

EXPLANATORY MEMORANDUM TO
THE ANIMAL HEALTH, PLANT HEALTH, SEEDS AND SEED POTATOES
(AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 809

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 on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument uses powers under Section 8 of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to make a number of technical changes to existing instruments and to introduce some provisions on policies which were not able to be included in earlier EU Exit SIs to ensure all deficiencies have been fully addressed. It covers a number of policy areas: animal health, plant health, seed marketing and seed potatoes.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Regulation (EC) No. 999/2001 of the European Parliament and the Council (amended 61 times) lays down rules for the prevention, control and eradication of certain TSEs, including Bovine Spongiform Encephalopathy (“BSE”) in cattle and scrapie in sheep and goats. It was first introduced by the EU as a result of the BSE epidemic in the late 1980s and early 1990s and has been updated frequently over subsequent years to reflect the development and decline of that particular epidemic. It is implemented through the Transmissible Spongiform Encephalopathies (England) Regulations 2018 and similar instruments in other UK territories.
- 2.3 Commission Implementing Decision 2014/709 applies certain movement restrictions to regions within the EU where the African swine fever is present, with the aim of preventing transmission to disease-free areas. The UK is designated free from the disease, so is not currently subject to these restrictions.
- 2.4 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU (“the Plant Health Directive”) establishes the EU plant health regime. Whilst protecting against plant health risks, the Plant Health Directive also provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material. The Plant Health Directive is implemented in England by the Plant Health (England) Order 2015 (S.I. 2015/610) and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) which extends to Great Britain. The Orders set out obligations for the control and management of plant health risks arising from the import from third countries and movement within the EU single market of plant material, in order to

protect biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in Scotland, Wales and Northern Ireland.

- 2.5 Council Directive 2002/56/EC, Council Directive 2002/55/EC and Council Directive 2008/90/EC prescribe marketing standards for seed potatoes, vegetable seed and fruit propagating materials respectively to ensure minimum quality standards and traceability for marketed seed and propagating material. These Directives are transposed by the domestic regulations, the Seed Potatoes (England) Regulations 2015, the Seed Marketing Regulations 2011 and the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 respectively, being amended by this instrument.

Why is it being changed?

- 2.6 Commission Implementing Decision 2014/709 concerns animal health control measures relating to African swine fever in certain Member States. Appropriate Ministers are required to prohibit movement of live feral pigs and to erect advisory signage alerting the public to the ways in which the disease can be inadvertently be spread by travellers. The Decision was due to expire in December 2018 but has now been extended by the European Commission (the “Commission”), so requires certain technical deficiency amendments to be made to ensure operability post-EU Exit. The deficiency amendments made by regulation 2 of this instrument ensure that the two ongoing requirements applicable to all member States are transferred to the appropriate UK Minister. The remainder of the EU instrument is not relevant to the UK as we are not a member State affected by this pig disease.
- 2.7 The amendment made by regulation 3 of this instrument to the Transmissible Spongiform Encephalopathies (England) Regulations 2018 ensures that the law on TSEs functions correctly after the UK has left the EU by addressing a deficiency arising from EU Exit. An un-amended reference to production and manufacturing processes “approved by the EU Commission” is replaced by a reference to approval by the Secretary of State.
- 2.8 This instrument amends the Plant Health (Amendment) (England) (EU Exit) Regulations 2019 and the Plant Health (EU Exit) Regulations 2019 (“the Plant Health Regulations”), which were laid on 19 December 2018 for debate in both Houses of Parliament. The Plant Health (Amendment) (England) (EU Exit) Regulations 2019 were re-laid on 28 February. The amendments to the Plant Health Regulations made by regulations 4 and 5 of this instrument deal with further deficiencies in plant health legislation arising on the UK’s withdrawal from the EU.
- 2.9 Amendments are being made to these Regulations to facilitate trade with the Crown Dependencies. The Crown Dependencies are currently treated as part of the United Kingdom for the purposes of EU plant health legislation and therefore plants and plant products move between the Crown Dependencies, the UK and the rest of the EU under the same EU plant health rules. Details of the changes being made to the UK regime to address deficiencies arising from the UK’s withdrawal from the European Union are set out in the explanatory memoranda to the Plant Health (Amendment) (England) (EU Exit) Regulations 2019 and the Plant Health (EU Exit) Regulations 2019. Following recent discussions with the Crown Dependencies, it has been agreed that the Crown Dependencies will adopt similar controls as the United Kingdom to facilitate the trade in plants and plant products to the UK and vice versa. The changes made to the Plant Health Regulations give effect to these arrangements.

