

EXPLANATORY MEMORANDUM TO
THE GENETICALLY MODIFIED ORGANISMS (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 190

1. Introduction

- 1.1 This explanatory memorandum has been prepared by 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 will make necessary changes, which arise as a result of the United Kingdom (“UK”) leaving the European Union (“EU”), to domestic legislation which ensures the regime for the control and marketing of Genetically Modified Organisms (‘GMO’) in Northern Ireland will continue to be operable when the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 This instrument amends our existing implementation of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of GMOs and repeal Council Directive 90/220/EEC (“the Deliberate Release Directive”) which specifies a framework of controls on the release of GMOs. Proposed releases require prior authorisation and this is subject to the GMO in question passing a science-based assessment of its potential impact on human health and the environment. Decisions on whether to approve GMO trial releases are delegated to Member States and regions within Member States. In the UK GMO trial decisions are devolved. Decisions on the release of GMOs for commercial marketing are taken collectively at EU level. In the specific case of GMO seeds for cultivation, the Directive provides discretionary provisions which allow Member States, or devolved governments within Member States, to block the cultivation of EU-approved seeds in their territory. The Directive is implemented in Northern Ireland by:
 - The Genetically Modified Organisms (Deliberate Release) Regulations (Northern Ireland) 2003
- 2.3 This instrument also amends our domestic implementation of Regulation (EC) No. 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms, as implemented in Northern Ireland by the Genetically Modified Organisms (Transboundary Movements) Regulations (Northern Ireland) 2005 which regulates the export of GMOs from the EU to third (non-EU) countries. The key requirement is for the planned first export of a GMO intended for environmental release to be notified to the receiving country to obtain its approval before shipment. The Regulation implements

the requirements of the Cartagena Biosafety Protocol to the United Nations Convention on Biological Diversity (to which both the EU and UK are each a Party).

Why is it being changed?

- 2.4 This instrument makes minor and technical changes to ensure that the above legislation is operable in a UK-only context.
- 2.5 The instrument makes no policy changes to the way the existing legislation operates. All changes make only the technical drafting fixes required to maintain continuity of approach after EU exit. More information on the changes being made is at section 7.

What will it now do?

- 2.6 The instrument will ensure that the legislation described above will operate effectively in the UK after we leave the EU.
- 2.7 Existing processes for reaching decisions will be maintained. The release and/ or marketing of GMOs will continue to need prior authorisation: approval to release, or market, a GMO will only be granted if a science-based assessment indicates that the safety of human health or the environment will not be compromised. Whilst Northern Ireland intended to follow England, Wales and Scotland's approach on the release of GMOs, this could not be realised due to the absence of the Stormont Executive. Northern Ireland's position is maintained as pre-EU Exit and will have to accept any marketing approvals that are granted in the rest of the UK. This issue will be a matter for a new Northern Ireland Executive to consider.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Genetically Modified Organisms (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 18th December 2018. On 16th 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.

4. Extent and Territorial Application

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

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 UK is leaving the European Union. EU and domestic legislation will continue to apply after the UK leaves the EU. The relevant EU legislation will become retained EU law by virtue of the European Union (Withdrawal) Act 2018. The retained EU legislation will not work in the UK without the amendments made by the instruments.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to policy areas which are a transferred matter for Northern Ireland under the Northern Ireland Act 1998. No change is being made to policy. This instrument provides the continued ability to ensure environmental protection in the UK when it leaves the EU. 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 day in the absence of a Northern Ireland Executive. In the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for 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.

- 7.2 The amendments can be broadly categorised as:

- Removing references to provisions being 'in accordance with EU legislation' and other references to EU law or obligations, and instead referring to retained EU law or obligations;
- Copying out definitions within the regulations themselves, instead of referring to definitions that sit within EU Directives, or specifying that references should be to specific 'versions' of pieces of EU legislation;
- Updating references to other sets of legislation that will be changed following EU Exit or where an update was required anyway due to the reference being to an out of date piece of legislation;
- Changing references from 'Member State level' to 'any law of any part of the UK'; and
- Updating the provision which requires the Department of Agriculture, Environment and Rural Affairs to notify 'other EU Member States' about transboundary environmental impacts to reflect Northern Ireland's new status outside of the EU.

8. European Union (Withdrawal) Act/ 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.
- 8.2 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 current plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 No formal consultations were carried out in respect of the instrument as its purpose is to resolve operability issues in order to preserve and protect the existing policy regime - it will not introduce any new policy.

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 A full Impact Assessment has not been prepared for this instrument because we expect it to have no impact on business. The instrument simply maintains existing laws in a way that works for Northern Ireland once the UK leaves the EU. No substantive policy changes will be brought in through this legislation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. There is no substantial impact on small 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 Mark Preston at the Department of Agriculture, Environment and Rural affairs
Telephone: 02890569314 or email Mark.Preston@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 the Department for Environment, Food and Rural Affairs (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/ ESIC.
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 the European Union (Withdrawal) Act 2018 instruments.	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 s 2(2) European Communities Act 1972.	Statement explaining the good reasons for modifying the instrument made under s.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 s.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 Genetically Modified Organisms (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 instrument does not fall within the categories for which use of the affirmative procedure is required under the European Union (Withdrawal) Act 2018. This corrects deficiencies in retained legislation in the field of Genetically Modified Organisms arising out of the UK’s withdrawal from the EU. The instrument makes changes of a minor and technical nature only, to ensure the continued effective operability of the legislation after EU Exit.

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 Genetically Modified Organisms (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate.”

- 2.2 This is the case because the amendments the instrument makes are minor and do no more than is strictly necessary to ensure the legislation amended functions correctly once the UK has left the EU.

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 The provisions will ensure that the legislation amended by this instrument continue to function effectively in Northern Ireland once the UK has left the EU.

4. Equalities

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

“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, 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.”