

2019 No. 0000

EXITING THE EUROPEAN UNION

AGRICULTURE, ENGLAND AND WALES

FEES AND CHARGES

HEALTH AND SAFETY

PESTICIDES

The Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019

Sift requirements satisfied ***

Made - - - - ***

Laid before Parliament ***

Coming into force in accordance with regulation 1(2) to (4)

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The Secretary of State makes these Regulations in exercise of the powers conferred by—

- (a) in relation to Part 1, the powers mentioned in paragraphs (b) to (d);
- (b) in relation to Part 2, section 15(1) and (2) and (4)(b) of, and paragraph 2(1) of Schedule 3 to, the Health and Safety at Work etc. Act 1974(a);
- (c) in relation to Part 3, section 2(2) of the European Communities Act 1972(b) and section 56(1) of the Finance Act 1973(c);
- (d) in relation to Part 4, section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(d).

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union(e), measures in the

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- (a) 1974 c. 37. Section 15(1) was amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraph 6 and S.I. 2002/794. Section 15(2) was amended by the Energy Act 2013 (c. 32), Schedule 12, Part 1, paragraph 5(3).
 - (b) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), the Schedule, Part 1. It is prospectively repealed by the European Union (Withdrawal) Act 2018 (c. 16), section 1 from exit day (see section 20 of that Act). Under section 57(1) of the Scotland Act 1998 (c. 46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Scotland. Under paragraph 5 of Schedule 3 to the Government of Wales Act 2006 (c. 32), despite the transfer to the Welsh Ministers of functions in relation to implementing obligations under EU law in relation to devolved matters, the Secretary of State retains power to exercise such functions as regards Wales.
 - (c) 1973 c.51. Section 56(1) was amended by S.I. 2011/1043, and is prospectively amended by paragraph 17 of Part 2 of Schedule 8 to the European Union (Withdrawal) Act 2018 from a date to be appointed.
 - (d) 2018 c. 16.
 - (e) S.I. 1972/1811, which is prospectively revoked by S.I. 2018/1011 from exit day (see section 20 of the European Union (Withdrawal) Act 2018). Functions exercisable by the former Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly were transferred to the Secretary of State by S.I. 2002/794.

veterinary and phytosanitary fields for the protection of public health(a), and in relation to the environment(b).

In accordance with section 56(1) of the Finance Act 1973 the Treasury consents to the making of these Regulations.

In relation to Part 2, the Secretary of State has consulted in accordance with section 50(1AA) of the Health and Safety at Work etc. Act 1974(c).

The requirements of paragraph 3(2) of Schedule 7 to that Act (relating to the appropriate Parliamentary procedure for these regulations) have been satisfied.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019.

(2) This Part and Part 2 comes into force 21 days after the day on which these Regulations are laid.

(3) Part 3 come into force on 1st March 2019.

(4) Part 4 comes into force on exit day.

PART 2

Amendment of out of date references relating to ammonium nitrate material

The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003

2.—(1) The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003(d) are amended as follows.

(2) Regulation 2 is amended in accordance with paragraphs (3) and (4).

(3) In paragraph (2)—

(a) in the definition of “batch”—

(i) in paragraph (a), in the words before sub-paragraph (i)—

(aa) for “neither” substitute “not”;

(bb) omit “nor material which is or has been kept in accordance with regulation 7”;

(ii) in paragraph (b), omit the words from “and is not” to “regulation 7”;

(iii) omit paragraph (c);

(b) in the definition of “competent laboratory” omit paragraph (b);

(a) S.I. 1999/2027, which is prospectively revoked by S.I. 2018/1011 from exit day (see section 20 of the European Union (Withdrawal) Act 2018). Functions exercisable by the former Minister of Agriculture, Fisheries and Food and the Secretary of State acting jointly were transferred to the Secretary of State by S.I. 2002/794.

(b) S.I. 2008/301, which is prospectively revoked by S.I. 2018/1011 from exit day (see section 20 of the European Union (Withdrawal) Act 2018).

(c) Section 50(1AA) was inserted by S.I. 2008/960.

(d) S.I. 2003/1082, to which there are amendments not relevant to these Regulations.

