

EXPLANATORY MEMORANDUM TO
THE AGRICULTURE, ENVIRONMENT AND RURAL AFFAIRS (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 1101

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes drafting amendments to six Northern Ireland Statutory Rules (SRs) in order to ensure operability of those SRs as a result of the United Kingdom's exit from the European Union. It also amends four Northern Ireland EU Exit Statutory Instruments (SIs). It does not introduce any changes to policy and simply ensures the continuity of a functioning statute book in Northern Ireland.

Explanations

What did any relevant EU law do before Exit Day?

- 2.2 This instrument does not amend EU law itself, but makes drafting amendments to Northern Ireland SRs in order to ensure operability following the United Kingdom's exit from the European Union. Amendments to Northern Ireland EU Exit SIs correct and update earlier amendments made to Northern Ireland secondary legislation.

Why is it being changed?

- 2.3 The Northern Ireland SRs that are being amended are drafted in the context of the UK being a Member State of the EU. The drafting amendments being introduced simply reflect that the UK will no longer be a Member State. Amendments to the Northern Ireland EU Exit SIs correct and update earlier amendments made by EU Exit SIs. The legislation being amended is as follows:

- **The Cattle Passport Regulations (Northern Ireland) 1999** make provision for the administration and enforcement of Commission Regulation (EC) No. 2629/97 laying down detailed rules for the implementation of Council Regulation (EC) No. 820/97 as regards eartags, holding registers and passports in the framework of the system for the identification and registration of bovine animals. The Regulations deal with cattle passports for animals consigned into or out of Northern Ireland. The Regulations provide for the enforcement of the provision of Council Regulation (EC) No. 820/97 relating to movement of cattle without a cattle passport, make provision for application for passports and make it an offence to export cattle from Northern Ireland without a passport. The Regulations require the retention of passports once granted, require the person currently holding a cattle passport to surrender it for inspection on demand, and make provision for lost passports and fees for replacement passports. They make provision for cattle brought into Northern Ireland from another Member State or other parts of the United Kingdom and provide for cattle passing through Northern Ireland in transit. The Regulations deal with the return of passports

when animals die, or are stolen or slaughtered and make it an offence to alter or deface a cattle passport. They amend the Cattle Identification (No. 2) Regulations (Northern Ireland) 1998 and provide for penalties for offences.

- **The Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2019** were made in exercise of the powers in the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The EU Exit SI made technical amendments to secondary legislation in relation to aquatic animal health and alien and locally absent species in aquaculture.
- **The Environmental Noise Regulations (Northern Ireland) 2006** transpose the requirements of Directive 2002/49/EC relating to the assessment and management of environmental noise. This Directive requires the production of noise maps and preparation of action plans for certain sources of noise every five years.
- **The Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009** transposed the requirements of the EC Environmental Liability Directive (2004/35/EC) with regard to the prevention and remedying of environmental damage. The Regulations impose obligations on operators of economic activities to prevent, limit and remediate environmental damage. The Regulations only apply to more serious cases of environmental damage.
- **The Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019** were made in exercise of the powers in the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The EU Exit SI made technical amendments to legislation relating to waste, producer responsibility, environmental provisions, noise and environmental liability.
- **The Carcase Classification and Price Reporting Regulations (Northern Ireland) 2018** revoke and remake the provisions of the Beef and Pig Carcase Classification (Northern Ireland) Regulations 2010, consequent to the repeal of Commission Regulation (EC) No 1249/2008. The Regulations enforce the setting of union scales for the classification of beef and pig carcasses for human consumption.
- **The Agriculture, Food and Horse (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019** were made in exercise of the powers in the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The EU Exit SI made amendments to subordinate legislation in relation to horses and food as well as Common Agricultural Policy Regulations, Rural Development Programme Regulations and Single Common Market Organisation Regulations.
- **The Animal Health, Seed Potatoes and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019** were made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The EU Exit SI made amendments to Northern Ireland domestic legislation in relation to the control of salmonella in poultry, broiler flocks and turkeys and in relation to beef and veal labelling and seed potatoes.

