EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020.

2.2 Regulation (EU) 2016/2031) on protective measures against pests of plants and Regulation (EU) 2017/625) on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products ("the EU Regulations") and associated implementing legislation will be made operable for GB. The result of the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") is that the UK leaves the EU single market. The operability amendments contained in this instrument create a 'single market' covering GB and the Crown Dependencies. The EU will become a third country and, as a result, be subject to third country import controls. Plant health controls on material imported from third countries will continue to be applied and will focus on risks to GB, rather than risks to the EU. Internal controls will also continue to apply to movement of goods within the GB internal market.

Explanations

What did any relevant EU law do before exit day?

2.3 The EU Regulations form part of the EU Smarter Rules for Safer Food package of regulations. This package was designed to modernise, simplify and improve existing health and safety standards for the agri-food chain, taking a risk-based approach to animal, plant and public health protection and introducing more efficient pest and disease control measures.

2.4 The EU Regulations, and the implementing legislation made under these Regulations, such as Commission Implementing Regulation (EU) 2019/2072, are directly applicable (i.e. national implementing legislation was not needed for them to take effect in UK law). The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) ("the 2019 Regulations") contain supplementary domestic provisions to enable the competent authorities in England to carry out their obligations under the EU Regulations, enforce these EU Regulations and implement derogations to various provisions in the EU Regulations that are available to Member States. Separate but parallel domestic legislation applies in Wales, Northern Ireland, and Scotland.

Why is it being changed?

2.5 The Plant make operability changes and other consequential amendments to Regulation (EU) 2016/2031 on protective measures against pests of plants the ("EU Plant Health Regulation") and the 2019 Regulations to ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period.

What will it now do?

2.6 This instrument will ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period.

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 includes Scotland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England, Wales and Scotland.

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 Plant Health (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Withdrawal Act converts and preserves EU law at the end of the Transition Period into domestic law ("retained EU law"). This instrument is made under powers conferred by the Withdrawal Act, in order to address failures in retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

6.2 If retained EU law was not amended, it would contain inoperable rules that would prevent the UK government and the Devolved Administrations from being able to deliver workable legislation on plant health. This instrument uses the powers in Section 8 of the Withdrawal Act to correct these deficiencies. The legislation being amended would not have the right effect as it would not reflect the change in the legislative position following the Withdrawal Act, the Protocol of Ireland / Northern Ireland ("the Protocol") and amendments which have been made to the EU Regulations since they were made.

6.3 This instrument makes amendments to legislation in the field of plant health. Part 2 of the Plant amends domestic legislation relating to plant health. Part 3 amends

Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants and other directly applicable EU legislation relating to plant health. Part 4 makes consequential amendments, contains transitional provisions and savings, and revokes retained direct EU legislation.

7. Policy background

What is being done and why?

7.1 All the amendments introduced by this instrument are technical operability amendments and do not include any policy changes.

7.2 The purpose of this instrument is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020. The current policy of risk-based plant health controls applied under EU legislation will continue. However, the regime will now focus on risks to GB, rather than risks to the EU, to ensure it is technically justified in accordance with World Trade Organisation obligations and the EU Regulations. The GB risk assessment process will follow the same internationally accepted principles and approach used in previous Pest Risk Analysis under the EU regime.

7.3 The revised approach for EU imports will be phased in over 6 months, from 1 January 2021 to stagger the operational implementation of controls on EU products to allow trade to continue to flow whilst businesses adapt to the application of third country import controls. This will be a temporary and risk-based transitional arrangement, with the aim of ensuring consistent and technically justified import controls which apply to all countries exporting to GB.

7.4 For Northern Ireland, separate legislative arrangements will be needed in order to maintain alignment with Sanitary and Phytosanitary related EU regulations and specify requirements for GB goods entering Northern Ireland.

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

8.1 The Plant are 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. 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 Stakeholders have not been consulted as all the amendments introduced by this instrument are technical operability amendments and not policy changes.

10.2 The Scottish and Welsh Devolved Administrations have been consulted about the proposed amendments and are content.

11. Guidance

11.1 The Animal and Plant Health Agency and the Forestry Commission are the relevant delivery body and are developing an implementation plan and associated guidance for publication on GOV.UK.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies as a result of policy changes introduced under this instrument.

12.2 There is no significant impact on the public sector as a result of policy changes introduced under this instrument.

12.3 The result of the Withdrawal Act is that the UK leaves the EU single market. The amendments in this instrument reflect this change which results in the EU becoming a third country for plant health purposes.

12.4 As the EU becomes a third country at the end of the Transition Period, regulated EU commodities imported to GB will be subject to standard third country controls for plant health (provide a certificate, pre-notify imports from the EU, undergo document, identity and physical checks). These direct impacts on businesses and the public sector are a result of the terms of the Withdrawal Act and do not reflect any change in GB plant health policy, therefore an impact assessment has not been prepared for this instrument.

12.5 Requirement to use UK rather than EU plant passports for intra-GB movements of plant passported commodities – this will require businesses moving plant passported commodities within GB to modify the reference code that they use when issuing plant passports, replacing 'EU' with 'UK'. The process for authorising businesses for plant passporting will not change and businesses who will need to use the system from 1 January 2021 are likely to already be registered. Therefore, we expect no extra impact on business from this change.

Additional Benefits

12.6 There may be some increase in protection against the spread of plant pests and diseases. This is because the current requirement is for an EU plant passport for trade in higher risk plants and plant products between the GB and other EU countries and that requirement would now increase to a phytosanitary certificate for all imports of regulated plants and plant products, as defined by the EU Plant Health Regulation, that have been assessed to be higher risk by GB. In addition, there may be extra data available on higher risk commodities (through pre-notification), which would allow for better targeting of plants and pests from the EU which present a biosecurity risk.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 This instrument applies equally to all businesses 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.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 SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.

Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. 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 2020 do no more than is appropriate".

1.2 This is the case because this instrument corrects technical deficiencies that arise from the UK's withdrawal from the EU and ensure that the existing regimes for safeguarding UK biosecurity will continue to operate effectively after the end of the Transition Period. 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:

"This instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

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

"In relation to this instrument, I, Lord Gardiner of Kimble have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

4. Explanations

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