EXPLANATORY MEMORANDUM TO

THE ANIMAL WELFARE (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 802

1. Introduction

1.1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Act.

2. Purpose of the instrument

2.1. The purpose of the Animal Welfare (Amendment) (EU Exit) Regulations 2019 is to ensure that three pieces of direct EU legislation will be fully operable when the UK leaves the EU. The instrument concerns animal welfare which as a devolved matter and is implemented and enforced by EU-derived domestic legislation in each constituent nation of the UK. The retained direct EU legislation is being amended using powers contained in the EU (Withdrawal) Act 2018 and relates to the protection of the welfare of animals whilst being transported, kept at control posts or at the time of their killing. This instrument will enable this retained direct EU legislation to operate effectively immediately after the UK's exit from the European Union.

Explanations

What did any relevant EU law do before exit day?

2.2. Council Regulation (EC) 1255/97 of 25 June 1997 sets out criteria for control posts in the European Union. Control posts are areas in the EU for animals to be unloaded, fed, watered and rested for at least 12 hours or more during long journeys. The regulation sets out the requirements that control posts in the European Union must comply with. These requirements include: conditions for approval as a control post; health and hygiene requirements for control posts; and details on how control posts should be constructed and operated to protect the health and welfare of the animals passing through them.

2.3. The regulation also requires Member States to notify the Commission of control posts in their territory. It permits Member States to suspend the authorisation of control posts on animal health or welfare grounds. When a Member State suspends a control post, it must notify the Commission. The regulation also provides for mutual assistance and information sharing between Member States in order to comply with the requirements of the regulation.

2.4. Council Regulation (EC) 1/2005 on the protection of animals during transport and related operations applies to the transport of live vertebrate animals within the European Union. It does not apply to the transport of animals which does not take place in connection with an economic activity and to the transport of animals directly to or from veterinary practices or clinics, under the advice of a veterinarian.

2.5. The regulation sets out welfare checks to be carried out by officials on consignments of animals entering or leaving the European Union; and conditions for the transport of animals within the European Union. The regulation requires that documentation stating the origin and ownership of animals, their place of departure, the date and time

of departure, their intended place of destination and the expected duration of the journey accompany all animals transported in the European Union.

2.6. All transporters must also be authorised and drivers and attendants must hold certificates of competence evidencing their training in animal welfare at transport. If animals are transported long distances, the regulation requires that vehicles must be inspected and approved by the relevant competent authority in the Member State and the transporter must have a different, more stringent authorisation. If animals are transported to a different country, then they are required to be accompanied by a journey log. Standard versions of the approval certificates, certificates of competence, authorisations, journey logs and associated documentation are included in an annex to the regulation.

2.7. The regulation also contains conditions for assembly centres, which are places where domestic equidea or domestic animals of bovine, ovine, caprine or porcine species originating from different holdings are grouped together to form consignments. The regulation also provides mechanisms for mutual assistance and exchange of information between Member States.

2.8. Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing requires that animal shall be spared any avoidable pain, distress and suffering during their killing and related operations. The regulation does not apply where animals are killed during scientific experiments carried out under the supervision of a competent authority, during hunting or recreational fishing activities, or during cultural or sporting events.

2.9. It sets out requirements for the protection of animals being killed in slaughterhouses and elsewhere, including provisions for stunning methods to be applied and their effects assessed; standard operating procedures to be in place; for the installation and use of equipment for restraining and stunning animals to protect their welfare; for monitoring procedures to be in place in slaughterhouses (including the appointment of animal welfare officers); and for guidance on good practice to be prepared and disseminated. The regulation also requires slaughterers and animal handlers to be trained and competent in the tasks they undertake, with certificates of competence issued by a competent authority to evidence such competence and training.

2.10. The regulation also provides an exception to the general requirements that animals shall only be killed after stunning where they are subject to particular methods of slaughter prescribed by religious rites. This exception only applies to animals slaughtered in a slaughter house.

