

EXPLANATORY MEMORANDUM TO
THE TRADE IN ANIMALS AND RELATED PRODUCTS (AMENDMENT)
(NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 811

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 explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to ensure that Northern Ireland legislation relating to the controls and standards applied to trade in animals, animal products and bees and non-commercial movement of pet animals continues to be operable after the United Kingdom (“UK”) leaves the European Union (“EU”).

Explanations

What did any relevant EU law do before exit day?

- 2.2 The relevant EU law lays down conditions for trade in live animals, products of animal origin, germplasm (semen, ova, and embryos), animal by-products and bees as well as the non-commercial movement of pet animals.

Why is it being changed?

- 2.3 The amendments are necessary to correct minor deficiencies and, thereby, ensure the operability of the Northern Ireland legislation referred to in sections 6.1 to 6.3 below to ensure that it continues to operate effectively after withdrawal from the EU.

What will it now do?

- 2.4 This instrument will address deficiencies in Northern Ireland legislation referred to in sections 6.1 to 6.3 arising from withdrawal of the UK from the EU and ensure that it continues to be operable after the UK leaves the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees on 18 December 2018. The European Statutory Instruments Committee agreed with the Government that this instrument does not require a debate in Parliament, though one may still occur. However, the Secondary Legislation Scrutiny Committee disagreed with the Government and recommended that this instrument needs to be debated in Parliament.

- 3.2 The Secondary Legislation Scrutiny Committee made this recommendation as the concern was that the instrument proposed maintaining unilaterally arrangements for the import of animals and animal products from the EU in a possible ‘no deal’ scenario, when the UK would be treated as a third country and would face considerable additional administrative requirements and potential costs for the commercial movement of animals and animal-related products and the non-commercial movement of pets. Any additional administrative requirements and potential costs for the commercial movement of animals and animal-related products and the non-commercial movement of pets would pose a particular challenge in the unique circumstances in Northern Ireland.
- 3.3 Noting this recommendation, Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, has agreed for this instrument to be made subject to the urgent ‘made affirmative’ procedure. The Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

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.

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 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 Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends the following Northern Ireland legislation which was made under section 2(2) of the European Communities Act 1972 (“the 1972 Act”): the Northern Ireland Poultry Health Assurance Scheme Order (Northern Ireland) 2011, the Trade in Animals and Related Products Regulations (Northern Ireland) 2011 and the Non-Commercial Movement of Pet Animals Order (Northern Ireland) 2011.
- 6.2 It also revokes the Destructive Imported Animals Regulations (Northern Ireland) 1993 which were made under section 2(2) of the 1972 Act and amends the Destructive Imported Animals Act (Northern Ireland) 1933. In addition, the instrument amends legislation relating to trade in germplasm made under the Artificial Reproduction of Animals (Northern Ireland) Order 1975, namely: the Artificial Insemination of Cattle Regulations (Northern Ireland) 1988, the Artificial Insemination of Pigs (EEC) Regulations (Northern Ireland) 1993, the Artificial Breeding of Sheep and Goats (EEC) Regulations (Northern Ireland) 1994, and the Bovine Embryo Collection, Production and Transplantation Regulations (Northern Ireland) 1996 (which also relied on powers contained in the Welfare of Animals Act (Northern Ireland) 1972).

- 6.3 It also amends the Sales, Markets and Lairs Order (Northern Ireland) 1975, the Rabies (Importation of Dogs, Cats and Other Mammals) Order (Northern Ireland) 1977 and the Animals (Post Import Control) Order (Northern Ireland) 1993 which were made under domestic Northern Ireland legislation relating to the diseases of animals; and the Bee Diseases and Pests Control (Northern Ireland) Order 2007 which was made under the Bees (Northern Ireland) Order 1980. In addition to this instrument, Defra will introduce other instruments as part of the exit process which interact with the legislation amended by this instrument.
- 6.4 Section 8 (1) of the European Union (Withdrawal) Act 2018 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 UK from the EU. The instrument is made in exercise of these powers.

7. Policy background

What is being done and why?

- 7.1 Trade with any place outside the UK is a reserved matter in Northern Ireland. This instrument, however, applies to the controls on the import of disease or of pest into Northern Ireland and animal health related aspects of trade in germplasm 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 less than one year 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 There are some references in the Northern Ireland legislation referred to in sections 6.1 to 6.3 that are predicated on EU membership or would be otherwise inappropriate to retain once the UK leaves the EU. This instrument will address these deficiencies to ensure that the legislation continues to function after the UK leaves the EU. The proposed amendments will ensure that trade in animals, related products and bees and the non-commercial movement of pet animals will continue with minimum disruption, whilst maintaining high biosecurity and welfare standards.

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 UK from the EU. 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 None.

10. Consultation outcome

10.1 The devolved administration in Northern Ireland has been consulted about this instrument. Given its technical nature, no public consultation was considered necessary.

11. Guidance

11.1 There is no guidance being issued for this instrument as it makes no more than minor technical EU Exit amendments.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there are no significant impacts on business or on the public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 This measure does not introduce duties or burdens on business. Businesses will not need to change their current practices as a result of the instrument.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

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

15. Contact

15.1 Naomi Callaghan at the Department of Agriculture, Environment and Rural Affairs: Telephone: 02877442159 or email: Naomi.Callaghan@daera-ni.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jackie Robinson at the Department of Agriculture, Environment and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner of Kimble, 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 instrument 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 instrument 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, 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. Appropriateness statement

- 1.1 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, the Trade in Animals and Related Products (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate.”

- 1.2 This is the case because: this instrument makes only minor or technical amendments to the relevant Northern Ireland legislation to ensure that it remains operative following the withdrawal of the UK from the EU will not introduce any new policy.

2. Good reasons

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

- 2.2 These are: the provisions are necessary to ensure the continuance of trade in animals, related products, bees and the non-commercial movement of pet animals whilst maintaining high biosecurity and welfare standards.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, 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.”

- 3.2 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 relation to the instrument, I, Lord Gardiner of Kimble, 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 Trade in Animals and Related Products (Amendment) (Northern Ireland) (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.”

5.2 This is because: if this instrument is not in force on exit day, there is a significant detrimental risk to the application of public health standards to imports into Northern Ireland from countries outside the EU (“third countries”). This arises because Northern Ireland domestic legislation will continue to provide for the free circulation of animals and products of animal origin from third countries that have cleared EU Border Inspection Posts (“BIPs”) but, post EU Exit, public health checks will not be carried out at these BIPs on any such imports transiting through the EU into the UK.

5.3 If this instrument is not in force on exit day, there is also a significant risk that products of animal origin from third countries will not be able to be imported directly into Northern Ireland. This is because Northern Ireland domestic legislation will continue to provide that products of animal origin cannot be imported into Northern Ireland other than at a BIP approved by the European Commission and, in a no deal scenario, Northern Ireland BIPs (and those elsewhere in the UK) will be removed from the European Commission’s list of approved BIPs.