

EXPLANATORY MEMORANDUM TO

THE AGRICULTURE, FOOD AND HORSE (MISCELLANEOUS AMENDMENTS) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 347

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes minor, drafting amendments to ten Northern Ireland Statutory Rules in order to ensure operability of those Rules after the United Kingdom leaves the European Union. It does not introduce a change to policy. It 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 amends Northern Ireland secondary legislation which give effect to and enables enforcement of certain agriculture, food and equine measures

Why is it being changed?

- 2.3 The Northern Ireland Statutory Rules that are being amended are as follows:
 - **The Horses (Free Access to Competitions) Regulations (Northern Ireland) 1992** implements Council Directive 90/428 on trade in equidae intended for competition and lays down conditions for participation in such competitions to ensure no discrimination between horses from United Kingdom or another Member State.
 - **The Eggs and Chicks Regulations (Northern Ireland) 2010** make provision for the enforcement and execution of Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products. This provides for the enforcement of Commission Regulation (EC) No 539/2008 of 16 June 2008 establishing the standard import values for determining the entry price of certain fruit and vegetables eggs for hatching and farmyard poultry chicks and to eggs in shell for consumption. They also make provision for the enforcement of Regulation (EC) No. 2160/2003 of the European Parliament and of the Council on the control of *Salmonella* and other specified food-borne zoonotic agents.
 - **The Beef and Veal Labelling Regulations (Northern Ireland) 2010** provide for the enforcement of Articles 5a, 5b and 5c of Commission Regulation (EC) No. 1825/2000 for the provision of information for non-pre-packaged meat of bovine animals aged 12 months or less at the point of sale. They also provide

for Regulation (EC) No. 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products.

- **Poultrymeat Regulations (Northern Ireland) 2011** make provision for the enforcement and execution of Commission Regulation (EC) No. 543/2008 laying down detailed rules for the application of Council Regulation (EC) No. 1234/2007 as regards the marketing standards for poultrymeat. They make provision in relation to the registration of slaughterhouses and producers as required by Article 12 of Commission Regulation (EC) No. 543/2008 and provide for appeals against a decision to refuse such a registration and a decision to cancel such a registration.
- **The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations (Northern Ireland) 2016.** The Regulations implement Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta-agonists. The Regulations also implement as respects Northern Ireland Council Directive 96/23/EC on measures to monitor certain substances and residues thereof in live animals and animal products and provide for the enforcement of Regulation (EC) No. 470/2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin and Commission Regulation (EU) No. 37/2010 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin
- **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 laying down detailed rules on the implementation of the Community scales for the classification of beef, pig and sheep carcasses and the reporting of prices thereof. The Regulations enforce the setting of union scales for the classification of beef and pig carcasses for human consumption.
- **The Common Agricultural Policy Direct Payments and Support Schemes (Cross Compliance) Regulations (Northern Ireland) 2014** amend the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) Regulations (Northern Ireland) 2014 which supplemented and made provision for the administration and enforcement of Regulation (EU) No. 1306/2013 of The European Parliament and the Council on the financing, management and monitoring of the common agricultural policy; Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance, and; Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance.

The Regulations -

- (a) permit a farmer to put measures in place to limit soil erosion where soil or weather conditions prevent a crop being sown;
- (b) remove the requirement that residues of crops harvested after 1st November are not disturbed until just before sowing the spring crop on the land;
- (c) extend the period during which a derogation may be obtained for a ploughing match, providing for the derogation to be obtained by the farmer rather than by the organiser of the ploughing match and permitting ploughing as part of practice for a ploughing match; and
- (d) permit the Department of Agriculture Environment and Rural Affairs (“the Department”) to authorise hedge, tree or scrub cutting, trimming or laying between 15th August and 31st August.

- **The Common Agricultural Policy (Control and Enforcement) Regulations (Northern Ireland) 2015** make provision for the implementation of Commission Delegated Regulation (EU) No. 640/2014 supplementing Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance. They also make provision for the implementation of Commission Implementing Regulation (EU) No. 809/2014 laying down rules for the application of Regulation (EU) No. 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control systems, rural development measures and cross compliance; Regulation (EU) No. 1306/2013 of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy; Council Regulation (EC) No. 73/2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers; Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development etc; Council Regulation (EC) No. 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers; and Regulation (EU) No. 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development.
- **The Rural Development Programme Regulations (Northern Ireland) 2015** enable the Department to pay financial assistance in respect of expenditure incurred or income foregone by a beneficiary, including the power to determine the form of a Rural Development application or claim.
- **The Single Common Market Organisation (Exceptional Adjustment Aid) Regulations (Northern Ireland) 2017** make provision for providing exceptional adjustment aid to milk producers and farmers in other livestock sectors. They provide the Department with the power to pay financial assistance to beneficiaries, for specified purposes.

