

EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH AND TRADE IN ANIMALS AND RELATED PRODUCTS
(AMENDMENT) REGULATIONS 2022

2022 No. 1367

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to address failures of retained EU law to operate effectively following the withdrawal of the United Kingdom (“UK”) from the European Union (“EU”).
- 2.2 This instrument makes operability amendments (see sections 6.2 and 6.3) including to allow authorities in GB to implement demarcated areas within their own territories based on findings of a certain pest (including any relevant disease) in a neighbouring territory. This will ensure that effective biosecurity controls are in operation within GB to best manage any outbreaks of certain pests and enable coordinated action between territories within GB to deliver biosecurity.
- 2.3 Corrections are also made to the retained Commission Implementing Decision (EU) 2019/1614 (“Decision 2019/1614”) to ensure that potatoes, other than potatoes for planting, originating in certain regions of Lebanon meet stringent entry requirements.
- 2.4 Corrections are also made to the Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022 (“TARP (ALF)”), to ensure the transfer of functions from the EU Commission to the appropriate authority in GB. This will give the appropriate authority the power to change or establish specific rules on imports of equine animals from third countries.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Errors in Decision 2019/1614 are being corrected in Regulation 7. Some of these errors were identified by the Joint Committee on Statutory Instruments in the Animals, Food, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022 (“S.I. 2022/1090”); please see the Committee’s Eighteenth Report of Session 2022-23.
- 3.2 Errors in TARP (ALF) are also being corrected in Regulation 8. Both Regulations 7 and 8 are non-urgent so these provisions will come into force 28 calendar days after laying, with the exception of any recess periods.
- 3.3 The remaining provisions of this instrument need to come into force the day after laying. A recent outbreak of a certain pest near the Wales/England border has highlighted the need for a rapid correction to ensure that the legislation allows effective action to be taken against this pest and to control outbreaks of certain pests in future. In addition, the Withdrawal Act powers needed to address the deficiencies

covered by this instrument (see section 8.1) are due to sunset on 31st December 2022. Therefore, this instrument needs to be laid urgently.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales, and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland apart from Regulation 3, which applies to England only, Regulation 4, which applies to Scotland only, Regulation 5 and 6, which apply to Wales only, and Regulation 8, which applies to England and Scotland only.

5. European Convention on Human Rights

- 5.1 The Minister of State, Lord Benyon, has made the following statement regarding Human Rights:
- 5.2 “In my view the provisions of the Plant Health and Trade in Animals and Related Products (Amendment) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Regulation (EU) 2016/2031 on protective measures against pests of plants (“the Plant Health Regulation”) and tertiary legislation made under that Regulation have been incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”). This legislation has been amended in relation to GB by a series of statutory instruments, including the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (“S.I. 2020/1482”) and the S.I. 2022/1090, to deal with a range of deficiencies in the legislation arising from the withdrawal of the UK from the EU, ensuring that the UK Government and the devolved administrations are able to deliver workable legislation and enforcement on material subject to phytosanitary controls.
- 6.2 Regulation 2 of this instrument amends the Plant Health Regulation to:
 - ensure that provisional quarantine pests (a type of regulated pest) are included in certain provisions of the Plant Health Regulation (Articles 11, 12, 14, 15, 16 and 17) for the application of demarcated areas,
 - require a competent authority in which the pest is present to notify the competent authority of another territory of GB of the extent of the demarcated area if it considers a demarcated area should extend to or be established in that territory,
 - allow a competent authority which is informed that a demarcated area should extend to or be established in their territory to take appropriate action, which includes establishing a demarcated area.
- 6.3 Regulations 3, 4 and 5 of this instrument make consequential amendments to EU-derived domestic legislation in, respectively, England, Scotland, and Wales, to allow notices to be served to establish a demarcated area in circumstances described in section 6.2. Regulation 6 makes the equivalent amendments to the Welsh version of the domestic legislation in Wales.

- 6.4 Regulation 7 makes corrections to Decision 2019/1614 to ensure this piece of legislation can operate effectively.
- 6.5 Regulation 8 makes corrections to TARP (ALF) that were omitted by mistake in the draft laid on 20th October 2022.

7. Policy background

What is being done and why?

- 7.1 The purpose of this instrument is to ensure the continued protection of GB biosecurity by correcting a remaining deficiency in the Plant Health Regulation regarding the establishment of demarcated areas. The changes made by S.I. 2020/1482 to the Plant Health Regulation failed to fully address this deficiency arising from EU Exit, as discovered following a recent outbreak of a certain pest near the Wales/England border. This instrument also corrects errors made by a previous instrument, S.I. 2022/1090, which addressed the deficiencies in Decision 2019/1614.
- 7.2 The amendments being introduced by this instrument are technical operability amends and do not implement any new policy changes.
- 7.3 Corrections to the modifications to Directive 2009/156, omitted by mistake from the TARP (ALF), are necessary to transfer the functions from the European Commission to the appropriate authority in GB.

