EXPLANATORY MEMORANDUM TO

THE HUMAN MEDICINES (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care 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 This instrument amends the Human Medicines Regulations 2012 (HMRs) and associated Medicines (Products for Human Use) (Fees) Regulations 2016 (Fees Regulations) to ensure they are fit for purpose in a no deal EU Exit scenario. It allows the UK licensing authority, acting through the Medicines and Healthcare products Regulatory Agency (MHRA) to function as a standalone regulator in the event of a no-deal EU Exit and for the UK to continue to recognise prescriptions from the EU/EEA.

2.2 This instrument also amends the HMRs to enable regulations to be made to temporarily modify the HMRs to deal with any serious shortages of medicines arising from the UK's withdrawal from the EU.

Explanations

What did any relevant EU law do before exit day?

2.3 EU law provided for the EU medicines regulatory system of which the UK is a part before exit day. This includes licensing routes for the UK market, through the European Medicines Agency (EMA), joint Member State assessment or mutual recognition procedures, enabling recognition of prescriptions across the EU/EEA, providing networks and processes for monitoring the safety of medicines and incentivising the development of medicines to treat rare diseases and children.

Why is it being changed?

2.4 UK law assumes that the UK is part of the EU medicines regulatory system. In a no deal scenario the MHRA needs to operate as a regulator outside this system and take on roles formerly conducted by the EMA. There are also reciprocal arrangements between the UK and EEA Member States, the absence of which needs to be reflected. These changes are set out in section 7.

What will it now do?

2.5 By transferring to the MHRA the functions previously carried out at EU level, this instrument will allow the MHRA to function as a standalone regulator and ensure patient access to safe and effective medicines as well as monitor the ongoing safety of those medicines and where necessary take action to protect patients.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument contains provisions which anticipate prospective changes to be made by the Medical Devices (Amendment etc.) (EU Exit) Regulations 2019 which are laid in draft alongside this instrument. Footnotes in the instrument indicate where this is the case. Both instruments will be made at the same time to come into force on exit day.

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 (section 8 and schedule 4 to the European Union (Withdrawal) Act 2018) cover the entire United Kingdom 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 all of the United Kingdom.

4.2 The territorial application of this instrument is all of the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State for Health, Stephen Hammond, has made the following statement regarding Human Rights:

"In my view the provisions of the Human Medicines (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The regulation of human medicines is an area of shared competence between the EU and Member States under article 4 of the Treaty on the Functioning of the EU (TFEU); but in light of the EU's comprehensive exercise of the competence, Member States are precluded from exercising the competence nationally.

6.2 The EU has created a comprehensive code for the marketing, manufacturing, packaging, distribution, advertising and monitoring of human medicines. The framework for this is set out in Directive 2001/83/EC and Regulation (EC) No. 726/2004. There are also multiple pieces of Commission-made EU tertiary legislation - both Directives and Regulations –largely made under Directive 2001/83/EEC or Regulation (EC) No 726/2004 as well as some further EU Regulations that supplement the EU legislative framework on human medicines.

6.3 Directive 2001/83/EEC and the tertiary Directives on human medicines have all been transposed into UK law by the HMRs. The HMRs are made under section 2(2) of the European Communities Act 1972 (ECA).

6.4 Regulation (EC) No 726/2004 and the tertiary and other EU Regulations on human medicines take direct effect in UK law by virtue of section 2(1) ECA.

6.5 The EU (Withdrawal) Act 2018 (EUWA) provides at section 2 that domestic legislation made under section 2(2) ECA continues to have effect in domestic law on or after exit day (notwithstanding that the ECA is repealed by virtue of section 1).

"Exit day" is defined at section 20 to mean 11pm on 29th March 2019. By virtue of being saved under section 2 EUWA, the HMRs form part of "retained EU law" as defined in section 6(7) EUWA.

6.6 Section 3 EUWA provides that EU Regulations and tertiary Regulations also continue to form part of domestic law on or after exit day and these also form part of retained EU law. The approach taken in this instrument is to revoke and restate in the HMRs, with modifications, all the relevant EU and tertiary Regulations, in order to place the law governing the regulation of medicinal products for human use in one domestic instrument. This is in reliance on the power in paragraph 21(b) of Schedule 7 to EUWA to make provision re-stating retained EU law in a clearer or more accessible way.

6.7 Section 8 EUWA provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate (a) any failure of retained EU law to operate effectively; or (b) any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.

6.8 This instrument relies on the power at section 8 EUWA to amend the HMRs, and modify the effect of the re-stated EU regulations, to ensure that all aspects of retained EU law in relation to human medicines operate effectively and are not deficient after exit day as a result of the UK's withdrawal from the EU.

6.9 The MHRA, an executive agency of the Department of Health and Social Care, carries out the functions of competent authority in the UK in the area of human medicines on behalf of the "licensing authority", a body established under regulation 6 of the HMRs. The power in section 8(6)(a) of EUWA is exercised in these Regulations to confer on the licensing authority those functions in relation to medicines regulation, including legislative functions, that are currently carried out by EU bodies.

6.10 By virtue of the MHRA Trading Fund Order 2003 (SI 2003/1076), the MHRA operates as a trading fund and seeks to recover the cost of its work regulating human medicines through the charging of fees.

6.11 The majority of the fees the MHRA charge are statutory and are set out in the Fees Regulations.

6.12 This instrument relies on the power at Schedule 4 EUWA to introduce new fees in connection with functions conferred on the licensing authority under section 8 EUWA. They do so by amending the Fees Regulations.

7. Policy background

What is being done and why?

7.1 This instrument makes a large number of changes to make sure that the MHRA can operate in a No Deal EU Exit and to provide continuity for businesses and the public. A description of these changes is set out below.

Marketing Authorisations (MAs)

7.2 At present, there are four routes by which a company can gain an MA to place a human medicine on the UK market – three of which involve the EU regulatory network: a centralised MA granted by the European Commission which is valid for the whole EU, or a national UK MA granted following mutual recognition of a national MA granted by another EU member state, or following a collective

assessment procedure by several member states, led by one of them. The fourth is a purely national UK route, resulting in a national MA valid for the UK only.

7.3 After EU Exit, the UK will no longer be part of the EU licensing system, and all medicines coming to the UK will be required to use a UK national route. This instrument makes the necessary changes to regulation 46 of the HMRs to achieve this.

7.4 A new targeted assessment route is being introduced to incentivise novel medicines and biosimilars (a biological medical product that is equivalent to the original innovative product) which presently use one of the routes involving the European regulatory network (known as 'the centralised route') to receive a UK MA in the same timeframe as today. Changes to regulation 58 of the HMRs and to the Fees Regulations achieve this. Further, non-legislative changes may also be implemented in order to ensure the continued competitiveness of the UK market.

