EXPLANATORY MEMORANDUM TO

THE HUMAN MEDICINES (AMENDMENT ETC.) (EU EXIT) (NO. 2) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care ("DHSC") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument amends the Human Medicines Regulations 2012 ("HMRs"), the Medicines (Products for Human Use) (Fees) Regulations 2016 ("Fees Regulations") and the Medicines for Human Use (Clinical Trials) Regulations 2004 ("Clinical Trials Regulations").

2.2 The Medicines and Healthcare products Regulatory Agency ("MHRA") needs to operate outside the EU regulatory network in respect of GB but will continue to regulate medicines in NI largely on the basis of EU law. The HMRs, the Clinical Trials Regulations and the Fees Regulations were amended by the following SIs (collectively, "the 2019 and 2020 SIs") to facilitate this continued approach and the explanatory memoranda to these SIs explained the changes in detail:

- The Human Medicines (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/774)
- The Human Medicines and Medical Devices (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/1385)
- The Medicines for Human Use (Clinical Trials) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/744)
- The Human Medicines (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1488) ("the 2020 Regulations")

2.3 Further minor amendments are now required to ensure that EU law continues to be implemented in Northern Ireland, to update some aspects of earlier provisions that were made in light of the end of the Implementation Period, and to ensure that the UK regulations reflect the correct policy positions following the end of the Implementation Period.

Explanations

What did any relevant EU law do before exit day?

2.4 EU law provided for the EU medicines and clinical trials regulatory system of which the UK was a part until the end of the Implementation Period, and which continues to apply in NI.

2.5 This included licensing routes for the UK market, through the European Medicines Agency ("EMA"), joint Member State assessment or mutual recognition procedures, which enabled recognition of prescriptions across the EU/EEA, providing networks and processes for monitoring the safety of medicines, incentivised the development

of medicines to treat rare diseases and children, and regulated the conduct of clinical trials.

Why is it being changed?

2.6 From 1 January 2021, the MHRA took on the responsibilities for regulating medicinal products in the UK. GB will no longer have to comply with the EU regulatory framework, but NI must continue to do so for as long as the Northern Ireland Protocol (NIP) is in force.

What does this instrument do?

2.7 This instrument will enable the effective ongoing regulation of medicinal products across the UK. This instrument makes minor updates and technical amendments to existing instruments to ensure that, through their proper functioning, NI continues to meet the provisions of applicable EU legislation, whilst providing for an independent regulatory framework in GB. This includes allowing for national variations in the Marketing Authorisation (MA), which is necessary to give effect to the NIP.

2.8 This instrument will ensure patient access to safe and effective medicines as well as enabling the MHRA to continue to monitor the ongoing safety of those medicines across the UK and where necessary take action to protect patients.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the same as the instruments it amends, namely all of the United Kingdom.

4.2 The territorial application of this instrument is the same as the instruments it amends, that is, it applies to all of the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister of State for Health, Edward Argar, has made the following statement regarding Human Rights:

"In my view the provisions of the Human Medicines (Amendment etc.) (EU Exit) (No.2) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 The EU has created a comprehensive code for the marketing, manufacturing, packaging, distribution, advertising and monitoring of human medicines. The framework for this is set out in Directive 2001/83/EC and Regulation (EC) No. 726/2004.

6.2 Directive 2001/83/EEC and the tertiary directives on human medicines have all been transposed into UK law by the HMRs. The HMRs were made under section 2(2) of the European Communities Act 1972 ("ECA").

6.3 Clinical trials included in applications for marketing authorisations ("MAs") for human medicines in the European Economic Area must be conducted in accordance

with the requirements set out in Annex 1 of Directive 2001/83/EC. Clinical trials conducted in the EEA have to comply with Directive 2001/20/EC on the approximation of laws, regulations and administrative provisions of the Member States relating to the implementation of good clinical practice in the conduct of clinical trials on medicinal products for human use ("the Clinical Trials Directive"). The Clinical Trials Directive is implemented in the UK by the Clinical Trials Regulations.

6.4 Section 2 of the European Union (Withdrawal) Act 2018 ("EUWA") saves EU-derived domestic legislation so that it continues to have effect in domestic law, on and after IP completion day. The HMRs and Clinical Trials Regulations are retained EU law and have been amended by the 2019 and 2020 SIs to ensure they function effectively since the GB is no longer subject to EU law and NI needs to remain subject to EU medicines legislation.

6.5 Article 5(4) and Annex 2 to the NIP provide for the legislation listed in that Annex to apply to and in the United Kingdom in respect of Northern Ireland now that the UK has left the EU. Paragraph 20 of the Annex sets out the applicable EU legislation relating to medicinal products; this list includes Directive 2001/83/EC, Regulation 726/2004 and Article 13 of the Clinical Trials Directive (which regulates the manufacture and importation of investigational medicinal products that are used in clinical trials).

