

EXPLANATORY MEMORANDUM TO
THE OFFICIAL CONTROLS (ANIMALS, FEED AND FOOD) (ENGLAND)
(AMENDMENT) (EU EXIT) REGULATIONS 2018

2018 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.
- 1.2 This Memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

The purpose of this instrument is to make deficiency amendments under the EU (Withdrawal) Act 2018 (“the Withdrawal Act”) to EU-derived domestic legislation that implements and provides for the enforcement retained direct EU legislation, the Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and welfare rules (“the EC Regulation”). The amendments in this instrument enable the England-only statutory instrument to function immediately after EU exit.

2.1 Explanations

What did any relevant EU law do before exit day?

- 1. The EC Regulation, was introduced to establish a harmonised framework of general rules for the organisation of official controls carried out to verify compliance with feed and food law, and animal health and animal welfare rules.
- 2. This instrument amends EU-derived domestic legislation, namely the Official Controls (Animals, Feed and Food) (England) Regulations 2006 (“S.I. 2006/3472”) which provides enforcement powers for that part of the EC Regulation.

Why is it being changed?

This instrument uses powers under the EU (Withdrawal) Act 2018 to make the necessary changes to the domestic legislation to ensure that the law functions correctly after the UK has left the EU. This instrument addresses deficiencies arising from EU exit.

The Instrument has been drafted on the assumption of a ‘no deal’ at the time of EU Exit.

What will it now do?

The deficiency amendments will allow EU-derived domestic legislation to be fully operable once the UK leaves the EU. The instrument makes no policy changes.

3. Matters of special interest to Parliament

Matters of special interest to the Sifting Committees

3.1 The instrument is being laid for sifting to the European Union (Withdrawal) Act 2018 by the ESIC and SLSC. A statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018 is contained in Part 2 of the Annex to this Memorandum.

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 England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

The verification of compliance with feed and food law and animal health and animal welfare legislation in the UK is covered by the EC Regulation, which is partly enforced in England by S.I 2006/3472 (and equivalent legislation in other parts of the UK as the subject matter is devolved). The EC Regulation will be retained EU law as defined in the Withdrawal Act. This instrument makes the few necessary changes to the domestic legislation to ensure that the law functions correctly after the UK has left the EU.

7. Policy background

What is being done and why?

7.1 This instrument ensures that S.I 2006/3472 functions correctly after the UK has left the EU by addressing deficiencies arising from EU exit.

7.2 The countries that the UK hopes to trade with will expect the UK to adhere to similar rules for verification of compliance with feed and food law, and animal health and animal welfare legislation.

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

8.1 This instrument is not being made to address a deficiency in retained EU law, but relates to the withdrawal of the United Kingdom from the European Union and is being made under section 8(1) of the Withdrawal Act. The Minister has made relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 It has been decided not to consolidate either principal statutory instrument as very few previous amendments have been made to them.

10. Consultation outcome

10.1 The Scottish, Welsh and Northern Ireland devolved administrations have been consulted about this proposed amendment. No consultation with industry or other stakeholders is required.

11. Guidance

11.1 The Department for Environment, Food and Rural Affairs does not propose to issue any specific guidance in respect of this Statutory Instrument as it makes no policy change.

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 it relates to maintenance of existing regulatory standards and will not introduce any new policy.

13. Regulating small business

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

13.2 This measure does not introduce new duties or burdens on business. Businesses will not need to change their current practices as a result of this Instrument.

14. Monitoring & review

14.1 As this Instrument is made under the Withdrawal Act, no review clause is needed.

15. Contact

15.1 Stefan Pietrzyk at the Department for Environment, Food and Rural Affairs
Telephone: 0208026 4121 or email: stefanniq.pietrzyk@defra.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Sheridan, Deputy Director for Import, Exports and EU Trade 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 at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

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/ESIC
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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	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. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the Official Controls (Animals, Feed and Food) (England) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.
- 1.3 This is the case because it relates to maintenance of existing regulatory standards and will not introduce any new policy.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view the Official Controls (Animals, Feed and Food) (England) (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate as it relates to maintenance of existing regulatory standards and will not introduce any new policy”.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action and relate to maintenance of existing regulatory standards”.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has made the following statement “The 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”.
- 4.2 The relevant Minister within the United Kingdom has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 4.3 “In relation to the instrument, I, Lord Gardiner of Kimble, being the relevant Minister, 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.”
- 4.4 Little or no impact on equalities is expected.

5. Explanations

- 5.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.