- **The Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010** provide a statutory framework for the enforcement of the Community marketing rules in the fresh fruit and vegetable sector provided for by Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), and contained in Commission Implementing Regulation 543/2011/EU. The Regulations make the failure to comply with Articles 113 and 113a of Council Regulation (EC) No. 1234/2007, and the provisions of Commission Implementing Regulation 543/2011/EU, an offence. They contain some additional offences necessary for the effective enforcement of the Community marketing rules. They exercise the derogation in Article 4 of Commission Implementing Regulation 543/2011/EU. This derogation exempts products presented for retail sale to consumers for their personal use from the specific marketing standards provided they are labelled “product intended for processing”, or with other equivalent wording. The Regulations confer powers of entry and other powers, including seizure powers which require authorised officers to fulfil certain duties in relation to any items seized.
- **The Marketing of Bananas Regulations (Northern Ireland) 2019** provide for the enforcement of banana marketing standards as provided for by Council Regulation (EC) No. 1308/2013 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), and contained in Commission Implementing Regulation (EU) No. 1333/2011 laying down marketing standards for bananas, rules on the verification of compliance with those marketing standards and requirements for notifications in the banana sector. The Commission Implementing Regulation sets out detailed requirements relating to quality, size, presentation and marking of bananas at the “un-ripened green stage” of marketing after preparation and packaging where the bananas are intended for supply fresh to the consumer. The marketing standards are applicable to bananas falling within CN code 0803 90, excluding plantains, fig bananas and bananas intended for processing, and apply to bananas originating in third countries at the stage of release for free circulation, to bananas originating in the EU at the stage of first landing at a Community port, and to bananas delivered fresh to the consumer in the producing region at the stage of leaving the packing shed. The Regulations make the failure to comply with the banana marketing standards an offence. They contain additional offences necessary for the effective enforcement of the banana quality standards including conferring on authorised officers, powers of entry and other powers, including seizure powers.

What will it now do?

- 2.4 The Northern Ireland SRs that are being amended are drafted in the context of the UK being a Member State of the EU. The drafting amendments to these being introduced simply reflect that the UK will no longer be a Member State. An example of the amendments is to remove reference to “Community” marketing rules to reflect that the UK is no longer in the European Community. The amendments also remove references to the “European Commission” and “European Community”. This instrument also provides for transitional arrangements to take effect immediately after EU Exit. The amendments will ensure that the legislation operates after EU Exit as it did before.
- 2.5 Four Northern Ireland EU Exit SIs are also being amended to correct and update errors and references.

2.6 Further detail of the amendments is set out in subsections 6.1 to 6.11 of this Explanatory Memorandum.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 The Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 10th June 2019. On 18th June 2019, the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament, although one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

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

3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

3.3 The Department has reached this view because this instrument is made under powers in section 8(1) of the European Union (Withdrawal) Act 2018 and makes only technical drafting amendments to Northern Ireland SRs and to Northern Ireland EU Exit SIs to ensure operability after the UK leaves the EU.

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

6. Legislative Context

6.1 This instrument amends six Northern Ireland SRs that implement or enforce EU law, as well as four Northern Ireland EU Exit SIs. The legislation that is amended is set out in section 2.3. The changes do not introduce any new policy, but seek to ensure that the legislation is fully operable after EU Exit.

6.2 This instrument amends the Cattle Passport Regulations (Northern Ireland) 1999 to remove a requirement to provide cattle passports to competent authorities in Member States.

6.3 This instrument amends the Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (Northern Ireland) (EU Exit) Regulations 2019. This amending instrument amended the definition of “quarantine facility” to replace “Member State” with “Northern Ireland” to reflect that the UK will no longer be in the EU. This instrument omits this amendment given that the amendment was taken forward in The Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019, a UK-wide EU Exit SI. This instrument further amends a reference to Council Directive 2006/88/EC to ensure it operates effectively following the withdrawal of the United Kingdom from the European Union.

