

EXPLANATORY MEMORANDUM TO
THE LEGHOLD TRAP AND PELT IMPORTS (AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to ensure operability of Council [Regulation \(EEC\) 3254/91](#) (“the Leghold Trap Regulation“) and associated tertiary legislation following the withdrawal of the United Kingdom from the European Union.
- 2.2 The Regulations make amendments to retained direct EU legislation concerning the use of leghold traps and the import of pelts and manufactured goods of certain wild animal species. Part 2 amends retained direct EU legislation and Part 3 revokes tertiary retained direct EU legislation.

Explanations

What did any relevant EU law do before exit day?

- 2.3 The Leghold Trap Regulation prohibited the use of leghold traps in the European Union and the introduction into the EU of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.
- 2.4 Commission [Regulation 1771/94](#) put into effect a one-year delay on the import ban contained in the Leghold Trap Regulation (to 1st January 1996) and also set deadlines for the Commission to put in place related tertiary rules (by 1st September 1995).
- 2.5 Commission [Regulation 35/97](#) set out the requirements for certificates of origin issued by competent authorities of exporting and re-exporting countries and the form of the certificates.
- 2.6 Council [Decision 97/602/EC](#) (as amended by Commission [Decision 98/188/EC](#) and [Decision 98/596/EC](#)) provided a ‘green list’ of approved countries from which imports of pelts and manufactured goods of certain wild animal species into the EU are permitted.

Why is it being changed?

- 2.7 The Regulations amend the Leghold Trap Regulation and two pieces of associated tertiary legislation (Commission Regulation (EC) No 35/97 and Council Decision (EC) No 97/602) to ensure their operability following the withdrawal of the United Kingdom from the European Union. It revokes Commission Regulation 1771/94 as it is now spent. It also revokes Commission Decisions 98/188/EC and 98/596 because,

as instruments which amended (by replacing) the Annex to Council Decision 97/602, they will become redundant following the replacement of that Annex effected by these Regulations.

What will it now do?

- 2.8 The Leghold Trap Regulation and its tertiary legislation now operate in a post-EU context with no substantive policy changes. That is to say they prohibit the use of leghold traps in the UK and the introduction into the UK, unless from member States of the EU (see paragraph 2.9, below), of pelts, and manufactured goods incorporating pelts, of certain wild animal species unless the pelts originate from an approved country or are from animals which were captive-bred.
- 2.9 To avoid changing our policy and expanding the remit of the Leghold Trap Regulation to cover countries not currently covered, we will not impose the pelt import controls upon EU Member States when we leave the EU.
- 2.10 The Leghold Trap Regulation also requires certificates of origin to be issued by competent authorities of exporting and re-exporting countries (except member States of the EU) and presented to border control officers at the point of entry into the UK. The amendments make no substantive policy changes to the requirements in this area.
- 2.11 Amendments relating to the transfer of functions in the Leghold Trap Regulation are being made in a separate statutory instrument subject to the affirmative procedure.

3. Matters of special interest to Parliament

Matters of special interest to the Matters of special interest to the Sifting Committees.

- 3.1 The instrument is being laid in draft for sifting pursuant to the European Union (Withdrawal) Act 2018.

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 includes Scotland and Northern Ireland.
- 3.3 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 and 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 Leghold Trap Regulation prohibits the use of leghold traps in the European Union and the introduction into the EU of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards.

- 6.2 The Leghold Trap Regulation defines a ‘leghold trap’ as a device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal's limbs, thereby preventing withdrawal of the limb or limbs from the trap.
- 6.3 These Regulations are made in exercise of the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 in order to ensure operability of the Leghold Trap Regulation and associated tertiary legislation following the withdrawal of the United Kingdom from the European Union.
- 6.4 The consequences of not proceeding with the Regulations would be that the Leghold Trap Regulation wouldn't function properly, meaning we will not be able to meet the Leghold Trap Regulation's objectives of securing better welfare for mammals commonly trapped for their pelts.
- 6.5 With the above in mind, it is essential that UK import controls continue to operate and deliver the Leghold Trap Regulation's objectives from Exit day, ensuring pelts are only sourced from countries which ensure animals are trapped humanely. Customs procedures will be changing and will be defined post-Exit under the [Taxation \(Cross-border Trade\) Act 2018](#).

