

EXPLANATORY MEMORANDUM TO
THE ANIMALS AND ANIMAL HEALTH, FEED AND FOOD, PLANTS AND
PLANT HEALTH (AMENDMENT) REGULATIONS 2022

2022 No. 1315

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 His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes various operability amendments to retained direct European Union (EU) legislation and domestic legislation relating to official controls on imports into Great Britain (GB) of animals and animal products, plant products (including food) and other imports relevant to agri-food chain, as well as rules on animal health and welfare, and rules on the marketing of planting and propagating material following the UK’s withdrawal from the EU. This instrument also addresses various deficiencies in retained EU legislation and corrects errors in earlier instruments made under the European Union (Withdrawal) Act 2018 (“EUWA”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument includes amendments which correct errors in The Animal Welfare (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/802), The Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1388), The Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1462), The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481) and The Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1482).
- 3.2 The Department has complied with the requirement stated in paragraph 4.7.6 of the Statutory Instrument Practice to consult with the SI Registrar for issuing a free of charge headnote.

4. Extent and Territorial Application

- 4.1 Regulation 12 of this instrument extends to, and applies in, England and Wales.
- 4.2 Regulation 13 of the instrument extends to, and applies in, Scotland.
- 4.3 Part 6 of this instrument extends to England and Wales, but applies only in England.
- 4.4 Otherwise the territorial extent of this instrument is England and Wales, Scotland and Northern Ireland, and its territorial application is England and Wales and Scotland.

5. European Convention on Human Rights

- 5.1 The Minister of State for Biosecurity, Marine and Rural Affairs, Lord Benyon, has made the following statement regarding Human Rights:

“In my view the provisions of The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 EUWA converted and preserved EU law at the end of the Transition Period into domestic law ("retained EU law"). It also provided for amendments to be made to address deficiencies which were not anticipated at the time of EU Exit. This instrument addresses a number of such deficiencies to ensure a functioning system of official controls and rules on animal welfare during transport as well as the rules on the marketing of plants and planting material is retained in UK law, and legislation regarding transmissible spongiform encephalopathies (TSE).

7. Policy background

What is being done and why?

- 7.1 This instrument makes necessary changes to retained EU law and domestic legislation to ensure they are fully operable now that the UK has left the EU. With regards to provisions which apply in the Devolved Administrations, the Scottish and Welsh Governments have been consulted and are content with these changes.

Part 2: Amendment of Regulation (EU) No 2016/2031 (the Plant Health Regulation)

- 7.2 This instrument amends the Plant Health Regulation to reintroduce (with modifications) a provision relating to penalties for failure to comply with duties imposed by or under the Regulation. Article 108 of the Plant Health Regulation, which created for an obligation on Member States to provide for a penalties regime, was revoked by the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 on the basis that it was considered redundant at the time. However, there is now no mechanism to fully enforce the Plant Health Regulation as the existing penalties regime cannot be amended nor added to. This will allow the appropriate authority (Secretary of State in England, Welsh ministers in Wales; and Scottish Ministers in Scotland) to create (or amend) rules on penalties for non-compliance with the Plant Health Regulation and relevant supporting legislation.

Part 3: Amendment of Regulation (EU) 2017/625

- 7.3 This instrument makes several amendments to the Official Controls Regulation (OCR) (2017/625) to ensure operability after EU Exit.
- 7.4 Articles 3 and 4 of the OCR are amended to clarify designation of the appropriate authority as a competent authority. There must be a designated competent authority to carry out official controls. Currently, the competent authority must be designated by the appropriate authority through legislation, meaning that where the appropriate authority is itself to act as the competent authority it must still make a designation to that effect. This instrument amends Articles 3 and 4 of the OCR to make clear that the appropriate authority is a competent authority, removing the need for a designation to be made to set out this default position. This does not affect any current designations

of competent authorities carrying out official controls, however, where no competent authority has been designated, the appropriate authority will be assumed to be the competent authority. Amendments are also made to make the process for designating other public authorities as a competent authority clearer and to ensure that the appropriate authority can modify designations made before this instrument comes into force.

