EXPLANATORY MEMORANDUM TO

THE IMPORT OF AND TRADE IN ANIMALS AND ANIMAL PRODUCTS (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2020

2020 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 Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to ensure a functioning imports system at the end of the Implementation Period by making operability amendments to the Trade in Animal and Related Products Regulations 2011 (S.I. 2011/1197). Operability amendments include: technical changes to language to remove European Union terms; changes to reflect the status of the European Economic Area as a third country; and introduce the government's previously announced phased approach to imports control on goods arriving from the European Economic Area. This instrument is made under the European Union (Withdrawal) Act 2018 ("the Withdrawal Act").

Explanations

What did any relevant EU law do before exit day?

2.2 The retained European Union Regulations and Decisions being amended by this instrument relate to the animal health requirements for the importation into, and transit through, European Union States of live animals, products of animal origin, germplasm (semen, ova and embryos) and the non-commercial movement of pet animals, circus animals and equines.

Why is it being changed?

Now that we have left the European Union we will be implementing our own imports policy based on our relevant trading relationships. This instrument will make technical amendments and give effect to the government's announced policy of phasing in third country checks on European Union consignments.

What will it now do?

This instrument will allow us to set imports policy for animals and animal products using a risk-based analysis in line with domestic imports policy. The amendments contained in this instrument will provide for the continuation of the existing legal framework under European Union law which relates to the importation into, and transit through, Great Britain of live animals and animal products from the European Union and from other listed third countries from the 1 January 2021. It will ensure that official controls on imports of live animals and animal products are effective to safeguard animal and public health in Great Britain. Imported goods will continue to be required to meet the specific import conditions laid down in the relevant domestic and retained European Union legislation. Provision will be made in respect of the

continuing authorisation of businesses, health certification, conditions for transport and appropriate safeguard actions to be taken in case of a reported non-compliance with official controls or disease outbreak in exporting countries.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 Wales.

3.3 Part 4 of this instrument replaces The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019 ("S.I. 2019/795") which was United Kingdom-wide in its application. Part 4 therefore now applies only to England, Scotland and Wales due to the introduction of the Northern Ireland Protocol.

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 (Regulations 2-32) and Great Britain (Regulations 33-70).

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment Food and Rural Affairs, Lord Gardiner of Kimble has made the following statement regarding Human Rights:

5.2 "In my view the provisions of the Import of and Trade in Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being passed to give effect to a new import regime at the end of the Transition Period now that we have left the European Union. It makes amendments to the England-only Trade in Animal and Related Products Regulations 2011 (Part 2, Chapter 1), to previously made EU Exit SIs (Chapter 2) and to retained European Union directly applicable legislation (Part 3). See Annex II for a full list of the EU Exit SIs and retained European Union Regulations.

7. Policy background

What is being done and why?

7.1 No substantive change is being made to policy. This instrument amends redundant references to European Union laws and systems which will no longer be relevant at the end of the Transition Period and is necessary to ensure a functioning system for the importation of live animals (including equines), products of animal origin (including meat), animal by-products, and germplasm whilst maintaining biosecurity and welfare standards. These changes aim to maintain the existing import regime and the amendments to directly applicable European Union Regulations and Decisions

made by this instrument are technical in nature. It introduces transitional arrangements for imports from the European Union in line with the Government's previous announcements on this.[1]

7.2 The approach from 1st April 2021 allows Great Britain to protect itself from European Union imports of Products of Animal Origin ("POAO") that may pose a biosecurity risk. Given Great Britain is currently part of the European Union's Sanitary and Phytosanitary ("SPS") regime, this risk is currently very low. Additionally, through the pre-notification requirement, the new regime will provide data on the risk posed by European Union imports. This data will be able to inform decisions on future controls, leading to a more efficient regime.

7.3 The amendments are made in accordance with the Withdrawal Act to ensure no legislative hindrance to movement of live animals including equines, and trade in animal products including meat with the European Union and other listed third countries, at the end of the Transition Period.