2.11. The regulation also provides for killing of animals by their owners for private domestic consumption and for the slaughter of small quantities of poultry, rabbits and hares. The regulation also ensures that third countries exporting meat to the European Union are required to certify that it has been prepared in accordance with welfare standards equivalent to European Union requirements.

2.12. The regulation sets out the requirements for depopulation of herds and flocks in disease outbreaks and other emergencies as well as requiring Member States to appoint a source of scientific support. The regulation permitted Member States to maintain national rules that were in existence at the time of entry into force of the regulation which aimed at ensuring more extensive protection of animals at the time of killing. Member States are also permitted to introduce higher standards than those specified in the regulation in relation to: killing outside slaughterhouses; killing of

farmed game; and killing in accordance with religious rites. There are annexes to the regulation setting out detailed rules for the accepted methods of stunning and killing for animals; the layout, construction and equipment of slaughterhouses; and the handling and restraining operations at slaughterhouses.

Why is it being changed?

2.13. When the UK leaves the European Union this directly applicable EU legislation will become retained EU law. To ensure that they remain operable following EU Exit, this amending instrument will redress deficiencies as set out in section 8 of, and Schedule 7 to, of the EU (Withdrawal) Act 2018. It also introduces a policy change in relation to certificates of competence for slaughterers as a consequence of leaving the EU.

What will it now do?

2.14. For Council Regulation (EC) 1255/97, the changes ensure that the regime remains operable. All non-legislative powers (e.g. abilities to designate or suspend control posts) are devolved. The controls on control posts in the UK will remain identical to those in the EU (at least initially) after EU Exit. The impact upon UK industry of these changes is expected to be low given that no changes to existing systems or processes is envisaged.

2.15. For Council Regulation (EC) 1/2005, the instrument will make operability changes. The standard forms that are contained in the legislation will be removed and a power is given to each constituent nation of the UK to make their own versions of the authorisations and documents currently contained in an annex to the regulation. This will mean it will be easier to amend these documents if needed after the UK leaves the European Union. All other non-legislative powers (e.g. abilities to publish guidance) are also devolved.

2.16. For Council Regulation (EC) 1/2005, authorisations and certificates of competence issued by Member States will still be recognised in the UK after EU Exit. This approach will help minimise friction at the border and prevent potential animal welfare issues arising from delays of animals coming from the European Union entering the UK. There are several changes in the instrument to amend the legislation to allow this. Enforcement action in relation to these authorisations and certificates will not be possible after EU Exit, although currently the UK can only make a formal notification to the issuing Member State to address issues of non-compliance. The controls on welfare at transport in the UK will remain identical to those in the EU (at least initially) after EU Exit.

2.17. For Council Regulation (EC) 1099/2009, the instrument will make operability changes. It will also permit meat produced in Member States, the Channel Islands, Isle of Man, Liechtenstein, Norway and Switzerland to be accepted in the UK without a third country health certificate. As well as these technical changes to ensure operability of the regulation after exit, the instrument also introduces a policy change. Currently, certificates of competence, issued to slaughterers by other Member States, must be recognised in the UK. Certificates of competence are required by slaughterhouses in the EU to demonstrate that an individual has been trained and successfully assessed as reaching a sufficient level of competence to undertake the animal handling, stunning and killing and related operations required of them. The amendments made to Article 21(4) of Council Regulation (EC) 1099/2009 removes this recognition requirement.

2.18. Continued recognition of certificates issued in other Member States would open up potential enforcement issues as we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterer breached the requirements of the retained EU legislation or domestic legislation. The European Commission has already confirmed that certificates of competence issued in the UK will not be recognised in other Member States after the UK has left the EU.

2.19. The additional amendments made by this instrument make no material changes to the requirements of the retained EU legislation on the protection of animals at the time of killing. The controls on welfare at slaughter in the UK will remain harmonised with those in the EU (at least initially) after EU Exit.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1. The content of this SI was originally contained in the Animal Welfare (Amendment) (EU Exit) Regulations 2018 which were laid for sifting as proposed negatives on 13 November 2018.

