

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 15 July 2019

Meeting time: 14.30

For further information contact:

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- 1 Introduction, apologies, substitutions and declarations of interest**
14.30
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**
14.30–14.35 (Pages 1 – 4)
CLA(5)–23–19 – Paper 1 – Statutory instruments with clear reports
Negative Resolution Instruments
 - 2.1 SL(5)429 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019**
 - 2.2 SL(5)431 – The M4 Motorway (Junction 40 (Tai Bach) to Junction 42 (Earlswood), Neath Port Talbot) (50mph Speed Limit) Regulations 2019**
- 3 Written statements under Standing Order 30C**
14.35–14.40
 - 3.1 WS–30C(5)138 – The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019**
(Pages 5 – 10)
CLA(5)–23–19 – Paper 2 – Statement
CLA(5)–23–19 – Paper 3 – Commentary
- 4 Statutory instruments requiring consent: Brexit**
14.40–14.45



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

4.1 SICM(5)24 – The Animal Health, Invasive Alien Species, Plant Breeders’ Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019

(Pages 11 – 40)

CLA(5)–23–19 – Paper 4 – Statutory Instrument Consent Memorandum

CLA(5)–23–19 – Paper 5 – Regulations

CLA(5)–23–19 – Paper 6 – Explanatory Memorandum

CLA(5)–23–19 – Paper 7 – Letter from the Minister for Environment, Energy and Rural Affairs, 4 July 2019

CLA(5)–23–19 – Paper 8 – Written statement

CLA(5)–23–19 – Paper 9 – Commentary

5 Paper(s) to note

14.45–14.50

5.1 Letter from the Chair of the Finance Committee to the Counsel General: Senedd and Elections (Wales) Bill

(Pages 41 – 42)

CLA(5)–23–19 – Paper 10 – Letter from the Chair of the Finance Committee, 10 July 2019

6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

14.50

7 Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill: Draft report

14.50–15.00

(Pages 43 – 69)

CLA(5)–23–19 – Paper 11 – Draft report

CLA(5)–23–19 – Paper 12 – Legal advice note

8 Legislative Consent Memorandum on the Birmingham Commonwealth Games Bill

15.00–15.10

(Pages 70 – 73)

CLA(5)–23–19 – Paper 13 – Legal advice note

9 Correspondence from Business Committee relating to future work

15.10–15.20

(Pages 74 – 146)

CLA(5)–23–19 – Paper 14 – Letter from the Llywydd, 10 July 2019

10 Forward Work Programme

15.20–15.30

(Pages 147 – 149)

CLA(5)–23–19 – Paper 15 – Draft terms of reference

Date of the next meeting – 16 September.

Statutory Instruments with Clear Reports

15 July 2019

SL(5)429 – The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2019

Procedure: Negative

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) (the Principal Regulations).

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the United Kingdom (UK) for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations are being made under section 124 of the National Health Service (Wales) Act 2006 (the 2006 Act) which confers a power on the Welsh Ministers to make regulations for the making and recovery of charges from persons who are not “ordinarily resident” in Great Britain for NHS services. It is also being made under section 203(9) and (10) of the 2006 Act.

The Regulations will correct references to EU law that will be inoperable after the UK leaves the EU and make provision on the chargeable status of EEA State and Swiss visitors using NHS services in Wales in the event of a No Deal EU Exit. The amendments will ensure that specified categories of visitors from EU/EEA States and Switzerland remain exempt from charging for particular NHS care. The amendments are also required to maintain the current exemptions in the Principal Regulations following the making of the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/776).

The Regulations:



- Preserve the existing right for individuals who are ordinarily resident in an EEA State or Switzerland to receive NHS care without a charge in circumstances where they either held a UK-issued reciprocal healthcare document on exit day or would have been eligible to receive one had the pre-exit rules continued to apply.
- Provide an exemption from charges for needs arising treatment received by frontier workers when pursuing an activity as an employed or self-employed person in the United Kingdom.
- Provide an exemption from charging for planned treatment provided to EEA or Swiss visitors on or after Exit day which is part of a course of treatment which was authorised before Exit day.
- Provide an exemption from charges for overseas visitors for relevant services covered by a reciprocal agreement with an EEA State or Switzerland which comes into effect on or after Exit day.
- Remove EU references contained in the Principal Regulations that may no longer be operable or coherent after Exit day.

Parent Act: National Health Service (Wales) Act 2006

Date Made: 26 June 2019

Date Laid: 28 June 2019

Coming into force date:



SL(5)431 – The M4 Motorway (Junction 40 (Tai Bach) to Junction 42 (Earlswood), Neath Port Talbot) (50mph Speed Limit) Regulations 2019

Procedure: Negative

The Welsh Ministers make these Regulations which impose a maximum speed limit of 50 miles per hour (instead of the general 70 miles per hour speed limit imposed on motorways by the Motorways Traffic (Speed Limit) Regulations 1974 (S.I. 1974/502)) on the lengths of the M4 motorway specified in the Schedule to these Regulations.

The M4 Motorway (Port Talbot, Neath Port Talbot) (50 Mph Speed Limit) Regulations 2004 (S.I. 2004/2179) (W. 208) (“the 2004 Regulations”) are revoked by these Regulations. The M4 Motorway (Junction 41 (Pentyla) to Junction 42 (Earlswood), Neath Port Talbot) (Temporary 50 mph Speed Limit) Order 2018 (S.I. 2018/746) (W. 144) which is in place at the above location will be revoked in a separate revocation order.

The 2004 Regulations were made by the Head of Roads Administration in the name of the Assembly, as no Assembly procedure applied at the time to such local Regulations. For that reason, they were not published in the usual way. The current procedure therefore makes the legislation more accessible.

Parent Act: Road Traffic Regulation Act 1984

Date Made: 02 July 2019

Date Laid: 03 July 2019

Coming into force date: 24 July 2019



**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019**

DATE **27 June 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019

The Law which is being amended

- The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019;
- The Trade in Animals and Related Products Regulations 2011 (not applicable to Wales);
- The Trade in Animals and Related Products (Northern Ireland) Regulations 2011 (not applicable to Wales, and
- The Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019.

European Directly Applicable instruments amended by the 2019 Regulations

- Commission Regulation (EC) No 136/2004
- Commission Decision 2006/168/EC
- Commission Decision 2006/766/EC
- Commission Decision 2007/777/EC
- Commission Regulation (EC) No 798/2008
- Commission Regulation (EC) No 119/2009
- Commission Regulation (EU) No 206/2010
- Commission Decision 2010/472/EC
- Commission Regulation (EU) 605/2010
- Commission Decision 2011/163/EC
- Commission Implementing Decision 2011/630/EC
- Commission Implementing Decision 2012/137/EC
- Commission Implementing Regulation (EU) 139/2013

- Commission Implementing Regulation 2016/759
- Commission Implementing Regulation 2018/659

The purpose of the amendments

Third countries currently apply to the Commission in order to be listed as a country that Member States can import from, and set the requirements that must be met by those countries in order to be retained on the list. Such classification of an exporting country's risk status will now have to be agreed by the UK for countries which the UK can import from. It is unlikely that an exporting country would apply to the 4 UK administrations separately, and as there are no Border Inspection Posts in Wales, any animals or animal related products would likely be received into England in the first instance, and would have to meet the classification requirements of England ahead of those requirements of Wales. Therefore, one list will be held and applications will be made to the Secretary of State. The Secretary of State can then only act with the other Ministers' consent (the Welsh Ministers and the other devolved administrations) in doing so. The change in the requirements of a country would only be in response to bio-security risk, so an efficient and immediate response across the whole of the UK is required for such situations.

