House of Lords
House of Commons

Joint Committee on Statutory Instruments

Fifty-second Report of Session 2017–19

Drawing special attention to:

Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 **(Draft S.I.)**

Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 **(S.I. 2019/170)**

Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 **(S.I. 2019/188)**

Education (Student Loans) (Repayment) (Amendment) Regulations 2019 **(S.I. 2019/189)**

Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019 **(S.I. 2019/204)**

Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019 **(S.I. 2019/207)**

Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019 **(S.I. 2019/208)**

Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 **(S.I. 2019/209)**

Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 **(S.I. 2019/211)**

Official Controls (Animals, Feed and Food) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 **(S.I. 2019/219 (now S.I. 2019/272))**

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Joint Committee on Statutory Instruments

Current membership

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Lord Lexden (*Conservative*)

Baroness Meacher (*Crossbench*)

Lord Morris of Handsworth (*Labour*)

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Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 151 and House of Lords Standing Order No. 73, available on the Internet via www.parliament.uk/jcsi.

Remit

The Joint Committee on Statutory Instruments (JCSI) is appointed to consider statutory instruments made in exercise of powers granted by Act of Parliament. Instruments not laid before Parliament are included within the Committee's remit; but local instruments and instruments made by devolved administrations are not considered by JCSI unless they are required to be laid before Parliament.

The role of the JCSI, whose membership is drawn from both Houses of Parliament, is to assess the technical qualities of each instrument that falls within its remit and to decide whether to draw the special attention of each House to any instrument on one or more of the following grounds:

i that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;

ii that its parent legislation says that it cannot be challenged in the courts;

iii that it appears to have retrospective effect without the express authority of the parent legislation;

iv that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;

v that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;

vi that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;

vii that its form or meaning needs to be explained;

viii that its drafting appears to be defective;

ix any other ground which does not go to its merits or the policy behind it.

The Committee usually meets weekly when Parliament is sitting.

Publications

The reports of the Committee are published by Order of both Houses. All publications of the Committee are on the Internet at www.parliament.uk/jcsi.

Committee staff

The current staff of the Committee are Jeanne Delebarre (Commons Clerk), Jane White (Lords Clerk) and Liz Booth (Committee Assistant). Advisory Counsel: Daniel Greenberg, Klara Banaszak, Peter Brooksbank, Philip Davies and Vanessa MacNair (Commons); James Cooper, Nicholas Beach, John Crane and Ché Diamond (Lords).

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Instruments reported

At its meeting on 13 March 2019 the Committee scrutinised a number of Instruments in accordance with Standing Orders. It was agreed that the special attention of both Houses should be drawn to 10 of those considered. The Instruments and the grounds for reporting them are given below. The relevant Departmental memoranda are published as appendices to this report.

1 Draft S.I. Reported for defective drafting, for requiring elucidation and for failure to comply with proper legislative practice

Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019

1.1 **The Committee draws the special attention of both Houses to these Draft Regulations on the grounds that they are defectively drafted in one respect, require elucidation in four related respects and fail to comply with proper legislative practice in one respect.**

1.2 These Draft Regulations amend retained EU law on food improvement agents to address deficiencies arising as a result of the United Kingdom leaving the European Union.

1.3 The Committee asked the Department of Health and Social Care (who forwarded the request to the Food Standards Agency) to explain why the inserted text in regulation 16(b) does not include an obligation to inform the Authority of the receipt of an application for a product to be included in the list of products authorised for smoke flavourings. In a memorandum printed at Appendix 1, the Department accepts the need for a provision of this kind and undertakes to make an appropriate amendment at the next opportunity. **The Committee accordingly reports regulation 16(b) for defective drafting, acknowledged by the Department.**

1.4 The Committee asked the Department to explain why the definitions of "appropriate authority" and "prescribe" are not inserted in to Regulation (EC) No. 1332/2008, Regulation (EC) No. 1333/2008 and Regulation (EC) No. 1334/2008 and why the definitions of "Authority" and "appropriate authority" are not inserted into Regulation (EU) No.234/2011. In its memorandum, the Department explains that there was no need to insert those definitions as they are to be inserted by other draft EU Exit regulations which are yet to be approved by Parliament. **The Committee accordingly reports regulations 55 to 153 as requiring elucidation, provided by the Department's memorandum.**

1.5 The Committee also asked the Department to explain why inserted paragraph 2 (which is not operative text) in regulations 29, 52, 72, 105 and 132 is not presented as a footnote. In its memorandum, the Department explains that the text used tracks paragraph 20(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 and that guidance from the Statutory Instrument Hub was followed to be consistent across government. It is not within the remit of this Committee to comment on the text of primary legislation. However, in relation to subordinate legislation the Committee has always been clear that it is important to ensure clarity and certainty and there should be a clear presentational

distinction between operative and inert material (see the Committee's First Special Report of Session 2013–14, Excluding the inert from secondary legislation). **The Committee accordingly reports regulations 29, 52, 72, 105 and 132 for failure to comply with proper legislative practice.**

2 S.I. 2019/170: Reported for defective drafting, for failure to comply with proper legislative practice and for requiring elucidation

Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019

2.1 **The Committee draws the special attention of both Houses to these Regulations on the grounds that they are defectively drafted in three respects, fail to comply with proper legislative practice in one respect, and require elucidation in one respect.**

2.2 These Regulations amend retained EU law on transmissible spongiform encephalopathies (TSEs) to address deficiencies arising as a result of the United Kingdom leaving the European Union.

2.3 Regulation 2(4) amends provisions that require member States to carry out an annual monitoring programme for TSEs, including by replacing an obligation for member States to report annually to the European Commission with an obligation for the Secretary of State, Welsh Ministers, Scottish Ministers and Northern Ireland Department of Agriculture, Environment and Rural Affairs (DAERA) to report annually to their relevant legislature "where possible". In the Explanatory Memorandum published alongside the Regulations, the Department for Environment, Food and Rural Affairs explains that the words "where possible" have been included because at present Northern Ireland has no Assembly. The Committee was concerned that the phrase was capable of a broader construction than the Department intended, and that an explanation in material extraneous to the Regulations would not be sufficient to limit its meaning. The Committee therefore asked the Department to explain how the phrase is limited to circumstances in which there is no Northern Ireland Assembly.