3.2. Whilst the Lords' Secondary Legislation Scrutiny Committee agreed with the recommendation of the negative procedure, the Commons' European Statutory Instruments Committee did not. It concluded that:

"…the issue of animal welfare is important. Although the amendments are aimed at retaining current standards, we consider the volume of amendments and interest in the subject is such that the additional safeguard of affirmative resolution is appropriate. ***The Committee therefore recommends that the appropriate procedure for the instrument is for a draft of it to be laid before, and approved by a resolution of, each House of Parliament before it is made (i.e. the affirmative procedure), on the ground that it is of political importance.****"*

3.3. In response to these recommendations, David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare at the Department for Environment, Food and Rural Affairs, agreed for this instrument to be made subject to the affirmative procedure.

3.4. No substantive changes have been made to the instrument since it was presented to the Sifting Committees.

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)

3.5. The powers under which this instrument is made cover the entire United Kingdom (see section 8(1) of, and paragraph 21(b) of Schedule 7 to, the European Union (Withdrawal) Act 2018) and the territorial application of this instrument is not limited either by the Act or by the instrument.

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 England, Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1. David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, has made the following statement regarding Human Rights:

5.2. "In my view the provisions of the Animal Welfare (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights. The Government has examined the compatibility of the provisions of the instrument with the Convention. In particular, the Government has considered potential arguments that the decision to no longer recognise slaughterer certificates of competence issued by another Member State amounts to deprivation of a possession or is a disproportionate interference with the rights of the individual under article 1 of Protocol 1 to the Convention. I am, however, satisfied that any interference is necessary and proportionate on the basis that continuing recognition would mean that we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterer breached the requirements of the retained EU legislation or domestic legislation."

6. Legislative Context

6.1. Animal welfare controls in the UK are contained in the directly applicable EU regulations described at paragraphs 2.2–2.12 above. These are implemented in the UK via enforcement secondary legislation in each constituent nation of the UK.

6.2. In addition to this instrument, the Department has also laid the Animal Health and Welfare (Miscellaneous Amendments) (England) (EU Exit) Regulations 2018 before Parliament. These regulations ensure that the English legislation, which implements EU Directives protecting the health and welfare of animals on-farm and the registration of establishments with laying hens, will continue to be operable in England after the UK leaves the EU. The instrument also ensures that the English legislation, which provides enforcement powers and, in some cases, stricter national rules in respect of Council Regulation (EC) 1255/97, Council Regulation (EC) 1/2005 and Council Regulation (EC) 1099/2009 will continue to be operable in England after the UK leaves the EU.

6.3. The Department is separately making an affirmative resolution EU Exit instrument that will contain all those functions of a legislative character that are being transferred from EU institutions to appropriate authorities in the United Kingdom. This will include legislative functions contained in Council Regulation (EC) 1255/97, Council Regulation (EC) 1/2005 and Council Regulation (EC) 1099/2009.

7. Policy background

What is being done and why?

7.1. The Government shares the British public's high regards for animal welfare and plans to retain the current standards set out in directly applicable EU legislation and EU derived domestic regulations that protect the welfare of animals during transport, at control posts and the welfare of animals at the time of killing.

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

8.1. This instrument is being made using the power in section 8 of, and Schedule 7 to, the European Union (Withdrawal) Act 2018 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. No separate consultation exercise was conducted as this instrument makes mainly technical amendments with the purpose of maintaining continuity of approach in the context of the UK leaving the EU; it does not change the substantive policy with the exception of the proposal to no longer recognise EU27 certificates of competence for slaughterers. We have engaged directly with the industry representative bodies on this issue and they have not expressed any concerns over this policy, given the low numbers involved (see paragraph 12.2 below). The Scottish, Welsh and Northern Irish devolved administrations have been consulted about this proposed instrument and their views have been taken into account in the drafting of the instrument.

11. Guidance

11.1. The Department for Environment, Food and Rural Affairs does not propose to issue guidance specifically with regard to this Statutory Instrument.