The 2019 Regulations ensure that the relevant third country lists can be amended. This power is required for the United Kingdom to harmonise our animal health legislation with the EU in the event that the UK leaves the EU without a negotiated agreement, and for the United Kingdom to facilitate trade with new third countries.

The 2019 Regulations also make a minor amendment to correct a cross-reference to the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019, 'the Veterinary Surgeons Instrument. In relation to this, the regulation of veterinary surgeons' profession is a reserved matter under section G1 of Part 2 of Schedule 7A to the Government of Wales Act 2006.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/4uBo9Ohy>

Any impact the SI may have on the legislative competence of the National Assembly for Wales

The 2019 Regulations contain provisions which enable the Secretary of State, in place of the European Commission, to exercise legislative/administrative functions in relation to the whole of the UK. Part 2 of the Regulations transfer to the Secretary of State fifteen legislative functions which enable the Secretary of State to make regulations in relation to the UK but only if the consent of the Welsh Ministers and other devolved administrations is obtained to the making of the legislation. The regulation making power permits UK lists of approved third countries to be amended so that third countries can be added, varied or removed from the list. In addition, before make Regulations the Secretary of State must have regard to the views of the relevant authorities (Welsh Ministers, Scottish Ministers and Northern Ireland (within the meaning of the Northern Ireland Act 1998 or a Northern Ireland department). This is intended to enable Welsh Ministers to request that the Secretary of State exercise the UK-wide power, with the Secretary of State required to give due

consideration to such a request. Consent powers will relate to the removal or variation of the list of a third country; depending on, for instance, new or existing biosecurity risks, or the country's rules on animal-disease prevention and control. Part 5 transfers administrative functions to the Secretary of State. It sets out the veterinary checks list of animals and products that are to be published by the Secretary of State with the consent of Welsh Ministers under a joint decision making process. The Secretary of State with the consent of Welsh Ministers may publish and amend (where required) a list of animals and products subject to veterinary import checks and a lists of composite products and foodstuffs that are exempt from such checks.

Trade in animals and related products is a devolved function. Areas relating to imports fall within the prohibition and regulation of imports and exports which is a reserved matter under paragraph 71 of Schedule 7A to the Government of Wales Act 2006. However, there are certain exceptions, including the prohibition and movement into and out of Wales of food, plants, animals and related things for the purpose of protecting human, animal or plant health, animal welfare or the environment.

Functions transferred to the Secretary of State with consent may constitute functions of a Minister of the Crown for the purposes Schedule 7B to GoWA 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

Any impact the SI may have on the Welsh Ministers' executive competence

The 2019 Regulations will broaden the Welsh Ministers' executive competence in light of the new functions of requesting that regulations be made by the Secretary of State and consent in respect of the regulations

Why consent was given

As set out above, the 2019 Regulations ensure we have the powers to amend the relevant third country lists. This power is required for the United Kingdom to harmonise our animal health legislation with the EU in the event that the UK leaves the EU without a negotiated agreement, and for the United Kingdom to facilitate trade with new third countries. The 2019 Regulations also make a minor amendment to correct a cross-reference to the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019, 'the Veterinary Surgeons Instrument.

UK MINISTERS ACTING IN DEVOLVED AREAS

138 - The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019

Laid in the UK Parliament: 26 June 2019

Sifting

Subject to sifting in UK Parliament?	No
Procedure:	Draft Affirmative
Date of consideration by the House of Commons European Statutory Instruments Committee	N/A
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	N/A
Written statement under SO 30C:	Paper 2
SICM under SO 30A (because amends primary legislation)	N/A

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Draft Affirmative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government pursuant to section 8 of the European Union (Withdrawal) Act 2018.

These Regulations make technical operability changes to existing EU legislation.

At present, third countries apply to the European Commission to be listed as a country that EU Member States can import from. The Commission also sets out the requirements that such third countries have to meet to be retained on the list. The power to amend such lists sits with the EU Commission in various Council Directives that will not become part of retained EU legislation on exit day. These Regulations will make these legislative powers, which are contained within EU Directives, operable upon the UK's withdrawal from the EU, and allows the UK to align with

the EU and approve third countries, for the purpose of animal and product imports.

These Regulations contain provision which enable the Secretary of State ('SoS') to exercise legislative/administrative functions in relation to the whole of the UK, in place of the European Commission.

The Explanatory Memorandum to these Regulations confirms that they support the UK's application to be listed as a third country by the EU for live animals and for animal products. It is noted in the EM that the UK's application was approved by the EU in April 2019 as having met the minimum requirements at that time (see paragraph 2.2 of the EM).

Part 2 of the Regulations transfers legislative functions to the SoS to make regulations in relation to the UK, but only if the consent of the Welsh Ministers and the other devolved administrations is obtained to the making of such legislation. The regulation making power permits UK lists of approved third countries to be amended, allowing countries to be added, varied, or removed from the list. Before making Regulations, the SoS must have regard to the views of the devolved administrations (including the Welsh Ministers). This provision will enable the Welsh Ministers to request that the SoS exercise its UK wide powers. The SoS will be required to give due consideration to any such request.

Functions transferred to the SoS may constitute functions of a Minister of the Crown for the purposes of Schedule 7B to the Government of Wales Act 2006. A future Assembly Bill seeking to remove or modify these functions could trigger a requirement to consult the UK Government.

Legal Advisers agree with the statement laid by the Welsh Government dated 27 June 2019 regarding the effect of these Regulations. However, the statement raises some additional questions about the approach which are not explained clearly in the statement. It states that "there are no Border Inspection Posts in Wales", but does not explain whether, after Brexit, there should be, e.g. at Holyhead or Fishguard. This is particularly relevant if there are border posts e.g. at Liverpool, which may result in animals/animal products arriving through Liverpool rather than Holyhead. Further, the statement notes that "any animal or animal related products would likely be received into England in the first instance", but does not explain by what means and to what locations animals/animal products are likely to arrive e.g. whether by air to an English airport, or via Dover. Additionally, it states that "the change in requirements of a country would only be in response to bio-security risk, so an efficient and immediate response across the whole of the UK is required for such situations". The doesn't explain any safeguards that will be put in place to ensure this is done in a timely and comprehensive manner by the UK Government, to protect Welsh interests.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

STATUTORY INSTRUMENT CONSENT MEMORANDUM

THE ANIMAL HEALTH, INVASIVE ALIEN SPECIES, PLANT BREEDERS' RIGHTS AND SEEDS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

1. This Statutory Instrument Consent Memorandum is laid under Standing Order ("SO") 30A.2. SO 30A prescribes that a Statutory Instrument Consent Memorandum must be laid and a Statutory Instrument Consent Motion may be tabled before the National Assembly for Wales ("Assembly") if a UK Statutory Instrument (SI) makes provision in relation to Wales amending primary legislation within the legislative competence of the Assembly.
2. The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment Etc.) (EU Exit) Regulations 2019 ("the 2019 Regulations"); were laid before the Houses of Parliament on 1 July 2019. The Regulations can be found at:

<https://beta.parliament.uk/work-packages/BhGFI9yi>

Summary of the Statutory Instrument and its objective

3. The changes made by the Regulations are necessary to ensure Invasive Non-native Species functions operate correctly after the UK has left the EU.
4. The provisions for invasive non-native species in the Regulations will make a number of amendments to the Invasive Alien Species (Enforcement and Permitting) Order 2019 ("the 2019 Order") and the Wildlife and Countryside Act 1981 ("the 1981 Act"). These corrections will ensure that the permitting and enforcement provisions required under Regulation (EU) No 1143/2014 operate as intended after exit. This instrument also amends article 20 of the 2019 Order in order to rectify a small error which has been identified in the provisions setting the level of penalties which may be imposed upon criminal conviction for an offence under the 2019 Order.
5. These Regulations correct cross-references to the "list of species Union concern" and the "Union list" within the 1981 Act to ensure consistency with Regulation (EU) No 1143/2014 (as amended) and to the 2019 Order.