2.4 In a memorandum printed at Appendix 2, the Department acknowledges that the phrase is not so limited in express terms but asserts that it is difficult to conceive of any other plausible case where the appropriate authority would be inherently incapable of complying with the obligation to report. The Committee does not accept that: on its face the exemption would cover situations in which any of the named authorities felt unable for some practical reason to make a report; that is not the policy intention, and the provision is therefore defectively drafted. The Committee notes that other legislation enacted since the collapse of the Northern Ireland Assembly has included an unqualified obligation to lay annual reports or statutory instruments before the Assembly (see for instance the Criminal Finances Act 2017, section 15 (new section 303F); the European Union (Withdrawal) Act 2018, Schedule 7, paragraph 8), doubtless relying on the maxim of statutory interpretation *lex non cogit ad impossibilia* (the law does not advert to the impossible) to cover the case where there is no Northern Ireland Assembly to which to make the required report. So

silence would have been the appropriate technique to cover the case (or, perhaps, the provision of an alternative mechanism for reporting in the absence of the Assembly). **The Committee accordingly reports regulation 2(4) for defective drafting.**

2.5 Regulation 2(40)(b) amends a provision of retained EU law by omitting the second sentence of a paragraph. It struck the Committee as unusual that the amendment removes an obligation about the type of sampling plan required to be used in a slaughterhouse while leaving in place an obligation on member States to inform the Commission of the results of the sampling. Regulation 6(20)(b) also appeared to the Committee to have an unusual result: the apparently meaningless phrase "it was produced at least 21 days before the date of entry into the Union kept in a third country United Kingdom kept in the European Union or a third country outside the European Union or region thereof". The Committee therefore asked the Department to explain why regulation 2(40)(b) omitted the second sentence of the relevant provision rather than the third, and the meaning of the phrase resulting from the amendment in regulation 6(20)(b). In its memorandum the Department acknowledges that both are errors and undertakes to correct them at the earliest opportunity. **The Committee accordingly reports regulations 2(40) and 6(20)(b) for defective drafting, acknowledged by the Department.**

2.6 Regulation 5(5) inserts into Regulation (EC) No 1069/2009 a new defined term, "appropriate authority", which means the Secretary of State for England, the Welsh Ministers for Wales, the Scottish Ministers for Scotland, and DAERA for Northern Ireland – or the Secretary of State if consent is given by the other authorities. Commission Regulation (EU) No 142/2011, which is amended by regulation 6, also relies on this definition. Regulations 5 and 6 generally substitute this defined term for inappropriate references to the Commission and member States. Regulation 5(12) and 6(94), however, instead use the terms "devolved authorities" and "devolved authority", which are not expressly defined. The Committee asked the Department to confirm whether these terms refer to the Welsh Ministers, Scottish Ministers and DAERA, and if so why the defined term "appropriate authority" was not used.

2.7 In its memorandum, the Department explains that it relies on section 11 of the Interpretation Act 1978 to extend the definition of "devolved authority" in section 20(1) of the Withdrawal Act to these Regulations, and that this was done to exclude the possibility that "appropriate authority" would be read, in the provisions amended by regulations 5(12) and 6(94), to mean the Secretary of State acting with the consent of the other authorities. Section 11 provides that "where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act". The Committee acknowledges that it is at least arguable that the effect of section 11 carries through to provisions in regulations under the 2018 Act inserting text into other legislation (subject to any contra-indication in the amended legislation). But it is, at least, confusing for readers who have to notice that the text has been inserted by regulations made under the 2018 Act, and then check the 2018 Act for relevant definitions, and then check the provisions of the amended legislation for contra-indications of section 11. Taken in the round, this is liable to confuse, and open to sufficient risk of definite or possible non-application of section 11 as a result of contra-indication that the Committee considers reliance on section 11 to be inappropriate in this situation as a matter of drafting practice. **The Committee accordingly reports regulations 5(12) and 6(94) for failure to comply with proper legislative practice.**

2.8 The Committee noticed that regulation 6 does not amend the many inappropriate references to the European Union in the model certificates contained in Annex 15 to Commission Regulation (EU) No 142/2011. The Committee therefore asked the Department whether these will be amended by another instrument. In its memorandum, the Department confirms that they are dealt with by regulation 10(10)(c) of the Animals (Legislative Functions) (EU Exit) Regulations 2019. **The Committee accordingly reports regulation 6 for requiring elucidation, provided by the Department's memorandum.**

3 S.I. 2019/188: Reported for defective drafting

Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

3.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in four respects.**

3.2 These Regulations amend a number of instruments that provide for the treatment and disposal of various kinds of waste in the United Kingdom. The amendments are made under section 8(1) of the European Union (Withdrawal) Act 2018 to correct deficiencies arising from the United Kingdom leaving the European Union. The instruments being amended contain a significant number of cross-references to Directives, which will not be incorporated as retained direct EU legislation by s.3(1) of the Withdrawal Act. Where Directives are incorporated into UK law by reference, however, the kinds of deficiencies anticipated by the Withdrawal Act may arise. This is the case with instruments being amended by these Regulations, and the Department for Environment, Food and Rural Affairs has dealt with the deficiencies by inserting provisions into the affected instruments which modify the way the Directives should be read after exit day.

3.3 New regulation 2A, as inserted by regulation 10(3), is an example of such a modifying provision. The Committee asked the Department to explain whether it is intended that this new regulation 2A is both applying the Directive in full and also introducing modifications, and to explain the same in relation to other regulations in this instrument that modify Directives. In a memorandum printed at Appendix 3, the Department explains that the modifying regulations in this instrument are not intended to apply the Directives in full. Provisions of the modified Directives are to apply after exit day only to the extent that other provisions of domestic legislation refer to them in terms which indicate that they apply, and regulation 2A (and other similar regulations) are merely interpretation provisions. The Department provides a helpful elaboration of how, in its view, this applies in relation to new regulation 2A. The Department clarifies that modifications are also made to provisions incorporated by cross-references within Directives. Where provisions are not modified, it is because they are not incorporated by any cross-reference, whether in domestic legislation or in another Directive; they are therefore neither part of domestic legislation nor required to interpret domestic legislation.

