

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENT, FOOD AND RURAL AFFAIRS (MISCELLANEOUS
AMENDMENTS ETC.) REGULATIONS 2019

2019 No. [XXX]

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 miscellaneous amendments to various pieces of legislation within the remit of Defra. These largely deal with out of date references to domestic and EU instruments but several of the amendments also reflect changes to EU law, make minor changes to implementation of EU obligations, or minor drafting corrections to domestic instruments which transpose EU obligations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The amendments made by regulation 17(2) and (3) address the JCSI’s report on S.I. 2018/1051 in its 38th Report of Session 2017-19, by correcting the syntax of two provisions which that instrument inserted into the Plant Health (England) Order 2015 (S.I. 2015/610). Further corrections of errors are made by regulations 6, 14, 18 and 27, as detailed in paragraph 6.3 below. In consequence, this instrument has been published under the free issue procedure.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is that:
 - regulations 1, 3, 19 and 31, and paragraphs 1 and 2 of the Schedule, extend to the United Kingdom;
 - regulations 8, 9, 15 and 22 extend to England and Wales and Scotland;
 - regulation 20 extends to England and Wales and Northern Ireland;
 - all other provisions extend to England and Wales.
- 4.2 The territorial application of this instrument is that:

- regulations 1, 3, 19 and 31, and paragraphs 1 and 2 of the Schedule, apply to the United Kingdom;
- regulations 8, 9, 15 and 22 apply to England and Wales and Scotland;
- regulation 20 applies to England and Wales and Northern Ireland;
- regulations 2, 4, 6 and 10 apply to England and Wales;
- all other provisions apply to England only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, David Rutley, has made the following statement regarding Human Rights:

“In my view the provisions of the Environment, Food and Rural Affairs (Miscellaneous Amendments etc.) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument makes various amendments, the majority of which update out of date references to domestic and EU instruments. There are also amendments to reflect changes to EU law.
- 6.2 Section 56(1) of the Environment Act 1995 extends to Great Britain but it has parallel texts for England and Wales and for Scotland, as a result of previous amendments made by the Secretary of State and by Scottish Ministers. The definitions of “environmental licence” differ for England and Wales and for Scotland, and regulation 2 of this instrument only amends the definition which applies in England and Wales.
- 6.3 Regulations 14 and 18 correct minor errors in the Pigs (Records, Identification and Movement) Order 2011 (SI 2011/2154) and the Transmissible Spongiform Encephalopathies (England) Regulations 2018 (SI 2018/731). Regulations 6, 17 and 27 correct minor errors in instruments which amended the Water Supply (Water Quality) Regulations 2016, the Plant Health (England) Order 2015 and the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007. The amending instruments which contain errors are SI 2018/706, 2018/1051 and 2018/352 respectively.

7. Policy background

What is being done and why?

- 7.1 The amendments made by this instrument cover legislation in the fields of environmental protection, water, agriculture, animals and animal health, plant health, sea fisheries and food.
- 7.2 In regulation 2, the amendment to the Environment Act 1995 corrects an out of date reference to ensure it refers to Directive 2008/98 (the Waste Framework Directive, OJ L 312, 22.11.2008, p. 3), as last amended by EU Regulation 2017/997 (OJ L 150, 14.6.2017, p. 1). There is a reference in the definition of environmental licence in section 56 of the Environment Act 1995, as it applies in England and Wales, to Directive 2008/98, inserted by the Waste (England and Wales) Regulations 2011.

This amendment updates that to be the version of the directive as last amended by EU Regulation 2017/997.

