

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (AMENDMENT) (NORTHERN IRELAND) (EU EXIT)
REGULATIONS 2019

2019 No. 820

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 These Regulations make technical corrections to Northern Ireland’s secondary domestic legislation arising from the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”). The domestic legislation transposes EU Directives protecting plant health, marketing of seed, propagating material and other legislation relating to plant health.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community established the EU plant health regime. Whilst protecting against plant health risks, the Directive also provides for the trade and movement of relevant plant material within and between Member States, thereby creating an internal EU market for this material.
- 2.3 Council Directive 2008/90/EC on the marketing of fruit plant propagating material and fruit plants intended for fruit production, Council Directive 1998/56/EC on the marketing of propagating material of ornamental p and Council Directive 1999/105 on the marketing of forest reproductive material prescribe marketing standards for the specified materials in order to ensure minimum quality standards and traceability.

Why is it being changed?

- 2.4 This instrument makes changes and technical amendments to Northern Ireland legislation and creates new offences. This gives effect to, and provides for, plant health enforcement measures necessary to ensure the domestic laws in Northern Ireland, including where amended by this instrument, continue to operate effectively after the UK leaves the EU.
- 2.5 Under the EU single market, plant material may move freely between and within Member States and Switzerland. Material which hosts the most serious pests and diseases requires an EU plant passport to facilitate its movement. These Regulations introduce changes to the rules on importation of plant health material from Member

States and Switzerland and the movement of such material within Northern Ireland, to ensure that the current legislation continues to operate effectively after exit.

- 2.6 After exit, without amendment, the Northern Ireland legislation would not be operable, resulting in disruption to trade in plants, seed, propagating material and forest reproductive material. Changes must be made to maintain the current, high standards in Northern Ireland law and provide continuity to the various sectors through security of supply to plant, seed, propagating material and forest reproductive material.
- 2.7 This instrument also facilitates trade with the Crown Dependencies. The Crown Dependencies are currently treated as part of the UK 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. Following recent discussions with the Crown Dependencies, it has been agreed that the Crown Dependencies will adopt similar controls to those of the UK to facilitate the trade in plants and plant products to the UK and vice versa. The changes made to the plant health legislation by this instrument give effect to these arrangements.
- 2.8 Northern Ireland domestic legislation amended in this instrument is as follows: the Plant Health (Wood and Bark) (*Phytophthora ramorum*) Order (Northern Ireland) 2005, the Plant Health (Wood and Bark) Order (Northern Ireland) 2006, the Plant Health Order (Northern Ireland) 2018 and the Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

What will it now do?

- 2.9 The instrument ensures that Northern Ireland law which implements current EU protective measures against the introduction and spread of organisms harmful to plants or plant products, the marketing of seed, ornamental plant propagating material, forest reproductive material and fruit propagating material remains effective after the UK leaves the EU.
- 2.10 This instrument ensures that, for plants and plant products moving to Northern Ireland from Member States and Switzerland, such material currently managed under the EU plant passport regime, will be subject to phytosanitary controls. Currently, consignments from the EU are controlled under the EU plant passports system. This instrument provides the assurance and traceability which the EU plant passport regime currently offers, whereby consignments of plants and plant products entering the UK from the EU will be required to be pre-notified and accompanied by a phytosanitary certificate issued by the country of export. The relevant UK plant health authority will carry out documentary and identity checks, thereby ensuring future traceability of the material should that need arise. Plants and plant products moving to Northern Ireland from Member States and Switzerland which currently do not require an EU plant passport will not be subject to the checks required for plant-passported material. Recognising that biosecurity risks associated with EU goods do not change immediately on EU exit, checks will not be carried out at the point of entry into the UK and will be conducted remotely.
- 2.11 Under Council Directive 2000/29/EC, checks on material imported from third countries are normally carried out at the first point of entry into the EU; so material arriving in Northern Ireland from a third country via another Member State will already have been subject to the required plant health checks. Following exit, Northern Ireland's importers bringing in high risk plant and plant products (from a list

set out in separate legislation) from non-EU countries and which have travelled through the EU before entering the UK without relevant plant health checks taking place at an EU border will be required to have full plant health checks involving pre-notification and phytosanitary certification. Documentary, identity and physical checks of the consignment will be undertaken at trade premises authorised by the Department of Agriculture, Environment and Rural Affairs (“DAERA”).