3.4 The Committee remains concerned that in some cases the Department appears to treat Directive provisions as applying where it is not clear that they do. In regulation 10(3), for example, new regulation 2A(6)(b) modifies Article 6 of Directive 2000/53/EC so that it is read as referring to Articles 23, 24 and 25 of Directive 2008/98/EC. Article 6 is modified because it is incorporated by a cross-reference in regulation 12(1) of the instrument that regulation 10 amends, which provides: "The authorised treatment facilities which comprise

all or part of a producer's system for collection of vehicles shall contain sufficient capacity to treat, in accordance with the requirements of Article 6 and Annex I of the Directive, the number of that producer's vehicles which are likely to become end-of-life vehicles in 2006 and in each year thereafter." According to the Department's memorandum, this reference is taken to mean that Article 6 applies for the purposes of regulation 12(1); it is modified accordingly. Articles 23, 24 and 25 are also modified (by new regulation 2B) because they are incorporated by the cross-reference in Article 6.

3.5 It remains unclear to the Committee, however, whether these Articles are intended to apply only to the extent that they impose obligations on the authorised treatment facilities to which regulation 12(1) refers, or whether they are also intended to apply in relation to UK authorities. If the former, it is not clear to the Committee why it is necessary to omit provisions that empower the Commission to legislate (the modification made by new regulation 2A(6)(c)) or require Member States to inform the Commission of rules laid down under Article 25 (the modification made by new regulation 2B(8)). If the latter, the Committee is not persuaded that modifying a cross-reference in a Directive is sufficient to make Articles 23, 24 and 25 apply to the extent that they impose obligations on UK authorities to issue permits, restrict their ability to apply exemptions from those permit requirements, or lay down general rules in relation to such exemptions. The Committee understands the Department's policy intention, but given that such ambiguity remains, it does not consider that the modifications made by these Regulations have achieved that policy intention with sufficient clarity. **The Committee accordingly reports regulation 10(3) for defective drafting, and notes that other regulations in this instrument that modify provisions of Directives may contain similar defects.**

3.6 The Committee asked the Department to clarify the reference to "except for regulation 2A" in regulation 13(3); confirm that it was not necessary to include both paragraphs (2)(b) and (2)(c) in regulation 14; and explain what "the technical standards" and "the parts that have been applied to" refer to in regulation 18(25), new paragraph 26(c)(vi). In its memorandum, the Department acknowledges that these were all errors and undertakes to correct them at the first available opportunity. **The Committee accordingly reports regulations 13(3), 14(2) and 18(25) for defective drafting, acknowledged by the Department.**

3.7 The Department's memorandum also helpfully explains why different regulations in this instrument modify the same Directive in different ways.

4 S.I. 2019/189: Reported for doubt as to whether it is *intra vires*

Education (Student Loans) (Repayment) (Amendment) Regulations 2019

4.1 **The Committee draws the special attention of both Houses to this instrument on the ground that there is doubt whether it is *intra vires* in one respect.**

4.2 These Regulations amend the Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470) to facilitate, from April 2019, more frequent sharing of student loan repayment data between Her Majesty's Revenue and Customs (HMRC) and the Student Loans Company (SLC). Currently, where student loan repayments are made via deductions by the employer, SLC receives repayment data from HMRC at the end of the tax year. This can lead to a long delay between full repayment of the loan and the employer being

instructed to stop deductions, resulting in substantial over-repayment. Operational IT improvements will allow repayment data to be shared more frequently. To reflect this change in practice, the amendment made by regulation 3(b) allows SLC to consider a payment received either on the day it was deducted or, where it is necessary to take account of any adjustment to the deduction, on "such other day as HMRC specifies". It appeared to the Committee that this could be construed as conferring a discretionary function on HMRC, without a clear express sub-delegation in the enabling Act. The Committee therefore asked the Department for Education to identify the power for the sub-delegation to HMRC in regulation 3(b).

4.3 In a memorandum printed at Appendix 4, the Department explains that this provision is not intended to sub-delegate any power to HMRC. Where an adjustment can be backdated to the date of the original deduction, this is the date that HMRC will specify. In exceptional cases this will not be possible, and HMRC will be required to specify a date that should be treated as the date of the deduction; it will do so based on the factual circumstances in each case, and not in the exercise of any discretion. The Department acknowledges, however, that regulation 3(b) could be read as conferring a discretion and undertakes to correct it at the first available opportunity. The Committee is grateful for the explanation and the undertaking, and **accordingly reports regulation 3(b) for doubt as to whether it is *intra vires*.**

5 S.I. 2019/204: Reported for requiring elucidation

Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019

5.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in one respect.**

5.2 This instrument amends retained EU law on plant breeders' rights to address deficiencies arising as a result of the United Kingdom leaving the European Union. It revokes Regulation (EC) 2100/94, the principal EU Regulation that creates the framework for protection of Community plant variety rights (CVPR) across the European Union, and provides instead for a separate UK framework to come into effect after exit day. Under Article 95 of the principal EU Regulation, a person who applies for and is granted a CPVR is able to require reasonable compensation from anyone who infringes that CPVR between the date the application is published and the date of the grant. An equivalent protection applies under the UK scheme, which is set out in the Plant Varieties Act 1997. Under regulation 9 of this instrument, where a CPVR application is still outstanding on exit day, it is treated as an "unresolved application". A person with an unresolved application may apply for UK plant breeders' rights for a limited time using the special procedure set out in regulations 10 to 14, rather than the procedures in the 1997 Act. The application for UK plant breeders' rights will be treated, under regulation 11, as having been made on the date the CPVR application was filed. But regulation 13 provides that the applicant's right to compensation is for infringing acts that occur after exit day, not the date the CPVR application was published.

5.3 The Committee asked the Department for Environment, Food and Rural Affairs to confirm whether a person will be able, in such circumstances, to exercise the right to compensation for infringing acts that occurred between the date of the CPVR application

and exit day, as currently provided under Article 95. In a memorandum printed at Appendix 5, the Department confirms that this right is preserved by section 4 of the European Union (Withdrawal) Act 2018. **The Committee accordingly reports regulation 13 as requiring elucidation, provided by the Department's memorandum.**

6 S.I. 2019/208: Reported for requiring elucidation

Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019

6.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they require elucidation in two related respects.**

6.2 These Regulations amend retained EU legislation relating to direct payments to farmers under agricultural support schemes within the Common Agricultural Policy to address deficiencies arising as a result of the United Kingdom leaving the European Union.

