

EXPLANATORY MEMORANDUM TO
THE EQUINE IDENTIFICATION (ENGLAND) REGULATIONS 2018
2018 No. 761

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 Command of Her Majesty.

2. Purpose of the instrument

2.1 The aim of the Equine Identification Regulations is to improve the system of identification of equidae by implementing Commission Implementing Regulation (EU) 2015/262.

2.2 These Regulations ensure that the system of equine identification set out by (EU) 2015/262 functions effectively in England. This system includes individual identification documents, marking of equines by way of a transponder, and a central database. These Regulations make provisions in relation to these. They also set out a system of civil sanctions and criminal penalties for offences of breaching the EU Regulation or offences contrary to these Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Equine Identification (England) Regulations 2018 are introduced using powers conferred on the Secretary of State for the Department for Environment, Food and Rural Affairs by section 2(2) of the European Communities Act 1972.

4.2 These Regulations implement Commission Implementing Regulation (EU) 2015/262 of 17 February 2015, regarding the identification of equidae and known as the Equine Passport Regulation.

4.3 These Regulations revoke the Horse Passport Regulations 2009 which implemented Commission Regulation (EC) No 504/2008 of 6 June 2008. (EU) 2015/262 replaces (EC) No 504/2008.

4.4 These Regulations support the requirement that all equines moving in, to or through the EU must be identified in accordance with (EU) 2015/262 and that the human food chain is protected against animals treated with potentially harmful veterinary medicines.

- 4.5 These regulations administer and enforce (EU) 2015/262. Offences and penalties are set out in the Regulations. The Regulations confer on Local Authorities the ability to deal with breaches by way of civil sanctions and to recover the costs of so doing.
- 4.6 A person served a notice under Part 5 (enforcement and penalties) of these regulations has the right to an appeal. The procedural rules for the First-tier Tribunal are set out in SI 2009 no. 1976, The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. Regulation 22 of SI/2009/1976 prescribes that an appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal so that it is received within the time provided for the appeal in the notice and otherwise within 28 days of the date on which the notice was sent to the appellant.
- 4.7 A derogation for equines that are living semi-wild in derogated areas of Dartmoor, Exmoor, New Forest and Wicken Fen is included in these Regulations. This continues the use of the similar derogation under (EC) No 504/2008.
- 4.8 These Regulations come into effect on 1 October 2018 and, except where derogated above, together with (EU) 2015/262 have the effect that that all equines must be passported and microchipped by the implantation of a transponder by 1 October 2020.
- 4.9 A Transposition Note is not required because (EU) 2015/262 applies directly in Member States.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 Commission Implementing Regulation (EU) 2015/262 has been in force since 1 January 2016. The Equine Identification (England) Regulations 2018 implement (EU) 2015/262 in England.
- 7.2 The 2018 Regulations require the unique identification of all equines by way of passport. The 2018 Regulations require that all equines are microchipped regardless of age. Previously, only equines born after 2009 required a microchip. The new requirement in the 2018 Regulations for older equines to possess a microchip will be enforced from 1 October 2020.
- 7.3 The Regulations use a derogation for equines living semi-wild in the designated areas of Dartmoor, Exmoor, New Forest and Wicken Fen. These equines are exempt from the requirement for a passport or microchip until such time as they are moved out of the designated area, removed for slaughter or treated with any veterinary medicinal product. Equines younger than 12 months of age may be moved direct to slaughter without a passport if they have not been treated with veterinary medicinal products. In such cases, a rump sticker must be used. Equines older than 12 months of age may be

similarly moved direct to slaughter with a passport and a rump sticker. Provision has been made for temporary moves necessary for welfare purposes.

- 7.4 The rules for equine identification were previously administered and enforced under the Horse Passport Regulations 2009 which implemented the previous EU legislation: (EC) No 504/2008. The 2018 Regulations revoke those the 2009 Regulations.
- 7.5 The combination of the more robust identification requirements, the establishment of the UK's Central Equine Database and the availability of civil sanctions for breaches of these regulations will improve traceability during disease outbreaks as well as support appropriate resolution and enforcement in cases of loss, theft or lapses in welfare.

Consolidation

- 7.6 None.

8. Consultation outcome

- 8.1 The Department for Environment, Food and Rural Affairs ran a six week public consultation from 16 May to 5 April 2017.
- 8.2 The consultation document is published on GOV.UK at:
<https://consult.defra.gov.uk/equine-id/revised-eu-rules-on-equine-id-eu-reg-eu-2015-262/>.
- 8.3 The consultation outcome is publish on GOV.UK at:
<https://www.gov.uk/government/consultations/horse-identification-changes-to-regulations-in-england>.
- 8.4 230 responses in total were received to the consultation, in general in broad support and agreement to the proposals. A thorough examination of the issues raised during consultation is available in the abovementioned outcome document. A summary of key issues is included below.

