

EXPLANATORY MEMORANDUM TO
THE EQUINE IDENTIFICATION (ENGLAND) (AMENDMENT) (EU EXIT)
REGULATIONS 2018

2018 No. 1409

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for the Environment, Food and Rural Affairs and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 Regulation 2 of these Regulations corrects errors in the Equine Identification (England) Regulations 2018 (S.I. 2018/761) (“the Equine ID Regulations”). Regulation 3 of these Regulations ensures that the English legislation, which implements and provides enforcement powers for EU law regarding equine identification, will continue to be operable in England after the UK leaves the EU. They also correct minor errors in the English law.

Explanations

- 2.2 The Equine ID Regulations supplement and make provision for the enforcement in England of Commission Implementing Regulation (EU) 2015/262 regarding the identification of equines.

What did any relevant EU law do before exit day?

- 2.3 Regulation (EU) 2015/262, which is retained EU law under the European Union (Withdrawal) Act 2018 (“the Act”) sets out much of the current system of equine identification that applies in EU and EEA member states.
- 2.4 Key features include single lifetime identification documents that identify individual equines, their markings (e.g. microchips and diagrams) and food chain eligibility. Regulation (EU) 2015/262 prescribes rules relating to the Central Equine Database.
- 2.5 The UK’s database holds much of the aforementioned information and is of particular use in maintaining high standards of equine biosecurity, effective enforcement, food safety, fraud prevention and equine welfare.

Why is it being changed?

- 2.6 Regulation 2 of these Regulations corrects errors in the Equine ID Regulations. Regulation 3 amends provisions in those Regulations which are inappropriate or redundant as a result of the exit of the United Kingdom from the European Union.
- 2.7 These Regulations do not amend retained direct EU law. Changes to retained direct EU law relevant to equine ID are being made under the Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018.
- 2.8 The changes made by Regulation 3 of these Regulations are those necessary to retain an effective system of equine identification in order to sustain biosecurity, equine

movements, food safety and welfare and primarily concern how the UK defines itself in domestic legislation once it is no longer a member state.

- 2.9 The Regulations have been drafted using the assumption of a ‘no deal’ EU Exit.

What will it now do?

- 2.10 These Regulations will ensure that equines continue to be identified both by way of a single lifetime document and Central Equine Database, and will maintain high standards of biosecurity, equine movements, food safety and welfare.
- 2.11 These Regulations will preserve existing provisions that enhance Commission Implementing Regulation (EU) 2015/262, such as the system of civil sanctions and insertion of microchips into all horses (by 2020) introduced by the Equine ID Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Equine Identification (England) (Amendment) (EU Exit) Regulations 2018 were presented to the Sifting Committees for consideration on 28 November 2018. On 5 December 2018 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in Parliament, though one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England.
- 4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 These Regulations amend the Equine Identification (England) Regulations 2018 (S.I. 2018/761) (“the Equine ID Regulations”).
- 6.2 The Equine ID Regulations supplement and make provision for the enforcement of Commission Implementing Regulation (EU) 2015/262 of 17 February 2015 laying down rules pursuant to Council Directives 90/427/EEC and 2009/156/EC as regards the methods for the identification of equidae (OJ No. L 59, 3.3.2015, p.1) in England.
- 6.3 Regulation 2 of these Regulations, made under section 2(2) of the European Communities Act 1972 (1972 c.68), corrects errors in the Equine ID Regulations.

- 6.4 Regulation 3 is made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) (in particular under section 8(1) to (3) and (6) of, and paragraph 21 of Schedule 7 to, that Act) in order to address failures to operate effectively and other deficiencies in the Equine ID Regulations arising from the withdrawal of the United Kingdom from the European Union.

7. Policy background

What is being done and why?

- 7.1 These Regulations do not implement new policy. Regulation 3 will ensure that, on the United Kingdom's exit from the EU, equines continue to be identified by way of a single lifetime document to underpin high standards in biosecurity, food safety and welfare.
- 7.2 This includes ensuring that the human food chain continues to be protected from potentially harmful substances that may be given to equines and continue existing arrangements for equines to travel to and from the UK.
- 7.3 Equine welfare is enforced by local authority Trading Standards and continuing the current robust identification requirements makes it easier to deal with cases of abandoned, lost or stolen equines.
- 7.4 The UK's Central Equine Database, established in accordance with Commission Implementing Regulation (EU) 2015/262, provides accurate, up to date information about equines, their owners and food chain eligibility and Regulation 3 of these Regulations ensures that the Database will continue to operate after the United Kingdom leaves the EU.
- 7.5 The amendments made by Regulation 2 of these Regulations correct errors in the Equine ID Regulations, some of which were identified by the Joint Committee on Statutory Instruments and some by the Department. The Department gave an assurance to the JCSI that these errors would be corrected at the first opportunity. These amendments are summarised below.
- 7.6 Paragraph (2) of Regulation 2 corrects the definition of "issuing body", to accommodate the possibility that an issuing body in the EU or in a devolved territory may have issued an identification document for an equine present in the United Kingdom. Paragraphs (3) and (5) of Regulation 2 remove an erroneously included duty, which had no corresponding sanction. Paragraph (4)(a) of regulation 2 corrects the heading to regulation 21 of the Equine ID Regulations. Paragraph (4)(b) inserts an EU law requirement accidentally omitted from regulation 21(1)(b), which implements a derogation permitted by Regulation (EU) 2015/262. Paragraph (6) corrects a typographical error in regulation 29, and paragraph (7) removes a superfluous reference.