6.3 The Committee asked the Department for Environment, Food and Rural Affairs to explain what is intended by the phrase "relevant authority" (inserted in to EU Regulations 639/2014 and 641/2014). In a memorandum printed at Appendix 6, the Department explains that the definitions in Regulation 1307/2013 flow through to Regulations 639/2014 and 641/2014 and that Regulation 1307/2013 was amended by the Common Agricultural Policy (Direct payments to Farmers) (Amendment) (EU Exit) Regulations 2019 to insert a definition of "relevant authority". **The Committee accordingly reports Parts 2 and 3 of these Regulations as requiring elucidation, provided by the Department's memorandum.**

7 S.I. 2019/211: Reported for defective drafting

Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

7.1 **The Committee draws the special attention of both Houses to these Regulations on the ground that they are defectively drafted in one respect.**

7.2 These Regulations amend European Union derived legislation relating to seed and plant propagating material in Northern Ireland to address deficiencies arising as a result of the United Kingdom leaving the European Union.

7.3 The Committee asked the Department for Environment, Food and Rural Affairs to explain what the wording "a temporary experiment seeking improved alternatives to provisions of these Regulations" (in regulation 45 (substituted regulation 22)) means. In a memorandum printed at Appendix 7, the Department explains "temporary experiment" but does not address the meaning of the rest of the phrase. The Committee remains unclear how an experiment itself can improve legislation and which provisions of the Seed Marketing Regulations (Northern Ireland) 2016 the temporary experiments would be seeking to improve. **The Committee accordingly reports regulation 45 for defective drafting.**

8 S.I. 2019/204; S.I. 2019/207; S.I. 2019/208; S.I. 2019/209; S.I. 2019/211; S.I. 2019/219 (Re-laid as SI 272): Reported for unjustifiable delay in laying before Parliament

Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019; Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019; Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019; Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2019; Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019; Official Controls (Animals, Feed and Food) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

8.1 **The Committee draws the special attention of both Houses to these six sets of Regulations on the ground that there appears to have been unjustifiable delay in laying them before Parliament.**

8.2 These instruments are made under powers in the European Union (Withdrawal) Act 2018 to deal with aspects of law that would no longer work after the United Kingdom leaves the European Union.

8.3 There were delays ranging between 11 and 33 days between the making and laying before Parliament of these instruments. The Committee asked the Department for Environment. Food and Rural Affairs to explain. In a memorandum printed at Appendix 8, the Department apologises for the delay and cites the making of an extremely high number of instruments during the period and depleted staff resources as reasons for the delay. The Committee repeats what it said in its First Special Report of Session 2017–19, Transparency and Accountability in Subordinate Legislation (at paragraphs 2.8 to 2.13): there is no reasonable excuse for delay in such a simple administrative step as laying before Parliament. The statutory arrangements for laying before Parliament remain part of the required formal measures by which publicity is assured. The Committee considers that, as a general rule and in the absence of exceptional circumstances, a delay of 10 calendar days or more will amount to an unjustifiable delay. **The Committee accordingly reports these Regulations for unjustifiable delay in laying before Parliament.**

Instruments not reported

At its meeting on 13 March 2019 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses.

Annex

Draft instruments requiring affirmative approval

Draft S.I.	Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Common Agricultural Policy (Financing, Management and Monitoring) (Miscellaneous Amendments) (EU Exit) Regulations 2019
Draft S.I.	Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Common Organisation of the Markets in Agricultural Products and Common Agricultural Policy (Miscellaneous Amendments) (EU Exit) Regulations 2019
Draft S.I.	Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Heavy Duty Vehicles (Emissions and Fuel Consumption) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Common Rules for Access to the International Market for Coach and Bus Services (Amendment etc.) (EU Exit) Regulations 2019
Draft S.I.	Cash Controls (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Customs (Economic Operators Registration and Identification) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Customs Safety and Security Procedures (EU Exit) Regulations 2019
Draft S.I.	Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2019
Draft S.I.	Electricity Capacity (No. 1) Regulations 2019
Draft S.I.	Cat and Dog Fur (Control of Import, Export and Placing on the Market) (Amendment) (EU Exit) Regulations 2019
Draft S.I.	Animal Health, Plant Health, Seeds and Seed Potatoes (Amendment) (EU Exit) Regulations 2019
Draft S.I.	State Aid (Agriculture and Fisheries) (Amendment) (EU Exit) Regulations 2019

Instruments subject to annulment

S.I. 2019/261	Air Navigation (Amendment) Order 2019

S.I. 2019/285 Personal Injuries (NHS Charges) (Amounts) (Amendment) Regulations 2019

S.I. 2019/287 National Health Service (Charges for Drugs and Appliances) (Amendment) Regulations 2019

S.I. 2019/329 Proscribed Organisations (Name Change) Order 2019

S.I. 2019/342 Civil Procedure (Amendment) Rules 2019

S.I. 2019/347 Agriculture, Food and Horse (Miscellaneous Amendments) (Northern Ireland) (EU Exit) Regulations 2019

S.I. 2019/353 Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

S.I. 2019/364 Tax Credits, Child Benefit and Childcare Payments (Miscellaneous Amendments) Regulations 2019

Instruments not subject to Parliamentary proceedings laid before Parliament

S.I. 2019/184 Eritrea (Sanctions) (Overseas Territories) (Revocation) Order 2019

S.I. 2019/185 Sanctions (Overseas Territories) (Amendment) Order 2019

S.I. 2019/186 Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions (Amendment) Order 2019

S.I. 2019/324 Employment Rights (Increase of Limits) Order 2019

Instrument not subject to Parliamentary proceedings not laid before Parliament

S.I. 2019/182 Consular Fees (Amendment) Order 2019

Appendix 1

Draft S.I.

Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019

1. The Committee requested a memorandum in response to the following points in relation to the above-mentioned instrument:

> *(1) Explain why the inserted text in regulation 16(b) does not include an obligation to inform the Authority of the receipt of the application.*

2. Administrative arrangements are being established to support the efficient transfer of applications and dossiers from the 'appropriate authority' to the 'Food Safety Authority' for all regulated food products including smoked flavourings. In addition, an appropriate amendment will be made at the next opportunity.