- 7.3 Regulations 3, 8, 9(3) and (4), 11, 12, 13, 15, 17(4), 21, 24(2), 25(2), 26, 29 and 30 amend secondary legislation relating to environmental protection, animals and animal health, plant health, fisheries and food, to amend cross-references to EU legislation which are out of date as a result of the amendment, or revocation and replacement, of that EU legislation, and to make amendments consequential on those changes to cross-references. The amendments do not implement any new policy.
- 7.4 Regulations 9(2) and 10 amend secondary legislation relating to animals and animal health, which implements or is related to EU obligations, in consequence of the amendment or revocation of domestic legislation referred to in that legislation. The amendments do not implement any new policy.
- 7.5 Regulations 6, 14, 17(2) and (3), 18 and 27 correct errors in the instruments referred to in paragraph 6.3 above. The amendment made to the Transmissible Spongiform Encephalopathies (England) Regulations 2018 by regulation 18 corrects an error in the wording of Schedule 7, which covers requirements for the removal of Specified Risk Material (SRM) from carcasses at slaughterhouses. The correction to paragraph 4(3)(a) requires the removal of the spinal cord from ovine and caprines aged over 12 months or that have a permanent incisor erupted through the gum, before, instead of after, the post-mortem inspection. This change brings the wording into line with standard slaughterhouse procedure. The other corrections are to drafting errors and inconsistencies of a very minor nature.
- 7.6 All of these amendments ensure a functioning statute book, enabling the reader to understand what the law is.
- 7.7 Regulation 4 amends the process in the Bathing Waters Regulations 2013 for updating the list of designated bathing waters. Currently there is a statutory list in a Schedule to the Regulations which must be amended each time a bathing water is designated or de-designated, in addition to a requirement for the Secretary of State and Welsh Ministers to publish a list. The amendments remove the Schedule containing the list and instead provide that the Secretary of State and Welsh Ministers must identify and maintain a list of bathing waters through an administrative process. They must also continue to publish the list as before. This means that the list can be updated without requiring a statutory instrument to amend the Schedule to the Regulations each time, for which there will be no power when the European Communities Act 1972 is repealed on exit day. This change will not affect the decision-making process, or have any impact on users of bathing waters. Stakeholders are unlikely to see the change to an administrative process as problematic and safeguards will remain to ensure stakeholders continue to have a chance to express their views e.g. consultations will continue to be open to the public in advance of any designations or de-designations.
- 7.8 Regulation 5 amends the Nitrate Pollution Prevention Regulations 2015 (Nitrate Regulations). Regulations 5(2), 5(3)(a) and 5(6) amend the definition of “new holding”, the definition of “relevant map” and the transitional arrangements in Schedule 4 to the Nitrate Regulations respectively, so that it will no longer be necessary for certain dates in those regulations to be periodically updated. The power which has been used to do this updating is section 2(2) of the European Communities Act 1972, which will no longer be available when it is repealed on the

UK's exit from the EU. These amendments are needed to ensure the Nitrate Regulations continue to operate effectively when the designation of Nitrate Vulnerable Zones is revised. None of these amendments will change the way the Nitrate Regulations operate. In particular, farmers will continue to be able to review the territorial scope of nitrate vulnerable zones by consulting the relevant maps, and to appeal the designation of their land as a nitrate vulnerable zone where there are grounds for doing so. Further, farmers whose land is designated as a nitrate vulnerable zone for the first time will continue to benefit from the transitional arrangements in Schedule 4 to the Nitrate Regulations, which remain unchanged.

