

EXPLANATORY MEMORANDUM TO
THE ANIMAL HEALTH, SEED POTATOES AND FOOD (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument uses powers under section 8 of the European Union (Withdrawal) Act 2018 (“the Act”) to make a number of minor, technical amendments to Northern Ireland EU derived legislation, which were not able to be included in earlier European Union (“EU”) exit SIs to ensure that all deficiencies, arising from the withdrawal of the United Kingdom (“UK”) from the European Union, have been addressed. It covers a number of policy areas: animal health, food and the marketing seed potatoes.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Council Directive 2002/56/EC prescribes marketing standards for seed potatoes, to ensure minimum quality standards and traceability for marketed seed potatoes. These Directives are transposed by the domestic regulations, the Seed Potatoes Regulations (Northern Ireland) 2016 (“the Seed Potato Regulations”), which are being amended by this instrument.
- 2.3 Regulation (EC) No 2160/2003 on the control of salmonella and other specified food-borne zoonotic agents, provides for the protection of human health against diseases and infections transmissible directly or indirectly between animals and humans. The Department of Agriculture, Environment and Rural Affairs is the competent authority in Northern Ireland for the purpose of Regulation (EC) No 2160/2003.
- 2.4 The Beef and Veal Labelling Regulations (Northern Ireland) 2010 provide rules for the provision of information for non-pre-packaged meat of bovine animals aged 12 months or less at the point of sale, and establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products. They provide for the enforcement of: Regulation (EC) No 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products; Commission Regulation (EC) No 1825/2000 laying down detailed rules for the application of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the labelling of beef and beef products; and Commission Regulation (EC) No 566/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less.

Why is it being changed?

- 2.5 After EU Exit, without amendment, the EU derived Northern Ireland legislation would not operate properly and would disrupt the trade in seed potatoes. Changes must be made to maintain the current, high standards in Northern Ireland law and provide continuity to industry and farmers through security of supply of seed potatoes.
- 2.6 This instrument facilitates the trade of seed potatoes with the Crown Dependencies. The Crown Dependencies are currently treated as part of the United Kingdom for the purposes of seed potato legislation and therefore seed potatoes move between the Crown Dependencies, the UK and the rest of the EU under the same EU marketing rules. Following recent discussions with the Crown Dependencies, it has been agreed that the Crown Dependencies will adopt similar controls as the United Kingdom to facilitate the trade in seed potatoes to the UK and vice versa. The changes made to the Seed Potato Regulations give effect to these arrangements.
- 2.7 This instrument also ensures that domestic Northern Ireland legislation relating to the control of zoonotic diseases – the Control of Salmonella in Poultry Scheme Order (Northern Ireland) 2008, the Control of Salmonella in Broiler Flocks Scheme Order (Northern Ireland) 2009 and the Control of Salmonella in Turkey Flocks Scheme Order (Northern Ireland) 2010, will remain operable after the UK has left the EU.
- 2.8 The SI amends the Beef and Veal Labelling Regulations (Northern Ireland) 2010 to reflect that the UK will no longer be a Member State. The amendments reflect changes that have been made to the EU retained legislation to make it operable after exit day.

What will it now do?

- 2.9 This instrument ensures that, in the fields of animal health and the marketing of seed potatoes, derived EU Northern Ireland legislation will remain operable after the UK has left the EU.
- 2.10 This instrument also amends the Seed Potatoes Regulations (Northern Ireland) 2016 by providing for a one-year interim period (which covers two growing seasons) during which time EU seed will continue to be recognised for production and marketing in Northern Ireland to ensure continuity in supplies of seed potatoes.
- 2.11 This instrument also amends the Beef and Veal Labelling Regulations (Northern Ireland) 2010 to address references to EU law and EU Commission processes, making drafting amendments to reflect that the UK will no longer be a Member State and including transitional arrangements for beef and veal labelling for immediately after exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Animal Health, Plant Health, Seeds and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees on 21 February 2019. The Secondary Legislation Scrutiny Committee disagreed with the Government, that this instrument does not have a debate in Parliament, and recommended that this instrument needs to be debated in Parliament.