7.4 Regulations 2-32 makes substantive further operability amendments to English domestic trade-related secondary legislation. The operability amendments to the Trade in Animal and Related Products Regulations 2011 ("S.I. 2011/1197") made at the end of 2019 have been necessitated due to the substantial amendments made to that English instrument following the United Kingdom implementation of the Official Control Regulation (EU) 2017/625 in December 2019. This is the reason why a complete re-make of earlier European Union Exit instruments, such as S.I. 2019/795, is the chosen way forward instead of adding another level of further amendments into existing European Union Exit provisions. These new amendments ensure that England will have a deliverable and well-functioning imports system for animals and animal products at the end of the Transition Period. It introduces transitional arrangements for specified territories in Schedule 5 to deliver the Government's decision to phase in official controls on imports from those countries subject to special transitional measures. Regulations 37-67 remake operability amendments made last year in EU Exit S.I. 2019/795 to the directly applicable European Union Regulations and Decisions listed above that have been necessitated mainly by the operation of the Northern Ireland Protocol being in force from the end of the Implementation Period.

7.5 Regulations 68-70 deal with revocations, savings and transitional provisions, with the latter providing for existing health certificates to continue to be recognised for imports into Great Britain for a period of time after 31 December 2020.

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

8.1 This instrument is being made using the power conferred by section 8 of the Withdrawal Act in order to address failures of retained European Union 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 Annex I to this Explanatory Memorandum.

[1] See https://www.gov.uk/government/news/government-accelerates-border-planning-for-the-end-of-the-transition-period

9. Consolidation

9.1 None, however this instrument re-makes operability amendments to a number of previously made EU Exit SIs.

10. Consultation outcome

10.1 This instrument was not subject to consultation. The amendments in the legislation are technical in nature. There are no policy changes so no public consultation has been undertaken.

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

11. Guidance

11.1 Guidance is available on gov.uk: https://www.gov.uk/prepare-to-import-to-great-britain-from-january-2021; https://www.gov.uk/import-goods-outside-eu

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because this instrument maintains existing border controls on imports of animals, animal by-products, products of animal origin and other products and in line with Better Regulation Executive guidance, an Impact Assessment is not required for operability changes.

12.2 Compliance with the regulatory changes will result in some familiarisation costs to importers to Great Britain. There are estimated to be almost 26,900 United Kingdom firms involved in the import of either POAO or live animals (based on internal Defra analysis).

12.3 From 1 January 2021, importers of animal by-products and live animals will be required to pre-notify via Great Britain's new system for the notification of imports (known as "IPAFFs"). European Union imports of animal by-products and live animals are already required to pre-notify via the European Union's electronic notification system (known as "TRACES"), therefore the requirement to pre-notify via IPAFFS will likely lead to a negligible additional burden for these commodities. From 1 April 2021, importers of POAO will also be required to pre-notify via "IPAFFs". This is likely to add to the staffing costs of a proportion of the 21,600 firms who are estimated to be involved in the import of POAO (https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation).

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to replicate as far as possible existing import requirements so that there is as little disruption to trade in animals and animal products as possible.

14. Monitoring & review

14.1 Following the operation of the transitional phased approach to import controls during 2021 Defra will then review any necessary changes required to the Trade in Animal and Related Products Regulations 2011.

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

15. Contact

15.1 Coralie Blatchford-Neave at the Department for Environment, Food and Rural Affairs Telephone: 07919697363 or email: coralie.blatchford-neave@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Peter Jinks, Deputy Director for imports of animals and animal products, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex I

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 EUROPEAN UNION 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	Paragraph 16, Schedule 8	Anybody making an SI after exit day under	Statement setting out: a) the steps which the relevant

where amending regulations under 2(2) ECA 1972		powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	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 Imports of and Trade in Animals and Related Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 does no more than is appropriate".

1.2 This is the case because it relates to maintenance of existing regulatory standards and for the justifications set out at paragraph 7.1. of this Explanatory Memorandum.

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 These are the reasons set out at paragraph 7.1. of this Explanatory Memorandum.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement(s):

"The Import of and Trade in Animal and Related Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 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 Import of and Trade in Animal and Related Products (Miscellaneous Amendments) (EU Exit) Regulations 2020, I, 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 Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2020."

5.2 This is appropriate because it enables the Secretary of State to publish and amend health certificates and certain lists, rather than retaining them in legislation, so that they can be amended and improved quickly in future. As the contents of the certificates and lists reflect the legislation for imports, substantive changes would still require the usual parliamentary oversight.

Annex II

Legislation to be amended or revoked by The Import of and Trade in Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020.