What will it now do?

- 2.4 The ten Northern Ireland Statutory Rules that are being amended are drafted in the context of the UK being a Member State of the EU. The minor, drafting amendments being introduced simply reflect that the UK will no longer be a Member State.
- 2.5 An example of the amendments is to change references to “another” Member State to “any” Member State. The instrument addresses references to EU law, requirements on EU Member States and EU Commission processes, making simple drafting amendments to reflect that the UK will no longer be a Member State. This will ensure that the legislation continues to operate after EU Exit as it does now. Further detail is set out in subsection 6.1.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Agriculture, Food and Horse (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 22nd January 2019. On 6th February 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 this instrument is made under powers in section 8(1) of the European Union (Withdrawal) Act 2018 and makes only minor drafting amendments to Northern Ireland Statutory Rules 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 The instrument amends ten Northern Ireland Statutory Rules that implement or enforce EU law. These are set out in section 2.3.
- 6.2 The instrument does not introduce any new policy or policies but simply seeks to ensure that the legislation continues to operate in the same way on Exit Day as it does now. They are therefore minor drafting amendments only, such as; changing existing references to “another” Member State, to read “any” Member State; removing the automatic power of entry for a Commission Official; redefining ‘third country’ –

which currently means any country outside the EU – to mean any country outside the UK; and replacing “European Union” with “UK”.

- 6.3 In the case of the Eggs and Chicks Regulations (Northern Ireland) 2010, the instrument removes references to welfare aspects which are set out in Article 4 of Council Directive 1999/74/EC laying down minimum standards for the protection of laying hens. Council Directive 1999/74/EC is already fully transposed into domestic legislation in Northern Ireland by the Welfare of Farmed Animals Regulations (Northern Ireland) 2012. This is a direct substitution with text from domestic legislation and therefore does not comprise any change to welfare requirements or policy.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to the areas of agriculture, food and equine legislation, 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 Exit Day in the absence of a Northern Ireland Executive. With Exit Day only a few months 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.
- 7.2 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.

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 Not applicable.

10. Consultation outcome

- 10.1 The Department for Environment, Food and Rural Affairs has consulted with officials in the Department of Agriculture, Environment and Rural Affairs in Northern Ireland regarding this instrument.
- 10.2 As some of the Northern Ireland Statutory Rules being amended by this instrument relate to food, there has been open and transparent consultation during the preparation of this 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.
- 10.3 The consultation exercise opened on 12 November 2018 and closed on 10 December 2018. The draft instrument and associated impact assessments / screening were published on the Department's website at: <https://www.daera-ni.gov.uk/consultations>. Key stakeholders within the agri-food industry were directly informed of the consultation exercise by email. The Department did not receive any substantive responses to 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 minor drafting 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 minor 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, Director for Sustainable Agri-Food Development Division, at the Department of Agriculture Environment and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 George Eustice MP, Parliamentary Under Secretary 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 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 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) Act 2018

1. Sifting statement(s)

- 1.1 George Eustice MP, Parliamentary Under Secretary 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, Food and Horse (Miscellaneous Amendments) (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 of reasons set out in paragraph 3.1 of the main part of this Explanatory Memorandum.

13. Appropriateness statement

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

- 13.2 “*In my* view the Agriculture, Food and Horse (Miscellaneous Amendments) (Northern Ireland) (EU Exit) *Regulations 2019 does no more than is appropriate*”.

- 13.3 This is the case because the instrument does not introduce new policy but simply makes minor drafting amendments to existing Northern Ireland Statutory Rules 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.

14. Good reasons

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

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

- 14.3 These reasons are that the instrument does not introduce new policy but simply makes minor drafting amendments to existing Northern Ireland Statutory Rules 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.

15. Equalities

- 15.1 George Eustice MP, Parliamentary Under Secretary 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”.

4.1 George Eustice MP, Parliamentary Under Secretary 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, Food and Horse (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019, 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. This Act does not extend to Northern Ireland, and as the Agriculture, Food and Horse (Miscellaneous Amendments) (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”.