Relevant provision to be made by the SI

6. The amendments made to The 1981 Act by the Regulations, are as follows:

The Wildlife and Countryside Act 1981
Regulations 6—

(1) The Wildlife and Countryside Act 1981(a) is amended as follows.

(2) In section 14(4ZA)(b), for the words from "the list" to "spread of invasive alien species" substitute "the list of species in the Annex to Commission

^a 1981 c.69

^b Section 14 of the Act was amended by section 102 of, and Part 4 f Schedule 16 to, the Countryside and Rights f Way Act 2000 (c.16), section 23 and 25 of the Infrastructure Act 2015 9c.7) and S! 2019/527

Implementing Regulation (EU) 2016/1141 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No. 1143/2014 of the European Parliament and of the Council”.

(3) In Schedule 9A(c)—

(a) in paragraph 1(2)(a)(d) for “Union list” substitute “list of species of special concern”;

(b) for paragraph 2(6) substitute—

(6) “The list of species of special concern” means the list of species in the Annex to Commission Implementing Regulation (EU) 2016/1141 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council, as amended from time to time.

7. The changes identified in paragraphs 4 and 5 relate to a subject matter that is within the legislative competence of the National Assembly for Wales, and which could be the subject of a National Assembly Bill.

8. Section 108A of the Government of Wales Act 2006 enables the Assembly to legislate on any subject except those specifically reserved to the UK Parliament in Schedule 7A to the Act. The Assembly has legislative competence in relation to the environment.

Why it is appropriate for the SI to make this provision

9. There is no divergence between the Welsh Government and the UK Government on the policy of the correction. Therefore, making separate SIs in Wales and England to correct the reference in question would lead to duplication, and unnecessary complication of the statute book. Consenting to this SI ensures that there is a single legislative framework across England and Wales, which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.

Lesley Griffiths AM,
Minister for Environment, Energy and Rural Affairs
4 July 2019

^c Schedule (A was inserted by section 23(30) of the Infrastructure Act 2015 (c.7) and amended by SI 2019/527

^d Schedule (A was inserted by section 23(30) of the Infrastructure Act 2015 (c.7) and amended by SI 2019/527

STATUTORY INSTRUMENTS

2019 No. 000

EXITING THE EUROPEAN UNION

ANIMALS

PLANT BREEDERS' RIGHTS

SEEDS

WILDLIFE

The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019

Sift requirements satisfied

Made - - - -

Laid before Parliament

Coming into force in accordance with regulation 1

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) and (c);
- (b) in relation to Parts 2 and 3, section 2(2) of the European Communities Act 1972(a);
- (c) in relation to Parts 4 to 7, section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(b).

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy(c) and the environment(a).

(a) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7). It is prospectively repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) from exit day (see section 20 of that Act). The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794.

(b) 2018 c. 16.

(c) S.I. 1972/1811, to which there are amendments not relevant to these Regulations. The power of the Secretary of State, as a designated Minister in relation to the common agricultural policy, to make regulations that apply in Wales remains exercisable by virtue of article 6(1) of S.I. 2010/2690.

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019.

(2) They come into force as follows—

- (a) as regards this Part and Parts 2 and 3, 21 days after the day on which these Regulations are laid;
- (b) as regards Parts 4, 6 and 7, immediately before exit day;
- (c) as regards regulation 6, immediately after the coming into force of the Invasive Alien Species (Enforcement and Permitting) Order 2019 or (if later) on exit day;
- (d) as regards regulation 7, on exit day.

(3) Regulations 3 and 6 extend to England and Wales only.

PART 2

Amendment of the Invasive Alien Species (Enforcement and Permitting) Order 2019

The Invasive Alien Species (Enforcement and Permitting) Order 2019

2. In the Invasive Alien Species (Enforcement and Permitting) Order 2019^(b), in article 20, for paragraph (1) substitute—

“(1) A person guilty of an offence under this Order is liable—

(a) on summary conviction—

- (i) in England and Wales, to imprisonment for a term not exceeding six months or to a fine, or to both;
- (ii) in Scotland and Northern Ireland, to imprisonment for a term not exceeding three months or to a fine which may not exceed the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(1A) In relation to any conviction obtained before the coming into force of paragraph 3 of Schedule 27 to the Criminal Justice Act 2003^(c), paragraph (1)(a)(i) has effect with the substitution for “six months” of “three months”.”

(a) S.I. 2008/301. The power of the Secretary of State, as a designated Minister in relation to the environment, to make regulations that apply in Wales as regards the prevention and remedy of environmental damage remains exercisable by virtue of article 5(1) of S.I. 2014/1890.

(b) S.I. 2019/527.

(c) 2003 c. 44.

PART 3

Marketing of seeds and plant propagating material: amendment of domestic legislation

The Marketing of Vegetable Plant Material Regulations 1995

3. In the Marketing of Vegetable Plant Material Regulations 1995(a), after regulation 4 insert—

“Plant material from outside the European Union: authorisation

4A.—(1) The Secretary of State in relation to England, and the Welsh Ministers in relation to Wales, may authorise the marketing of plant material from any country outside the European Union if satisfied that the plant material has been produced under conditions equivalent to the requirements in these Regulations for plant material.

(2) An authorisation given under this regulation—

- (a) must be in writing;
- (b) may be subject to conditions; and
- (c) may be amended, suspended or revoked by notice.”.

The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017

4. In the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017(b), in regulation 5, for paragraphs (3) and (4) substitute—

“(3) The Secretary of State may authorise the marketing of plant material from any country outside the European Union if satisfied that the plant material has been produced under conditions equivalent to the requirements in these Regulations for plant material.”.

PART 4

Amendment of the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019

The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019

5.—(1) The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019(c) are amended as follows.

(2) In regulation 2—

(a) in paragraph (2)(b)—

- (i) in the substituted text of paragraph 1A, in points (b) and (c), insert “the” before “Welsh Ministers” and “Scottish Ministers”, respectively;
- (ii) in the substituted text of paragraph 1B, in point (b), insert “the” before “Scottish Ministers”;

(b) in paragraph (4)(c)(i), for the substituted text of Article 6(4) substitute “The appropriate authority in Wales and (if the Northern Ireland Assembly is not in suspension) in Northern Ireland must submit an annual report to the National Assembly for Wales or the

(a) S.I. 1995/2652, to which there are amendments not relevant to these Regulations.

(b) S.I. 2017/595, to which there are amendments not relevant to these Regulations.

(c) S.I. 2019/170.

