EXPLANATORY MEMORANDUM TO

THE CAT AND DOG FUR (CONTROL OF MOVEMENT ETC.) (EU EXIT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments, the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee.

2. Purpose of the instrument

2.1 The purpose of this instrument is to ensure that the ban on the import, export and placing on the market of cat and dog fur, and products containing such fur, remains fully operable now that the United Kingdom has left the European Union.

2.2 This instrument is made under sections 8 and 8C of the EU (Withdrawal) Act 2018 ("the EUWA").

a. Part 2 of this instrument amends the retained domestic version of the Regulation (EC) No 1523/2007 (the "EC Regulation") so as to:

- remove references to the European Commission as these are no longer relevant to the United Kingdom in respect of Great Britain;
- amend inappropriate references to the European Union, replacing them with references to Great Britain;
- remove references to EU customs legislation (which has been replaced in its application to the United Kingdom in respect of Great Britain by provisions in the Taxation (Cross-Border Trade) Act 2018 and in regulations made under that Act) and replace these with references to domestic legislation where required;
- transfer to the Secretary of State for International Trade the power of EU Member States to derogate, by way of provision in regulations, from the general prohibition contained in the EC Regulation;
- whilst recognising that the placing on the market of such goods remains prohibited, derogate from the general prohibition to technically enable the movement of cat and dog fur and products containing such fur from Northern Ireland to Great Britain. In doing so, it does not prevent unfettered movement between Northern Ireland and other parts of the United Kingdom's internal market as permitted by Article 6(1) of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement.

b. Part 3 of this instrument amends the Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008 (S.I. 2008/2795) ("the domestic Regulations"), as those Regulations apply in Great Britain, to provide for the imposition of criminal penalties in the criminal law jurisdictions of England and Wales, and Scotland, for contravening the prohibition in the retained domestic version of the EC Regulation as it applies in Great Britain.

c. Part 4 of this instrument makes separate provision in respect of Northern Ireland to apply similar penalties for contravening the prohibition under the EC Regulation, as it directly applies to and in the United Kingdom in respect of Northern Ireland only by virtue of section 7A of the EUWA and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement.

d. This instrument has nationwide extent. However, the amendments made by Parts 2 and 3 apply in relation to Great Britain only. The amendments made by Part 4 apply in relation to Northern Ireland only by virtue of section 7A of the EUWA and Annex 2 of Protocol on Ireland/Northern Ireland to the EU withdrawal agreement pursuant to which the EC Regulation continues to be directly applicable in Northern Ireland.

Explanations

What did any relevant EU law do before exit day?

2.3 Regulation (EC) No 1523/2007[1]:

a. implemented a prohibition on the import, export and placing on the market of cat and dog fur in the European Union;

b. contained the ability for Member States to derogate from the prohibition for educational and taxidermy purposes;

c. allowed 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. set out the process by which any changes to the methodology will be developed (the European Commission will be assisted by the Committee on the Food Chain and Animal health) and adopted (meaning which committee process will apply);

e. imposed obligations on Member States to report to the European Commission on their efforts to enforce the EC Regulation;

f. required 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 United Kingdom's position on the trade in cat and dog fur remains unchanged post the departure of the United Kingdom from the European Union. That is why this EC Regulation, which imposes a ban on the import, export and placing on the market of cat and dog fur and products containing such fur, forms part of the retained domestic legislation of the United Kingdom. The placing on the market of such fur remains illegal across the whole of the United Kingdom through the combined effect of both the EC Regulation, as directly applicable in Northern Ireland, and the retained domestic version of the EC Regulation as amended by Part 2 of this instrument in relation to Great Britain.

2.5 The retained domestic version of the EC Regulation, as it applies in relation to Great Britain, contains a number of references to the European Union, the European Commission and EU laws that are no longer appropriate. Part 2 of these Regulations amends or removes these inappropriate references in the retained domestic version of

[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

the EC Regulation as it applies in Great Britain and replaces them with references to legislation governing Great Britain or the United Kingdom, as appropriate.

2.6 As the retained domestic version of the EC Regulation imposes a total ban on the import, export and placing on the market of cat and dog fur in Great Britain, this could arguably include the movement of cat and dog fur and products containing such fur from Great Britain to Northern Ireland and vice versa. Whilst the import, export and placing on the market of cat and dog fur remains illegal, given that the United Kingdom is one customs territory, Part 2 of these Regulations amends the retained domestic version of the EC Regulation so as to derogate from the general prohibition in Article 3 and enable, from a technical but not practical perspective, the movement of cat and dog fur and products containing such fur from Northern Ireland to Great Britain. This amendment upholds the principle of unfettered movement within the United Kingdom's internal market, whilst retaining strict controls on these products.

What will it now do?

