

EXPLANATORY MEMORANDUM TO

THE ANIMALS, AQUATIC ANIMAL HEALTH, INVASIVE ALIEN SPECIES, PLANT PROPAGATING MATERIAL AND SEEDS (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 No. 1388

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 The purpose of this instrument is to ensure that legislation relating to animal and aquatic health, invasive alien species, plant propagating material and seeds remains operable following the Withdrawal Agreement, the Protocol on Ireland / Northern Ireland (“the Protocol”), and recent updates to EU law. The amendments in this instrument are technical in nature with no changes to policy.
- 2.2 The amendments made by this instrument will address deficiencies in domestic legislation including previously made EU Exit legislation, e.g. by removing references to EU institutions that are no longer appropriate; removing obligations to report to, or seek approval from, the European Commission; and removing provisions relating to reciprocal arrangements and provisions that will no longer exist or operate following the end of the transition period.

In addition, the instrument will:

- amend retained EU law;
 - replace references to the EU’s Trade Control and Export System (“TRACES”) with references to the UK’s new system for import notifications and controls, the Imports of Products, Animals, Food and Feed System (IPAFFS);
 - remove transitional measures which expire at the end of the Transition Period;
 - make operability changes to recent amendments to EU law that were settled in the EU too late to be covered by the earlier EU Exit legislation.
 - make reference to the special transitional import arrangements set out in Schedule 5 to the England Trade Regulations or equivalent provisions in the Wales Trade Regulations or the Scotland Trade Regulations, and the new Annex 6 to the Official Controls Regulation (EU) 2017/625;
 - apply a reciprocal approach to the EU, in particular so that EU breed societies are subject to the same recognition and listing process as third country breeding bodies by the UK as the EU is applying to UK breed societies post Transition Period. This is subject to a six month transitional period during which EU breed societies will be automatically listed by the UK;
 - make a few very minor corrections to drafting errors in earlier EU Exit SIs;
- and

- make minor amendments to domestic legislation using section 2(2) of the European Communities Act 1972 in order to ensure regimes can be made operable at the end of the Transition Period.

The EU Exit SIs and EU legislation amended by this instrument are listed in Annex 2.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The regulations and directly applicable EU law amended by this instrument concern the following policy areas: Equine identification; TSE and animal by-products; Livestock identification; Aquatic Animal Health; Exotic animal diseases; Plant varieties and marketing of seed and other plant material; Pet travel; Animal breeding; and Seal Products. The law amended includes earlier EU Exit SIs, which were made in 2018 and 2019 in preparation for leaving the EU.

Why is it being changed?

- 2.4 Since making those earlier EU Exit SIs, a Withdrawal Agreement between the UK and the EU has been signed. It is necessary to update those earlier EU Exit SIs and make further amendments to retained EU law to ensure they function effectively at the end of the Transition Period. Amendments must also be made to reflect the Protocol and to directly applicable EU legislation made during the Transition Period, and to make minor amendments.

What will it now do?

- 2.5 Retained EU law relating to the areas cited at paragraph 7.1 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, changes the identity of the bodies carrying out the specified functions and converts EU procedures to UK procedures, and as appropriate, stands up the Protocol on existing instruments; replaces references to the EU's TRACES system by references to IPAFFS, the UK's new system for import notifications and controls; removes transitional measures which expire at the end of the Transition Period; makes operability changes to recent amendments to EU law following updates to EU legislation; makes reference to special transitional import arrangements; applies a reciprocal approach to the EU to ensure that EU breed societies are subject to the same recognition and listing process as third country breeding bodies by the UK as the EU is applying to UK breed societies following the Transition Period (subject to a six month transitional period during which EU breed societies will be automatically listed by the UK); and corrects a very small number of minor drafting errors in earlier EU Exit SIs. A full explanation of the changes being made by this instrument can be found in section 7 of this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was presented to the Sifting Committees for consideration on 2 November 2020. On 17 November 2020, the Sifting Committees agreed with the

Government that this instrument does not have to have a debate in Parliament, though one may still occur. This 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 application of this instrument are as follows:

- Part 1 extends and applies to the United Kingdom.
- Parts 2, 3 and 4 extend and apply to England and Wales and Scotland, other than regulation 3 which extends and applies to the United Kingdom.
- In relation to Part 5:
 - Regulations 20, 23, 25, 27, 31, 33 and 34 extend to the United Kingdom but apply to England and Wales and Scotland only;
 - Regulation 21 extends to England and Wales but applies to England only, other than paragraph (2) which extends and applies to the United Kingdom;
 - Regulation 22 extends to the United Kingdom but applies to England and Wales and Scotland, other than paragraph (3) which extends and applies to England and Wales.
 - Regulations 24 and 26 extend to England and Wales but apply to England only, other than Regulation 21(2) which extends and applies to the United Kingdom;
 - Regulation 28 extends and applies to the United Kingdom, other than paragraphs (2)(d) and (6)(c) and (d), which extend to the United Kingdom but apply to England and Wales and Scotland only;
 - Regulation 29 extends and applies to England and Wales only, other than paragraphs (4) to (6) which extend to England and Wales but apply to England only;
 - Regulation 30 extends and applies to the United Kingdom, other than paragraphs (6) and (7) which extends to the United Kingdom but applies to England and Wales and Scotland only;
 - Regulation 32 extends and applies to England and Wales.
- Part 6 extends and applies to England and Wales and Scotland, other than regulation 38 which extends to England and Wales and Scotland, but applies to England and Wales only.
- Part 7 extends and applies to England and Wales, other than regulation 39 which extends and applies to England and Wales and Scotland.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The European Union (Withdrawal) Act 2018 incorporates EU law as it stands at the end of the Transition Period into UK law. Section 8(1) of the Withdrawal Act provides that a Minister of the Crown may, by regulations, make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. This includes both EU-derived domestic law and directly applicable EU law. This instrument is accordingly being made to correct relevant legislation to ensure it operates effectively after the end of the Transition Period.

7. Policy background

What is being done and why?

- 7.1 The purpose of this instrument is to ensure that legislation relating to animal and aquatic health, invasive alien species, plant propagating material and seeds remains operable following the Withdrawal Agreement, the Protocol on Ireland / Northern Ireland (“the Protocol”), and recent updates to EU law.
- 7.2 This instrument also makes amendments for the purpose of implementing aspects of the Protocol, which forms part of the Withdrawal Agreement. This instrument will place the Protocol as it relates to aspects of EU finance, management and monitoring rules on a legal footing as required at the end of the Transition Period.
- 7.3 Following the end of the Transition Period, GB will no longer have access to the EU’s TRACES system. This instrument addresses that deficiency by replacing references to TRACES by references to IPAFFS, the UK’s new system for import notifications and controls.
- 7.4 This instrument makes reference to the special transitional import arrangements set out in Schedule 5 to the England Trade Regulations or equivalent provisions in the Wales Trade Regulations or the Scotland Trade Regulations, and the new Annex 6 to the Official Controls Regulation (EU) 2017/625.
- 7.5 Animal breeding legislation facilitates trade of pedigree animals, hybrid breeding pigs and germinal products (such as semen and embryos). This instrument will amend the Animal Breeding (Amendment) (EU Exit) Regulations 2019 (“SI 2019/117”) to apply a reciprocal approach to the EU, in particular (subject to transitional arrangements), that EU breed societies are subject to the same recognition and listing process as third country breeding bodies by the UK and as the EU is applying to UK breed societies post Transition Period. This is subject to a six month transitional period during which EU breed societies will be automatically listed by the UK.
- 7.6 This instrument makes only amendments which are legally necessary to achieve its objectives. It represents no changes in policy, and it is not envisaged that any of these amendments will directly impact on businesses or the public.

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 of 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 Annex 1 to this Explanatory Memorandum.

9. Consolidation

9.1 Not applicable to this instrument.

10. Consultation outcome

10.1 The amendments in this instrument 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.

11. Guidance

11.1 As no policy changes are included in this instrument no guidance specifically related to this instrument is required.

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 A full Impact Assessment has not been prepared for this instrument because this instrument provides for technical amendments to existing legislation.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is for this instrument to maintain the status quo, therefore making no changes which would otherwise introduce duties or burdens on businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is in continuing dialogue with stakeholders.

14.2 As this instrument is made under the EU Withdrawal Act 2018, 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 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 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 1

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. Sifting 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 Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 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 the amendments made by this instrument are the minimum required to ensure that existing domestic legislation remains operable after the end of the Transition Period. The amendments are predominantly technical in nature and do no more than is strictly necessary to ensure that UK law continues to function effectively.

