

EXPLANATORY MEMORANDUM TO
THE ANIMAL HEALTH AND WELFARE (MISCELLANEOUS AMENDMENTS)
(ENGLAND) (EU EXIT) REGULATIONS 2018

2018 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Committees on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 The Animal Health and Welfare (Miscellaneous Amendments) (England) (EU Exit) Regulations 2018 ensures that the English legislation, which implements EU Directives protecting the health and welfare of animals on-farm and the registration of establishments with laying hens, will continue to be operable in England after the UK leaves the EU. The instrument also ensures that the English legislation, which provides enforcement powers and in some cases stricter national rules, for the EU Regulations protecting the welfare of animals at the time of killing and the welfare of animals during transport will continue to be operable and enforceable in England after the UK leaves the EU.

2.2 Explanations

What did any relevant EU law do before exit day?

The Registration of Establishments (Laying Hens) (England) Regulations 2003 implemented into English law the requirements in relation to the registration of establishments with laying hens, which were set out in Directive 2002/4/EC.

Directive 2002/4/EC specifies registration requirements for establishments in the European Union which are covered by Directive 1999/74. Directive 1999/74 applies to all establishments keeping laying hens other than those with fewer than 350 laying hens or establishments that only rear breeding laying hens. Directive 1999/74 sets the minimum welfare standards required in the EU for the protection of laying hens.

Directive 2002/4/EC requires member states to establish a system for registering establishments caught by Directive 1999/74 and assigning each a unique identification number. Member States are required to ensure that this register is accessible to the relevant competent authority in that Member State for the purposes of tracing eggs put on the market for human consumption.

The distinguishing number under Directive 2002/4/EC was also required to specify the farming method used for the eggs and the Member State of registration. The farming methods and the corresponding numbers to be used in the unique number are defined in Regulation (EC) No 589/2008. Regulation (EC) No 589/2008, which lays

down rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs, defines the farming methods as: 1: for free range eggs, 2: for barn eggs; and 3: for cage laid eggs. In addition, Regulation (EC) No 834/2007 sets out requirements for organic egg production and the corresponding farming method code for organic production is 0.

The Registration of Establishments (Laying Hens) (England) Regulations 2003 implemented these requirements in England. It places an obligation on the Secretary of State to establish such a register and assign unique identification numbers to establishments meeting the requirements of Directive 1999/74 in England.

The Welfare of Animals (Transport) (England) Order 2006 implements and provides enforcement powers in relation to Regulation (EC) No. 1/2005 on the protection of animals during transport and related operations. Regulation (EC) No. 1/2005 applies to the transport of live vertebrate animals carried out within the Community and includes specific checks which are to be carried out by officials on consignments of animals entering or leaving the customs territory of the Community. It also includes several derogations to Regulation (EC) No. 1/2005 that apply to England only.

The Welfare of Farmed Animals (England) Regulations 2007 transposes several EU Directives relating to the welfare of farm animals into English law. These Directives are:

- a) Directive 91/630/EEC, Directive 2001/88/EC and Directive 2001/93/EC which all related to the welfare of pigs. These Directives were repealed and consolidated in 2008 by Directive 2008/120/EC. Directive 2008/120/EC specifies the minimum standards required for pig production in the EU.
- b) Directive 2007/43/EC which specifies the minimum requirements for the welfare of conventional meat chickens in the EU, including the maximum permitted stocking densities.
- c) Directive 1999/74/EC which sets out specific minimum requirements for the welfare of laying hens in the EU for different permitted production systems.
- d) Directive 91/629/EEC, Directive 97/2/EC and Directive 97/182/EC in relation to calve welfare. These Directives were repealed and consolidated in 2008 by Directive 2008/119/EC which sets out specific minimum requirements for the keeping of calves. These include the prohibition of individual veal crates, the tethering of calves and the requirement for roughage to be provided in their diet.

The Welfare of Farmed Animals (England) Regulation also transposed the requirements of Directive 98/58/EC, which formed the framework directive for farm animal welfare in the EU. Directive 98/58/EC sets out minimum essential requirements for all farmed livestock, irrespective of the species.

