EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (AMENDMENT) (EU EXIT) REGULATIONS 2021

2021 No. 79

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.

2. Purpose of the instrument

2.1 The purpose of this instrument is to protect biosecurity and support trade between Northern Ireland and Great Britain ("GB") by ensuring the continued functioning of plant health controls in relation to Qualifying Northern Ireland goods ("Qualifying Goods") moving from Northern Ireland to GB, and within GB, following the end of the Transition Period.

2.2 Regulation (EU) 2016/2031) on protective measures against pests of plants ("the Plant Health Regulation") and tertiary legislation made under that Regulation has been incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"), save insofar as the legislation applies to Northern Ireland for the purposes of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement ("the Protocol"). This legislation has been amended in relation to GB by the Plant Health (Amendment etc.) (EU Exit) Regulation 2020 and the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 ("the 2020 Regulations") to deal with a range of deficiencies in the legislation arising from the withdrawal of the UK from the European Union. This instrument will make further amendments to the Plant Health Regulation (as amended by the 2020 Regulations) to deal with other deficiencies and matters arising out of, or related to, the Protocol. As a result of the Protocol, different Sanitary and Phytosanitary ("SPS") requirements now apply in GB and in Northern Ireland. The operability amendments contained in this instrument supplement the government's policy on unfettered market access for Qualifying Goods.

Explanations

What did any relevant EU law do before exit day?

2.3 The Plant Health Regulation formed part of the EU Smarter Rules for Safer Food package of regulations. This package was designed to modernise, simplify and improve existing health and safety standards for the agri-food chain, taking a risk-based approach[1] to animal, plant and public health protection and introducing more efficient pest and disease control measures.

2.4 The Plant Health Regulation itself set out the phytosanitary requirements for the movement of regulated plants and plant products within and into the European Union

[1] A risk-based approach assesses the level of biosecurity risk posed by trade in a commodity and implements measures to mitigate this.

and provided for the adoption of lists of regulated plants, plant products, pests and diseases in respect of the Union territory.

2.5 As the Plant Health Regulation was directly applicable, no national implementing legislation was needed for it to take effect in UK law. However, supplementary domestic provisions were introduced by the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) ("the 2019 Regulations") to enable competent authorities in England to carry out their obligations under the Plant Health Regulation, enforce the Plant Health Regulation and implement various derogations in the Plant Health Regulation. Separate but parallel domestic legislation to the 2019 Regulations was introduced in Wales, Northern Ireland, and Scotland.

Why is it being changed?

2.6 The operability changes and other consequential amendments made by this instrument to retained EU law relating to plant health (including the Plant Health Regulation) will ensure the continued functioning of plant health controls within GB, and between Northern Ireland and GB, in relation to Qualifying Goods and will enable enforcement action to be taken, where appropriate, on such goods. The instrument also clarifies the internal GB controls applicable to Qualifying Goods.

What will it now do?

2.7 This instrument supplements the government's policy on unfettered market access for qualifying Northern Ireland goods, defining how this access operates for plant health and allowing enforcement action to be taken in GB if plants and plant products that are Qualifying Goods are moved into, and within, GB otherwise than in a permitted manner.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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.

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 England, Wales and Scotland.

4.3 Part 2 of this instrument amends domestic regulations which apply in England only. The retained direct EU legislation which is amended by this instrument has been incorporated into domestic legislation by section 3 of the Withdrawal Act, except in relation to Northern Ireland as the Protocol applies to that legislation in Northern Ireland.

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 Plant Health (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Withdrawal Act converts and preserves EU law at the end of the Transition Period into domestic law. If retained EU law was not amended, it would contain inoperable rules that would prevent the UK Government and the Devolved Administrations from being able to deliver workable legislation on plant health. This instrument uses the powers in section 8, section 8C and paragraph 21 of Schedule 7 of the Withdrawal Act to correct these deficiencies. The legislation being amended would not have the right effect as it would not reflect the change in the legislative position following the withdrawal of the UK from the European Union at the end of the Transition Period, the application of the Protocol in Northern Ireland and the amendments which have been made to retained EU law by the 2020 Regulations.

6.2 Part 2 amends domestic legislation relating to plant health as it applies in England. Part 3 amends retained direct EU legislation, as it applies in Great Britain.

7. Policy background

What is being done and why?

7.1 All the amendments introduced by this instrument are technical operability amendments and do not include any policy changes.

7.2 The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate between Northern Ireland and GB and within GB in relation to Qualifying Goods. It facilitates the government's policy of unfettered market access in relation to Qualifying Goods.

7.3 This instrument makes amendments to allow movements of Qualifying Goods into GB under an EU Plant Passport. Once in GB, an EU Plant Passport can continue to accompany the Qualifying Goods, but an authorised operator will also have the option, as for other regulated plants being moved in GB, to replace the plant passport with a UK plant passport where appropriate. An EU Plant Passport on Qualifying Goods may be replaced by an authorised operator if they: choose to replace the plant passport for business reasons (e.g. to include their own business details); or split a consignment where each trade unit (e.g. pot, box, trolley or similar) is not already covered by an individual plant passport.

7.4 In these circumstances, the provisions allow GB operators to simply replace the original EU plant passport with a UK plant passport, if the characteristics of the Qualifying Goods have not changed, but also ensures that the traceability requirements in relation to the goods are maintained.

7.5 Provision is also made for the goods to be assessed against GB plant health standards (where these are different to the EU's) and for the authorised operator to have the option to issue a UK plant passport where the goods are assessed as meeting GB plant health requirements.

7.6 This instrument also makes amendments to the format of UK Plant Passports to include a country code of GB(NI) for all Qualifying Goods where replacement UK PPs are being issued once within GB. This will allow the goods concerned to continue to be identified as Qualifying Goods and facilitate effective enforcement.

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

8.1 This instrument is being made using the powers in sections 8 and 8C 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. This instrument is also made under the paragraph 21 of Schedule 7 in the Withdrawal Act 2018. 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 Not applicable to this instrument.

10. Consultation outcome

10.1 Stakeholders have not been consulted as all the amendments introduced by this instrument are technical operability amendments and not policy changes.

10.2 The Scottish and Welsh Devolved Administrations have been consulted about the proposed amendments and are content.

11. Guidance

11.1 The Animal and Plant Health Agency and the Forestry Commission are the relevant delivery bodies in England and are developing an implementation plan and associated guidance for publication on GOV.UK before the end of 2020.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies as a result of policy changes introduced under this instrument.

12.2 There is no significant impact on the public sector as a result of policy changes introduced under this instrument.

12.3 Therefore, an impact assessment has not been completed as there are no significant impacts as result of the amendments detailed within this instrument.

13. Regulating small business

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

13.2 This instrument applies equally to all businesses, including small businesses. The government's policy on unfettered market access for qualifying Northern Ireland goods is not impacted by the size of businesses concerned.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the Withdrawal Act, no review clause is required.

15. Contact

15.1 Kate Somerwill-Owens at the Department for Environment, Food and Rural Affairs Telephone: 02080 5654319 or email: kate.somerwill-owens@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, 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, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a 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. 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 Plant Health (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case because this instrument makes operability changes and other consequential amendments to ensure the continued functioning of plant health controls in relation to Qualifying Northern Ireland goods moving from Northern Ireland to GB, and within GB, following the end of the Transition Period. This is in line with government 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 there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist.

3. Equalities

3.1 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."

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.".

4. Explanations

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