EXPLANATORY MEMORANDUM TO

THE ANIMALS (LEGISLATIVE FUNCTIONS) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument provides for a series of legislative functions that are currently conferred by European Union ("EU") legislation upon the European Commission ("the Commission") to be exercisable instead by public authorities in the United Kingdom ("UK"), so that they can be exercised at national level after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

2.2 The EU Regulations concerned cover animal health and welfare. The powers were provided to the European Commission through directly applicable European Regulations agreed with the member states. In each case, the legislative function is conferred upon the Commission so that it can develop the technical details of the specific regime, without the frequent need to refer back to the EU Council and Parliament. Examples of these functions include specifying forms to be used and amending technical annexes.

Why is it being changed?

2.3 This instrument does not make changes to substantive policy content. It provides for the legislative function in each case to be exercisable by UK authorities. This is to ensure that the regimes continue to function smoothly, without the need for primary legislation every time a change to technical matters is required. Without establishing powers we would be unable to bring forward measures which the European Commission currently has authority to do on behalf of member states.

What will it now do?

2.4 The regimes will continue to function in a similar way to how they did previously. This instrument changes the identity of the bodies carrying out the specified functions and converts the EU procedures to UK procedures as appropriate.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument provides for the exercise by UK bodies of legislative functions currently carried out by the Commission. These functions all fall within the animal

health and welfare policy areas of Defra. Defra has decided to deal with these in a single instrument which is subject to the affirmative resolution procedure.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

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 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding Human Rights

"In *my view the provisions of The Animals (Legislative Functions) (EU Exit) Regulations 2019 are compatible with the Convention rights."*

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 ("EUWA") converts EU law as it stands at the moment of exit into domestic law before the UK leaves the EU. It also confers temporary powers to make secondary legislation to enable corrections to be made to the laws that would otherwise no longer operate appropriately once the UK has left the EU. This instrument relies upon those correcting powers to allow functions exercisable by the Commission to be exercisable instead by UK bodies, as this is an aspect of the law that will otherwise not work properly after exit.

7. Policy background

What is being done and why?

7.1 EU legislation frequently gives the Commission the power to make further legislation (often called delegated or implementing acts). This delegation of legislative functions happens generally to act flexibly in administrative matters and is also intended to allow the Commission to develop technical details within regimes (for example, specifying forms to be used and amending technical annexes) without the need to refer back to the EU Council and Parliament. This allows for the Commission, within these areas, to act flexibly and more quickly, with a lower level of scrutiny by other EU bodies.

7.2 As part of the corrections necessary to make the EU Regulations covered by this instrument operate properly after exit, it is necessary to remove references to the Commission and the delegated and implementing acts that it can make, since they will no longer mean anything in UK law. Instead, under the retained EU legislation as amended by this instrument the powers previously exercised by the Commission will be exercisable by UK authorities after EU exit. The exercise of those functions will principally be by way of domestic secondary legislation where Parliament considers it appropriate and in accordance with the parliamentary scrutiny method provided for in these Regulations. However, there are some administrative functions (for example publication of model forms) which can be exercised without the need for legislation. This means that primary legislation will not be required for such changes.

7.3 A considerable amount of EU legislation, in different policy areas within Defra, confers legislative functions on the Commission. In some cases, this is the only type of provision that would make an EU exit SI made under the European Union (Withdrawal) Act 2018 subject to the affirmative resolution procedure. In order to maximise efficiency, Defra is bringing forward a number of comprehensive instruments to be considered by way of the affirmative resolution procedure. This instrument is one such comprehensive instrument, covering the area of animal health and welfare.

7.4 Animal transport (regulation 2 and 6): this instrument transfers legislative functions from Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No. 1255/97 concerning Community criteria for staging points and amending the route plan referred to in the Annex to Directive 91/628/EEC. The Commission has the power to, by regulations, amend elements of the retained EU legislation and publish forms relating to transport requirements. These functions are transferred to "the appropriate authority" in relation to regulation 2 and the appropriate authority and Minister in relation to regulation 6. These functions relate to the policy regulations The Animal Health and Welfare (Amendment) (England) (EU Exit) Regulations 2018 and proposed Animal Welfare (Amendment) (EU Exit) Regulations 2019 due to be scheduled for debate in both Houses.