The Welfare of Animals at the Time of Killing (England) Regulations 2015 implements and provides enforcement powers in England for the requirements of Regulation (EC) 1099/2009 on the protection of animals at the time of killing. Regulation (EC) 1099/2009 specifies the accepted method of killing and stunning for animals in the EU. The Welfare of Animals at the Time of Killing (England) Regulation 2015 includes these standards but it also includes several stricter national

rules and higher welfare standards which apply to England only and includes provisions relating to the religious slaughter of animals in England.

Why is it being changed?

The changes made by the instrument are necessary to ensure that the current legislation continues to operate effectively after we leave the EU. It also introduces a policy change in relation to certificates of competence for slaughtermen that is required as a consequence of leaving the EU.

The instrument amends the Registration of Establishments (Laying Hens) (England) Regulations 2003 to ensure that the provisions relating the system of registration continue to be operable post exit. These amendments make no material changes to the requirements of the Registration of Establishments (Laying Hens) (England) Regulations 2003.

For the Welfare of Animals (Transport) (England) Order 2006 the instrument makes a small change to Article 20 to ensure the Secretary of State can continue to define competent authorities under the welfare at transport legislation after exit day. It also removes an interpretation provision which would otherwise prevent any amendments made to Council Regulation (EC) No 1/2005, required by the UK leaving the EU, applying to the Order after exit. These amendments will make no material change to the requirements of the Order.

The instrument makes a small amendment to the Welfare of Farmed Animals (England) Regulations 2007, to ensure that an existing cross reference to Directive 96/22/EEC in Schedule 1 will continue to work after exit. This will make no material changes to the requirements of the Regulations.

For the Welfare of Animals at the Time of Killing (England) Regulations 2015 the instrument makes technical amendments to remove references to Member States and European Commission officials. As well as these technical changes to ensure operability of the Regulation after exit, the instrument also introduces a policy change. Currently, certificates of competence, issued to slaughtermen by other Member States, must be recognised in the UK. Certificates of competence are required by slaughterhouses in the EU to evidence that an individual has been trained and successfully assessed as reaching a sufficient level of competence to undertake the animal handling, stunning and killing and related operations required of them. The amendments made to regulations 11 and 19 of the Welfare of Animals at the Time of Killing (England) Regulations 2015 remove this mutual recognition requirement.

The European Commission has already confirmed that certificates of competence issued in the UK will not be recognised in other Member States after the UK has left the EU. Continued recognition of certificates issued in other Member States would also open up enforcement problems after we leave as we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterman breached the requirements of the Welfare of Animals at the Time of Killing (England) Regulations 2015. Other than the removal of mutual recognition the changes made by this instrument make no material changes to the requirements of these Regulations.

What will it now do?

The instrument will ensure that English law, which implements current EU requirements for the registration of laying hen establishments, the welfare of animals

on-farm, the welfare of animals during transport and the welfare of animals at the time of killing remain effective in England after we leave the EU. It will also end the mutual recognition of certificates of competence issued in other Member States in relation to Regulation 1099/2009.

3. Matters of special interest to Parliament

Matters of special interest to the Committees on the UK's exit from the European Union

- 3.1 The instrument is being laid for sifting to the European Union (Withdrawal) Act 2018 by the ESIC and SLSC.

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 and Wales.
4.2 The territorial application of this instrument is England only.

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 The key legislative context for the instrument is set out at paragraph 2.2 above.
- 6.2 In addition to this instrument the Department will also introduce several other instruments as part of the exit process, which interact with the legislation amended by this instrument. These instruments will cover several areas related to animal welfare and will, for example: amend the out of date references in the Welfare of Farmed Animals (England) Regulations 2007; will transfer functions of the European Commission under the various Directives relating to farm animal welfare to the Secretary of State where appropriate; and will make amendments needed to the EU Regulations on welfare at the time of killing and welfare at transport to ensure that they function effectively after we leave the EU.
- 6.3 The Registration of Establishments (Laying Hens) (England) Regulations 2007 and the Welfare of Animals at the Time of Killing (England) Regulations were made using powers in section 2(2) of the European Communities Act 1972. The Welfare of Animals (Transport) (England) Order 2006 was made in exercise of powers under the Animal Health Act 1981. The Welfare of Farm Animals (England) Regulations 2007 were made using powers under the Animal Welfare Act 2006.
- 6.4 Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU. The instrument is made in exercise of these powers.