Legal presence

7.5 At present for medicines in the EU, in order to hold a MA, the MA holder (MAH) must be established in the EU or EEA. The MAH is the contact point if there are any problems with a medicine, as well as being legally accountable for compliance with the obligations in the HMRs on MAHs– the ultimate sanction against an MAH is up to two years imprisonment.

7.6 Additionally, as part of the MA, the MAH must have a Qualified Person for Pharmacovigilance (QPPV) present in the EU or EEA. The QPPV is an important position, as they must be accessible at all times to allow a regulator access to the safety data systems for the medicine.

7.7 In a No Deal EU Exit, the UK will have far less control over an MAH or QPPV based in the EU or EEA, when no longer a part of the regulators' network, because it will have no guaranteed relationship with any of the EU / EEA regulators.

7.8 In the event of a problem with a medicine, the existence of a UK based MAH and UK based QPPV ensures that the necessary action to protect patient safety is taken in the most expeditious and effective manner.

7.9 This instrument ensures that a UK based MAH and a UK based QPPV will need to be in place for all medicines with a UK MAs (changes to regulation 49(3) and 182(2)(a) achieve this). This will ensure that UK patients continue to be protected in case of an issue with a medicine in the event of a no deal exit.

7.10 Transitional provision is made in Part 4 and 10 of new Schedule 33A to the HMRs to require UK MAHs and QPPVs to be in place by the end of the period of 21 months after exit to allow time for business to comply. This is especially the case for the QPPV, which is a specialist role.

Converting centrally authorised products (CAPs) to UK marketing authorisations (grandfathering)

7.11 CAPs are products which are currently licensed for the UK market through the EMA. The amendments made by this instrument ensure that existing CAPs will continue to be licensed in the UK in a no-deal scenario. Part 3 of new Schedule 33A to the HMRs provides that all existing CAP MAs will automatically be converted into UK MAs and issued with a UK MA number on exit day, unless the MAH indicates that they do not wish their MA to be converted in this manner. The automatic conversion of CAP MAs on exit day allows the continuation of medicines supply in the UK. Applications

for CAPs which are to be granted after exit day will not be eligible for grandfathering, and will require a separate application to the MHRA.

7.12 Transitional provision is made in order to address the fact that the MHRA does not currently hold the dossier containing the full scientific and technical data that support the approval of the CAPs. CAP MAHs will have to supply a full set of data (both data that was submitted to EMA at time of approval and in support of any post authorisation changes to the MA) to the MHRA within one year of exit day. However, they may supply a subset of the data in advance of that, to enable MHRA to consider an application to amend the terms of the approval in the meantime.

Packaging

7.13 As now, medicines labelling and packaging must be in English and multimarket packs will be acceptable provided the information presented is identical in all languages. A transitional period is included to allow manufacturers sufficient time for the administrative details in the product information to be brought in line with the new UK requirements following withdrawal from the EU (paragraphs 23, 27, 33, 45 and 50 of new Schedule 33A to the HMRs).

7.14 Separately, the requirements to be placed on all actors in the UK supply chain from 9 February 2019 by virtue of the Human Medicines (Amendment) Regulations 2019/62, regarding the safety features aspects of the Falsified Medicines Directive, will be removed by this instrument, because UK stakeholders would no longer be able to comply with the requirement to verify and authenticate all relevant medicines. For example, the unique identifier in a 2D data matrix code for products coming from the EU will have been decommissioned (made inactive) on export from the EU and before entry to the UK as a third country. Furthermore, this instrument ensures that there will be no obligations on the UK supply chain to affix the safety features or to scan packs of medicines. Packs already affixed with FMD safety features will continue to be accepted in the UK, provided that they are in line with other UK packaging requirements. In the interests of public safety, the Government will evaluate the options for a future UK falsified medicines framework, taking into account the investment already made by stakeholders.

Paediatric investigation plans (PIPs) and studies

7.15 The UK is currently part of the EU system for paediatric drug development including paediatric investigation plans (PIPs) which are development plans aimed at ensuring that the necessary data are obtained through studies in children. Decisions in relation to paediatric matters, such as agreeing a PIP and granting waivers and deferrals from the need for a PIP are currently made at EU level, as well as assessments of compliance with PIPs.

7.16 This instrument provides for a UK based system and the provisions of the EU Paediatric Regulation (Regulation (EC) No 1901/2006) are restated in the HMRs with appropriate amendments (new regulations 50A to 50F, 58A and 58B and 78A of the HMRs). MA applications for new medicinal products and applications for new indications reflecting the medical conditions studied in clinical trials, including paediatric indications, routes of administration and new pharmaceutical forms for products with supplementary patent protection, should demonstrate compliance or partial compliance with a UK PIP or have a waiver. The MHRA will take decisions on paediatric matters post exit and the same rewards for PIP compliance will be available - a 6-month extension for a UK Supplementary Protection Certificate, which

extends patent protection for medicinal products, as well as 2 years additional market exclusivity for orphan products (see section 7.19) complying with a PIP.

7.17 Newly completed paediatric studies will need to be submitted by UK MA holders for assessment.

Orphan Designation

7.18 Orphan (rare disease) medicines are currently regulated through the EU system where an 'orphan designation' may be given during product development if certain criteria are met, and orphan status is re-assessed at the stage of considering an application for an MA. To benefit from orphan incentives, products currently have to use the central EU authorisation system and if an orphan MA is granted, the product benefits from a ten-year period of marketing exclusivity from competition from similar products.

7.19 This instrument puts in place a UK system for incentivising development of medicinal products for rare diseases. In the UK system, orphan status will be determined at the point of MA assessment. The provisions of the Orphan Regulation (Regulation (EC) No 141/2000) are restated in the HMRs with appropriate amendments (new regulations 50G, 58C and 58D of the HMRs). The pre-marketing authorisation designation step will not be replicated. Overall, the orphan criteria will still be based on the current EU criteria, but the UK will have specific criteria (in relation to the prevalence of the rare disease in the UK, the availability of satisfactory alternative treatment methods in the UK and the significant benefit of the product). The benefit of 10 years market exclusivity from competition from similar products in the approved orphan indication will be retained. The start of this market exclusivity will continue be set from the date of first approval of the product in the UK or EU/EEA.

7.20 The provisions of Commission Regulation (EC) No 847/2000, laying down provisions for the implementation of the criteria for designation of a medicinal product as an orphan product and definitions of the concept of "similar medicinal product" and "clinical superiority" are restated in the HMRs with appropriate amendments (new Schedule 9A to the HMRs), with an appropriate regulation-making power to amend the Schedule in future to reflect the tertiary EU Commission power.

