

EXPLANATORY MEMORANDUM TO

THE ANIMAL BREEDING (AMENDMENT) (EU EXIT) REGULATIONS 2018

[2018] No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Department for the Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the sifting committees.

2. Purpose of the instrument

- 2.1 This instrument will ensure that retained direct EU legislation animal breeding legislation remains operable after we leave the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 EU Regulation 2016/1012 (‘the Regulation’) and related retained direct EU Regulations prescribe what pedigree breeding businesses have to do and the rules/conditions that need to be followed in order to become ‘officially recognised’ to take part in zootechnical trade. It also prescribes the activities which should be carried out to satisfy the zootechnical criteria (called a ‘breeding programme’ in the Regulation).
- 2.3 The Regulation and the wider zootechnical regime seek to facilitate trade in live breeding pedigree animals and germinal products such as semen and embryos, and support the integrity of genetic resources. They do this by promoting high standards of production and record keeping across all participating territories and ensuring equality of treatment for purebred breeding animals (and germinal products) between businesses in different territories. The zootechnical regime applies only to bovine, ovine, porcine, caprine and equine species.

Why is it being changed?

- 2.4 After EU Exit, direct retained legislation in the field of zootechnics will not function correctly. This instrument therefore uses powers in the European Union (Withdrawal) Act 2018 to address this. This will provide certainty for stakeholders.
- 2.5 This instrument will ensure that UK zootechnical legislation continues to be aligned with EU requirements in force at the date of EU exit, providing certainty for businesses operating in the field. A number of technical changes are made: for example, the removal of references to oversight by the Commission. It will also amend references to the Union and ‘Member State’ so that the reference is to the UK, the appropriate authority, or the constituent territories of the United Kingdom (which means England, Scotland, Wales, and N. Ireland). Zootechnical policy is not being changed by this instrument.

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 This instrument is being laid for sifting under the European Union (Withdrawal) Act 2018.

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 this 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 the UK.
4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Most retained direct EU and EU-derived domestic legislation will continue to apply after the UK leaves the UK, becoming retained EU law by virtue of the European Union (Withdrawal) Act 2018. This instrument ensures that retained EU legislation will continue to function in the UK after EU exit.
- 6.2 The EU zootechnical legislation amended by this instrument currently facilitates the trade of pedigree animals and germinal products (including semen and embryos) and applies to bovine, equine, porcine, ovine and caprine species. It does this by setting out requirements and the standards to which breed societies and others must adhere. The current legislation also seeks to protect genetic resource by encouraging sustainable breeding programmes.

7. Policy background

What is being done and why?

- 7.1 No change is being made to policy. The policy objective is to ensure the existing zootechnical regime continues to apply in the UK when it leaves the EU. This objective can be achieved by rolling over existing EU legislation into UK law, as explained in section 2, above. For example, the EU Commission currently maintain a list of third country breeding bodies, and decide which bodies appear on the list. The Commission also exercises controls in the UK (to check that enforcement of the Regulation is effective). These decisions and powers will instead be exercised by the appropriate authority in each of the territories of the UK.
- 7.2 Some technical changes are made under this instrument, for example, in order to give UK authorities the necessary powers to recognise third country operators in the UK, and to work with the EU Commission to provide assistance.

- 7.3 To properly administer the continuing zootechnical regime once the UK leaves the EU, the appropriate ministers will need additional powers which are currently exercised by the EU Commission. These powers (to create delegated legislation) will be created in separate legislation, to follow the laying of this instrument, which will be subject to the affirmative procedure.
- 7.4 As there is no change in policy, there is no impact on businesses. It is legally important to make the changes in order to ensure that directly applicable zootechnical legislation can continue to be enforced and operable on withdrawal of the United Kingdom from the European Union.
- 7.5 The UK will not charge breed societies or breeding businesses any fees to participate in the Zootech regime or for the purposes of checking compliance with the rules. For this reason, and because there is no existing UK fee regime, it is considered that the omission of a provision which could potentially relate to fees (Article 47(4) of Regulation (EU) 2016/1012) should not attract the affirmative procedure.

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 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.

9. Consolidation

- 9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

- 10.1 This instrument and the policy reflected in it have been developed in collaboration with Devolved Administration officials.
- 10.2 No separate, additional consultation exercise was conducted as this instrument makes technical amendments whose purpose is to maintain continuity of approach in the context of the UK leaving the EU; it does not change the substantive policy.

11. Guidance

- 11.1 A Technical Notice has been published on the gov.uk website:
<https://www.gov.uk/government/publications/breeding-animals-if-theres-no-brexit-deal/breeding-animals-if-theres-no-brexit-deal>.

12. Impact

- 12.1 There is no, or no significant impact on business, charities or voluntary bodies.
- 12.2 UK authorities will remain responsible for recognising and approving zootechnical operations in the UK, who will continue to follow the current standards.

- 12.3 There is no, or no significant impact on the public sector.
- 12.4 Agricultural trade with the EU in regards to zootechnical products would depend on the arrangement decided with the EU, which is outside of the scope of this SI. The amendments to the Regulations are intended to simply carry over EU legislation.
- 12.5 An Impact Assessment has not been prepared for this instrument as there is expected to be no significant impact on business (over £5m per annum) as a direct result of this instrument. This is because it relates to the maintenance of existing legislation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No disproportionate impacts are expected to affect small and micro businesses. The government will work with small businesses and other relevant bodies to ensure that any future changes are communicated to stakeholders as early as possible.

14. Monitoring & review

- 14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required. Defra and its agencies will monitor the operation of this instrument and review the impact of the instrument as part of its standard policy making procedures, and will ensure that the provisions are adhered to.

15. Contact

- 15.1 Garreth Dunstall at the Department for Environment, Food and Rural Affairs, telephone: 020 802 60180 or email: garreth.dunstall@defra.gsi.gov.uk may be contacted with any queries regarding the instrument.
- 15.2 Tim Mordan, Deputy Director at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 George Eustice MP, Minister of State at the Department for Environment, Food and Rural Affairs 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 Minister of State for Agriculture, Fisheries and Food, George Eustice MP, and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view The Animal Breeding (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)”.
- 1.3 This is the case because the contents of the instrument are not of such significance that Parliament would expect to debate it. The amendments to retained direct EU legislation are the minimum required to make the legislation operable and are not significant in that they maintain current regulatory standards. No criminal offences are created as a result of this instrument, and it confers no powers to create tertiary legislation.

2. Appropriateness statement

- 2.1 The Minister of State at the Department for Environment, Food and Rural Affairs, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view The Animal Breeding (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate”.
- 2.3 This is the case because the amendments to retained direct EU legislation and domestic legislation are the minimum required to make the legislation operable. For example, the instrument simply replaces EU decision making institutions with domestic bodies and does not change the substance of those decisions.

3. Good reasons

- 3.1 The Minister of State at the Department for Environment, Food and Rural Affairs, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.3 These are to ensure UK businesses can continue to take part in zootechnical trade, by providing a valid statutory basis in UK law. This means that any references to EU institutions are replaced with references to domestic institutions and zootech decision making is repatriated as per paragraph 2.4 of the main body of this explanatory memorandum.

4. Equalities

4.1 The Minister of State at the Department for Environment, Food and Rural Affairs, George Eustice MP, M has made the following statement:

4.2 “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”.

4.3 The Minister of State at the Department for Environment, Food and Rural Affairs, George Eustice MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.4 “In relation to The Animal Breeding (Amendment) (EU Exit) Regulations 2018, I George Eustice MP 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

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