EXPLANATORY MEMORANDUM TO

THE PESTICIDES (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 1410

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 instrument makes a number of amendments to the retained direct EU legislation which forms the plant protection product and maximum residue level regulatory regimes, so that they can continue to operate effectively after the United Kingdom leaves the European Union. Some of the required amendments are as a consequence of the change in exit day from 29th March which impacts on various dates specified in the retained law. Further new EU legislation has also come into force during the extension period, which needs to be amended in order to correct deficiencies arising from exiting the European Union. This instrument also fixes a number of errors in earlier instruments made under section 8(1) of the European Union (Withdrawal) Act 2018 ('the Withdrawal Act').

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 its underpinning EU Regulations, regulate the placing of plant protection products (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 Maximum Residue Levels ('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 a number of provisions aimed at achieving the sustainable use of pesticides by reducing risks and impacts on human health and the environment.

Why is it being changed?

2.5 The change in exit day from 29th March impacts on various dates within a number of provisions specified in the retained law. In addition, a consequence of the extension is that various additional pieces of EU legislation have since come into force, and so need to be amended in order to correct deficiencies arising from exiting the European Union. This instrument also makes a number of corrections and additions to the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 (S.I. 2019/556) ("the PPP EU Exit SI"), and the Pesticides (Maximum Residue Levels) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/557) ("the MRL EU Exit SI"). A full breakdown of the amendments made by this instrument is contained in section 7 of this explanatory memorandum.

What will it now do?

2.6 The changes made by this instrument will ensure that PPPs, and MRLs for pesticides in food and feed, continue to be effectively managed after EU Exit. This instrument also reinstates provisions on endocrine disrupting chemicals that were omitted in error by the PPP EU Exit SI, to ensure that current environmental standards are maintained when the UK leaves the EU (see section 7.12).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Pesticides (Amendment) (EU Exit) Regulations 2019 was presented to the Sifting Committees on 2 July 2019. The Lords Committee accepted the Government's approach that this statutory instrument did not require a debate in parliament and could follow the negative procedure. However, the Commons committee recommended that it be upgraded to the affirmative procedure (as reported in the European Statutory Instruments Committee (ESIC) 27th Report of Session 2017-2019).

3.2 Both Committees noted that the instrument revokes Article 13a of Implementing Regulation (EU) No 844/2012 allowing EU Member States to require the payment of fees and charges to recover the costs of any work they carry out within the scope of that Regulation. The ESIC concluded that this falls within the provisions of Schedule 7 paragraph 1(2)(b) of relating to a fee, and therefore recommended that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. the affirmative procedure).

3.3 In response to these recommendations, Robert Goodwill MP, Minister of State for Agriculture, Fisheries and Food agreed for this instrument to be made subject to the affirmative procedure.

3.4 No further substantive changes have been made to the instrument since it was presented to the Sifting Committees, except that minor amendments made using the power in section 2(2) of the European Communities Act 1972 have been removed from this instrument. Those amendments are to be contained in a future instrument made by Defra.

3.5 This instrument is being published under the free issue procedure. Having discussed with the SI Registrar, Defra decided that there are reasonable grounds to apply the

procedure given the length of this instrument and the mix of new and correcting provisions.

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)

3.6 The territorial application of this instrument includes Scotland and Northern Ireland.

3.7 The powers under which this instrument is made in respect of Scotland and Northern Ireland cover the entire United Kingdom (see section 24(1) 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 Robert Goodwill MP has made the following statement regarding Human Rights:

"In my view, the provisions of the Pesticides (Amendment) (EU Exit) Regulations 2019 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 Withdrawal Act. 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.

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 the UK's PPP legislation that would otherwise be left partially inoperable/unable to function legally following our exit from the EU. These minor corrections are required to ensure that they remain operable in a national context.

Regulation 2

7.2 Regulation 2(2) amends Regulation (EC) No 1107/2009 by replacing an out-of-date reference in Article 12(3)(c) to the superseded Official Control Regulations (OCRs), Regulation (EC) No 882/2004 with a reference to the new OCRs, Regulation (EU) 2017/625.

Regulation 3

7.3 Regulation 3(2) amends Article 13(4) of Regulation (EU) No 844/2012 (in the same way that regulation 2(2) amends Regulation (EC) No 1107/2009). Regulation 3(3) omits new Article 13a, which was inserted by Commission Implementing Regulation

(EU) 2019/724 and which is redundant. The existing fee system will continue to operate without any practical impact

7.4 Commission Implementing Regulation (EU) No 844/2012 provides detail as to the procedure for the provisions providing for the renewal of active substance approvals set out in Regulation (EC) No 1107/2009. Recital (9) of Commission Implementing Regulation (EU) 2019/724 indicates the new Article was inserted so that the "possibilities to require fees and charges in accordance with Article 74 of Regulation (EC) No 1107/2009 should be clarified for the renewal procedure".

7.5 However, Article 74(1) of Regulation (EC) No 1107/2009 gave the necessary permission to Member States to implement provision to recover costs "associated with any work … within the scope of this Regulation" by means of fees or charges. As a result, domestically the legislative authority for UK competent authorities to charge fees for work carried out in relation to the renewal of active substance approvals is contained in regulation 4(1)(b) of, and paragraph 2 of Schedule 1 to, the Plant Protection Product (Fees and Charges) Regulations 2011 (S.I. 2011/2132).

7.6 After leaving the EU, the UK will no longer need permission in order to make provision requiring the payment of fees and charges. The necessary powers which underpin the national fees and charges regime (the Plant Protection Product (Fees and Charges) Regulations 2011) are provided by domestic primary legislation. Therefore Article 13a of Commission Implementing Regulation (EU) No 844/2012 will be redundant post-exit (like Article 74(1) of Regulation (EC) No 1107/2009 which has also been revoked). In respect of costs arising in relation to the renewal of active substance approvals, the existing fee system which operates under the Plant Protection Products (Fees and Charges) Regulations 2011 will continue to operate without any practical impact.

