EXPLANATORY MEMORANDUM TO

THE animal health, PLANT HEALTH, SEEDs AND food (AMENDMENT) (nORTHERN IRELAND) (eu EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

This memorandum contains information for the Sifting Committees.

1. Purpose of the instrument

This instrument uses powers under section 8 of the European Union (Withdrawal) Act 2018 (“the Act”) to make a number of minor, technical amendments to Northern Ireland EU derived legislation, which were not able to be included in earlier European Union (“EU”) exit SIs to ensure that all deficiencies, arising from the withdrawal of the United Kingdom (“UK”) from the European Union, have been addressed. It covers a number of policy areas: animal health, plant health, the marketing of seed and propagating material and seed potatoes.

Explanations

What did any relevant EU law do before exit day?

Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU (“the Plant Health Directive”) establishes the EU plant health regime. Whilst protecting against plant health risks, the Plant Health Directive also provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material. The Plant Health Directive is implemented in Northern Ireland by the Plant Health (Northern Ireland) Order 2018 (S.R. 2018 No. 184). The Order sets out obligations for the control and management of plant health risks arising from the import from third countries and movement within the EU single market of plant material, in order to protect biosecurity and the value of plant material to the economy and society. Similar, but separate, legislation operates in Scotland, Wales and England.

Council Directive 2002/56/EC, Council Directive 2002/55/EC, Council Directive 2008/90/EC, Council Directive 1998/56/EC and Council Directive 1999/105 prescribe marketing standards for seed potatoes, vegetable seed, fruit propagating materials, ornamental plant materials and forest reproductive material, respectively to ensure minimum quality standards and traceability for marketed seed and propagating material. These Directives are transposed by the domestic regulations, the Seed Potatoes Regulations (Northern Ireland) 2016, the Seed Marketing Regulations (Northern Ireland) 2016, the Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017, the Marketing of Ornamental Plant Propagating Material Regulations (Northern Ireland) 1999 and the Forest Reproductive Material Regulations (Northern Ireland) 2002 respectively, which are being amended by this instrument.

Regulation (EC) No 2160/2003 on the control of salmonella and other specified food-borne zoonotic agents, provides for the protection of human health against diseases and infections transmissible directly or indirectly between animals and humans. The Department of Agriculture, Environment and Rural Affairs is the competent authority in Northern Ireland for the purpose of regulation (EC) No 2160/2003.

The Beef and Veal Labelling Regulations (Northern Ireland) 2010 provide rules for the provision of information for non-pre-packaged meat of bovine animals aged 12 months or less at the point of sale, and establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products. They provide for the enforcement of Regulation (EC) No 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products; Commission Regulation (EC) No 1825/2000 laying down detailed rules for the application of Regulation (EC) No 1760/2000 of the European Parliament and of the Council as regards the labelling of beef and beef products and Commission Regulation (EC) No 566/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less.

Why is it being changed?

After EU exit, without amendment, the EU derived Northern Ireland legislation would not operate properly and would disrupt the trade in plants, seed, propagating material, seed potatoes and forest reproductive material. Changes must be made to maintain the current, high standards in Northern Ireland law and provide continuity to the various industrial sectors through security of supply to plant, seed, propagating material, seed potatoes and forest reproductive material.

This SI facilitates trade with the Crown Dependencies. The Crown Dependencies are currently treated as part of the United Kingdom for the purposes of EU plant health legislation and therefore plants and plant products move between the Crown Dependencies, the UK and the rest of the EU under the same EU plant health rules. Following recent discussions with the Crown Dependencies, it has been agreed that the Crown Dependencies will adopt similar controls as the United Kingdom to facilitate the trade in plants and plant products to the UK and vice versa. The changes made to the Plant Health Regulations give effect to these arrangements.

This SI also ensures that domestic Northern Ireland legislation relating to the control of Zoonotic diseases – the Control of Salmonella in Poultry Scheme Order (Northern Ireland) 2008, the Control of Salmonella in Broiler Flocks Scheme Order (Northern Ireland) 2009 and the Control of Salmonella in Turkey Flocks Scheme Order (Northern Ireland) 2010, will remain operable after the UK has left the EU.

The SI amends the Beef and Veal Labelling Regulations (Northern Ireland) 2010 to reflect that the UK will no longer be a Member State. The amendments reflect changes that have been made to the EU retained legislation to make it operable after exit day.

What will it now do?

This instrument ensures that, in the fields of animal health, plant health, and the marketing of seed and seed potatoes, ornamental plant propagating material, forest reproductive material and fruit propagating material, derived EU Northern Ireland legislation will remain operable after the UK has left the EU.

