

EXPLANATORY MEMORANDUM TO
THE AGRICULTURE, ENVIRONMENT AND RURAL AFFAIRS (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) (NO. 2) REGULATIONS 2019

2019 No. 1313

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 memorandum contains information for the Joint Committee of Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes drafting amendments to Northern Ireland domestic legislation in order to ensure operability following the United Kingdom (“UK”)’s exit from the European Union (“EU”). It also amends Northern Ireland EU Exit Statutory Instruments (“SI’s) to update earlier amendments made to Northern Ireland secondary legislation.
- 2.2 The instrument amends two Northern Ireland EU Exit SIs (the Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 and the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 to update earlier operability changes, to amend a drafting error and thus ensure that the legislation amended by these EU Exit SIs are fully operable after EU Exit.
- 2.3 The instrument does not introduce any changes to policy and simply ensures the operability of a functioning statute book in Northern Ireland post EU Exit.

Explanations

What did any relevant EU law do before exit day?

- 2.4 This instrument does not amend EU law itself, but makes drafting amendments to Northern Ireland domestic legislation in order to ensure operability following the UK’s exit from the EU. The amendments to the Northern Ireland EU Exit SIs, updates earlier amendments made to Northern Ireland secondary legislation.

Why is it being changed?

- 2.5 The Northern Ireland legislation that is being amended was drafted in the context of the UK being a Member State of the EU. The drafting amendments simply reflect that the UK will no longer be a Member State. The legislation being amended is as follows:
 - **The Eggs and Chicks Regulations (Northern Ireland) 2010** make provision for the enforcement and execution of marketing standards relating to eggs for hatching and farmyard poultry chicks and eggs in shell for consumption. They also make provision for the enforcement of controls for Salmonella serotypes with public health significance in relation to the marketing and use of eggs in shell for human

consumption. The Regulations provide for district councils and the Department of Agriculture, Environment and Rural Affairs (DAERA) to enforce the Regulations and impose a duty on enforcement authorities to give assistance and information to each other. They confer powers of entry and other powers, including seizure and destruction powers and require certain procedures to be followed in the event of any exercise of the seizure powers. They provide for the issue of compliance notices and provide for appeals against certain decisions of DAERA and district councils. They enable DAERA to impose additional record-keeping requirements. They provide for the destruction of seized products and the giving of compliance notices to be publicised. The Regulations make obstruction an offence and provide for the punishment of criminal offences. They contain provisions extending the period during which a prosecution may be brought. They also contain provisions relating to the giving of notices. They apply various provisions of the Food Safety (Northern Ireland) Order 1991 to the Regulations and make a transitional provision.

- **The Importation of Animal Pathogens Order (Northern Ireland) 1999** was made to prohibit, subject to exceptions, the importation of animal pathogens or carriers of such pathogens without a licence issued by the Department and in accordance with any conditions of that licence. There are exceptions for veterinary and human medicines. The Order contains powers for the seizure of any animal pathogen or carrier imported in contravention of the Order or in breach of any licence conditions and powers for the detention, treatment or destruction of such pathogens or carriers. The Order also contains provisions for requiring the cleansing and disinfection of places and vehicles where an animal pathogen is or has been present in contravention of the provisions of the Order.
- **The Agriculture, Environment and Rural Affairs (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 UK from the EU. The Regulations makes necessary amendments to subordinate legislation in relation to animals, aquaculture, environmental protection, food and horticulture.
- **The Marketing of Vegetable Plant Material Regulations (Northern Ireland) 1995** implement Council Directive 92/33/EEC and Commission Directives 93/61/EEC and 93/62/EEC on the marketing of vegetable propagating material other than seeds within the EU.
- **The Plant Health (Wood and Bark) Order (Northern Ireland) 2006** makes provision for measures to prevent the introduction and spread of harmful forestry pests and diseases in Northern Ireland and to assist in preventing their introduction and spread elsewhere in the EU.
- **The Plant Health Order (Northern Ireland) 2018** makes provision for transposing the EU Directives that protect plant health. This relates in particular to the official control of quarantine organisms effecting plants and plant products. In addition it concerns official investigations and surveys, official designations of infected areas and demarcation zones for control and measures to be taken following confirmation of outbreaks.

