

EXPLANATORY MEMORANDUM TO
THE PESTICIDES AND FERTILISERS (MISCELLANEOUS AMENDMENTS) (EU
EXIT) REGULATIONS 2019

2019 No. 306

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 This instrument is one of a set of three statutory instruments that will make corrections to the EU plant protection product regulatory regime, so that it can continue to operate effectively after the United Kingdom (UK) leaves the European Union (EU). This instrument makes amendments to secondary legislation relating to that regime.
- 2.2 In preparation for EU Exit, the instrument also amends domestic legislation to transfer functions under the EU pesticides legislation to the Welsh Ministers. Finally, the instrument updates out of date references and provisions in the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003.

Explanations

What did any relevant EU law do before exit day?

- 2.3 Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 established a framework for Community action to achieve the sustainable use of pesticides ('Directive 2009/128/EC'). Directive 2009/128/EC aims to promote sustainable use of pesticides in the EU. It includes a number of provisions aimed at achieving the sustainable use of pesticides by reducing risks and impacts on human health and the environment.
- 2.4 The Plant Protection Products (Sustainable Use) Regulations 2012 ('the 2012 Regulations') transposed Directive 2009/128/EC in relation to the use of pesticides that are plant protection products (PPPs).
- 2.5 The Plant Protection Product Regulations 2011 support the operation of Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market.
- 2.6 The Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008 support the operation of Regulation (EC) No 396/2005 concerning levels of pesticide residues in food and feed.

Why is it being changed?

- 2.7 The changes made by this instrument will ensure that Plant Protection Products continue to pose no unacceptable risks to humans or the environment, whilst facilitating production of affordable food and trade in food produce to operate effectively after the United Kingdom has left the European Union. This instrument addresses deficiencies in domestic legislation arising from EU Exit.

What will it now do?

- 2.8 This instrument will address deficiencies in domestic legislation arising from EU Exit and ensure that existing protections and regulatory frameworks are maintained and continue to work in the same way once the United Kingdom has left the European Union.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 13th December 2018. On 8th January 2019 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 and territorial application of this instrument varies between provisions. It amends existing legislation to the same extent and application as that legislation.
- 4.2 The territorial application of the 2012 Regulations and the Plant Protection Products (Fees and Charges) Regulations 2011 is the United Kingdom. The territorial extent of the Plant Protection Product Regulations 2011 and the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 is Great Britain. The territorial extent of the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008 is England and Wales only.
- 4.3 The territorial application of the 2012 Regulations and the Plant Protection Products (Fees and Charges) Regulations 2011 is the United Kingdom. The territorial application of the Plant Protection Product Regulations 2011 the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 is Great Britain. The territorial application of the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008 is England and Wales only.

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 The secondary legislation relating to pesticides which are corrected by this instrument were made under the powers of section 2(2) of the European Communities Act 1972 in compliance with the UK's European treaty obligations to give effect to EU Directives.
- 6.2 The European Union (Withdrawal) Act 2018 repeals the European Communities Act 1972 ('Withdrawal Act'), but section 2 saves EU-derived domestic legislation so that it continues to have effect in domestic law on and after "Exit Day". Exit Day is defined

by section 20 of the Withdrawal Act. The secondary legislation relating to pesticides which are corrected by this instrument are EU-derived domestic legislation and so will be preserved.

7. Policy background

What is being done and why?

- 7.1 Plant Protection Products (PPPs) are ‘pesticides’ that: protect crops or desirable or useful plants, regulate plant growth or prevent growth of unwanted plants. They are primarily used in the agricultural sector but also in forestry, horticulture, amenity areas and in home gardens. For example, they play a fundamental role in UK farming and the provision of food, keeping the transport infrastructure clear of weeds, maintaining public spaces and controlling invasive species.
- 7.2 However, as PPPs contain chemicals that are designed to disrupt life processes, risks can be associated with their use. Regulation is required to ensure that PPPs do not harm human health or have unacceptable effects on the environment. The law sets strict conditions on the way PPPs can be used. The basis for the regulatory framework is the assessment of scientific data to establish the risks to people and to the environment. PPPs that are found to pose unacceptable risks are not authorised. Those that are authorised are subject to regular review to ensure they meet current safety standards. The regulations aim to ensure that PPPs do not harm human health or have unacceptable effects on the environment.
- 7.3 Users of PPPs are required to follow legally enforceable conditions of use and adopt other practices which ensure safe, more sustainable use of these chemicals.

