Submission from Green Alliance on behalf of Friends of the Earth and response from the Department for Environment, Food and Rural Affairs

Submission from Green Alliance on behalf of Friends of the Earth

Background

1. This statutory instrument was laid under the draft affirmative procedure on 30 March 2022. It amends several pieces of retained EU law (including Commission Regulation (EC) No. 999/2001, No. 798/2008, No. 119/2009, No. 206/2010 and No. 142/2011) to allow the Secretary of State (SoS) to rapidly change certain conditions for imports of animals and animal products into Great Britain that might impact on public and animal health in the United Kingdom. These changes are currently made through statutory instruments.

More detail needed

2. This instrument makes a substantial change to the mechanisms through which the import of poultry, Leporidae, dairy and other animal products are regulated. It allows for the SoS to amend controls on the import of these products from listed third countries (or parts of those countries) via an administrative, rather than a parliamentary process. Whilst it is reasonable to state that making these changes through the laying of statutory instruments (SIs) is slower than the European Commission's tertiary legislation process, there is little detail provided on how the new process will work beyond the statement that decisions will be made by the Animal Disease Policy Group, and that the SoS must consider a list of factors in each case. Therefore, it is hard to judge if the process will approximate or provide improvements upon the Commission's tertiary legislation process.

The changes in practice

3. This instrument makes no changes to how whole (new) countries are to be added to the third country lists (which will continue to be done via SIs), specified in other legislation such as retained Commission Regulation 206/2010 (as amended by the Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019). It applies only to amendments to parts of these countries and other specifics, including certification and public health mechanisms.

Issues to clarify:

- It would be useful to compare how the specificities of implementing this instrument compare to EU biosecurity processes.

4. For example, Commission Regulation (EC) No. 999/2001 is amended so that the SoS "may, with the consent of each other authority which in relation to any part of Great Britain is the appropriate authority, decide to change the BSE classification of a country or region from a date specified in the decision, on the basis of a risk assessment, taking into consideration the criteria set

out in Annex 2, Chapters A and B and the OIE classification." The SoS must then publish "a document" for the purposes of this article. The same approach (of adding a specific reference to publishing a "document" where previously the regulations referred to updating a list within an existing regulation) is used throughout this instrument in amending the other regulations. The decisions and implementing regulations addressed in the remainder of this instrument are amended broadly in line with this approach, adding more detail in terms of the factors that must be included in each of the specific documents.

Issues to clarify:

- The Department for Environment, Food and Rural Affairs(Defra) should set out what form the documents published by the SoS should take and where they might sit(for example, BSE status was formerly to be found a relevant annex, where would it be held under this instrument?).
- Defra should provide further detail on the decision-making process through which the SoS will determine where changes are "appropriate" or "necessary" and must confirm that independent checks and balances will take place, given that this process is to move outside of parliamentary scrutiny.
- Defra should also clarify the process to be followed by the Animal Disease Policy Group, and how it will be ensured that the group's membership has the capacity and expertise to deliver this work.
- If the intention of this instrument is to speed up the process of changing import conditions in response to circumstances that may impact on public and animal health in the UK, a model process must be set out that clarifies the expert led, best practice, independent and transparent routes of determining and publishing these changes in this and other areas. It should also offer a clear explanation of how these processes approximate or provide better options than the relevant EU processes (and associated UK committee oversight) previously relied upon.
- All of these regulations have been subsequently amended by Brexit SIs, usually more than once. It would be helpful to clarify whether any potential legal compatibility issues between these new documents and any previous requirements have been considered and mitigated.

5. Amendment of **Commission Regulation (EC) No. 798/2008, paragraph 10** inserts a new provision (**article 18b**) into the final section that states that the SoS can make provisions concerning where and how poultry can be imported from third countries, taking into account a number of criteria including "the degree of compliance with regulatory requirements in the United Kingdom relating to growth hormones and veterinary medicines." (3(b) of new art 18b).

