

EXPLANATORY MEMORANDUM TO
THE ZOOBOTIC DISEASE ERADICATION AND CONTROL (AMENDMENT) (EU
EXIT) REGULATIONS 2019

2019 No. 740

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 Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019 amend retained EU law which protects human health against zoonotic disease (in particular, salmonella) so that it will continue to be operable after the UK leaves the EU. Zoonotic diseases are those that may transfer from animals to humans.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Controls on salmonella and other specified food-borne zoonotic agents are set out in Council Regulation (EC) No 2160/2003. This requires Member States to establish national control programmes for specified zoonosis and zoonotic agents; sets out requirements for the movement of live animals and hatching eggs between Member States and for trade in live animals and hatching eggs between Member States and third countries and sets out requirements for laboratories testing for zoonoses and zoonotic agents. Commission Decisions 2003/644 and 2004/235 establish additional guarantees regarding salmonella for consignments to Finland and Sweden of breeding poultry and day-old chicks and additional guarantees regarding salmonella for consignments to Finland and Sweden of laying hens, respectively. Commission Decision 2004/665/EC made provision for a baseline study on the prevalence of salmonella in laying flocks. Regulation 2160/2003 is implemented by Commission Regulation (EC) No 1177/2006 which sets out requirements for the use of specific control methods (antimicrobials and vaccinations) in the national control programmes for salmonella in poultry; Commission Regulation (EU) No 200/2010 setting an EU target for the reduction of the prevalence of salmonella in breeding hens; Commission Regulation (EU) No 517/2011 setting an EU target for the reduction of the prevalence of salmonella in laying hens; Commission Regulation (EU) No 200/2012 of 8 March 2012 setting an EU target for the reduction of the prevalence of salmonella in broilers and Commission Regulation (EU) No 1190/2012 setting an EU target for the reduction of the prevalence of salmonella in turkeys. Commission Implementing Decision 2013/652/EU on the monitoring and reporting of antimicrobial resistance in zoonotic and commensal bacteria implements Directive 2003/99/EC on the monitoring of zoonoses and zoonotic agents.

Why is it being changed?

- 2.3 Minor and technical changes made by the instrument are necessary to ensure that retained EU law continues to operate effectively. The changes include removing or amending references to EU institutions such as “Community reference laboratories” and “the Commission” which will no longer be applicable after EU Exit. Imports of live poultry and hatching eggs from the EU will continue on the same basis after exit day. The amendments also transfer legislative functions from the European Commission (“the Commission”) to UK authorities to ensure the regime continues to function smoothly, without the need for primary legislation every time a technical change is required.

What will it now do?

- 2.4 This instrument will ensure that controls on zoonoses and zoonotic agents (primarily on salmonella) continue to operate on EU Exit to protect public health. As animal health is a devolved matter, legislative functions which are being transferred by the Commission (such as the power to amend targets) will be exercised by each of the devolved administrations in respect of their territories. This has meant that, instead of having a UK wide target for the reduction of salmonella and a UK wide national control programme, each administration will have its own. The regime will otherwise continue to function in a similar way to now.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2018 was originally drafted to ensure that controls on zoonoses continue to operate. It was laid for sifting in November 2018. The Committees cleared it for negative resolution in December 2018. Devolved administrations subsequently expressed preference for drafting the provisions to transfer legislative functions from the European Commission to the UK so that these functions would rest with each administration rather than with the Secretary of State. To avoid delay to The Animals (Legislative Functions) (EU Exit) Regulations, the zoonoses provisions were removed for further discussion with devolved administrations and must now be included in the Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations. The inclusion of the provisions to transfer legislative functions mean that this instrument must now be considered using the affirmative 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 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 (see section 24 of the EU (Withdrawal) Act 2018) 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 of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

“In my view the provisions of the Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The EU legislation amended by this instrument controls salmonella and other food-borne zoonotic agents. It will become retained EU law by virtue of the European Union (Withdrawal) Act 2018. The European Union (Withdrawal) Act 2018 also confers temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU. This instrument relies upon those correcting powers to allow functions exercisable by the Commission to be exercisable instead by UK bodies, as this is an aspect of the law that will otherwise not work properly after EU Exit.

7. Policy background

What is being done and why?

- 7.1 The existing EU legislation sets out controls that protect public health from zoonotic disease and in particular from salmonella. The Government wishes to retain those standards of health protection on EU Exit and is making amendments to retained EU legislation to allow this.
- 7.2 EU legislation frequently gives the Commission the power to make further legislation (often called delegated or implementing acts). This delegation of legislative functions happens generally to allow flexibility in administrative matters and is also intended to allow the Commission to develop technical details within regimes (for example, amending technical annexes) without the need to refer back to the EU Council and Parliament. This allows for the Commission, within these areas, to act flexibly and more quickly, with a lower level of scrutiny by other EU bodies.
- 7.3 As part of the corrections necessary to make the EU Regulations covered by this instrument operate properly after EU Exit, it is necessary to remove references to the Commission and the delegated and implementing acts that it can make, since they will no longer apply to the UK law. Instead, under the retained EU legislation as amended by this instrument the powers previously exercised by the Commission will be exercisable by UK authorities after EU Exit. The exercise of those functions, which include setting requirements for national control programmes, special control measures and reference laboratories and setting targets for the prevalence of salmonella will principally be by way of domestic secondary legislation where Parliament considers it appropriate and in accordance with the parliamentary scrutiny method provided for in these Regulations. However, there are some administrative functions (for example approving national control programmes) which can be exercised without the need for legislation. This means that primary legislation will not be required for such changes.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8(1) of, and paragraph 21(b) 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.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 There has been no public consultation on this instrument. This instrument introduces no changes in policy or impact on businesses or the public that would make consultation appropriate.

10.2 Defra has worked closely with the Scottish, Welsh and Northern Irish devolved administrations in developing this instrument who have accepted the approach taken to promote consistency of regulation.

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 it was deemed unnecessary as this is not a policy change, but a technical change to ensure operability. 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 This measure does not introduce duties or burdens on business. Businesses will not need to change their current practices as a result of the instrument.

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 Alison Gadsby at the Department for Environment, Food and Rural Affairs Telephone: 020 0826 2696 or email: alison.gadsby@defra.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Catherine Harrold, Deputy Director for Future Animal & Plant Health, Endemics & Traceability, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble 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 2018 SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	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 s. 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s. 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

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

“In my view the Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because: the instrument makes only minor and technical amendments to the EU retained legislation to ensure that it remains operative following the withdrawal of the United Kingdom from the European Union and provides for the exercise of legislative functions by UK authorities as appropriate given the nature of the functions concerned.

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: It is important to retain the existing standards for protecting public health from zoonotic disease on EU Exit. The amendments in this instrument will help to ensure that those standards are maintained. Without this instrument, the EU Regulations which are converted into UK law by the European Union (Withdrawal) Act 2018 will not work properly and it is appropriate for UK authorities to exercise legislative functions currently carried out by the Commission.

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 As this instrument does not make a substantive change to existing law 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.