7. Policy background

What is being done and why?

- 7.1 The Government shares the British public's high regards for animal welfare and plans to retain the current standards set out in EU legislation and EU derived domestic regulations that protect the health and welfare of animals on-farm, the welfare of animals during transport, the welfare of animals at the time of killing and the system of registration for laying hen establishments and the system of registration for laying hen establishments when the UK leaves the EU.

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

- 8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of English legislation which implements requirements of EU law or which provides enforcement powers for 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

9. Consolidation

- 9.1 Not applicable to this instrument.

10. Consultation outcome

- 10.1 The Scottish, Welsh and Northern Irish devolved administrations have been consulted about the proposed amendments. There has been no other consultation.

11. Guidance

- 11.1 There is no associated guidance.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is minimal.
- 12.2 This instrument will end mutual recognition of certificates of competence that have been issued in respect of Regulation (EC) 1099/2009 on the protection of animals at the time of killing in another Member State. As a result a very limited number of slaughterhouse employees will need to apply for a certificate of competence issued by a competent authority in the UK in order to be able to continue to work in England from exit day. Doing so will cause these individuals to incur a cost. Applying and being assessed for a certificate of competence in the UK carries a cost (of around £225). We understand that less than 200 individuals in England will be affected in this way.
- 12.3 The impact on the public sector is minimal. There will be no change to monitoring and enforcement requirements.
- 12.4 An Impact Assessment has not been prepared for this instrument as there are limited impacts on business and no significant impacts on the public sector.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses. This measure does not introduce duties or burdens on business, other than the limited number of individuals who will need to apply for a new UK certificate of competence. Businesses will not need to change their current practices as a result of the instrument.

14. Monitoring & review

- 14.1 No specific monitoring arrangements are needed.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Richard Aram at the Department for the Environment, Food and Rural Affairs
Telephone: 0208 0263936 or email: animal.welfare@defra.gsi.gov.uk can answer any queries regarding the instrument.
- 15.2 Marc Casale at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner at the Department for the Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

Annex [x]

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/ESIC |
| 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 | Sub-paragraphs (3) and (7) | Ministers of the Crown | Set out the 'good reasons' for creating a |

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|---|-----------------------------|---|--|
| offences | of paragraph 28, Schedule 7 | exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | 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 Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 “In my view the Animal Health and Welfare (Miscellaneous Amendments) (England) (EU Exit) Regulations 2018 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure). This is the case because this instrument addresses technical deficiencies in EU derived United Kingdom legislation that will arise from withdrawal.”

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, 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 Animal Health and Welfare (Miscellaneous Amendments) (England) (EU Exit) Regulations 2018 does no more than is appropriate”. This is the case because: the instrument largely corrects technical deficiencies that will arise from withdrawal and ensures that the existing regimes for the registration of laying hen establishments, welfare of farm animals, the welfare of animals at transport and the welfare of animals at the time of killing will continue to operate effectively, in England, once we leave the EU. This is in line with government policy. Ending mutual recognition of certificates of competence issued in another Member State and requiring them to apply for a UK certificate of competence in order to continue to operate in England will ensure we have the ability to suspend or revoke these certificates in the event that animal handlers or slaughtermen are found to be in breach of animal welfare requirements.

3. Good reasons

3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, 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”. These are: that there is real public concern about the welfare of animals and that the government should at least maintain the protections that currently exist. The public would also expect us to be able to take enforcement action against slaughtermen in England that are in breach of the animal welfare legislation, for example by having the ability to suspend or revoke their certificate of competence that enables them to operate in a slaughterhouse.”

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement:

“This 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 Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lord Gardiner of Kimble, 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. As this instrument does not make a substantive change to existing law 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.