The Plant Protection Products (Sustainable Use) Regulations 2012

- 7.4 The 2012 Regulations transposed Directive 2009/128/EC in relation to the use of pesticides that are plant protection products (PPPs) in the UK. The 2012 Regulations aim to reduce the risks and impacts of pesticide use on human health and the environment and promoting the use of Integrated Pest Management (IPM) and of alternative approaches or techniques (such as non-chemical alternatives to pesticides). The UK has drawn up a National Action Plan to detail the measures and mechanisms that are used to deliver the outcomes sought in the Directive, including training of users, advisors and distributors, inspection of application equipment, the prohibition of aerial spraying, limitation of use in sensitive areas, and information and awareness raising about pesticide risks. Plans also cover issues such as control of sales, promotion of low-input pest management, monitoring health impacts, handling and storage practice, use of indicators.

The Plant Protection Product Regulations 2011

- 7.5 These Regulations support the operation of Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market. The Regulations lay down enforcement powers and penalties for infringements of Regulation (EC) No 1107/2009, and also implement various other aspects of it. The enforcement Regulations cover England, Scotland and Wales. Northern Ireland has its own enforcement regulations.

The Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008

- 7.6 These Regulations enforce the provisions of Regulation (EC) No 396/2005 of the European Parliament and of the Council; creating an offence of placing on the market

as food or feed, or feeding to an animal, any product that contains pesticide residue levels in excess of those specified in Regulation (EC) No 396/2005.

- 7.7 In order to make sure the UK has effective PPP regulation after leaving the EU, it is necessary to correct the deficiencies in domestic legislation arising from EU Exit. This will enable the UK to have an operable regulatory framework after EU exit to ensure that PPPs continue to pose no unacceptable risks to humans or the environment, whilst facilitating production of affordable food and trade in food produce.
- 7.8 We need to make minor corrections to the existing domestic legislation. For example, there are a number of references within the current regulations which assume EU membership, and/or which assume elements that are reliant on EU processes or institutions. Some provisions have therefore been corrected or omitted because they are either no longer relevant outside the EU context, or have been incorporated within the replacement instruments for Regulation (EC) No 1107/2009 and Regulation (EC) No 396/2005. Some obsolete references to other EU legislation have been updated.
- 7.9 We also need to ensure that these enforcement regulations continue to operate alongside the main regulations governing marketing and use of plant protection products and setting of maximum residue levels, once they have been retained in national law and corrected so as to work sensibly in a national context. All these amendments are very minor in nature.
- 7.10 Currently, the Secretary of State is the competent authority in respect of both England and Wales for Regulation (EC) No 1107/2009 and Directive 2009/128/EC, and the designated national authority for Regulation (EC) No 396/2005. Pesticides is a devolved matter under the Government of Wales Act 2006. Therefore in preparation for exit day, the instrument makes amendments to domestic legislation to designate Welsh Ministers as the competent authority in relation to Wales for the purposes of Regulation (EC) No 1107/2009 and Directive 2009/128/EC, and as designated national authority for the purposes of Regulation (EC) No 396/2005. It also amends the Plant Protection Products (Fees and Charges) Regulations 2011 to allow the Welsh Ministers to charge fees in respect of their functions as competent authority and designated national authority. This is in line with the government's approach to EU exit and devolution, and in order to facilitate both UK-wide decision making with consent and independent exercise of powers as necessary.

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

- 7.11 The instrument updates provisions in the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 which are spent. This is because they concern transitional arrangements relating to the keeping and supplying of existing stocks of relevant ammonium nitrate material, where the relevant period expired 60 days after the Regulations came into force. In addition, it updates the provisions regarding the contact details of the Department for notification purposes and makes a reference to the Integrated Customs Tariff of the United Kingdom in 2002, a reference to that document as revised or re-issued from time to time.

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 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.