- Northern Ireland Assembly (as the case may be), and the appropriate authority in Scotland must submit an annual report to the Scottish Parliament”;
- (c) in paragraph (11)(b), for “EU retained” substitute “retained direct EU”;
 - (d) in paragraph (32)—
 - (i) in sub-paragraph (a)—
 - (aa) for paragraph (ii) substitute—
 - “(ii) in point (c), in the last paragraph, after “TRACES”, insert “or any replacement system in operation in the United Kingdom”.”;
 - (bb) for paragraph (iii) substitute—
 - “(iii) in point (d), after “TRACES”, insert “or any replacement system in operation in the United Kingdom”.”;
 - (ii) for sub-paragraph (c) substitute—
 - “(c) in point 4(e), omit “third”.”;
 - (e) for paragraph (34) substitute—
 - “(34) In point 1—
 - (a) in the words before point (a), for the words from “Member State” to “their” substitute “country or a”;
 - (b) in point (b), for “competent authority of the Member State of slaughter” substitute “appropriate authority”.”;
 - (f) in paragraph (40)(b), for “second” substitute “third”;
 - (g) in paragraph (64), before sub-paragraph (a) insert—
 - “(za) in Chapter D, in Section B, in point 2, in the words after point (b), for “Union” substitute “retained direct EU”.”.
- (3) In regulation 5—
- (a) in paragraph (4)(d), after paragraph 34 of the inserted text, insert—
 - “35. ‘devolved authority’ has the meaning given in section 20(1) of the European Union (Withdrawal) Act 2018.”;
 - (b) in paragraph (20)(a), for paragraph (iv) substitute—
 - “(iv) in point (c), for “Articles.” substitute “Articles; or”.”;
 - (c) in paragraph (23), for sub-paragraph (c) substitute—
 - “(c) in paragraph 3—
 - (i) in the first subparagraph—
 - (aa) for “The competent authority of the Member State of origin” substitute “The importer”;
 - (bb) for “Member State”, in the second place it occurs, substitute “constituent nation”;
 - (cc) after “Decision 2004/292/EC” insert “or any replacement system in operation in the United Kingdom”;
 - (dd) for “Member State of destination”, in the second place it occurs, substitute “United Kingdom”;
 - (ii) omit the second subparagraph.”;
 - (d) in paragraph (28), for “third and fourth paragraphs” substitute “third paragraph”.

(4) In regulation 6—

 - (a) in paragraph (20)(b)(i), for sub-paragraph (aa) substitute—

- “(aa) for “Union kept in a third country” substitute “United Kingdom and kept in the European Union or a third country outside the European Union”;;
- (b) in paragraph (27), for sub-paragraph (a) substitute—
“(a) after “TRACES system” insert “or any replacement system in operation in the United Kingdom”;;
- (c) in paragraph (47)(ii), for sub-paragraph (bb) substitute—
“(bb) after “TRACES system” insert “or any replacement system in operation in the United Kingdom”;;
- (d) in paragraph (62), for sub-paragraph (f) substitute—
“(f) in paragraph 5, after “TRACES system” insert “or any replacement system in operation in the United Kingdom”;;
- (e) in paragraph (73)(d)(vii), for “meat” substitute “fresh poultry meat”.

PART 5

Invasive alien species: amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

The Wildlife and Countryside Act 1981

6.—(1) The Wildlife and Countryside Act 1981(a) is amended as follows.

(2) In section 14(4ZA)(b), for the words from “the list” to “spread of invasive alien species” substitute “the list of species in the Annex to Commission Implementing Regulation (EU) 2016/1141 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No. 1143/2014 of the European Parliament and of the Council”.

(3) In Schedule 9A(c)—

- (a) in paragraph 1(2)(a), for “Union list” substitute “list of species of special concern”;
- (b) for paragraph 2(6) substitute—

“(6) The “list of species of special concern” means the list of species in the Annex to Commission Implementing Regulation (EU) 2016/1141 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No. 1143/2014 of the European Parliament and of the Council, as amended from time to time.”.

The Invasive Alien Species (Enforcement and Permitting) Order 2019

7.—(1) The Invasive Alien Species (Enforcement and Permitting) Order 2019 is amended as follows.

(2) In Parts 1 and 3, in each place where it occurs (except as otherwise indicated in paragraph (3)(b)), for “Union list” substitute “list of species of special concern”.

(3) In article 2(1)—

- (a) after the definition of “the licensing authority”, insert—

““the list of species of special concern” means the list of species in the Annex to Commission Implementing Regulation (EU) 2016/1141 adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council, as amended from time to time;”;

(a) 1981 c. 69.

(b) Section 14 of the Act was amended by Part 4 of Schedule 16 to the Countryside and Rights of Way Act 2000 (c. 37), sections 23 and 25 of the Infrastructure Act 2015 (c. 7) and S.I. 2019/527.

(c) Schedule 9A was inserted by section 23(3) of the Infrastructure Act 2015 and amended by S.I. 2019/527.

- (b) omit the definition of “the Union list”.
- (4) In article 12(3), in the definition of “third country ship”—
 - (a) in sub-paragraph (a), for “(other than Gibraltar) which is not a member State” substitute “other than the United Kingdom”;
 - (b) in sub-paragraph (b), for “a member State” substitute “the United Kingdom”.
- (5) In article 21(2), for “Union” substitute “United Kingdom”.
- (6) In Schedule 1—
 - (a) in Table 1, for “Union”, in both places where it occurs, substitute “United Kingdom”;
 - (b) in Table 2, in the entry relating to Article 8 paragraph 2—
 - (i) in conditions (a) and (d), for “of Union concern” substitute “of special concern”;
 - (ii) in condition (b), for “competent authorities” substitute “appropriate authority”;
 - (iii) in condition (f)—
 - (aa) for “competent authority” substitute “appropriate authority”;
 - (bb) for “Union” substitute “United Kingdom”.

PART 6

Amendment of the Plant Breeders’ Rights (Amendment etc.) (EU Exit) Regulations 2019

The Plant Breeders’ Rights (Amendment etc.) (EU Exit) Regulations 2019

8.—(1) The Plant Breeders’ Rights (Amendment etc.) (EU Exit) Regulations 2019(a) are amended as follows.

- (2) In regulation 6, for “regulation 5(2)” substitute “regulation 3(2)”.
- (3) In regulation 10, for paragraph (2) substitute—

“(2) If an application under paragraph (1) is made within the period of 6 months beginning with exit day, regulations 11 to 13 apply.”.
- (4) In regulations 11 and 12—
 - (a) in the heading, after “regulation 10”, insert “(1) and (2)”;
 - (b) in paragraph (1)—
 - (i) at the beginning insert “Where the condition in regulation 10(2) is met,”;
 - (ii) for “regulation 10” substitute “regulation 10(1)”.
- (5) In regulation 13—
 - (a) in the heading, after “regulation 10”, insert “(1) and (2)”;
 - (b) at the beginning insert “Where the condition in regulation 10(2) is met,”;
 - (c) for “regulation 10” substitute “regulation 10(1)”.
- (6) In regulation 18, for “regulation 5(2)” substitute “regulation 3(2)”.
- (7) In regulation 19(6), in the text inserted as regulation 3A(2) of the Plant Breeders’ Rights (Naming and Fees) Regulations 2006(b), for “holder of the right” substitute “proprietor of the registered trademark”.

(a) S.I. 2019/204.

(b) S.I. 2006/648, amended by S.I. 2018/942, 2019/204.

PART 7

Marketing of seeds and plant propagating material: amendment of domestic legislation consequent on the withdrawal of the United Kingdom from the European Union

The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019

9.—(1) The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019(a) are amended as follows.

(2) In regulation 4, after paragraph (2), insert—

“(2A) In regulation 4A(1) and in the heading, for “European Union” substitute “United Kingdom”.”.

(3) In regulation 8(4), for the words before the inserted text substitute—

“In regulation 5—

- (a) in paragraph (3), for “European Union” substitute “United Kingdom;
- (b) at the end insert—”.

The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019

10. In the Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019(b), in the Schedule—

(a) after paragraph 7, insert—

“**7A.** Commission Implementing Decision (EU) 2013/166 amending Council Directive 2008/72/EC to extend the derogation relating to import conditions for vegetable propagating and planting material, other than seed, from third countries.”;

(b) after paragraph 9, insert—

“**10.** Commission Implementing Decision (EU) 2019/119 amending Council Directive 2002/56/EC as regards the date laid down in Article 21(3) until which Member States are authorised to extend the validity of decisions concerning equivalence of seed potatoes from third countries.

