EXPLANATORY MEMORANDUM TO

THE ENVIRONMENT AND WILDLIFE (MISCELLANEOUS AMENDMENTS ETC.) (EU EXIT) REGULATIONS 2020

2020 No. 1395

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 Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to implement the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement ("the Protocol") in the context of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), as required at the end of the Transition Period. This will be done by making changes to the UK's existing CITES regime, comprised primarily of retained EU law ("REUL"), insofar as it will operate in Great Britain, to ensure that the relevant EU regulations can continue to be properly implemented in Northern Ireland.

2.2 We are laying this instrument now in order to facilitate separate CITES regimes in Northern Ireland and Great Britain. This will be achieved by making amendments to retained EU law and relevant domestic regulations to take into account the coming into force of the Protocol.

2.3 This instrument also makes outstanding operability changes to REUL and will consolidate previous EU Exit SIs made in the context of CITES in order to make REUL clearer and more accessible to end users.

Explanations

What did any relevant EU law do before exit day?

2.4 CITES regulates international trade between Parties through a system of documents, including import and export permits, which must be presented at the border. No such permits or checks are required for intra-EU trade.

2.5 The CITES regime in the UK is currently regulated at an EU level through the principal regulation and several subsidiary regulations (listed below), which will become REUL at the end of the Transition Period. Previous EU Exit SIs, which have not yet come into force, would have made changes to REUL to take into account the departure of the UK from the EU.

2.6 CITES is currently implemented in the EU through a set of regulations known as the EU Wildlife Trade Regulations ("EUWTR"). The relevant regulations are:

- Principal regulation - Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (as last amended by Commission Regulation (EU) 2017/160);
- Implementing regulation - Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation

(EC) No 338/97 (as last amended by Commission Regulation (EU) No 2015/870);

- Permit regulation - Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating the trade therein and amending Regulation (EC) No 865/2006 (as amended by Commission Implementing Regulation (EU) 2015/57); and
- Suspension regulation - Commission Implementing Regulation (EU) No 2019/1587 prohibiting the introduction into the Union of specimens of certain wild fauna and flora.

2.7 The amendments to REUL made by the EU Exit SIs listed below will be consolidated in this instrument insofar as they relate to CITES:

- The Trade in Endangered Species of Wild Fauna and Flora (Amendment) (EU Exit) Regulations 2018 (SI 2018/1408);
- The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (SI 2019/473);
- The Environment (Miscellaneous Amendments and Revocations) (EU Exit) Regulations 2019 (SI 2019/559); and
- The Environment and Wildlife (Legislative Functions) (EU Exit) (Amendment) Regulations 2019 (SI 2019/1424).

2.8 EU derived domestic legislation amended by this instrument are:

- The Control of Trade in Endangered Species (Fees) Regulations 2009 (SI 2009/496); and
- The Control of Trade in Endangered Species Regulations 2018 ("COTES") (SI 2018/703).

Why is it being changed?

2.9 As the UK has left the EU, CITES permits and checks which were implemented at the EU border will need to be implemented at the UK border. This necessitates a number of changes to regulations to ensure operability after the end of the Transition Period.

2.10 The Protocol requires that the EU Regulations listed in Annex 2, which includes the CITES regulations, are implemented in Northern Ireland. In other words, retained EU law as amended should not apply in Northern Ireland in the context of CITES.

2.11 Relevant legislation is currently drafted as if the UK is a Member State of the EU. Following withdrawal from the EU and in accordance with the specific provisions of the Protocol, the CITES regulations must be amended to make clear that retained regulations generally only apply in Great Britain, and that the EU regulations will continue to be implemented in Northern Ireland.

2.12 The EUWTR contain a number of references to "the Commission", "the Union", "Member States" and similar. These are being amended to UK equivalents in respect of Great Britain, and relevant powers will be transferred to the Secretary of State.

2.13 A number of other outstanding operability fixes to REUL will be made in this instrument. These relate to regulations which came into force after previous Exit SIs

were made, and include an updated "suspension regulation" which will prohibit the introduction of specimens of certain species of wild fauna and flora.

2.14 Previous amendments to relevant REUL were made to capture the whole of the UK. Those changes will not be appropriate given the context of the Protocol. This instrument will therefore make clear the separation between the CITES regime as it will operate in Great Britain after the end of the Transition Period and the regime which will operate in Northern Ireland.

What will it now do?

2.15 This instrument will ensure that necessary amendments are made to the CITES regulations and related domestic regulations following the UK's departure from the EU to ensure their operability after the end of the Transition Period. In conjunction, this instrument will ensure regulations can continue to apply as required in Great Britain, and not in Northern Ireland as appropriate.