- 2.10 A number of amendments are also being made to the Plant Health Regulations to correct minor errors and to ensure that all identified deficiencies from EU Exit are dealt with appropriately. In particular, the Plant Health (Amendment) (England) (EU Exit) Regulations 2019 are being amended to enable UK plant passports to contain certain information in relation to fruit plant propagating material and fruit plants. The current provisions on this information in the Plant Health (England) Order 2015 (S.I. 2015/610) are out of date, but will be updated by a statutory instrument which will be made before exit day. The Plant Health (Amendment) (England) (EU Exit) Regulations 2019 are also being amended to ensure that people travelling from the EU will be subject to the same rules as they currently are when bringing plants and plant products into the UK in their passenger baggage.
- 2.11 In regulation 5, amendments are also being made to the Plant Health (EU Exit) Regulations 2019 to ensure that a number of recent EU plant health decisions will be operable on exit day. These are Commission Implementing Decision (EU) 2018/1503 of 8 October 2018 establishing measures to prevent the introduction into the spread within the EU of *Aromia bungii*, Commission Implementing Decision (EU) 2016/412 authorising Member States to provide for a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of ash wood originating or processed in Canada, as last amended by Commission Implementing Decision (EU) 2018/1970 and Commission Implementing Decision (EU) 2018/1203 authorising Member States to provide for a temporary derogation from certain provisions of Council Directive 2000/29/EC in respect of ash wood originating or processed in the United States of America. The provisions in this retained direct EU legislation, as amended, are set out in full to make the provisions clear and accessible
- 2.12 Regulations 6 to 8 of this instrument concern amendments to domestic legislation and other EU Exit legislation on the subjects of the marketing of seed potatoes and seeds and plant propagating material.
- 2.13 Regulations 6 and 7 amend the Seed Marketing Regulations 2011 and the Seed Potatoes (England) Regulations 2015 respectively using powers under the Withdrawal Act to make them operable upon the withdrawal of the United Kingdom from the European Union and to ensure continuity of supply and marketing for an interim period after that withdrawal.
- 2.14 Regulation 7 is needed in order to address technical operability issues by removing from the Seed Potatoes (England) Regulations 2015 references to the Commission, Community and Member States, replacing references to “third countries” and removing reporting obligations to the Commission. Regulation 7 also: assures continuity in supplies of seed potatoes by amending the Seed Potatoes (England) Regulations 2015 to provide for a one-year interim period during which time EU varieties and seed will continue to be recognised for production and marketing in England; avoids financial loss by permitting a one-year period for existing stocks of pre-printed official EU certification labels to be used up; and finally makes provision to recognise Crown Dependencies’ legislation.
- 2.15 Unlike with seed potatoes, for seed of unlisted vegetable varieties there is no interim period to allow existing stocks of pre-printed official labels to be used up as suppliers produce their own supplier labels and pre-printed stocks are not held. Regulation 6, therefore, amends the Seed Marketing Regulations 2011 to allow a two-year interim period for the marketing of unlisted vegetable varieties for the purpose of gaining knowledge and practical experience during cultivation in England where such

authorisations were granted in an EU Member State before exit or during the two years after EU Exit.

- 2.16 Regulation 8 of this instrument amends the Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (which were made on 23 January 2019 and laid before Parliament on 30 January 2019) to exclude the marketing, in England, of vegetable seed produced in Switzerland. This is necessary because the scope of the EU/Swiss trade agreement does not extend to vegetable seed. Regulation 8 also amends that same EU Exit instrument to add a definition of “the relevant fruit marketing regulations”.

What will it now do?

- 2.17 This instrument ensures that, in the fields of trade in animals and animal products, production of animal feed, plant health, and the marketing of seed potatoes, unlisted varieties of vegetable seed and fruit propagating material, retained direct EU legislation and domestic legislation implementing certain EU Directives will remain operable after the UK has left the EU.
- 2.18 In addition, this instrument amends the Seed Marketing Regulations 2011 to allow a two-year interim period for the marketing of unlisted vegetable varieties under authorisations granted by an EU Member State for the purposes mentioned in paragraph 2.15 above; and to exclude the marketing, in England, of vegetable seed produced in Switzerland because vegetable seed is not in scope of the EU/Swiss Trade agreement.
- 2.19 This instrument also amends the Seed Potatoes (England) Regulations 2015 by providing for a one-year interim period during which time EU seed will continue to be recognised for production and marketing in England for the purposes mentioned in paragraph 2.14 above; and avoids financial loss by permitting a one-year period for existing stocks of pre-printed official EU certification labels to be used up.
- 2.20 Finally, in relation to plant health and seed potatoes this instrument makes amendments to domestic implementing legislation and EU Exit legislation to facilitate trade with the Crown Dependencies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is made subject to the urgent ‘made affirmative’ procedure. The Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

The Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 were presented to the Sifting Committees on 12 February 2019. The European Statutory Instruments Committee (“ESIC”) has recommended that the instrument is laid under the affirmative procedure on the grounds that it is of political and legal importance. The recommendation was made because, in the Committee’s view, the instrument makes extensive amendments to two EU Exit statutory instruments – the Plant Health (Amendments) (England) (EU Exit) Regulations 2019 and the Plant Health (EU Exit) Regulations 2019 that were laid under the affirmative procedure. The Committee considered that it would usually be appropriate to use the affirmative procedure when amending EU Exit instruments which were themselves originally subject to the affirmative procedure.