- 2.12 This instrument introduces new offences in addition to the existing offences in the Plant Health Order (Northern Ireland) 2018.
- 2.13 In order to facilitating the monitoring of plant material moving within the UK, a system of UK plant passports is to be introduced for the movement of material between the devolved administrations replacing the EU plant passports system.
- 2.14 A new criminal offence is created to enforce any failure to comply with any requirement in a general notice issued under the Plant Health Order (Northern Ireland) 2018 in respect of a demarcated area, as well covering non-compliance with a small number of prohibitions and restrictions in EU emergency plant health Decisions. These EU Decisions contain specific prohibitions and restrictions to prevent the spread of certain harmful plant pests in cases of outbreaks involving one of these pests.

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.

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 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 Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The EU Directives referred to above are transposed by the following domestic legislation: the Seed Marketing Regulations (Northern Ireland) 2016, the Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017, the Marketing of Ornamental Plant Propagating Material Regulations (Northern Ireland) 1999 and the Forest Reproductive Material Regulations (Northern Ireland) 2002. This legislation is amended by this instrument.

- 6.2 Council Directive 2000/29/EC is transposed in Northern Ireland by the Plant Health Order (Northern Ireland) 2018 and, in relation to certain forestry matters, by the Plant Health (Wood and Bark) Order (Northern Ireland) 2006. The Orders set out obligations for the control and management of plant health risks from the importation of plant material from third countries, and the movement of such material within the EU single market. This protects biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in England, Scotland and Wales.
- 6.3 The Plant Health Order (Northern Ireland) 2018 is amended by the Plant Health (Northern Ireland) (Amendment) Regulations 2019 to transpose various EU law requirements. Those amendments come into force immediately before exit day. Accordingly, the amendments in these Regulations take account of those amendments.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to the areas of plants, seed and plant propagating material 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 exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day absent a Northern Ireland Executive. With exit day less than one month away, and 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 changes made by this instrument are necessary to ensure that current legislation relating to plant health, seed and propagating material, and plant propagating material continues to operate effectively after the UK leaves 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. 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 It is not considered appropriate to consolidate the legislation being amended by this instrument.

10. Consultation outcome

- 10.1 Discussions have been held with the UK Plant Health Advisory Forum, which represents key stakeholders, led by Defra on behalf of the UK. These informed the contents of this instrument.
- 10.2 The devolved administration in Northern Ireland has been consulted about this instrument.

11. Guidance

- 11.1 DAERA as the relevant delivery body undertakes to develop an implementation plan and relevant guidance in due course.

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 it is not expected to create additional significant direct costs, which are expected to be below the *de minimis* threshold for requiring an impact assessment. The impact on business results from additional phytosanitary requirements necessary for maintenance of existing regulatory standards. This change will be relevant to the 67 Northern Ireland businesses currently registered for plant passporting. Importing plants and plant products from the EU into Northern Ireland currently requires a plant passport. This instrument introduces, for high risk plant and plant products, the requirement to pre-notify and accompany the consignment with a phytosanitary certificate issued by the country of export. Documentary and identity checks will be undertaken remotely following arrival into Northern Ireland. The requirement will be to use UK rather than EU plant passports for intra-UK movements of plant-passported commodities. Phytosanitary certificates will continue to be required for EU goods.
- 12.4 Additional Direct Costs on Day 1: the main additional direct costs are expected to be: the requirement to provide phytosanitary certificates for regulated EU commodities imported to the UK will represent an additional administrative burden, and incur costs which are likely to be passed onto the UK importer, and potentially the customer. The burden of providing the phytosanitary certificate will fall on the National Plant Protection Organisation in the Member State exporting the commodity, as well as the exporter. This is expected to affect only a small proportion of plants/plant products (i.e. those where plant passports are currently required for trade deemed to have a high biosecurity risk) from the total annual imports of regulated plants/plant products from the EU to the UK.
- 12.5 There may also be additional time requirements to businesses of applying for and providing the required information to get the certificate.
- 12.6 The requirement to pre-notify imports of regulated EU commodities will represent an additional administrative process. Importers will need to register with DAERA and provide consignment details and scanned copies of import documentation and phytosanitary certificates. However, there are no charges to use this system, and businesses who already trade in regulated third country plants and plant products will be familiar with this process, so the additional costs are expected to be minor.