> *(2) Explain why the definitions of "appropriate authority" and "prescribe" are not inserted in to Regulation (EC) No. 1332/2008, Regulation (EC) No. 1333/2008 and Regulation (EC) No. 1334/2008 and why the definitions of "Authority" and "appropriate authority" are not inserted into Regulation (EU) No.234/2011 (compare regulations 12 and 39 in relation to Regulation (EC) No. 2065/2003 and Regulation (EC) No. 1331/2008).*

3. Article 3 of Regulation (EC) No. 1332/2008 provides that 'the definitions laid down in Regulation (EC) No. 178/2002 [and] Regulation (EC) No. 1829/2003… shall apply'. There is similar wording in Regulation (EC) No. 1333/2008 and Regulation (EC) No. 1334/2008 (also at Article 3). The draft General Food Law (Amendment etc.) (EU Exit) Regulations 2019, at regulation 7, insert the definition of "appropriate authority" into Regulation (EC) No. 178/2002. Accordingly, and on the basis that Parliament agrees to the making of draft General Food Law (Amendment etc.) (EU Exit) Regulations 2019, that definition applies in Regulation (EC) No. 1332/2008 by virtue of Article 3 of Regulation (EC) No. 1332/2008, and there is no need to insert it.

4. The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019, at regulation 6, insert the definition of "prescribe" into Regulation (EC) No. 1829/2003. Accordingly, that definition applies in Regulation (EC) No. 1332/2008 by virtue of Article 3 of Regulation (EC) No. 1332/2008, and there is no need to insert it.

5. The definitions of "appropriate authority" and "prescribe" apply in Regulation (EC) No. 1333/2008 and Regulation (EC) No. 1334/2008 by virtue of wording equivalent to Article 3 of Regulation (EC) No. 1332/2008 in those Regulations.

6. Regulation (EU) No. 234/2011 is made pursuant to Article 9 of Regulation (EC) No. 1331/2008. The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019 insert the definitions of "Authority" and "appropriate authority" into Regulation (EC) No. 1331/2008. The definitions of "Authority" and "appropriate authority" apply in Regulation (EU) No. 234/2011 by virtue of section 11 of the Interpretation Act 1978 (c.30) (expressions used in subordinate legislation have

the meaning which they bear in the Act) as read with section 23ZA of that Act (inserted by Schedule 8 paragraph 20 of the European Union (Withdrawal) Act 2018 (c.16)) which applies section 11 to retained direct EU legislation.

> *(3) Having regard to the Committee's First Special Report of Session 2013–14 (Excluding the inert from secondary legislation), explain why inserted paragraph 2 in regulations 29, 52, 72, 105 and 132 is not a footnote.*

7. The text used in inserted paragraph 2 in regulations 29, 52, 72, 105 and 132 tracks that in Schedule 7 to the European Union (Withdrawal) Act 2018 (c.16), Part 2, paragraph 20(2). The SI Hub Guidance on procedural provisions (Version: 1. Issue date: 19 October 2018.) states-

> "13. A power of the Scottish Ministers to make regulations under an enactment is generally exercisable by Scottish statutory instrument thanks to section 27(1) and (2)(a) of Legislative Reform (Scotland) Act 2010 ("the 2010 Act").
>
> So:
>
> - you should not provide for regulations made by the Scottish Ministers to be made by statutory instrument;
> - and there is no need to provide for them to be made by Scottish statutory instrument – rely on the 2010 Act (as amended by the EUWA).

8. It is, however, probably helpful to signpost the provisions in the 2010 Act, especially where you need to make express provision for the other jurisdictions. So you can include something like this:

> For regulations made under [these Regulations] by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010."

9. The SI Hub Guidance makes no mention of the reference to section 27 being in the form of a footnote so the wording used in the Statutory Instrument was adopted in order to achieve some consistency across government.

Food Standards Agency

4 March 2019

Appendix 2

S.I. 2019/170

Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following points:

> *(1) Explain how the phrase "where possible" in regulation 2(c)(i) is limited to the example given in paragraph 7.3 of the Explanatory Memorandum.*
>
> *(2) Explain why regulation 2(40)(b) omits the second sentence rather than the third of point 8.2 of Annex 5 to Regulation (EC) No. 999/2001.*
>
> *(3) Confirm whether the "devolved authorities" to which regulation 5(12) refers and "each devolved authority" to which regulation 6(94) refers are the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs, and if so why the defined term "appropriate authority" was not used.*
>
> *(4) Explain the meaning of the following phrase, which results from the amendment made by regulation 6(20)(b)(i)(aa): "it was produced at least 21 days before the date of entry into the Union kept in a third country United Kingdom kept in the European Union or a third country outside the European Union or region thereof".*
>
> *(5) Confirm whether the model certificates contained in Annex 15 to Regulation (EU) No 142/2011 will be amended by another instrument to remove inappropriate references to the European Union, and to be consistent with the introductory paragraph and notes in that Annex as amended by regulation 6(92).*

2. In relation to point (1), the Department understands the Committee to be referring to the inclusion of the words "where possible" in the sentence substituted by regulation 2(4)(c)(i) in Article 6(4) of Regulation (EC) 999/2001. The Committee asks how the phrase "where possible" is limited to the example given in paragraph 7.3 of the Explanatory Memorandum, namely the case where the impossibility is occasioned by the current absence of an Assembly in Northern Ireland.

Paragraph 7.3 of the Explanatory Memorandum reads:

> 7.3 In Article 6(4) of Regulation (EC) 999/2001 there is a requirement for Member States to report to the European Commission on monitoring programmes. This is being replaced by a requirement to report to national bodies. However because at present Northern Ireland has no Assembly the words "where possible" (to submit an annual report) have been inserted.

3. The Department accepts that the phrase "where possible" is not in terms limited to this example. The Department, however, finds it difficult to conceive of any other plausible case where the requirement to report to national bodies is inherently incapable of being complied with by the appropriate authority.

4. In relation to point (2), it was indeed the third sentence (referring to the requirement on a Member State to inform the Commission of the use of a derogation) that was intended to be omitted (rather than the second sentence). The Department will bring forward an amending instrument to correct this error at the earliest opportunity. The significance of the error is limited as there is no reliance by the UK on any such derogation.

5. In relation to point (3), the term "devolved authority" has (by virtue of section 11 of the Interpretation Act 1978) the meaning given by section 20(1) of the European Union (Withdrawal) Act 2018, namely "the Scottish Ministers, the Welsh Ministers or a Northern Ireland department". The term "appropriate authority", which in addition includes the Secretary of State, was not used in the instances to which the Committee refers so as to exclude Article 3A(2), as inserted by regulation 5(5), and so avoid suggesting the possibility that the Secretary of State might carry out the relevant obligations on behalf of the devolved authorities with their consent, which in these contexts would not have made sense.

