

EXPLANATORY MEMORANDUM TO
THE CAT AND DOG FUR (CONTROL OF MOVEMENT ETC.) (EU EXIT)
REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for International Trade and is laid before Parliament by command of Her Majesty.
- 1.2 This memorandum contains information for the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee.

2. Purpose of the instrument

- 2.1 The purpose of this SI is to recognise the public's high regard for the welfare of cats and dogs; and complement and build upon the existing suite of EU Exit instruments covering public morality, animal and aquatic health and welfare, such as the Seal Products (Amendments) (EU Exit) Regulations 2018 amending retained EU legislation and existing United Kingdom legislation on seal products from commercial hunts, so that they continue to be operable.
- 2.2 This instrument is made under sections 8 and 8C of the EU (Withdrawal) Act 2018 ("the EUWA").
 - a. This instrument amends the retained domestic version of Regulation (EC) 1523/2007 of the European Parliament and of the Council ("the EC Regulation"), in order to make sure that the ban on the placing on the market, import and export of cat and dog fur, and products containing such fur continue to operate effectively. Part 2 of this instrument amends the retained domestic version of the EC Regulation so as to:
 - remove references to the European Commission as these are no longer relevant to the United Kingdom in respect of Great Britain;
 - amend inappropriate references to the European Union, replacing them with references to Great Britain;
 - remove references to EU customs legislation (which has been replaced in its application to the United Kingdom in respect of Great Britain by provisions in the Taxation (Cross-Border Trade) Act 2018 and in regulations made under that Act) and replace these with references to domestic legislation where required;
 - transfer to the Secretary of State the existing power of EU Member States to derogate, by way of provision in regulations, from the general prohibition contained in the EC Regulation;
 - derogate from the general prohibition to enable the movement of cat and dog fur and products containing such fur from Northern Ireland to Great Britain and so does not prevent unfettered market access for goods moving between Northern Ireland and other parts of the United Kingdom's internal market

as permitted by Article 6(1) of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement.

- b. Part 3 of this instrument amends The Cat and Dog Fur (Control of Import, Export and Placing on the Market) Regulations 2008 (S.I. 2008/2795) (“the domestic Regulations”), as those Regulations apply in Great Britain, to provide for the imposition of penalties for contravening the prohibition in the retained domestic version of the EC Regulation as it applies in Great Britain.
- c. Part 4 of this instrument makes separate provision in the domestic Regulations in respect of Northern Ireland to apply similar penalties for contravening the prohibition under Regulation (EC) 1523/2007, as it directly applies to and in the United Kingdom in respect of Northern Ireland by virtue of section 7A of the EUWA and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement.
- d. This instrument has United Kingdom wide extent. However, the amendments made by Parts 2 and 3 apply in relation to Great Britain only. The amendments made by Part 4 apply in relation to Northern Ireland only by virtue of section 7A of the EUWA and Annex 2 of Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement pursuant to which the EC Regulation continues to be directly applicable in Northern Ireland.

Explanations

What did any relevant EU law do before exit day?

- 2.3 Regulation (EC) 1523/2007¹ (“the EC Regulation”):
- a. implements a prohibition on the import, export and placing on the market of cat and dog fur in the European Union;
 - b. contains the ability for Member States to derogate from the prohibition for educational and taxidermy purposes;
 - c. allows the European Commission to adopt an analytical method to identify different species of fur and to introduce legislation to amend this method when necessary;
 - d. sets out the process by which any changes to the methodology will be developed (the European Commission will be assisted by the Committee on the Food Chain and Animal health) and adopted (meaning which committee process will apply);
 - e. imposes obligations on Member States to report to the European Commission on their efforts to enforce the EC Regulation;
 - f. requires Member States to provide for the enforcement of appropriate penalties for any breach of the prohibition in their domestic law.

Why is it being changed?

