

EXPLANATORY MEMORANDUM TO

THE IMPORT AND EXPORT LICENCES (AMENDMENT ETC.) (EU EXIT) 2019

2019 No. 1409

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department for Environment, Food and Rural Affairs (“Defra”) and is laid before the House of Commons by Act.

2. Purpose of the instrument

2.1 This statutory instrument (“instrument”) amends retained European Union (“EU”) Common Agriculture Policy (“CAP”) legislation to enable it to work effectively after the UK’s withdrawal from the EU in a ‘no deal’ scenario.

2.2 This instrument specifically amends the below retained EU regulations:

- Commission Implementing Regulation (EU) 2016/1239 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the system of import and export licences;
- Commission Delegated Regulation (EU) 2016/1237 of 18 May 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences.

2.3 This instrument further revokes the below retained EU regulation:

- Commission Regulation (EC) No 1187/2009 of 27 November 2009 laying down special detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards export licences and export refunds for milk and milk products.

2.4 The purpose of this instrument is to make operability fixes to existing (non-tariff) trade provisions (which are part of wider market support schemes in this sector), as set out in the above EU regulations, under the European Union (Withdrawal) Act 2018. The provisions include a licence system for the import and export of certain agricultural products, and on specific provisions that exist for the import of hemp. These fixes consist of changing the following: EU specific terms to their UK equivalent; EU legislation to equivalent UK legislation; and Euros to Pound Sterling in certain instances.

2.5 Operability fixes have not been applied to Commission Regulation (EC) No 1187/2009 relating to the payment of export licences and refunds, as these provisions are all obsolete and World Trade Organisation (“WTO”) members have committed to phase out export measures from 2020. This instrument therefore revokes this regulation.

Explanations

What did any relevant EU law do before exit day?

- 2.6 The instrument concerns a part of the CAP called the Common Organisation of the Markets (“CMO”), which contains provisions related to market price support and third country trade.
- 2.7 The specified EU law relevant to this instrument sets out a licence system for the import and export of certain agricultural products such as rice, hemp seed and ethyl alcohol. It also sets out specific provisions that exist for the import of hemp. This licencing system is detailed in Commission Implementing Regulation (EU) 2016/1239 and Commission Delegated Regulation (EU) 2016/1237.
- 2.8 This instrument further addresses Commission Regulation (EC) No 1187/2009 relating to the payment of export refunds.

Why is it being changed?

- 2.9 After EU Exit and without amendment, the above retained EU legislation would contain inoperable provisions that would prevent the UK government and the Devolved Administrations from being able to administer the licence system for the specified agricultural products. This instrument will address operability issues created by the UK leaving the EU to ensure that the CMO can continue to operate effectively after EU Exit. This instrument therefore uses powers in the European Union (Withdrawal) Act 2018 to make predominately technical changes to the above legislation to ensure that it remains coherent and continues to function correctly after the UK has left the EU. This will provide clarity to stakeholders.
- 2.10 These technical amendments, designed to provide operability “fixes”, include changing the following: EU specific terms to their UK equivalent; EU legislation to equivalent UK legislation; and Euros to Pound Sterling in certain instances.
- 2.11 One retained EU regulation relating to the payment of export refunds will be revoked by this instrument. This is because provisions detailed by this regulation will become obsolete and so are not necessary in a domestic context. WTO members have committed to phase out export measures from 2020.

What will it now do?

- 2.12 This instrument will ensure that the policies outlined above will continue to operate effectively as now after EU Exit. The appropriate legislative “fixes” introduced by this instrument will maintain continuity with the current policies after EU Exit, which we believe will not be noticeable or have a significant impact on the ground for the agricultural sector.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill MP, has made the following statement regarding Human Rights:
“In my view the Import and Export Licences (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The European Union (Withdrawal) Act 2018 converts EU law as it stands at the moment of EU Exit into domestic law. It also confers temporary powers to make secondary legislation, to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU. This instrument relies upon those correcting powers to allow functions exercisable by the Commission to be exercisable instead by UK bodies, as this is an aspect of the law that will otherwise not work properly after EU Exit.

7. Policy background

What is being done and why?