Issues to clarify:

- If indeed this refers to UK requirements relating to imports, it would be useful to understand why import restrictions would be set with consideration of the "degree" of compliance with existing UK legal import

requirements which already ban growth hormones and regulate medicines usage. In amending Commission Regulation (EC) No. 119/2009 and No. 206/2010, this instrument focuses on the SoS "taking into account" issues such as animal welfare legislation and third country monitoring/enforcement. As these do not feature in UK import standards, this would seem to be a preferable approach to the SoS making judgements on degrees of compliance with legal import controls, outside of parliamentary scrutiny.

Kierra Box
Friends of the Earth, 2022

5 April 2022

Response from Defra

a) It would be useful to compare how the specificities of implementing this instrument compare to EU biosecurity processes.

Defra response: The process established by this instrument will approximate the European Union (EU) process when a significant food safety or biosecurity risk has been identified. Central to this process is the ability for Great Britain (GB) to rapidly implement import controls where a significant risk has been identified from countries that are approved to import live animals and animal products into GB.

This instrument will enhance GB's existing ability to protect domestic food safety and biosecurity by bringing the process for amending import restrictions for non-EU countries in line with those already in place for EU and European Free Trade Association states, as introduced in December 2020 through the Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020.

<u>The existing EU process:</u> Sanitary and Phytosanitary (SPS) import conditions for entry to the EU are considered by the EU Commission's Standing Committee on Plants, Animals, Food and Feed, which is composed of representatives of all EU Member States. Import conditions are implemented in law by the EU Commission, which has delegated powers to amend certain conditions via implementing decisions and regulations. These are legally binding across all Member States on their publication in the *Official Journal of the European Union*.

<u>The proposed GB process:</u> Import conditions for animals and animal products are considered by the Animal Disease Policy Group (ADPG), a senior decision-making body on SPS matters whose representatives include the Chief Veterinary Officers of England, Scotland, Wales and Northern Ireland, along with the Director of Veterinary Services for the Food Standards Agency. ADPG reaches official-level agreement on UK and GB import policy and, where appropriate, informs officials' recommendations to their respective Ministers. Following the proposed instrument coming into force, implementation in law of changes to import conditions will require the Defra Secretary of State, with consent of the Scottish Ministers (in relation to Scotland) and the Welsh Ministers (in relation to Wales), to specify the change(s) in a document published for that purpose on www.gov.uk. Depending on the type of changes being made, officials may act on behalf of Ministers under

the Carltona principle.
As referred to in FoE's briefing note, this instrument will not allow changes to the process for consideration of new market access requests to GB from new countries, or current countries requesting access for different commodities. In this case, the approval and/or delisting of countries and commodities will continue to require secondary legislation in the form of a Statutory Instrument and will therefore remain subject to parliamentary scrutiny.

b) The Department for Environment, Food and Rural Affairs (Defra) should set out what form the documents published by the SoS should take and where they might sit (for example, BSE status was formerly to be found a relevant annex, where would it be held under this instrument?).
Defra response: The documents published by the Secretary of State, with consent of the Scottish Ministers (in relation to Scotland) and the Welsh Ministers (in relation to Wales), will be in a similar format as the information that is currently available in legislation to ensure consistency. They will be accessible via this link (on www.gov.uk) when this Statutory Instrument comes into force.

c) Defra should provide further detail on the decision-making process through which the SoS will determine where changes are "appropriate" or "necessary" and must confirm that independent checks and balances will take place, given that this process is to move outside of parliamentary scrutiny.
Defra response: Recommendations regarding the exercise of powers in this instrument will be made following risk-based assessments carried out or commissioned by veterinary experts in Defra, which coordinates SPS import policy and delivery functions repatriated from the EU Agency DG Santé F in January 2021. They will provide expert advice to the Animal Disease Policy Group (ADPG), including assessments of risk, and ensure that any changes to import conditions are implemented in accordance with legislative requirements. The legal implementation of any changes by the Defra Secretary of State will be, as they are now, subject to agreement by the Welsh Government and the Scottish Government, thereby providing a further layer of scrutiny. While this instrument does not allow import conditions to be amended for Northern Ireland, any implications for biosecurity or food safety in Northern Ireland will be taken into consideration throughout the process.