6.6 Section 8C of EUWA provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate (a) to implement the Northern Ireland Protocol on Ireland/Northern Ireland in the Withdrawal Agreement, (b) to supplement the effect of section 7A in relation to the NIP, or (c) otherwise for the purposes of dealing with matters arising out of, or related to, the NIP (including matters arising by virtue of section 7A and the NIP).

6.7 This instrument relies on the power in section 8C of EUWA to ensure that NI can effectively comply with EU medicines legislation.

6.8 The MHRA, an executive agency of DHSC, carries out the functions of competent authority in the UK in the area of human medicines on behalf of the "licensing authority", a body established under regulation 6 of the HMRs.

6.9 By virtue of the MHRA Trading Fund Order 2003 (S.I. 2003/1076), the MHRA operates as a trading fund and seeks to recover the cost of its work regulating human medicines through the charging of fees.

6.10 The majority of the fees the MHRA charges are statutory and are set out in the Fees Regulations. This instrument relies on the powers at Schedule 4 of EUWA to introduce new fees and amend existing fees in connection with functions conferred on the licensing authority under section 8C of EUWA. They do so by amending the Fees Regulations.

7. Policy background

What is being done and why?

7.1 The policy reflected in the 2020 Regulations sought to give effect to the NIP by making changes which facilitated the regulatory regime in GB whilst allowing NI to remain within the EU framework for the regulation of medicines.

7.2 This instrument will make a number of changes to the above regulations to facilitate the governing of the two separate systems within the United Kingdom ("UK") as a whole. In view of the NIP, this instrument will make a limited number of updates intended to offer clarity and definition where needed, to correct any mistakes and omissions that were inadvertently missed in the 2020 Regulations, as well make some technical changes to support the delivery of medicines across the UK.

Amendments to the Human Medicines Regulations 2012

Wholesale distribution to EEA States

7.3 The changes to regulation 43 will clarify and allow for the wholesale distribution of an EU licensed medicinal product in an EEA State.

Brokering in medicinal products

7.4 The changes to regulation 45A clarify and confirm that the licensing authority is the appropriate competent authority with which brokers in NI will need to be registered.

Place of establishment of Marketing Authorisation Holder

7.5 The UK Government is committed to ensuring the continued supply of medicines to patients. Changes are made to regulation 49 to confirm the location requirements for applicants for UK marketing authorisations that authorise the sale or supply in the whole of UK ("UKMA(UK)"), in GB only ("UKMA(GB)"), and in NI only ("UKMA(NI)").

7.6 The changes also reinstate the requirements for applications relating to parallel import licences which were inadvertently missed out by the 2020 Regulations.

Discretion to grant a Marketing Authorisation with territorial restriction

7.7 The UKMA(UK), UKMA(GB) and UKMA(NI) were introduced to support industry in their approach to the UK market. Changes are made to regulation 58 to equip the licencing authority to further support industry by issuing the most appropriate licence for their needs, or in light of the circumstances at the time.

Conditions as to the submitting of samples and other information

7.8 Changes will be made to regulations 60A and 60B to update the definition of "Immunological Products" to "Immunological Medical Products" for clarity and consistency with the EU medicines legislation. There will also be changes to allow exemptions to batch testing requirements to include countries with which the EU has a Mutual Recognition Agreement, to ensure compliance with the NIP.

7.9 The latter change is necessary to ensure continued effective supply of medicines into NI without additional cost to businesses.

Location of Qualified Person for Pharmacovigilance

7.10 The HMRs were previously amended to provide that holders of UKMAs would have at their disposal a Qualified Person for Pharmacovigilance (QPPV) who resides and operates in the EU or the UK. However, by virtue of the NIP, regulation 182 of the HMRs needs to be updated to reflect the applicability of the EEA Agreement in NI and therefore, allow for the QPPV to reside in an EEA State instead of the EU. This clarifies that the UK will recognise effective pharmacovigilance arrangement across the EEA. Ancillary amendments are also made to Schedule 8.

Pharmacovigilance: Post-authorisation safety studies

7.11 Post-authorisation safety studies (PASS) are submitted and assessed by the licensing authority or, at an EU-level, by the Pharmacovigilance Risk Assessment Committee (PRAC). Regulations 199, 200 and 201 are updated to clarify the circumstances under which these study protocols need to be submitted to the licensing authority or PRAC.

Medicinal products subject to additional monitoring

7.12 The MHRA monitors the ongoing safety of medicines across the UK and where necessary takes action to protect patients. To do so it maintains and updates a list of products subject to additional monitoring. The European Medicines Agency maintains a similar list under Article 23 of EC Regulation 726/2004.

7.13 By virtue of the NIP, medicinal authorised under a UKMA(UK) and UKMA(NI) will need to be added to the list maintained by the EMA. Regulation 202A is updated to ensure that products authorised under all licencing routes are covered and can be added to the appropriate list. Ancillary changes are made to Schedule 8 and Schedule 27 to reflect the appropriate packaging requirements.