- (c) in the definition of “production run” omit paragraph (b)(ii) (together with the preceding “or”).
- (4) Omit paragraph (3)(c) (together with the preceding “and”).
- (5) In regulation 4(2)(d)(ii), for the words from “for Environment” to the end substitute “, whether by post or by electronic means”.
- (6) In regulation 5—
 - (a) in paragraph (1), in the words before sub-paragraph (a) omit “7 and”;
 - (b) in paragraph (2), for the words from “for Environment” to “regulation 4(2)(d)” substitute “, whether by post or by electronic means”.
- (7) Omit regulation 7.
- (8) In regulation 9—
 - (a) in paragraph (3)(a) omit “subject to paragraph (4)”;
 - (b) omit paragraph (4).
- (9) In regulation 10(5), for the words from “earlier of” to the end substitute “date at which the exempting certificate is issued”.
- (10) In Schedule 3, in sub-paragraph (n), for “(2002 edition)” substitute “as revised or re-issued from time to time”.

PART 3

Transfer of pesticide functions to Welsh Ministers

Amendment of the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008

3.—(1) The Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008(a) are amended as follows.

(2) For regulations 4 and 5 substitute—

“Designated national authority

4. The designated national authority for the purposes of Article 38 of Regulation 396/2005 is—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers.

Functions of the member State

5. The functions of the member State in Regulation 396/2005 are to be performed by—

- (a) the Secretary of State, in relation to England;
- (b) the Welsh Ministers, in relation to Wales.”.

Transitional provision: the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008

4.—(1) For the purposes of the 2008 Regulations, anything done before the coming into force of this Part by the Secretary of State under the 2008 Regulations or, in relation to Regulation

(a) S.I. 2008/2570, amended by S.I. 2011/2131.

396/2005, as designated national authority, in relation to Wales is deemed to have been done by the Welsh Ministers.

(2) For the purposes of the 2008 Regulations, anything done before the coming into force of this Part by the Secretary of State in the performance of a function of the member State in Regulation 396/2005 in relation to Wales is deemed to have been done by the Welsh Ministers.

(3) In paragraph (1), “designated national authority” has the same meaning as in regulation 4 of the 2008 Regulations.

(4) In this regulation—

“the 2008 Regulations” means the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008;

“Regulation 396/2005” has the meaning given in regulation 2(1) of the 2008 Regulations.

Amendment of the Plant Protection Products Regulations 2011

5.—(1) The Plant Protection Products Regulations 2011(a) are amended as follows.

(2) In regulation 1(7), omit “and Wales”.

(3) In regulation 3—

(a) in paragraph (a), omit “and Wales” (and the final “and”);

(b) after paragraph (a) insert—

“(aa) in relation to Wales, the Welsh Ministers; and”.

(4) In regulation 5—

(a) in paragraph (1), omit “and Wales”;

(b) after paragraph (1) insert—

“(1A) Where the Welsh Ministers reasonably consider that treated seeds are likely to constitute a serious risk to human or animal health or to the environment, they may issue a notice in writing restricting or prohibiting their sale or use, or both, in relation to Wales.”;

(c) in paragraph (3), in the words before sub-paragraph (a), after “paragraph (1)” insert “, (1A)”.

(5) In regulations 15(2) and 20(4), after “Secretary of State” insert “, the Welsh Ministers”.

(6) In regulation 21—

(a) in paragraph (1)(a), after “regulation 5(1)” insert “, (1A)”;

(b) in paragraphs (2) and (3), after “Secretary of State” insert “, the Welsh Ministers”.

(7) In regulation 28—

(a) in paragraphs 1 and 2, after “Scottish Ministers” in each place it occurs insert “or Welsh Ministers”;

(b) in paragraph 3, after “Scottish Ministers” insert “or Welsh Ministers, as the case may be,”.

(8) In Schedule 2—

(a) in paragraph 1—

(i) omit “and Wales”;

(ii) omit “and Welsh” in each place it occurs;

(b) after paragraph 1 insert—

“**1A.** An adjuvant is authorised for use with an authorised plant protection product in Wales if it is included in a list of adjuvants published by the Welsh Ministers from time to time (in this paragraph referred to as “the Welsh list”) or, if not included in the Welsh list, if

(a) S.I. 2011/2131, amended by S.I. 2012/1657 and 2018/942.

it is used with an authorised plant protection product for the sole purpose of research and development. A person may apply to the Welsh Ministers for an adjuvant to be included on the Welsh list.”;

- (c) in paragraphs 3, 4, 5 and 6, after “Secretary of State” in each place it occurs insert “, the Welsh Ministers”.

Transitional provision: transfer of competent authority status in relation to Wales

6.—(1) For the purposes of the 2011 Regulations, anything done before the coming into force of this Part by the Secretary of State under the 2011 Regulations or in relation to Regulation 1107/2009 as competent authority in relation to Wales is deemed to have been done by the Welsh Ministers.

