EXPLANATORY MEMORANDUM TO

THE ENVIRONMENT AND WILDLIFE (LEGISLATIVE FUNCTIONS) (EU EXIT) (AMENDMENT) 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.

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

2. Purpose of the instrument

2.1 This statutory instrument amends the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 ('SI 2019/473'). This is to ensure that the Secretary of State can set out the detail of key derogations in Commission Regulation (EC) No 865/2006 by regulations, rather than 'in writing', which may restrict the powers of the Secretary of State to simply making administrative measures. It also provides for regulations made by the Secretary of State in respect of those derogations to be subject to parliamentary scrutiny under the negative resolution procedure.

Explanations

What did any relevant EU law do before exit day?

2.2 The Convention on International Trade in Endangered Species of Wild Fauna and Flora ('CITES') is implemented in the EU through a set of regulations known as the EU Wildlife Trade Regulations ('WTR'), which put in place a system of permits and certificates for cross-border movement of specimens of endangered species. The WTR include:

- Principal Regulation – Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein ("Regulation 338/97");
- Implementing Regulation – Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 ("Regulation 865/2006").

2.3 Article 7(1) to (3) of Regulation 338/97 provides for derogations from the permitting regime, in relation to: specimens of species born and bred in captivity or artificially propagated; specimens in transit; and specimens which are personal and household effects. The Article also gives the Commission legislative powers to set out the regulatory detail of the derogations. The Commission has done so in Regulation 865/2006.

Why is it being changed?

2.4 SI 2019/473 provides for the Secretary of State to set out the regulatory detail of the Article 7(1) to (3) derogations "in writing", rather than "in regulations".

2.5 This instrument amends SI 2019/473 to correct the drafting, so that the Secretary of State can instead set out the regulatory detail "in regulations". This will ensure the Secretary of State has the necessary legislative powers to amend Regulation 865/2006 (in respect of the Art 7(1) to (3) derogations) after EU Exit.

2.6 This instrument also amends SI 2019/473, to provide that regulations made by the Secretary of State (in respect of those derogations) will be subject to Parliamentary scrutiny under the negative resolution procedure.

What will it now do?

2.7 This instrument amends SI 2019/473, which in turn amends Articles 7 and 18 of Regulation 338/97 on exit day. Consequently, on exit day, Regulation 338/97 will provide that the Secretary of State may set out the detail of the Article 7(1) to (3) derogations in regulations. Any such regulations made by the Secretary of State will be subject to negative resolution procedure.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument amends SI 2019/473 to correct the drafting, so that the Secretary of State can set out the regulatory detail of the Article 7(1) to (3) derogations "in regulations", ensuring the Secretary of State has the necessary legislative powers to amend Regulation 865/2006. Regulations made by the Secretary of State will be subject to parliamentary scrutiny under the negative 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 includes Scotland and Northern Ireland.

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

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for the Environment and Rural Life Opportunities, Dr Thérèse Coffey has made the following statement regarding Human Rights:

"In my view the provisions of the Environment and Wildlife (Legislative Functions) (EU Exit) (Amendment) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends SI 2019/473 (made under section 8 of the European Union (Withdrawal) Act 2018), which in turn amends Regulation 338/97, in order to ensure Regulation 338/97 operates properly after the UK leaves the EU.

7. Policy background

What is being done and why?

7.1 This instrument is necessary to ensure that Article 7(1) to (3) of Regulation 338/97 operates properly in the UK after our exit from the EU.

7.2 It ensures that the legislative powers currently conferred on the Commission are conferred on the Secretary of State, so that, after EU Exit, the Secretary of State can legislate to amend Regulation 865/2006 which sets out the regulatory detail of the Article 7(1) to (3) derogations.

7.3 Given that these provisions enable the Secretary of State to make changes to restrictions on trade of endangered species, regulations made by the Secretary of State in this regard will be subject to parliamentary scrutiny under the negative resolution procedure.

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. 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 The Department does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 No public consultation was undertaken.

11. Guidance

11.1 No new guidance will be produced.

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 no, or no significant, impact on the private or voluntary sector is foreseen.

13. Regulating small business

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

14. Monitoring & review

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

15. Contact

15.1 Rhiannon Hudson-Jones at the Department for Environment, Food and Rural Affairs email: Rhiannon.hudson-jones@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Emma Williams and Tamsin Ballard, jointly Deputy Directors in the Wildlife, International, Climate and Forestry ('WICAF') Directorate at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Parliamentary Under Secretary of State for the Environment, Dr Thérèse Coffey MP 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 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. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for the Environment and Rural Life Opportunities, Dr Thérèse Coffey has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Environment and Wildlife (Legislative Functions) (EU Exit) (Amendment) Regulations 2019 does no more than is appropriate".

1.2 This is the case because: this instrument corrects drafting in a previous instrument, and ensures that, after EU Exit, the Secretary of State has power to carry out legislative functions currently exercised by the European Commission. Further, this instrument provides for parliamentary scrutiny of regulations made by the Secretary of State.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for the Environment and Rural Life Opportunities, Dr Thérèse Coffey 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: this instrument corrects drafting in a previous instrument, and ensures that, after EU Exit, the Secretary of State has power to carry out legislative functions currently exercised by the European Commission. Further, this instrument provides for parliamentary scrutiny of regulations made by the Secretary of State.

3. Equalities

3.1 The Parliamentary Under Secretary of State for the Environment and Rural Life Opportunities, Dr Thérèse Coffey has made the following statement(s):

"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."

3.2 The Parliamentary Under Secretary of State for the Environment and Rural Life Opportunities, Dr Thérèse Coffey has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Thérèse Coffey, 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.