EXPLANATORY MEMORANDUM TO

THE CAT AND DOG FUR (CONTROL OF IMPORT, EXPORT AND PLACING ON THE MARKET) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for International Trade 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 is made under section 8 of the EU (Withdrawal) Act 2018 ("the EUWA"). It amends inappropriate references to the EU, EU legislation and the European Commission that will no longer apply to the UK after exit.

2.2 This instrument will:

a. remove references to the European Commission where these will no longer be relevant to the UK after exit;

b. amend inappropriate references to the European Union, replacing them with references to the United Kingdom;

c. remove references to EU customs legislation (which will be revoked by the Taxation (Cross-Border Trade) Act) and replace these with references to UK legislation where required;

d. transfer the existing power to derogate contained in the EC Regulation to the Secretary of State by way of regulations.

Explanations

What did any relevant EU law do before exit day?

2.3 Regulation (EC) 1523/2007[1] ("the EC Regulation"):

a. implements a prohibition on the import, export and placing on the market of cat and dog fur into the European Union.

b. maintains the ability to derogate from the prohibition for educational and taxidermy purposes.

c. allows the European Commission to adopt an analytical method to identify different species of fur and to introduce legislation to amend this method when necessary.

d. sets out the process by which any changes to the methodology will be developed (the Commission will be assisted by the committee on the Food Chain and Animal health) and adopted (meaning which committee process will apply).

[1] As amended by S.I. 2009/1056 (The Cat and Dog Fur (Control of Import, Export and Placing on the Market)(Amendment) Regulations 2009

e. imposes obligations on Member States to report to the European Commission on their efforts to enforce the regulation and,

f. requires Member States to provide for the enforcement of appropriate penalties for any breach of the prohibition in their domestic law.

Why is it being changed?

2.4 The EC Regulation and S.I. 2795/2008, which implements penalties for breach of the prohibitions on the import, export and placing on the market of cat and dog fur, ("the UK regulation") contain a number of references to the European Union, the Commission and EU laws that will no longer be appropriate in the UK after exit. These Regulations are required to amend or remove these inappropriate references and replace them with references to the United Kingdom or to UK legislation as appropriate.

What will it now do?

2.5 The instrument makes no change to policy but corrects the technical deficiencies as set out in paragraph 2.2 in order to:

a. maintain the effect of the existing prohibitions on the import, export and placing on the market of cat and dog fur into the United Kingdom.

b. maintain the existing derogations from the prohibition for educational and taxidermy purposes.

c. maintain the existing penalties for breaching the prohibition on the import, export or placing on the market of cat and dog fur.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument has been sifted on 12 September 2018 by the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee. The European Statutory Instruments Committee considered that: "the inclusion in regulations of a power for the Secretary of State to legislate by negative procedure warrants as a general rule the use of the draft affirmative resolution procedure." It recommended that: "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 it is of political and legal importance".

3.2 The Minister accepted the recommendation that the draft affirmative procedure be used.

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)

3.3 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 whole of the UK (England, Wales, Scotland and Northern Ireland).

4.2 The territorial application of this instrument is the whole of the UK (England, Wales, Scotland and Northern Ireland).

5. European Convention on Human Rights

5.1 The Minister of State for Trade Policy, George Hollingbery, has made the following statement regarding Human Rights:

"In my view the provisions of the Cat and Dog Fur (Control of Import, Export and Placing on the Market)(EU Exit) Regulations 2018 are compatible with the Convention rights."

6. Legislative Context

6.1 EC Regulation 1523/2007 was published in the Official Journal on 11 December 2007 and the prohibition officially came into force 20 days thereafter. However, Member States were given until 31 December 2008 to provide an effective, persuasive and proportionate penalty for breach of this directly applicable prohibition. Existing UK legislation, the Customs & Excise Management Act 1979 (CEMA), provides a penalty of 7 years' imprisonment for deliberate breach of any enactment which has the effect of prohibiting imports into or exports from the United Kingdom, but this would not cover unintentional breaches of the customs prohibition or deliberate or unintentional breaches of the prohibition on sale.