(2) A notice issued by the Secretary of State under regulation 5(1) of the 2011 Regulations before the coming into force of this Part in relation to Wales is deemed to have been issued by the Welsh Ministers under regulation 5(1A) of the 2011 Regulations (as inserted by regulation 5(4)(b)).

(3) A direction issued by the Secretary of State under regulation 15(2) of the 2011 Regulations before the coming into force of this Part in relation to Wales is deemed to have been issued by the Welsh Ministers under that regulation (as amended by regulation 5(5)).

(4) An adjuvant which immediately before the coming into force of this Part is included on the English and Welsh list published by the Secretary of State in relation to Wales is deemed to be included in the Welsh list.

(5) In paragraph (1), “competent authority” has the same meaning as in regulation 3 of the 2011 Regulations.

(6) In paragraph (4)—

“the English and Welsh list” has the meaning given by paragraph 1 of Schedule 2 to the 2011 Regulations as it had effect immediately before the coming into force of this Part;

“the Welsh list” has the meaning given by paragraph 1A of Schedule 2 to the 2011 Regulations (as inserted by regulation 5(8)(b)).

(7) In this regulation—

“the 2011 Regulations” means the Plant Protection Products Regulations 2011;

“Regulation 1107/2009” has the meaning given in regulation 2(1) of the 2011 Regulations.

Amendment of the Plant Protection Products (Fees and Charges) Regulations 2011

7.—(1) The Plant Protection Products (Fees and Charges) Regulations 2011(a) are amended as follows.

(2) In regulation 2(1), for the definition of “United Kingdom competent authorities” substitute—

““United Kingdom competent authorities” means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers;

(c) in relation to Scotland, the Scottish Ministers;

(d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.”.

(3) In regulation 8—

(a) in sub-paragraph (3), in the second sentence, for “The” substitute “Except where paragraphs (3A) to (3C) apply, the”;

(b) after sub-paragraph (3) insert—

(a) S.I. 2011/2132, to which there are amendments not relevant to these Regulations.

“(3A) For a charge payable to the Welsh Ministers as United Kingdom competent authority in respect of the liability period ending 31st March 2019, the percentage referred to in sub-paragraph (3) must be calculated by applying the following formula—

$A/B \times (31/365) \times 100\% = \text{the percentage}$

where A and B have the meanings given in sub-paragraph (3).

(3B) Sub-paragraph (3C) applies where, for the liability period ending 31st March 2019, an authorisation holder is liable to pay a charge to both the Secretary of State and the Welsh Ministers as United Kingdom competent authorities in relation to Wales.

(3C) Where this sub-paragraph applies—

- (a) for the charge payable to the Welsh Ministers, the percentage referred to in sub-paragraph (3) must be calculated by applying the formula set out in sub-paragraph (3A);
- (b) for the charge payable to the Secretary of State, the percentage referred to in sub-paragraph (3) must be calculated by applying the following formula—

$A/B \times (334/365) \times 100\% = \text{the percentage}$

where A and B have the meanings given in sub-paragraph (3).”.

Saving for work carried out by the Secretary of State as United Kingdom competent authority in relation to Wales

8. The amendment made by regulation 7(2) does not prevent the Secretary of State from charging fees in accordance with regulation 4 of the Plant Protection Products (Fees and Charges) Regulations 2011 for any work carried out before the coming into force of this Part by the Secretary of State as the United Kingdom competent authority in relation to Wales.

Amendment of the Plant Protection Products (Sustainable Use) Regulations 2012

9.—(1) The Plant Protection Products (Sustainable Use) Regulations 2012(a) are amended as follows.

(2) In regulation 2(1), in the definition of “the appropriate United Kingdom competent authority”—

- (a) in sub-paragraph (a), omit “and Wales”;
- (b) after sub-paragraph (a), insert—
“(aa) in relation to Wales, the Welsh Ministers;”.

(3) In regulation 3(2), omit “and Wales”.

(4) In regulation 4, omit “Secretary of State, the Scottish”.

(5) In regulation 29—

- (a) in paragraphs 1 and 2, after “Scottish Ministers” in each place it occurs insert “or Welsh Ministers”;
- (b) in paragraph 3, after “Scottish Ministers” insert “or Welsh Ministers, as the case may be,”.

(a) S.I. 2012/1657, amended by S.I. 2018/942; there are other amending instruments but none is relevant.

Transitional provision: transfer of competent authority status in relation to Wales

10.—(1) For the purposes of the 2012 Regulations, anything done before the coming into force of this Part by the Secretary of State under the 2012 Regulations or in relation to the Directive as appropriate United Kingdom competent authority in relation to Wales is deemed to have been done by the Welsh Ministers.