11. Commission Implementing Decision (EU) 2019/120 amending Council Directive 2008/90/EC as regards the extension of the derogation relating to import conditions for fruit plant propagating material and fruit plants intended for fruit production from third countries.”.

Date

Gardiner of Kimble
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in part 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 the deficiencies referred to in paragraphs (a), (c), (d) and (g) of section 8(2)) arising from the withdrawal of the United Kingdom from the European Union.

(a) S.I. 2019/131, to which there are amendments not relevant to these Regulations.

(b) S.I. 2019/162.

Parts 2 and 3 are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (c. 68). Part 2 amends the Invasive Alien Species (Enforcement and Permitting) Order 2019 (S.I. 2019/527) in order to correct errors in that Order. Part 3 makes amendments to the Marketing of Vegetable Plant Material Regulations 1995 (S.I. 1995/2652) and the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 (S.I. 2017/595) to enable the Secretary of State to authorise the marketing of vegetable plant material and fruit plant and propagating material from countries outside the European Union in certain circumstances.

Parts 4 to 7 make amendments to legislation relating to animal disease prevention, the prevention and management of the introduction and spread of invasive alien species, plant variety rights and the marketing of seeds and plant propagating material arising from the withdrawal of the United Kingdom from the European Union.

Regulation 5 amends the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/170).

Regulation 6 amends the Wildlife and Countryside Act 1981 (c. 69), and regulation 7 further amends the Invasive Alien Species (Enforcement and Permitting) Order 2019.

Part 6 amends the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/204).

Regulation 9 amends the Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019 (S.I. 2019/131). Regulation 10 amends the Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/162).

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

EXPLANATORY MEMORANDUM TO

THE ANIMAL HEALTH, INVASIVE ALIEN SPECIES, PLANT BREEDERS' RIGHTS AND SEEDS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Act.
- 1.2 This Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments and the Sifting Committees.

2. Purpose of the Instrument

- 2.1 This instrument makes a number of technical changes to existing instruments and takes into account recent changes to EU legislation which could not be included in earlier EU Exit instruments. It will ensure that retained EU law continues to operate effectively after the UK leaves the EU. It covers animal health, invasive non-native species and plant varieties and seeds policy areas.

Explanations

What did any relevant EU law do before exit day?

- 2.2 Regulation (EU) No 1143/2014 of the European Parliament and the Council laid down rules on the prevention and management of the introduction and spread of invasive non-native (‘alien’) species across the EU. The Regulation places an obligation on Member States to put in place provisions on penalties applicable to infringements of the Regulation and to take all the necessary measures to ensure that they are applied. The Invasive Alien Species (Enforcement and Permitting) Order 2019 (“the 2019 Order”) fulfils this obligation by providing enforcement provisions, prescribing the offences and penalties and introducing permitting and licensing provisions. The 2019 Order also contains a number of consequential changes and provisions to resolve or remove overlaps between existing legislation, such as the Wildlife and Countryside Act 1981, and the controls set out in Regulation (EU) No 1143/2014.
- 2.3 Council Directive 2008/72/EC and Council Directive 2008/90/EC (“the Fruit Directive”) prescribe marketing standards for vegetable plant material and fruit plant propagating material to ensure minimum quality standards and traceability. They allow each Member State to authorise in respect of its territory the marketing of planting material produced in countries outside the European Union which the Member State considers to have equivalent production standards. These Directives are transposed by the Marketing of Vegetable Plant Material Regulations 1995 (“the 1995 Regulations”) and the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017.
- 2.4 Transmissible Spongiform Encephalopathies (“TSEs”) and Animal By-Products (“ABPs”): the relevant five pieces of direct EU legislation below were first put in place as a result of the Bovine Spongiform Encephalopathy (“BSE”) epidemic in the late 1980s and early 1990s. They have been updated frequently to reflect the development and decline of the epidemic. Animal by-products legislation is relevant

to TSE controls because scientific evidence has demonstrated that infectivity is concentrated in certain organs which are classified as Specified Risk Material (SRM) and are destroyed to prevent their entry into the food chain. However, in addition, the legislation controls the use and disposal of ABPs to protect public and animal health against the spread of other diseases.

- (i) Regulation (EC) No. 999/2001 of the European Parliament and the Council lays down rules for the prevention, control and eradication of certain TSEs, including BSE in cattle and scrapie in sheep and goats. Related Decisions subject to minor technical operability amendments are:
 - (a) Commission Decision 2007/453 establishing the BSE status of Member States or third countries or regions thereof according to their BSE risk, and
 - (b) Commission Decision 2009/719 authorising certain Member States to revise their annual BSE monitoring programmes.
- (ii) Regulation (EC) No. 1069/2009 of the European Parliament and the Council lays down health rules as regards animal by-products and derived products not intended for human consumption.
- (iii) Commission Regulation (EU) No. 142/2011 implements Regulation (EC) No. 1069/2009 of the European Parliament and the Council, which lays down health rules as regards animal by-products and derived products not intended for human consumption.

- 2.5 Plant breeders' rights ("PBR") are regulated across the EU by Council Regulation (EC) 2100/94 on Community plant variety rights and implementing regulations. These set out a unitary system of intellectual property rights for new varieties of plants in the EU. The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/204) make provision for and amendments to legislation in the area of plant variety rights as part of the exit preparations of the UK from the EU. Those regulations provide for existing Community plant variety rights ("CPVR") from a specified date to have effect in the UK as if such rights were granted in accordance with the Plant Varieties Act 1997 (the "1997 Act"). After EU Exit, an application for plant breeders' rights must be made under the 1997 Act. Regulation 10 of the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 provides that an application for UK PBR for a variety which is the subject of an unresolved CPVR application [on exit day] be made within 6 months of exit day. Regulations 11 to 13 apply to such an application with adaptations to the rules regarding priority, novelty and reasonable compensation in relation to the period between application for and granting of rights.

Why is it being changed?

- 2.6 The provisions for invasive non-native species will make operability amendments to the 2019 Order with effect from exit day. These amendments were not made by the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019 because those Regulations were made prior to the Order (nor in the Order itself, as that was not an Exit SI). Additionally Defra is correcting the provision in the 2019 Order which sets the maximum penalties upon criminal conviction for an offence under the Order. We are ensuring that these amendments are made before the 2019 Order enters into force on 1 October 2019. This will ensure that the permitting and enforcement provisions required under Regulation (EU) No 1143/2014 operate as intended.

- 2.7 The EU Directives for fruit plant propagating material and vegetable plant material allow a Member State, during a specified period, to authorise in respect of their territory the marketing of plant material produced in countries outside the European Union which that Member State considers to have equivalent production standards. The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 transposed this provision which was time limited. That limit has been extended by Commission Decision (EU) 2019/120. This instrument transposes Article 16(2) of Council Directive 2008/72/EC and Commission Decision 2013/166/EU into the 1995 Regulations for vegetable plant material, provides for the new EU timeframe relating to the Fruit Directive and makes exit deficiency amendments with regards to references to the European Union.
- 2.8 The amendments made by regulation 5 of this instrument ensure that the law on TSEs and ABPs functions correctly after the UK has left the EU by including recent amendments to EU law which were not made in earlier exit legislation. The most important is last year's amendment to Regulation (EC) No. 999/2001 that enables Member States to approve a different method to dentition for estimating whether a lamb or kid is aged over twelve months for the purpose of removing the skull and spinal cord at slaughter. We are also making further technical/operability changes to ensure that all deficiencies have been fully addressed. These include a requirement for the pre-notification of imports of certain higher risk animal by-products from the EU 27 to provide equivalent controls on traceability of consignments to those which apply for existing intra- community movements. This instrument also addresses drafting issues identified by the Joint Committee on Statutory Instruments in the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/170). It adds a definition of "devolved authority" to regulation 5 of those Regulations so that its meaning can be more easily understood.
- 2.9 The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 allow an application relating to a variety which is the subject of an unresolved CPVR application at exit to benefit from regulations 11 to 13 if made within 6 months of exit day. These regulations will be amended to allow an application linked to an unresolved CPVR application [on exit day] to be made after that 6 month period, but without the benefit of regulations 11 to 13. The provisions will also amend some cross references.