7.5 Livestock identification (regulation 3): this instrument transfers legislative functions from Regulation (EC) No. 1760/2000 of the European Parliament and of the Council of 11 August 2000 on establishing a system for the identification and registration of bovine animals. The Commission has the power to make regulations covering matters such as the format and design of means of identification, and the records that must be kept. These functions are transferred to "the appropriate Minister". These functions relate to the policy regulations The Livestock (Records, Identification and Movement) (England) (Amendment) (EU Exit) Regulations 2018 (S.I. 2018 No. 1238) and proposed Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 due to be scheduled for debate.

7.6 Transmissible Spongiform Encephalopathies (TSEs) (regulation 4): this instrument transfers legislative functions from Regulation (EC) No. 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain (TSEs). The Commission has the power to make provisions for rules and measures laid down the Regulations for the prevention, control and eradication of TSEs; to determine derogations in those rules; to determine prohibitions with regard to the feeding of TSE susceptible farmed animals; to decide to change the BSE classification of a Member State or third country, or one of its regions; and to make regulations to amend the Annexes to Regulation (EU) NO. 999/2001. These functions are transferred to "the appropriate authority" but in regulation 4(4) the Secretary of State with the consent of the appropriate authority. These functions relate to the policy regulations The Animal By-Products and Transmissible Spongiform Encephalopathies (Amendment) (England) (EU Exit) Regulations 2018 and the proposed Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019.

7.7 Livestock identification (regulation 5): this instrument transfers legislative functions from Council Regulation (EC) No. 21/2004 of 17 December 2003 establishing system

for the identification and registration of ovine and caprine animals. The Commission has the power to make regulations covering matters such as the enforcement of compliance with the regulation and the level of checks to be carried out. These functions are transferred to "the appropriate Minister". These functions relate to the policy regulations The Livestock (Records, Identification and Movement) (England) (Amendment) (EU Exit) Regulations 2019 (SI 2018 No. 1238) and the proposed Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 due to be scheduled for debate in both Houses.

7.8 Seal Products (regulation 7): this instrument transfers legislative functions from Regulation (EC) No. 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products as amended by Regulation (EU) 2015/1775 of the European Parliament and of the Council. The Commission has the power to recognise bodies that are qualified to provide documents attesting that the conditions of the legislation are met; provide a power to prohibit or limit the amount of seal products placed on the market from commercial hunts; and provide a power to issue guidance where appropriate. These functions are transferred to the Secretary of State. These functions relate to the policy regulations The Seal Products (Amendments) (EU Exit) Regulations 2018.

7.9 Animal Slaughter (regulation 9): this instrument transfers legislative functions from Council Regulation (EC) No. 1099/2009 on the protection of animals at the time of killing. The Commission has the power by regulations to amend elements of the retained EU legislation; define the maximum numbers of poultry, hares and rabbits to be processed by low throughput slaughterhouses; and publish guidance. These functions are transferred to the Appropriate Authority – except in regulations 9(4)(b), 9(8)), 9(9)(b), 9(10), 9(11)(a) and 9(12) which all allow the publication of guidelines from time to time by the Appropriate Minister. These functions relate to the policy regulations The Animal Health and Welfare (Amendment) (England) (EU Exit) Regulations 2018 and proposed Animal Welfare (Amendment) (EU Exit) Regulations 2019 due to be scheduled for debate in both Houses.