Central Equine Database

- 8.5 Previously optional, (EU) 2015/262 requires that all Member States set up a Central Equine Database to “exchange and synchronise data” held by multiple Passport Issuing Organisations “with a view to provide not only the required animal health guarantees but also ... animal welfare and public health”.
- 8.6 Passport Issuing Organisations must provide information about the identification of equines to the Central Equine Database and ensure it is kept up to date. The maximum permissible delay is 15 days under (EU) 2015/262. The Equine Identification (England) Regulations 2018 shorten this to within 24 hours of a Passport Issuing Organisation creating or updating a record in its database. Hours are not counted on non-working days such as Saturday and Sunday.
- 8.7 169 responses were received to the open question posed in the consultation document. Careful consideration was given to the range of views expressed and the Regulations include a requirement that Passport Issuing Organisations update their records in the Central Equine Database within 24 hours. Government Data, Digital and Technology Services has been working to ensure this is as efficient as possible.

Semi-wild horses

- 8.8 The Horse Passport Regulations 2009 exempted horses living semi-wild in Dartmoor, New Forest, Exmoor and Wicken Fen from the requirement to be identified until such time as they are moved from these locations, enter domestic use, or receive medical treatment. The consultation proposed retaining this derogation in the Equine Identification (England) Regulations 2018.
- 8.9 226 responses were received. Of these, 65% agreed, 29% disagreed and 6% neither agreed nor disagreed.
- 8.10 The 2018 Regulations retain the derogation, in line with the views offered during consultation.

Microchipping

- 8.11 As a minimum, (EU) 2015/262 requires that all equines identified for the first time are microchipped, except where exempted because they are living in semi-wild conditions. The consultation proposed requiring all equines to be microchipped, except for those living semi-wild, in order to create a robust system of identification and a complete set of records within the Central Equine Database.
- 8.12 222 responses were received. 67% were in favour of all equines being microchipped, 30% opposed and 3% were neutral. Consultees generally recognised the advances anticipated from widespread microchipping especially in terms of establishing ownership, traceability and tackling problems such as loss, theft and welfare lapses.
- 8.13 The Regulations require that all equines, except derogated semi-wild ponies, are microchipped.
- 8.14 Older equines that are not already microchipped must have a chip inserted by 1 October 2020. This period of grace will give owners of older equines time to adapt as well as minimise the cost by coinciding the insertion of a microchip with a routine visit from a veterinary surgeon.
- 8.15 Whilst recognised as a rare event, the consultation asked whether consultees agreed that where a microchip has failed or migrated the owner should arrange for the insertion of a new one.
- 8.16 229 answers were received. 86% agreed, 11% disagreed and 3% were undecided. In line with the strong majority view of respondents, the Regulations require the re-microchipping of a horse where the original chip has failed or migrated.

Notifying Passport Issuing Organisations

- 8.17 In response to a question whether the owner should be legally responsible for reporting changes to an equine's identify, 230 responses were received. 69% agreed. 26% disagreed and 5% neither agreed nor disagreed. The Regulations require that the owner should report changes to a horse's identity.

Enforcement

- 8.18 In response to whether civil sanctions could improve compliance, 226 responses were received. 66% agreed, 18% disagreed and 16% neither agreed nor disagreed. In line with the majority of respondents civil sanctions are provided for in the Regulations.

9. Guidance

- 9.1 Defra intendeds to provide suitable guidance to local authorities and the Food Standards Agency that set out the changes brought about by the Equine Identification (England) Regulations 2018 compared to the revoked Horse Passport Regulations 2009. The Minimum Operating Standards for Passport Issuing Organisations will be updated in due course.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is comparatively small (<£1m).
- 10.2 The impact on the public sector is minimal. The CED was launched in March 2018 and Passport Issuing Organisations update their information within it. Local authorities and the Food Standard Agency have carried out enforcement activity for a number of years including under the Horse Passport Regulations 2009 that the Equine Identification (England) Regulations 2018 replace. The 2018 Regulations include civil sanctions as an alternative to prosecution that contain provisions for cost recovery.
- 10.3 An Impact Assessment has not been prepared for this instrument because the total cost of the proposals falls below the £5 million de minimis requirement.
- 10.4 A consultation stage Impact Assessment was prepared at the time, and can is available on GOV.UK at:
<https://consult.defra.gov.uk/equine-id/revised-eu-rules-on-equine-id-eu-reg-eu-2015-262/>.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 Wherever possible, the costs for business will be minimised, for example by allowing owners until October 2020 to microchip older horses not already microchipped and continuing to provide derogation for semi-wild ponies.
- 11.3 Passport Issuing Organisations such as breed societies will be required by this Regulation to upload the data they create or amend on their own databases to the new UK Central Equine Database. Government Data, Digital and Technology Services has been working with Passport Issuing Organisations since 2016 to ensure a smooth transfer of data to the Central Equine Database.

12. Monitoring & review

- 12.1 A review will be carried out and published no later than 1 October 2023 and subsequent reviews published at intervals no exceeding five years. The impact and operation of Passport Issuing Organisations, local authorities and the Food Standards Agency will be included in review alongside the best practicable assessment of the impact on business.

13. Contact

- 13.1 The Equine Identification Team at the Department for Environment, Food and Rural Affairs Tel: 0208 0264133 or email: Equine.Identification@defra.gsi.gov.uk can answer any queries regarding the instrument.