues to operate effectively at the point at which the UK leaves the EU.

##### *Explanations*

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

- 2.2 The ten instruments listed in 6.1 that are subject to these deficiency amendments deal with the controls for exotic notifiable diseases, where owners and their veterinarians are obliged to notify the Department of suspicion of the relevant disease. They ensure that if there is an outbreak of such disease (including Foot and Mouth Disease, Bluetongue or Avian Influenza), the Department is able to respond in a timely, effective and coordinated manner to control and eradicate disease, demonstrate disease freedom, restore normal trade in the affected species and then work to assist the recovery of local communities.

###### Why is it being changed?

- 2.3 The amendments are necessary to correct minor deficiencies and thereby ensure the operability of the ten amended instruments in a way that continues to allow the UK to respond effectively to deal with an outbreak of relevant animal disease following withdrawal from the European Union.

###### What will it now do?

- 2.4 With the minor amendments made by this instrument, the UK will continue to be able to respond to outbreaks of exotic notifiable animal disease as before. There are no policy changes introduced in this instrument.

### **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 19 and 20th November 2018. On 21st November 2018 the Sifting Committees agreed with the Government that this instrument does not have 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 England and Wales.  
4.2 The territorial application of this instrument is England.

### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

### **6. Legislative Context**

- 6.1 This instrument introduces deficiency amendments under the European Union (Withdrawal) Act 2018 to ensure full operability of the following EU-derived domestic legislation. The Orders have been made under the Animal Health Act 1981, whilst the regulations have been made under the European Communities Act 1972:
- The Foot-and-Mouth Disease (England) Order 2006
  - The Foot-and-Mouth Disease (Control of Vaccination) (England) Regulations 2006
  - The Avian Influenza (Preventive Measures) (England) Regulations 2006
  - The Avian Influenza and Influenza of Avian Origin in Mammals (England) (No 2) Order 2006
  - The Avian Influenza (Vaccination) (England) Regulations 2006
  - The Avian Influenza (H5N1 in Poultry) (England) Order 2006
  - The Products of Animal Origin (Disease Control) (England) Regulations 2008
  - The Bluetongue Regulations 2008
  - The Poultry Compartments (England) Order 2010
  - The African Horse Sickness (England) Regulations 2012

## **7. Policy background**

### *What is being done and why?*

- 7.1 Outbreaks of exotic notifiable disease can cause significant impacts and costs to both industry and the taxpayer. If an outbreak occurs, government intervention is important in order to eradicate disease and regain disease freedom.
- 7.2 The amendments made by this instrument do not amount to a change in policy, but are necessary to ensure that Government can respond to outbreaks of certain exotic disease without issue after the UK's withdrawal from the European Union.
- 7.3 There are various amendments made by this instrument to amend references that refer, for instance to 'Member State' and to 'intra-community trade' or permit EU officials to accompany inspection visits.

## **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 the European Union (Withdrawal) Act 2018 in order to address failures in EU-derived domestic legislation to operate effectively and 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 No consolidation is considered to be necessary.

## **10. Consultation outcome**

- 10.1 As animal health is a fully devolved matter, there has been ongoing dialogue with officials from Scottish, Welsh and Northern Irish devolved administrations about these proposed amendments to English domestic instruments so that they can consider similar amendments to their own EU-derived domestic legislation. There has been no other consultation.

## **11. Guidance**

- 11.1 There is no associated guidance.

## **12. Impact**

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

## **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 because this instrument does not introduce any policy change.

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

- 14.1 No specific monitoring arrangements are needed
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

#### **15. Contact**

- 15.1 Janet Dixon at the Department for Environment, Food and Rural Affairs Telephone: 02080263325 or email: [janet.dixon@defra.gsi.gov.uk](mailto:janet.dixon@defra.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Marc Casale at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner 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 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:
- 1.2 “In my view The Exotic Disease (Amendment) (England) (EU Exit) Regulations should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”. This is the case because this instrument addresses technical deficiencies in EU derived England legislation that will arise from withdrawal.

#### 2. Appropriateness statement

- 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:
- 2.2 “In my view The Exotic Disease (Amendment) (England) (EU Exit) Regulations does no more than is appropriate”. This is the case because these Regulations make minor and technical operability changes to ensure that domestic legislation remains operable immediately following EU exit, enabling England to continue to respond effectively to suspect cases, or outbreaks of exotic notifiable disease.

#### 3. Good reasons

- 3.1 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:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action and ensure that England will continue to be able to respond to outbreaks of exotic notifiable disease”.

#### 4. Equalities

- The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble 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.”
- 4.1 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:
- 4.2 “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.”.

**5. Explanations**

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