

EXPLANATORY MEMORANDUM TO

**THE TRADE IN ANIMALS AND ANIMAL PRODUCTS (LEGISLATIVE
FUNCTIONS) AND VETERINARY SURGEONS (AMENDMENT) (EU EXIT)
REGULATIONS 2019**

2019 No. 1225

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.
- 1.2 This Explanatory Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

- 2.1 The purpose of this instrument is to make technical operability changes under Section 8 of the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”) to existing EU legislation. Relevant EU legislation delegates to the EU Commission the legislative power to add, vary or remove a country from lists of approved third countries. This instrument makes these legislative powers that are contained within EU Directives operable upon EU withdrawal and allows the UK to align with the EU and approve third countries for the purpose of animal and product imports.
- 2.2 This instrument supports the UK’s application to be listed as a third country by the EU for live animals and animal products. The UK’s application was approved by the EU in April 2019 as having met the minimum requirements at that time. Given the change in exit day to 31st October 2019, we are using this opportunity to ensure we are as prepared as we can be to support all possible requirements of listing.
- 2.3 In transferring EU Commission powers to approve third countries for the purpose of animal and product imports, this will ensure the UK could adapt its own list of approved countries to retain its EU listing, should the long-term situation change after exit day. It will also allow for the longer-term removal of third countries from our approval list, should their biosecurity risk change significantly after exiting the EU, supporting our existing powers to exercise import controls.
- 2.4 Parts 2 and 3 of this instrument transfer these delegated legislative powers from the Commission to the Secretary of State if consent is given by the Welsh Ministers in relation to Wales, the Scottish Ministers in relation to Scotland, and the Department of Agriculture, Environment and Rural Affairs (“DAERA”) in relation to Northern Ireland following their involvement in an assessment of the suitability of a third country to be approved to export such goods and animals into the United Kingdom.
- 2.5 Parts 4 and 5 of this instrument also makes further operability amendments to a previously made EU exit statutory instrument, and into domestic regulations in England and Northern Ireland relating to the trade in animals and animal products. No policy changes are being introduced by these amendments, which are technical in nature.

However, the Secretary of State with the consent of devolved appropriate authorities may publish lists of those animals and products that require or are exempted from border veterinary checks.

- 2.6 Part 6 makes an amendment to correct a cross-reference to the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019 ('the Veterinary Surgeons Instrument').

Explanations

What did any relevant EU law do before exit day?

- 2.7 The power to amend lists of approved third countries from which live animals, germplasm (semen, ova, and embryos) and products may be imported sits with the EU Commission in the various Council Directives that will not become retained EU legislation on exit day. These powers need to be transferred to enable such lists to be updated in the future so that they are relevant to the UK.
- 2.8 The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations S.I. 2019/795 is being further amended by this instrument. That instrument makes operability amendments related to the import of live animals, products of animal origin and germplasm to ensure a continuation of current biosecurity standards relating to the trade in these commodities after exit day.

Why is it being changed?

- 2.9 This instrument enables the Secretary of State, with the consent of the devolved administrations, to remove or vary the listing of a third country dependent on an assessment of the country's biosecurity risks and application of rules on animal disease prevention and control. This supports our existing powers to exercise import controls, and ensures we can adapt in the longer-term should we assess that biosecurity risks presented by third countries have fundamentally changed after we leave the EU.
- 2.10 Parts 2 and 3 of this instrument will thereby facilitate trade by allowing for the United Kingdom approval of third countries for the purpose of trading in animals and products with the UK. The current EU approved lists of approved third countries are referenced throughout several pieces of EU legislation that will be retained EU law on exit day. The existing lists of EU approved third countries will initially be adopted for trade with the UK and therefore there is no direct impact on businesses on exit day.
- 2.11 Part 4 of this instrument contains additional amendments to the EU Exit S.I. 2019/795 that will ensure that there is greater clarity and full operability in the retained EU legislation relating to trade in animals and products.
- 2.12 Part 5 further amends the domestic trade in animal and product regulations in both England and in Northern Ireland in addition to operability amendments previously inserted into those two domestic instruments by EU Exit S.I. 2019/782 and 2019/811 respectively.
- 2.13 Part 6 of this instrument makes a correction in the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations S.I. 2019/454 to correct a cross-reference to the appropriate paragraph in the Recognition of Professional Qualifications (Amendment) (EU Exit) Regulations S.I. 2019/312. That instrument ensures that EU/EEA nationals that have submitted an application before exit day to register with the Royal College of Veterinary Surgeons will continue to have their application processed after exit day.