6. In relation to point (4), the Department regrets this error. The words inserted should instead have been substituted for the words "Union kept in a third country". Additionally, however, the wording of the EU Regulation appears to have inadvertently omitted the word "and" after "Union". This should have been inserted after "United Kingdom" in order to make sense of the provision, so that the phrase resulting from the amendment read: "it was produced at least 21 days before the date of entry into the United Kingdom and kept in the European Union or a third country outside the European Union or region thereof". The Department will bring forward an amending instrument to correct this error at the earliest opportunity.

7. In relation to point (5), the Department confirms that the model certificates to which the Committee refers are being omitted in a separate instrument (see regulation 10(10)(c) of the Animals (Legislative Functions) (EU Exit) Regulations 2019) which confers on the appropriate authority power to publish or make them available elsewhere in place of the Commission's existing powers at Article 21(5), 42(2)(d) and 48(7)(c) of Regulation (EC) No 1069/2009.

Department for Environment, Food and Rural Affairs

5 March 2019

Appendix 3

S.I. 2019/188

Waste (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following points:

> *(1) In relation to regulation 10(3), new regulation 2A, explain:*
>
> *a. whether it is intended that new regulation 2A is both applying the Directive in full and also introducing modifications;*
>
> *b. if that is the intention, why are provisions that refer to EU institutions not modified (see e.g. Articles 4(2), 7, 8(2), 11); and*
>
> *c. if that is not the intention, how is it made clear which provisions of the Directive are to apply; and*
>
> *explain the same in relation to the other regulations in this instrument which modify Directives.*

2. New regulation 2A is not intended to apply the Directive (that is, Directive 2000/53/EC on end-of life vehicles) in full.

3. Regulation 10(2)(a) amends the definition of "the Directive" in regulation 2 of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 ("the EoLV Regulations") to provide that it is to be read in accordance with new regulation 2A. Regulation 2A(1) provides that for the purpose of those Regulations, the Directive is to be read in accordance with regulation 2A.

4. In the Department's view it is clear from these provisions taken together, and from the absence of any statement that the Directive applies in full, that:

a) provisions of the Directive are to apply after EU exit only to the extent that other provisions of the Regulations refer to them in terms which indicate that they apply, and

b) regulation 2A is an interpretation provision, and its purpose is that provisions of the Directive which are referred to in other provisions of the Regulations are to be read with the modifications contained in it.

5. In the EoLV Regulations as they will apply after exit day, the only provisions referring to the Directive are regulations 12(1) and 26(1) and (2). Regulation 12(1) requires things to be done "in accordance with the requirements of Article 6 and Annex I of the Directive". Regulation 26(1) confers powers "for the purpose of implementing the detailed rules of Article 5(4) of the Directive, and regulation 26(2) refers to "the objectives set out in Article 1 of the Directive".

6. Consequently, Article 6 and Annex I apply for the purposes of regulation 12(1), and Articles 1 and 5(4) apply for the purposes of regulation 26(1) and (2). For these purposes, Articles 5(4) and 6 are to be read with the modifications in regulation 2A.

7. Regulation 2A also modifies or disapplies some other provisions of the Directive because they are linked to the provisions mentioned in the previous paragraph. For example, Article 5(3) is modified because Article 5(4) cross-refers to it. Article 2(1), (2), (5) and (8) are disapplied because they contain definitions of terms used in those provisions, and new regulation 2A(3) instead applies the definitions of those terms which are set out in regulation 2.

8. The provisions referred to in part b of the Committee's question are not modified because they are not referred to in the EoLV Regulations, and are not linked to any of the provisions of the Directive which are referred to.

9. The same approach has been taken in relation to each of the other regulations in this instrument which modify Directives. In each case, Articles have only been modified if they are cross-referred to in the domestic regulations or linked (in ways such as those in the examples in paragraph 7) to provisions that are cross-referred to. Other Articles of Directives have not been modified because they will neither be part of domestic legislation after exit day nor need to be referred to in order to interpret domestic legislation, and accordingly they do not require modification.

10. The Department has also taken the same approach in other EU exit SIs amending legislation which contains references to Directives, for example in the draft Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019, which were considered by the Committee on 20th February 2019.

> *(2) Explain why the modifications to Directive 2008/98/EC made by regulation 10(3), new regulation 2B(7) and (8), omit the reference to Community legislation in the phrase "national or Community legislation" and an obligation on member States to send information to the Commission, but the modifications to the same Directive made by other regulations do not (e.g. in regulation 14(3), new regulation 2A; 15(3), new regulation 2C; in regulation 16(3), new regulation 3D; in regulation 17(2)(c), new regulation 2A).*

11. On the approach that the Department has taken, the modifications that have been made to a Directive for the purposes of a particular domestic instrument are dependent on which provisions of the Directive that instrument applies or refers to.

12. The reference and the obligation mentioned in the Committee's question are contained in Articles 23(5) and 25 of Directive 2008/98/EC (the Waste Framework Directive). The modifications made by regulation 10(3) omit them, because Articles 23 and 25 are referred to in new regulation 2A(6)(b)(i)(bb) of the EoLV Regulations, and the omission of those parts of them is necessary for those references to be operable following EU exit.

13. The modifications made to the Waste Framework Directive by new regulation 2A in regulation 14(3), new regulation 2C in regulation 15(3), and new regulation 2A in regulation 17(2)(c) do not include modifications of Articles 23 and 25, because in each of those cases the instrument being amended does not contain any references to those Articles.

14. New regulation 3D in regulation 16(3) modifies Article 23 because regulation 22 of S.I. 2011/988 (the instrument amended by regulation 16) refers to it. This modification of Article 23 differs from the modification made by new regulation 2B(7) in regulation 10(3), in that it does not omit the reference to Community legislation in Article 23(5). This is because regulation 22 of S.I. 2011/988 does not refer to that paragraph, but refers specifically to Article 23(1), (3) and (4), thereby differing from the reference in the EoLV Regulations which is to the whole Article.

