EXPLANATORY MEMORANDUM TO

THE IMPORT OF ANIMALS AND ANIMAL PRODUCTS AND APPROVED COUNTRIES (AMENDMENT) REGULATIONS 2022

2022 No. 735

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. This instrument amends several pieces of retained European Union law to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union. The amendments allow the Secretary of State, with the consent of the Scottish Ministers (in relation to Scotland) and the Welsh Ministers (in relation to Wales), to rapidly change certain conditions for imports of animals and animal products into Great Britain that may impact on public and animal health in the United Kingdom, such as following an overseas animal disease outbreak or food safety incident, by specifying the change in a document published for that purpose.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Extent and Territorial Application

4.1. The territorial extent of this instrument is England and Wales, and Scotland.

4.2. The territorial application of this instrument is England, Wales and Scotland.

5. European Convention on Human Rights

5.1. The Parliamentary Under Secretary of State (Minister for Rural Affairs, Access to Nature and Biosecurity), Lord Benyon, has made the following statement regarding Human Rights:

"In my view the provisions of the Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1. This instrument is being made to address deficiencies in retained EU law that mean functions previously carried out by the European Commission to protect human and animal health cannot be exercised effectively in response to biosecurity and food safety risks. These deficiencies were not fully remedied through previous exercise of the EU (Withdrawal) Act 2018.

6.2. The instrument amends several pieces of retained EU law which impose import conditions in respect of animals and animal products entering Great Britain. In

particular, the retained EU law provides that such imports are generally only permitted from countries (or parts thereof) which are listed in Annexes to the retained EU law ("third country lists"). These third country lists set out in tables the details of which animals/products are permitted from which countries (or parts thereof) and the specific conditions applicable to such imports.

6.3. Prior to withdrawal, the power to amend third country lists was conferred on the European Commission using its delegated powers. This enabled changes to be made quickly and frequently by the European Commission through tertiary legislation, to reflect changes relevant to imports of animals or animal products which may present biosecurity or food safety risks, for example a disease outbreak in a certain country or area (or equally to reflect changes to remove restrictions where risks diminished).

6.4. The legislative functions of the European Commission to amend third country lists have been transferred to the Secretary of State under the following Statutory Instruments:

- Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019 (SI 2019/1225)
- The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (SI 2020/1481)

6.5. However, those instruments transferred those functions by way of granting power to make secondary legislation. Due to the legislative process that must be undergone when making secondary legislation, the United Kingdom cannot act sufficiently quickly in response to changes in risk in trading partners that may affect animal or public health in the United Kingdom. The retained EU law therefore continues to operate ineffectively.

6.6. With the exception of regulation 2, the exercise of the powers in this instrument are subject to an assessment of the risks to animal or public health in the United Kingdom, taking into account certain specified criteria. There is no risk assessment requirement in regulation 2 relating to the publication of Bovine Spongiform Encephalopathy classification as the risk assessment requirements and relevant criteria were previously set out by the Animals (Legislative Functions) (EU Exit) Regulations 2019 (SI 2019/588).

6.7. Additionally, this instrument makes consequential amendments which are needed to reflect the removal of entries from retained legislation and the conferral of administrative powers to publish certain information. It also makes amendments to remove redundant references in footnotes in Annex 1 to retained Commission Decision 2006/168/EC and in Part 2, Annex 2, Commission Decision 2007/777/EC, which are no longer appropriate to retain.

7. Policy background

What is being done and why?

7.1. Trading partners that are approved to export animals and animal products to Great Britain must comply with country-specific import conditions that are found in retained EU law. Regular amendments to these conditions are required to respond to changes in risk, including to safely manage trade from countries experiencing animal disease outbreaks (for example, Avian Influenza and African Swine Fever) or food safety incidents.

7.2. Amendments to the retained EU law are currently made by Statutory Instrument. This means that even when a negative procedure is used and the 21 day rule is breached, there is a significant gap between the identification of risk and the legal implementation of import conditions. Both trade bodies and trading partners have raised concerns about the lack of responsiveness of the current legislative mechanism.