- 2.4 The United Kingdom’s position on the trade in cat and dog fur remains unchanged. That is why this EU Regulation, which imposes a ban on the import, export and placing on the market of cat and dog fur and products containing such fur, forms part of the retained domestic legislation of the United Kingdom. The placing on the market of such fur

¹ As amended by S.I. 2009/1056 (The Cat and Dog Fur (Control of Import, Export and Placing on the Market) (Amendment) Regulations 2009)

remains illegal across the whole of the United Kingdom through the combined effect of both the EC Regulation, as directly applicable in Northern Ireland, and the retained domestic version of the EC Regulation as amended by Part 2 of this instrument in relation to Great Britain.

- 2.5 The retained domestic version of the EC Regulation, as it applies in relation to Great Britain, contains a number of references to the European Union, the Commission and EU laws that are no longer appropriate in respect of Great Britain. Part 2 of these Regulations amends or removes these inappropriate references in the retained domestic version of the EC Regulation as it applies in Great Britain and replaces them with references to Great Britain or to United Kingdom legislation as appropriate.
- 2.6 As the retained domestic version of the EC Regulation imposes a total ban on the import, export and placing on the market of cat and dog fur in Great Britain, this could arguably include the movement of cat and dog fur and products containing such fur from Great Britain to Northern Ireland and vice versa. Whilst the import, export and placing on the market of cat and dog fur remains illegal, given that the United Kingdom is one customs territory, Part 2 of these Regulations amends the retained domestic version of the EC Regulation so as to derogate from the general prohibition in Article 3 and enable, from a technical but not practical perspective, the movement of cat and dog fur and products containing such fur from Northern Ireland to Great Britain. This amendment therefore upholds the principle of unfettered market access for goods moving within the United Kingdom's internal market, whilst retaining her strict controls on these abhorrent products.

What will it now do?

- 2.7 The instrument makes no change to policy but corrects the technical deficiencies and implements the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement as set out in paragraph 2.1 in order to:
- a. leave the law unchanged in Northern Ireland as the EC Regulation will directly apply in Northern Ireland as a result of the section 7A of the EUWA and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement;
 - b. amend the retained domestic version of the EC Regulation as it applies in Great Britain to correct technical deficiencies and to continue allowing the movement of cat and dog fur and products containing such fur from Northern Ireland to Great Britain only in accordance with the domestic policy of unfettered access for goods moving within the United Kingdom's internal market, whilst maintaining the prohibition on the placement on the market;
 - c. make new provision in the domestic Regulations for enforcement and penalties for breach of the prohibition under the retained domestic version of the EC Regulation;
 - d. make separate provision in respect of Northern Ireland for enforcement and penalties for breaches of the prohibition in the directly applicable EC Regulation.
- 2.8 Unfettered access for the movement of all products² – including cat and dog fur – and products containing such fur does not alter the commitment of Her Majesty's Government to protecting and securing animal welfare and public morality but is a

² The only exception to unfettered access policy is where it is necessary to secure compliance with, or to give effect to, any international obligations.

legal technicality to fulfil obligations with regards to unfettered access and its adherence to the Revised Protocol on Ireland / Northern Ireland.

- 2.9 The technical ability to move cat and dog fur, and related products, between Northern Ireland and Great Britain, is one that existed under the EC Regulation as it applied in relation to the United Kingdom before the end of the implementation period; the amendments made by these Regulations do not alter the fact that the trade in cat and dog fur and products containing such fur remains illegal across the whole of the United Kingdom. The legal changes required to give effect to the policy of unfettered access maintain in place the full extent of the restrictions and prohibitions that applied in this area and that the United Kingdom adhered to as an EU Member State. They do not constitute any less regard by Her Majesty's Government to animal welfare standards or public morality.

3. Matters of special interest to Parliament

- 3.1 An earlier version of this instrument and Explanatory Memorandum were previously laid before and approved by Parliament. However, due to two minor technical errors, the Department had to withdraw and re-lay that instrument, but it was not made before EU exit day so the deferral of its commencement to the end of the implementation period was not effected by provision in the EUWA.
- 3.2 The Department has now decided not to proceed to make that earlier instrument given that it does not, as drafted, take into account the implications of the section 7A of the EUWA and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement. This instrument is, therefore, a replacement of the earlier version referred to above.