> *(3) There appears to be no regulation 2A in the Regulations being amended by regulation 13, whether in the version now in force or the version as amended by this instrument. Clarify what provision "except for regulation 2A" as inserted by regulation 13(3) is intended to refer to.*

15. The insertion of those words is an error, and regulation 13(3) should not have been included in the instrument.

> *(4) Confirm that regulation 14(2)(b) ought to refer to "the definition of the "Waste Framework Directive" (as inserted by regulation 6(2)(b))" not "the definition of "the Waste Directive" (as inserted by regulation 7(2)(b))", and that it is not necessary to include both paragraphs (2)(b) and (2)(c).*

16. It is confirmed that paragraph (2)(b) should not have been included in regulation 14. Paragraph (2)(c) is correct.

> *(5) In regulation 18(25), new paragraph 26(vi), explain what "the technical standards" and "the parts that have been applied" refer to.*

17. It is acknowledged that paragraph (vi) does not make sense as drafted. It was intended to read "where the designated standards have not been applied in full, the technical documentation must specify the parts that have been applied". However, this would not add anything to paragraphs (iv) and (v), so paragraph (vi) should not have been included.

18. The Department apologises for the errors identified by the Committee's questions 3, 4 and 5, and will correct them at the first available opportunity.

Department for Environment, Food and Rural Affairs

5 March 2019

Appendix 4

S.I. 2019/189

Education (Student Loans) (Repayment) (Amendment) Regulations 2019

1. In its letter to the Department for Education of 27 February 2019, the Committee requested a memorandum on the following point:

> *Identify the power for the sub-delegation to HMRC in regulation 3(b).*

2. This memorandum has been prepared by the Department for Education.

3. The Department respectfully takes a different view to that of the Committee and considers that regulation 3(b) of the Education (Student Loans) (Repayment) (Amendment) Regulations 2019/189 does not (and was not intended to) provide for sub-delegation to the HMRC.

4. Regulation 3(b) of the Education (Student Loans) (Repayment) (Amendment) Regulations 2019/189 amends Regulation 17 of the Education (Student Loans) (Repayment) Regulations 2009/470 so that from the tax year 2019/20, for borrowers who repay via employer deductions, the date when a student loan repayment will be considered to have been paid by the borrower and received by the Authority or loan purchaser will be the day on which it is deducted by their employer or *"where an adjustment is made in relation to the deduction, such other day as HMRC specifies in order to take account of that adjustment"*.

5. The purpose of this change is to ensure that repayments of student loans made via deductions from employer salary payments will in future be credited to borrower accounts in a way that more accurately reflects the date that they were actually deducted by employers.

6. In light of enhanced information sharing between HMRC and the SLC it will be possible for interest to be applied to the profile of monthly repayments actually made, rather than on the basis of estimated monthly repayments (as happens at present). This should avoid a situation in which interest is applied to an inaccurate estimated balance of the amount still to be repaid.

7. In order for this system to operate properly, adjustments to salary deductions may be required in certain circumstances. For example, to correct an error in the amount deducted from the outstanding balance or the timing of a deduction recorded on a borrower's account. In most cases, this adjustment will be undertaken and applied to the original and/or correct date of deduction and it will be that date on which the adjustment is treated as having taken effect. In this type of case HMRC will inform SLC that the relevant date is the date of the original deduction by the employer.

8. However, in exceptional cases, it may not be possible to backdate an adjustment to the date of the original deduction in this way. For example, where it is not possible to identify exactly when an error took place or where an error does not take place at a single point in

time but continues over a period or is intermittent. In such cases, HMRC will notify SLC, to whom repayments of students loans are made, of the relevant date to be associated with that adjustment. It is this point that the relevant part of regulation 3(b) seeks to deal with.

9. In such exceptional cases, therefore, a date other than that of the original deduction will need to be notified by HMRC to the SLC to give effect to the adjustment in for the purpose of repayment. The relevant date in such a case will follow from the factual circumstances of the case and, consequently, it is anticipated that HMRC may have to notify different relevant dates in different cases to reflect different factual circumstances.

10. In this context the words "such other day as HMRC specifies" in regulation 3(b) were intended only to reflect this point i.e. that a different date to that in new regulation 17(ca)(i) of the 2009 Regulations will sometimes be notified by HMRC to the SLC to ensure the accuracy of repayment records and corresponding calculations of interest. That date will follow from the particular facts. Accordingly, it is not anticipated that HMRC will exercise a discretion, for example, by deciding what that date should be. Instead, it will notify the SLC of a factual matter i.e. that a different date to that of the original deduction is to be recorded on a borrower's account.

11. However, on reflection, the Department can see how the drafting of regulation 3(b) might be read to imply the creation of a discretion. Further, the Department can see how this provision could have been drafted differently to avoid such an implication.

12. With that in mind the Department undertakes to revisit the drafting at the first available opportunity to remove the implication referred to in paragraph 11.

Department for Education

5 March 2019

Appendix 5

S.I. 2019/204

Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following point:

> *Confirm whether a person will be able, after the grant of an application under regulation 10, to exercise the right to compensation for infringing actions taken before exit day but after the publication of their application for a Community Plant Variety Right as currently provided for by Article 95 of Regulation (EC) 2100/94.*

2. Section 5 of the Plant Varieties Act 1997 (the "1997 Act") is in terms corresponding to the provisions of Article 95 of Regulation (EC) 2100/94. Under section 5 of the 1997 Act, where an application for a plant breeders' right is granted, the holder of the right is entitled to reasonable compensation for an infringing action taken during the application period. The application period runs from the date of publication of details of the application in the Gazette (maintained under the Plant Varieties and Seeds Act 1964).

3. In framing these Regulations (S.I. 2019/204), the Department took the view that applications made to the Community Plant Variety Office before exit day which immediately before exit day had not been determined under Article 61 or 62 of Regulation (EC) 2100/94, or were still the subject of the appeal process, should be classed as unresolved applications on exit day (see the definition of "unresolved application" in regulation 9 of S.I. 2019/204). Regulation 10 of S.I. 2019/204 allows the applicant of an unresolved application for a Community plant variety right (CPVR) to make an application for UK Plant Breeders' rights within six months of exit day. For those applications, the provisional protection period under section 5 of the 1997 Act is modified by regulation 13 of this instrument so as to run from exit day rather than from the date on which the UK application is published. This extended period only relates to the period between exit day and the publication of the details of the application in the UK.

