

EXPLANATORY MEMORANDUM TO

THE ANIMALS, FOOD, PLANT HEALTH, PLANT PROPAGATING MATERIAL AND SEEDS (MISCELLANEOUS AMENDMENTS ETC.) REGULATIONS 2022

2022 No. 1090

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

2. Purpose of the instrument

- 2.1 This instrument is made under section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 to make various operability amendments to retained direct EU legislation and domestic legislation relating to official controls, animal health and welfare, food, plant health and the marketing of seed and fruit planting material as a result of the UK’s Exit from the European Union. This is to ensure the UK retains a fully functioning statute book. Some of the amendments make technical corrections to legislation already amended by EU Exit secondary legislation, although the majority make operability amendments to retained EU legislation for the first time. This instrument also revokes various pieces of retained direct EU legislation which are no longer required on the UK statute book.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee of Statutory Instruments

- 3.1 On 6th September 2022 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.
- 3.2 This instrument removes superfluous references raised by JCSI in respect of amendments to retained Regulation (EU) 2019/2072 made in S.I. 2020/1527.
- 3.3 The Department has consulted with the SI Registrar whether the free issue should apply to this instrument in accordance with paragraph 4.7.6 of Statutory Instrument Practice in light of certain corrective provisions being made. Since the corrective provisions only represent a minor part of the overall instrument, the Department proposes that the free procedure will not apply to this instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom, except Part 2 which extends to England and Wales.
- 4.2 The territorial application of this instrument is England, Wales and Scotland, except Part 2 which applies in relation to England 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 EU (Withdrawal) Act 2018 (“EUWA”) converted and preserved EU law at the end of the Transition Period into domestic law ("retained EU law"). It also provided for amendments to be made to address deficiencies arising from EU exit. This instrument uses the powers in section 8 of, and paragraph 21 of Schedule 7 of the EUWA to address technical errors from previous EU Exit amendments, and correct deficiencies in retained EU law and domestic secondary legislation that were not included in previous EU Exit instruments in order to ensure the legislation is operable following the withdrawal of the UK from the European Union.

7. Policy background

What is being done and why?

- 7.1 This instrument makes necessary changes to domestic secondary legislation and retained EU law to ensure they’re fully operable as a result of the UK’s exit from the EU. All of the amendments are technical operability amendments and do not include any policy changes.

Part 2 of this instrument

- 7.2 Part 2 of this instrument makes operability amendments to secondary legislation relating to the marketing of seed and fruit planting material to EU references which are no longer appropriate and which were overlooked in earlier amending instruments. These amendments are necessary to ensure that this legislation continues to function effectively following the withdrawal of the UK from the EU.

Part 3 of this instrument

- 7.3 Part 3 of this instrument makes various operability amendments to retained EU law relating to animal health and welfare, food and plant health, the majority of which were overlooked in earlier amending instruments, while some correct minor technical errors. These amendments are necessary to ensure that this legislation continues to function effectively following the withdrawal of the UK from the EU.
- 7.4 The majority of the amendments are to change EU references, such as references to the Union and Member States, in the original European legislation to the GB language of Great Britain and relevant authorities in Great Britain., as well as removing redundant provisions applicable to EU institutions no longer applicable in GB. Notable changes made by this instrument to sector specific legislation are listed below:

Animal welfare in transport

- 7.5 Regulations 8 and 13 of this instrument make corrective amendments relating to the welfare in transport of animals entering Great Britain. Regulation 8(2) amends retained Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations to ensure that Article 5(4) of that Council Regulation correctly applies to the transport of livestock and unregistered horses involving long

journeys, whether they are being transported from GB to third countries, from third countries into GB or through GB.

- 7.6 Regulation 13 of this instrument makes corrective amendments to EU Regulation 2017/625 (Official Controls Regulations – OCR). It corrects the limitation of the official controls specified in Article 21(1)(b) of the OCR to export journeys and ensures they may also be carried out in relation to import and transit journeys. Both Regulations 8 and 13 are required to rectify amendments within previous EU Exit secondary instruments which incorrectly limited, confused, and modified the intent and practical application of the existing regulations.

Sampling and monitoring of residues in certain animal products

- 7.7 Regulation 4 of this instrument amends legislation relating to the monitoring of certain substances and residues thereof in certain animal products to ensure the legislation continues to operate effectively in GB. Decision 1997/747 was overlooked during previous EU exit amendments and therefore requires operability amendments to ensure it continues to function effectively in respect of GB. The amendments ensure the sampling requirements continue to be carried out by competent authorities in GB according to the requirements set out in the Decision.

Import measures applying to certain third countries

- 7.8 Regulations 10 to 12 amend various retained EU Decisions governing emergency import measures relating to certain food product from certain third countries as a result of the health risks they present. The operability amendments ensure these emergency measures to continue to operate in respect of imports into GB, until such time as they are considered no longer necessary.
- 7.9 Regulations 7 and 9 make amendments to two retained Decisions relating to imports from the US. Regulation 7 makes operability amendments to Decision 2003/863 to ensure that gelatine and collagen for human consumption are authorised to be imported into GB provided they come with a health certificate completed in accordance with the form published by the appropriate authority. Regulation 9 amends Commission Decision 2006/199 ensuring that fishery products from the US continue to meet the conditions for import laid down in that Decision.
- 7.10 Regulation 16 of this instrument amends Commission Delegated Regulation (EU) 2019/2122 to ensure that pet birds entering GB from Andorra, the Faroe Islands, Greenland, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland and the Vatican City State are subject to the same import requirements as all other third countries.