- 6.4 This instrument makes an amendment to the Environmental Noise Regulations (Northern Ireland) 2006 to correct a numbering error resulting from amendments to these Regulations made by the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019.
- 6.5 This instrument amends the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009 to ensure operability of this legislation post EU Exit.
- 6.6 This instrument omits an amending regulation in the Environment (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019. These amending Regulations inserted a superfluous regulation in the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009. This EU Exit SI should have made an amendment to an existing regulation within the 2009 Regulations.
- 6.7 An amendment to the Carcase Classification and Price Reporting Regulations (Northern Ireland) 2018 replaces a reference to “European” with “retained EU”.
- 6.8 This instrument amends the Agriculture, Food and Horse (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019, which amended the power of an authorised officer in the Poultrymeat Regulations (Northern Ireland) 2011 to give direction to prevent non-compliant batches of poultrymeat being marketed in the “European Union”. The EU Exit SI replaced “European Union” with “United Kingdom” to reflect that the UK will no longer be in the EU. This instrument further amends this to replace “United Kingdom” with “United Kingdom, Channel Islands and the Isle of Man”.
- 6.9 This instrument amends the Animal Health, Seed Potatoes and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019, which amended the Beef and Veal Labelling Regulations (Northern Ireland) 2010 to provide transitional arrangements for beef and veal labelling after the planned exit day of 29 March 2019. This instrument amends the transition period to reflect the subsequent change in the EU Exit date.
- 6.10 This instrument replaces a number of references to “community marketing standards” in the Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010, with “marketing standards”, as defined by the EU legislation to which they relate. It removes references to the European Commission and the European Union. This instrument also provides transitional arrangements for fresh horticultural products placed on the market after exit day.
- 6.11 Finally, this instrument amends the Marketing of Bananas Regulations (Northern Ireland) 2019 to remove references to Member States and replace “European Union” with “United Kingdom”.

7 Policy background

What is being done and why?

- 7.1 This instrument applies to a range of policy areas, all of 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 EU Exit 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(1) 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 There are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 Defra has consulted with officials in the Department of Agriculture, Environment and Rural Affairs (DAERA) in Northern Ireland regarding this instrument.

10.2 As some of the legislation being amended by this instrument relates to food, there has been consultation during the preparation of the relevant parts of the instrument as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. The consultation exercise opened on 17 April 2019 and closed on 8 May 2019. The draft amendments and associated impact assessments/screening documents (equality and human rights and rural needs) were published on the DAERA website at: <https://www.daera-ni.gov.uk/consultations>. Relevant industry stakeholders were informed of the consultation exercise directly. DAERA did not receive any comments on the consultation.

11. Guidance

11.1 There is no associated guidance.

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 technical in nature and will have no, or no significant, impact on the private, voluntary or public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. However, because the proposed amendments are technical drafting amendments only, it is anticipated that they will have no, or no significant, impact on small business.

14. Monitoring and review

14.1 Monitoring of this legislation is not considered necessary.

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

15. Contact

15.1 John Terrington at the Department of Agriculture, Environment and Rural Affairs, Northern Ireland. Telephone: 028 9037 8510 or email: john.terrington@daera-ni.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Colette McMaster at the Department of Agriculture, Environment and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare 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 instrument.	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 instrument 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 23(1) or jointly exercising powers in Schedule 2 to create	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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 instrument is urgent.
Explanations where amending regulations under s. 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an instrument 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 instrument 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) Act 2018

1. Sifting statement(s)

- 1.1 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the amendments 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. Appropriateness statement

- 2.1 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case because the instrument does not introduce new policy but simply makes technical drafting amendments to existing Northern Ireland Statutory Rules and Northern Ireland EU Exit Statutory Instruments to ensure operability after the United Kingdom leaves the European Union. This is intra vires section 8(1) of the European Union (Withdrawal) Act 2018.

3. Good reasons

- 3.1 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

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

- 3.2 These reasons are that the instrument does not introduce new policy but simply makes technical drafting amendments to existing Northern Ireland Statutory Rules and Northern Ireland EU Exit Statutory Instruments to ensure operability after the United Kingdom leaves the European Union. Any references which assume the United Kingdom to be a Member State will no longer be appropriate after exit day.

4. Equalities

- 4.1 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, 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”.

4.2 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019, I, David Rutley MP, the Parliamentary Under Secretary of State for Food and Animal Welfare, 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. This Act does not extend to Northern Ireland, and as the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the need to eliminate discrimination, harassment and victimisation in Northern Ireland”.