4. In relation to the period before exit day, the applicant would have enjoyed the provisional protection granted by Article 95 of Regulation (EC) 2100/94 from the date of publication of the application for a CPVR. Since the EU Regulation is revoked with effect from exit day, this right does not after exit day form part of retained EU law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as it otherwise would; but any right to compensation under Article 95 of the Regulation which has accrued before exit day by virtue of an infringement occurring before that date is preserved by section 4 of that Act, so as to continue to be recognised and available on and after exit day, and to form part of retained EU law, by virtue of section 4.

Department for Environment, Food and Rural Affairs

5 March 2019

Appendix 6

S.I. 2019/208

Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum explaining what is intended by the phrase "relevant authority" (inserted in to EU Regulations 639/2014 and 641/2014).

2. The Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019 amend:

- Commission Delegated Regulation (EU) No 639/2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation ("**Regulation 639/2014**"), and
- Commission Implementing Regulation (EU) No 641/2014 laying down rules for the application of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy ("**Regulation 641/2014**").

3. Regulations 639/2014 and 641/2014 are made under the powers in Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy ("**Regulation 1307/2013**"). Regulation 1307/2013 is the Basic Act that lays down the legal framework for direct payments and empowers the Commission to adopt delegated and implementing acts. The regulations made under these powers include Regulation 639/2014, which is the Delegated Act, and Regulation 641/2014, which is the Implementing Act. Accordingly the definitions used in Regulation 1307/2013 flow through to Regulations 639/2014 and 641/2014. For example, the defined term "farmer", which is defined in Article 4(1)(a) of Regulation 1307/2013, is used in various articles in Regulation 639/2014 and Regulation 641/2014 without further definition (see, for example, Articles 1 to 4 of both regulations, although there are many more examples). The same is true for the defined term "holding" (see, for example, Articles 11 and 14 of Regulation 639/2014 and Article 6 of Regulation 639/2014).

4. The Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/207) amend Regulation 1307/2013. More specifically, regulation 3(3)(h) inserts a new definition into Article 4(1) of Regulation 1307/2013 for *"relevant authority"*. Accordingly *"relevant authority"* means:

> *"(i) in relation to England, the Secretary of State;*
>
> *(ii) in relation to Wales, the Welsh Ministers;*
>
> *(iii) in relation to Scotland, the Scottish Ministers;*
>
> *(iv) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs.".*

5. Given that the definition is inserted into Regulation 1307/2013, the Basic Act, we take the view that it is unnecessary to again define the term because that definition will flow through to Regulations 639/2014 and 641/2014.

Department for Environment, Food and Rural Affairs

5 March 2019

Appendix 7

S.I. 2019/211

Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs ("the Department") for a memorandum on the following point:

> *In the light of the Committee's observations on S.I. 2019/211 in regulation 45 (substituted regulation 22), explain what the wording "a temporary experiment seeking improved alternatives to provisions of these Regulations" means.*

2. This SI has been made on behalf of the Department of Agriculture, Environment and Rural Affairs ("DAERA") in the absence of a Northern Ireland Executive.

3. DAERA understands that the Committee's question relates to the meaning of "a temporary experiment seeking improved alternatives to the provisions of these Regulations", as provided for in regulation 22 of the Seed Marketing Regulations (Northern Ireland) 2016 (S.R. 2016 No. 244), as amended by regulation 45 of the Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

4. Temporary experiments are currently provided for by regulation 22 of the Seed Marketing Regulations (Northern Ireland) 2016, which transposes the relevant provisions of various seed marketing Directives (Council Directive 2002/54/EC on the marketing of beet seed, Council Directive 66/402/EEC on the marketing of cereal seed, Council Directive 66/401/EEC on the marketing of fodder plant seed, Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants and Council Directive 2002/55/EC on the marketing of vegetable seed ("the Seed Marketing Directives")). Following the UK's exit from the EU it is necessary to amend the current provision to remove references to these Directives since they will not be part of retained EU law.

5. Temporary experiments can be utilised by DAERA to allow plant breeders access to more genetic variation and permit the development of new varieties with combinations of useful traits, or to facilitate the implementation of an improved, more efficient and streamlined certification process.

6. Neither regulation 22, nor the Seed Marketing Directives, provide a definition of "temporary experiment". However the term is well understood by the plant breeding and seed industries in the United Kingdom. To note in this regard that, at present, the Department is overseeing three temporary experiments in this area.

7. DAERA notes that a temporary experiment is a transitory measure which, upon authorisation, must not exceed 7 years. This is the current maximum duration of a temporary experiment provided for in the Seed Marketing Directives and is reflected in regulation 22 as amended by the Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019.

Department for Environment, Food and Rural Affairs

5 March 2019

Appendix 8

S.I. 2019/204; S.I. 2019/207; S.I. 2019/208; S.I. 2019/209; S.I. 2019/211; S.I. 2019/219 (Re-laid as SI 272)

Plant Breeders' Rights (Amendment etc.) (EU Exit) Regulations 2019; Common Agricultural Policy (Direct Payments to Farmers) (Amendment) (EU Exit) Regulations 2019; Common Agricultural Policy (Rules for Direct Payments) (Amendment) (EU Exit) Regulations 2019; Fisheries (Amendment) (Northern Ireland) (EU Exit) Regulations 2019; Marketing of Seeds and Plant Propagating Material (Amendment) (Northern Ireland) (EU Exit) Regulations 2019; Official Controls (Animals, Feed and Food) (Amendment) (Northern Ireland) (EU Exit) Regulations 2019

1. The Committee has asked the Department for Environment, Food and Rural Affairs for a memorandum on the following point:

> *Explain the significant delay between the making and laying of these instruments.*

2. The Department recognises that in respect of these instruments a longer than usual time elapsed between making and laying, and apologises for that delay.

3. In explanation of that delay, the Committee may be aware that the Department laid an extremely high number of SIs in the period in question (over 40), and this depleted staff resources to concentrate on making. In addition, the Department experienced an unusually high number of rejections during the registration process at this time – an issue we have since resolved by increasing capability and experience in this area through generous loans and training from other departments.

4. The Department remains committed to maintaining transparency and accessibility of new legislation, and it is not our intention to expect or tolerate undue delays between signing, registering and laying made instruments.

Department for Environment, Food and Rural Affairs

5 March 2019