

EXPLANATORY MEMORANDUM TO
THE SEAL PRODUCTS (AMENDMENTS) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Committees on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 The Seal Products (Amendments) (EU Exit) Regulations 2018 are being made under section 8(1) of, and Paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018 to amend retained EU legislation and existing United Kingdom legislation in order to ensure that the ban on imports of seal products from commercial hunts will continue to operate effectively after we leave the EU.

2.2 Explanations

What did any relevant EU law do before exit day?

Controls on trade in seal products are set out in Council Regulation (EC) No 1007/2009 on trade in seal products and Commission Implementing Regulation 2015/1850 laying down detailed rules for implementing Regulation 1007/2009 (“the EU Regulations”). The controls are enforced domestically by the Seal Products Regulations 2010. The EU Regulations ban the import of and trade in seal products in the EU. The Regulation provides limited exceptions for traditional hunts conducted by indigenous peoples for their subsistence and items for travellers’ personal use. The EU Regulations also require documentation to accompany consignments of seal products that attest to compliance with the conditions of the exception. These documents are to be checked and certified by customs authorities in Member States. Bodies qualified to provide these attestation documents are recognised by the EU Commission.

Why is it being changed?

The minor and technical changes made by the instrument are necessary to ensure that retained EU legislation and the domestic EU legislation enforcing it continues to operate effectively. The changes made to ensure that it operates effectively include the removal of references to the “EU”, “Union” and “the Commission” and replaced with “the United Kingdom” and “the Secretary of State”. It also removes references to ensuring free movement within the EU (which will no longer be relevant), Member State requirements to lay down rules for enforcement (which the UK already has in place in domestic legislation), and requirements to report to, or notify the EU Commission of, information on actions taken to implement the EU legislation in the UK.

What will it now do?

The instrument will ensure that a ban on import and trade in seal products from commercial hunts continues to operate effectively in the UK after we leave the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Committee on the UK's exit from the European Union

- 3.1 The instrument is being laid for sifting to the European Union (Withdrawal) Act 2018 by the ESIC and SLSC.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The EU and domestic legislation amended by this instrument currently ban the import of and trade in seal products from commercial hunts. Both will continue to apply after the UK leaves the EU, with the relevant EU legislation becoming retained EU law by virtue of the European Union (Withdrawal) Act 2018.
- 6.2 This instrument amends both EU and domestic legislation to remedy deficiencies arising from the withdrawal of the United Kingdom from the EU and ensure that the ban continues to operate effectively.
- 6.3 As part of the exit process the Department will also bring forward other instruments to amend EU legislation in this area. These instruments will cover several areas related to animal health and welfare and will, for example: transfer functions of the European Commission under the retained EU legislation relating to recognition of bodies qualified to provide attestation documents; provide a power to prohibit or limit the amount of seal products placed on the market from commercial hunts; and provide a power to issue guidance where appropriate.

7. Policy background

What is being done and why?

- 7.1 Seals are hunted in some countries and used for obtaining products such as meat, oil, blubber and fur skins which are sold commercially. The inhumane nature of seal hunting practices in certain parts of the world caused considerable concern to

members of the public, animal welfare NGOs, Members of Parliament, Member State Governments and the European Parliament.

- 7.2 To prevent distortion in trade being brought about by individual bans in Member States, the EU introduced Council Regulation EC No. 1007/2009 on trade in seal products, which created a Europe wide ban on the import of seal products from commercial hunts. The Regulation provides limited exceptions for traditional hunts conducted by indigenous peoples for their subsistence and items for travellers' personal use. The detailed rules for the implementation of the ban are set out in Commission Implementing Regulation (EU) No 2015/1850. The ban is enforced domestically by the Seal Products Regulation 2010.
- 7.3 The Government shares the British public's high regards for animal welfare and plans to retain the legislation banning the importation of seal products when the UK leaves the EU. The EU Regulations in respect of seal products will become retained EU law when we leave the EU, however they require amendment to ensure they continue to operate effectively. No substantive policy changes are being introduced by this instrument. The policy objective is to maintain existing laws.

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

- 8.1 This instrument is being made using the powers in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21(b) of Schedule 7 to the European Union (Withdrawal) Act 2018. 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 Scottish and Welsh Governments and Northern Irish devolved administration have been consulted about the proposed amendments. There has been no other consultation.

11. Guidance

- 11.1 There is no associated guidance.

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 there are no impacts on business and no significant impacts on the public sector. The instrument does not introduce any duties or burdens on business, and businesses will not need to change their current practices. There will be a very limited administrative impact on the public sector and no change to monitoring and enforcement requirements.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

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

15. Contact

15.1 Richard Aram at the Department for Environment, Food and Rural Affairs Telephone: 0208 0263936 or email: animal.welfare@defra.gsi.gov.uk can answer any queries regarding the instrument.

15.2 Marc Casale at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner of Kimble at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex I

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/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister’s opinion that the SI is urgent.
Explanations where amending regulations under 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	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 SI 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. Sifting statement(s)

- 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:
- 1.2 “In my view the Seal Products (Amendments) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure). This is the case because this instrument addresses only technical deficiencies in retained EU legislation and EU derived United Kingdom legislation that will arise from withdrawal.”

2. Appropriateness statement

- 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:
- 2.2 “In my view the Seal Products (Amendments) (EU Exit) Regulations 2018 does no more than is appropriate. This is the case because the instrument makes only minor and technical amendments to the retained EU legislation and EU derived domestic legislation to ensure that it remains operative following the withdrawal of the United Kingdom from the European Union.”

3. Good reasons

- 3.1 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:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. This is because there is real public concern about the inhumane nature of seal hunting practices in certain parts of the world and making these technical amendments in order to maintain a ban on the import of seal products from these commercial hunts following the withdrawal of the United Kingdom from the European Union is proportionate.”

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement(s): “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.”
- 4.2 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. As this instrument does not make a substantive change to existing law no impact on equalities is expected.”

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.