7.3. The amendments made by this instrument confer powers on the Secretary of State, with consent of the Scottish Ministers (in relation to Scotland) and the Welsh Ministers (in relation to Wales), to change import conditions for animals and animal products entering Great Britain, by specifying the change in a document published for that specific purpose rather than in legislation. The functions that were previously carried out by the European Commission to protect human and animal health are therefore transferred in a way that enables them to be exercised promptly and effectively.

7.4. Similar powers already exist for import conditions for European Union Member States and European Free Trade Association States. These powers were necessary in order to implement the United Kingdom's withdrawal from the European Union and remain essential in order to manage current and future trading relationships. This instrument will bring the approach for all trading partners in line with the approach for European Union Member States and European Free Trade Association States. Continuing to manage import conditions for some countries administratively (and quickly) and for other countries legislatively (with some delays) may leave Great Britain at risk of a challenge at the World Trade Organization. Affected trading partners may also raise concerns on discriminatory treatment at the World Trade Organization.

7.5. Timely amendments to import conditions are also necessary to meet trade agreement obligations. Failure to meet these obligations may lead to legal challenge from trading partners, or retaliatory action against exports from Great Britain. Currently, when trading partners quickly respond to changes in disease status in Great Britain in order to support export trade, Great Britain is unable to reciprocate.

7.6. This instrument has been drafted in a such a way as to ensure that as much parliamentary oversight as possible is retained. Only import conditions that must be amended quickly (sometimes within days) have been removed from legislation. A Statutory Instrument will continue to be required to approve or delist a country or a commodity, ensuring ongoing parliamentary scrutiny of the government's commitment to maintain standards for animal health and welfare and food safety.

7.7. Parliament has had oversight of amendments to third country lists since January 2021. Prior to European Union Exit, the power to amend these lists was conferred on the European Commission using its delegated powers, meaning amendments were dealt with by an EU committee. This instrument aims to strike a balance between the requirement for appropriate parliamentary scrutiny and the need for effective biosecurity controls.

7.8. Decisions on the use of these powers will be made by consensus at the Animal Disease Policy Group, which is a technical decision-making body that incorporates experts from across government including the Chief Veterinary Officers of Wales, Scotland, Northern Ireland and the United Kingdom, Scottish Government, Welsh Government, Defra, DAERA, the Food Standards Agency, The Animal and Plant Health Agency, and where appropriate, public health and aquatics experts.

Explanations

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

7.9. Prior to the changes to be made by this instrument, certain amendments could only be made to the lists of countries approved to import animals and animal products into Great Britain by Statutory Instrument using powers conferred by the instruments specified in paragraph 6.4 and Articles 126/128 of Regulation (EU) 2017/625.

7.10. Powers also exist in the following pieces of domestic legislation for the Secretary of State, Scottish Ministers, Welsh Ministers, Food Standards Agency and Food Standards Scotland to publish special measures in a safeguard declaration in order to contain specific risks to human or animal health:

- For England, regulation 29 of the Trade in Animals and Related Products Regulations 2011(SI 2011/1197);
- For Scotland, regulation 25 of the Trade in Animals and Related Products (Scotland) Regulations 2012 (SI 2012/177); and,
- For Wales, regulation 29 of the Trade in Animals and Related Products (Wales) Regulations 2011 (SI 2011/2379).

Why is it being changed?

7.11. The legislative functions previously conferred on the European Commission to amend third country lists in retained EU legislation have not been transferred in a way that allows them to be exercised sufficiently quickly in response to changes in risk in trading partners that export animals and animal products to Great Britain. In some instances, such as for retained EU Regulation 999/2001 (as amended by the Animals (Legislative Functions) (EU Exit) Regulations 2019 (SI 2019/588) and the Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 (SI 2020/1463), the procedure for amending the BSE status of third countries was omitted.