What will it now do?

- 2.10 The provisions for invasive non-native species correct technical operability issues including those relating to references to the "list of species of Union concern", "member state" and the "Union". References to the "competent authority" are being amended to the "appropriate authority" to ensure consistency between the 2019 Order and the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019. The "appropriate authority" means: the Secretary of State in relation to England, the offshore marine area or the regulation of imports into, and exports from, the United Kingdom; the Welsh Ministers in relation to Wales; and the Department of Agriculture, Environment and Rural Affairs in relation to Northern Ireland. The amendments to the Wildlife and Countryside Act 1981 correct cross-references to the "list of species Union concern". This instrument also amends article 20 of the 2019 Order, by substituting article 20(1), which will ensure that the maximum custodial sentence on summary conviction is three months imprisonment, in accordance with Schedule 2 to the European Communities Act 1972, only increasing to six months in

England and Wales at such time as paragraph 3 of Schedule 27 to the Criminal Justice Act 2003 enters into force. The amendment to article 20 also ensures that, in Scotland and Northern Ireland, the maximum fine which may be imposed following conviction on indictment is unlimited, again in accordance with Schedule 2 to the European Communities Act 1972.

- 2.11 In respect of the marketing of fruit plant propagating material, this instrument will enable the Secretary of State to authorise the marketing, in England, of plant material from any country outside of the EU if satisfied the plant material has been produced under conditions equivalent to those required in domestic legislation. In respect of the marketing of vegetable plant material this instrument will enable the Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, to authorise the marketing of plant material from any country outside of the EU if satisfied the plant material has been produced under conditions equivalent to those required in domestic legislation. Those provisions are then amended for the purposes of exit from the EU. The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019 will be amended to revoke retained EU Decisions 2013/166, 2019/119 and 2019/120 which will be redundant upon EU Exit.
- 2.12 The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 (the 2019 Regulations) made amendments to Regulation (EC) No. 999/2001, Regulation (EC) No. 1069/2009 and Regulation (EU) No. 142/2011 to ensure that retained direct EU legislation will remain operable after the UK has left the EU. This instrument amends the 2019 Regulations to include recent amendments to EU law and makes corrections which were recommended by the JCSI to the drafting of the 2019 Regulations. The key change, as described in paragraph 2.8 above, will enable the UK to introduce an alternative method for estimating whether a lamb is aged over twelve months for the purpose of removing the skull and spinal cord for rendering and disposal as specified risk material. We are also using the opportunity presented by the extended exit date to include an amendment to require importers to pre-notify the import of certain high risk animal by-products into the UK from the EU. This will enhance the traceability of imports of such consignments in a way which has an equivalent effect to that which currently applies for existing intra- community movements.
- 2.13 Amendments are being made to the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 to allow an applicant with an unresolved application for EU rights [on exit day] to make an application for UK PBR more than 6 months after EU Exit but without benefiting from the provisions of regulations 11 to 13 (which adapt the dates for priority, novelty and reasonable compensation during the application process). For such applications, the provisions of the 1997 Act will be applicable. This instrument also amends some cross references and substitutes the term 'holder of the right' with the term 'proprietor of the registered trademark' for consistency with the Trade Marks Act 1994.

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 of special interest to the Joint Committee on Statutory Instruments

- 3.2 In its fifty-second report of session 2017-19, the Joint Committee on Statutory Instruments reported the Department for defective drafting in respect of regulations 2(4), 2(40) and 6(20) (b) of the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/170). This instrument contains amendments to address these points. It also corrects errors in the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/204) and the 2019 Order (S.I. 2019/527). In consequence, this instrument is being issued free of charge to recipients of S.I. 2019/170, 204 and 527.

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)

- 3.3 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 In Part 2 of this instrument, regulation 2 has the same extent and application as the provisions it amends. This means that it extends and applies to England and Wales. It extends and applies to Scotland and Northern Ireland only in so far as it amends provisions which relate to controls on imports into and exports from the UK, or the offshore marine area.
- 4.2 The amendment to article 20 of the Invasive Alien Species (Enforcement and Permitting) Order 2019, made under section 2(2) of the European Communities Act 1972, insofar as it extends and applies to Wales, partially relates to an area within Welsh devolved competence. However, the power of the Secretary of State, as a designated Minister in relation to the environment, to make regulations that apply in Wales as regards the prevention and remedy of environmental damage remains exercisable by virtue of article 5(1) of the European Communities (Designation) (No. 2) Order 2014 (S.I. 2014/1890).
- 4.3 In Part 3 of this instrument, regulation 3 extends and applies to England and Wales; and regulation 4 extends to England and Wales but applies to England only.
- 4.4 Part 4 of this instrument extends to the United Kingdom and applies to England, Scotland, Wales and Northern Ireland.
- 4.5 In Part 5 of this instrument, regulations 6 and 7 have the same extent and application as the provisions they amend. This means that regulation 6 extends and applies to England and Wales. Regulation 7 extends and applies to England and Wales, and to Scotland and Northern Ireland only in so far as the provisions it amends relate to controls on imports into and exports from the UK, or the offshore marine area.
- 4.6 Part 6 of this instrument extends and applies to the whole of the United Kingdom.
- 4.7 In Part 7 of this instrument, regulation 9 extends and applies to England and Wales except for regulation 9(3) which applies to England only; and regulation 10 extends and applies to the whole of the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding Human Rights:

“In my view the provisions of the Animal Health, Invasive Alien Species, Plant Breeders’ Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument makes amendments to domestic legislation implementing certain EU Directives and Regulations and to EU Exit legislation to ensure that in the fields of animal health, invasive non-native species, plant breeders’ rights and the marketing of seeds and plant propagating material, domestic legislation and EU Exit legislation remains operable and functions appropriately after the UK has left the European Union.
- 6.2 This instrument uses powers under section 2(2) of the European Communities Act 1972 to:
- (i) amend the Invasive Alien Species (Enforcement and Permitting) Order 2019 in order to correct the provision setting maximum penalties upon criminal conviction for an offence under the Order before that Order enters into force.
 - (ii) amend the Marketing of Vegetable Plant Material Regulations 1995 to provide that the Secretary of State in relation to England, and the Welsh Ministers in relation to Wales, may authorise the marketing of plant material from any country outside of the EU if satisfied that the plant material has been produced under conditions equivalent to those required in domestic legislation.
 - (iii) amend the Marketing of Fruit Plant and Plant Propagating Material (England) Regulations 2017 to provide that the Secretary of State may authorise the marketing of plant material from countries outside of the EU where production standards are equivalent to domestic standards.
- 6.3 This instrument is also made under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to:
- (i) amend the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019, as described in paragraph 2.12, in order to enable the UK to introduce an alternative method for estimating whether a lamb is aged over twelve months for the purpose of removing the skull and spinal cord. We are also making further technical/operability changes to ensure that all deficiencies have been fully addressed. These include a requirement for pre-notification of imports of certain higher risk animal by-products from the EU 27 to provide equivalent controls on traceability of consignments to those which apply for existing intra- community movements. This instrument also addresses comments made by the Joint Committee on Statutory Instruments on various provisions in those Regulations.
 - (ii) amend the Invasive Alien Species (Enforcement and Permitting) Order 2019 and the Wildlife and Countryside Act 1981. These corrections will ensure that, post-Exit, the permitting and enforcement provisions in the Order and related provisions in the 1981 Act will work in alignment with Regulation (EU) No. 1143/2014, as amended post-Exit, and operate as intended.
 - (iii) amend the Plant Breeders’ Rights (Amendment etc.) (EU Exit) Regulations 2019 regarding some cross references and address a deficiency resulting from the UK’s withdrawal from the European Union.