Plant health

- 7.11 Regulation 14 of this instrument makes operability amendments to retained Decision 2019/1614 relating to derogations from certain provisions of Regulation 2019/2072 (the “Phytosanitary Conditions Regulation”). It makes various operability amendments to ensure GB competent authorities can continue to apply the derogation provided for in the legislation to ensure that potatoes, other than potatoes intended for planting, originating in the regions of Akkar and Bekaa in Lebanon, can be imported into GB providing they meet the conditions set out in Decision 2019/1614. These amendments were not made in earlier EU exit SIs, as it was originally considered that this derogation would not be used in GB. However, it is now considered necessary to make provision for such a derogation and make the legislation operable in GB.

- 7.12 This instrument also makes corrections to Annex 7 to the Phytosanitary Conditions Regulation (regulation 15), which sets out import requirements for live pollen and plants for planting, other than seeds, of *Actinidia* sp. (kiwi), of the retained Phytosanitary Conditions Regulation. This correction omits the word “specified”, as the term specified plants was removed when the EU Exit amendments made by S.I. 2020/1527 were introduced.

Part 4 of this instrument

- 7.13 Part 4 of this instrument revokes two retained decisions in the area of plant health.
- 7.14 Decision 2017/2374 sets out conditions for movements, storage and processing of fruit of *Citrus*, *Fortunella*, *Poncirus* and their hybrids originating from third countries to prevent the introduction of *Phyllosticta citricarpa* and other harmful organisms associated with these fruits.
- 7.15 It is not necessary to retain these restrictions because the biosecurity risk of pests associated with these fruits to GB is considered low due to the lack of citrus production in GB. The import of fruit of *Citrus*, *Fortunella*, *Poncirus*, and their hybrids was deregulated following EU exit and as such there are no import requirements associated with these fruits.
- 7.16 This instrument also revokes retained Regulation (EU) 2020/178. This regulation sets the form for instructional phytosanitary posters relating to the introduction of plants, plant products and other objects at all seaports, airports and international transport operators at entry points into EU territory. The ability to set the form of such posters is already set out in Article 45 of Regulation 2016/2031. As Regulation (EU) 2020/178 impacts on EU member states only, it needs to be revoked following the UK’s exit from the EU.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.17 EU law across the areas of animal welfare in transport, sampling and monitoring of residues in certain animal products, and import measures applying to certain third countries provided a high level of protection in relation to animal, human and plant health and welfare. Additionally, EU law on the marketing of seed and fruit plant and propagating material ensured minimum quality standards and traceability of such material.
- 7.18 Technical amendments have since been identified relating to the UK’s exit from the EU and are now corrected by this instrument.

Why is it being changed?

- 7.19 Minor operability amendments and corrections are needed to domestic secondary legislation and retained EU law to remove EU references which are redundant or are no longer appropriate.

What will it now do?

- 7.20 This instrument makes a number of operability amendments to enable UK law in relation to animal, human and plant health and welfare and on the marketing of seed and fruit plant and propagating material to continue to function effectively following the withdrawal of the UK from the EU. It also revokes various pieces of retained direct EU legislation which are no longer required on the UK statute book.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the powers in section 8 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.

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. This instrument and the policy reflected in it has been developed in collaboration with Devolved Government 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 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument does not place any burdens on small businesses, therefore no action will be taken.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through the course of normal departmental business.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Trine Andresen at the Department for Environment, Food and Rural Affairs
Telephone: 0208 415 2249 or email: trine.andresen@defra.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Peter Jinks, Deputy Director for SPS and Imports, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Benyon 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 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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) or	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 section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

16. Sifting statement(s)

16.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement regarding use of legislative powers in the [European Union (Withdrawal) Act 2018:

In my view The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

16.2 This is because this instrument corrects technical deficiencies and does not introduce additional burden on the general public, nor are these amendments controversial.

16.3 Appropriateness statement

16.4 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022 does no more than is appropriate”.

16.5 This is the case because this instrument corrects technical deficiencies that arise from the UK’s withdrawal from the EU and ensures that the existing regimes for safeguarding UK biosecurity will continue to operate effectively after the end of the Transition Period. This is in line with government policy.

17. Good reasons

17.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon 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”.

17.2 These are:

- That there are public concerns about biosecurity and so the government should ensure legislation upholding biosecurity is fully operable in GB.
- That secondary legislation on the marketing of seed and fruit plant and propagating material is made fully operable after the UK’s withdrawal from the EU so that it remains effective and functions correctly.

18. Equalities

18.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement(s):

“The draft 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.

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

“In relation to the draft instrument, I, Lord Benyon 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.”.

19. Explanations

- 19.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.