Annex: Submission by Friends of the Earth and response by Defra

Question 1

Background

This Statutory Instrument was made on Dec 21 2020 and laid on Dec 22. It focuses on ensuring a full system of sanitary and phytosanitary import controls for agri-food items, including transitional arrangements for trade with the EEA. It amends various pieces of legislation, including the insertion of references into to annex 6 of 2017/625.

Use of negative SI process:

- ***Regulation 2*** *amends the Trade in Animals and Related Products Regulations 2011 to add a new provisions on 'Special import conditions'. This gives the Secretary of State the power to 'by regulations impose special import conditions in respect of imports from third countries of products of animal origin intended for human consumption, having regard to the animal health situation of the third country or countries concerned , and may for that purpose amend, modify or revoke any retained direct minor EU legislation made under Article 8(4) of Council Directive 2002/99/EC'. Regulations made in this way are to be by negative SI.*
- ***Regulation 13*** *amends Commission Delegated Regulation 2019/624, adding a new article 14A. this article gives the SoS and Welsh Ministers the power to make new regulations concerning meat and bivalve production by negative SI.*
- ***Issues to clarify:***
  - *The European Commission process for making such direct minor EU legislation is not directly replicated by the negative SI procedure. This appears to decrease the level of scrutiny accorded to the imposition of special import conditions and meat and bivalve production. This creates the potential for the weakening of import and production standards over time. It would be helpful to understand why the government has not chosen to use the affirmative procedure in either of these cases, or to allow for a case-by case assessment of the best route.*
  - *It would also be useful if the department could clarify how special import conditions will be publicly communicated, the length of time for which they will apply, and the processes proposed to review the cumulative impact of special import conditions or consider their permanent adoption.*

Answer 1

Regulation 2 of SI 2020/1631 inserts into the Trade in Animal and Related Products Regulations 2011 ('the TARP Regulations') a provision which is based on the enabling power originally in Article 13 of Directive 1994/65/EC. That same power is now in Article 8(4) of Directive 2002/99/EC, which continues to have effect in EU law, but is not retained direct EU legislation for the purposes of law in Great Britain. The Department took the view that the power to impose special import conditions should be retained in order to be able to respond quickly to changing circumstances in relation to health risks posed by imports of products of animal origin, and it was replicated in the TARP Regulations, using the power in section 8 of the European Union (Withdrawal) Act 2018.

The procedure for putting in place detailed rules for the purposes of Article 8(4) of Directive 2002/99/EC appears in Article 12(2) of that Directive, which in turn cross-refers

to the procedure in Articles 5 and 7 of Decision 1999/468. Article 5 of that Decision sets out a procedure by which the Commission is assisted by a Committee composed of representatives of the member States. This procedure is taken into account, insofar as possible in Great Britain, by giving the power to make regulations under new paragraph 11 of Schedule 2 to the TARP Regulations to the Secretary of State, the Welsh Ministers and the Scottish Ministers in respect of the application of regulations in each constituent territory of Great Britain.

In common with the great majority of other powers to make EU tertiary instruments transferred from the Commission to the appropriate authority under EU Exit legislation, the Department's view was that it was appropriate for the exercise of this power to be subject to negative resolution. This was because the power would only be exercised on the strength of appropriate scientific and technical advice and the Department should be able to respond quickly to changing situations, including the risks relating to emerging animal diseases, including zoonotic diseases. It was also considered that the exercise of the power was unlikely to be sufficiently serious or contentious to justify using the affirmative resolution procedure.

Since the power will be exercised by negative resolution, it will be given effect to in the usual way by an instrument being laid before Parliament, in accordance with the requirements of the Statutory Instruments Act 1946, published by the Queen's Printer and on legislation.co.uk. The Meat Preparations (Amendment and Transitory Modification) (England) (EU Exit) Regulations 2020 (S.I. 2020/1666) (see https://www.legislation.gov.uk/uksi/2020/1666/contents/made) was made on 31st December 2020 under this power and came into force on 1st January 2021.

Regulation 13

The procedure provided for in Article 14A of Regulation (EU) 2019/624 relates to the regulation making power in Article 13 of that Regulation. Article 13, as amended, allows the appropriate authority to make regulations providing for minimum specific requirements for certain official veterinarians and veterinary students by way of derogation from the minimum requirements laid down in points 1 to 6 of Chapter 1 of Annex 2. The EU version of Regulation (EU) 2019/624 allows Member States to make provision for such a derogation, therefore it is not subject to any Commission procedure as it is not a power that belongs to the Commission. The Department's view was that the negative procedure was the appropriate procedure for this regulation making power given the minor and technical nature of the provision that may be made pursuant to it.

The EU version of Regulation (EU) 2019/624 was made pursuant to Article 18 of Regulation (EU) 2017/625. Article 18 is an enabling power to make specific rules on official controls in relation to the production of products of animal origin intended for human consumption. The powers in Article 18, along with the other powers to make tertiary legislation under Regulation (EU) 2017/625, have been transferred to the appropriate authority by S.I. 2020/1481, and the procedure attached to those powers is set out in Article 144 of Regulation (EU) 2017/625.

