

Explanatory Memorandum to Tynwald Members

Issued by the Department of Environment, Food and Agriculture

To the Hon Stephen Rodan MLC, President of Tynwald and the Hon Council and Keys in Tynwald assembled

1. Title of measure

European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 4) Regulations 2019 [SD 2019/0185] (the "No.4 regulations").

European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 5) Regulations 2019 [SD 2019/0212] (the "No.5 regulations").

European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 6) Regulations 2019 [SD 2019/0213] (the "No.6. regulations").

2. Changes in policy

None. The retained direct EU legislation (i.e. EU regulations, EU decisions and EU tertiary legislation) amended by, and retained by, these Regulations are considered applicable to the Island under Protocol 3, and thus already form part of existing policy.

3. Effects of the measures

Changes in retained direct EU legislation

Regulation 4 of, and Schedule 1 to, the No. 4 regulations amend the European Union and Trade Act 2019 (Retained Direct EU Legislation) (DEFA and OFT) Regulations 2019 [SD 2019/0037] (the "retention regulations"). These amendments insert 6 additional items of EU legislation for retention and remove 7 items of EU legislation from the list of retained direct EU legislation.

The effect of amending the list of retained direct EU legislation in the retention regulations is likely to be minimal as the retained direct EU legislation already has effect on the Island and no other operational changes are anticipated as a consequence of these changes.

Amendments to previous modifications to retained direct EU legislation

Regulation 5 of, and Schedule 2 to, the No. 4 regulations amend Schedules 2, 3, 4 and 9 of the European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 2) Regulations 2019 (the "deficiencies regulations") to ensure the modifications made by those regulations are operable in Manx law after exit day and align with similar amendments made to the equivalent UK legislation.

Application of regulation 4 of the retention regulations

Regulation 6 of the No. 4 regulations, regulation 4 of the No. 5 regulations and regulation 4 of the No. 6 regulations accordingly provides that the provisions of the retained direct EU legislation, as modified by these regulations, are no longer subject to the interpretative provisions set out in regulation 4 of the retention regulations.

The overall effect of amending the amendments to the retained direct EU legislation made by these regulations is likely to be minimal as such changes ensure the effect of the retained direct EU legislation on exit day aligns with that of the equivalent UK legislation.

4. Reasons for the measures

The Isle of Man's Protocol 3 relationship with the European Union is dependent upon the United Kingdom's membership of the EU. The UK's withdrawal from the EU means that the Island's relationship with the EU will change when the UK's membership of the EU ends as Protocol 3 ceases to have effect.

These regulations revise the EU regulations, EU decisions and EU tertiary legislation that are to be retained in Manx law after exit day, i.e. retained direct EU legislation. Amendments to the retention regulations are required to retain 6 further items of EU legislation and remove 7 further items of EU legislation. These changes to the retained direct EU legislation were identified as a consequence of the Department's greater understanding of what items of EU legislation are required to be retained after exit day.

Modifications to retained direct EU legislation are also required to ensure such legislation is operable after exit day. Some of the modifications are relatively simple (e.g. changing "European Union" to the "Isle of Man"), while some provide for changes from EU based regulatory controls and processes to the equivalent UK or IOM based regulatory controls and processes. In addition, provision has also been made, where appropriate, to allow for secondary legislation to be made (subject to either the Tynwald approval procedure or negative procedure) to support the operation of retained direct EU legislation.

Amendments are also required to be made to the modifications previously made to retained direct EU legislation, such as those specified in the European Union and Trade Act 2019 (Deficiencies) (DEFA) (No. 2) Regulations 2019 [*SD 2019/0122*], to ensure the retained EU legislation is operable after exit day and reflects any changes in regulatory responsibilities.

To ensure the Island's trading relationship with the UK, and thus the EU, is maintained, these amendments were derived from upon similar amendments set out in UK statutory instruments amending the UK's retained direct EU legislation.

5. Resource implications

These regulations are not considered to have resource implications.

6. Tynwald procedure

These Regulations are made under sections 7 (for the No. 4 regulations) and 12 of, and paragraph 7 of Schedule 4 to, the European Union and Trade Act 2019 and are subject to the Tynwald "affirmative" procedure under paragraph 7 of Schedule 4 to that Act. This procedure has been utilised to ensure the changes made by these Regulations have effect before exit day and to demonstrate our compliance with our international obligations for the purposes of trade negotiations.