2.7 The instrument makes no change to policy but corrects the technical deficiencies and implements the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement as set out in paragraph 2.1 in order to:

a. leave the law unchanged in Northern Ireland as the EC Regulation directly applies in Northern Ireland as a result of the section 7A of the EUWA and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement;

b. amend the retained domestic version of the EC Regulation as it applies in Great Britain to correct technical deficiencies and to technically continue allowing the movement of cat and dog fur and products containing such fur from Northern Ireland to Great Britain only, in accordance with the domestic policy of unfettered movement within the United Kingdom's internal market, whilst maintaining the prohibition on the placement on the market in reality;

c. clarify and make provision in the domestic Regulations for enforcement and criminal penalties for breach of the prohibition under the retained domestic version of the EC Regulation for the criminal law jurisdictions of England and Wales, and Scotland;

d. make separate provision in respect of Northern Ireland for enforcement and criminal penalties for breaches of the prohibition in the directly applicable EC Regulation.

2.8 Unfettered movement of all products[2] does not alter the commitment of Her Majesty's Government to maintaining the cat and dog fur trade measures, but is merely a legal technicality to fulfil obligations with regards to unfettered movement and its adherence to the Revised Protocol on Ireland / Northern Ireland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 An earlier version of this instrument and Explanatory Memorandum were previously laid before and approved by Parliament. However, due to two minor technical errors, the Department wished to withdraw and re-lay that instrument. It was not made before

[2] The only exception to unfettered movement policy is where it is necessary to secure compliance with, or to give effect to, any international obligations.

EU exit day, so the deferral of its commencement to the end of the implementation period was not effected by provision in the EUWA.

3.2 The Department decided not to proceed to make that earlier instrument given that it did not, as drafted, take into account the implications of the section 7A of the EUWA and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement.

3.3 The Department then proceeded to lay before Parliament the Cat and Dog Fur (Control of Movement etc.) (EU Exit Regulations) 2021 which took account of the implications of the section 7A of the EUWA and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement.

3.4 However, the Joint Committee on Statutory Instruments made a report in respect of the Cat and Dog Fur (Control of Movement etc.) (EU Exit Regulations) 2021, suggesting improved drafting of the penalty provisions with respect to Scotland and Northern Ireland, as it did not include specific references to the statutory maximum for summary fines.

3.5 The JCSI in its report stated that it considered that the penalty provisions in the statutory instrument did not provide correctly for the penalty provisions in Scotland and Northern Ireland. Sentencing provisions for each criminal jurisdiction within the United Kingdom are as a matter of legislative drafting outlined firstly with respect to that particular jurisdiction, and thereafter with respect to summary and indicatable offence penalties. At the time of the Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008 being made, summary fines in all criminal law jurisdictions in the United Kingdom had the same statutory maxima. This position was changed in 2012 with the Legal Aid Sentencing and Punishment of Offenders Act, which removed the cap for England and Wales in statute, meaning that fines on a summary basis were now capped in reference only to an offender's means to pay or judicial powers as a matter of discretion. This change only extended to England and Wales; Scotland and Northern Ireland retained their maxima caps for summary fines.

3.6 The Department for International Trade has, therefore, clarified the position on the penalties that apply across the United Kingdom with respect to each criminal law jurisdiction.

3.7 The Department, in response to the JCSI report, withdrew the Cat and Dog Fur (Control of Movement etc.) (EU Exit Regulations) 2021 and redrafted the relevant provisions of the draft instrument to clarify the penalty provisions for each criminal law jurisdiction of England and Wales, Scotland and Northern Ireland in response to the report of the JCSI; setting out that a statutory maximum applies in respect of Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom (England and Wales, Scotland and Northern Ireland).

4.2 The territorial application of the amendments made by Part 2 of this instrument to the retained domestic version of the EC Regulation is Great Britain only. The territorial application of the amendments made by Part 3 of this instrument to the enforcement provisions in the domestic Regulations is England and Wales, and Scotland, by criminal law jurisdiction. The territorial application of the amendments made by Part 4 of this instrument to the domestic enforcement provisions is Northern Ireland.

4.3 The retained domestic version of the EC Regulation is incorporated into the domestic law of the United Kingdom under section 3 of the EUWA. However, it is not capable of having effect in relation to Northern Ireland because of the effect of section 7A of the EUWA and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement under which the EC Regulation is directly applicable to and in the United Kingdom in respect of Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister for Trade Policy, Rt Honourable Penny Mordaunt MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Cat and Dog Fur (Control of Movement etc.) (EU Exit) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The EC Regulation was published in the Official Journal on 11th December 2007 and the prohibition officially came into force 20 days thereafter. However, Member States were given until 31st December 2008 to provide an effective, persuasive and proportionate penalty for breach of this directly applicable prohibition. Existing United Kingdom 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 non-government organisations across the European Union 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 the Department for Environment, Food and Rural Affairs (DEFRA) on 18th December 2006 and 10th 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 The EC Regulation will continue to be directly applicable to and in the United Kingdom in respect of Northern Ireland by virtue of section 7A of the EUWA as it is EU legislation listed in Annex 2 of the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement.

7. Policy background

What is being done and why?