2.16 As a result of this instrument, all EU Exit changes to the CITES regulations will be contained in one place. REUL as amended will apply only in Great Britain where relevant, thereby ensuring that Northern Ireland can continue to operate under the EUWTR. Additionally, it will ensure that EU legislation which came into force after previous EU Exit SIs were made can operate properly in Great Britain after the end of the Transition 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 varies between provisions.

3.3 The territorial application of the amendments to REUL in Part 3 of this instrument is Great Britain. The territorial application of the amendments to EU derived domestic legislation in Part 2 of this instrument is the United Kingdom.

4. Extent and Territorial Application

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

4.2 As mentioned in paragraphs 3.2 and 3.3, Part 2 of these Regulations applies to England, Scotland, Wales and Northern Ireland and Part 3 of these Regulations applies to England, Scotland and Wales only.

5. European Convention on Human Rights

5.1 The Minister of State, Lord Goldsmith, has made the following statement regarding Human Rights:

"In my view the provisions of the Environment and Wildlife (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The UK has left the EU under the provisions of the Withdrawal Agreement, including the Protocol. Retained EU legislation and existing domestic legislation will not work in Great Britain without the amendments made by this instrument, and parts of the CITES regime may be rendered inoperable.

6.2 In order for separate CITES regimes to operate in Great Britain and Northern Ireland, amendments made to retained EU law must relate to activities in and relating to Great Britain. Changes made in previous EU Exit SIs treated the UK as one entity for the purposes of CITES. In this instrument, the REUL is amended to instead refer to "Great Britain" or "United Kingdom" as appropriate, where the latter may be necessary to take into account activities which occur before the Protocol comes into force.

6.3 Relevant changes will also be made to EU derived domestic legislation to ensure that it can operate as necessary in both Great Britain and Northern Ireland.

7. Policy background

What is being done and why?

7.1 The EUWTR and domestic EU derived legislation will become retained EU law after the end of the Transition Period. A number of EU Exit SIs were made under the powers in section 8 of the European Union (Withdrawal) Act 2018 in order to make this legislation operable after Transition Period completion day. The Withdrawal Agreement and the Protocol have changed this landscape and at the end of the Transition Period the EUWTR will continue to apply in Northern Ireland.

7.2 The purpose of the Protocol is to prevent a hard border between Northern Ireland and the Republic of Ireland, and safeguard the Good Friday (Belfast) Agreement.

7.3 The amendments and corrections in this instrument are required to ensure the implementation of the Protocol insofar as it relates to CITES and the operability of the CITES regime in Great Britain after the end of the Transition Period.

7.4 Amendments included in this instrument include changes to ensure that Great Britain and Northern Ireland operate under separate CITES regimes and outstanding corrections to new REUL which only came into force after previous EU Exit SIs were made. Additionally, rather than amending all previous EU Exit SIs to take the Protocol into account, this instrument will consolidate those changes made in several different instruments in order to make the legislation clearer and more accessible to all users.

7.5 This instrument does not alter policy and the way the CITES regulations operate in the UK, other than those changes which necessarily arise out of provisions in the Protocol. A consequence of the arrangements made under the Protocol is that CITES permits and relevant checks will be required for movement of CITES specimens between Northern Ireland and Great Britain.

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

8.1 This instrument is being made using the powers 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. This instrument is also made under section 8C of that Act to implement the Protocol. 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 will consolidate EU Exit changes made to CITES regulations. The previous EU Exit SIs which have yet to come into force, listed in section 2.5 above, will instead be revoked or amended and changes which would have been made in those instruments will instead be made in this instrument in order to make the legislation clearer and more accessible to end users.

10. Consultation outcome

10.1 No consultation has been undertaken for this instrument.

10.2 CITES is a wholly reserved policy area.

10.3 A draft of this instrument has been shared with Devolved Administrations for information.

11. Guidance

11.1 Guidance will be provided on GOV.UK as part of broader central initiatives which looks to clearly set out the actions businesses and individuals need to take to prepare for the end of the Transition Period on 31 December 2020.

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 public, 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 European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Maya Moss at the Department for Environment, Food and Rural Affairs, email: maya.moss@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Cheryl Case, Deputy Director for International Biodiversity and Environment, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lord Goldsmith**,** Minister of State for Pacific and the Environment 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 Minister of State, Lord Goldsmith, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Environment and Wildlife (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case because this instrument corrects deficiencies as necessary to ensure that protections for the trade in endangered species are maintained in both Great Britain and Northern Ireland after the end of the Transition Period, and implements the Protocol insofar as it relates to CITES.

2. Good reasons

2.1 The Minister of State, Lord Goldsmith, 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 deficiencies as necessary to ensure that protections for the trade in endangered species are maintained in both Great Britain and Northern Ireland after the end of the Transition Period, and implements the Protocol insofar as it relates to CITES.

3. Equalities

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

"In relation to the draft instrument, I, Lord Goldsmith, 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.