In line with the approach taken in respect of the majority of tertiary powers transferred from the Commission to the appropriate authority under EU Exit legislation, the Department's view was that the negative procedure was appropriate for the exercise of the powers contained in Article 18 and the remaining tertiary powers contained in that

Regulation. The powers in Article 18 would be exercised on the strength of appropriate scientific and technical advice and the provisions made under Article 18 would be technical in nature, and not sufficiently contentious or politically sensitive to justify the use of the affirmative procedure.

Question 2

Engagement with EU systems:

- ***Regulation 4*** *Amends the Animal Feed (Amendment) (EU Exit) regulations 2019 to omit regulation 90, which had previously replaced references to the EURL-AP (European Union Reference Laboratory for animal proteins in feedingstuffs) with the words 'reference laboratory' in Annexe 6 of Regulation 152/2009.*
- ***Regulation 29(14)*** *deletes articles 12 to 38 of Commission Implementing Regulation 2019/1715, which cover iRASFF, ADIS, EUROPHYT and TRACES systems.*
- ***Issues to clarify:***
  - *We would be interested to know why the government has decided to reinstate references to the EURL-AP. Does this represent a specific, time-limited transitional arrangement, an agreement on continued UK engagement with the EURL-AP, or is it that no reference lab yet exists within the UK to take on this work?*
  - *In relation to the other systems referenced in 29(14), it would be helpful if the department could update on current UK arrangements to replace or access these systems, in light of the EU deal.*

Answer 2

Regulation 4
Regulation 4 omits regulation 90 of the Animal Feed (Amendment) (EU Exit) Regulations 2019, which previously made amendments to Annex 6 of Regulation (EC) 152/2009 to in relation to the standard operating procedures ("SOP") of the European Union reference laboratories ("EURLs").

The omission of regulation 90 reflects the intention for official laboratories to continue to use the standard operating procedures ("SOP") published by the European Union reference laboratories ("EURLs") in the determination of constituents of animal origin until such time as other internationally recognised SOP may be used or established by a reference laboratory in Great Britain. There are currently no equivalent SOP established by a reference laboratory in Great Britain, but the intention is that national reference laboratories in Great Britain will carry out functions previously carried out by EURLs.

This also reflects the position set out in Article 34(2) of Regulation (EU) 2017/625 which applies in the absence of specific legislation governing the methods to be used for official laboratory sampling and analysis, and allows methods developed or recommended by EURL to be continued to be used by official laboratories in Great Britain.

Above you refer to Regulation 29(14); that is in fact **Regulation 21(14)**.

References to EU systems were removed because after the end of the Transition Period, we would no longer have access to those systems. In terms of replacements, from the plants perspective we have:

- Replaced Europhyt with our own national version across GB (it doesn't have a name yet!)
- We never used TRACES for plants as a general rule (only in a very small number of cases relating to transit/transhipments), we will therefore continue to use the existing national IT systems eDomero/PEACH (access to which has now been increased to include Scottish Government colleagues) for import notifications.
- eDomero will continue to be used for export health certificates
- The new systems IPAFFS & ECHO will replace eDomero later in the year.

Question 3

Model import certificates:

- ***Regulation 17(6)*** *replaces reference to EU model import certificates in 2019/628 with a reference to that 'published by the appropriate authority from time to time'. The rest of the regulation applies similar effects to other parts of the commission regulation.*
- ***Issues to clarify:***
  - *We have previously raised the concern that, despite the transition periods already agreed for use of new import certification, it is important for government to be clear what requirements will feature in new model certificates and the timescale within which they will be available as soon as possible.*
  - *It would also be helpful if the minister could provide an update on the development of the 'appropriate computerised information management system' referred to in sub clause (6)(b).*

Answer 3

Health certificates for imports into Great Britain have been developed and are being published on the government website. Amendments have been made to make them operable in Great Britain. There have been no changes in policy for third country imports. https://www.gov.uk/government/collections/health-certificates-for-animal-and-animal-product-imports-to-great-britain in November 2020. Each certificate has notes for guidance, giving the user information about the requirements.

This is a term used to refer to the new computerised imports system. The description of the system was used in legislation rather than the name given, in case this name is changed in the future.

Question 4

Removal of future compliance requirements:

- ***Regulation 19(3)(c)*** *inserts a new paragraph into article 3 of Commission Implementing Legislation 2019/1014 removing some requirements for border posts to have roofs where they did not have a roof when 2017/625 came into force. 19(4) then removes the EU article 10 requirement that all border posts be bought into compliance by December 2021.*
- ***Issues to clarify:***
  - *Although this is not an issue with direct environmental significance, it is another example of the removal of references to the development and improvement of laws with no clear*

reasoning beyond that the Withdrawal Act allows it. Why does the government not still agree that border posts where consumer goods are checked should be protected from the elements?

Answer 4

The amendment does not significantly change the requirements for border control posts in respect of plants, plant product and other objects provided in the EU version of Regulation 2019/1014. The exception for roof coverings applies to BCPs with areas without roof coverings for these types of product where those areas were constructed before 31st December 2020 and which did not have a roof at that point. That exception applies in the EU version of Regulation 2019/1014 in Article 10 and has been moved to Article 3 in order to remain open-ended, rather than coming within scope of an end date of 14th December 2021, after the end of the transition period. A further exception from the requirement for these areas to be easy to clean, have adequate drainage and adequate artificial or natural light has also been removed from Article 10 but not reinserted in Article 3, meaning that this exception no longer applies. These amendments reflect the need for the exceptions to work in relation to existing BCPs in Great Britain.

11 January 2021