1. Previously Made EU Exit Statutory Instruments Being Amended

1.1 The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019;

1.2 The Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019;

1.3 The Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019;

1.4 The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019; and

1.5 The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2012.

2. Retained European Union Regulations Being Amended

2.1 Commission Decision 1997/152/EC concerning the information to be entered in the computerized file of consignments of animals or animal products from third countries which are re-dispatched;

2.2 Commission Decision 2000/572/EC laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the Community from third countries;

2.3 Commission Decision 2003/459/EC on certain protection measures with regard to monkey pox virus;

2.4 Commission Decision 2003/467/EC establishing the official tuberculosis, brucellosis, and enzootic-bovine-leukosis-free status of certain Member States and regions of Member States as regards bovine herds;

2.5 Commission Decision 2003/779/EC laying down animal health requirements and the veterinary certification for the import of animal casings from third countries;

2.6 Modification of Commission Regulation (EC) No 136/2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries;

2.7 Commission Decision 2006/146/EC on certain protection measures with regard to certain fruit bats, dogs and cats coming from Malaysia (Peninsula) and Australia;

2.8 Commission Decision 2006/168/EC establishing the animal health and veterinary certification requirements for imports into the Community of bovine embryos;

2.9 Commission Decision 2007/25/EC as regards certain protection measures in relation to highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community;

2.10 Commission Decision 2007/240/EC laying down new veterinary certificates for importing live animals, semen, embryos, ova and products of animal origin into the Community;

2.11 Commission Decision 2007/275/EC concerning lists of composite products to be subject to controls at border control posts;

2.12 Commission Decision 2007/777/EC laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries;

2.13 Commission Decision 2008/185/EC on additional guarantees in intra-Community trade of pigs relating to Aujeszky's disease and criteria to provide information on this disease;

2.14 Commission Decision 2008/636/EC establishing the list of third countries from which Member States authorise imports of ova and embryos of the porcine species;

2.15 Commission Regulation (EC) No 798/2008 laying down a list of third countries, territories, zones or compartments from which poultry and poultry products may be imported into and transit through the Community and the veterinary certification requirements;

2.16 Commission Regulation (EC) No 119/2009 laying down a list of third countries or parts thereof, for imports into, or transit through, the Community of meat of wild leporidae, of certain wild land mammals and of farmed rabbits and the veterinary certification requirements;

2.17 Commission Decision 2009/712/EC implementing Council Directive 2008/73/EC as regards Internet-based information pages containing lists of establishments and laboratories approved by Member States in accordance with Community veterinary legislation;

2.18 Commission Regulation (EU) No 206/2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements;

2.19 Commission Decision 2010/472/EU on imports of semen, ova and embryos of animals of the ovine and caprine species;

2.20 Commission Regulation (EU) No 605/2010 laying down animal and public health and veterinary certification conditions for the introduction into the European Union of raw milk, dairy products, colostrum and colostrum-based products intended for human consumption;

2.21 Commission Decision 2011/163/EU on the approval of plans submitted by third countries;

2.22 Council Decision 2011/408/EU laying down simplified rules and procedures on sanitary controls of fishery products, live bivalve molluscs, echinoderms, tunicates, marine gastropods, by-products thereof and products derived from these by-products coming from Greenland;

2.23 Commission Implementing Decision 2011/630/EU on imports into the Union of semen of domestic animals of the bovine species;

2.24 Commission Regulation (EU) No 28/2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products;

2.25 Commission Implementing Decision 2012/137/EU on imports into the Union of semen of domestic animals of the porcine species;

2.26 Commission Implementing Regulation (EU) 139/2013 laying down animal health conditions for imports of certain birds into the Union and the quarantine conditions thereof;

2.27 Commission Implementing Regulation EU No 743/2013 introducing protective measures on imports of bivalve molluscs from Turkey intended for human consumption;

2.28 Commission Implementing Decision 2013/764/EU concerning animal health control measures relating to classical swine fever in certain Member States;

2.29 Commission Implementing Decision (EU) 2015/1901 laying down certification rules and a model health certificate for importation into the Union of consignments of live animals and of animal products from New Zealand;

2.30 Commission Implementing Decision (EU) 2018/320 on certain animal health protection measures for intra-Union trade in salamanders and the introduction into the Union of such animals in relation to the fungus Batrachochytrium salamandrivorans; and

2.31 Commission Implementing Regulation (EU) 2018/659 on the conditions for the entry into the Union of live equidae and of semen, ova and embryos of equidae.