EXPLANATORY MEMORANDUM TO

THE TRADE IN ANIMALS AND RELATED PRODUCTS (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 The purpose of this instrument is to address failures of domestic legislation and other deficiencies arising from the withdrawal of the UK from the EU. This instrument is made under the EU (Withdrawal) Act 2018 ("the Withdrawal Act") to amend EU-derived domestic legislation in England, Scotland and Wales in relation to trade in animal and animal related products. No policy changes are being introduced by these amendments, which are technical in nature and would come into force in a 'no deal' scenario only.

Explanations

What did any relevant EU law do before exit day?

2.2 The domestic legislation derived from EU law amended by this instrument is related to imports of live animals, products of animal origin, animal by-products, germplasm (semen, ova, and embryos), and the non-commercial movement of pet animals and equines. This legislation is aimed primarily at ensuring sufficient pre-notification of arrival, proper certification, checks of certain consignments and isolation and vaccination facilities where necessary to ensure strong biosecurity protection of animals and related products into Great Britain. A summary of the content of each amended instrument, together with a summary of its purpose, is set out in the following paragraphs:

2.3 The Trade in Animals and Related Products Regulations 2011. These Regulations apply in England only and establish a system for trade with other EU Member States in live animals and genetic material and for the importation of live animals, genetic material, products of animal origin and animal by-products from outside the European Union. They also list the EU legislation required to be complied with before animals or goods can be released from control at the port of importation (the "border inspection post"). The Secretary of State is empowered to prohibit importation into England of any animal or product in the event of a disease outbreak outside the UK. Enforcement is divided between the Secretary of State, port health authorities, local authorities and the United Kingdom Border Force.

2.4 The Trade in Animals and Related Products Regulations 2011 is derived from four pieces of EU legislation (Council Directive 89/662/EEC, Council Directive 90/425/EEC, Council Directive 91/496/EEC and Council Directive 97/78/EC) which ensure that veterinary controls on EU trade and imports of live animals and animal

products are safe with regard to animal and public health and that they meet the specific import conditions laid down in the relevant EU legislation.

2.5 Artificial Insemination of Pigs (EEC) Regulations 1992. These Great Britain wide Regulations implement the provisions of Council Directive 90/429/EEC in relation to exports to Member States and the approval of semen collection centres which engage in intra-Community trade in porcine semen. Council Directive 90/429/EEC lays down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species.

2.6 The Animals (Post-Import Control) Order 1995. This Order establishes controls on certain animals after they have been imported into Great Britain by laying down requirements relating to: cattle from areas not free from warble fly; pigs from areas not free from Aujeszky's disease; cattle from Canada (which must be isolated for certain specified periods after import); cattle imported under specific EU legislation; and sheep and goats from areas not free from contagious agalactia (and vaccination requirements). It empowers an inspector to serve a notice in specified circumstances and is enforced by the local authority.

2.7 The Bovine Embryo (Collection, Production and Transfer) Regulations 1995. These Regulations implement Council Directive 89/556/EEC on animal health conditions governing intra-Community trade in and import from third countries into Great Britain of embryos of domestic bovine animals. These Regulations set out the criteria for approval of collection, production and transfer teams and storage conditions for bovine embryos. They also provide for domestic trade in bovine embryos.

2.8 The Bovine Semen (England) Regulations 2007. These Regulations also implement Council Directive 2003/43/EC laying down the animal requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species. They control the collection, processing and storage of bovine semen, and establish two regimes: one by which semen may be collected and processed for trade with other EU Member States, and one by which semen may be collected for use in other parts of the UK.

2.9 The Non-Commercial Movement of Pet Animals Order 2011. The 2011 Order sets out delivery and enforcement arrangements for implementing the EU pet travel scheme, commonly known as the 'Pet Passport Scheme', within Great Britain. It also links to other pieces of EU legislation that set out import protection measures against other diseases and parasites that can occur in pets, such as Highly Pathogenic Avian Influenza in birds and Nipah disease in cats and dogs. The main purpose of the Order is to create a mechanism to facilitate the non-commercial movement of pet animals (dogs, cats and ferrets) into Great Britain without the need for quarantine in accordance with the EU pet travel scheme, whilst protecting Great Britain from the threat of rabies and the *Echinococcus multilocularis* tapeworm. It also requires carriers that land pet dogs, cats and ferrets in Great Britain to be approved, subject to certain exceptions, and makes provision regarding the suspension or withdrawal of such approvals. The Order was amended substantially in 2014 to take account of new Regulation (EU) No 576/2013 regarding pet movements.

2.10 The Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974 is designed to prevent the introduction of rabies into Great Britain by imposing controls on the landing of mammals specified within the Order in Great Britain and it contains requirements relating to the detention and isolation of such mammals in quarantine.

Why is it being changed?

2.11 After EU Exit, without amendment, certain provisions within the above EU-derived domestic legislation will be inoperable and, as a result, existing law will either be unclear or will not function effectively. This instrument uses powers conferred by the Withdrawal Act to make the necessary technical changes to ensure that it will continue to operate effectively after the UK has left the EU. The amendments contained in this instrument also remove redundant references. Examples of the changes include amending occurrences of trade "between Member States" to trade "into England", or "Movement between Member States" to "Import from Member States" (The Trade in Animals and Related Products Regulations 2011, regulation 8); and replacing references to European legislation with references to relevant domestic legislation (The Rabies (Importation of Dogs, Cats and Other Mammals) Order 1974, article 4).

2.12 The corrections within this instrument will help ensure that imports of live animals, products of animal origin, germplasm, animal by-products and the non-commercial movement of pet animals and equines continue to function correctly, and the legislation remains fully operable after EU exit.

