

EXPLANATORY MEMORANDUM TO
THE OFFICIAL CONTROLS, PLANT HEALTH, SEEDS AND SEED POTATOES
(AMENDMENT ETC.) REGULATIONS 2021

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 Act.
- 1.2 This Memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to correct deficiencies in retained EU law to ensure that plant health controls operate effectively to protect biosecurity and support trade between Great Britain (“GB”) and the relevant third countries.
- 2.2 Regulation (EU) 2016/2031 (“the Plant Health Regulation”) and Regulation (EU) 2017/625 (“the Official Controls Regulation”), (together “the EU Regulations”), respectively establish protective measures against pests of plants, and provide for the conduct of official controls and other official activities to ensure the proper application of rules on plant health and plant protection products. The EU Regulations, and the additional EU legislation made under them, have been incorporated into domestic law (“retained EU law”) using powers under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”). This instrument addresses the remaining deficiencies of that retained EU law, and makes a small number of corrections to an earlier instrument (S.I. 2019/809) and to secondary legislation on the marketing of vegetable seed and seed potatoes, that have arisen as a result of the withdrawal of the UK from the European Union and the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement (“the NI Protocol”). It also corrects an error in an earlier instrument relating to official controls (S.I. 2021/136), in respect of the importation of ware potatoes from Portugal, Poland, Romania and Spain.
- 2.3 In addition, this instrument modifies Commission Implementing Regulation (EU) 2019/66 (“Implementing Regulation 2019/66”) to introduce frequency rates of plant health checks on regulated plants, plant products and other objects imported into GB from the European Union, Switzerland and Liechtenstein. This will apply to plants, plant products and other objects deemed as a higher risk to GB biosecurity.

Explanations

What did any relevant EU law do before exit day?

- 2.4 The EU Regulations form part of the EU Smarter Rules for Safer Food package of regulations. This package was designed to modernise, simplify and improve existing health and safety standards for the agri-food chain, taking a risk-based approach to animal, plant and public health protection and introducing more efficient pest and disease control measures. Additional tertiary legislation, such as the Commission Implementing Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”), established uniform conditions for the Plant Health Regulation, while

Implementing Regulation 2019/66 established uniform arrangements for the performance of official controls on plants, plant products and other objects.

- 2.5 Before the end of the Transition Period, the EU Regulations were directly applicable to UK law, so no national implementing legislation was needed for them to take effect. However, supplementary domestic provisions were introduced by the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) (“the 2019 Regulations”) to enable competent authorities in England to carry out their obligations under, and enforce, the EU Regulations and implement various derogations in the EU Regulations. Separate but parallel domestic legislation to the 2019 Regulations was introduced in Wales, Northern Ireland, and Scotland.
- 2.6 Council Directive 2002/55/EC and Council Directive 2002/56/EC prescribe marketing standards for vegetable seed and seed potatoes respectively to ensure minimum quality standards and traceability. These Directives are transposed by domestic regulations, the Seed Marketing Regulations 2011 (S.I. 2011/436) and the Seed Potatoes (England) Regulations 2015 (S.I. 2015/1953), being amended by this instrument.

Why is it being changed?

- 2.7 The EU Regulations, and tertiary legislation made under them, were amended in relation to GB by the Plant Health (Amendment etc.) (EU Exit) Regulation 2020 (S.I. 2020/1482), the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1527), and the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481) (together “the 2020 Regulations”) to deal with a range of deficiencies in the legislation arising from the withdrawal of the UK from the European Union. This instrument corrects any deficiencies that had not been fully mitigated in the above amendments. This instrument also amends EU decisions, in relation to GB, that had been introduced after the drafting for the 2020 Regulations was finalised.
- 2.8 Implementing Regulation 2019/66, which is retained EU law, is being modified in order to set out the frequency rates of physical checks and identity checks on certain regulated plants, plant products and other objects imported into GB from EU member states, Switzerland and Liechtenstein, based on the risk each poses. These frequency rates of checks have already been applied from 1 January 2021. To ensure consistency with these checks, the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021 (S.I. 2021/136) are also amended to correct a provision relating to the importation of ware potatoes from Portugal, Poland, Romania, which are subject to checks.
- 2.9 Legislation relating to vegetable seed and seed potatoes were amended by the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/809) and the Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1388) to remedy deficiencies arising as a result of the UK’s withdrawal from the European Union, the latter instrument following the Withdrawal Agreement and the NI Protocol. A small number of corrections are being made in this instrument as a result of these provisions.

What will it now do?

- 2.10 The operability amendments made by this instrument to the retained EU law relating to plant health will ensure the continued functioning of plant health controls within GB, and between relevant third countries and GB.
- 2.11 This instrument makes corrections to the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/809) to remove a coming into force provision which provided for a transitional measure in the Seed Potatoes (England) Regulations 2015 (S.I. 2015/1953) that is no longer necessary due to the Withdrawal Agreement plus consequential amendments to those regulations. It also makes operability amendments to implement the NI Protocol such as replacing references to UK grade of seed potatoes with GB.
- 2.12 This instrument also amends the Seed Marketing Regulations 2011 (S.I. 2011/463) so that an authorisation to market unlisted varieties of vegetable seed may only be requested by the person who has submitted an application for entry of the varieties concerned on to the GB variety list or the NI variety list.
- 2.13 The modifications to Implementing Regulation 2019/66 will enable the plants, plant products and other objects which pose the highest risk to GB biosecurity to be subject to physical checks and identity checks at the appropriate frequency rate. They will apply for a limited period of time, as explained in section 6.4.
- 2.14 The correction to the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021 (S.I. 2021/136) will ensure that the importation into GB of ware potatoes from Poland, Portugal, Romania and Spain are subject to official controls.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

- 3.1 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)

- 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 and application of this instrument is England and Wales, and Scotland, apart from Part 3.
- 4.2 In relation to Part 3, regulations 6 and 7 extend to England and Wales but apply to England only, regulation 8 extends to the United Kingdom but apply to England.

