EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (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.

2. Purpose of the instrument

2.1 The Plant Health (EU Exit) Regulations 2019 correct deficiencies in domestic legislation which implements EU Directive 2000/29/EC on measures to protect plant health and in retained direct EU legislation relating to plant health arising in consequence of the United Kingdom's withdrawal from the EU in a 'no deal' scenario.

Explanations

What did any relevant EU law do before exit day?

2.2 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU[1] ("the Plant Health Directive") establishes the EU plant health regime. It sets out controls for the import of plant material into the EU and provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.

2.3 The Plant Health Directive is implemented in England by the Plant Health (England) Order 2015 (S.I. 2015/610) and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) which extends to Great Britain. The Orders set out obligations for the control and management of plant health risks arising from the import from third countries and movement within the EU single market of plant material, in order to protect biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in Scotland, Wales and Northern Ireland.

Why is it being changed?

2.4 The changes made by the Plant Health (EU Exit) Regulations 2019 are necessary to ensure that current UK plant health legislation continues to operate effectively in the event of the UK leaving the EU in a 'no deal' scenario.

What will it now do?

2.5 This instrument provides a common list of regulated pests and plant material for England, Wales and Northern Ireland. This list, along with equivalent legislation in Scotland, will set out the basis for the UK to operate an internal market for regulated plant material whilst protecting biosecurity. Currently this list is included in Schedules

[1] This Directive can be found at http://europa.eu.int/eur-lex/en/search/index.html.

1 to 7 to the Plant Health (England) Order 2015 and the Plant Health (Forestry) Order 2005, and in the equivalent Schedules in the plant health legislation operating in Wales and Northern Ireland. In a 'no deal' scenario, these Schedules need to be amended to address a large number of deficiencies. This instrument sets out the replacement Schedules of regulated pests and plant material whilst continuing to mirror the pests and plant material that are regulated under the Plant Health Directive. The Schedules will apply to England, Wales and Northern Ireland and comprise:

Schedule 1 - Prohibited plant pests

Schedule 2 - Prohibited infested material

Schedule 3 - Prohibited imported material

Schedule 4 - Regulated material

Schedule 5 - Notifiable material

Schedule 6 - Controlled material

Schedule 7 - Notifiable material destined for a UK pest free area

2.6 Under the Plant Health Directive, certain areas of the EU that are free from plant pests that are established elsewhere in the EU have been designated as "Protected Zones". Plants and plant produce that are hosts of these pests must reach higher plant health standards before entering these zones. The Plant Health Authority responsible for the protected zone prescribes additional regulatory requirements for plant movements to keep the designated area pest free. After EU exit the status of UK protected zones will continue by adopting the World Trade Organisation's similar concept of "Pest Free Areas". The UK's EU protected zones will become UK pest free areas where the pest concerned is not regulated for the whole of the United Kingdom.

2.7 This instrument also sets out amendments to deal with deficiencies in retained direct EU legislation relating to plant health, comprising EU plant health derogations (to enable them to continue to be used in line with existing practice) and EU plant health emergency decisions (to ensure that UK biosecurity continues to be protected). The provisions in this retained direct EU legislation, as amended, are set out in full to make the provisions clear and accessible.

2.8. The derogations referred to in paragraph 2.7 are set out in Schedule 8 of Plant Health (EU Exit) Regulations 2019 and comprise:

(i) Commission Decisions 2002/499/EC and 2002/887/EC - Dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. or *Pinus* L. originating in the Republic of Korea or Japan respectively,

(ii) Commission Decision 2005/51/EC - Soil contaminated by pesticides or persistent organic pollutants for decontamination purposes, and

(iii) Commission Implementing Decision (EU) 2017/715 – citrus fruits from Argentina, Brazil, South Africa or Uruguay for industrial processing into juice.

2.9 The emergency decisions referred to in paragraph 2.7 are set out in Schedules 9 to 16 and cover requirements regarding certain pests, such as *Phytophthora ramorum* and *Xylella fastidiosa*. These requirements include official surveys to check for the presence of these and other pests and also measures to be taken in the event of outbreaks, such as the demarcation of infested areas and the actions to be taken to eradicate and contain outbreaks in those areas.

2.10 This instrument also revokes other EU legislation relating to plant health which will not need to be retained after EU exit because it will be redundant. These revocations are listed in Schedule 17.

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 is England, Wales and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, and Northern Ireland.

4.2 The territorial application of this instrument is England, Wales and Northern Ireland.

5. European Convention on Human Rights

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

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

6. Legislative Context

6.1 The key legislative context for the instrument is set out at paragraph 2.2 above. In essence, the instrument provides the basis to continue the UK's regulatory regime to protect plant health, in the event of the UK leaving the EU in a 'no deal' scenario. The UK's current regime is based on the EU's Plant Health Directive which is implemented in England by the Plant Health (England) Order 2015 (S.I. 2015/610) and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) which extends to Great Britain. Similar but separate legislation operates in Scotland, Wales and Northern Ireland.

7. Policy background

What is being done and why?

7.1 The changes made by this instrument are necessary to ensure that current plant health legislation continues to operate effectively after the UK leaves the EU in a 'no deal' scenario. It sets out a common list of regulated pests and plant material for England, Wales and Northern Ireland. Scottish Government will replicate this list in their plant health legislation. It also sets out amendments to deal with deficiencies in retained direct EU legislation.

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. The instrument is also made under paragraph 21 of Schedule 7 of the Withdrawal Act 2018. 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.

10. Consultation outcome

10.1 No separate consultation exercise was conducted as this instrument makes mainly technical amendments whose purpose is to maintain continuity of approach in the context of the UK leaving the EU; it does not change the substantive policy. The Welsh and Northern Irish devolved administrations have been consulted about the proposed amendments and are content.

11. Guidance

11.1 The Department for Environment, Food and Rural Affairs does not propose to issue guidance specifically with regard to this Statutory 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.

13. Regulating small business

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

13.2 The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

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

15. Contact

15.1 Liz McIntosh at the Department for Environment, Food and Rural Affairs Telephone:

02080 262414 or email: liz.mcintosh@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, 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, 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/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 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 Plant Health (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because the this instrument corrects technical deficiencies that will arise from withdrawal from the EU in a 'no deal' scenario and ensures that the existing regimes for safeguarding UK biosecurity will continue to operate effectively in England, Wales and Northern Ireland, once we leave the EU. This is in line with government policy.

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 These are that there is real public concern about biosecurity and that the government should at least maintain the protections that currently exist.

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."

4. Explanations

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