7.10 Animal by-products (ABPs) (regulation 8 and 10): this instrument transfers legislative functions from Regulation (EC) No. 1069/2009 of the European Parliament and of the Council of 21 October laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No. 1774/2002 (Animal by-products Regulation) and Commission Regulation 142/2011 implementing Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive. To ensure the protection of public and animal health, the Commission has a number of powers by regulation to lay down detailed rules including in relation to: controls on ABP operators; conditions for the safe collection, transport use and disposal of ABPs and derived products and their placing on the market - including specific rules in relation to trade e.g. requirements for import health certificates. These functions are transferred to "the appropriate authority" but in relation to Article 17 of 1069/2009 (regulations 8(8) and (9)), to the Secretary of State with the consent of the appropriate authority. These functions relate to the policy regulations The Animal By-Products and Transmissible Spongiform Encephalopathies (Amendment) (England) (EU Exit) Regulations 2018 and the

proposed Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc) (EU Exit) Regulations 2019.

7.11 Zootechnical (regulation 11): This instrument amends Regulation 2016/1012 of the European Parliament and of the Council of 8 June 2016 on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof and amending Regulation (EU) No. 652/2014, Council Directives 89/608/EEC and 90/425/EEC and repealing certain acts in the area of animal breeding ('Animal Breeding Regulation'). The Commission may adopt implementing acts to take account of developments for identifying breeding animals and other scientific advances. The Commission may also adopt implementing acts to designate new reference centres (which provide technical advice on animal breeding), as well as acts which amend the zootechnical certificates and equine ID documents used by breeders. The Commission may also adopt acts which recognise third country measures as equivalent to those required by Regulation (EU) 2016/1012. The functions of the Commission are transferred to the appropriate authority which, by virtue of the Animal Breeding (Amendment) (EU Exit) Regulations 2018 is each devolved administration for its own territory, or, with the consent of the authorities in the relevant devolved administrations, the Secretary of State either for the whole of the UK or for one or two of the devolved administrations. Finally, the Secretary of State is able to make regulations for one or two of the devolved administrations, with the consent of the relevant authorities. These functions relate to the policy regulations The Animal Breeding (Amendment) (EU Exit) Regulations 2018.

7.12 Regulation 13 is an overriding regulation applying across this instrument generally and containing transitional provision relating to standard form documents. It allows standard form documents whose form is currently set out in the retained EU legislation covered by this instrument, to be used after exit day in the form that they took before exit day if the appropriate authority or Minister determines that necessary. Where under this instrument such standard forms can be published by the appropriate authority or Minister on an ambulatory basis from time to time after exit day, this regulation also allows the model document in the retained EU legislation as it had effect before exit day, to continue to be used instead of the equivalent domestic document for such period as the appropriate authority or Minister decides is necessary for transitional purposes.

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 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 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 This instrument was not subject to consultation.

10.2 This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials

11. Guidance

11.1 None.

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 the SI provides for technical measures already contained in directly applicable EU Regulations.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review and bring forward further measures with additional powers from Regulations which were not considered critical for day 1 of EU exit.

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

15. Contact

15.1 Trine Andresen at the Department for Environment, Food and Rural Affairs email: trine.andresen@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Catherine Harrold, Deputy Director for Future Animal & Plant Health, Endemics & Traceability 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, the 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 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	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 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 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 Animals (Legislative Functions) (EU Exit) Regulations 2019 do no more than is appropriate".

1.2 This is the case because they provide for the exercise of legislative functions by UK authorities as appropriate given the nature of the functions concerned

2. Good reasons

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 there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".*

2.2 This is the case because without this instrument, the EU Regulations which are converted into UK law by the European Union (Withdrawal) Act 2018 will not work properly and it is appropriate for UK authorities' to exercise legislative functions currently carried out by the Commission.

3. Equalities

3.1 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".

3.2 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, The 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. 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 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 it is appropriate to create a relevant sub-delegated power in the Animals (Legislative Functions) (EU Exit) Regulations 2019".

5.2 This is appropriate to make this statement because, as set out in paragraphs above 7.1 and 7.2 in this memorandum, delegated or implementing acts previously exercised by the Commission are being transferred to appropriate authorities in the UK after exit day and although 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 by UK appropriate authorities without the need for legislation. It is thought right for domestic appropriate authorities to be able to exercise such administrative functions without recourse to legislation, so as to preserve the ability to act flexibly and quickly where appropriate, where the exercise is more administrative than legislative in character.