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:

“In my view the Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 2.2 This is the case because without this instrument, the EU regulations listed in Annex 2 of this Explanatory Memorandum that are retained in UK law by the European Union (Withdrawal) Act 2018 will not operate effectively after the end of the Transition Period. See section 7 of the main body of this Explanatory Memorandum.

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:

“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 are the reasons set at paragraph 7.1 of this Explanatory Memorandum.

4. Equalities

4.1 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.”

4.2 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.”.

4.3 Little or no impact on equalities is expected.

5. Explanations

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

Annex 2

Domestic and EU legislation amended by this instrument

Plant varieties and marketing of seed and other propagating material

- The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/1220);
- The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131);
- The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/162);
- The Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/809);
- Council Decision 2005/834/EEC on the equivalence of checks on practices for the maintenance of varieties carried out in certain third countries;
- Commission Implementing Decision (EU) 2020/1106 on the organisation of a temporary experiment under Council Directives 66/401/EEC, 66/402/EEC, 2002/54/EC and 2002/57/EC as regards the official checking rate for field inspection under official supervision for basic seed, bred seed of generations prior to basic seed and certified seed.

Equine identification

- The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/591);
- The Equine Identification (England) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1409);
- The Horses (Free Access to Competitions) Regulations 1992 (S.I. 1992/3044).

TSEs and Animal By-Products

- The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment) (EU Exit) Regulations 2018 (S.I. 2019/170);
- The Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/809);
- The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/1220);
- The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1229);
- Regulation (EC) No. 1069/2009 of the European Parliament and the Council lays 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.

Pet Travel

- The Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974 (S.I. 1974/2211);
- The Non Commercial Movement of Pet Animals Order 2011 (S.I. 2011/2883);
- Regulation (EU) No 576/2013 of the European Parliament and of the Council on the non-commercial movement of pet animals;
- Commission Implementing 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 provided for in Regulation (EU) No 576/2013 of the European Parliament and the Council;
- Commission Delegated Regulation (EU) 2018/772 of 21 November 2017 supplementing Regulation (EU) No 576/2013 of the European Parliament and of the Council with regard to preventive health measures for the control of *Echinococcus multilocularis* infection in dogs, and repealing Delegated Regulation (EU) No 1152/2011;
- Commission Implementing Regulation (EU) 2018/878 of 18 June 2018 adopting the list of Member States, or parts of the territory of Member States, that comply with the rules for categorisation laid down in Article 2(2) and (3) of Delegated Regulation (EU) 2018/772 concerning the application of preventive health measures for the control of *Echinococcus multilocularis* infection in dogs.

Seal Products

- The Seal Products (Amendments) (EU Exit) Regulations 2018 (S.I. 2018/1034);

Aquatic Animal Health

- The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/451);
- The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/452);
- Commission Regulation (EC) No 1251/2008 implementing Council Directive 2006/88/EC as regards conditions and certification requirements for the placing on the market and the import into the Community of aquaculture animals and products thereof and laying down a list of vector species;
- Commission Decision 2008/392/EC implementing Council Directive 2006/88/EC as regards an Internet-based information page to make information on aquaculture production businesses and authorised processing establishments available by electronic means;
- Commission Decision 2008/896/EC on guidelines for the purpose of the risk-based animal health surveillance schemes provided for in Council Directive 2006/88/EC;
- Commission Decision 2008/946 implementing Council Directive 2006/88/EC as regards requirements for quarantine of aquaculture animals;

- Commission Decision 2009/177/EC implementing Council Directive 2006/88/EC as regards surveillance and eradication programmes and disease-free status of Member States, zones and compartment;
- Commission Decision 2010/221/EU approving national measures for limiting the impact of certain diseases in aquaculture animals and wild aquatic animals in accordance with Article 43 of Council Directive 2006/88/EC;
- Commission Decision (EU) 2015/1554 laying down rules for the application of Directive 2006/88/EC as regards surveillance and diagnostic methods.
- The Aquatic Animal Health (England and Wales) Regulations 2009.

Animal Breeding

- The Animal Breeding (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/117).

Exotic animal diseases

- The Exotic Disease (Amendment etc) (EU Exit) Regulations 2018 (S.I. 2018/1410);
- The Exotic Disease (Amendment) (England) (EU Exit) Regulations 2018 (S.I. 2018/1406);
- Commission Implementing Decision 2014/709/EU concerning animal health control measures relating to swine fever.

Livestock Identification

- The Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/814).

Invasive Non-native Species

- The Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527).