7. Policy background

What is being done and why?

- 7.1 The EU has adopted legislation on animal welfare in pursuit of its commitment to the highest animal welfare standards. The Leghold Trap Regulation is part of that suite of legislation.
- 7.2 The UK has a long standing commitment to the welfare of wildlife. For example, humaneness is the reason for regulating the use of spring traps under the Pests Act 1954. Ministers have regularly referred to our country's strong record on welfare and have committed to delivering to the highest possible standards.
- 7.3 Defra is introducing secondary legislation to ensure a smooth transition out of the European Union. These Regulations seek to achieve this with regard to implementation of the Leghold Trap Regulation (see section 2 for more information).
- 7.4 This policy area is, under the various devolution agreements, partly devolved (animal welfare and wildlife management) and partly reserved (import controls) and we have consulted with the Devolved Administrations to seek agreement on policy (what legislative changes to make) and delivery of them (who should make them).
- 7.5 Given the mix of competence and the short timescales involved, it has been agreed that the Regulations will deliver the operability amendments on behalf of the UK, including matters of a devolved nature.

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(1) of, and paragraph 21 of Schedule 7 to, 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 N/A The instrument is not a consolidation.

10. Consultation outcome

10.1 No change in policy will occur as a result of these Regulations. The changes being made are technical in nature. We have not undertaken a formal public consultation. Instead, we have used targeted engagement of key stakeholders.

10.2 HMRC, Border Force and the Home Office have been consulted to ensure that this Regulation is compatible with any post-Exit UK wide framework for border control and the Taxation (Cross-border Trade) Act 2018.

11. Guidance

11.1 This instrument does not introduce any procedural changes requiring 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 the Regulations relate to maintenance of existing regulatory controls.

12.4 In practice, the Regulations will have no quantifiable impact on the current situation. We are making no substantive changes to policy in this area. Leghold traps will continue to be prohibited, as will the introduction into the UK (unless from an EU member State) of pelts and manufactured goods incorporating pelts of certain wild animal species, unless the pelts originate from an approved country (and are accompanied by a certificate of origin issued by exporting and re-exporting competent authorities).

12.5 We are also working with our colleagues in the devolved administrations to ensure a smooth and consistent transition for the whole of the UK.

13. Regulating small business

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

13.2 An approach to minimise the impact of the requirements on small businesses (employing up to 50 people), is not appropriate as the aim is to make no substantive changes when ensuring operability of the Leghold Trap Regulation post-Exit.

14. Monitoring & review

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

15. Contact

15.1 Simon Liebert at the Department for Environment, Food and Rural Affairs, Tel: 020802 66898 or email: simon.liebert@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Richard Pullen at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Thérèse Coffey Minister at the Department for Environment, Food and Rural Affairs, can confirm that this Explanatory Memorandum meets the required standard.

Annex A

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 [relevant]	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 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 [relevant]	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 [relevant]	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 [relevant]	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 [relevant – but surely covered by the EM?]	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 [not relevant –	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9, and 23(1) or jointly exercising	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.

we don't create any criminal offences]		powers in Schedule 2 to create a criminal offence	
Sub-Delegation [not relevant, no sub-delegated powers in this instrument]	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 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 [not relevant]	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972 [not relevant]	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 [not relevant]	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 the Environment, Thérèse Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Leghold Trap and Pelt Imports (Amendment etc.) (EU Exit) Regulations 2018, should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the instrument makes only minor and technical amendments to the retained EU legislation to ensure that it remains operative following the withdrawal of the United Kingdom from the European Union (see paragraph 2.7).

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Leghold Trap and Pelt Imports (Amendment etc.) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because the regulations do no more than is required to ensure operability of Council Regulation (EEC) No 3254/91 and associated tertiary legislation following the withdrawal of the United Kingdom from the European Union (see paragraph 12.3).

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey, 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”.

- 3.2 These reasons are: It is UK policy to maintain the status quo and ensure the operability of retained direct EU law post Exit. These Regulations (together with a separate SI subject to the affirmative procedure) seek to achieve this without increasing regulatory burden (see paragraph 12.3).

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey, 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”.

4.2 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Thérèse Coffey 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”.

5. Explanations

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