- 7.1 The instrument concerns a part of the CAP called the Common Organisation of the Markets (“CMO”), which contains provisions related to market support. It has its roots in the original CAP and still contains some of those policy elements but has, over time, broadened out to provide a toolkit that enables the EU to:
 - i. manage market volatility;
 - ii. incentivise collaboration between and competitiveness of agricultural producers; and
 - iii. facilitate trade.
- 7.2 After EU Exit, the UK will no longer be part of the CAP so it is vital that the retained versions of these regulations are fully operative at the point of EU Exit. This will deliver a smooth transition and provide certainty to farmers, land managers, traders, rural businesses and communities, and the public sector. The purpose of this instrument is therefore to correct inoperability within the retained EU CMO legislation to make it work domestically in the UK.
- 7.3 This instrument makes operability fixes to retained EU legislation relating to existing (non-tariff) trade provisions under the European Union (Withdrawal) Act 2018. The provisions amended by this instrument set out a licence system for the import and export of certain agricultural products such as rice, hemp seed and ethyl alcohol. It also sets out specific provisions that exist for the import of hemp.
- 7.4 In order to ensure that this EU legislation is operable after EU Exit, this instrument makes technical fixes, examples of which include changing the following: EU specific terms to their UK equivalent; EU legislation to equivalent UK legislation; and Euros to Pound Sterling in certain instances.

7.5 Operability fixes have not been applied to Commission Regulation (EC) No 1187/2009, which relates to the payment of export refunds. This is because all of these measures are obsolete and WTO members have committed to phase out export measures from 2020.

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 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 This instrument was not subject to consultation because its sole purpose is to enable functions contained within this instrument to remain operable if the UK withdraws from the EU in a ‘no deal’ scenario.

10.2 However, Defra has engaged with stakeholder umbrella organisations regarding the wider CAP. Defra has met regularly with the Rural Payments Agency’s Industry Partnership Group, Brexit Stakeholder Groups and also held a bespoke EU Exit Contingency Planning meeting on 15 March 2019, with the same audience. These meetings serve to update farming, processing, trading and land management stakeholders on the Government’s plans for the UK’s withdrawal from the EU, including operational readiness planning for a ‘no deal’ EU Exit. Stakeholders have been informed of the plans to make both retained EU CAP legislation and existing domestic CAP regulations fully operable at the point of the UK’s withdrawal from the EU. This will enable Defra and the devolved administrations to continue to deliver ongoing CAP Pillar 1 and Pillar 2 commitments to the agriculture sector in 2019 in the event of a non-negotiated EU Exit. No concerns were raised. Stakeholders present were the:

- Tenant Farmers Association;
- Countryside Land and Business Association;
- Farming Community Network;
- Institute of Agricultural Secretaries and Agents;
- British Institute of Agricultural Consultants;
- National Farmers’ Union;
- Representatives from the arable, livestock and food and drink sectors.

10.3 This instrument only contains reserved measures. Defra has engaged with the devolved administrations on its approach to CAP legislation under the European Union (Withdrawal) Act 2018, including on this instrument, to familiarise them with the legislation ahead of laying.

11. Guidance

- 11.1 Defra is not producing any specific guidance on this instrument, as it only makes technical amendments to deficiencies in recently created existing domestic law arising from the UK's withdrawal from the EU.

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 our analysis from the regulatory triage assessment indicates that the changes introduced by this instrument fall below the £5m per annum threshold for net direct costs to business. This is because the changes in the regulations made by this instrument are intended to maintain the status quo in terms of business's regulatory obligations, and therefore we expect there to be no significant changes in business practices and therefore no significant changes in the direct costs to businesses.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No disproportionate impacts are expected to affect small and micro businesses.

14. Monitoring & review

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

15. Contact

- 15.1 Darren Stretton at the Department for the Environment, Food and Rural Affairs Telephone: 020 8026 2979 or email: Darren.Stretton@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Fiona James and Elen Shepard, Deputy Directors for The Common Market Organisation, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Robert Goodwill MP, Minister of State for Agriculture, Fisheries and Food, 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.

		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 Minister of State for Agriculture, Fisheries and Food, Rt Hon Robert Goodwill MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Import and Export Licences (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because: the amendments made by this instrument are the minimum required to ensure that existing domestic legislation remains operable after the United Kingdom (“UK”) leaves the European Union (“EU”). The amendments are predominantly technical in nature and do no more than is strictly necessary to ensure that UK law continues to function effectively. See section 7 in the main body of this explanatory memorandum.

2. Good reasons

- 2.1 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill 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 it is a reasonable course of action”.

- 2.2 These are: the amendments to existing domestic legislation are necessary to ensure that the Common Market Organisation (“CMO”) arrangements in relation to the issue of licences for certain agricultural products can continue to operate seamlessly and without ambiguity after EU Exit. See section 7 in the main body of this explanatory memorandum.

3. Equalities

- 3.1 The Minister of State for Agriculture, Fisheries and Food, Robert Goodwill MP, has made the following statement:

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

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

“In relation to the draft instrument, I, Robert Goodwill 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”.

4. Explanations

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