- 7.5 The OCR gave the EU commission powers to adopt delegated acts to establish quantities under Article 48(g). It is no longer appropriate for this power to remain with the Commission in the retained EU law. Consequently, Article 48 is amended to enable the appropriate authority, by regulations, to make the relevant provision.
- 7.6 Article 128 of the OCR is amended so that the appropriate authority may make regulations to protect biosecurity in response to a change in risk in an approved trading partner. This clarifies that the appropriate authority has the discretion to make regulations to control biosecurity risks, but there is no obligation to do so. This will allow the appropriate authority to control biosecurity risks through other means, including safeguard declarations, where considered appropriate.
- 7.7 Article 115 is amended to remove a cross-reference to Article 55 of Regulation (EC) No 178/2002, because Article 55 was repealed by the General Food Law (Amendment etc) (EU Exit) Regulations 2019 (S.I. 2019/641). Therefore, this reference is no longer required.
- 7.8 Article 139 is amended to provide the appropriate authority with the power to, by regulations, create penalties for non-compliance with the requirements under the OCR and relevant supporting legislation. Currently, there is a requirement for the appropriate authority to provide for penalties, however, there are no powers to create any penalties to fulfil this requirement.
- 7.9 Article 150 of the OCR is amended to extend the transitional periods provided for in that Article during which the legislation which transposed Directive 96/23/EC continues to apply. This means the provisions in Directive 96/23/EC will continue to apply for the purposes of delivering official controls to detect the presence of certain substances and groups of residues in products of animal origin intended for human consumption, until the date specified in regulations by the appropriate authority.
- 7.10 Annex 6 of the OCR (as inserted by the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481)) is amended so that the appropriate authority may, by regulations, amend the conditions of the transitional staging period, independently of changing the end date of that period.
- 7.11 Annex 6 is also amended to extend the scope of goods which fall within the definition of “relevant goods” in Article 47(1)(d) to include High Risk Food and Feed of Non-Animal Origin (HRFNAO). HRFNAO was previously excluded from the transitional staging period in error. Article 56A (as inserted by Annex 6) is consequentially amended to apply prenotification requirements to HRFNAO from the date this statutory instrument comes into force. HRFNAO imported from EU to GB will therefore not be subject to full import checks, but prenotification will be required from the date this instrument comes into force.

Part 4: Amendment of other retained EU law

- 7.12 The Annexes to Regulation (EC) No 999/2001, which relates to the prevention, control, and eradication of certain TSE, are amended to correct operability deficiencies that were not accounted for in earlier amending instruments. These include references to the EU reference laboratory and Member State(s) that cause operability issues and could cause doubt on the application of the provisions in GB; for example, by defining some TSE diseases in relation to the EU reference laboratory's standards and tests.
- 7.13 Corrective amendments are also made to Council Regulation (EC) No 1/2005. These amendments correct minor errors in previous amendments made to Articles 5 and 8 of that Regulation by the Animal Welfare (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/802). The amendments make it clear to transporters, organisers, and keepers that they must comply with the journey log requirements set out in Annex II, as was the case immediately prior to EU Exit.
- 7.14 Footnote (d) of Annex II to Commission Decision 2007/777/EC is amended to specify that country-specific import conditions for poultry meat are now found in a document published for that purpose rather than in legislation. This corrects an error in legislation, as the country-specific import information is now found in a document published by the Secretary of State, in accordance with Commission Regulation (EC) No 798/2008.
- 7.15 Part 1 of Annex I to Commission Regulation (EC) No 798/2008 is amended to remove Belarus from the list of approved trading partners for poultry and poultry products. Belarus was previously only approved for the transit of goods bound for the Russian territory of Kaliningrad through Lithuania, an approval which was retained in legislation upon EU Exit but which is not applicable to GB trade.
- 7.16 Annex I to Commission Regulation (EC) No 119/2009 is amended to specify that country-specific import conditions for fresh meat of ungulates are now found in a document published for that purpose rather than in legislation. This corrects an error in legislation, as this information is now found in a document published by the Secretary of State, in accordance with Commission Regulation (EU) No 206/2010.
- 7.17 Commission Implementing Regulation (EU) 2020/625 ("Regulation 2020/625") made various amendments to Commission Implementing Regulation (EU) 2019/1793 ("Regulation 2019/1793"), relating to increased official controls and emergency measures for certain food of non-animal origin entering GB. The amendments made to Regulation 2019/1793 by Regulation 2020/625 were taken into account by S.I. 2020/1631, although the transitional provision in Article 3 of Regulation 2020/625 was not amended at the time. Since the transitional provision no longer has any application in relation to GB, these Regulations revoke Article 3 to put this beyond doubt.