Abridged applications

7.21 Abridged MA applications are applications where it is not necessary to generate all of the safety and efficacy data that would be needed for a full application because some of that data has already been provided and assessed in another application and it can be referred to. Examples would be applications for generic products or additional strengths of an existing product. Article 10 of Directive 2001/83/EC allows marketing authorisation applicants to make reference to the safety and efficacy data that supported the approval of the original 'reference' products so as to avoid the repetition of studies in humans and animals, after the designated periods of data and market exclusivity have elapsed. The reference product contains the full data necessary to support the safety, quality and efficacy of a marketing authorisation. The reference product may have been approved by the UK, the European Commission or by another EEA state.

7.22 The options for these abridged applications will remain in place with appropriate amendments to reflect the UK's exit from the EU. A reference product must be either a UK-approved product (including converted CAPs – see section 7.11) or a product approved as a CAP before exit day which did not convert to a UK MA. Data

exclusivity will continue to be calculated by reference to the date of first authorisation in the UK or EEA.

7.23 An abridged application can only be made once the 8-year period of data exclusivity enjoyed by the reference product has expired, and the product can only be placed on the market a minimum of two years after that. The rules governing data and marketing exclusivity, which group MAs into "global marketing authorisations" for the purposes of calculating the start of data exclusivity, are currently set out in Articles 6 and 10 of Directive 2001/83, and these Articles are currently cross-referred to in regulations 51 to 53 of the HMRs. The amendments made by this instrument re-state those rules in the HMRs with modifications to reflect EU exit (amendments to regulations 48 and 51 to 53 of the HMRs). Data exclusivity is calculated by reference to the date of grant of the UK MA for the reference product, but will start earlier than that if the same product is authorised before that as a CAP or nationally in an EEA state. Continuing to calculate data exclusivity by reference to the first authorisation in the UK or EEA aims to protect UK public health by discouraging delay to innovative products reaching the UK market once the UK is no longer part of the reciprocal and other arrangements for centralised and decentralised MA procedures.

Requirements for wholesale dealer licences

7.24 For an approved medicine to be placed on the market in the EU, including the UK, it must have been certified by a Qualified Person (QP certified), and that Qualified Person must be based in an EU or EEA country. This is the case for medicines, whether they are manufactured within the EU / EEA or a third country.

7.25 For medicines manufactured in a third country, if the importer wishes to place the medicine on the EU market they must hold a Manufacturers Licence for Import (MIA), and they must QP certify the medicine before placing it on the EU market. The QP certification step is a critical part of ensuring a medicine has been manufactured to the correct standard, and hence is fit for purpose.

7.26 However, it is possible to import a medicine from a third country into the EU to sell straight onto another third country (known as an 'introduced medicine') via a Wholesaler Dealer's Licence. There is no requirement for QP certification of such introduced medicines.

7.27 When the UK becomes a third country to the EU there is no obligation under EU law that ensures 'introduced medicines', coming from the EU into the UK to have been QP certified. This would pose a public health risk for the UK if there were no checks in place within the UK.

7.28 The current checking mechanism for imports from a third country would require all importers of medicines into the UK who wish to place medicines onto the UK market, to hold an MIA for Import. These importers would also have to QP certify all batches of medicines entering the UK. However, industry feedback has indicated that this is a significant undertaking for them. There may also be an insufficient number of UK QPs to undertake the necessary volume of work.

7.29 Given the robustness of the collective EU system the UK can be confident in any QP certification undertaken in the EU / EEA. This instrument therefore introduces a new mechanism for checking imports from the EU/EEA, following feedback from industry in the MHRA's consultation.

7.30 This instrument will introduce into UK law a new authorised activity as part of the existing Wholesaler Dealer's Licence, enabling importation of medicinal products

from countries on a list (on exit day this list will comprise all EU/EEA countries). It will also introduce a new role, known as a Responsible Person – Import (RP-I). This licence with RP-I oversight will allow wholesale dealers to import medicines from the EU / EEA to be placed onto the UK market, provided the medicines have been QP certified in the EU / EEA (amendments to regulation 18 and new regulations 45AA and 45AB of the HMRs achieve this).

7.31 The licence will require the licence holder to put in place an assurance system which will confirm medicines have been QP certified. It will be required that this system is overseen by the RP-I. Industry will have 2 years from EU Exit day in order to comply (Part 2 of new Schedule 33A to the HMRs).

7.32 It will be required that the RP-I is appropriately qualified for the role and is on a register created and held by the MHRA. The RP-I can be removed from the register for failing to properly undertake their functions.

Recognition of prescriptions

7.33 The UK currently recognises prescriptions issued by health professionals from all EU/EEA countries.

7.34 This instrument will allow the recognition of prescriptions from an approved list of countries following EU Exit (amendments to Part 12 of the HMRs achieve this). On exit day, the list will comprise all EEA/EU countries (Part 11 of new Schedule 33A to the HMRs). This will ensure that an eligible prescription written in an EEA/EU country can continue to be dispensed in the UK. For a prescription to be eligible, the prescriber must be of equivalent professional status to a profession that is eligible to prescribe in the UK.

7.35 The Government will review the list of countries with respect to equivalent standards to ensure that prescriptions from those countries should continue to be recognised. This will take place at least every 3 years.

New/amended MHRA fees for six processes/services previously provided centrally by EC/EMA

7.36 As a trading fund the MHRA charges fees to recover the costs of statutory regulation of medicines. Changes are therefore required to reflect the costs of the new regulatory changes being introduced after EU Exit. The Fees Regulations set out the fees which the Agency currently charges. The fees changes introduced in this instrument are:

a) Fees for new targeted assessment procedures for MA applications, specifically £62,421 for a major application for an MA for a new active substance, and £17,330 for a complex abridged application for an MA for a biosimilar

b) Refunds of MA application fees for products granted orphan status, with 100% refund for small and medium sized enterprises (SMEs) and 10% for all other manufacturers. A fee waiver for variations in the first year after an orphan MA is granted will also be provided for SMEs.

c) Fees of £8,309 for certification of a new Plasma Master File (PMF); £277 for a certified annual update of a PMF involving epidemiology updates only; and £734 for a certified annual update of a PMF where there are significant changes to safety-related information

d) A fee of £8,309 for certification of a new Vaccine Antigen Master File (VAMF)

e) Fees of £8,309 for assessment of a Pharmacovigilance Post-Authorisation Safety Study (PASS) protocol, and £8,309 for assessment of a PASS results

f) A fee of £51,286 to undertake a Pharmacovigilance Major Safety Review

g) A fee of £890 for a single assessment of Pharmacovigilance Periodic Safety Update Reports (PSURs)

h) Changes to Renewals fees so that all new active substances, including centrally authorised products that are converted to UK MAs, are subject to a renewal fee of £9,682 five years after the licence was first granted.

i) A fee waiver for provision of scientific advice to SMEs established in the UK.

j) There will be no fees associated with biological medicines which have been batch released in a country with which the UK has a mutual recognition agreement, except where the UK carries out testing/certification in accordance with the terms of the MRA. Where a paper based assessment is taken for biological medicines the fee will be in accordance with the fee bands set out in the legislation (ranges from £90 - £677 per batch). Where full batch testing and certification is needed for biological medicines, as now, the fee will be in accordance with the fee bands set out in the legislation (ranges from £180 - £10,350 per batch).