(2) In this regulation—

“the 2012 Regulations” means the Plant Protection Products (Sustainable Use) Regulations 2012;

“the Directive” has the same meaning as in regulation 2(1) of the 2012 Regulations.

PART 4

Amendment of secondary legislation in preparation for the United Kingdom’s withdrawal from the European Union

The Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008

11. Omit regulations 4 and 5 of the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008.

The Plant Protection Products Regulations 2011

12.—(1) The Plant Protection Products Regulations 2011 are amended as follows.

(2) In regulation 2(1), in the definition of “Regulation 1107/2009”, for “Articles 30(3) and 52(4) and Annexes I to V” substitute “Annexes 2 and 4”.

(3) Omit regulations 3, 4 and 14(2).

(4) In regulation 17(c), at the end insert “as it had effect immediately before 14th June 2011”.

(5) In regulation 20—

(a) in paragraph (2)—

(i) in sub-paragraph (b), after “Article 40(1)” insert “as it had effect immediately before exit day”;

(ii) in sub-paragraph (c), after “Article 40(2)” insert “as it had effect immediately before exit day”;

(iii) in sub-paragraph (e), omit “52(1) or”;

(b) in paragraph (5), omit “52(1) or”.

(6) In regulation 30(1), after “Article 80(5)” insert “as it had effect immediately before exit day”.

Saving: the Plant Protection Products Regulations 2011

13.—(1) The amendments to regulation 20(2)(e) and (5) of the Plant Protection Products Regulations 2011 made by regulation 12(5)(a)(iii) and 12(5)(b) do not affect—

(a) any obligation or liability acquired, accrued or incurred immediately before exit day;

(b) any penalty, forfeiture or punishment incurred in respect of any offence committed before exit day; or

(c) any investigation, legal proceeding or remedy in respect of (a) or (b) above.

(2) Any penalty, forfeiture or punishment referred to in paragraph (1)(b) may be imposed as if regulation 12(5)(a)(iii) and 12(5)(b) had not come into force.

(3) Any investigation, legal proceeding or remedy referred to in paragraph (1)(c) may be instituted, continued or enforced as if regulation 12(5)(a)(iii) and 12(5)(b) had not come into force.

The Plant Protection Products (Sustainable Use) Regulations 2012

14.—(1) The Plant Protection Products (Sustainable Use) Regulations 2012 are amended as follows.

(2) In regulation 2(1), in the definition of “the Directive”, after “Council” in the second place it appears insert “, as read in accordance with Schedule A1”.

(3) In regulation 9(4), for “European Union legislation” substitute “retained EU law”.

(4) In regulation 10—

(a) in paragraph (2)(c), for the words from “other areas” to the end substitute “a European site or European marine site within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2017(a)”;

(b) in paragraphs (3) and (4)(b), for “dangerous for” substitute “hazardous to”.

(5) In regulation 15(6)(b), omit “or European Union law”.

(6) Before Schedule 1, insert new Schedule A1 which is set out in the Schedule to these Regulations.

Date
We consent

Name
Parliamentary Under Secretary of State
Department of the Environment, Food and Rural Affairs

Date

Name
Name
Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE

Regulation 14(6)

New Schedule A1 to the Plant Protection Products (Sustainable Use) Regulations 2012

“SCHEDULE A1

Regulation 2(1)

Modification of the Directive

1. For the purposes of these Regulations, the Directive is to be read as follows.
2. A reference in the Directive to “Member States”—
 - (a) in Article 4, is to be read as a reference to the Ministers and the Department;
 - (b) except in Article 8(6), is otherwise to be read as a reference to the appropriate United Kingdom competent authority.
3. Article 3 is to be read as if in paragraph 10(b), for the words from “Directive 98/8/EC” to the end there were substituted “Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products”.
4. Article 4 is to be read as if—

(a) S.I. 2017/1012.

- (a) in paragraph 1, in the fifth subparagraph, for the words from “Community” to the end substitute “retained EU law on the use of pesticides”;
- (b) in paragraph 2—
 - (i) the first subparagraph were omitted;
 - (ii) in the second subparagraph, the words from “and any substantial” to the end were omitted;
- (c) paragraphs 3 and 4 were omitted;
- (d) in paragraph 5, the reference to Article 2 of Directive 2003/35/EC were a reference to that Article read in accordance with paragraph 16.

5. Article 5 is to be read as if paragraph 3 were omitted.

6. Article 6 is to be read as if—

- (a) in paragraph 1, in the third sentence, for the words from “as toxic” to the end there were substituted “for acute toxicity, carcinogenicity, germ cell mutagenicity, or reproductive toxicity pursuant to Regulation 1272/2008”;
- (b) in paragraph 3, for “Community legislation” there were substituted “retained EU law”.