What will it now do?

- 2.14 This instrument will generally help facilitate trade in animals and products whilst ensuring that veterinary checks continue to be carried out on appropriate consignments arriving into the UK. Lists of products and animals from third countries that require veterinary border checks on entry will be separately published by the Secretary of State with the consent of the devolved administrations after exit day.
- 2.15 This instrument does not make any policy changes to the existing animal imports regime, or with regard to veterinary surgeon registrations. It transfers legislative functions to approve third countries that export animals and related products to the UK. It makes further operability amendments to allow existing EU retained direct legislation and EU-derived domestic legislation to continue to be fully operable after exit day.

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 This instrument is made subject to the urgent ‘made affirmative’ procedure. The Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

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 power under which this instrument is made cover the entire United Kingdom and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

- 4.1 The territorial extent and application of all Parts of this instrument is the United Kingdom with the exception of Part 5.
- 4.2 In Part 5 the territorial extent of regulation 20 is England and Wales, and the application is England only. The territorial extent and application of regulation 21 is Northern Ireland 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 Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 8(1) of the Withdrawal Act 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.

7. Policy background

What is being done and why?

- 7.1 No change is being made to policy and therefore there is no direct impact on businesses as a result of the amendments made by this instrument that will only enter into force on exit day if there is no negotiated withdrawal agreement.

This instrument transfers to the appropriate authority in the UK the EU Commission function of assessing the suitability of third countries to export animals and animal products into the UK and subsequently amending lists of approved third countries. This will allow the UK to align its animal trade legislation with that which applies within the EU.

- 7.2 As a result of further operability amendments to the retained EU Commission Decision 2007/275/EC, the Secretary of State with the consent of the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs (“DAERA”) can publish product lists to ensure that movement of animals and animal products on arrival into the UK will continue with minimum disruption, whilst maintaining biosecurity following EU exit.
- 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 day.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the power in section 8 of the Withdrawal Act in order to address failures of retained EU law and EU-derived domestic legislation to operate effectively 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 European Union (Withdrawal) Act 2018 no review clause is required.

15. Contact

- 15.1 Sam Beckett at the Department for Food Environment and Rural Affairs Telephone: 02078955283 or email: Samuel.Beckett@defra.gov.uk
- 15.2 Richard Irvine, 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 Instrument.	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 Instrument 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 2018 Instruments.	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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising 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 Instrument is urgent.
Explanations where amending regulations under s 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an Instrument after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s 2(2) ECA 1972.	Statement explaining the good reasons for modifying the instrument made under s.2 (2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an Instrument after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA 1972.	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 Animal Products (Legislative Functions) and Veterinary Surgeons (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.

5. Legislative sub-delegation

- 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 use of legislative powers in the European Union (Withdrawal) Act 2018:
- 5.2 “In my view it is appropriate to create a relevant sub-delegated power in the Trade in the Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment etc.) (EU Exit) Regulations 2019.”
- 5.3 This is appropriate because it enables the Minister to publish and amend lists of products that require or are exempt from veterinary checks on entry into the UK, rather than retaining them in legislation, so that such lists can be amended quickly in future.

6. Urgency

- 6.1 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:
- 6.2 “In my view by reason of urgency, it is necessary to make the Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019, without a draft of the instrument containing the regulations being laid before, and approved by a resolution of, each House of Parliament.”
- 6.3 The Government has concluded that the ‘made affirmative’ procedure provided for in the European Union (Withdrawal) Act 2018 ensures that this instrument is in place for exit day.
- 6.4 The Government considers it important to urgently have this instrument in place so as to provide confidence and certainty to the public and business and to ensure the effective functioning of the statute book after exit.
- 6.5 This is because this instrument needs to be made and laid so that it is visible to the EU Commission on Legislation.gov.uk in October when a vote is taken in the EU’s Standing Committee on Plants, Animals, Food and Feed (SCoPAFF) Committee in October regarding the UK’s expedited request to be approved as a third country for the purpose of trade in animals and animal products with the European Union after Exit day.
- 6.6 Using this procedure still allows for parliamentary scrutiny and Parliament will need to approve its making for it to remain in force.