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

- 8.1 Regulation 3 of 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 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 Regulation 2 of the instrument is being made under the powers conferred by section 2(2) of the European Communities Act 1972, as read with paragraph 1A of Schedule 2 to that Act.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 Devolved Administrations have been consulted and are content.

11. Guidance

- 11.1 Guidance amended as necessary to reflect these Regulations will be offered to UK Passport Issuing Organisations and local authority Trading Standards.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is minimal. Local authorities and the Food Standard Agency may need to update some references in their respective guidance relating to their implementation and enforcement procedures.
- 12.3 An Impact Assessment has not been prepared for this instrument because the total cost of the proposals falls below the £5 million de minimus requirement for Impact Assessments. These Regulations relate 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 To minimise the impact of the requirements on small businesses (employing up to 50 people) the approach taken is, wherever possible, to minimise the costs for business, especially small business. For example, by allowing owners until October 2020 to microchip older horses not already microchipped and continuing to provide derogation for semi-wild ponies. The UK's Central Equine Database is being further developed to enable small businesses access to their data for free and to flag any inaccuracies to their Passport Issuing Organisation. Since 2016, Government Data, Digital and Technology Services has been working with the UK's Passport Issuing Organisations, several of which are small businesses and the largest of which is within medium sized business parameters, to ensure a smooth transfer of data to the UK's Central Equine Database and in order to make it as easy as possible for these organisations to keep their data up to date.
- 13.3 The basis for the final decision on what action to take to assist small businesses was informed by public consultation undertaken between 16 May and 5 April 2017, ongoing discussion with representatives from the equine sector and a Regulatory Triage Assessment, which included an assessment of the equivalent annual net direct cost to business, often referred to as the EANDCB and undertaken before the Equine Identification (England) Regulations 2018 were laid.

14. Monitoring & review

- 14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.
- 14.2 However, certain reviews will be carried out, such as the one described in the Explanatory Memorandum to the Equine Identification (England) Regulations 2018 (S.I. 2018 No. 761) that describes a review of the impact and operation of UK Passport Issuing Organisations, local authorities and the Food Standards Agency (in the context of equine identification regulations) to be completed by no later than October 2023.

15. Contact

- 15.1 Queries may be directed to the Equine Identification Team at the Department for Environment, Food and Rural Affairs by telephone on 02080264133 or by email to Equine.Identification@defra.gsi.gov.uk.
- 15.2 Catherine Harrold, Deputy Director for Future Animal & Plant Health, Endemics & Traceability, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, 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 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), 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 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 SIs	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 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 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 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 amending regulations under 2(2) ECA 1972	Paragraph 16, 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 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. Sifting statement(s)

- 1.1 The Parliamentary Under Secretary of State for 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:

“In my view, The Equine Identification (England) (Amendment) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the Regulations relate to maintenance of existing regulatory standards and will not introduce new policy.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for 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:

“In my view The Equine Identification (England) (Amendment) (EU Exit) Regulations 2018 make appropriate use of the powers in the European Union (Withdrawal) Act 2018.”

- 2.2 This is because it is necessary to retain a robust system of equine identification that facilitates high standards of biosecurity, food safety and animal welfare and the movement of equines into and then through the EU with the minimum of disruption”.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for 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:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 As above, the primary reason is to retain a robust system of equine identification that facilitates high standards of biosecurity, food safety and animal welfare and the movement of equines into and then through the EU with the minimum of disruption.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has made the following statements:

“The Equine Identification (England) (Amendment) (EU Exit) Regulations 2018 do 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, the relevant Minister within the United Kingdom have had due regard for the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Little or no impact on equalities is expected.

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

6. Criminal offences

6.1 No **new** criminal offences are created. The offences in the original Equine Identification (England) Regulations 2018 are not affected **except** for the amendment to omit the duty at paragraph 17(3) and the exception to the corresponding offence from 24(4).

7. Legislative sub-delegation

7.1 Not applicable.

8. Urgency

8.1 Not applicable. These Regulations are subject to the negative procedure.

9. Section 2(2) of ECA 1972

9.1 Regulation 2 of these Regulations, made under section 2(2) of the European Communities Act 1972, corrects minor errors in the Equine ID Regulations. This is explained in the main body of this memorandum, at Section 7.5 and 7.6 under the heading “*What is being done and why?*”.