EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (ANIMALS, FEED AND FOOD, PLANT HEALTH ETC.) (AMENDMENT) (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 ('Defra') and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to make amendments to existing EU retained Regulations governing official controls on imports to Great Britain of animals and animal products, plants and plant products, including food and other imports relevant to the agri-food chain – collectively known as 'sanitary and phyto-sanitary' ("SPS") checks.

2.2 Official controls are performed at appropriately designated border control points and other points of entry, and may also be carried out at other locations, such as slaughterhouses, to verify the compliance of imported SPS goods with Official Controls Regulations ("OCR"). These controls are integral to the protection of human health and biosecurity in the UK, as they deliver a risk-based and closely defined regime for checking the provenance, health and lack of contamination of SPS goods before they are allowed to pass beyond the control points at the UK border.

2.3 This instrument rectifies legal deficiencies arising from the withdrawal of the United Kingdom from the European Union which, if not amended, would prevent our existing, established and harmonised system of official controls on SPS imports from being able to operate after the end of the Implementation Period. For example, references in retained EU Official Controls Regulations to legislative functions of the European Commission, are amended to be exercisable instead by the UK Secretary of State or the appropriate authority of the UK Devolved Administrations. These are termed *operability amendments*.

Explanations

What did any relevant EU law do before exit day?

2.4 The retained EU Regulations being amended by this instrument set out a comprehensive and consistent risk-based regime of official controls on imports of SPS import goods, simplifying and harmonising controls across the entire agri-food chain. OCR supports EU and UK biosecurity, helping to prevent the spread of animal and plant diseases, uphold the humane treatment of animals, and raise standards of food safety and consumer protection.

Why is it being changed?

2.5 The changes are necessary to ensure retained EU Official Controls Regulations operate effectively immediately after the end of the Transition Period which implements withdrawal of the United Kingdom from the European Union.

What will it now do?

2.6 The deficiency amendments set out in this instrument will allow EU-derived domestic OCR legislation and direct retained EU Regulations to continue to be fully operable, once the UK completes the Implementation Period to exit the EU. They will allow the UK to continue to deliver controls and checks on all imports subject to sanitary and phyto-sanitary checks using risk-based analysis. The operability changes include powers giving effect to the government's announced policy of phasing in third country checks on European Union consignments, to bring controls on these EU SPS imports in line with the risk-based controls applied to SPS imports from the rest of the world. This instrument does not apply to the Northern Ireland Protocol.

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.

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 Great Britain.

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 Official Controls (Animals, Feed and Food, Plant Health Etc.) (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument ensures that a functioning system of official controls is retained in UK law and is in force at the end of the Implementation Period, by making operability amendments under the EU (Withdrawal) Act 2018 ("the Withdrawal Act") to retained EU-derived domestic legislation ((EC) No 2017/625) on official controls.

6.2 Annex 2 sets out the tertiary regulations amended under this instrument, other EU Exit Regulations amended, and regulations revoked.

7. Policy background

What is being done and why?

7.1 This instrument does not introduce changes to sanitary and phyto-sanitary imports control policy. The intention is to continue to ensure delivery of a robust import controls mechanism for all SPS imports to the UK, whilst maintaining or improving biosecurity and welfare standards.

7.2 The operability amendments in this instrument fall into the following broad categories:

- Maintaining the same controls structure, definitions, powers and processes currently in force for UK (and EU) border controls for all SPS goods;
- Repealing certain specific functions carried out by the Commission for which there is no current GB equivalent (for example, the Commission's Sante F European Union audit functions: audit and assurance processes are still provided for within the OCR, as mandated by the appropriate authority in the UK);
- Replacing references to the Commission, Member States and EU-specific functions, which will be non-functional in UK law outside the EU: for example, references to 'the Commission' as the overarching authority (in EU Regulations) are amended to 'appropriate authority' or 'competent authority' (in UK law or non-legislative functions); and
- Enabling OCR powers in UK law to be exercised either by the Secretary of State, or by the appropriate devolved administration (depending on whether the relevant functions are reserved or devolved in existing UK law), and also to permit devolved powers to be exercised by the Secretary of State with the consent of the Devolved Administrations. This is necessary as OCR covers a complex legislative landscape, where reserved and devolved functions are closely interlinked in practice.

7.3 This instrument introduces transitional arrangements, to phase in progressive controls on SPS imports from the European Union in 2021 and align these controls with those relating to SPS imports from the rest of the world.