Explanations

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

- 7.4 The Plant Health Regulation originally set out the phytosanitary requirements for the movement of regulated plants and plant products within and into the European Union and provided for the adoption of lists of regulated plants, plant products, pests and diseases in respect of the Union territory. Article 18 of the Plant Health Regulation is used, when there is a finding of a certain pest, to establish a demarcated area and specify rules relating to movements out of and within the demarcated area. Articles 11, 12, 14, 15, 16 and 17 establish the notification and eradication process following the outbreak of a certain pest.
- 7.5 As the Plant Health Regulation was directly applicable, no national implementing legislation was needed for it to take effect in UK law. However, supplementary domestic legislation was introduced separately in England, Wales, and Scotland, to enable each competent authority to carry out their obligations under the Plant Health Regulation, enforce the Plant Health Regulation and implement various derogations in the Plant Health Regulation. Regulation 17 of this domestic legislation, then allows competent authorities to issue notices that establish these demarcated areas and the requirements relating to movements of susceptible material.
- 7.6 Decision 2019/1614 sets out the conditions for the import of potatoes from certain regions of Lebanon. Amendments were previously made by S.I. 2022/1090 to ensure that this legislation was operable following the withdrawal of the UK from the EU.
- 7.7 The Directives being modified by TARP (ALF) provide for the animal and public health requirements for the importation into, and movements between EU Member States of live animals, products of animal origin including germplasm (semen, ova and embryos). They provided appropriate powers for the European Commission to

make and implement changes to legislation for the importation and intra-European movements of live animals and animal products.

Why is it being changed?

- 7.8 The changes made by S.I. 2020/1482 to the Plant Health Regulation failed to provide for the competent authority in one territory of Great Britain to establish a demarcated area based on the findings of a certain pest from another territory. For example, if a certain pest is identified in England near the border with Scotland, a notice to demarcate an area can only be issued on the English side of the border, by the English appropriate authority. Scotland are unable to implement a demarcated area within their territory based on the pest findings in England. This leaves the Scottish side of the border open to spread.
- 7.9 Errors in Decision 2019/1614, mistakenly introduced by S.I. 2022/1090, need to be addressed to ensure that potatoes from certain regions of Lebanon meet stringent entry requirements.
- 7.10 Corrections to TARP (ALF) will give the appropriate authority the power to change the rules on imports of equine animals from a particular country and the power to establish specific rules if there is a change in the disease situation of the approved country.

What will it now do?

- 7.11 Changes to Article 18 of the Plant Health Regulation will provide for a competent authority to establish a demarcated area in response to a finding across the border in a neighbouring competent authority. Changes to Articles 11, 12, 14, 15, 16 and 17 will ensure that provisional quarantine pests are included in the scope of these demarcated area measures. Finally, parallel changes in the supplementary domestic legislation in England, Wales, and Scotland are being made to enable collaboration between each authority of GB following a certain pest outbreak.
- 7.12 The operability amendments made by this instrument will ensure the continued functioning of phytosanitary controls within GB, and between relevant third countries and GB.
- 7.13 Corrections to TARP (ALF) will ensure the appropriate authority continues to provide for safeguard actions to be taken in case of non-compliance with the animal health rules or disease outbreaks in exporting countries.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is being made using the power in section 8 of the Withdrawal Act 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. The instrument is also made under paragraph 21 of Schedule 7 to the Withdrawal Act. 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 as this is not a consolidation.

10. Consultation outcome

- 10.1 Defra have carried out numerous informal engagements with GB-wide stakeholders on the changes following the withdrawal of the UK from the EU. Engagement on this specific instrument was not deemed necessary as all the amendments introduced by this instrument are technical operability amendments and not policy changes.
- 10.2 The Scottish and Welsh Devolved Administrations have been consulted about the proposed amendments and are content.

11. Guidance

- 11.1 Guidance is not required. The amendments introduced by this instrument are correcting legislative deficiencies and are not policy changes.

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 there are no significant impacts because of the amendments detailed within this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This instrument applies equally to all businesses. There is no exemption for small businesses, given the importance of protecting plant and animal biosecurity through the actions of all sizes of businesses.

14. Monitoring & review

- 14.1 No specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the Withdrawal Act, no review clause is required.

15. Contact

- 15.1 Suzie Pearce at Defra, telephone: 0208 0267 171 or email: suzannah.pearce@defra.gov.uk can be contacted with any queries regarding this instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health Bees and Seeds, at Defra can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Benyon, Minister of State, at Defra 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

1. Appropriateness statement

- 1.1 The Minister of State, Lord Benyon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

In my view the Plant Health and Trade in Animals and Related Products (Amendment) Regulations 2022 does no more than is appropriate”.

- 1.2 This is the case because this instrument corrects technical deficiencies and ensures that the existing regimes for safeguarding GB biosecurity will continue to operate effectively. This is in line with government policy.

2. Good reasons

- 2.1 The Minister of State, 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”.

- 2.2 These are that legislative deficiencies need to be corrected to ensure the continued protection of GB biosecurity.

3. Equalities

- 3.1 The Minister of State, Lord Benyon 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”.

4. Explanations

- 4.1 The explanations statement has been made in section 7 of the main body of this Explanatory Memorandum.

5. Urgency

- 5.1 The Minister of State, Lord Benyon, 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 and Trade in Animals and Related Products (Amendment) Regulations 2022, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”

- 5.2 A recent outbreak of a certain pest near the Wales/England border has identified a deficiency in legislation. A rapid correction is needed to ensure that the legislation allows effective action to be taken against this pest, and to control outbreaks of certain pests in future. In addition, the Withdrawal Act powers needed to address the deficiencies covered by this instrument (see section 8.1) are due to sunset on 31st December 2022. Therefore, this instrument needs to be laid urgently.