- 8.2 Alongside the EU (Withdrawal) Act 2018 powers, the instrument is also being made under section 2(2) of the European Communities Act 1972 and section 56(1) of the Finance Act 1973, in relation to the transfer of functions to the Welsh Ministers in relation to Wales, in preparation for EU exit. The instrument is also being made in exercise of the powers conferred by section 15(1) and (2), and (4)(b) of, and paragraph 2(1) of Schedule 3 to, the Health and Safety at Work etc. Act 1974, in relation to the amendment and updating of references and provisions in the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 The Scottish, Welsh and Northern Irish devolved administrations have been consulted about the amendments in this instrument.
- 10.2 The Department undertook informal stakeholder engagement in relation to PPPs. In July 2018, a series of four stakeholder workshops on the “no deal” legislative proposals were held. The purpose was to increase awareness of the day 1 contingency planning to enable businesses to make their own plans and to support our own day 1 readiness work, through acquiring practical feedback and views on our proposed approach to operational fixes.
- 10.3 Representatives from all sectors with an interest in the PPPs regime attended including: industry, consultancies, farming and growers’ organisations, and environmental Non-Government Organisations. They were advised on the proposed legislative modifications as a result of EU Exit.
- 10.4 Stakeholders posed a number of questions, but there were no strong objections to the proposals, with a general acceptance that the approach was sensible and proportionate, and would be necessary in the overall context of a no deal scenario.
- 10.5 As required by the Health and Safety at Work etc. Act 1974, the Department consulted the Health and Safety Executive and the Office for Nuclear Regulation regarding the changes relating to ammonium nitrate materials.

11. Guidance

- 11.1 There is no associated guidance.

12. Impact

- 12.1 The Department for Environment, Food and Rural Affairs has produced an assessment of the impacts which is published alongside these Regulations and the Explanatory Memorandum on the legislation.gov.uk website. This document considers the collective impact of the set of three Statutory Instruments which have been prepared as part of contingency planning to ensure that an operable national plant protection product regulatory regime is put in place from March 2019 should it be required at that point.
- 12.2 It is concluded that there would be large benefits associated with introducing the instrument compared to the ‘do nothing’ option, as the instrument offsets the negative impacts on the UK’s ability to manage risks to health and the environment, and impacts

on business that would arise as a result of an inoperable regime after EU exit. There is no significant, impact on business, charities or voluntary bodies.

- 12.3 The impact on the public sector is from additional costs incurred by Government to operate a national regime. This includes work to build national capacity to run decision making bodies, review legislation, guidance and process around the approvals of active substances and their maximum residue levels. To do this, the government will require extra resources to manage these processes, as well as funding for additional expert advice and research. The principal part of this cost will be the additional staff required for policy making and regulation.
- 12.4 A full Impact Assessment has not been prepared for this instrument because no significant impact on business, charities or voluntary bodies is foreseen, with any costs or benefits falling below £5 million in any one year. This instrument only amends deficiencies arising from the UK's withdrawal from the EU.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The effect of these Regulations is to maintain the status quo, therefore no specific action to minimise the impact on small businesses is required.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is no specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Duncan Williams at the Department for Environment, Food and Rural Affairs, Telephone: 020 8026 6659 or email: Duncan.Williams@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Gabrielle Edwards, Deputy Director for Chemicals, Pesticides and Hazardous Waste, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
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 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 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 Minister of State for Agriculture, Fisheries and Food, George Eustice MP, of the Department of Food and Rural Affairs (Defra), has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view the Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 1.2 This is the case because: these Regulations correct deficiencies in retained pesticides legislation arising out of the United Kingdom’s withdrawal from the European Union. The instrument makes changes of a technical nature to ensure the continued effective operability of the relevant legislation and does not make policy changes.

2. Appropriateness statement

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view, the Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 does no more than is appropriate”.
- 2.2 This is the case because: it does no more than prevent, remedy or mitigate deficiencies in retained EU law arising from the withdrawal of the UK from the EU, examples of which are mentioned in paragraph 7.4 in the main body of this explanatory memorandum.

3. Good reasons

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.2 These Regulations correct deficiencies in pesticides regulatory framework to ensure that it can continue to operate from exit day. The instrument does not impose any new liabilities or obligations on any relevant persons.

4. Equalities

- 4.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement(s):
“The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 instrument does not amend, repeal or revoke a provision or provisions in the

Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 4.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, George Eustice, 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.