- (iv) address deficiencies in the domestic regulations listed in sections 6.2 (ii) and (iii) above and amend the Schedule of revoked direct EU legislation in the Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/162) to include Commission Implementing Decisions 2013/166, 2019/119 and 2019/120.

7. Policy background

What is being done and why?

- 7.1 This instrument is being made to maintain the effectiveness and continuity of UK legislation and retained direct EU legislation that would otherwise be left partially inoperable following the withdrawal of the United Kingdom from the European Union. It also transposes EU legislation which was recently agreed or did not need to be transposed while the UK was a member of the EU and makes corrections to earlier EU exit SIs.
- 7.2 This instrument makes only amendments which are legally necessary to achieve its objectives. It does not represent any changes of policy and it will not produce any impact on businesses or the public.
- 7.3 No change is being made to policy for invasive non-native species. This instrument amends the 2019 Order to correct technical operability issues which will exist after Exit and the provision relating to penalties to ensure that the permitting and enforcement provisions required under Regulation (EU) No 1143/2014 operate as intended.
- 7.4 No change is being made to policy for the marketing of fruit plant propagating material and vegetable plant material. This instrument transposes EU legislation and corrects technical operability issues which will exist after Exit.
- 7.5 No change is being made to policy for transmissible spongiform encephalopathies and animal by-products. This instrument corrects technical operability issues, transposes recent changes to EU law, and addresses comments made by the Joint Committee on Statutory Instruments.
- 7.6 No change is being made to policy for plant breeders' rights. This instrument makes corrections to the earlier EU exit SI.

8. European Union (Withdrawal) Act 2018/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. This instrument is also being made under paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (which includes the power to modify retained EU law and to make supplementary, incidental or consequential provision). 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 There are no plans for consolidation.

10. Consultation outcome

- 10.1 This instrument was not subject to formal consultation.
- 10.2 Defra has engaged with both the Devolved Administrations, who have supported these proposed changes, and the main industry representative organisations who raised no matters of concern.

11. Guidance

- 11.1 Whilst no specific guidance will be provided about the provisions in this instrument relating to invasive non-native species, guidance about the 2019 Order will be published in due course.
- 11.2 None in respect of the marketing of seed and plant propagating material and Plant Breeders' Rights.

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 this instrument relates to the maintenance of existing regulatory standards.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 This instrument largely maintains the status quo, or corrects identified errors, and therefore does not introduce new duties or burdens on business.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is through the course of normal departmental business as no substantive changes to current practices are being introduced.
- 14.2 For the amendments in this instrument made under the European Union (Withdrawal Act) 2018, no review clause is required. This instrument does not include a statutory review clause in respect of the amendments being made under Section 2(2) of the European Communities Act 1972; the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 and the Invasive Alien Species (Enforcement and Permitting) Order 2019 already contain review clauses; the Marketing of Vegetable Plant Material Regulations 1995 does not contain a statutory review clause but in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Gardiner has made the following statement: The amendments to the Marketing of Vegetable Plant Material Regulations 1995 being made in this instrument have no significant annualised net impact on business and it would not therefore be appropriate to undertake a review given the costs of doing so.

15. Contact

- 15.1 Trine Andresen at the Department for Environment, Food and Rural Affairs email: trine.andresen@defra.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health 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 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.

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 instrument.	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 instrument 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 2018 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 instrument is urgent.
Explanations where amending regulations under s.2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an instrument after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law.
Scrutiny statement where amending regulations under s. 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an instrument after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972	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 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, Invasive Alien Species, Plant Breeders’ Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 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 in so far as the instrument uses the power in the European Union (Withdrawal) Act 2018, it contains changes not affecting current standards or procedures and as such would not normally be expected to be debated in Parliament.

2. Appropriateness statement

- 2.1 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, Invasive Alien Species, Plant Breeders’ Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 2.2 This is the case because in so far as the instrument uses the power in the European Union (Withdrawal) Act 2018, the instrument contains changes not affecting current standards and procedures.

3. Good reasons

- 3.1 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”.

- 3.2 These are set out in section 7 in the main body of this Explanatory Memorandum.

4. Equalities

- 4.1 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”.

- 4.2 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”.

5. Explanations

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



Ein cyf/Our ref MA - L/LG/0462/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee
National Assembly for Wales

SeneddCLA@assembly.wales

4 July 2019

Dear Mick,

This letter is to inform you that I have laid a Statutory Instrument Consent Memorandum in the National Assembly for Wales in respect of the Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019, as required by Standing Order 30A.

I am writing to inform you that I am not minded to lay a motion for debate about this SI in this instance. I have reached this decision on the basis that our interest in this SI is restricted to operability amendments that will arise as a result of the UK leaving the EU.

The SI provision covers operability amendments in relation to the Wildlife and Countryside Act 1981 and there is no divergence in policy between the Welsh Government and the UK Government in this case.

SO30A provides that any Member may table a motion for a debate on this SI. Given the volume of legislation that the Assembly is considering, I will not myself be seeking to initiate such a debate.

Regards,

Lesley Griffiths AC/AM
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019**

DATE **04 July 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 ("the 2019 Regulations").

The Law which is being amended

- The Invasive Alien Species (Enforcement and Permitting) Order 2019.
- The Marketing of Vegetable Plant Material Regulations 1995.
- The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019.
- The Wildlife and Countryside Act 1981.
- The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019.
- The Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019.

The purpose of the amendments

Amendments to the legislation (listed above) make a number of technical changes and introduce some provisions on policies which were included in earlier EU exit SIs, ensuring all deficiencies have been fully addressed. It covers a number of policy areas including:

- Invasive Alien Species
- Plant varieties
- Marketing of seeds and plant material
- Animal disease control of Transmissible Spongiform Encephalopathies and Animal by-products

The Invasive Alien Species (Enforcement and Permitting) Order 2019

Part 2 amends The Invasive Alien Species (Enforcement and Permitting) Order 2019 ("the 2019 Order") in order to correct a small error in that Order.

An error was found in article 20 of the 2019 Order which requires rectification before the Order enters into force relating to the provisions setting maximum penalties upon criminal

convictions for an offence under the 2019 Order. The 2019 Regulations amend article 20, by substituting article 20(1), in order to address these errors. It ensures that the maximum custodial sentence on summary conviction is three months imprisonment, in accordance with Schedule 2 to the European Communities Act 1972, only increasing to six months in England and Wales at such time as paragraph 3 of Schedule 27 to the Criminal Justice Act 2003 enters into force.

Amendments were made to correct operability issues in Regulation (EU) No 1143/2014 through the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019 which were laid in Parliament in December 2018 and made in February 2019. When the Invasive Alien Species (Enforcement and Permitting) Order 2019 was made subsequently, it was drafted on the basis of the UK still being a Member State in order to fulfil obligations under Regulation (EU) No 1143/2014. Part 5 amends the 2019 Order in terms of deficiencies relating to references to the “list of species of Union concern” and the “Union List” instead of the “list of species of special concern”. A definition of the “list of species of special concern” has also been added. References to “member state” and the “Union” are being amended to the “United Kingdom”. References to the “competent authority” are being amended to the “appropriate authority” to ensure consistency between the 2019 Order and the Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2019.