Fee levels are based, as far as possible, on fees for existing comparable procedures.

Batch testing of biological medicines

7.37 Stringent regulators worldwide insist that biological medicines are tested by an independent laboratory prior to use, in addition to the manufacturer. The UK's National Institute for Biological Standards and Control (NIBSC) is currently a member of the EU's Official Control Authority Batch Release (OCABR) network for biological medicines. A feature of the system provided for in Directive 2001/83/EC (Article 114(1)) is that there is mutual recognition of certificates across the EU/EEA, which means that a batch certified by one independent laboratory will be accepted by the other states. In a no deal scenario, where the UK is a third country from the EU's perspective, this system of mutual recognition will no longer be in place.

7.38 In a no deal, there are two possible scenarios for manufacturers marketing biological medicines in the UK (see new regulation 60A of the HMRs). First, where the UK agrees with one or more countries to accept each other's independent test certificates for biological medicines. In such a scenario there will be little change from the current arrangements, except as agreed and set out in the formal mutual recognition agreement between the countries. A list of those countries with whom the UK has an agreement in place, together with any restrictions to the exemption to batch release will be available.

7.39 Second, where there is no mutual recognition agreement in place, NIBSC will issue UK certificates for batches of biological medicines used in this country. Manufacturers will provide samples and documentation for each batch of biological medicine destined for the UK to NIBSC. It is anticipated that batches to be used only in the UK will usually be tested and certificated by NIBSC. Where a batch is destined for use in both the UK and another country, if it has already received independent certification in a country that is on the UK's approved country list, NIBSC will take a public health risk-based approach to deciding whether to rely on a paper assessment of that certification or to issue the UK certificate or whether to carry out laboratory testing of the batch in the UK.

7.40 This approach is designed to provide the UK with an appropriate level of safety oversight over batches of biological medicines, whilst minimising the impact on manufacturers. Where the UK accepts an independent test certificate in line with a mutual recognition agreement, no fee will be payable by the manufacturer.

Parallel import licences and conversion of parallel distribution notices

7.41 This instrument enables the parallel import of medicines to continue, subject to the MHRA being able to be satisfied that a medicine to be imported is essentially similar to the UK reference product, and remains so. Parallel import of medicinal products is an important route of supply for medicinal products in the United Kingdom, and provides cost savings to the NHS across the UK.

7.42 As the parallel import of medicines is based on Articles 34 to 36 TFEU, and CJEU case law in respect of those Articles, the fundamental principles of the parallel import regime have been incorporated on to the face of the HMRs. The changes to regulation 48 of the HMRs mean that medicinal products that hold a marketing authorisation in an EEA State, or which have a CAP MA, and are essentially similar to a product that has been granted a UK MA, will still be able to be imported under a parallel import licence, subject to the MHRA being able to obtain the information it needs to determine if the product to be imported is essentially similar to the UK reference product and remains so.

7.43 At present, confidential information on the product to be imported is provided by the competent authorities of other Member States, enabling the MHRA to check that the product to be imported is essentially similar as claimed and does not therefore need to be assessed for a UK marketing authorisation. After EU Exit, obtaining such information is likely to be more challenging. This challenge extends to being able to monitor and obtain information on variations to the marketing authorisation of the product to be imported over time.

7.44 The parallel import regime will remain limited to EEA States because a necessary aspect for the continuation of parallel imports is the regional exhaustion regime which is being unilaterally continued in the UK by virtue of the Intellectual Property (Exhaustion of Rights) (EU Exit) Regulations 2019, the regional exhaustion regime, before exit day, only applies in the EEA and this regime will continue (unilaterally) for goods coming in to the UK from the EEA by virtue of this statutory instrument[1]. In short form, this means that once a medicine brand owner puts goods on the market in the EEA, it cannot use its intellectual property rights to prevent the resale of the goods in the UK. The registered right is "exhausted" by the first marketing of the goods in the EEA.

7.45 The conditions for variation, revocation and suspension of parallel import licences have been added to, given that after EU Exit it will be more difficult to obtain information on a product to be imported to ensure that it is, and remains, essentially similar to the UK reference product. This is a necessary facet of the scheme for reasons of public health protection, specifically, to ensure the regime does not allow medicinal products that are not or no longer essentially similar to a fully assessed UK product to be sold or supplied in the UK. This is because from a public health perspective, the only reason a medicine without a UK marketing authorisation can be parallel imported is because the UK is satisfied it has no material differences to a product that has already had a full assessment for safety, quality and efficacy in the UK.

[1] This affirmative instrument has been laid before Parliament in draft.

7.46 The MHRA will be able to vary, suspend or revoke a parallel import licence if the UK reference product is suspended, revoked or varied. It will also be able to do likewise if it can no longer be satisfied that a product to be imported remains essentially similar to the UK product. This power will not be exercised before the end of one year beginning with exit day and nor will it be exercised in respect of products that were certified by a Qualified Person in the EEA before exit day. This is because in both these circumstances it is considered that the risks of variance between the imported product and the UK reference product are low and it provides a period of stable transition for current holders of parallel import licences (amendments to regulation 68 of the HMRs).

7.47 Parallel import licence holders will in future need to be established in the United Kingdom. Those holding licences will have until end of the transition period to effect this change if currently established elsewhere in the EEA (see paragraph 26 of new Schedule 33A to the HMRs).

7.48 Holders of parallel distribution notices, issued by the EMA, in respect of medicinal products that hold a central MA will, where the UK is listed in that notice as a destination country, be automatically, and with no fee, issued with a parallel import licence, subject to providing specified information on the products to be imported to the MHRA before the end of the period of 21 days beginning with exit day (see paragraph 28 of new Schedule 33A to the HMRs).

