EXPLANATORY MEMORANDUM TO

THE TRADE IN ANIMALS AND RELATED PRODUCTS (AMENDMENT AND LEGISLATIVE FUNCTIONS) REGULATIONS 2022

2022 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 His Majesty.

2. Purpose of the instrument

2.1 The purpose of the Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022 ("TARP ALF"), is to ensure a continuing and fit for purpose imports system for animals and animal products entering Great Britain now that we have left the European Union ("EU"). This will be achieved by making amendments to the legislative regime set up under The Trade in Animals and Related Products Regulations 2011 S.I. 2011/1197 ("TARP England") applicable in England and The Trade in Animals and Related Products (Scotland) Regulations 2012 S.S.I. 2012/177 ("TARP Scotland") to fix deficiencies that arise in the legislative regime from the withdrawal of the UK from the EU. An equivalent SI will be made by Welsh Ministers to apply in Wales.

2.2 This instrument does three things:

(a) It modifies references made in TARP England and TARP Scotland to animal and public health requirements found in a list of EU Directives, originally set out in Schedule 1 to those instruments but now set out in an updated list in regulation 7(2)(a) of TARP ALF;

(b) It transfers functions, including legislative powers, in those EU Directives from EU bodies to the appropriate authority (defined in regulation 4(3) of TARP ALF);

(c) and it makes the necessary changes to TARP England and TARP Scotland to implement those changes.

2.3 The instrument will ensure official controls on imports of live animals and animal products continue to be effective. This instrument is made under the European Union (Withdrawal) Act 2018 ("the Withdrawal Act").

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, apart from Part 2 where the amendment has the same extent as the provision amended.

4.2 The territorial application of this instrument is England, Wales and Scotland, apart from Part 2 where the amendment has the same application as the provision amended and Part 3 that applies only to England and Scotland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement regarding Human Rights:

"In my view the provisions of the Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The Withdrawal Act converted and preserved EU law at the end of the Transition Period into domestic law ("retained EU law"). At that time, the importation of animals and animal products was governed at an EU level by a set of 12 Directives and various EU Regulations and Decisions that were listed in Schedule 1 to TARP England and TARP Scotland. Consignments entering Great Britain through a border control post, and goods and animals transiting through Great Britain, were required to comply with the legislation listed in Schedule 1 (e.g. see regulations 15 and 18 of TARP England, and regulations 13 and 16 of TARP Scotland). However, during the Implementation Period, the EU revoked those EU Directives and replaced them with the EU's Animal Health Law (see Regulation (EU) 2016/429). The relevant provisions of the Animal Health Law did not apply to imports until 21 April 2021, (i.e. during the Implementation Period) and are not therefore retained EU law. This instrument preserves and maintains the policy and legislative regime as of exit day and does not try to align itself with the EU's Animal Health Law.

6.2 TARP ALF modify the references to the EU Directives in TARP England and TARP Scotland, transfer all of the functions of EU bodies within those EU Directives to the appropriate authority (see regulation 4(3) of the TARP ALF Regulations 2022 for the definition of that term) and amend TARP England and TARP Scotland to update the legislative regime and implement the modifications and transfer of functions. The Welsh government are making their own equivalent version of this SI to amend the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379 (W.252)).

6.3 Part 2 of the TARP ALF amends the relevant regulations of TARP England and TARP Scotland that concern the import or transit of animals and animal products into Great Britain. Part 3 of the TARP ALF replaces Schedule 1 to TARP England and TARP Scotland with a new and updated list of legislation in regulation 7(2), particularly in relation to the EU Directives where the Articles and Annexes of each Directive that provide for animal or public health requirements are identified (see regulation 7(2)(a)). The provisions of the EU Directives listed in regulation 7(2)(a) are then modified in Part 5. No modifications have been made to the instruments listed in regulation 7(2)(b) as those instruments are either retained direct EU law, that have been amended separately in other projects, or in the case of the Aquatic Animal Health Regulations (see regulation 4(2) for a definition), updated domestic legislation that (amongst other things) replaces the EU Directive that preceded it (i.e. Directive 2006/88/EC which was originally listed in Schedule 1).

6.4 Part 4 of the TARP ALF provides for the list of functions in the Schedule, together with any other provisions of the EU Directives that need to be retained because they are either relevant to the exercise of the specified function and are to be read with that function, or are connected to that function. All of the listed functions and supporting provisions in the Schedule are modified in Part 5.

