EXPLANATORY MEMORANDUM TO

THE AQUATIC ANIMAL HEALTH AND PLANT HEALTH (LEGISLATIVE FUNCTIONS) (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 and is laid before Parliament by Act.

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

2. Purpose of the instrument

2.1 This instrument provides for a number of legislative functions that are currently conferred by European Union ("EU") legislation upon the European Commission ("the Commission") to be exercisable instead by public authorities in the United Kingdom ("UK"), so that they can be exercised at national level after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The EU Directives concerned cover aquatic animal health and plant health. The powers were conferred on the European Commission by Council Directive 2006/88/EC on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals (OJ No. L 328, 24.11. 2006) ("Directive 2006/88/EC") and 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 in the Community (OJ No. L 169, 10.7.2000, p.1) ("Directive 2000/29/EC"). The legislative functions were conferred upon the Commission to enable it to develop the technical details of the specific regimes, without the frequent need to refer back to the EU Council and Parliament. Examples of these functions include amending technical annexes containing diseases and pests.

Why is it being changed?

2.3 This instrument does not make changes to substantive policy content. It provides for the legislative function in each case to be exercisable by UK authorities. This is to ensure that the relevant regimes continue to function smoothly and can be updated to reflect changes in disease and pest risks.

What will it now do?

2.4 This instrument confers functions on UK authorities which are equivalent to various legislative functions exercisable by the European Commission in relation to EU aquatic animal health and plant health legislation and converts the EU procedures to appropriate UK procedures.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument provides for the exercise by UK authorities of legislative functions currently carried out by the Commission. These functions all fall within the aquatic animal health and plant health policy areas of Defra. Defra has decided to deal with these in a single instrument, which is subject to the affirmative resolution procedure.

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 The powers under which this instrument is made cover the United Kingdom (see section 24(1) of the European Union (Withdrawal) Act 2018), and the territorial application of this instrument is not limited by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom except for Part 3 which does not extend to Scotland.

4.2 The territorial application of this instrument is the United Kingdom, except for Part 3 which does not apply to Scotland.

5. European Convention on Human Rights

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

"In my view the provisions of the Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations) 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 ("EUWA") converts EU law as it stands at the moment of exit into domestic law before the UK leaves the EU. It also confers temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU. This instrument relies upon those correcting powers to allow legislative functions exercisable by the Commission to be exercisable instead by UK authorities.

7. Policy background

What is being done and why?

7.1 EU legislation frequently gives the Commission the power to make further legislation (known as delegated or implementing acts). This delegation of legislative functions allows the Commission to adopt detailed provisions that amend, supplement or implement EU legislation without going through the full legislative process.

7.2 This instrument will allow UK authorities to exercise legislative functions in the UK after exit which are equivalent to various legislative functions exercisable by the Commission under Directive 2006/88/EC and Directive 2000/29/EC. These regulation-making powers will enable UK authorities to implement technical provisions that may need to be developed after exit to ensure that the aquatic animal health and plant health regimes continue to reflect appropriate risks and scientific and technical information (in a manner consistent with the UK's obligations under the World Trade Organisation Sanitary and Phytosanitary Agreement). The instrument provides for Parliament to scrutinise the exercise of these functions by negative resolution, reflecting the technical nature of the provisions which would be made by these powers.

7.3 Aquatic Animal Health (Part 2): this instrument transfers legislative functions from Directive 2006/88/EC. The Commission has the power to amend the list of diseases listed throughout the EU for disease control purposes and the criteria for listing diseases; and draw up and update lists of third countries or parts of third countries from which aquaculture animals and related products can be introduced into the EU and set out detailed rules for the introduction into the EU from third countries of aquaculture animals and related products. These functions are transferred (with appropriate modifications) to the Secretary of State, the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland to exercise in their respective areas. The Secretary of State may also exercise the functions on behalf of a Devolved Administration with its consent. There are several other powers under this Directive which are not transferred via this instrument, as they are not thought to be critical for day 1 readiness and may be transferred in due course. This instrument is linked to the proposed Aquatic Animal Health and Alien Species in Aquaculture (Amendment etc.) (EU Exit) Regulations 2019 and the Aquatic Animal Health and Alien Species in Aquaculture (Amendment) (England and Wales) (EU Exit) Regulations 2019, which have been laid before the sifting committee.

7.4 Plant health (Part 3): this instrument transfers legislative functions from Directive 2000/29/EC. The Commission has the power to amend the Annexes to the Directive where it is necessary or appropriate in light of developments in scientific or technical knowledge or technically justified and consistent with the risk to plant health; specify exemptions and derogations from an import prohibition, an import restriction or a documentary requirement that applies to plants and plant products originating in a third country; recognise the equivalence of phytosanitary measures adopted by third countries and make temporary emergency measures for the purposes of preventing the introduction of a plant pest into the EU or the spread of the plant pest within the EU. These functions are transferred (with appropriate modifications) to the Secretary of State, the Welsh Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland to exercise in their respective areas. The Secretary of State may also exercise the functions on behalf of a Devolved Administration with its

consent. There are several other powers under this Directive which are not transferred via this instrument, as they are not thought to be critical for day 1 readiness and may be transferred in due course. This instrument is linked to the proposed Plant Health (EU Exit) Regulations 2019 and Plant Health (Amendment) (England) (EU Exit) Regulations 2019 which are also due for debate in both Houses.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 This instrument was not subject to consultation.

10.2 This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials.

11. Guidance

11.1 None.

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 SI provides for technical measures already contained in transposed EU Directives.

13. Regulating small business

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

13.2 There is no additional impact on small businesses (employing up to 50 people) because this instrument maintains the status quo and does not introduce any policy change. Therefore, no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review and bring forward further measures with additional powers from Directives which were not considered critical for day 1 of EU exit.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required. Defra and its agencies will, however, monitor and review the impact of the instruments as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

15. Contact

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

15.2 Catherine Harrold, Deputy Director for Future Animal & Plant Health, Endemics & Traceability 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 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/ESIC
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 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 Aquatic Animal Health and Plant Health (Legislative Functions) (EU Exit) Regulations) 2019 does no more than is appropriate".

1.2 This is the case because they provide for the exercise of legislative functions by UK authorities as appropriate given the nature of the functions concerned.

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 This is the case because it is appropriate for UK authorities to exercise legislative functions currently carried out by the Commission for disease and pest control to ensure UK biosecurity. These functions include those in relation to surveillance and quarantine procedures, as well as the power to amend and update the list of notifiable diseases.

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 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."

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 the draft instrument, I, The 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

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