Regulation-making power to make temporary modification of the HMRs to deal with serious shortages

7.49 The amendments made to the HMRs by this instrument are intended to provide for a system that strikes a balance between ensuring the continuity of supply of medicines for the UK, and protecting public health. However, in the exceptional circumstances of exiting the EU with no deal in place, there is concern that there may be a need to take urgent action if, there is, or is likely to be, a serious shortage of one or more medicinal products in the United Kingdom. Without express provision to cater for that deficiency, there would be no power to modify the HMRs to make appropriate temporary modification to address any such serious shortages. New regulation 344A of the HMRs will, in the event of urgent need relating to serious shortages, enable Minsters to make regulations to modify Parts 1, 3 to 5, 10 to 13 and 16 of the HMRs. Any modifications made under the power must be temporary (they cannot have effect beyond 2 years beginning with exit day) and only in circumstances of serious shortages of medicines arising from the withdrawal of the UK from the EU.

7.50 Regulations containing any such modifications would be subject to annulment by resolution of either House of Parliament.

Data and marketing exclusivity for Marketing Authorisations and orphan products

7.51 There will not be any changes as a result of EU exit to the data and marketing exclusivity periods enjoyed by the holders of UK national MAs or converted EU MAs (paragraph 30 of new Schedule 33A to the HMRs). After the UK's withdrawal from the EU, the start of data and/or market exclusivity will continue to be calculated by reference to the date of authorisation of the reference product in the EEA or UK, whichever is earlier. This is to discourage companies from delaying bringing their innovative products to the UK market once the UK is no longer in the EU medicines regulatory network and is aimed at protecting public health in the UK.

Vaccine antigen master files and Plasma master files

7.52 Certain vaccines, and medicinal products derived from human blood or plasma, may make reference to master files. The files are currently certified by the EMA. This instrument confers the certification function on the MHRA post exit (see the modifications to Annex I to Directive 2001/83 in new Schedule 8B to the HMRs), with transitional provision in relation to products which already refer to EMA-certified plasma master files (paragraph 35 of new Schedule 33A to the HMRs). There are no vaccine antigen master files currently.

Genetically modified organisms

7.53 Regulation 726/2004, which provides for CAP MAs to be granted by the European Commission, includes some provisions on medicinal products which contain or consist of genetically modified organisms. These include additional requirements for the material which must be supplied with applications for MAs and as to the matters which must be considered by the authority dealing with the application. These requirements are replicated in the HMRs by this instrument, to reflect the fact that all applications will come to the MHRA post exit (new regulations 50J and 58G of the HMRs).

Conditional MAs (CMAs)

7.54 A CMA is one which is granted in defined circumstances in advance of all the information being available, in order to get medicines for life threatening and seriously debilitating conditions onto the market as soon as possible. They are valid for one year and are renewable. They may only be granted by the EU at present and are governed by the CMA Regulation (Commission Regulation (EC) 507/2006). Post-exit, the MHRA will be able to grant CMAs (in addition to its existing power to grant MAs subject to conditions in exceptional circumstances). The CMA Regulation will be revoked and the relevant provisions inserted into the HMRs with appropriate amendments (new regulations 50I and 58F of the HMRs).

Article 126a authorisations

7.55 This instrument amends the HMRs to remove references throughout to this type of authorisation. Article 126a of Directive 2001/83 permits Member States, for justified public health reasons, to authorise the placing on the market of medicinal products authorised in another EEA state in the absence of a national MA for their territory. The UK has never had, and currently has no such authorisations in place and in the context of no deal, it is considered it would be inappropriate to retain this type of authorisation. No transitional provision is necessary given there are currently no such authorisations.

Variations of UK marketing authorisations

7.56 The amendments made to the HMRs have the effect that all variations to MAs will in future be dealt with under Part 5 of the HMRs. (new regulation 65C of the HMRs). Much of the detail of the variation procedure is currently contained in Commission Regulation (EC) No 1234/2008 including for purely national variations. As much of this Regulation would become redundant in a no deal scenario, and what needs retaining requires some amendment to reflect that the UK is not a Member State, this Regulation is revoked. The HMRs are amended to insert provisions that remain relevant to purely national variations that mirror the purely national variation scheme in the revoked Regulation (new Schedule 10A to the HMRs), with an appropriate

regulation-making power to vary the scheme for variations in future. The current EU classification guidance on variations will continue to be used, with power for the MHRA to replace, amend or modify that classification guidance in future.

7.57 Transitional provision is made for variations that are being dealt with at EU level (centralised applications and those being assessed through joint Member State assessment processes) that have not concluded at exit day (Part 5 of new Schedule 33A to the HMRs). Unless the procedure was substantially complete, the licensing authority has to make a determination on the variation in accordance with the new provisions, but it may take account what has gone before in doing so. It may also take into account or adopt decisions taken at EU-level that post -date exit day. This allows the licensing authority to take a risk-based approach to variations in progress at exit day.

7.58 The amendments have the effect that a type IA variation will, from exit day, be required for a change in Qualified Person for Pharmacovigilance, replacing the current system at EU level for notifying of change of QPPV that will no longer operate in respect of the UK on and after exit day.

Pharmacovigilance

7.59 The amendments to Part 11 of the HMRs have the effect that the MHRA will have responsibility for the oversight of all pharmacovigilance activities in relation to UK MAs and traditional herbal registrations, including any safety reviews that arise out of concerns resulting from the evaluation of data from pharmacovigilance activities. The amendments to the HMRs provide that the QPPV will need to operate and reside in the UK. However, where the QPPV in respect of a MA or traditional herbal registration was operating in an EEA State other than the UK before exit day, the transitional provisions in Part 10 of new Schedule 33A to the HMRs provide that a QPPV should be established in the UK by the end of the period of 21 months beginning with exit day. Until a UK QPPV is in place, holders will still need to comply with all of their obligations in respect of pharmacovigilance in the UK. Commission Implementing Regulation (EU) No 520/2012 is revoked, with the text being restated in new Schedule 12A to the HMRs, appropriately modified to address the fact that the UK is no longer a Member State. A regulation-making power to amend those re-stated provisions is also inserted, replacing the equivalent tertiary legislative function at EU level under which the Implementing Regulation was made.

7.60 Currently, the majority of periodic safety update reports (PSURs) and post-authorisation safety studies (PASS) are submitted and assessed at EU-level. The HMRs are amended to provide that post-Exit, these will need to be submitted to and assessed by the MHRA.

7.61 Transitional provisions provide for the various types of pharmacovigilance referrals that may be on-going at Exit day at EU-level under Title IX of Directive 2001/83 (both Article107i referrals and Article 31 referrals that are driven by pharmacovigilance data.) The basic premise is that unless the procedure was substantially complete, the licensing authority has to make a determination on the pharmacovigilance issue in accordance with Part 11 of the HMRs, but it may take account what has gone before in doing so. It may also take into account or adopt decisions at EU-level that post-date Exit day. This allows the licensing authority to take a risk-based approach to pharmacovigilance referrals in progress at Exit Day. There are further transitional measures to cater for PSURs and PASS that have been submitted for assessment at EU-level but where that assessment is not complete immediately before Exit Day.