7.1 This instrument is required to correct technical deficiencies in retained EU law and to implement the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement. The amendments made by Part 2 of this instrument, which apply in respect of Great Britain only, ensure that the existing prohibition under the EC Regulation on the import, export and placing on the market of cat and dog fur is

directly applicable in Northern Ireland. The amendments made by Part 2 of these Regulations also derogate from the general prohibition in Article 3 of the retained domestic version of the EC Regulation to technically (but not practically) enable the movement of cat and dog fur and products containing such fur from Northern Ireland to Great Britain in accordance with the domestic policy of unfettered movement within the United Kingdom's internal market. The amendments made by Part 2 of this instrument also include a regulation making power for the Secretary of State to further derogate from the general prohibition under Article 3 of the retained domestic version of the EC Regulation for educational or taxidermy purposes.

7.2 In addition, the amendments made by Part 4 of this instrument make sure that the criminal penalties for breach of the prohibition in the directly applicable EC Regulation will continue to apply in respect of Northern Ireland. Criminal penalties are also applied, by virtue of the amendments made by Part 3 of this instrument, to a breach of the prohibition under the retained domestic version of the EC Regulation as it applies in Great Britain.

Explanations

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

7.3 Prior to the United Kingdom's withdrawal from the European Union, Regulation (EC) No 1523/2007 of the European Parliament and of the Council banned the placing on the market and the import to, or export from, the European Union of cat and dog fur and products containing such fur, and the Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008 implemented these requirements in line with the United Kingdom's obligations at that time as an EU Member State. Please refer to Annex Part 1A for the relevant statements under the European Union (Withdrawal) Act 2018.

Why is it being changed?

7.4 The policy itself is not being changed for the United Kingdom. This instrument will maintain the ban of the placing on the market, the import to and the export from the United Kingdom of cat and dog fur and products containing such fur. However, this instrument corrects technical deficiencies in the retained EU law and implements the Protocol on Ireland/Northern Ireland.

What will it now do?

7.5 This instrument makes sure EU law is retained but is expressed correctly for the United Kingdom and the continued policy has full effect across in Great Britain.

7.6 This instrument enforces the ban on the import, export and placing on the market of cat and dog fur and products containing such fur in Great Britain, by clarifying penalties for breaking the law and enabling enforcement.

7.7 The instrument is compliant with the Protocol on Ireland/Northern Ireland by technically, but not practically, allowing for unfettered movement of products between Northern Ireland and Great Britain.

7.8 The ability to move cat and dog fur, and related products, between Northern Ireland and Great Britain technically, is one that existed under the EC Regulation as it applied in relation to the United Kingdom before the end of the implementation period; the amendments made by these Regulations do not alter the fact that the trade in cat and

dog fur and products containing such fur remains illegal across the whole of the United Kingdom. The legal changes required to give effect to the policy of unfettered movement maintain in place the full extent of the restrictions and prohibitions that applied in this area and that the United Kingdom adhered to as an EU Member State.

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 made under section 8C(1) of the EUWA to implement Annex 2 of the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement by giving the amendments made to retained domestic version of the EC Regulation effect across Great Britain and thereby leaving the law unchanged in relation to Northern Ireland. This instrument therefore enables unfettered movement within the United Kingdom also, in accordance with the United Kingdom's internal market.

8.2 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 makes no change to policy but corrects the technical deficiencies and implements the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement as set out in paragraph 2.7.

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 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 A full Impact Assessment has not been prepared for this instrument because this instrument makes no change to policy but corrects the technical deficiencies and implements the Protocol on Ireland/Northern Ireland to the EU withdrawal agreement as set out in paragraph 2.7.

13. Regulating small business

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

14. Monitoring & review

14.1 Monitoring is not proposed because this instrument makes no change to policy but corrects the technical deficiencies and implements the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement as set out in paragraph 2.7.

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

15. Contact

15.1 Kate Robinson at the Department for International Trade (email: importcontrols@trade.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Ada Igboemeka, Deputy Director of Multilateral Tariff Policy and Operations at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard

15.3 Rt Honourable Penny Mordaunt MP, Minister 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 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

1. Appropriateness statement

1.1 The Minister for of State for Trade Policy at the Department for International Trade, Rt Honourable Penny Mordaunt MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Cat and Dog Fur (Control of Movement etc.) (EU Exit) Regulations 2022 do no more than is appropriate".

1.2 This is the case because United Kingdom left the EU on 31st January 2020 and is, therefore, no longer a Member State of the European Union. 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 for of State for Trade Policy at the Department for International Trade, Rt Honourable Penny Mordaunt 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".

2.2 These are that regulations would otherwise contain a number of references to the European Union, the Commission and EU laws that are no longer appropriate in the United Kingdom after exit. These reasons are explained further in sections 2.4, 7.1 and 8.1 of the explanatory memorandum.

3. Equalities

3.1 The Minister for of State for Trade Policy at the Department for International Trade, Rt Honourable Penny Mordaunt MP has made the following statement(s):

"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 Minister for of State for Trade Policy at the Department for International Trade, Rt Honourable Penny Mordaunt MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the [draft] instrument, I, Rt Honourable Penny Mordaunt 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.".

4. Explanations

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