Miscellaneous amendments

7.14 There are some corrections of errors in, or omissions, from the 2020 Regulations, which will ensure the legislation is readable, precise and accurate. These include

- the definition of 'homoeopathic medicinal product' in regulation 8,
- the correct day on which suspected adverse reactions need to be reported in regulation 188,
- cross-references in regulation 193, and
- an omission of COR(NI) (an NI-only Certificate of Residency) from the process of advice and representations in Schedule 11.

7.15 With respect to the exceptions to the requirement for Marketing Authorisations, the 2020 Regulations amended the conditions for the supply to fulfil special patient needs to reflect the different positions in NI and GB. Regulation 167 is now updated to reflect the accurate position in respect of these conditions.

7.16 The transitional provisions for pharmacovigilance in Part 10 of Schedule 33A to the HMRs are removed as they are not required, given that GB-only marketing authorisations and traditional herbal registrations did not exist before January 2021, and therefore do not need to be transitioned out of the EU legislation.

<u>Amendments to the Medicines (Products for Human Use) (Fees) Regulations 2016</u>

Fees for testing of samples

7.17 The Fees Regulations provide for fees which can be charged for testing of samples undertaken in relation to UK marketing authorisations. Regulation 19F of the Fees Regulations is amended to clarify that these fees would also apply to testing of samples undertaking in relation to EU marketing authorisations.

Fee for renewals of a marketing authorisation

7.18 The amendment to regulation 27A of the Fees Regulations clarifies that the renewal fees do not apply where a marketing authorisation was granted under Chapter 4 of Title III of the 2001 Directive

7.19 The amendments to Schedule 2 to the Fees Regulations clarify the circumstances under which the renewal fees will apply to the various types of licences.

Fees relating to certificates of registration

7.20 Fee changes were introduced in the 2020 Regulations to reflect the costs of the new regulatory changes following the end of the Implementation Period. For example, fee changes were introduced to include new fees for marketing authorisations issued under the unfettered access route.

7.21 Similar amendments are now made in respect of fees for Certificates of Registrations (CORs), specifically in regulation 46 and Schedule 5 to the Fees Regulations. The fees for certificates of registration granted under the unfettered access route will be set at the same level as the existing fees for the equivalent MRP/DCP application.

Amendments to the Medicines for Human Use (Clinical Trials) Regulations 2004

Good Clinical Practice across the UK

7.22 The 2020 Regulations incorrectly restricted to GB the licencing authority's functions in relation to good clinical practice. This restriction was not necessary by the NIP and is corrected by these amendments to the Clinical Trials Regulations.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the powers in section 8C of EUWA in order to deal with matters arising out of, or related to, the Northern Ireland Protocol. This instrument is also being made under paragraphs 1(1)(ab) and 7(2) of Schedule 4 (insofar as they make provision in relation to fees) and paragraph 21 of Schedule 7 (in relation to transitional arrangements) to EUWA.

9. Consolidation

9.1 No consolidation is being made to legislation as a result of this instrument.

10. Consultation outcome

10.1 The amendments introduced by this instrument are technical updates to give effect to the NIP by updating the changes made by the 2020 SI and ensuring that regulations enable effective regulation in both GB and NI by the UK regulator. Therefore, there was no public consultation.

10.2 The proposed amendments have been shared with the Department of Health in Northern Ireland. The Department is content on the technical updates provided for in this SI.

11. Guidance

11.1 Guidance relating to this instrument has already been published and the Government has committed to provide further guidance where appropriate.

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. Following a Regulatory Triage Assessment, it was determined that this instrument has a low level of impact on businesses.

13. Regulating small business

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

13.2 Following an economic analysis of the proposed changes, no specific actions have been taken to minimise the regulatory impact on 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 Jason Eldridge at the Medicines and Healthcare products Regulatory Agency Telephone: 0203 080 7103 Ext 7103 or email: Jason.eldridge@mhra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jack Turner at the Medicines and Healthcare products Regulatory Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Edward Argar, The Minister for Health at the Department of Health and Social Care 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 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
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 under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Appropriateness statement

1.1 The Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Human Medicines (Amendment etc.) (EU Exit) (No.2) Regulations 2021 does no more than is appropriate".

1.2 This is the case because: the instrument makes minor updates and technical amendments to existing instruments to enable the effective ongoing regulation of medicinal products across the UK.

2. Good reasons

2.1 The Minister of State for Health, Edward Argar, 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 to ensure patient access to safe and effective medicines as well as enabling the MHRA to continue to monitor the ongoing safety of those medicines across the UK and where necessary take action to protect patients

3. Equalities

3.1 The Minister of State for Health, Edward Argar, 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 Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Minister of State for Health, Edward Argar, 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.