7.12. Powers exist in domestic legislation to publish safeguard declarations at short notice to manage import risks to public or animal health. However, these do not allow amendments to be made to existing import conditions, including the lifting of restrictions where appropriate. Both functions are necessary in order to effectively manage imports of animals and animal products to Great Britain in the long term.

What will it now do?

7.13. The amendments set out in this instrument will allow the Secretary of State, with the consent of the Scottish Ministers and the Welsh Ministers, to respond quickly and effectively to changes in biosecurity risk presented by animals and animal products imported into Great Britain from approved third countries. The instrument allows the exercise of such powers where they are necessary or appropriate subject to an assessment of the risks to animal or public health in the United Kingdom, taking into account certain specified criteria (with the exception of regulation 2 as set out in paragraph 6.6).

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. The instrument is also made under paragraphs 21 and 38 of Schedule 7 to the European Union (Withdrawal) Act 2018. 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. There are no current plans for consolidation.

10. Consultation outcome

10.1. The amendments made by this instrument are technical in nature and there are no substantial changes to policy, so no public consultation has been undertaken.

10.2. Scottish Government, Welsh Government, Food Standards Agency and Food Standards Scotland have been consulted and are in agreement that the amendments in this instrument are consistent with animal health and public health policy for the import of animals and animal products to Great Britain, and necessary in order to effectively carry out functions repatriated from the European Union.

11. Guidance

11.1. Guidance will be issued to trading partners, Border Control Posts, importers and other stakeholders in Great Britain prior to the instrument coming into force.

12. Impact

12.1. This instrument will have a positive impact on businesses that import animals and animal products. It will ensure our import conditions match the risks associated with imports, thereby protecting biosecurity and supply chains in Great Britain.

12.2. Managing amendments to third country lists administratively will reduce the number of Statutory Instruments required to carry out this function. An estimated 20 to 30 amendments will be required annually for all countries excluding European Union Member States and European Free Trade Association States.

12.3. A full Impact Assessment has not been prepared for this instrument because this Instrument relates to the maintenance of existing regulatory standards.

13. Regulating small business

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

13.2. No specific action is proposed to minimise regulatory burdens on small businesses.

13.3. The basis for the final decision on what action to take to assist small businesses is that as this instrument does not place any burdens on small businesses no action will be taken.

14. Monitoring & review

14.1. The approach to monitoring this legislation is through the course of normal departmental business.

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

15. Contact

15.1. Anthony Laing at the Department for Environment, Food and Rural Affairs Telephone: 02080269250 or email: Anthony.laing@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2. Paul Green, Deputy Director at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3. Lord Benyon at the Department for Environment, Food and Rural Affairs 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	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
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 Parliamentary Under Secretary of State (Minister for Rural Affairs, Access to Nature and Biosecurity), Lord Benyon, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022 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 to 7.8 of this Explanatory Memorandum.

2. Good reasons

2.1. The Parliamentary Under Secretary of State (Minister for Rural Affairs, Access to Nature and Biosecurity), Lord Benyon, 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 in paragraphs 7.1 to 7.8 and 7.9 to 7.13 of this Explanatory Memorandum.

3. Equalities

3.1. The Parliamentary Under Secretary of State (Minister for Rural Affairs, Access to Nature and Biosecurity), Lord Benyon, 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 Parliamentary Under Secretary of State (Minister for Rural Affairs, Access to Nature and Biosecurity), Lord Benyon, 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 Benyon, 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 7 of the main body of this explanatory memorandum.

5. Legislative sub-delegation

5.1. The Parliamentary Under Secretary of State (Minister for Rural Affairs, Access to Nature and Biosecurity), Lord Benyon, 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 Animals and Animal Products and Approved Countries (Amendment) Regulations 2022".

5.2. This is appropriate because it enables the Secretary of State (with consent of the appropriate authority) to publish and amend import conditions, rather than retaining it in legislation, so that such information can be changed quickly in future. Please see paragraphs 7.3 to 7.5 of this Explanatory Memorandum for further information.