EXPLANATORY MEMORANDUM TO

THE PESTICIDES (AMENDMENT) (EU EXIT) REGULATIONS 2020

2020 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.

2. Purpose of the instrument

2.1 This instrument makes a number of amendments to earlier EU Exit SIs that convert EU legislation (which forms the plant protection product ("PPP") and maximum residue level ("MRL") regulatory regimes) into national law, to reflect when EU law ceases to apply and retained EU law comes into force at the end of the implementation period, thereby ensuring that the national regime will operate effectively. Most of the amendments are required as a result of new EU legislation that has come into force shortly prior to and during the implementation period, and so was not addressed by our earlier EU Exit SIs. This instrument also makes amendments as a result of the Northern Ireland Protocol ("NIP") where the EU PPP and MRL regimes will continue to apply, therefore legislative changes are required to remove Northern Ireland from the retained EU legislation so that the new PPP and MRL regime applies in Great Britain only, rather than UK-wide.

Explanations

What did any relevant EU law do before exit day?

2.2 Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009, and all its underpinning EU Regulations, regulate the placing of PPPs on the market, including the approval of active substances, authorisation of PPPs, and management of associated risks.

2.3 Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 sets EU MRLs for pesticides in food and feed and measures to ensure their compliance. This enables trade in treated produce by providing a basis for confirming whether pesticides have been used correctly, through the setting of MRLs for the relevant active substances that are approved to be included in the formulation of pesticides for use on food and feed.

2.4 Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 established a framework for Community action to achieve the sustainable use of pesticides ("Directive 2009/128/EC"). Directive 2009/128/EC aims to promote sustainable use of pesticides in the EU. It includes several provisions aimed at achieving the sustainable use of pesticides by reducing risks and impacts on human health and the environment. The Plant Protection Products (Sustainable Use) Regulations 2012 transposed Directive 2009/128/EC into national law.

Why is it being changed?

2.5 The main corrections required to the regulatory regime for pesticides as a result of EU Exit have already been put in place through a series of earlier EU Exit SIs, primarily the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI No 2019/556) ("the PPP EU Exit SI"); and the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 (SI No 2019/557) ("the MRL EU Exit SI").

2.6 The Pesticides (Amendment) (EU Exit) Regulations 2019 (SI No 2019/1410) amended the earlier EU Exit SIs because of changes to "Exit Day" which impacted on various dates specified in the retained EU law. It also corrected several deficiencies within those SIs. Further changes are now required as a consequence of the implementation period. Various additional pieces of EU legislation have come into force in the period since the earlier EU Exit SIs, and so they need to be amended in order to correct new deficiencies arising from exiting the EU.

2.7 Another consequence is that corrections are required to reflect the change to the date when EU law ceases to apply, and when retained law comes into force, which is now at the end of the implementation period rather than Exit Day. Therefore, this instrument makes a number of minor corrections and additions so that retained law can function correctly.

2.8 Since these EU Exit SIs were finalised, the NIP was agreed which now requires that Regulation (EC) No 1107/2009 and Regulation (EC) No 396/2005 will continue to apply directly in Northern Ireland after the end of the implementation period. It is therefore necessary to amend these UK-wide EU Exit SIs so that references related to Northern Ireland are removed and consequently they only have practical application in Great Britain. This will clarify that the required legal framework remains in place for Northern Ireland for the relevant EU regulations to continue to apply to Northern Ireland and to continue to operate as envisaged under the NIP.

2.9 This instrument also makes minor modifications to the Pesticides and Fertilisers (Miscellaneous Amendments) (EU Exit) Regulations 2019 (SI No 2019/306) ("the SUD EU Exit SI"), following the issue of an EU Comission Directive as regards to the establishment of harmonised risk indicators in order to correct new deficiencies in the retained EU law.

2.10 Finally, this instrument also makes minor modifications to the Official Controls (Plant Protection Products) Regulations 2020 (SI No 2020/552), which implemented Regulation (EU) 2017/625 of the Parliament and of the Council on official controls for plant protection products.

2.11 A full breakdown of the amendments made by this instrument is contained in section 7 of this Explanatory Memorandum.

What will it now do?

2.12 The changes made by this instrument will ensure that PPPs, and MRLs for pesticides in food and feed, continue to be effectively managed. This instrument will remove redundant provisions and make clarificatory changes to make it clear that a properly functioning pesticides regulatory regime will come into force in Great Britain (and Northern Ireland with respect to Directive 2009/128/EC) at the end of the implementation period, and that the existing EU pesticides regulatory regime will continue to operate as intended in Northern Ireland under the NIP.

2.13 This instrument also updates UK legislation in relation to the establishment of harmonised risk indicators that will ensure current environmental standards are maintained after the implementation 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 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.

4.3 Regulation (EC) No 1107/2009, Regulation (EC) No 396/2005, Commission Implementing Regulation (EU) No 844/2012 and the direct EU legislation listed in the Schedule to this instrument are incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 insofar as they apply to Northern Ireland for the purposes of the NIP. Accordingly, this instrument will only have practical application in Northern Ireland in relation to regulations 1, 5, and 8.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Victoria Prentis MP has made the following statement regarding Human Rights:

"In my view, the provisions of the Pesticides (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made in part in exercise of powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. Section 8(1) of the Withdrawal Act provides that a Minister of the Crown may by regulations make such provisions as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the UK from the EU.