Reporting suspected Adverse Drug Reactions

7.62 The MHRA already holds its own database of Pharmacovigilance information. The amendments to Part 11 of the HMRs provide for reporting of suspected Adverse Drug Reactions by the pharmaceutical industry in association with their medicinal products to be made directly to the MHRA rather than to the current EU database known as the Eudravigilance database. This requirement is for both serious and non-serious UK suspected adverse drug reactions and reports of serious suspected adverse drug reactions that occur outside of the UK.

Online sellers

7.63 EU-based online sellers have to register, comply with relevant requirements and display an EU common logo linked to the competent authority in which they are based. This instrument omits Part 12A of the HMRs so that UK-based online sellers would no longer be required to do this.

Manufacturing and wholesale dealing

7.64 The current Good Manufacturing Practice Directive is preserved with appropriate modifications to reflect that the UK is no longer a Member State, but with a regulation-making power conferred on ministers to further modify that Directive, or to replace it in the future (new regulations B17 and C17 of the HMRs). A power is conferred on the licensing authority to publish guidelines on good manufacturing practice and good distribution practice, whilst preserving the EU guidance in place immediately before Exit Day until it does so (issued under Article 47 and 84 of the 2001 Directive).

API registration

7.65 In relation to registration requirements for importing, manufacturing or distributing active substances, there are no major amendments to Chapter 4 of Part 3 of the HMRs except to insert references to the designated country list rather than the equivalent list currently maintained by the EU under Article 111b of the 2001 Directive and to remove some inappropriate references to EEA States (so that all imports are treated equally).

Homeopathic medicines

7.66 With regard to matters such as place of establishment, variations, transitional provision for matters on-going at EU level at Exit Day, the policy follows that for MAs. So, a person will not be able to hold a certificate of registration in the UK unless they are established in the UK, with appropriate transitional provision (amendments to Part 6 of the HMRs and Part 8 of new Schedule 33A to the HMRs).

7.67 The licensing authority will have the option of expanding the definition of a homeopathic medicinal product to cover products prepared from homoeopathic stocks in accordance with a homoeopathic manufacturing procedure described in any pharmacopoeia used officially in a country that is included in a list published by the licensing authority for this purpose (amendments to the definition in regulation 8 of the HMRs achieve this).

Herbal medicines

7.68 With regard to matters such as place of establishment, variations, matters on-going at EU level at Exit Day, the policy follows that for MAs. Therefore, a person will not be able to hold a traditional herbal registration in the UK unless they are established in

the UK, with appropriate transitional provision (amendments to Part 7 of the HMRs and Part 9 of new Schedule 33A to the HMRs).

7.69 The licensing authority is given the power to expand the list of countries from where it will accept traditional use for herbals: currently a product has to have been used for 30 years, and in the EU for 15 years. In future the 15 year part of the requirement will be linked to traditional use in a designated country rather than limited to traditional use within the EU. On Exit Day the designated country list will comprise of all EU/EEA states. The amendments also provide for the licensing authority to have the power to have its own herbal monographs rather than rely on the EU established monographs though the EU list would be preserved pending the publication by the licensing authority of its own list. The amendments also create a domestic procedure for consideration of a product that has been used for less than 15 years to replace a similar procedure lost at EU level.

ATMP

7.70 Advanced therapy medicinal products (ATMPs) are currently all authorised centrally by the EU. The ATMP Regulation (Regulation (EC) No 1394/2007) governs these applications. This instrument revokes that Regulation and the relevant provisions are inserted into the HMRs with appropriate amendments (new regulation 2A, 50H, 58E and 78B of the HMRs, and amendments to the packaging provisions in Part 13 of the HMRs).

Regulation making powers

7.71 In reliance on section 8(6) of EUWA, various regulation-making powers are conferred on the Secretary of State and Northern Ireland Ministers to amend provisions of the HMRs which re-state retained EU law, replacing the equivalent tertiary legislative function at EU level. Some of these powers are mentioned in preceding paragraphs and all are listed in new regulation 344B of the HMRs

Lists

7.72 Certain of the amendments made by this instrument give the licensing authority a power or duty to publish a list of countries which are relevant for the purposes of certain provisions. Some of these are mentioned in preceding paragraphs of this section but all are listed in Annex B. Some powers replicate EU tertiary powers and others are an appropriate way to reflect EU exit, when the UK is no longer bound by EU medicines law. An example of an area where we consider this power to be appropriate is batch testing in EEA states or in countries with which the EU has agreed a mutual recognition agreement and can reach an independent decision as to whether other countries' standards are equivalent to those in the UK. The list mechanism is appropriate because it provides flexibility to respond to developments as countries either can, or can no longer, demonstrate equivalence with the UK standards. Including the lists in the HMRs would be a cumbersome way of addressing this technical and potentially fluctuating issue.

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. The instrument is also made under the powers in the

Withdrawal Act 2018 in paragraph 21(b) of Schedule 7 to restate retained EU law in a clearer or more accessible way, and in Schedule 4 to introduce new fees in connection with functions conferred on the MHRA under section 8. 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 The majority of medicines legislation was consolidated in 2012 as the Human Medicines Regulations 2012. There are no plans currently to repeat the exercise.

10. Consultation outcome

10.1 MHRA and DHSC conducted informal consultation with industry and the third sector over a series of deep dives to develop no deal proposals. The devolved administrations were engaged at official level during the policy development through the MHRA devolved administrations forum meetings. Devolved officials were broadly content with the proposals and made no substantive comments. Secretaries of State for Health in Scotland and Wales and the Permanent Secretary in Northern Ireland were informed of the proposed positions ahead of formal consultation and again when the final positions were confirmed post consultation. Proposals for medicines regulation were publicly consulted on alongside the proposals for medical devices and clinical trials through a formal written consultation over 4 weeks (4th October – 1st November 2018 inclusive).

10.2 There were 168 responses through the online portal and 9 via email. Responses were received from a range of interests including pharmaceutical companies (including SMEs), trade bodies, NHS trusts, universities, research organisations, charities, health related professional bodies (including from the devolved administrations), law firms and learned societies.

10.3 Consultation responses were broadly supportive of the proposed approach for medicines regulation in a no deal scenario. However, in some areas there was significant concern about the proposals which were considered in turn and the approach amended where appropriate:

- For manufacturing licences for import, the original proposal to require a manufacturing licence for imports from the EEA was considered too burdensome for industry. A second proposal (set out in the policy section above on wholesale dealing) was developed with industry input which strikes a balance between industry burden and ensuring patient safety.
- On orphan medicines regulation, some responses requested the replication of the pre-approval designation step and indicated that the omission of this incentive could have an adverse impact on UK based SMEs. To support UK SMEs in medicines development this instrument now puts in place a provision to provide free scientific advice to all SMEs established in the UK. In addition, the MHRA will monitor the need for a designation step going forward.
- There was concern from the generics industry over whether the targeted assessment routes could be made available for generics. In response the MHRA proposes to review this and work with industry to shorten the timings of UK national licensing of generics.
- For the ‘grandfathering’ of CAPs licences there was concern from industry over the requirements for providing all baseline data in time for the first variation. The

approach has been amended such that only some of the data will be required for variations with the full data required by the end of 12 months post exit day.