d) Defra should also clarify the process to be followed by the Animal Disease Policy Group, and how it will be ensured that the group's membership has the capacity and expertise to deliver this work.
Defra response: The expertise, capacity and processes required to exercise the powers in this instrument appropriately are well-established within government, and have already been used to effectively control a range of SPS import risks since January 2021.
The Animal Disease Policy Group (ADPG) is a senior, expert government body that considers a wide range of animal health, human health and food safety issues, and ensures that such decisions are informed by assessments of risk. It has had a remit since 2007 for UK animal disease risks, which was extended in January 2021 to include SPS risks from the import of animals and animal products to the UK.
ADPG incorporates experts from across government, including the Chief Veterinary Officers of England, Scotland, Wales, and Northern Ireland, the Director of Veterinary

Services for the Food Standards Agency, technical experts from Scottish Government, Welsh Government, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA), Defra, the Food Standards Agency, the Animal and Plant Health Agency and, where appropriate, public health and aquatics experts. ADPG make clear in their terms of reference that: *"When making decisions, consideration will be given first to the best options for disease control, then to any legal requirements, latitude and constraints and finally to the deliverability of the preferred strategy in the field, including sustainability of the operational response and where to prioritise if resources are limited."*

e) If the intention of this instrument is to speed up the process of changing import conditions in response to circumstances that may impact on public and animal health in the UK, a model process must be set out that clarifies the expert led, best practice, independent and transparent routes of determining and publishing these changes in this and other areas. It should also offer a clear explanation of how these processes approximate or provide better options than the relevant EU processes (and associated UK committee oversight) previously relied upon.

Defra response: This instrument does not impact upon the current risk-based and evidence-led decision-making process that is used to determine appropriate responses to changes in risk in countries approved to import animals and animal products to Great Britain. Rather, this instrument impacts upon how risk-based decisions are implemented in law – by allowing 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 amend certain import conditions relating to the import of animals and animal products into GB from approved trading partners by specifying the change(s) in a document published for that purpose. This will improve upon the current process by ensuring that decisions can be rapidly implemented in law to protect UK biosecurity and food safety.

As set out above, this instrument will not allow changes to the process for consideration of new market access requests to GB from new countries, or currently approved countries requesting access for different commodities. In such cases, the approval and/or delisting of countries and commodities will continue to require secondary legislation in the form of a Statutory Instrument and will therefore remain subject to parliamentary scrutiny.

The instrument aims to strike a balance between the requirement for appropriate parliamentary scrutiny and the need for effective biosecurity and food safety import controls (e.g. updating restricted zones for exports to GB during an overseas disease outbreak).

f) All of these regulations have been subsequently amended by Brexit SIs, usually more than once. It would be helpful to clarify whether any potential legal compatibility issues between these new documents and any previous requirements have been considered and mitigated.

Defra response: This instrument contains a number of consequential amendments that have been made to address potential compatibility issues. Defra is not aware of any legal compatibility issues that have not been addressed. The Joint Committee for Statutory Instruments (JCSI) scrutinised the instrument prior to laying and did not raise any points of substance.

g) If indeed this refers to UK requirements relating to imports, it would be useful to understand why import restrictions would be set with consideration of the "degree" of compliance with existing UK legal import requirements which already ban growth hormones and regulate medicines usage. In amending Commission Regulation (EC) No. 119/2009 and No. 206/2010, this instrument focuses on the SoS "taking into account" issues such as animal welfare legislation and third country monitoring/enforcement. As these do not feature in UK import standards, this would seem to be a preferable approach to the SoS making judgements on degrees of compliance with legal import controls, outside of parliamentary scrutiny.

Defra response: The criteria specified in paragraph 3 of Article 18b (referred to above) have been taken directly from reg 7(2) of the Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1225), which itself is based on similar requirements in European Union law. Amendments to those sections of the instrument are not necessary in order to ensure retained European Union law is operable. For that reason, the recommended amendments would not be within the vires of Section 8 of the European Union (Withdrawal) Act 2018 and cannot be recommended.

13 April 2022