EXPLANATORY MEMORANDUM TO

THE WELFARE OF ANIMALS (TRANSPORT) (MISCELLANEOUS AMENDMENTS) (ENGLAND AND SCOTLAND) REGULATIONS 2023

2023 No. 287

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 His Majesty.

2. Purpose of the instrument

2.1 This instrument brings the official controls relating to animal welfare in transport under the same regime as other official controls for animal health and welfare. It also clarifies the obligations of animal transporters and keepers, places greater responsibility on journey organisers in relation to the preparation and completion of journey logs and clarifies the process for the approval of journey logs.

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 extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Scotland.

5. European Convention on Human Rights

5.1 The Minister of State, Mark Spencer MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Welfare of Animals (Transport) (Miscellaneous Amendments) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 The principal legislation governing the protection of animals during transport within Great Britain, from Great Britain to third countries, and upon arrival from third countries is set out in retained EU legislation. This consists of Council Regulation (EC) No 1/2005 on the protection of animals during transport and related operations ("Regulation 1/2005") and Council Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products ("the OCR").

6.2 Many of the provisions in the OCR already apply to official controls and official activities performed by competent authorities in relation to the animal welfare in transport rules. However, Article 154 of the OCR originally delayed the introduction

of the specific provisions in Article 21 of the OCR relating to official controls for welfare in transport which were intended to replace the provisions on official controls in Regulation 1/2005 to a long-stop date of 14 December 2022. Article 154(2) of the retained version of the OCR provides for these provisions to be commenced by regulations on a date that the Appropriate Authority chooses.

6.3 This instrument commences the remaining provisions in Article 21 of the OCR on official controls in relation to the animal welfare in transport rules in England and Scotland on 6th April 2023. Equivalent regulations will be made by Welsh Ministers in relation to Wales.

6.4 It also amends Annex II to Regulation 1/2005 which deals with the preparation and completion of journey logs which are required for certain journeys under Article 5(4) of that Regulation.

6.5 Finally, it makes consequential amendments to the Welfare in Transport (England) Order 2006. and to the Welfare of Animals (Transport) (Scotland) Regulations 2006. The Welfare of Animals (Transport) (Wales) Order 2007 is being amended in parallel by Welsh Ministers within their equivalent Regulations.

7. Policy background

What is being done and why?

7.1 This instrument will commence the remaining provisions of Article 21 of the OCR on official controls in relation to animal welfare in transport and make amendments to Annex II to Regulation 1/2005.

Commencement of provisions of Article 21 of the OCR

7.2 The aim of the OCR is to provide an integrated and uniform approach to official controls across the agri-food supply chain covering food and feed law and rules on animal health and welfare, plant health and plant protection products and to ensure a consistent approach to official controls and official activities across these sectors.

7.3 Commencement of the remaining provisions of Article 21 of the OCR will ensure a consistent regime of official controls for both animal health and welfare in place of the current dual controls. It will not result in any changes to the nature of the checks conducted by the Animal and Plant Health Agency (APHA), on behalf of the Secretary of State and Scottish Ministers, to ensure compliance with Regulation 1/2005.

Amendments to Annex II to Regulation 1/2005

7.4 Annex II to Regulation 1/2005 sets out the obligations of transporters, organisers and keepers in relation to journey logs that must be completed under Article 5(4). The requirement for an approved journey log applies to journeys over 8 hours from third countries to Great Britain, from Great Britain to third countries or that transit through Great Britain involving the transportation of livestock or unregistered horses.

7.5 A journey log must cover the entirety of the journey and its purpose is to ensure that the journey is properly planned in advance and that it will comply with Regulation 1/2005. APHA currently checks all journey logs in advance for compliance and approves them prior to the journeys commencing. Compliance checks are also conducted on the returned journey log when the journey has been completed.

7.6 The amendments made to Annex II by this instrument clarify the obligations of animal transporters and keepers, place greater responsibility on journey organisers in relation to the preparation and completion of journey logs, and clarify the process for the approval of journey logs.

Explanations

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

7.7 *Provisions of Article 21 of the OCR.* Official controls in relation to animal welfare in transport rules are currently set out in Articles 14 to 16, 21, 22(2), 23 and 26 of Regulation 1/2005. The official controls set out in these Articles include the approval of journey logs, the checking of animals during transport and the responsibility of the competent authority not to cause delay to animals in transport and to ensure their welfare is safeguarded where non-compliance is identified.

7.8 *Amendments to Annex II to Regulation 1/2005.* Annex II to Regulation 1/2005 sets out the obligations of transporters, keepers and organisers in relation to the preparation of the journey log required under Article 5(4), ensuring it is fully completed and returned to the competent authority for compliance checks within one month of the completion of the journey.