2.13 If the amendments within this instrument were not made, the impacts would be lack of clarity and commercial certainty for industry. This could result in confusion and disruption to trade, as well as making enforcement more difficult. Up to 9 million tonnes of products of animal origin and live animals are imported into the UK annually, with a value of up to £19.3 billion (of which, roughly 80% is from trade with the EU). Approximately 300,000 pet animals move into the UK annually through the Pet Travel Scheme.

What will it now do?

2.14 This instrument will not make any policy changes to the existing imports regime, but will simply make technical amendments to allow existing domestic legislation to continue to be fully operable after exit day. Part 1 of this EU Exit instrument deals with amendment to legislation applicable in England, Scotland and Wales, whilst Part 2 deals with amendments to two England-only statutory instruments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 The Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2018 were presented to the Sifting Committees on 4 December 2018. The Commons Sifting Committee agreed with the Government that this instrument does not require an obligatory debate in Parliament. However, the Lords Sifting Committee disagreed, on the grounds that there may be Parliamentary interest in the Department's choice to unilaterally continue to recognise current arrangements with the EU, and the potential lack of reciprocity. They decided that an opportunity to debate this approach ought to be allowed. The recommendation to upgrade to the affirmative procedure was published on the gov.uk website on 20 December 2018.

3.2 The Lords Sifting Committee observed that the UK would be treated as a third country by the EU, and that therefore the commercial movement of animals and animal-related products, and the non-commercial movement of pets, would face

considerable additional administrative requirements and potential costs. However it also observed that any potential reciprocal agreements with the EU covering these issues would be the outcome of negotiations with the EU and therefore beyond the scope of these draft Regulations.

3.3 Consequently, the Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has agreed for this instrument to be made subject to the affirmative procedure.

3.4 The instrument has only had minor amendments made since it was presented to the Sifting Committees. Nothing has been added to the instrument.

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)

3.5 The territorial application of this instrument varies between provisions.

4. Extent and Territorial Application

4.1 The territorial extent of Part 1 of this instrument is England and Wales; and Scotland. The territorial extent of Part 2 is England and Wales.

4.2 The territorial application of Part 1 of this instrument is England, Wales, and Scotland. The territorial application of Part 2 is England only.

5. European Convention on Human Rights

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

"In my view the provisions of the Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends seven EU-derived domestic statutory instruments related to imports of germplasm, animal products and live animals. The key legislative context for this instrument is set out at paragraph 2. This instrument deals with deficiencies in retained EU law, and ensures that the UK's legal system continues to function properly after exit day.

6.2 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. The amendments being made by this instrument are solely connected to the UK's exit from the EU in a 'no deal' scenario and are made under these powers.

7. Policy background

What is being done and why?

7.1 No change is being made to policy. This instrument amends redundant references to domestic laws and systems which will no longer be relevant once the UK leaves the

EU. It will ensure continuity of existing arrangements and prevent creation of barriers to the importation and trade in live animals, products of animal origin (including meat), animal by-products, germplasm, and the non-commercial movement of pets and equines following the UK's withdrawal from the EU. These changes aim to maintain the existing import regime and therefore there should be no direct impact on businesses.

7.2 This instrument is necessary to ensure that movement of pet animals and equines will continue with minimum disruption, whilst maintaining biosecurity and welfare standards, following EU Exit. The amendments to existing domestic legislation made by this instrument are technical in nature. Currently, the UK has access to the 'EU Pet Travel Scheme' which provides relatively disruption-free travel between participating countries via 'Pet Passports' (providing that animals are appropriately vaccinated, without which, animals must be quarantined prior to entry into the country). This instrument makes possible the continued functionality of the domestic legislation required to protect against particular disease introduction by travelling pets. Current levels of protection in the UK from rabies and the *Echinococcus multilocularis* tapeworm will be maintained after EU Exit by retaining the requirements for non-commercial pet movements and continuing current import requirements. Further matters regarding the non-commercial movement of pets are being addressed by an EU Exit Day 1 project within Defra.

7.3 These amendments are made in accordance with the Withdrawal Act to ensure no legislative hindrance to trade in these agricultural matters with the EU after exit.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 There is no intention to consolidate this legislation.

10. Consultation outcome

10.1 The amendments in the legislation are technical in nature. There are no policy changes so no public consultation has been undertaken.

11. Guidance

11.1 As no policy changes are included in the instrument no guidance specifically related to this instrument is required. However, guidance on the general aspects of future trade in this subject-matter after exit day will be considered in due course.

12. Impact

12.1 There is no, or no significant impact on business, charities or voluntary bodies.

12.2 There is no, or no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as it relates to the maintenance of existing regulatory standards and will not introduce new policy.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 There is no additional impact on small businesses (employing up to 50 people) because this instrument maintains the status quo and does not introduce any policy change.

14. Monitoring & review

14.1 Defra and its agencies will monitor and review the impact of the instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

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

15. Contact

15.1 Sam Beckett or Louise Hill at the Department for Food Environment and Rural Affairs Telephone: 02078955283 or 02082258967 or email: Samuel.Beckett@defra.gov.uk or Louise.Hill@defra.gov.uk

15.2 Sarah Sheridan, Deputy Director at the Department for Food Environment and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, 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, 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 Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate".

1.2 This is the case because: this instrument relates to maintenance of existing regulatory standards to ensure that domestic legislation remains operable immediately following EU exit and will not introduce any new policy.

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: to ensure maintenance of existing regulatory standards.

3. Equalities

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

"The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

3.2 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, 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."

3.3 Little or no impact on equalities is expected.

4. Explanations

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