

**EXPLANATORY MEMORANDUM TO**  
**THE ENVIRONMENT, FOOD AND RURAL AFFAIRS (MISCELLANEOUS**  
**AMENDMENTS AND REVOCATIONS) REGULATIONS 2018**

**2018 No. 942**

**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 a number of pieces of secondary 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 These largely deal with out of date references to domestic and EU instruments but several of the amendments also reflect changes to EU law in relation to hazardous waste, environmental information, pesticides and beef and veal labelling. There are also a number of amendments to the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999 (S.I. 1999/2228) (“the EIA Regulations”). Finally there is an amendment of the definition of “Blended Malt Scotch Whisky” in the Scotch Whisky Regulations 2009 (S.I. 2009/2890) (“the Scotch Whisky Regulations”).

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 There are two amendments (at regulations 24 and 55) which are corrections. The second of these corrects an error which was reported for defective drafting by the Joint Committee on Statutory Instruments in its 30th Report of Session 2017-19. Defra has consulted the SI Registrar in accordance with paragraph 4.7.6 of Statutory Instrument Practice regarding our view that the procedure for free issue of the instrument is not required in this case. This is because it would be disproportionate given that the vast bulk of the instrument contains new provisions which are not corrections.

*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 the United Kingdom.

- 4.2 The territorial application of this instrument is the United Kingdom, though different provisions have different application depending on the application of the legislation that is the subject of amendment.

## **5. European Convention on Human Rights**

- 5.1 The Parliamentary Under Secretary of State for the Environment, Thérèse Coffey MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 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 in relation to hazardous waste, environmental information, pesticides and beef and veal labelling. There are also a number of amendments to the EIA Regulations. Finally there is an amendment of the definition of “Blended Malt Scotch Whisky” in the Scotch Whisky Regulations.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The amendments within this instrument cover legislation in the fields of agriculture, animal health, environmental information and protection, food, forestry, marine management, pesticides, plant breeders’ rights, sea fisheries, spirit drinks, waste and water.
- 7.2 The instrument primarily amends out of date references to domestic legislation and to EU instruments.
- 7.3 The instrument also makes two drafting corrections (regulations [24 and 55]). The amendment to the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 2015/910) amends an incorrect reference to Directive 2008/98/EC of the European Parliament and of the Council on waste. The amendment to the Transmissible Spongiform Encephalopathies (England) Regulations 2018 (S.I. 2018/731) inserts some words that were missed out in error when those Regulations were drafted.
- 7.4 All of these amendments ensure a functioning statute book, enabling the reader to understand what the law is.
- 7.5 This instrument also amends the definition of “Blended Malt Scotch Whisky” in the technical file to the Scotch Whisky Regulations. This amended definition accommodates “teaspooning” of new-make spirit (distilled spirit that has not completed the minimum period of maturation). Teaspooning is the practice of adding a teaspoon of one whisky to a cask of another, meaning that the cask to which it is added is no longer classed as single malt. The change allows for new-make spirits to be blended and then matured to become Blended Malt Scotch Whisky. This is considered to be the most effective way of protecting the integrity of single malt brand names and is an approach endorsed by key stakeholders (including the Scotch Whisky Association).

