EXPLANATORY MEMORANDUM TO

THE ANIMAL HEALTH, PLANT HEALTH, SEEDS AND SEED POTATOES (MISCELLANEOUS AMENDMENTS) REGULATIONS 2021

2021 No. 1229

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.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this instrument is to address failures of retained EU law to operate effectively following the withdrawal of the United Kingdom ("UK") from the European Union ("EU"). This will ensure that plant and animal health controls can operate effectively to protect biosecurity and support trade between Great Britain ("GB") and the relevant third countries.

2.2 This instrument makes amendments to secondary legislation to correct deficiencies relating to plant health, seeds and seed potatoes which have arisen as a result of the withdrawal of the UK from the EU.

2.3 This instrument also corrects errors in various statutory instruments (please see the Explanatory Note to the instrument for further details). In light of these corrections, the Department is adopting the free issue procedure in relation to this instrument. The Department confirms that it has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult the SI Registrar on the use of the free issue procedure in relation to this instrument.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The amendments in regulations 3 and 5 correct errors identified by the Joint Committee on Statutory Instruments in the Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 ("S.I. 2020/1388"): please see the Committee's Forty-First Report of Session 2019-21. Please also see paragraphs 7.5, 7.6 and 7.9 below.

3.2 On 28th October 2021 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament though one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, and Scotland, apart from regulations 3 and 4, which extend to England and Wales, Scotland and Northern Ireland, and regulation 13, which extends to England and Wales only.

4.2 The territorial application of this instrument is England and Wales, and Scotland, apart from regulation 3, which applies to England and Wales, Scotland and Northern Ireland, and regulation 13, which applies to England only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 converted and preserved directly applicable EU law at the end of the transition period into domestic law, as retained EU law (see section 7.3). If retained EU law relating to animal and plant health was not amended to correct any deficiencies, it would prevent the UK Government and the devolved administrations from being able to deliver workable legislation and enforcement on material subject to sanitary and phytosanitary controls.

6.2 Part 2 of this instrument makes amendments to retained EU law relating to animal and plant health.

6.3 Part 3 makes amendments to subordinate legislation, namely the Seeds (National Lists of Varieties) Regulations 2001 (S.I. 2001/3510), the Seed Potatoes (England) Regulations 2015 (S.I. 2015/1953) and the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 ("S.I. 2020/1482").

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to amend legislative deficiencies to ensure the continued protection of GB biosecurity and facilitate trade movements between GB and relevant third countries. The amendments being introduced by this instrument are technical operability amends and do not implement any new policy changes.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 Regulation (EU) 2016/2031 ("the Plant Health Regulation") and Regulation (EU) 2017/625 ("the Official Controls Regulation"), (together "the EU Regulations"), form part of the EU Smarter Rules for Safer Food package of regulations. This package was designed to modernise, simplify, and improve existing health and safety standards for the agri-food chain, taking a risk-based approach to animal, plant and public health protection and introducing more efficient pest and disease control measures. Additional tertiary legislation, such as Regulation (EU) 2019/2072 ("the Phytosanitary Conditions Regulation"), established uniform conditions for the Plant Health Regulation, while Commission Implementing Regulation (EU) 2019/66 of 16 January 2019 on rules on uniform practical arrangements for the performance of official controls on plants, plant products and other objects in order to verify compliance with Union rules on protective measures against pests of plants applicable to those goods established uniform arrangements for the performance of official controls on plants, plant products and other objects.

7.3 Before the end of the transition period, the EU Regulations were directly applicable, so no national implementing legislation was needed for them to take effect in UK law. However, supplementary domestic provisions were introduced by the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 ("S.I. 2019/1517") to enable competent authorities in England to carry out their obligations under, and enforce, the EU Regulations and to implement various derogations in the EU Regulations. Separate but parallel domestic legislation to S.I. 2019/1517 was also introduced in Wales, Northern Ireland, and Scotland.

7.4 Commission Implementing Regulation (EU) 139/2013 lays down animal health conditions for imports of certain birds into the EU and the quarantine conditions thereof.

7.5 Regulation (EC) No. 999/2001 lays down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies. It was retained in domestic law when the UK left the EU, as amended by the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/170), which was subsequently amended and updated by S.I. 2020/1388.

7.6 Commission Regulation (EU) No 576/2013 lays down the animal health requirements applicable to the non-commercial movement of pet animals into an EU Member State from another EU Member State or from third countries and the checks applicable to such movement. It aims to ensure a sufficient level of safety with regard to the public and animal health risks involved in such non-commercial movement and to remove any unjustified obstacles to such movement.

Why is it being changed?

7.7 The above EU laws on animal and plant health were amended in relation to GB to deal with a range of deficiencies in the legislation arising from the withdrawal of the UK from the EU.