- 7.9 The amendment to the Common Agricultural Policy (Control and Enforcement, Cross-Compliance, Scrutiny of Transactions and Appeals) Regulations 2014 by regulation 7 does not implement any new policy. It amends the definition of "SCMO Regulations" to insert references to EU legislation that repealed and replaced part of an EU enactment and does not introduce any new requirements.
- 7.10 The amendment to the Animal By-Products (Enforcement) (England) Regulations 2013 in regulation 16 removes a reference to a transitional period which expired on 31 December 2011 in regard to placing on the market organic fertilisers and soil improvers comprising certain animal by-products which were produced before 4 March 2011.
- 7.11 The amendments to the Sea Fish (Specified Sea Area) (Regulation of Nets and Prohibition of Fishing Methods) Order 1989 and the Sea Fish (Specified Sea Areas) (Regulation of Nets and Other Fishing Gear) Order 2001 in regulations 19 and 20 update those Orders with a reference to the current EU net measuring methods legislation, Commission Regulation (EC) No 517/2008, which replaced the earlier EU regulation in place when the Orders were made.
- 7.12 The amendment to the Sea Fishing (Enforcement) Regulations 2018 ("the 2018 Regulations") by regulation 22 replaces the reference in the 2018 Regulations to the bass measures in Council Regulation (EU) 2018/120, which fixes the Total Allowable Catch (TAC) and Quota for certain fish stocks for 2018, with a reference to the replacement bass measures in the EU TAC and Quota Regulations for 2019 which came into force on 31 January 2019. The 2018 Regulations enable Inshore Fisheries and Conservation Officers (IFCOs) to use their powers to enforce relevant EU conservation measures directly within their Inshore Fisheries and Conservation Authority (IFCA) districts. These measures include measures on bass catch limits for vessels and recreational bass bag limits as set out in the EU TAC and Quota Regulation for 2018. Much of this fishing activity occurs within the IFCA 0-6 nautical mile zone and it is therefore appropriate for IFCOs to enforce the relevant controls. New bass measures have been agreed for 2019 and are set out in the EU TAC and Quota Regulation for 2019.
- 7.13 The amendments to Food Compositional Standards legislation in Chapter 5 of Part 3, as well as amending out-of-date cross references to EU legislation, also make some other specific, minor updates, such as an amendment of a reference to water supply regulations within the Fruit Juices and Fruit Nectars (England) Regulations 2013.
- 7.14 Paragraphs 1 and 2 of the Schedule revoke legislation relating to fisheries. The Fishery Producers' Organisations (Formation Grants) Regulations 1999 ("the 1999 Regulations") set out the process for Fisheries Producer Organisations (FPOs) to

apply for grants. Grants to producer organisations can instead be made from the European Maritime and Fisheries Fund established under Council Regulation 508/2014. This regulation is being retained on EU exit. The 1999 Regulations are therefore redundant and are being revoked.

- 7.15 Paragraphs 3 to 6 of the Schedule revoke legislation relating to agriculture and rural development: the Rural Development Grants (Agriculture and Forestry) Regulations 2000, the Countryside Stewardship Regulations 2000, the Rural Development Grants (Agriculture and Forestry) (Amendment) Regulations 2001 and the Rural Development Grants (Local Communities) Regulations 2001 They apply to grant schemes which were set up and run under previous iterations of the Rural Development Programme for England and these schemes are now closed.

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

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument is not consolidating any provisions.

10. Consultation outcome

- 10.1 This instrument has been developed in collaboration with Devolved Administration officials in so far as the amendments relate to devolved matters.
- 10.2 No separate consultation exercise was conducted as this instrument makes technical amendments whose purpose is to maintain continuity of approach in the context of the UK leaving the EU; it does not make any changes to policy.

11. Guidance

- 11.1 It is not considered that guidance is required in respect of 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 the amendments in themselves do not constitute any changes to policy and therefore there is expected to be no significant impact on business as a direct result of this SI as it relates to the maintenance of existing regulation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the impact on small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that Defra and its agencies will monitor and review the impact of the instrument as part of its standard policy-

making procedures, and will ensure that the provisions are adhered to and implemented.

- 14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 David Rutley MP has made the following statement. Much of the legislation being amended by this instrument already contains a review clause. Where it does not contain a review clause, the Minister considers that inserting a review provision is not appropriate, because there is not expected to be a significant annualised net impact on business (greater than +/- £5 million net annualised). It would not be proportionate to undertake a review in each case, given the costs of doing so and the limited scope for change, particularly in relation to out of date references.

15. Contact

- 15.1 Monnette Keenaghan at the Department for Environment, Food and Rural Affairs Telephone: 0208 026 4506 or email: Monnette.Keenaghan@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Colin Tweddle, Deputy Director for Secondary Legislation, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 David Rutley, Parliamentary Under Secretary of State for Food and Animal Welfare, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.