

EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (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 Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes technical changes to earlier EU Exit SIs to take account of various recent EU instruments relating to plant health. It will ensure that this recent EU legislation forms part of the retained EU law relating to plant health on exit day. It also amends primary legislation relating to plant health to remove references to EU obligations.

Explanations

What did any relevant EU law do before exit day?

2.2 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU¹ ("the Plant Health Directive") establishes the EU plant health regime. Whilst protecting against plant health risks, the Plant Health Directive also provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.

2.3 The Plant Health Directive is implemented in England by the Plant Health (England) Order 2015 (S.I. 2015/610) and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) which extends to Great Britain. The Orders set out obligations for the control and management of plant health risks from the import of plant material from third countries and the movement of such material within the EU single market, in order to protect biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in Scotland, Wales and Northern Ireland.

Why is it being changed?

2.4 The following EU instruments have been adopted recently which modify the annexes of the Plant Health Directive as a result of technical changes in the assessment of risks presented by particular pests and diseases and introduce new measures to address risks presented by other pests and diseases:

- Commission Implementing Decision (EU) 2018/ 1959 which establishes measures to prevent the introduction into and spread within the EU of the harmful organism *Agrilus planipennis* (Fairmaire) through wood originating in Canada and the United States of America.

¹ This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

- Commission Implementing Decision (EU) 2019/449 which amends Commission Implementing Decision (EU) 2016/715 setting out measure in respect of certain fruits originating in third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa.
- Commission Implementing Directive (EU) 2019/523 which amends Annexes 1 to V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community.
- These recent EU measures have been implemented in relation to England through two non-EU Exit SIs: the Plant Health (England) (Amendment) Order 2019 (S.I. 2019/1070); and the Plant Health (Forestry) (Amendment) (England) Order 2019 (S.I. 2019/1075). These Orders also introduce national provisions to protect against the introduction of the Rose rosette virus under provisions contained in the Plant Health Directive. Equivalent legislation to implement these EU measures is being brought forward in Wales and Northern Ireland.

2.5 National provisions to add strengthened protection against the introduction and spread of Oak Processionary Moth were implemented through the Plant Health (Amendment) (England) Order 2019 (S.I. 2019/1128), which came into force on 15 July 2019. This instrument amends the measures in the Plant Health (EU Exit) Regulations 2019 which apply to Oak Processionary Moth to reflect those changes, as well as the other changes required by the EU measures in Commission Implementing Directive (EU) 2019/523.

What will it now do?

- 2.6 This instrument amends the Plant Health (EU Exit) Regulations 2019 (S.I. 2019/787) and the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/809), which apply to England, Wales and Northern Ireland. It will ensure that Schedules 1 to 6 to the Plant Health (EU Exit) Regulations 2019 are updated to reflect recent EU and national legislation, relating to plant health so that EU-derived protective measures against the introduction and spread of organisms harmful to plants or plant products which are in place immediately before exit day continue to remain effective and operable following the UK's withdrawal from the EU.
- 2.7 In Part 2, this instrument also removes references to EU obligations from sections 2(1) and 3(1) of the Plant Health Act 1967 (which extends to Great Britain) and to Community obligations from sections 2(1) and 3(1) of the Plant Health Act (Northern Ireland) 1967 which will become redundant on exit day.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument varies between provisions.
- 3.3 Regulation 2 applies to Great Britain, regulation 3 applies to Northern Ireland and regulations 4 and 5 apply to England, Wales and Northern Ireland.

4. Extent and Territorial Application

- 4.1 The territorial extent of the provisions in this instrument is the same as the provisions they amend. This means that regulation 2 extends to Great Britain, regulation 3 extends to Northern Ireland and regulations 4 and 5 extend to England and Wales and Northern Ireland.
- 4.2 The territorial application of the provisions in this instrument is the same as the provisions they amend. This means that regulation 2 applies to Great Britain, regulation 3 applies to Northern Ireland and regulations 4 and 5 apply to England, Wales and Northern Ireland.

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 Plant Health (Amendment etc.) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The key legislative context for the instrument is set out at sections 2.2 to 2.7 above. The principal amendments made by this instrument are contained in Part 3 and Part 4 and amend the Plant Health (EU Exit) Regulations 2019 and the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 to update Schedules 1 to 6 to the Plant Health (EU Exit) Regulations 2019.

7. Policy background

What is being done and why?

- 7.1 This instrument will ensure that EU Exit SIs (referred to in section 6.1) are updated to reflect recent EU and national legislation relating to plant health. It ensures that the relevant EU-derived protective measures against the introduction and spread of organisms harmful to plants or plant products which are in place immediately before exit day continue to remain effective and operable following the UK’s withdrawal from the EU. These measures will be in place immediately before exit day.
- 7.2 All the amendments introduced by this instrument are technical operability amendments and do not introduce any policy changes.
- 7.3 We are also using this opportunity to remove references to EU obligations at sections 2(1) and 3(1) of the Plant Health Act 1967 (which extends to Great Britain) and to Community obligations from sections 2(1) and 3(1) of the Plant Health Act (Northern Ireland) 1967. These changes have no operational impact but simply remove redundant and inoperable references to EU obligations. The Devolved Administrations have provided their consent to make these changes for the whole of the UK.

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 (within the meaning of that Act) arising from the withdrawal of the United Kingdom from the European Union. The instrument is also

made under paragraph 21 of Schedule 7 of the Withdrawal Act. 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 The Scottish, Welsh and Northern Irish devolved administrations have been consulted about the proposed amendments and are content.

11. Guidance

11.1 The Animal and Plant Health Agency are the relevant delivery body and are developing an implementation plan and associated guidance for publication. A Technical Notice was published in September 2018, describing how imports and exports of plants and plant products to/from the EU will change in a 'no deal' EU Exit scenario.

12. Impact

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

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

12.3 An impact assessment has not been prepared for this instrument because the direct impacts on businesses and the public sector are expected to be below the *de minimus* threshold for requiring an impact assessment, as outlined in paragraphs 12.1 to 12.2 above.

13. Regulating small business

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

13.2 The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

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

15. Contact

15.1 Kate Somerwill-Owens at the Department for Environment, Food and Rural Affairs
Telephone: 02080 5654319 or email: kate.somerwill-owens@defra.gsi.gov.uk can be contacted with any queries regarding this 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, Parliamentary Under Secretary of State 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.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 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 SI is urgent.
Explanations where amending regulations under s. 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 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 SI 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. Appropriateness statement

- 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 Plant Health (Amendment etc.) (EU Exit) Regulations 2019 do no more than is appropriate”.
- 1.2 This is the case because the instruments correct technical deficiencies that will arise from withdrawal and ensures that the existing regimes for safeguarding UK biosecurity will continue to operate effectively once we leave the EU. This is in line with government policy.

2. Good reasons

- 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 there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 2.2 These are that there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement:
“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

4. Explanations

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