7.8 With regard to plant health, the Plant Health Regulation and the Phytosanitary Conditions Regulation were respectively amended by S.I. 2020/1482 and the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1527) together "the 2020 Regulations". This instrument deals with any outstanding deficiencies which have not been accounted for in previous amendments. This includes the amendment of certain transitional provisions in the 2020 Regulations, to ensure that these are extended to lower risk plants and plant products entering GB from Liechtenstein and Switzerland as well as from EU Member States. In addition, Commission Implementing Regulation (EU) 2019/2148, concerning the release of plants, plant products and other objects from quarantine stations and confinement facilities, is being amended to make this regulation operable in GB.

7.9 With regard to animal health, Regulation (EC) No 999/2001 is being amended to remove an unnecessary point which duplicates or contradicts other points in this paragraph, relating to risks associated with classical scrapie in sheep and goats. Commission Implementing Regulation (EU) No 139/2013 is being amended to remove the disapplication of that Regulation for the imports of certain birds from Andorra, Liechtenstein, Monaco, Norway, San Marino, Switzerland and the Vatican City State, following the withdrawal of the UK from the EU. Commission Regulation (EU) No 576/2013 is being amended to ensure consistency in language when making reference to EU legislation.

7.10 In addition, this instrument makes minor corrections to two statutory instruments:

- the Seeds (National Lists of Varieties) Regulations 2001 to provide clarity on the definition of "NI Variety Lists" so that a reference to the NI Variety List can mean any one of those lists.
- the Seed Potatoes (England) Regulations 2015 to re-state the definition of "seed potatoes produced outside England" to clarify the definition and remedy a minor error that arose in previous amending SIs (S.I. 2020/1388, which amended the definition in the Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/809)).

What will it now do?

7.11 The operability amendments made by this instrument regarding animal and plant health will ensure the continued functioning of sanitary and phytosanitary controls within GB, and between relevant third countries and GB.

7.12 For operability amendments made to regulations on seed and seed potatoes, it will clarify the definitions as regards the "NI Variety Lists" and "seed potatoes produced outside England".

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of, and paragraph 21 of Schedule 7 to, 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 EU. 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 as this is not a consolidation.

10. Consultation outcome

10.1 Defra have carried out numerous informal engagements with GB-wide stakeholders, on the withdrawal of the UK from the EU, from Summer 2020 to Summer 2021. However, a formal consultation was not deemed necessary as all the amendments introduced by this instrument are technical operability amendments and not policy changes.

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

11. Guidance

11.1 Guidance is not required. The amendments introduced by this instrument are correcting legislative deficiencies and are not policy changes.

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 there are no significant impacts as result of the amendments made by this instrument.

13. Regulating small business

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

13.2 This instrument applies equally to all businesses. There is no exemption for small businesses, given the importance of protecting plant biosecurity through the actions of all sizes of businesses.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Suzie Pearce at Defra, telephone: 0208 0267 171 or email: suzannah.pearce@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Nicola Spence, Deputy Director for Plant Health Bees and Seeds, at Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Benyon, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at Defra can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the European Union (Withdrawal) Act 2018

This table sets out the statements that may be required under the European Union (Withdrawal) Act 2018

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 powers in sections 8(1) or 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 powers in sections 8(1) or 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 powers in sections 8(1) or 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 powers in sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equality Act 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 powers in sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has	Explain the instrument, identify the relevant law before IP completion 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.

		made a political commitment to include these statements alongside all SIs made under the European Union (Withdrawal) Act 2018	
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising powers in sections 8(1) or 23(1) or paragraph 1(2) of 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 powers in section 8 or paragraph 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under section 2(2) of the European Communities Act 1972 ("the ECA 1972")	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under section 2(2) of the 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.
Explanations where amending regulations under section 2(2) of the ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under section 2(2) of the ECA 1972	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the European Union (Future Relationship) Act 2020

This table sets out the statements that may be required under the European Union (Future Relationship) Act 2020

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising powers in section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act and the European Union (Future Relationship) Act 2020

1. Sifting statement(s)

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

"In my view the Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because the amendments in this instrument correct outstanding technical deficiencies that arise from the UK's withdrawal from the EU that reflect the current government policy and ensure that the existing regimes for safeguarding GB plant health and biosecurity will continue to operate effectively. They do not make policy changes.

2. Appropriateness statement

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

"In my view the Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021 do no more than is appropriate".

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

3. Good reasons

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

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 These are that legislative deficiencies need to be corrected to ensure the continued protection of GB biosecurity and facilitate trade movements between GB and relevant third countries.

4. Equalities

4.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon, 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".

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

"In relation to this instrument, I, Lord Benyon 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 7 of the main body of this Explanatory Memorandum.