

EXPLANATORY MEMORANDUM TO
THE PESTICIDES (AMENDMENT) (NORTHERN IRELAND) (EU EXIT)
REGULATIONS 2019

2019 No. 118

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for the 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 minor, technical amendments to Northern Ireland legislation relating to pesticides, addressing deficiencies arising from the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”).

Explanations

What did any relevant EU law do before exit day?

- 2.2 The Pesticides (Maximum Residue Levels) Regulations (Northern Ireland) 2008 supports the operation of Regulation (EC) No. 396/2005, concerning the levels of pesticides in food and feeds, in Northern Ireland.
- 2.3 The Plant Protection Products Regulations (Northern Ireland) 2011 support the operation of Regulation (EC) No. 1107/2009, concerning the placing of plant protection products (PPPs) on the market, in Northern Ireland.

Why is it being changed?

- 2.4 After EU exit, without amendment, Northern Ireland EU derived legislation would not link appropriately to the national regulatory regime as provided for in EU retained law after leaving the EU.

What will it now do?

- 2.5 This instrument will address deficiencies in Northern Ireland EU derived legislation arising from EU exit, and ensure that existing protections and regulatory frameworks are maintained and continue to operate after EU exit as they do now. It will ensure that PPPs continue to pose no unacceptable risks to humans or the environment.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Pesticides (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 13 December 2018. On 10 January 2019 the Sifting Committees agreed with the Government that this instrument

does not have to have a debate in parliament, though one may still occur. The instrument will, therefore, remain subject to the negative resolution procedure.

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 the 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 the instrument is made under powers in section 8(1) of the European Union (Withdrawal) Act 2018 and makes only minor, technical amendments to Northern Ireland Statutory Rules to ensure operability after the United Kingdom 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 The instrument makes minor, technical amendments to Northern Ireland legislation, relating to pesticides, to ensure operability after EU exit. The instrument does not introduce any new policies but simply ensures that the legislation continues to operate in the same way on exit day as it does now.
- 6.2 The amendments to the Pesticides (Maximum Residue Levels) Regulations (Northern Ireland) 2008 include removal of references to the functions of Member States and ensuring that references to EU retained legislation remain relevant.
- 6.3 The amendments to The Plant Protection Products Regulations (Northern Ireland) 2011 include removal of references to “Member States” and ensuring that references to EU retained legislation remain relevant.

7. Policy background

What is being done and why?

- 7.1 PPPs are ‘pesticides’ that: protect crops or desirable or useful plants, regulate plant growth or prevent growth of unwanted plants. They are primarily used in the agricultural sector but also in forestry, horticulture, amenity areas and in home gardens. For example, they play a fundamental role in UK farming and the provision of food, keeping the transport infrastructure clear of weeds, maintaining public spaces and controlling invasive species.
- 7.2 However, as PPPs contain chemicals that are designed to disrupt life processes, risks can be associated with their use. Regulation is required to ensure that PPPs do not harm human health or have unacceptable effects on the environment. The law sets strict conditions on the way PPPs can be used. The basis for the regulatory framework is the assessment of scientific data to establish the risks to people and to the

environment. PPPs that are found to pose unacceptable risks are not authorised. Those that are authorised are subject to regular review to ensure they meet current safety standards. The regulations aim to ensure that PPPs do not harm human health or have unacceptable effects on the environment

- 7.3 Users of PPPs are required to follow legally enforceable conditions of use and adopt other practices which ensure safe, more sustainable use of these chemicals.

The Pesticides (Maximum Residues Levels) Regulations (Northern Ireland) 2008

- 7.4 These Regulations enforce the provisions of Regulation (EC) No. 396/2005 of the European Parliament and of the Council, creating an offence of placing on the market as food or feed, or feeding to an animal, any product that contains pesticide residue levels in excess of those specified in Regulation (EC) No. 396/2005.

The Plant Protection Products Regulations (Northern Ireland) 2011

- 7.5 These Regulations support the operation of Regulation (EC) No. 1107/2009 concerning the placing of plant protection products on the market. The Regulations lay down enforcement powers and penalties for infringements of Regulation (EC) No. 1107/2009, and also implement various other aspects of it.
- 7.6 This instrument applies to pesticides which are a transferred matter 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. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for EU exit is narrowing. 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 UK from the EU. 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 formal consultation. However, there were informal discussions with key stakeholders with an interest in the PPP regime, by Defra on behalf of the UK as a whole, about their concerns regarding EU exit in relation to PPPs policy including: industry, consultancies, farming and growers' organisations

and environmental Non-Government Organisations. They were advised on the proposed legislative modifications as a result of EU exit.

- 10.2 There were no strong objections to the proposals, with a general acceptance that the approach was sensible and proportionate and would be necessary in the overall context of a no deal scenario.

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 in Northern Ireland
- 12.2 There is no, or no significant, impact on the public sector in Northern Ireland.
- 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 This instrument only amends deficiencies arising from the UK's withdrawal from the EU.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The effect of this instrument is to maintain the *status quo*, therefore no specific action to minimise the impact on small businesses is required. The proposed amendments are minor and technical in nature and no disproportionate impacts are expected to affect small and micro businesses.

14. Monitoring and review

- 14.1 The approach to monitoring of this legislation is that the Department of Agriculture, Environment and Rural Affairs will monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that 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 Tommy McNamara at Department of Agriculture, Environment and Rural Affairs, Northern Ireland. Telephone: 028 90525583 or email: tommy.mcnamara@daera-ni.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 David Small, Head of Environment, Marine and Fisheries Group at the Department of Agriculture, Environment and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 George Eustice MP, the Minister of State for Agriculture, Fisheries and Food, at Defra 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 European Union (Withdrawal) Act 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 a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) European Communities Act 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 2(2) European Communities Act 1972.	Statement explaining the good reasons for modifying the instrument made under 2(2) European Communities Act 1972, 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) European Communities Act 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 2(2) European Communities Act 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. Sifting statement(s)

- 1.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Pesticides (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 contents of the instrument are not of such significance that Parliament would expect to debate it. The amendments address deficiencies arising from the withdrawal of the United Kingdom from the European Union to ensure that retained direct EU legislation continues to operate effectively. The amendments do not implement any new policies and are not significant in that they maintain current regulatory standards.

2. Appropriateness statement

- 2.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Pesticides (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 2.2 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.

3. Good reasons

- 3.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, 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 are: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable. They maintain current regulatory standards.

4. Equalities

- 4.1 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement(s):

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Minister of State for Agriculture, Fisheries and Food, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, George Eustice MP 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.”