

Explanatory Memorandum to The Livestock (Records, Identification and Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Department of Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Livestock (Records, Identification and Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this memorandum.

LESLEY GRIFFITHS

Minister for Environment, Energy and Rural Affairs

24 JANUARY 2019

PART 1

1. Description

The instrument ensures that legislation applicable in Wales, which implements, and provides enforcement powers in respect of, EU legislation on the identification and registration of livestock, will continue to be operable in Wales after the United Kingdom leaves the European Union.

The Welsh Government wishes to retain the current high standards of traceability as provided for by EU legislation, as this underpins effective disease control.

The instrument comes into force on “exit day”, which section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) defines as 29 March 2019 at 11.00 pm.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 to the 2018 Act.

As set out in the Ministerial statement in Part 2 of the Annex to this memorandum, it is proposed that the instrument be subject to the negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

The Constitutional and Legislative Affairs Committee considered the regulations for sifting on 14 January 2019 and approved that the “appropriate procedure for these Regulations is the negative resolution procedure.” It is, therefore, confirmed that the instrument will follow the negative procedure. A copy of the Committee’s report can be found [here](#).

3. Legislative background

The instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 to the 2018 Act 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

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

Controls on identification and registration of cattle are set out in:

- Commission Regulation (EC) 494/1998 laying down detailed rules for the implementation of Regulation (EC) 820/97;
- Commission Regulation (EC) 509/1999 concerning an extension on the maximum period laid down for the application of ear-tags to Bison;
- Council Regulation (EC) 1760/2000 establishing a system for the identification and registration of bovine animals;
- Commission Regulation (EC) 1082/2003 laying down detailed rules for the implementation of Regulation (EC) 1760/2000;
- Commission Regulation (EC) 911/2004 implementing Regulation (EC) 1760/2000 as regards eartags, passports and holding registers;
- Commission Regulation (EC) 644/2005 authorising a special identification system for bovine animals kept for cultural and historical purposes; and
- Commission Implementing Regulation 2017/949 laying down rules for the application of Regulation (EC) 1760/2000.

The controls are enforced in Wales by the Cattle Identification (Wales) Regulation 2007 (“the 2007 Regulations”).

The Pigs (Records, Identification and Movement) (Wales) Order 2011 (“the 2011 Order”) implements into the law applicable in Wales the requirements in relation to the identification and registration of pigs set out in Council Directive 2008/71/EC and Council Directive 64/432/EEC.

Controls on the identification and registration of sheep and goats are set out in Council Regulation (EC) 21/2004 establishing a system for the identification and registration of ovine and caprine animals and Commission Regulation (EC) 1505/2006 implementing Council Regulation (EC) 21/2004. The controls are enforced in Wales by the Sheep and Goats (Records, Identification and Movement) (Wales) Order 2015 (“the 2015 Order”).

The EU law ensures that bovines, pigs, sheep and goats are traceable for the purposes of disease control. The domestic law sets out how these species must be identified, what records their keepers must maintain, how they must report their animals’ movements, and how central competent authorities must record this information on central databases.

Why is it being changed?

Minor and technical changes to the 2007 Regulations, the 2011 Order and the 2015 Order are necessary to ensure that the relevant law continues to operate effectively after exit day. Such changes include:

- the replacement of references to provisions in retained EU law where the provision in question has been omitted by the Livestock (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018 - which in turn results in a change to the definition of “cattle passport” in regulation 2(1) of the 2007 Regulations;
- the omission of the provision in paragraph 8 of Schedule 1 to the 2007 Regulations, which established that it is an offence to consign an animal

- for intra-Community trade unless it is tagged in each ear with an ear tag approved by the Welsh Ministers in accordance with Article 4(1) of Regulation (EC) 1760/2000;
- the omission of references to the European Commission which will no longer be relevant after exit day; the omission of references to “intra-Community trade”; and amendments which correct references which are characterised by their inclusion of Wales as a constituent nation of a “Member State”, or, likewise, by the exclusion of Wales from the ambit of a “third country”.

What will it now do?

The instrument will ensure that legislation that underpins the traceability of livestock continues to operate effectively in the UK after we leave the EU.

5. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

An RIA has not been prepared for this instrument because there are no significant impacts on businesses.

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 of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p>	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Livestock (Records, Identification and Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because this instrument addresses only technical deficiencies in the law that will arise from withdrawal.”

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Livestock (Records, Identification and Movement) (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because the instrument makes only minor and technical amendments to domestic legislation to ensure that it remains operative following the withdrawal of the United Kingdom from the European Union.”

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths 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”. These are summarised in Section 4 of the Explanatory Memorandum.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement(s) “The instrument 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.

4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.3 “In relation to the instrument, I, Minister for Environment, Energy and Rural Affairs, Lesley Griffiths 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.”.

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.