

**EXPLANATORY MEMORANDUM TO**  
**THE IMPORT OF AND TRADE IN ANIMALS AND ANIMAL PRODUCTS**  
**(AMENDMENT ETC.) (EU EXIT) (NO. 2) REGULATIONS 2019**

**2019 No. [XXXX]**

**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 Act.
- 1.2 This memorandum contains information for the Sifting Committees on the UK's departure from the European Union.

**2. Purpose of the Instrument**

- 2.1 The purpose of this instrument is to make technical operability changes to parts of retained EU legislation relevant to the import of animals and animal products, in order to assist with the interpretation of cross-referenced Directive provisions. This will provide additional legal clarity to these Regulations. This instrument is made under Section 8 of the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") and the amendments take the form of modifications to cross referenced Directive provisions.
- 2.2 Part 2 of the instrument makes amendments to the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations S.I. 2019/795 ("the Import Regulations") to make references to EU Council Directives operable.
- 2.3 Part 3 makes a minor consequential amendment to the Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations (S.I 2019/778) and also to the Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations (S.I 2019/813). These two instruments contain cross references to EU Council Directives which relate to animal and animal product imports.

***Explanations***

*What did any relevant EU law do before exit day?*

- 2.4 Directly applicable EU legislation contains references to Council Directives concerning the importation into, and transit through, the EU of live animals and animal products. These references require modification so as to provide clarity for the continuation of the existing legal framework on exit day, when Council Directives will cease to apply to the UK. This will ensure that veterinary controls on imports of live animals and animal products imported from the EU continue to meet the specific import conditions laid down in the relevant EU legislation.

*Why is it being changed?*

- 2.5 The Import Regulations made operability amendments related to the import of live animals and animal products to ensure a continuation of current biosecurity standards relating to the trade in these commodities after exit day. They are being further amended by this instrument in order to modify cross-references to EU Directives. Two other instruments which contain sections of animal and animal product import

legislation are being similarly amended. Various directly applicable EU instruments reference Council Directives that will not become retained EU legislation on exit day. These references are being modified to provide additional legal clarity.

What will it now do?

- 2.6 The references to Council Directives within relevant retained EU legislation will be modified such that they are no longer dependent on the Council Directives applying directly to the UK. This will assist interpretation of the provisions containing these references to help to ensure that appropriate import conditions continue to apply after exit day.

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

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

- 3.1 The instrument is being laid for sifting and scrutiny by the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee, as required by the Withdrawal Act. A statement regarding the use of legislative powers in the Withdrawal Act 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 the United Kingdom.  
4.2 The territorial application of this instrument is the United Kingdom.

### **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**

- 6.1 Section 8(1) of the Withdrawal Act provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU.
- 6.2 Applying modifications (otherwise referred to as ‘glosses’) by way of amendment to the way in which cross references to Council Directives are to be interpreted is in accordance with section 8(2) of the Withdrawal Act which sets out examples of deficiencies which may be amended under that Act. This includes where the Minister considers that retained EU law contains anything which has no practical application in relation to the United Kingdom or any part of it or is otherwise redundant or substantially redundant, or contains EU references which are no longer appropriate.

## **7. Policy background**

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

- 7.1 This instrument makes technical operability modifications to retained EU legislation that has already been amended by the Import Regulations, but which contain certain cross references to Council Directives. As these Council Directives will cease to apply to the UK after EU Exit, these references must be modified in order to ensure continuity of the existing legal framework.
- 7.2 No change is being made to policy by this instrument, which will simply improve legal clarity of retained EU legislation relevant to the import of animals and animal products.

## **8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is being made using the power in section 8 of the Withdrawal Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

## **9. Consolidation**

- 9.1 None.

## **10. Consultation outcome**

- 10.1 The amendments in the legislation assist with the interpretation of cross references within EU retained legislation. There are no policy changes so no public consultation has been undertaken.

## **11. Guidance**

- 11.1 No guidance specifically related to this instrument is required.

## **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 the maintenance of existing regulatory standards and will not introduce new policy.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 These amendments do not introduce duties or burdens on business, and businesses will not need to change their current practices as a result of the instrument.

## **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.

14.2 As this instrument is made under the Withdrawal Act, no review clause is required.

**15. Contact**

15.1 Sam Beckett at the Department for Environment, Food and Rural Affairs Telephone: 02078955283 or email: [Samuel.Beckett@defra.gov.uk](mailto:Samuel.Beckett@defra.gov.uk)

15.2 Richard Irvine, Deputy Director 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, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs, can confirm that this explanatory memorandum meets the required standard.

# Annex

## 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 SI 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 SI 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 2018 SIs.	Explain the instrument, identify the relevant law before exit day, explain the SI'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 offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	
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 s. 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 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2 (2) ECA 1972, identifying the relevant law before exit day, and explaining the SI's effect on retained EU law.
Scrutiny statement where amending regulations under s. 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 1972.	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 for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: it relates to maintenance of existing regulatory standards and addresses technical deficiencies in EU derived legislation that will arise from withdrawal.

#### 2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019 does no more than is appropriate”.

- 2.2 This is the case because: this instrument relates to maintenance of existing regulatory standards to ensure that domestic legislation remains operable immediately following EU Exit and will not introduce any new policy.

#### 3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 These are: to ensure maintenance of existing regulatory standards.

#### 4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement:

“The draft 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 Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lord Gardiner of Kimble, 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.”

4.3 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.