The Marketing of Vegetable Plant Material Regulations 1995

Regulation 3 of the 2019 Regulations amends the Marketing of Vegetable Plant Material Regulations 1995 to provide that the Welsh Ministers may authorise the marketing of plant material from any country outside of the EU if satisfied the plant material has been produced under conditions equivalent to those required in domestic legislation. Regulation 9(2) of the 2019 Regulations amends the authorisation provision for the purposes of exit from the EU.

The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment) (EU Exit) Regulations 2019

In the fields of Transmissible Spongiform Encephalopathies (TSEs) and Animal By-Products (ABPs), the 2019 Regulations will amend the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 (Part 4) to ensure that retained direct EU legislation will remain operable after the UK has left the EU.

The key changes within this SI, ensure that the law and disease controls applicable to TSEs and Animal By-Products function correctly after the UK has left the EU by including recent amendments to EU law which were not included in earlier EU exit legislation, e.g. last year’s amendment to Regulation (EC) No. 999/2001 Annex V that enables Member States to approve a different method to dentition for estimating whether a lamb is aged over twelve months for the purpose of removing the skull and spinal cord. This will allow the UK to introduce a date based system for estimating whether a lamb is aged over twelve months for the purpose of removing the skull and spinal cord for rendering and disposal as specified risk material.

There are also a number of technical/operability changes to ensure all deficiencies have been fully addressed. These include a requirement for pre-notification of imports of certain

higher risk animal by-products from the EU 27 to provide equivalent controls on traceability of consignments to those which apply for existing intra- community movements.

The Wildlife and Countryside Act 1981 ("the 1981 Act")

The amendments to the 1981 Act (Part 5) correct cross-references to the "list of species Union concern" and the "Union list" to ensure consistency with Regulation (EU) No 1143/2014 (as amended) and the 2019 Order.

The Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019

Part 6 of the 2019 Regulations amends the Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 to enable an application to be submitted for UK plant breeders' rights after exit, which if made within 6 months of exit day will benefit from the application of regulations 11 to 13 of those Regulations, for applications made after that 6 month period the provisions of the Plants Varieties Act 1997 will apply. The 2019 Regulations also amend some cross references and will align terminology with the Trades Mark Act 1994.

The Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019

Regulation 10 of the 2019 Regulations amends the Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019 to revoke retained EU Decisions 2013/166, 2019/119 and 2019/120 which will be redundant upon exit.

The 2019 Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/BhGFI9yi>

Any impact the SI may have on the Welsh Ministers' executive competence

Save for Regulation 3 of the 2019 Regulations which confers an administrative function on the Welsh Ministers without encumbrance, the 2019 Regulations do not impact on the Welsh Ministers ability to exercise functions in relation to Wales and this will continue without encumbrance.

Any impact the SI may have on the legislative competence of the National Assembly for Wales

The 2019 Regulations have no impact on the National Assembly for Wales' legislative competence.

Why consent was given

As set out above, the 2019 Regulations make a number of technical changes and introduce some provisions on policies which were included in earlier EU exit SIs, ensuring all deficiencies have been fully addressed.

A Statutory Instrument Consent Memorandum has also been laid in the National Assembly in respect of the amendments to The Wildlife and Countryside Act 1981

UK MINISTERS ACTING IN DEVOLVED AREAS

139 - The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019

Laid in the UK Parliament: 1 July 2019

Sifting

Subject to sifting in UK Parliament?	Yes
Procedure:	Proposed Negative
Date of consideration by the House of Commons European Statutory Instruments Committee	16 July 2019
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	N/A
Date sifting period ends in UK Parliament	17 July 2019
Written statement under SO 30C:	Paper 8
SICM under SO 30A (because amends primary legislation)	Paper 4

Scrutiny procedure

Outcome of sifting	N/A
Procedure	Affirmative or Negative
Date of consideration by the Joint Committee on Statutory Instruments	Not known
Date of consideration by the House of Commons Statutory Instruments Committee	Not known
Date of consideration by the House of Lords Secondary Legislation Scrutiny Committee	Not known

Commentary

These Regulations are proposed to be made by the UK Government (in part) pursuant to section 8 (1) of and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

These Regulations make a number of technical changes to existing instruments taking into account recent changes to EU legislation which could not be included in earlier EU Exit instruments. The Regulations cover a number of policy areas including: invasive alien species, plant varieties, marketing of seeds and plant material, animal disease control of Transmissible Spongiform Encephalopathies and animal by-products.

Legal Advisers make the following comments in relation to the Welsh Government's statement dated 4 July 2019 regarding the effect of these Regulations:

- Whilst the statement refers to changes made (in regulations 2 and 3) to the Invasive Alien Species (Enforcement and Permitting) Order 2019 and the Marketing of Vegetable Plant Material Regulations 1995, changes to these instruments were made using powers under section 2 (2) of the European Communities Act 1972 rather than powers under the European Union (Withdrawal) Act 2018.
- The Regulations make changes to the Marketing of Seeds and Plant Propagating Material (Amendment) (England and Wales) (EU Exit) Regulations 2019. Whilst this instrument is mentioned in the bulleted list on page 1, no further explanation is provided in the statement. There is an explanation on page 3 of the statement which refers to changes made to the Marketing of Seeds and Plant Propagating Material (Amendment etc.) (EU Exit) Regulations 2019, however these Regulations are not included in the bulleted list on page 1.

The above summary and the content of the Explanatory Memorandum to these Regulations confirm their effect.

Jeremy Miles AM

Counsel General

10 July 2019

Dear Counsel General,

Senedd and Elections (Wales) Bill

As you will be aware, the Llywydd wrote to the Constitutional and Legislative Affairs (CLA) Committee on 13 June 2019, providing further information on the proposals in respect of the Electoral Commission. I responded to the Llywydd on 27 June 2019, and a copy was sent to yourself and the CLA Committee. In my reply, I asked the Llywydd, in discussion with yourself to consider not seeking the Assembly's approval of a Financial Resolution until further information was available in relation to the funding and oversight arrangements of the Electoral Commission.

I understand from your letter to the CLA Committee of 25 June 2019, that you intend to seek to amend the Bill to make clearer the financial and accountability arrangements between the Assembly and the Electoral Commission. I appreciate this is a complex area of law and you are still exploring various options in discussion with the UK Treasury, Assembly Commission and the Electoral Commission.

Standing Orders state that the Assembly needs to agree to the expenditure being charged on or payable out of the Welsh Consolidated Fund. As the provisions around the financial and accountability arrangements for the Electoral Commission are still unknown, I do not believe it is appropriate to ask the Assembly to authorise the expenditure associated with this legislation, until there is clarity as to exactly what the Assembly is authorising, and how this expenditure will be funded.



As only a member of the Government can 'move' a Financial Resolution motion, I am writing to ask you to delay seeking the Assembly's approval of such a motion until further information is provided by yourself and the Llywydd in relation to the Electoral Commission arrangements. This will ensure the Finance Committee is afforded an opportunity to consider your proposals and their financial implications prior to Stage 2 proceedings.

I am copying this letter to the Llywydd and the Chair of the CLA Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Llyr', is centered on a light yellow rectangular background.

Llyr Gruffydd AM
Chair of the Finance Committee



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Agenda Item 8

By virtue of paragraph(s) vi of Standing Order 17.42

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Agenda Item 9

By virtue of paragraph(s) vi of Standing Order 17.42

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