- Whilst most respondents to the consultation were content with the proposed licensing fees, there were a small number of other fees where the majority did not approve such as on renewal fees. In taking on board this feedback, the original proposals are retained but the intention is to review these fees within 2 years of exiting the EU.

10.4 There were also requests for additional guidance and clarification on the final approach for many of the proposals. This feedback has been taken on board and further guidance will be provided ahead of EU exit. The Government's response to the consultation was published on 3rd January 2019 and can be accessed at: https://www.gov.uk/government/publications/further-guidance-note-on-the-regulation-of-medicines-medical-devices-and-clinical-trials-if-theres-no-brexit-deal.

10.5 DHSC separately consulted industry, pharmacy and general practitioner stakeholder representative bodies on the provision for the modification of the Human Medicines Regulations 2012 in case of serious shortages of medicines arising from the withdrawal of the UK from the EU. Consultation responses were largely supportive of the proposal, although concerns were raised about the timescale. DHSC will work to keep respondents informed regarding its implementation.

11. Guidance

11.1 Further guidance will be provided in advance of EU Exit Day on the policy issues above. Commitments were made for the provision of the further guidance for EU Exit Day (when this legislation comes into force) in the government response to the consultation which will cover (but not be limited to):

- Further guidance on grandfathering
- New assessment routes, including targeted assessment
- The provision of free scientific advice for SMEs established in the UK
- The submission of PIPs and paediatric studies
- Legal presence, including:
  - Change of Ownership applications
  - The requirements of the UK QPPV.
  - The process for submitting a variation reflecting a change of QPPV.
- Responsible Persons for Import (RP-I)
- Requirements for reference products for new abridged applications
- Guidance on the technical means of submitting annual safety reports

11.2 Where guidance is referenced in EU legislation, the amendments to the HMRs generally state that the EU guidance on that topic applies until the MHRA amends or replaces it. The guidance may be accessed at: https://www.gov.uk/guidance/eu-guidance-documents-referred-to-in-the-human-medicines-regulations-2012

12. Impact

12.1 The impact on business, charities or voluntary bodies is set out in the impact assessment published alongside this Explanatory Memorandum on the legislation.gov.uk website.

12.2 The impact on the public sector is set out in the impact assessment published alongside this Explanatory memorandum on the legislation.gov.uk website.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To help support small businesses in developing medicines, this instrument provides for free scientific advice for small and medium sized enterprises (SMEs) established in the UK.

13.3 The instrument also provides for refunds to SME MA application fees for products granted orphan status and a fee waiver for variations in the first year after an orphan MA is granted.

14. Monitoring & review

14.1 The Human Medicines Regulations 2012 is subject to a regular review by the Secretary of State.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Ian King at the Medicines and Heath products Regulatory Agency Telephone: +44 7825 256 320 or email: ian.king@mhra.gov.uk can be contacted with any queries regarding the instrument

15.2 Patrick Carey at the Medicines and Health products Regulatory Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Health, Stephen Hammond at the Department of Health and Social Care 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	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. Appropriateness statement

1.1 The Minister of State for Health, Stephen Hammond has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Human Medicines (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because: the changes to the law made by these Regulations are limited to making provision which is appropriate to prevent, remedy or mitigate deficiencies arising out of EU exit. Those deficiencies result from the UK no longer being part of the EU medicines regulatory network and the amendments enable the UK licensing authority (acting through the MHRA) to act as a stand-alone regulator of medicinal products for the UK, whilst maintaining, so far as possible, the existing regulatory position. The amendments strike a balance between ensuring continuity of medicines supply to the UK and protecting public health, as explained in section 7 above.

2. Good reasons

2.1 The Minister of State for Health, Stephen Hammond 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: the protection of public health in the UK requires a stand-alone regulator to assess medicinal products prior to them being placed on the UK market and to monitor them thereafter, once the UK is no longer part of the EU medicines regulatory network and can no longer participate in the pan-EU assessment procedures and pharmacovigilance activities. Transitional provision ensures that businesses have time to adjust to a new UK system.

3. Equalities

3.1 The Minister of State for Health, Stephen Hammond has made the following statement:

"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.

3.2 The Minister of State for Health, Stephen Hammond has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Stephen Hammond, Minister of State for Health 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 A summary of the consideration which has been given to protected characteristics, and the impacts identified, is at Annex C.

4. Explanations

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

5. Criminal offences

5.1 The Minister of State for Health, Stephen Hammond 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 maintaining the existing criminal offence (and penalty for that offence) in regulation 34 of the HMRs of contravening the prohibition on wholesale dealing a medicinal product without a licence, but widening the scope of that offence to include the new activity of importing medicinal products from countries on an MHRA list subject to oversight by a Responsible Person – Import."."

5.2 The reasons are that the activity of importing a medicinal product from an EEA state is not currently an activity that requires to be included in a wholesale dealer's licence, on the basis that the UK is a Member State of the EU and therefore medicinal products being sold between EEA states must undergo batch testing and qualified person certification. Once the UK is a third country in relation to the EU, there is no obligation for medicines imported in to the UK from an EEA State to have been QP certified. Requiring wholesale dealers who import from EEA states to have the assurance system in relation to QP certification overseen by a responsible person (as explained in more detail in section 7) is an appropriate way to address this issue and it is appropriate for the same level of sanction to apply to contravention of this new requirement as currently applies to any breach of the existing requirements on wholesale dealers.

6. Legislative sub-delegation

6.1 The Minister of State for Health, Stephen Hammond has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view it is appropriate to create a relevant sub-delegated power in the Human Medicines (Amendment etc.) (EU Exit) Regulations 2019."

This is appropriate in relation to the lists which may or must be published by the licensing authority set out in Annex B, because of the explanation given in the final paragraph of section 7 of this memorandum. It is also appropriate in relation to the power for the licensing authority to specify in writing the information which must be submitted by the holders of centrally authorised marketing authorisations within one year of their conversion to UK marketing authorisations on Exit Day, or sooner than that if changes or renewals are required (see paragraphs 9, 13, 18 and 21 of new Schedule 33A to the HMRs as inserted by Schedule 7 to this instrument). This is because of the highly technical nature of this information, which is in electronic format and regularly updated.