7.9 Annex II also requires the organiser to ensure that the properly completed journey log application is received by the competent authority "within 2 working days before the time of departure" so that the competent authority can review and approve it in advance of the journey.

Why is it being changed?

7.10 *Provisions of Article 21 of the OCR*. Many of the provisions in the OCR already apply to official controls and official activities performed by competent authorities in relation to the welfare in transport rules. In the EU version of the OCR, the replacement of the official control provisions in Regulation 1/2005 with provisions in Article 21 of the OCR took effect on 14 December 2022. In the retained version of the OCR, the appropriate national authority can nominate the date on which this takes effect. We do not expect any significant consequences from having different commencement dates.

7.11 This will ensure a consistent regime for both animal health and welfare by bringing the official controls to verify and monitor compliance with animal welfare in transport requirements within the same regime as other official controls for agri-food.

7.12 *Amendments to Annex II to Regulation 1/2005.* We wish to clarify the obligations of animal transporters and keepers, place greater responsibility on journey organisers in relation to the preparation and completion of journey logs, and clarify the process for the approval of journey logs.

What will it now do?

7.13 *Provisions of Article 21 of the OCR.* There will be a consistent regime for both animal health and welfare, as the official controls to verify and monitor compliance with animal welfare in transport requirements will be within the same regime as other official controls for agri-food. The equivalent regulations in relation to Wales will also maintain the same official controls conducted on behalf of Welsh Ministers. Current compliance controls conducted by the Animal and Plant Health Agency on

behalf of the Secretary of State , Scottish Ministers and Welsh Ministers, and action that can be taken where non-compliance is identified, will be maintained.

7.14 *Amendments to Annex II to Regulation 1/2005.* The organiser will have overall responsibility for the preparation and completion of the journey log. In particular it will be the responsibility of the organiser to submit journey logs to APHA for approval for export, import and transit journeys at least two working days before the proposed departure date. The deadline for submission of a journey log to the competent authority will be clarified. The organiser will be required to ensure that a copy of the correctly completed journey log is returned to APHA within one month of the journey being completed and, if the journey log is not produced by electronic means, a copy is retained for a minimum of three years. The respective responsibilities of keepers of animals at places of departure, transit and destination and persons transporting the animals in relation to the completion of journey logs will also be clarified.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

9.1 There are no plans for consolidation.

10. Consultation outcome

10.1 The targeted consultation was issued jointly by the UK, Scottish and Welsh governments and sought views from those who would potentially be affected by, or have an interest in, the proposals. Those consulted included representatives from industry, animal welfare non-governmental organisations and enforcement bodies. The consultation was open for responses for nine weeks.

10.2 The majority (71%) of respondents agreed with the proposals to commence the remaining provisions on official controls relating to animal welfare in transport as soon as possible. The majority (71%) of respondents also agreed or strongly agreed with the proposal to update Annex II to Regulation 1/2005 to provide clarity on the compliance checks conducted by APHA. All respondents agreed (86%) or strongly agreed (14%) with the proposal to extend the role of the organiser to make them responsible for completion of the journey log throughout the process.

10.3 A summary of responses received, and the resultant government response was provided to those stakeholders targeted for engagement.

11. Guidance

11.1 Guidance on the updated process and role of the organiser will be produced by APHA and provided with journey log forms. In addition, the competent authority will engage with industry stakeholders to advise of the updates prior to their commencement.

12. Impact

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

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

12.3 A De Minimis Assessment has been prepared for this instrument. A De Minimis Assessment was considered appropriate as these technical amendments result in minimal cost to businesses. The estimated Equivalent Annual Direct Net Cost to Business (EADNCB) falls below the threshold of £5 million per annum. Further, this reform is not deemed controversial.

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 No specific action is proposed as new regulatory burdens on business as a result of this instrument are minimal.

14. Monitoring & review

14.1 As these changes are essentially technical in nature, we do not propose to set in place a dedicated monitoring and review regime. This impact of changes to this legislation will be monitored through the usual course of business. We engage regularly with stakeholders and will take every opportunity to gather feedback on the impact of these changes.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister of State, Mark Spencer MP, has made the following statement:

"In my view there is no requirement to include a statutory review clause in the Welfare of Animals (Transport) (Miscellaneous Amendments) Regulations 2023 as this would be disproportionate given the minimal business impact of the Regulations."

15. Contact

15.1 Matthew Wright at the Department for Environment, Food and Rural Affairs ("Defra") Telephone: 0208 7204433 or email: matthew.wright2@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Pamela Thompson, Deputy Director for Transforming Farm Animal Health and Welfare at the Department for Environment, Food and Rural Affairs ("Defra") can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State, Mark Spencer MP at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.