12. Impact

12.1. The impact on business, charities or voluntary bodies is minimal.

12.2. This instrument will end recognition of certificates of competence that have been issued in another Member State in respect of Regulation (EC) 1099/2009 on the protection of animals at the time of killing. As a result a very limited number of slaughterhouse employees will need to apply for a certificate of competence issued by a competent authority in the UK in order to be able to continue to work in the UK from Exit. Doing so will cause these individuals to incur a cost. Applying and being assessed for a certificate of competence in the UK carries a cost (of around £225). We understand that less than 200 individuals in the UK will be affected in this way, around 3% of all slaughterers.

12.3. The impact on the public sector is minimal. There will be no change to monitoring and enforcement requirements.

12.4. An Impact Assessment has not been prepared for this instrument as there are limited impacts on business and no significant impacts on the public sector.

13. Regulating small business

13.1. The legislation applies to activities that are undertaken by small businesses. This measure does not introduce duties or burdens on business, other than the limited number of individuals who will need to apply for a new UK certificate of competence to undertake animal handling, stunning, killing and related operations in slaughterhouses. Businesses will not need to change their current practices as a result of the instrument.

14. Monitoring & review

14.1. No specific monitoring arrangements are needed. Monitoring of the policy content of the instrument will take place in the course of normal departmental business.

14.2. As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1. Craig Lee at the Department for the Environment, Food and Rural Affairs Telephone: 0208 026 6632 or email: animal.welfare@defra.gsi.gov.uk can answer any queries regarding the instrument.

15.2. Marc Casale, Deputy Director for Animal Welfare and Exotic Disease Control, at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3. David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare at the Department for the 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 instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.

Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1. David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Animal Welfare (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate. This is the case because the instrument addresses technical deficiencies in direct EU legislation that will arise from withdrawal and ensures that the existing regulatory standards for the welfare of animals during transport, at control posts and the time of killing will continue to operate effectively in the UK, once we leave the EU. This is in line with government policy.

In my view ending the recognition of slaughterer certificates of competence issued in the EU and requiring slaughterers to apply for a UK certificate of competence in order to continue to operate in the UK is appropriate. This is because it will ensure that we have the ability to take enforcement action to suspend or revoke any certificate in the event that holders of certificates of competence in the UK are found to be in breach of animal welfare requirements.

In my view continuing to recognise EU issued transport authorisations in the UK after the UK leaves the EU is appropriate to minimise friction at the border and mitigate the associated risks to animal welfare"

2. Good reasons

2.1. David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, 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. There is genuine public concern about the welfare of animals and there is an expectation that the government should maintain the protections that currently exist. The public would also expect us to be able to take enforcement action against slaughterers that are in breach of the animal welfare legislation, by having the ability to suspend or revoke their certificate of competence that enables them to operate in a slaughterhouse. The public would also expect us to take action to minimise friction at the border and mitigate the associated risks to animal welfare by continuing to recognise transport authorisations."

3. Equalities

3.1. David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare has made the following statement:

"This 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."

3.2. David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, David Rutley MP, have had due regard to the need to advance the matters set out in section 149(1) of the Equalities Act 2010. I have concluded that it is appropriate to no longer recognise slaughterer certificates of competence issued in the EU because it will ensure that we have the ability to suspend or revoke these certificates in the event that that holders of certificates of competence in the UK are found to be in breach of animal welfare requirements. I also consider it is appropriate to continue to recognise transport authorisations issued in the EU in order to minimise friction at the border and mitigate the associated risks to animal welfare."

4. Explanations

4.1. The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

5.1. David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view it is appropriate to create a relevant sub-delegated power in the Animal Welfare (Amendment) (EU Exit) Regulations 2019. Whilst delegated or implementing acts previously exercised by the Commission are being transferred to appropriate authorities in the UK after exit day and the exercise of those functions will principally be by way of domestic secondary legislation, these Regulations provide that some administrative functions (for example publication of model forms) can be exercised without the need for legislation. I consider it is right to be able to exercise such administrative functions without recourse to legislation to preserve the ability to act flexibly and quickly where appropriate, where the exercise is more administrative than legislative in character."