6.2 This instrument is also required in order to implement the NIP. Earlier EU Exit SIs were finalised prior to agreement of the NIP and so did not take account of its requirements. This instrument is therefore required in order to remove any provisions which conflict with the NIP.

6.3 Defra has complied with the requirements stated in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI registrar. Defra thinks it would be disproportionate to apply the free issue procedure to this SI.

6.4 A further instrument will be required in 2021 to incorporate further EU regulations and decisions that come into force between 1 May 2020 and 31 December 2020 i.e. the time between this instrument being drafted, and the end of the implementation period.

7. Policy background

What is being done and why?

7.1 This instrument is being made in order to maintain the effectiveness and continuity of national PPP legislation that would otherwise be left partially inoperable/unable to function legally following the end of the implementation period. This instrument makes changes for four reasons:

(i) to make corrections relating to a series of new EU regulations which have come into force since the earlier EU Exit SIs were finalised, either shortly prior to or during the implementation period, so that they work correctly in a national context;

(ii) to amend these UK-wide EU Exit SIs so that references related to Northern Ireland are removed and consequently the SIs only have practical application in Great Britain;

(iii) to make updates to transitional provisions in earlier EU Exit SIs which are required as a result of the implementation period, so that they apply from the end of the implementation period when EU law ceases to apply and the retained law comes into force, rather than from Exit Day; and

(iv) to make minor technical corrections to secondary UK legislation. These corrections are required to ensure that the retained regulations remain operable in a national context.

The Official Control Regulations

7.2 Corrections are required as a result of new EU regulations. Regulation (EU) No 2017/625 of the Parliament and of the Council regulates official controls and other official activities performed to ensure the verification of feed and food law, rules on animal health and welfare, plant health, and plant protection products (the "Official Control Regulations/OCRs"). Certain provisions that regulate official controls on PPPs came into force on 14 December 2019, after the EU Exit SIs were laid in Parliament.

7.3 A separate instrument, the Official Controls (Plant Protection Products) Regulations 2020 (SI No 2020/552) implements the new EU Regulation to enable the UK to strengthen and develop the efficiency and effectiveness of its control system. This instrument makes minor amendments to these regulations e.g. to omit references to "EU Member States", to ensure domestic operability at end of the implementation period.

7.4 This instrument amends the PPP EU Exit SI and the MRL EU Exit SI so that the new requirements of the OCRs are replicated and fixes deficiencies within the national regime.

Removal of Northern Ireland from the EU Exit SIs

7.5 Under the terms of the Withdrawal Agreement Act 2020 and the NIP, it has been determined that relevant EU legislation (in Annex 2 of the NIP) will continue to apply directly in Northern Ireland after the end of the implementation period. This means

that Regulation (EC) No 1107/2009 and Regulation (EC) No 396/2005 will continue to apply to NI (with some limitations, as set out in the NIP, on those Member State functions which may be undertaken by Northern Ireland under the regulations).

7.6 The series of EU Exit SIs (set out under paragraph 2.5 and 2.6 above) thus far make corrections relating to all EU regulations on a UK-wide basis. These corrections are therefore now needed to apply in Great Britain only and not in Northern Ireland. It is therefore necessary to amend these UK-wide EU Exit SIs so that references related to Northern Ireland are removed and consequently the SIs will only have practical application in Great Britain. This will ensure it is clear that the required legal framework remains in place for Northern Ireland for Regulation (EC) No 1107/2009 and Regulation (EC) No 396/2005 to continue to apply and operate as envisaged under the NIP.

The Multi-Annual Control Programme

7.7 Corrections are required as a result of new EU regulations so that the most recent monitoring obligations are retained after the implementation period. Regulation (EC) No 396/2005 requires Member States to undertake national pesticide residue testing programmes, and also to take part in a Community Control programme which sets out particular requirements for each Member State.

7.8 The MRL EU Exit SI replaced the current residue monitoring programme at EU level with an equivalent national power to put in place a national monitoring programme. The national power was based on requirements placed upon the UK via Commission Implementing Regulation (EU) No 2018/555 for the three-year period from 2019 to 2021.

7.9 EU control programmes are updated every year which outline sampling strategies and specific obligations placed on Member States for a three-year period. Upon entering the implementation period, Regulation (EU) No 2018/555 was superseded by Regulation (EU) No 2019/533 for the three-year period from 2020 to 2022. Therefore, this instrument amends the MRL EU Exit SI and the saving provision so that the national strategy is based on the existing EU Regulations. This will ensure that the same standards of protection are maintained after at the end of the implementation period.

Renewal of Active Substances

7.10 Corrections are required as a result of new EU regulations. Under the current EU PPP legislation (Regulation (EU) No 1107/2009), approvals for active substances are time-limited and need to be periodically reviewed. The review process ensures that approved active substances continue to meet modern standards and that account is taken of current knowledge.