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)

- 3.3 The territorial application of this instrument is the whole of the United Kingdom (England and Wales, Scotland and Northern Ireland).
- 3.4 The territorial application of the amendments made by Part 2 of this instrument to the retained domestic version of the EC Regulation is Great Britain only. The amendments made by Parts 3 and 4 of this instrument to the domestic Regulations apply in Great Britain and in Northern Ireland respectively.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the whole of the United Kingdom (England and Wales, Scotland and Northern Ireland).
- 4.2 The territorial application of the amendments made by Part 2 of this instrument to the retained domestic version of the EC Regulation is Great Britain only. The territorial application of the amendments made by Part 3 of this instrument to the enforcement provisions in the domestic Regulations is England, Wales and Scotland. The territorial application of the amendments made by Part 4 of this instrument to the domestic enforcement provisions is Northern Ireland.
- 4.3 The retained domestic version of the EC Regulation is incorporated into the domestic law of the United Kingdom under section 3 of the EUWA. However, it is not capable of having effect in relation to Northern Ireland because of the effect of section 7A of the EUWA and Annex 2 of the Protocol on Ireland/Northern Ireland to the EU

Withdrawal Agreement under which the EC Regulation is directly applicable to and in the United Kingdom in respect of Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister for International Trade, Ranil Jayawardena, has made the following statement regarding Human Rights:

“In my view, the provisions of the Cat and Dog Fur (Control of Movement etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights”.

6. Legislative Context

6.1 The EC Regulation was published in the Official Journal on 11th December 2007 and the prohibition officially came into force 20 days thereafter. However, Member States were given until 31st December 2008 to provide an effective, persuasive and proportionate penalty for breach of this directly applicable prohibition. Existing United Kingdom legislation, the Customs & Excise Management Act 1979 (CEMA), provides a penalty of 7 years’ imprisonment for deliberate breach of any enactment which has the effect of prohibiting imports into or exports from the United Kingdom, but this would not cover unintentional breaches of the customs prohibition or deliberate or unintentional breaches of the prohibition on sale.

6.2 The EC Regulation was first proposed in response to pressure from non-government organisations from across Europe who suggested that the import, export and sale of cat and dog fur was widespread. Representatives in the fur trade argued that a ban was not required on the basis that they did not believe that the trade in this fur was common. The impact assessment prepared by the European Commission found very little evidence of a trade in cat and dog fur.

6.3 The EC Regulation was considered by the EC Scrutiny Committees (Explanatory Memorandum No 15674/06 and supplementary Explanatory Memorandum submitted by Defra on 18th December 2006 and 10th May 2007). The House of Commons EC Scrutiny Committee cleared the proposal on 6th June 2007. The House of Lords EC Scrutiny Committee cleared the proposal on 16th May 2007.

6.4 The EC Regulation will be directly applicable to and in the United Kingdom in respect of Northern Ireland by virtue of section 7A of the EUWA as it is EU legislation listed in Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement.

6.5 This instrument leaves untouched the existing prohibitions under the directly applicable EC Regulation as it applies in respect of in Northern Ireland. In addition, it amends the retained domestic version of the EC Regulation, in order to make sure that the ban on the placing on the market, import and export of cat and dog fur, and products containing such fur will continue to operate effectively in Great Britain. It also gives technical effect to the domestic policy of unfettered market access for goods moving within the United Kingdom by removing the application of criminal penalties under the domestic Regulation solely in respect of the movement of cat and dog fur and products containing such fur from Northern Ireland to Great Britain. In equal step, a new provision is added in the domestic Regulations for enforcement and the imposition of penalties for a breach of the prohibition under the retained domestic version of the EC Regulation as it applies in respect of Great Britain.

7. Policy background

What is being done and why?

