EXPLANATORY MEMORANDUM TO

THE ANIMAL WELFARE (MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 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 Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends retained EU law governing the protection and welfare of animals during transport and official controls of imports to Great Britain of animals, animal products, plants and plant products, including food and other imports relevant to the agri-food chain. It corrects deficiencies arising from the withdrawal of the United Kingdom from the European Union to ensure that the legislation operates effectively in a domestic context. The instrument also rectifies errors introduced by prior instruments amending retained EU law

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 and Scotland.

5. European Convention on Human Rights

5.1 The Minister of State, Victoria Prentis MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Animal Welfare (Miscellaneous Amendments) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 converted and preserved direct EU legislation at the end of the transition period into domestic law, as retained EU law. This instrument amends retained EU law relating to animal welfare in transport and official controls, to ensure that it operates effectively following the withdrawal of the United Kingdom from the European Union.

6.2 Specifically, this instrument amends and modifies Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations ("EUR 1/2005") and amends (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of

food and feed law, rules on animal health and welfare, plant health and plant protection products ("EUR 2017/625").

6.3 Articles 14, 15, 16, 21, 22(2), 23, 24 and 26 of EUR 1/2005 ("the saved provisions") were deleted before IP completion day by paragraph 1 of Article 154 of EUR 2017/625, but were then saved by paragraph 2 of Article 154 of EUR 2017/625. Therefore, the saved provisions continue to apply in GB as retained EU law.

6.4 Regulation 3 of the Animal Welfare (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/802) amended the saved provisions, and regulation 2 of the Animal Welfare and Invasive Non-native Species (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1590) amended regulation 3 of S.I. 2019/802. However, regulation 42 of the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481) removed most of the amendments to the saved provisions, except the amendments to Article 21, and the deletion of Article 24, of EUR 1/2005. Accordingly, this instrument therefore corrects the errors that arise from S.I. 2019/802, 2020/1481 and 2020/1590 and it modifies the saved provisions to address the deficiencies that remain as a result of the United Kingdom's withdrawal from the European Union.

6.5 Additionally, minor drafting corrections are made to EUR 1/2005 and EUR 2017/625.

7. Policy background

What is being done and why?

7.1 The amendments being made are in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The amendments made are summarised below:

7.2 *Role and definition of the Competent Authority.* A mandatory requirement for the competent authority to recover the costs of any enforcement action(s) it undertakes, has been changed to a discretionary action, so that it is not always necessary to take action. This allows for situations whereby the recovery of costs would be impractical, uneconomic, or not otherwise in the public interest. Other minor drafting changes have been made.

7.3 *Removal of references to EU institutions and recording systems.* References to EU "member states" have been replaced with "Great Britain". A requirement for a UK competent authority to provide details of intended long journeys via an EU information exchange system has been removed. References to a system of national contact points and mutual assistance scheme used by EU member states have been removed. A requirement to provide an annual report on inspections carried out under these regulations, to the EU Commission, has been removed. An errant reference to an EU oversight committee, whose functions were removed from these regulations by a previous instrument, has been removed.

7.4 *Penalties.* A requirement to lay down rules on penalties for infringements by the 5th July 2006, has been removed. This is no longer required, as rules on penalties and infringements to these regulations were laid by that deadline and are currently in force.

7.5 *Updating references to outdated legislation.* References to other regulations in the context of training for competent authority staff, other veterinary legislation, and

animal welfare inspections for animals destined for slaughter, have been updated to refer to current legislation appropriate for those subjects.

Explanations

What did any law do before the changes to be made by this instrument?

7.6 *Role and definition of the Competent Authority.* The role and powers of the competent authority in granting licences was unclear in some instances and could cause confusion. The competent authority was required to attempt to recover the costs of any and all enforcement actions it undertook.

7.7 *Requirement to report to EU institutions and use EU recording systems.* The competent authority was required to report details of long journeys to the EU Commission via an EU information exchange system. There was also a requirement to provide UK national contact(s) to an EU-wide list of such contacts. The competent authority was a member of an EU-wide mutual assistance scheme. The competent authority was required to provide an annual report on inspections carried out under these regulations to the EU Commission.

7.8 *Penalties.* There was a defunct requirement to lay down rules on penalties by the 5th July 2006.

7.9 *References to associated legislation.* References to other regulations on requirements and standards for the training of competent authority staff, other veterinary legislation, and animal welfare inspections for animals destined for slaughter are outdated.

Why is it being changed?

7.10 Several failures and deficiencies in retained EU law governing the protection and welfare of animals during transport have been identified. These had not been fully corrected by prior instruments (refer to sections 6.2 to 6.4). This led to a package of outstanding technical and operational issues which needed to be addressed in this instrument, in order for the retained EU law to operate properly.

What will it now do?

7.11 The instrument will make minor, technical changes to a number of operational procedures and requirements (refer to sections 7.2-7.5 for an explanation of the main changes).

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power in section 8 of 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. This instrument is also being made under paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (which includes the power to modify retained EU law and to make supplementary, incidental or consequential provision). 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 There are no plans for consolidation.

10. Consultation outcome

10.1 None: no consultation has been undertaken by Defra. Consultation was not considered necessary, as the instrument is making a number of minor, technical changes to address failures of retained EU law to operate effectively or other deficiencies arising from the UK's withdrawal from the European Union. The instrument does not deliver policy changes.

11. Guidance

11.1 Defra does not propose to issue guidance specifically with regard to the provisions in this instrument.

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 this instrument relates to the maintenance of existing regulatory standards.

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 regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses was that this instrument largely maintains the status quo, or corrects identified errors, and therefore does not introduce new duties or burdens on business.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through the course of normal departmental business as no substantive changes to current practices are being introduced.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

15.1 Matthew Wright at the Department for Environment, Food and Rural Affairs ("Defra") Telephone: 0208 7204433 or email: matthew.wright2@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Pamela Thompson, Deputy Director for Transforming Farm Animal Health and Welfare at the Department for Environment, Food and Rural Affairs ("Defra") can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State, Victoria Prentis MP at the Department for Environment, Food and Rural Affairs ("Defra") can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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) or 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) or 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) or 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) or 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 IP completion 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) or	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 section 8 or 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 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament 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.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion 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 IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

16. Appropriateness statement

16.1 The Minister of State, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Animal Welfare (Miscellaneous Amendments) Regulations 2022 does no more than is appropriate".

16.2 This is the case because this instrument is solely concerned with correcting technical deficiencies in existing legislation. These deficiencies have arisen due to the United Kingdom's withdrawal from the European Union. The corrections will ensure that animal welfare in transport legislation can operate effectively in a domestic context.

17. Good reasons

17.1 The Minister of State, Victoria Prentis MP, 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".

17.2 These are that without this instrument, certain aspects of retained EU law will not work properly, and the amendments made by this instrument will address those deficiencies. These are outlined in section 2.1 The changes made by this instrument are considered appropriate as explained in section 2 and 7 of this Explanatory Memorandum.

18. Equalities

18.1 The Minister of State, Victoria Prentis MP, has made the following statement:

"The 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."

18.2 The Minister of State, Victoria Prentis MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I, Victoria Prentis MP 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."

18.3 Our assessment of equality impacts is that the instrument will not result in any direct discrimination on stakeholders with protected characteristics.

19. Explanations

19.1 The explanations statement has been made in section 7 of the main body of this Explanatory Memorandum.