Part 5: Amendment of the Plant Varieties and Seeds Act 1964

- 7.18 This instrument amends the Plant Varieties and Seeds Act 1964 to extend the powers conferred by that Act to plants for planting. This amendment will allow appropriate authorities in GB to exercise legislative functions in GB which are equivalent to various legislative functions exercisable by the Commission and Council under the marketing directives for propagating material of ornamental plants, vegetable propagating and planting material (other than seed) and fruit plant propagating

material and fruit plants intended for fruit production referred to in Annex 2, section 1.1 of the Explanatory Memorandum to The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1463). These regulation making powers will enable GB authorities to amend domestic legislation which transposed those EU marketing directives as they apply in relation to plants for planting to ensure those domestic statutory requirements can be updated as appropriate.

Part 6: Amendment of subordinate legislation

- 7.19 Regulation 38 of the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197) is amended to ensure that the Secretary of State, as well as the enforcement authority, is required to charge a fee in connection with the carrying out of certain functions under the OCR. This amendment corrects an error made in the Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 (S.I. 2020/1462) where the Secretary of State was removed from the charging duty.
- 7.20 The Animal Health (Miscellaneous Fees) (England) Regulations 2018 are amended update the definition of “third country”.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.21 Currently, a number of provisions in retained EU legislation are not fully operational as they include uncorrected references to the EU or Member States. Additionally, a provision was incorrectly revoked following the UK’s exit from the EU, leading to a reduction in operability. The listed amendments intend to correct these errors and also to ensure that retained EU legislation and relevant domestic legislation is operable now the UK has left the EU.

What will it now do?

- 7.22 This instrument corrects errors made in earlier instruments to ensure that retained EU law and relevant subordinate legislation is operable now the UK has left the EU. This instrument will also address a number of deficiencies not in retained EU law which had not previously been addressed.

8. European Union Withdrawal and Future Relationship

- 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 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 to this instrument.

10. Consultation outcome

10.1 The amendments in this instrument are technical in nature. There are no policy changes so no public consultation has been undertaken. This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials.

11. Guidance

11.1 As no policy changes are included in this instrument no guidance specifically related to this instrument is required.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because this 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 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 is that this instrument does not place any burdens on small businesses, therefore no action will be taken.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through the course of normal departmental business.

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
Telephone: 0208 415 2249 or email: trine.andresen@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Peter Jinks, Deputy Director for SPS and Imports, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Benyon 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 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 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) or 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) or 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) or 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 IP completion 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) or	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 section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

16. Appropriateness statement

- 16.1 The Minister of State for Biosecurity, Marine and Rural Affairs, Lord Benyon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 16.2 “In my view The Animals and Animal Health, Feed and Food, Plants and Plant (Amendment) Regulations 2022 do no more than is appropriate”.
- 16.3 This is the case because this instrument corrects technical deficiencies that arise from the UK’s withdrawal from the EU and ensures that the existing regimes for safeguarding UK biosecurity will continue to operate effectively. This is in line with government policy.

17. Good reasons

- 17.1 The Minister of State for Biosecurity, Marine and Rural Affairs, Lord Benyon 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”.
- 17.2 These are:
- That there are public concerns about biosecurity and so the government should ensure legislation upholding biosecurity are fully operable in GB.

18. Equalities

- 18.1 The Minister of State for Biosecurity, Marine and Rural Affairs, Lord Benyon 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.
- 18.2 The Minister of State for Biosecurity, Marine and Rural Affairs, Lord Benyon 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 Benyon 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.”.

19. Explanations

- 19.1 The explanations statement has been made in section 7 of the main body of this explanatory memorandum.