This instrument also amends the Seed Potatoes Regulations (Northern Ireland) 2016 by providing for a one-year interim period (which covers two growing seasons) during which time EU seed will continue to be recognised for production and marketing in Northern Ireland to ensure continuity in supplies of seed potatoes.

The instrument amends the Beef and Veal Labelling Regulations (Northern Ireland) 2010 to address references to EU law and EU Commission processes, making drafting amendments to reflect that the UK will no longer be a Member State and including transitional arrangements for beef and veal labelling for immediately after exit day.

1. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

This instrument is being laid for sifting by the Sifting Committees.

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)

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.

1. Extent and Territorial Application

The territorial extent of this instrument is Northern Ireland only.

The territorial application of this instrument is Northern Ireland only.

1. European Convention on Human Rights

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

1. Legislative Context

This instrument makes amendments to Northern Ireland domestic legislation implementing certain EU Directives and to EU Exit legislation, to ensure that, in the fields of animal health, plant health, and the marketing of seed potatoes, seed and propagating material, forest reproductive material and fruit propagating material and the labelling of beef and veal, EU derived legislation remain operable and function appropriately after the UK has left the EU.

The amendments will also provide for a one-year interim period (which covers two growing seasons) during which time EU seed potatoes will continue to be recognised for production and marketing in Northern Ireland to ensure continuity in supplies of seed potatoes.

In addition to this instrument the Department has introduced other instruments as part of the exit process, which interact with the legislation amended by this instrument. These instruments are covered in separate Explanatory Memoranda.

1. Policy background

What is being done and why?

This instrument is being made in order to maintain the effectiveness and continuity of EU derived Northern Ireland legislation that would otherwise be left partially inoperable and unable to function legally following the withdrawal of the UK from the EU.

This instrument makes only amendments which are legally necessary to achieve its objectives. It represents no changes of policy, nor will it produce any impact on businesses or the public.

This instrument applies to the fields of animal health, plant health, and the marketing of seed potatoes, seed and propagating material, forest reproductive material and fruit propagating material and the labelling of beef and veal, which are transferred matters for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for EU exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland for exit day in the absence of a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for EU exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument

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

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.

1. Consolidation

This instrument is not consolidating any provisions.

1. Consultation outcome

This instrument was not subject to consultation.

This instrument was and the policy reflected in it has been developed in collaboration with Devolved Administration officials.

1. Guidance

None.

1. Impact

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

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

An Impact Assessment has not been prepared for this instrument because the proposed amendments are minor and technical in nature, relating to the maintenance of existing regulatory standards and will have no, or no significant, impact on the private, voluntary or public sector.

In a scenario where an agreement with the EU is not reached, it will no longer be possible to export seed potatoes to the EU. This change is a result of EU exit, not because of changes made by this instrument.

1. Regulating small business

The legislation applies to activities that are undertaken by small businesses.

To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to accept the marketing of EU seed potatoes for one year following exit, thereby ensuring continuity of supply. This instrument maintains the status quo and therefore does not introduce new duties or burdens on businesses.

1. Monitoring & review

The approach to monitoring of this legislation is that the Department of Agriculture, Environment and Rural Affairs, in Northern Ireland, will monitor and review the impact of the instrument as part of its standard policy-making procedures and will ensure the provisions are adhered to.

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

1. Contact

Diane Stevenson at the Department of Agriculture, Environment and Rural Affairs Telephone: 028 6634 5583 or email: diane.stevenson@daera-ni.gov.uk can be contacted with any queries regarding the instrument.

John Joe O’Boyle, Director for Plant Health, at the Department of Agriculture, Environment and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity 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

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

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| 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/Sifting Committees |
| 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 2In 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)

Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Animal Health, Plant Health, Seeds and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 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: the contents of the instrument are not of such significance that Parliament would expect to debate it. The amendments address deficiencies arising from the withdrawal of the United Kingdom from the European Union.to ensure that Northern Ireland EU derived legislation continues to operate effectively. The amendments do not implement any new policies and are not significant in that they maintain current regulatory standards.

1. Appropriateness statement

Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Animal Health, Plant Health, Seeds and Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate”.

This is the case because: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards.

1. Good reasons

Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity 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”.

These are: the amendments to Northern Ireland domestic legislation are the minimum required to make the legislation operable. They maintain current regulatory standards and ensure the continued supply of EU seed potatoes for a time-limited one year transitional period, providing continuity to the sector and security of supply for farmers.

1. Equalities

Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity 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”.

Lord Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity 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 Gardiner of Kimble, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, 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.”].

1. Explanations

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