7.11 Commission Implementing Regulation (EU) No 844/2012 sets out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 concerning the placing of PPPs on the market.

7.12 Commission Implementing Regulation (EU) No 2020/103 came into force during the implementation period in February 2020 which makes a number of amendments to Regulation (EU) No 844/2012. This subsequently means amendments are required to the retained law to ensure that the PPP EU Exit SI remains operable, with transitional provisions to ensure orderly introduction.

Harmonised Risk Indicators

7.13 Corrections are required as a result of changes to a Directive. Commission Directive (EU) 2019/782 amends Directive 2009/128/EC of the European Parliament and of the Council as regards the establishment of harmonised risk indicators. The Directive includes a commitment to consider setting EU-wide mandatory risk reduction targets if indicator trends do not demonstrate that sufficient progress has been made with implementation of the Directive. This populates the hitherto empty Annex IV of Directive 2009/128/EC on the sustainable use of pesticides. The Directive came into force during May 2019, after the SUD EU Exit SI had been made.

7.14 The Plant Protection Products (Sustainable Use) Regulations 2012 (SI No 2012/1657) transposed Directive 2009/128/EC in relation to the use of pesticides that are PPPs in the UK. The 2012 Regulations aim to reduce the risks and impacts of pesticide use on human health and the environment, promoting the use of Integrated Pest Management, and alternative approaches or techniques (such as non-chemical alternatives). The UK has drawn up a National Action Plan to detail the measures and mechanisms that are used to deliver the outcomes sought in the Directive, including use of indicators.

7.15 The Schedule to the SUD EU Exit SI contained an additional schedule "New Schedule A1" which is to be inserted into the Plant Protection Products (Sustainable Use) Regulations 2012. This instrument adds Annex IV to "New Schedule A1", as a result of the population of the Directive with Harmonised Risk Indicators to bring it into line with Commission Directive (EU) 2019/782. This instrument also makes minor administrative modifications to "New Schedule A1", such as removal of the word "harmonised" to ensure the Directive remains operable in a national context.

Changes to the date EU law ceases to apply

7.16 Corrections are required as a result of the implementation period, so the time periods referred to apply from the end of the implementation period when EU law ceases to apply directly and retained law comes into force, rather than Exit Day. Various transitional provisions were inserted into the PPP EU Exit SIs to enable continuity and avoid any cliff-edge impacts at the point of exit, to ensure that the changeover from an EU to a national regime was smooth.

7.17 A number of these transitional provisions specified various fixed time periods to commence from "Exit Day", with the intention of providing the regulator and businesses additional time to adjust to the requirements of the new regime. It is now necessary to revise these provisions so that they are based on the point when the regulations come into force at the end of the implementation period (i.e. 31 December 2020), rather than Exit Day (i.e. 31 January 2020).

Other EU Decisions/Regulations

7.18 Corrections are required as a result of new EU regulations. This instrument revokes the retained direct EU legislation listed in the Schedule. The schedule is a list of EU Regulations containing individual active substance and MRL decisions made by the EU since the earlier instruments listed in Section 2.5 were finalised, and which will form part of retained EU law from the end of the implementation period. The listed EU Regulations are redundant, as they are given effect through the statutory registers established by the PPP EU Exit SI and the MRL EU Exit SI.

7.19 This instrument also contains transitional provisions which continue the legal effect of active substance grace periods and MRL transitional measures contained in the

retained direct EU legislation to be revoked. The transitional provisions follow the same approach already established in the earlier instruments listed in Sections 2.5 & 2.6.

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 Not applicable.

10. Consultation outcome

10.1 We have not consulted specifically on this instrument, because it contains only minor technical amendments and represents no change of policy and has no impact of itself on businesses or the public.

10.2 We have liaised with Devolved Administrations in relation to the GB and UK-wide elements of this instrument.

11. Guidance

11.1 Guidance is not being provided in relation to this instrument.

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 is expected to be no or no significant impact on business as a direct result of this legislation. This is because it relates to the maintenance of existing legislation.

13. Regulating small business

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

13.2 This instrument amends current domestic legislation, maintaining existing regulatory standards. No mitigating actions for small businesses were deemed necessary for this instrument.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is 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 Duncan Williams at the Department for Environment, Food and Rural Affairs, Telephone: 020 826 6659 or email: duncan.williams@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Gabrielle Edwards, Deputy Director for Chemicals, Pesticides and Hazardous Waste, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State, Victoria Prentis 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 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, Victoria Prentis MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view, the Pesticides (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case for the reasons explained in sections 2 and 7 in the main body of this Explanatory Memorandum.

2. Good reasons

2.1 The Parliamentary Under Secretary of State, Victoria Prentis MP 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 explained in sections 2 and 7 in the main body of this Explanatory Memorandum.

3. Equalities

3.1 The Parliamentary Under Secretary of State, Victoria Prentis MP has made the following statement:

"The Pesticides (Amendment) (EU Exit) Regulations 2020 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, Victoria Prentis MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Victoria Prentis MP 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.