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 EU Withdrawal Act, 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 1 to this Explanatory Memorandum.

9. Consolidation

9.1 None: however, this instrument makes operability amendments to a number of previously made EU Exit SIs, which are listed at Annex 2.

10. Consultation outcome

10.1 None: no consultation was undertaken by Defra, as the instrument does not deliver policy changes, but maintains the existing imports controls regime and processes. Any impact on businesses or individuals arises from the earlier referendum decision to leave the EU, which had the effect of changing the OCR category of EU imports being subject to checks applicable to Member States inter alia, to checks applicable to third country imports.

11. Guidance

11.1 Guidance on the processes and requirements for the import of both EU and non-EU goods to the UK after the Transition Period are set out 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 As this instrument does not set out new policy in the risk-based control of SPS imports, and there are no (or no significant) impacts on the private or voluntary sectors, particular groups or regions, an impact assessment has not been produced.

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 review any necessary changes required to the Official Controls Regulations 2020.

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

15. Contact

15.1 Julie Hull at the Department for Environment, Food and Rural Affairs: julie.hull@defra.gov.uk / OCRLegislation@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Richard Moir, Deputy Director for SPS Import Delivery 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, can confirm that this Explanatory Memorandum meets the required standard.

Annex 1

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 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 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 Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (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:

"The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (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 Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (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 Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020."

5.2 This is appropriate because it enables the Minister to publish and amend the form of official certificates, attestations and other documents 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 2

1. Legislation to be amended or revoked by The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020

- Operability amendments to Commission Implementing Regulation (EU) 2019/1013 on prior notification of consignments of certain categories of animals and goods entering the Union;
- Operability amendments to Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying consignments of animals and goods to their destination;
- Operability amendments to Commission Delegated Regulation (EU) 2019/1666 (supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards conditions for monitoring the transport and arrival of consignments of certain goods from the border control post of arrival to the establishment at the place of destination in the Union);
- Operability amendments to Commission Implementing Regulation (EU) 2019/1873 (on the procedures at border control posts for a coordinate performance by competent authorities of intensified official controls on products of animal origin, germinal products, animal by-products and composite products);
- Operability amendments to Commission Implementing Regulation (EU) 2019/2007 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council;
- Operability amendments to Regulation 2019/2122 regarding certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market and amending Regulation (EU) No 142/2011;
- Operability amendments to Commission Implementing Regulation (EU) 2019/2129 establishing rules for the uniform application of frequency rates for identity checks and physical checks on certain consignments of animals and goods entering the Union:
- Operability amendments to Commission Implementing Regulation (EU) 2019/2130 establishing detailed rules on the operations to be carried out during and after documentary checks, identity checks and physical checks on animals and goods subject to official controls at border control posts; and
- Operability amendments to Amendments to Commission Implementing Regulation (EU) 2020/466 on temporary measures to contain risks to human, animal and plant health and animal welfare during certain serious disruptions of Member States' control systems due to coronavirus disease (COVID-19

2. Operability amendments made in this instrument to EU Exit Legislation

- The Market Measures (Marketing Standards) (Amendments) (EU Exit) Regulations 2019;
- The Animal Welfare (Amendment) (EU Exit) Regulations 2019;

- The Veterinary Medicines and Animals and Animal Products (Examination of Residues and Maximum Residue Limits) (Amendment etc) (EU Exit) Regulations 2019; and
- The Animals (Legislative Functions) (EU Exit) Regulations 2019.

3. Regulations revoked in this instrument

- Commission Implementing Regulation (EU) 2018/329 designating a European Union Reference Centre for Animal Welfare;
- Commission Delegated Regulation (EU) 2018/631 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by establishing European Union reference laboratories for pests of plants;
- Commission Implementing Regulation (EU) 2018/1587 revoking the designation of the Istituto Superiore di Sanita, Rome, Italy as a European Reference Laboratory for the residues listed in Annex 1, Group B(3)(c) to Council Directive 96/23/EC;
- Commission Implementing Regulation (EU) 2019/530 designating European Reference laboratories for pests of plants on insects and mites, nematodes, bacteria, fungi and oomycetes, viruses, viroids and phystoplasmas; and
- Commission Implementing Regulation (EU) 2019/1685 of 4 October 2019 designating a European Union Reference Centre for Animal Welfare for poultry and other small farmed animals.