- **The Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019** are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 in order to address failures of EU derived law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU. The Regulations make amendments to secondary legislation consequential on the UK's withdrawal from the EU. The changes are to legislation regulating the marketing of agricultural seed, forestry and vegetative propagating.
- **The Invasive Alien Species (Enforcement and Permitting) Order (Northern Ireland) 2019** makes provision for criminal offences relating to breaches of Regulation (EU) No.1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species ("the Principal Regulation"). The Principal UK-wide Regulation focuses on the prevention of certain invasive alien species, management of those species which have been introduced and to control the spread of such species. Part 2 of the 2019 Order contains criminal offences, Part 3 and 4 contain defences to those offences and penalties respectively. Part 5 sets out the enforcement provisions. The Order will be enforced by the Department of Agriculture, Environment and Rural Affairs (DAERA) and authorised persons appointed by DAERA. Part 6 provides for the issue of permits in accordance with Articles 8 and 9 of the Principal Regulation. Part 7 contain licensing provisions which may be issued for a number of different activities, provided specific conditions are met. Part 8 contains provisions ensuring the Order works alongside related legislation and avoids duplication of controls between similar regimes where possible.

What will it now do?

- 2.6 The Northern Ireland Statutory Rules ("SR"s) and Orders that are being amended by this instrument were drafted in the context of the UK being a Member State of the EU. The drafting amendments reflect that the UK will no longer be a Member State.
- 2.7 A Northern Ireland EU Exit SI, the Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019, is being amended to substitute references to "European Union" with "United Kingdom". The Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 is also being amended to insert a corrected reference.
- 2.8 The Ministerial statement in Part 2 of the Annex sets out the reasons for this decision. Further detail of the amendments is set out in subsections 6.1 to 6.9 of this Explanatory Memorandum. These amendments were not referenced in previous Northern Ireland SIs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is being made subject to the urgent "made affirmative" procedure. The Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.
- 3.2 The Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019 amends an existing EU Exit SI – the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 (SI 2019/1101) – to correct a minor error. The existing instrument

has not been revoked or remade due to the minor nature of the error corrected by this instrument. This instrument will be issued free of charge to all known recipients of SI 2019/1101.

- 3.3 Defra has complied with the requirement stated in section 4.7.6 of Statutory Instrument Practice (“SIP”) to consult with the SI Registrar, The National Archives on this matter.

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)

- 3.4 The territorial application of this instrument is limited to Northern Ireland.
- 3.5 This instrument is subject to the made affirmative procedure. It is made under powers in section 8(1) of the European Union (Withdrawal) Act 2018 and makes only technical drafting amendments to Northern Ireland legislation 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 This The Minister of State at the Department for Environment, Food and Rural Affairs, George Eustice MP, has made the following statement regarding Human Rights:

“In my view the provisions of The Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends two Northern Ireland SRs and four Northern Ireland Orders that each implement or enforce EU law. It also amends two Northern Ireland EU Exit SIs. The legislation that is amended is set out in section 2.5. 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 Eggs and Chicks Regulations (Northern Ireland) 2010 to omit Union requirements on the marking of eggs for cross-border delivery between Member States. This instrument also removes references to Article 4 of Council Directive 1999/74/EC, and replaces this with a reference to the Welfare of Farmed Animals Regulations (Northern Ireland) 2012, as the Council Directive is already fully transposed into Northern Ireland domestic legislation.
- 6.3 This instrument amends the Importation of Animal Pathogens Order (Northern Ireland) 1999 to make minor amendments in relation to references to, and the definition of, another Member State of the EU.
- 6.4 This instrument amends the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 to Part 3 to insert a corrected reference to the community marketing rules offences in the Marketing of Fresh Horticulture Produce Regulations (Northern Ireland) 2010.