Regulation 4 (and the Schedule)

7.7 Regulation 4(1) revokes the retained direct EU legislation listed in the Schedule. This is a list of EU Regulations containing individual active substance and MRL decisions which the EU have passed since the earlier instruments listed in section 2.5 were finalised, and which will form part of retained EU law from exit day. The listed EU Regulations are effectively spent, as these decisions are given effect through the statutory registers established by the PPP EU Exit SI and the MRL EU Exit SI, and so are redundant.

7.8 Regulation 4(2) to (6) contain 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. Similar transitional provisions were included in the earlier instruments listed in section 2.5.

Regulation 5

7.9 This regulation revokes some unnecessary EEA Agreement Annex entries which would otherwise form part of retained EU law from exit day. Paragraph (a) omits the adaptations for Regulation (EU) 2018/555, and paragraph (b) omits a number of points relating to retained direct EU legislation which is to be revoked.

Regulation 6

7.10 Regulation 6 makes a number of amendments to the PPP EU Exit SI. Regulation 6(2)(a) and (c), (3), and (5) correct a number of small errors in the PPP EU Exit SI.

7.11 Regulation 6(2)(b) amends regulation 5(30)(d) of the PPP EU Exit SI. Regulation 5(30)(d) amends Regulation (EC) No 1107/2009 so as to set a time limit for the expiry of existing parallel trade permits as "31st March 2021", i.e. approximately two years after exit day. Given that exit day is now 31st October 2019, regulation 6(2)(b) replaces this date with "the date two years after the day after exit day".

7.12 Regulation 6(4) amends regulations 14(3) of the PPP EU Exit SI so as to reverse the erroneous omission of provisions of Annex 2 to Regulation (EC) No 1107/2009 which prohibit the approval of active substances, safeners or synergists which have endocrine disrupting properties.

7.13 Regulation 6(6) makes a change to regulation 20 of the PPP EU Exit SI. Regulation 20 corrects deficiencies relating to EU Exit in Commission Implementing Regulation (EU) No 844/2012. As a result of subsequent amendments made to that Regulation (EU) No 844/2012 by Commission Implementing Regulation (EU) 2019/724, regulation 7(6) of this instrument changes the way that Article 1(1) of Regulation (EU) No 844/2012 is amended, in order to achieve the same outcome as the original amendment, as well as omitting the new subparagraphs of Article 1(1) which are redundant in a no deal EU Exit context.

7.14 Regulation 6(8) to (10) makes amendments to the transitional provisions in Schedule 1 to the PPP EU Exit SI. Regulation 6(8)(a)(i) replaces the current text of paragraph 2(2) of Schedule 1. This sub-paragraph excludes specified entries in Part A of the Annex to Regulation (EU) No 540/2011 which expired before exit day from the transitional provision in paragraph 2(1) (i.e. the transitional provision that converts existing EU active substance approvals into entries in the new register). A number of new Annex entries have expired since the PPP EU Exit SI was made. Rather than try and keep an increasingly lengthy list up to date, the replacement text simply excludes from the main transitional provision any Annex entry where the approval period for that entry has expired before exit day.

7.15 Regulation 6(8)(a)(ii) makes a similar date formula change to that made by regulation 6(2)(b), this time in relation to the cut-off date in the transitional provision paragraph 2(4) of Schedule 1 to the PPP EU Exit SI (which extends the approval period of those active substances etc.), which would otherwise expire in the first three years after exit day).

7.16 Regulation 6(8)(b)(i) and (ii)(aa) and (9) correct small errors in the text of Schedule 1.

7.17 Regulation 6(7)(b)(ii)(bb) and 6(7)(b)(iii) insert new specific transitional provision modifications into paragraph 3(4) and (5) of Schedule 1 to the PPP EU Exit SI respectively. This is as a result of new active substance approvals arising since the PPP EU Exit SI was finalised.

7.18 Regulation 6(10) makes a similar date formula change to that made by regulation 6(2)(b), in relation to the cut-off date in the transitional provision paragraph 14(4)(b) of Schedule 1 to the PPP EU Exit SI (which is the three year period after exit day in which certain treated seeds can be placed on the market in the UK).

7.19 Regulation 6(11) corrects two small errors in the titles of EU instruments being revoked in Schedule 2 to the PPP EU Exit SI.

Regulation 7

7.20 Regulation 7 makes amendments to the MRL EU Exit SI. Regulation 7(2) corrects an error in regulation 3(4)(c)(ii)(bb) of the MRL EU Exit SI.

7.21 Regulation 7(3) amends Schedule 1 to the MRL EU Exit SI, which provides transitional provisions. Regulation 7(3)(a)(i) and (iii) and (b) replaces set dates in paragraphs 3(6)(b)(i), 6(3)(b)(i) and 11(2) respectively of that Schedule with an exit day-based formula.

7.22 Regulation 7(3)(a)(ii) omits two specific transitional provisions in paragraph 4(2)(e) and (3)(a)(v) of Schedule 1 to the MRL EU Exit SI, which have become redundant as a result of further amendments made by EU legislation to the Annexes to Regulation (EC) No 396/2005.

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 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 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 8026 6659 or email: duncan.williams@defra.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Robert Goodwill 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 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 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, Robert Goodwill 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 2019 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 Minister of State, Robert Goodwill 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 Minister of State, Robert Goodwill MP has made the following statement:

"The Pesticides (Amendment) (EU Exit) Regulations 2019 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, Robert Goodwill MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Robert Goodwill, 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.