- 3.2 The Secondary Legislation Scrutiny Committee made this recommendation as the concern was that Part 6 of the instrument proposed amendments to the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019. This is a draft affirmative instrument that had not yet been laid before Parliament and the Department has not provided Parliament with a draft of the instrument to assist and inform its scrutiny. Without a copy of the instrument that is to be amended, it was not possible to assess properly whether the proposed changes are only minor and technical, or whether they are more substantial and would require the affirmative procedure. Given this uncertainty, the Sub-Committee considered that the House may expect an opportunity to debate the proposals and therefore recommended that this instrument should be subject to the affirmative resolution procedure.
- 3.3 Since the decision of the Secondary Legislation Scrutiny Committee, Parts 5 and 6 of the draft Regulations have been omitted and included in the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 and the draft Regulations have been renamed the Animal Health, Seed Potatoes and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.
- 3.4 Consequently, Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, has agreed for this instrument to be made subject to the affirmative procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.5 There are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business, as the territorial application of this instrument is limited to Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Northern Ireland only.
- 4.2 The territorial application of this instrument is Northern Ireland only.

5. European Convention on Human Rights

- 5.1 Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity has made the following statement regarding Human Rights:
- “In my view the provisions of the Animal Health, Seed Potatoes and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument makes amendments to Northern Ireland domestic legislation implementing certain EU directives, to ensure that, in the fields of animal health, the marketing of seed potatoes and the labelling of beef and veal, EU derived legislation remain operable and function appropriately after the UK has left the EU.
- 6.2 The amendments will also provide for a one-year interim period (which covers two growing seasons) during which time EU seed potatoes will continue to be recognised for production and marketing in Northern Ireland to ensure continuity in supplies of seed potatoes.

7. Policy background

What is being done and why?

- 7.1 This instrument is being made in order to maintain the effectiveness and continuity of EU derived Northern Ireland legislation that would otherwise be left partially inoperable and unable to function legally following the withdrawal of the UK from the EU.
- 7.2 This instrument makes only amendments which are legally necessary to achieve its objectives. It represents no changes of policy, nor will it produce any impact on businesses or the public.
- 7.3 This instrument applies to the fields of animal health, the marketing of seed potatoes and the labelling of beef and veal, which are transferred matters for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for EU Exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day in the absence of a Northern Ireland Executive. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 This instrument is not consolidating any provisions.

10. Consultation outcome

- 10.1 This instrument was not subject to consultation. It represents no changes of policy, nor will it produce any impact on businesses.
- 10.2 This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials.

11. Guidance

- 11.1 None.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.

- 12.3 An Impact Assessment has not been prepared for this instrument because the proposed amendments are minor and technical in nature, relating to the maintenance of existing regulatory standards and will have no, or no significant, impact on the private, voluntary or public sector.
- 12.4 In a scenario where an agreement with the EU is not reached, it will no longer be possible to export seed potatoes to the EU. This change is a result of EU Exit, not because of changes made by this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to accept the marketing of EU seed potatoes for one year following EU Exit, thereby ensuring continuity of supply. This instrument maintains the status quo and therefore does not introduce new duties or burdens on businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, will monitor and review the impact of the instrument as part of its standard policy-making procedures and will ensure the provisions are adhered to.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Diane Stevenson at the Department of Agriculture, Environment and Rural Affairs Telephone: 028 6634 5583 or email: diane.stevenson@daera-ni.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 John Joe O'Boyle, Director for Plant Health, at the Department of Agriculture, Environment and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs.	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under s. 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s. 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972.	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Appropriateness statement

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

“In my view the Animal Health, Seed Potatoes and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate”.

1.2 This is the case because: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

2. Good reasons

2.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

2.2 These are: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable. They maintain current regulatory standards and ensure the continued supply of EU seed potatoes for a time-limited one year transitional period, providing continuity to the sector and security of supply for farmers.

3. Equalities

3.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, 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”.

3.2 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”].

4. Explanations

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