- 6.5 This instrument amends the Marketing of Vegetable Plant Material Regulations (Northern Ireland) 1995 by making an operability amendment with the substitution of the “United Kingdom” in relation to the newly inserted regulation 4A.
- 6.6 This instrument amends the Plant Health (Wood and Bark) Order (Northern Ireland) 2006 by removing references to the European Union and omitting EU Decision references which are not operable outside the EU and are not required after EU Exit.
- 6.7 This instrument amends the Plant Health Order (Northern Ireland) 2018 to omit definitions of Decision (EU) 2018/1503 relating to the organism *Aromia bungii* (Faldermann) not required after EU Exit.
- 6.8 This instrument amends the Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 substituting “United Kingdom” for references to the “European Union”.
- 6.9 This instrument amends the Invasive Alien Species (Enforcement and Permitting) Order (Northern Ireland) 2019 which make provision for criminal offences relating to breaches in the Principal Regulation. This instrument makes appropriate amendments to substitute for the current EU definition of the “Union List” (of invasive alien species) the new UK definition of “the list of species of special concern”.

7. Policy Background

What is being done and why?

- 7.1 The policy areas this instrument applies to 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. Some of the

legislation being amended by this instrument relates to food (namely the Eggs and Chicks Regulations (Northern Ireland) 2010). DAERA carried out a consultation on those provisions during the preparation 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 targeted consultation exercise opened on 5 August 2019 and closed on 16 August 2019. The proposed draft amendments 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 Diane Stevenson at the Department of Agriculture, Environment and Rural Affairs, Northern Ireland. Telephone: 02866343012 or email: diane.stevenson@daera-ni.gov.uk, can be contacted with any queries regarding the instrument.

15.2 John Joe O'Boyle 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 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 procedure 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. |

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|--|--------------------------|---|--|
| | | 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 George Eustice MP, the Minister of State for Agriculture, Fisheries and Food, 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) (No. 2) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because the instrument does not introduce new policy but simply makes technical drafting amendments to existing Northern Ireland domestic legislation to ensure operability after the United Kingdom leaves the European Union. This is within the powers of section 8(1) of the European Union (Withdrawal) Act 2018.

2. Good reasons

- 2.1 George Eustice MP, the Minister of State for Agriculture, Fisheries and Food, 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 reasons are that the instrument does not introduce new policy but simply makes technical drafting amendments to existing Northern Ireland domestic legislation 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.

3. Equalities

- 3.1 The George Eustice MP, the Minister of State for Agriculture, Fisheries and Food, 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 George Eustice MP, the Minister of State for Agriculture, Fisheries and Food, 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) (No. 2) Regulations 2019, I, George Eustice MP, the Minister of State for Agriculture, Fisheries and Food, 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) (No. 2) 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.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.

5. Urgency

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

“In my view by reason of urgency, it is necessary to make the Agriculture, Environment and Rural Affairs (Amendment) (Northern Ireland) (EU Exit) (No. 2) Regulations 2019, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

- 5.2 This is because the Government has concluded that the ‘made affirmative’ procedure provided for in the European Union (Withdrawal) Act 2018 ensures that this instrument is in place for exit day.
- 5.3 If this instrument is not in force on exit day, the legislation it amends would contain inoperable provisions.
- 5.4 If this instrument is not in force on exit day, there is a significant detrimental risk to the application of plant health standards in relation to imports into Northern Ireland from countries outside the EU (“third countries”). After EU Exit, without amendment, the Northern Ireland legislation would not be operable, resulting in disruption to trade in plants, seed, propagating material and forest reproductive material. Changes must be made to maintain the current, high standards in Northern Ireland law and provide continuity to the various sectors through security of supply to plant, seed, propagating material and forest reproductive material.
- 5.5 Using this procedure still allows for parliamentary scrutiny and Parliament will need to approve its making for it to remain in force.