7. Article 7 is to be read as if paragraph 3 were omitted.

8. Article 8 is to be read as if—

- (a) in paragraph 4, the second subparagraph were omitted;
- (b) in paragraph 6—
 - (i) in the first subparagraph—
 - (aa) for “Member States” there were substituted “The appropriate United Kingdom competent authority”;
 - (bb) “and inform the Commission thereof” were omitted;
 - (ii) in the second subparagraph—
 - (aa) for “Member State” in the first place it occurs there were substituted “appropriate United Kingdom competent authority”;
 - (bb) for “in other” there were substituted “by the other appropriate United Kingdom competent authorities or”;
 - (cc) for “in another” there were substituted “by another appropriate United Kingdom competent authority or by a”;
 - (iii) in the third subparagraph—
 - (aa) for “Member States” in the first place it occurs there were substituted “The appropriate United Kingdom competent authority”;
 - (bb) for “in other” there were substituted “by other appropriate United Kingdom competent authorities or”;
- (c) paragraph 7 were omitted.

9. Article 9 is to be read as if—

- (a) in paragraph 2(b), for “Member State” there were substituted “appropriate United Kingdom competent authority”;
- (b) in paragraph 3, in the first subparagraph, for “shall designate the authorities competent for establishing” there were substituted “must establish”;
- (c) in paragraph 6, “or Community” were omitted.

10. Article 11(2)(a) is to be read as if—

- (a) for “dangerous for the aquatic environment pursuant to Directive 1999/45/EC” there were substituted “hazardous to the aquatic environment pursuant to Regulation 1272/2008”;
 - (b) for “Article 16(3) of” there were substituted “Annex 10 to”.
- 11.** Article 12 is to be read as if for point (b) there were substituted—
“(b) the areas described in regulation 10(2)(c) of the Plant Protection Products (Sustainable Use) Regulations 2012;”.
- 12.** Article 13 is to be read as if in paragraph 1(e), for “Community legislation” there were substituted “retained EU law”.
- 13.** Article 14 is to be read as if—
- (a) paragraph 3 were omitted;
 - (b) in paragraph 4, the second subparagraph were omitted.
- 14.** Article 15 is to be read as if—
- (a) in paragraph 1—
 - (i) in the first subparagraph—
 - (aa) in the first sentence, “Harmonised” were omitted;
 - (bb) in the second sentence, for “harmonised ones” there were substituted “risk indicators in Annex IV”;
 - (ii) the second subparagraph were omitted;
 - (b) in paragraph 2, in point (a)—
 - (i) “harmonised” were omitted;
 - (ii) for “the Community legislation concerning statistics on plant protection products” there were substituted “Article 67(3) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council”;
 - (c) for paragraph 3 there were substituted—
“3. The appropriate United Kingdom competent authority must make available the results of the evaluations carried out pursuant to paragraph 2 to the public.”;
 - (d) paragraph 4 were omitted.
- 15.** Annex 1 is to be read as if, in paragraph 7 for “relieves” there were substituted “topography”.
- 16.** For the purposes of paragraph 4(d), Article 2 of Directive 2003/35/EC is to be read as if—
- (a) a reference to Member States were a reference to the Ministers and the Department;
 - (b) paragraph 5 were omitted.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to subordinate legislation in the field of pesticides and, in particular, amend legislation relating to plant protection products, the maximum residue levels of pesticides, the sustainable use of pesticides, and associated legislation relating to fees and charges. These Regulations also makes amendments to subordinate legislation in the field of fertilisers that is out of date.

Part 2 amends the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 (S.I. 2003/1082) to remove various out of date and spent references.

Part 3 makes amendments to subordinate legislation to transfer the following functions from the Secretary of State to the Welsh Ministers in relation to Wales—

- (a) the function of competent authority under Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ No L 309, 24.11.2009, p 1);
- (b) the function of designated national authority, and the functions of the member State, under Regulation (EC) No 396/2005 of the European Parliament and of the Council on maximum residue levels of pesticides in or on food and feed of plant and animal origin (OJ No L 70, 16.3.2005, p 1);
- (c) the functions of a United Kingdom competent authority in relation to Directive 2009/128/EC of the European Parliament and of the Council establishing a framework for Community action to achieve the sustainable use of pesticides (OJ No L 309, 24.11.2009, p 71), under the Plant Protection Products (Sustainable Use) Regulations 2012 (S.I. 2012/1657).

Part 4 is made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a), (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.