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 Withdrawal Act converted and preserved directly applicable EU law at the end of the Transition Period into domestic law, as retained EU law. If retained EU law relating to plant health, was not amended to correct any deficiencies, it would prevent the UK Government and the Devolved Administrations from being able to deliver workable legislation and enforcement on plant health. This instrument uses the powers in section 8 of the Withdrawal Act to correct deficiencies that were outstanding between the finalised drafting of the 2020 Regulations, and the end of the Transition Period.
- 6.2 Part 1 of this instrument amends the Plant Health Regulation and the Phytosanitary Conditions Regulation to correct operability deficiencies that were not accounted for in previous amendments. Part 2 makes amendments to retained EU law relating to plant health not previously amended by the 2020 Regulations. Part 3 amends an earlier exit SI and domestic legislation relating to the marketing of vegetable seed and seed potatoes. Part 4 revokes retained EU law relating to plant health.
- 6.3 Part 5 of this instrument corrects secondary legislation, relating to the application of temporary derogations and modifications in Article 168 of, and Annex 6 to, the Official Controls Regulation, to ensure that the importation of ware potatoes from certain countries are subject to official controls.
- 6.4 Part 6 of this instrument introduces frequency rates of physical and identity checks on high risk regulated plants, plant products and other objects by modifying Implementing Regulation 2019/66. Those modifications apply for the purpose of specifying the appropriate frequency rate of high risk plants, plant products and other objects during the transitional staging period, as specified in Article 168 of, and Annex 6 to, the Official Controls Regulation. The modifications being made to those Regulations will therefore apply for a limited period of time, until the end of the transitional period.
- 6.5 The fees applicable to physical checks and identity checks of the plants, plant products and other objects to which Part 6 of the instrument relates are set out in the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 (S.I. 2015/350) and the Plant Health etc. (Fees) (England) Regulations 2018 (S.I. 2018/289).

7. Policy background

What is being done and why?

- 7.1 All the amendments introduced by this instrument are technical operability amendments and do not include any policy changes. The purpose of this instrument is to protect biosecurity and support trade between GB and the relevant third countries. By removing deficiencies that have arisen in the legislation, phytosanitary controls will continue to effectively operate within GB and between GB and the relevant third countries.
- 7.2 Under the Official Controls Regulation, plant health checks (documentary, identity and physical checks) are carried out on regulated consignments imported into GB from all third countries. The high risk plants, plant products and other objects are subject to 100% documentary, identity and physical checks. The level of identity and physical checks on other plants, plant products and other objects is based on risk.

- 7.3 Under the agreed phased approach, from 1 January 2021, documentary, identity and physical checks are being carried out on consignments of high risk plants, plant products and other objects imported from EU member states, Switzerland and Liechtenstein. Documentary checks on other regulated plants, plant products and other objects will commence on 1 April 2021; with identity and physical checks applied from 1 July 2021.
- 7.4 This instrument also makes amendments for the purpose of implementing aspects of the NI Protocol, which forms part of the Withdrawal Agreement and makes a small number of corrections to legislation relating to the marketing vegetable seed and seed potatoes as described in section 2.11 and 2.12.

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 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.

9. Consolidation

- 9.1 Not applicable to this instrument.

10. Consultation outcome

- 10.1 Defra have carried out numerous informal engagements with GB-wide stakeholders, such as the Fresh Produce Consortium and the Horticultural Trade Association, from Summer 2020 to January 2021, including four feasibility testing sessions and a plant imports webinar where the different frequency of checks dependent on biosecurity risk were explained. However, a formal consultation 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 The affected stakeholders will be informed of the changes. Information on the phased import regime has been placed on Gov.uk, including the full list of high risk plants, plant products and other objects. The frequency of these checks will be published on Gov.uk.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies as a result of policy changes introduced under this instrument.
- 12.2 There is no significant impact on the public sector as a result of policy changes introduced under this instrument.
- 12.3 Therefore, an impact assessment has not been completed as there are no significant impacts as result of the amendments detailed within this instrument.

13. Regulating small business

- 13.1 This instrument 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 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 the Department for Environment, Food and Rural Affairs, 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 the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner, 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.

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
Appropriateness	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, a 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 EUWASIs	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	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 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:

In my view The Official Controls, Plant Health, Seeds, and Seed Potatoes (Amendment etc.) Regulations 2021 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 amendments in this instrument correct outstanding technical deficiencies that arise from the UK’s withdrawal from the EU that reflect the current government policy and ensure that the existing regimes for safeguarding GB plant health and biosecurity will continue to operate effectively. They do not make policy changes.

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:

“In my view The Official Controls, Plant Health, Seeds, and Seed Potatoes (Amendment etc.) Regulations 2021 do no more than is appropriate”.

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

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:

“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 are that GB biosecurity must be protected through operable legislation which is amended to reflect the current policy objective to ensure that high risk plants, plant products and other objects arriving from the EU, Switzerland and Liechtenstein are checked in a risk-based manner.

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):

“This 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 this 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.”.

5. Explanations

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