- 12.7 The requirement to undergo documentary and identity checks on regulated EU commodities will represent an additional cost to importers, who may be subject to a fee for the checks carried out. The checks will take place after entry to the UK, and consignments will not be held awaiting checks. This avoids an additional time-related burden on businesses.
- 12.8 The requirement to use UK rather than EU plant passports for intra-UK movements of plant-passported commodities will require businesses moving plant-passported commodities within the UK to modify the reference code that they use when issuing plant passports, replacing 'EU' with 'UK'. The process for authorising businesses for plant passporting will not change, and businesses which will need to use the system on Day 1 are likely to already be registered. Therefore we expect no extra impact on business from this change.
- 12.9 Non-EU consignments of regulated plant material arriving in the UK via the EU will incur some small additional costs, as importers entering plants and plant products from third countries through ports will be able to have checks carried out at authorised trade premises. The costs associated with checks and the issue of the phytosanitary certificates will replicate what previously took place in the EU – there are no additional impacts. There may be costs to businesses to provide or avail of basic storage and inspection facilities acceptable to DAERA for carrying out checks. There may also be some additional transport/wage costs.
- 12.10 Public sector costs for the service provided by the inspectorate will increase. However most costs can be recovered from businesses which use and benefit from these services. Some additional costs may be borne by the public sector.
- 12.11 Additional indirect costs: this instrument is expected to mitigate indirect costs if phytosanitary certification processes (either pre-arrival in the UK or within the UK) leads to delays in delivering plants/plant products to the sales shelf, as this may erode product life and value. This would particularly be an issue for perishable plants/plant products.
- 12.12 Additional benefits: the current requirement is a plant passport for trade in higher risk plants/plant products between the UK and Member States, which will change to a requirement for a phytosanitary certificate for those plants/plant products. In addition, pre-notification will provide extra data on higher risk commodities which will allow better targeting of plants and pests from the EU which present a biosecurity risk.
- 12.13 An Equality Impact Assessment has been prepared for this instrument in line with DAERA's duty to screen strategies, plans, policies and legislative developments. This assesses equality and human rights impacts of proposed decisions on different groups of customers and service users. This instrument has no negative impact.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was that this instrument is not expected to create additional significant direct costs on business.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that DAERA will monitor and review the impact of the instrument as part of its standard policy-making procedures.
- 14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Diane Stevenson at DAERA Telephone: 028 6634 3012 or email: Diane.Stevenson@daera-ni.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 John Joe O'Boyle, Chief Executive of the Forest Service, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble 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 instrument	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 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 instrument is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an instrument after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	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 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an instrument after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	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 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 Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 1.2 This is the case because: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

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 amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable. They maintain current regulatory standards. This instrument makes changes and technical amendments to Northern Ireland legislation. This gives effect to, and provides for, plant health measures necessary to ensure the domestic laws in Northern Ireland, including where amended by this instrument, continue to operate effectively after the UK leaves the EU. (Explanations 2.4 in this memorandum)

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. Criminal offences

- 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 there are good reasons for the creation of a criminal offence and for the penalty in respect of it in the Plant Health (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.”

- 5.2 These are: Because the legislation creates new offences which give effect to, and provides for, plant health enforcement measures necessary to ensure the domestic laws in Northern Ireland, including where amended by this instrument, continue to operate effectively after the UK leaves the EU. (Explanations 2.4 in this memorandum))

6. Urgency

- 6.1 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 Plant Health (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.”

- 6.2 This is because: if this instrument is not in force on exit day, there is a significant detrimental risk to the application of plant health standards in relation to imports into Northern Ireland from countries outside the EU (“third countries”).

- 6.3 This arises because, after exit, without amendment, the Northern Ireland legislation would not be operable, resulting in disruption to trade in plants, seed, propagating material and forest reproductive material. Changes must be made to maintain the current, high standards in Northern Ireland law and provide continuity to the various sectors through security of supply to plant, seed, propagating material and forest reproductive material.

- 6.4 Checks on material imported from third countries are normally carried out at the first point of entry into the EU; so material arriving in Northern Ireland from a third country via another Member State will already have been subject to the required plant health checks. Following exit, Northern Ireland’s importers bringing in high risk plant and plant products (from a list set out in separate legislation) from non-EU countries and which have travelled through the EU before entering the UK without relevant plant health checks taking place at an EU border will be required to have full plant health checks involving pre-notification and phytosanitary certification. Documentary, identity and physical checks of the consignment will be undertaken at trade premises authorised by the Department of Agriculture, Environment and Rural Affairs (“DAERA”).