6.5 The functions conferred by the EU Directives are made exercisable in the relevant jurisdiction by the regulation 8(2) and (3). The functions are to be treated as if they are conferred by the TARP ALF. [This is to ensure that any provisions that have general application to statutory instruments, such as section 14 of the Interpretation Act 1978, apply to the functions as if they are a function under an enactment.]

6.6 Part 5 of the TARP ALF make the modifications that are necessary to the animal and public health requirements, the transferred functions and their supporting provisions in each EU Directive in order to ensure that the legislative regime for the importation of animals and animal products is up-to-date, clear, enforceable and easy to use. The modifications are made are to fix deficiencies, restate the law in a clearer or more accessible way and include, where necessary, any consequential or incidental amendments that may be required

7. Policy background

What is being done and why?

7.1 Modifications to EU Directives are being made to ensure clear operability now that we have left the EU. The Directives are part of the framework under which our domestic and retained EU legislation were made so therefore these modifications are technical fixes to assist with the interpretation and application of domestic and retained EU legislation. The modifications will continue to ensure that official controls on imports of live animals and animal products are effective by safeguarding animal and public health in Great Britain. They are not making any changes to policy but rather maintaining the rules that were in place as of exit day.

Explanations

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

7.2 The Directives being modified by this instrument provide for the animal and public health requirements for the importation into, and movements between EU Member States of live animals, products of animal origin including germplasm (semen, ova and embryos). They provided appropriate powers for the European Commission to make and implement changes to legislation for the importation and intra European movements of live animals and animal products.

Why is it being changed?

7.3 These changes are important to ensure as little disruption to imports when the transitional staging period (TSP) ends and the new import controls apply to the EU (i.e. the end of phasing of import checks). Now that we have left the European Union third countries are defined as any country outside the British Islands and the EU no longer have powers to legislate in GB. The changes will bring EU countries into line with third country rules on imports of animals and animal products into GB at the end of the TSP.

7.4 The Department has decided to retain the effects of these Directives, that have been revoked by the European Animal Health Regulations. The modifications continue to ensure that the Directives, which contain detailed rules for imports of animals and animal products, have a legal base in GB by bringing them on to our statute book. The modifications are being made to give the appropriate authority in Great Britain the relevant powers to make and implement changes to legislation for imports into Great Britain of animals and animal products.

What will it now do?

7.5 The modifications contained in this instrument will provide for the continuation of the existing legal framework within Great Britain for the importation of live animals and animal products. It will ensure that animal and public health requirements on imports of live animals and animal products are effective to safeguard animal and public health in Great Britain. Imported goods will continue to be required to meet the specific import conditions laid down in the relevant domestic and retained EU legislation. Provision is made in order to continue to facilitate imports of animals and animal products, provided they comply with the relevant import requirements including health certification, testing, quarantine and conditions for transport. It also continues to provide for appropriate safeguard actions to be taken in case of non-compliance with the animal health rules or disease outbreaks in exporting countries. Movements from Northern Ireland or the Crown Dependencies are considered internal movements and are not affected by the modifications.

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 EU. The instrument is also made under paragraph 21 in Schedule 7 in the Withdrawal Act 2018. 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 None.

10. Consultation outcome

10.1 This instrument was not subject to consultation. The changes to the legislation do not deliver policy changes, but maintain the existing import regime.

10.2 This instrument and the policy reflected in it has been developed in collaboration with Devolved Administration officials.

11. Guidance

11.1 Existing guidance regarding imports of animals and animal products will be reviewed and updated where necessary. There are no policy changes therefore we do not expect this instrument to have an impact on stakeholders. Conditions for importation of animal or animal products or approval of establishments for example are not being affected by these modifications. This instrument does not introduce any new duties or

obligations to users or enforcement agencies. These modifications will allow the existing rules to continue to apply in GB now that we have left the EU.

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 full Impact Assessment has not been prepared for this instrument because there is no impact on businesses and the instrument relates to 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 as no policy change is being made to requirements on small businesses.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

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

15. Contact

15.1 Noemi Guerra at the Department for Environment, Food and Rural Affairs Telephone: 02080267289 or email: noemi.guerra@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Peter Jinks, Deputy Director for SPS and Imports, 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 for Rural Affairs 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 Trade in Animals and Related Products (Amendment and Legislative Functions) 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. of this Explanatory Memorandum.

2. Good reasons

2.1 The Parliamentary Under Secretary of State for Rural Affairs 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 for the reasons set out at section 7 of the main body of this Explanatory Memorandum.

3. Equalities

3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Benyon has made the following statement(s):

"The Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022 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 Benyon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022, 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.