- 7.6 Provisions contained within the instrument also make a minor change to the Beef and Veal Labelling Regulations 2010 (“the Beef and Veal Regulations”) in response to a technical change to EU legislation (Regulation (EU) No 653/2014 of the European Parliament and of the Council amending Regulation (EC) No 1760/2000 as regards electronic identification of bovine animals and labelling of beef (OJ No L 189, 27.6.2014, p 33)). This change removes provisions relating to a voluntary labelling scheme specific to beef and veal, which was costly to administer and has now been overtaken by the general labelling principles in Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers (OJ No L 304, 22.11.2011, p 18).
- 7.7 The instrument also makes a number of amendments to the EIA Regulations. These amendments: i) clarify that forestry projects are not to be judged by the Forestry Commission solely on the size of the proposed project, but on other environmental factors; and ii) allow forestry projects that are grant funded by the Forestry Commission, or the National Forest Company, to be assessed for environmental significance in line with grant timescales, rather than the 28 or 42 days currently prescribed.
- 7.8 The amendments to the EIA Regulations therefore set out the way in which the Forestry Commission must judge if a project will be significant or not, which is a current area of ambiguity, and allow applicants to be given a joint decision on their grant and impact assessment. This will make the grant process easier to navigate and facilitate the design of new grant schemes to replace those currently funded by the EU.
- 7.9 The SI also amends the Environmental Information Regulations 2004 (S.I. 2004/3391) (“the EIR Regulations”) following the ruling of the Supreme Court in *R (on the application of Evans) and another v Attorney General* in 2015. The EIR Regulations previously enabled an accountable person to issue an executive override or “veto” justifying their decision not to comply with a decision notice or judgment ordering disclosure of environmental information. However, the Supreme Court found that the executive override was inconsistent with the access to justice provisions of Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information (OJ No L 41, 14.2.2003, p 26). The amendment therefore serves to tidy up the statute book before EU exit.
- 7.10 Certain provisions also reflect an amendment to Annex 3 to Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.2008, p 3) in relation to the meaning of hazardous waste. It concerns the definition of hazardous property HP 14 ‘Ecotoxic’, following the recommendations of an EU study on the alignment of the assessment of the hazardous property HP 14 ‘Ecotoxic’ with the criteria laid down in Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ No L 353, 31.12.2008, p 1). The amendment ensures that appropriate test methods are applied, ensuring that there is a suitable level of protection for human health.
- 7.11 Further provisions reflect an amendment to Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ No L 309, 24.11.2009, p 1) in relation to pesticides and water legislation. These amendments are also technical, concerning the scientific

criteria for the determination of endocrine disrupting properties, and will come into force in November 2018.

## **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.

## **9. Consolidation**

9.1 Defra has no plans currently to consolidate the legislation that is amended by this instrument.

## **10. Consultation outcome**

10.1 The amendments within the instrument consist primarily of updates to out of date references, and so consultation on the majority of the content was not considered necessary. However, there is a statutory requirement to consult in relation to legislation concerning food.

10.2 Food-related amendments within the SI consist only of minor changes, with the exception of the amendments to the Scotch Whisky Regulations and the Beef and Veal Regulations, which officials anticipated would be viewed positively. The most appropriate approach was therefore targeted consultation with key stakeholder organisations on the food and drink amendments only.

10.3 A targeted consultation with key Scotch Whisky stakeholders commenced on 19th December 2017 and ended on 19th January 2018. Defra received a total of three responses, from Scotland Office, HM Revenue and Customs and the Scotch Whisky Association. None of the responses raised significant issues or indicated that the proposed changes required adjustment. Defra officials have now cleared any outstanding queries by correspondence.

10.4 Targeted engagement with key stakeholders on the Beef and Veal Regulations was held from 9th May to 6th June 2018. Details of the proposed amendments were also published on the Food Standard Agency's Knowledge Hub. Officials received two responses, from the National Farmers' Union and the Agriculture and Horticulture Development Board. One response requested a clarification and the other provided a nomenclature suggestion for the future, and officials have now responded to both individually.

10.5 Defra also held targeted engagement with key stakeholders on minor amendments to legislation concerning hops, wine and sardines from 20th June to 4th July 2018. One anonymous response was received in support of the proposed amendments, and no further amendments were necessary.

## **11. Guidance**

11.1 It is not considered that guidance is required in respect of this instrument.

## **12. Impact**

12.1 The impact on business, charities or voluntary bodies is expected to be minimal. Consultations held on the food amendments indicated that the proposed changes were likely to have a positive impact. Amendments to the EIA Regulations were also considered as likely to have a positive impact, as the changes provide clarity and

reduce the need for the submission of excessive information during a forestry project application. For other changes there is no, or no significant impact on business, charities or voluntary bodies anticipated.

- 12.2 The impact on the public sector is expected to be minimal.
- 12.3 An Impact Assessment has not been prepared for this instrument because the changes are either minimal or seen to have a positive impact.

### **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.
- 13.3 The basis for the final decision on what action to take to assist small businesses was that no additional regulatory burden is anticipated. As detailed in paragraph 12.1 above, the amendments are likely to have a positive regulatory impact.

### **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 instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 (c. 26), Thérèse Coffey 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 Robert Miller at Defra, Telephone: 020 8026 1457 or email: robert.miller@defra.gsi.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Danny Jeyasingam, covering for the Deputy Director for Legislative Strategy, Capability and Better Regulation, at Defra can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Thérèse Coffey MP at Defra can confirm that this Explanatory Memorandum meets the required standard.