6.2 The EC Regulation was first proposed in response to pressure from NGOs from across Europe who suggested that the import, export and sale of cat and dog fur was widespread. Representatives in the fur trade argued that a ban was not required on the basis that they did not believe that the trade in this fur was common. The impact assessment prepared by the European Commission found very little evidence of a trade in cat and dog fur.

6.3 The EC regulation was considered by the EC Scrutiny Committees (Explanatory Memorandum No 15674/06 and supplementary Explanatory Memorandum submitted by Defra on 18 December 2006 and 10 May 2007). The House of Commons EC Scrutiny Committee cleared the proposal on 6th June 2007. The House of Lords EC Scrutiny Committee cleared the proposal on 16th May 2007

6.4 This instrument will amend inappropriate references in the EC regulation and the UK regulation (i.e., references to the European Union, its legislation and institutions) with references to the United Kingdom, domestic legislation and the Secretary of State so that the legislation continues to function effectively, and maintain the prohibitions on the import, export and placing on the market of cat and dog fur, after we leave the European Union.

7. Policy background

What is being done and why?

7.1 This instrument maintains the existing prohibition on the import, export and placing on the market in the United Kingdom of cat and dog fur. In addition, it will maintain the criminal penalties currently in force for any breach of the prohibition, after the United Kingdom leaves the European Union. If this legislation is not maintained, the prohibition on the trade in these fur products will be lifted.

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 correct inappropriate references in the EC regulation and UK regulation in order to allow them to operate effectively (maintaining the prohibitions and criminal penalties that they contain) after the United Kingdom leaves the EU. 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 There is no requirement for a formal consultation. This instrument does not alter the law as it applies in the UK.

10.2 The Department for International Trade has explained the purpose of the statutory instrument to the Devolved Administrations.

11. Guidance

11.1 The Department for International Trade does not propose to issue any guidance in relation to this statutory instrument at this time.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument. It only makes technical amendments to the existing law applicable in the UK which will allow the legislation to continue to function effectively after EU Exit.

12.2 It introduces no regulatory burdens on businesses or individuals, it does not deregulate business.

12.3 There is no impact on the public sector.

13. Regulating small business

13.1 This legislation does not regulate small business.

13.2 This instrument makes minor technical amendments to existing legislation applicable in the UK with the result that this legislation will continue to function as it does now, after exit day. This instrument is limited to making these technical changes. It does not regulate business and it does not introduce any changes in policy which affect the way that small business is regulated.

14. Monitoring & review

14.1 Monitoring is not proposed because this instrument only corrects inappropriate references to the European Union, its legislation and institutions.

14.2 HMRC currently submit information to the European Commission regarding the UK's implementation of the prohibitions in the EC regulation. This report will be made to the Secretary of State once this instrument comes into effect and will be used to determine whether a review of the enforcement of the prohibitions is necessary.

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

15. Contact

15.1 David Owen at the Department for International Trade Telephone: 02072150499 or email: david.owen@trade.gov.uk can be contacted with any queries regarding the instrument.

15.2 Neil Feinson at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.

15.3 George Hollingbery at the Department for International Trade 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/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 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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		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, Sch 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 Minister of State for Trade Policy, George Hollingbery has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 "In my view the Cat and Dog Fur (Control of Import, Export and Placing on the Market) (EU Exit) Regulations 2019 do no more than is appropriate".

1.3 This is the case because on exit day the UK will no longer be a Member State of the European Union and provisions designed in the context of EU membership need to be adapted accordingly, while doing no more than maintaining existing policy.

2. Good reasons

2.1 The Minister of State for Trade Policy, George Hollingbery has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are that regulations would otherwise contain a number of references to the European Union, the Commission and EU laws that would no longer be appropriate in the UK after exit." These are explained in sections 2.4, 7.1 and 8.1 of the main body of the explanatory memorandum.

3. Equalities

3.1 The Minister of State for Trade Policy, George Hollingbery has made the following statement:

3.2 "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."

3.3 The Minister of State for Trade Policy, George Hollingbery has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.4 "In relation to the instrument, I, George Hollingbery, 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.