ANNEX B - LISTS THAT MAY OR MUST BE PUBLISHED BY THE LICENSING AUTHORITY

Subject	Regulation no in this instrument	HMR regulation amended/ inserted	Provision made	EU tertiary power being replicated
Homeopathic medicinal products	10	8	In definition of "homoeopathic medicinal product", confers **power** on licensing authority to publish a list of countries whose pharmacopoeias are acceptable for purposes of homeopathic medicinal products	N/A – to allow recognition of pharmacopoeias other than just those of EEA States
Approved countries for import	16	18A	Confers an **obligation** on the licensing authority to publish a list of countries from which medicinal products can be imported under a wholesale dealing licence	N/A – currently products can be imported from EEA States by wholesale dealers
Manufacturing licences - batch testing in countries other than the United Kingdom	32	Schedule 7, paragraph 14(3) to (5)	Confers an **obligation** on the licensing authority to publish a list of countries with whom it has made appropriate arrangements in order that batch testing in those countries is accepted and need not be repeated in the United Kingdom	Replicates domestically the tertiary power of the EU Commission in Article 51(2) of Directive 2001/83/EC
Requirements for importers, manufacturers or distributors of active substances -Other countries who have equivalent regulatory standards in relation to active substances	44	45O(6) to (9)	Confers an **obligation** on the licensing authority to publish a list of countries in respect of which it is satisfied have an equivalent regulatory framework applicable to active substances	Replicates domestically the tertiary power of the EU Commission in Article 111b Directive 2001/83/EC
Granting of marketing authorisations- list of countries other than United Kingdom whose decisions to grant a marketing authorisation may in future be relevant to a licensing authority decision to grant a UK marketing authorisation	62	58(4B)(b)	Confers **power** on the licensing authority to publish a list of countries whose decisions on marketing authorisations are relevant to its own decision on an application for a marketing authorisation	N/A – to allow the possibility of accelerated consideration of MA applications in future by taking another country's assessment in to account given the lack of participation in the decentralised and centralised EU processes on and after Exit Day

Batch testing of biological medicines - list of countries with equivalent standards in relation to the batch testing and certification of biological medicines	67	Regulation 60A(5)	Confers **power** on the licensing authority to publish a list of countries with equivalent regulatory standards as regards batch testing and certification of biological medicinal products	N/A – to allow the appropriate authority (NIBSC) to take a risk based approach to requiring UK testing and certification if a certificate from a listed country has already been issued in respect of the batch – aimed at reducing duplication where appropriate
Batch testing of biological medicines – list of countries with whom agreements have been made to recognise testing	66	Regulation 60A(9)	Confers **obligation** on the licensing authority to publish a list of countries whose certificates for testing will be recognised	To replicate ability that exists at EU level to enter in to agreements with other countries to recognise testing
Herbal medicinal products - list of countries accepted for traditional use of herbal medicinal product	111	125A	Confers **power** on the licensing authority to publish a list of countries that the licensing authority will accept for traditional use of a herbal medicinal product for a period of at least 15 years in that country	N/A – the current requirement is 15 years use in an EEA State. This amendment allows the licensing authority to establish a list of acceptable countries to reflect EU Exit and the end of the mutuality of that arrangement
Herbal medicinal products - list of herbal substances, preparations and combinations thereof for use in traditional herbal medicinal products	112	126A	Confers **power** on the licensing authority to publish a list of herbal substances, preparations and combinations thereof for use in traditional herbal medicinal products	Replicates domestically the EU Commission power in Article 16f(1) of Directive 2001/83/EC
Herbal monographs – list of monographs for herbal medicinal products	126	143A	Confers **power** on the licensing authority to establish monographs for herbal medicinal products and traditional herbal medicinal products	Replicates domestically the power of the EU Committee for Herbal Medicinal Products to establish such monographs in Article 16h(3) of Directive 2001/83
Pharmacovigilance - list of medicinal products subject	161	202A	Confers **power** on the licensing authority to establish a list of products that are subject to additional monitoring	Replicates domestically the power of the EMA in Article 23 (EC) of

to additional monitoring				Regulation No 726/2004 to establish such a list
Cross-border prescriptions - list of approved countries and professions in respect of prescriptions	180	214(6A)	Confers obligations on the licensing authority to publish a list of approved countries and professions in respect of which prescriptions may be dispensed in the UK.	N/A - to allow recognition of prescriptions other than just those of EEA States
Pharmacovigilance – list of internationally agreed terminology etc for pharmacovigilance information	167	Paragraph 18 of Schedule 12A	Confers **power** on the licensing authority to publish a list of internationally agreed terminology and formats and standards to be used for the description of pharmacovigilance and medicinal product information	Confers the power on the licensing authority to replicate domestically provision that is equivalent to the standards set out in Chapter IV of Regulation (EU) No. 520/2012

Annex C – The Public Sector Equality Duty under s.149 Equality Act 2010

Protected Characteristic	Potential impact on protected groups	Decision/mitigation
Disability	Failure to consider the particular needs of disabled people, or those with long term illnesses could mean that they would will not benefit from new medicines	For those living with rare life-limiting conditions, the agency offers new proposal to offer fee incentives to SMEs to encourage more development of orphan drugs
Age	Need to consider all age- related conditions and ensure availability of medicines for all age groups	The MHRA does consider categories of information when collecting evidence and sub-populations of data, as different genetic groups may respond differently to medicines
Race	Consideration for diseases/conditions which may affect people from only some ethnic groups or which may be more common in some ethnic groups and need to ensure availability of medicines for all these	As above
Pregnancy and maternity	Safety considerations with regard to use of some medicines in pregnancy	Agency makes clear recommendations on medicines and products that are safe for those who are pregnant
Sex	Consideration for genetic diseases which disproportionately affect one gender and need to ensure availability of medicines for all	The MHRA considers all genetic predispositions that are influenced by gender, ensuring the license for medicines is broad and reflects wider society
Gender reassignment	Full reflection on gender reassignment and any influence in access for medicines and treatment effect	The agency considers all factors in any decisions in licensing, but these do need to reflect changes in society and those who have and will go through the transition process
Marriage and civil partnership	Ensuring information garnered from statistics across the UK are considered	The MHRA considers all relevant information, whilst ensuring new healthcare products are available for all, regardless of marital status
Sexual orientation	Reflection of sexual orientation and any new information ensuring there are no disadvantaged groups	The agency reviews all new relevant information that influences public health decisions. These decisions consider all sectors of wider society and are not influenced by sexual orientation
Religion or belief	Ensuring that religions and beliefs are considered appropriately, but there is equality in access and availability across all groups of society	The agency considers all relevant information in public health decisions, but these are made in the context of all wider society, irrespective of beliefs