- 7.1 This instrument is required to correct technical deficiencies in retained EU law and to implement the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement. The amendments made by Part 2 of this instrument, which apply in respect of Great Britain only, ensure that the existing prohibition under the EC Regulation on the import, export and placing on the market of cat and dog fur is directly applicable, without amendment, in Northern Ireland. The amendments made by Part 2 of these Regulations also derogate from the general prohibition in Article 3 of the retained domestic version of the EC Regulation to enable the movement of cat and dog fur and products containing such fur from Northern Ireland to Great Britain in accordance with the domestic policy of unfettered access for goods moving within the United Kingdom's internal market. The amendments made by Part 2 of this instrument also include a regulation making power for the Secretary of State to further derogate from the general prohibition under Article 3 of the retained domestic version of the EC Regulation for educational or taxidermy purposes.
- 7.2 In addition, the amendments made by Part 4 of this instrument make sure that the existing criminal penalties for breach of the prohibition in the directly applicable EC Regulation will continue to apply in respect of Northern Ireland. Identical penalties are applied, by virtue of the amendments made by Part 3 of this instrument, to a breach of the prohibition under the retained domestic version of the EC Regulation as it applies in Great Britain.

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 EUWA 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.
- 8.2 This instrument is also made under section 8C(1) of the EUWA to implement Annex 2 of the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement by giving the amendments made to retained domestic version of the EC Regulation Great Britain only effect and thereby leaving the law unchanged in relation to Northern Ireland. This instrument also enables unfettered market access for goods moving within the United Kingdom in accordance with the domestic policy of unfettered access for goods moving within the United Kingdom's internal market.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 There is no requirement for a formal consultation. This instrument makes no change to policy but corrects the technical deficiencies and implements the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement as set out in paragraph 2.1.
- 10.2 The Department for International Trade has explained the purpose of the statutory instrument to the Devolved Administrations.

11. Guidance

- 11.1 The Department for International Trade does not propose to issue any guidance in relation to this statutory instrument at this time.

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 because this instrument makes no change to policy but corrects the technical deficiencies and implements the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement as set out in paragraph 2.1.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 Monitoring is not proposed because this instrument makes no change to policy but corrects the technical deficiencies and implements the Protocol on Ireland/Northern Ireland to the EU Withdrawal Agreement as set out in paragraph 2.1.
- 14.2 HMRC currently submit information to the European Commission regarding the United Kingdom's implementation of the prohibitions in the EC Regulation. This report will be made to the Secretary of State, in respect of the application of the directly applicable EC Regulation to and in the United Kingdom in respect of Northern Ireland, once this instrument comes into effect and will be used to determine whether a review of the enforcement of the prohibitions is necessary in Northern Ireland.
- 14.3 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Corina Baltag at the Department for International Trade (Telephone: 020 7215 8712 or email: importcontrols@trade.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Ada Igboemeka, Deputy Director of Multilateral Tariff Policy and Operations at the Department for International Trade can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Ranil Jayawardena MP, Parliamentary Under Secretary of State at the Department for International Trade, 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 clauses 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
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 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 clauses 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 clauses 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.
Explanation	Sub-paragraph (6) of	Ministers of the Crown	Explain the instrument, identify the

s	paragraph 28, Schedule 77	exercising clauses 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	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 clauses 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 clauses 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, Sch 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	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the	Statement setting out: a) the steps which the relevant authority has taken to make the

<p>amending regulations under 2(2) ECA 1972</p>		<p>European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA</p>	<p>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.</p>
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Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Appropriateness statement

- 1.1 In my view, the Cat and Dog Fur (Control of Movement etc.) (EU Exit) Regulations 2021 do no more than is appropriate. This is the case because United Kingdom left the EU on 31st January 2020 and is, therefore, no longer a Member State of the European Union. Provisions designed in the context of EU membership need to be adapted accordingly, while doing no more than maintaining existing policy.

2. Good reasons

- 2.1 In my view, there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are that regulations would otherwise contain a number of references to the European Union, the Commission and EU laws that are no longer appropriate in the United Kingdom after exit. These reasons are explained further in sections 2.4, 7.1 and 8.1 of the explanatory memorandum.

3. Equalities

- 3.1 The 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.

“In relation to the instrument, I, Ranil Jayawardena, have 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 the explanatory memorandum.