- 3.2 Consequently, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has agreed for this instrument to be made subject to the affirmative procedure.
- 3.3 The instrument has been amended since it was presented to the Sifting Committees. Certain provisions that were to be made under section 2(2) of the European Communities Act 1972 have been removed from this instrument and included in another instrument and a few other minor amendments have been made.

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 varies between provisions.

4. Extent and Territorial Application

- 4.1 In Part 2 of this instrument, regulation 2 extends and applies to the whole of the United Kingdom; and regulation 3 extends to England and Wales but applies only to England.
- 4.2 In Part 3 of this instrument, regulation 4 extends to England and Wales but applies to England only; and regulation 5 extends and applies to England and Wales and Northern Ireland.
- 4.3 Part 4 of this instrument extends to England and Wales but applies to England only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding Human Rights:
- “In my view the provisions of the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights”.

6. Legislative Context

- 6.1 This instrument makes amendments to domestic legislation implementing certain EU Directives and to EU Exit legislation, to ensure that, in the fields of trade in animals and animal products, production of animal feed, plant health, and the marketing of seed potatoes, unlisted varieties of vegetable seed and fruit propagating material, domestic legislation and retained direct EU legislation remain operable and function appropriately after the United Kingdom has left the European Union.
- 6.2 In addition to this instrument Defra has introduced other instruments as part of the EU Exit process, which interact with the legislation amended by this instrument. These instruments are covered in separate Explanatory Memoranda.
- 6.3 Section 3 of the Withdrawal Act makes provision for incorporating direct EU legislation, as it stands at the moment of exit, into UK law. This includes the Regulations and Decisions listed in section 2 above. This legislation will form part of a new body of domestic legislation known as retained EU law.
- 6.4 Section 8(1) of the Withdrawal Act provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom

from the EU. Paragraph 21 of Schedule 7 to that Act provides that the section 8(1) power may be exercised to modify retained EU law or make different provision for different cases and includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision re-stating any retained EU law in a clearer or more accessible way).

7. Policy background

What is being done and why?

- 7.1 This instrument is being made in order to maintain the effectiveness and continuity of UK legislation and retained direct EU legislation that would otherwise be left partially inoperable / unable to function legally following the withdrawal of the United Kingdom from the European Union.
- 7.2 This instrument makes only amendments which are legally necessary to achieve its objectives. It represents no changes of policy, nor will it produce any impact on businesses or the public.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the powers 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 This instrument is not consolidating any other provisions.

10. Consultation outcome

- 10.1 This instrument was not subject to consultation.
- 10.2 This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials.

11. Guidance

- 11.1 None.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. For seed potatoes, the one year interim period means there will be no immediate impact because it maintains the status quo. It will allow businesses to start adapting UK seed production to provide all the varieties required by the food sector. UK production of ware potatoes is valued at about £900m, with the current level of reliance on EU seed making a small but important contribution.
- 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 instrument provides for technical amendments to existing legislation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The temporary period for accepting EU seed potatoes will constrain the impact on small businesses (employing up to 50 people). This instrument largely maintains the status quo and therefore does not introduce new duties or burdens on business.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is in continuing dialogue with stakeholders.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Trine Andresen at the Department for Environment, Food and Rural Affairs email: trine.andresen@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble, The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity 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 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 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 Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because the changes made in this instrument to domestic and retained EU legislation are to ensure that the legislation functions correctly once the UK has left the EU.

2. Good reasons

- 2.1 Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity 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 This is the case because without this instrument, the EU regulations which are converted into UK law by the European Union (Withdrawal) Act 2018 and domestic regulations will not work properly.

3. Equalities

- 3.1 Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity has made the following statement(s):

“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 Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity 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.

5. Urgency

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, 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 Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

“This is because: it is necessary for this instrument to be made in time for the European Commission’s vote regarding the UK’s application to be listed as a third country for the purposes of exporting animals and animal products into the EU in a no deal scenario. It is of significant importance to the UK’s export trade and economy that this vote is not delayed due to this legislation not having been made and laid.”

“Furthermore this instrument makes amendments to two instruments that come into force on exit day and amend retained EU law. It therefore needs to come into force before exit day, so that those amending instruments will come into force as themselves amended.”