

EXPLANATORY MEMORANDUM TO
THE LIVESTOCK (RECORDS, IDENTIFICATION AND MOVEMENT)
(AMENDMENT) (NORTHERN IRELAND) (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 Act.
- 1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

- 2.1 The instrument ensures that the Northern Ireland legislation which implements and provides enforcement powers for EU legislation on the recording, identification and movement of livestock will continue to be operable in Northern Ireland after the UK leaves the EU.

Explanations

What did any relevant EU law do before exit day?

- 2.2 EU law ensures that cattle, sheep, goats and pigs are traceable and identifiable. It also sets out the requirements for the keeping of the relevant records by keepers and competent authorities in Member States. There are a number of EU instruments which set out the controls on identification and registration of cattle namely;

- 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 supported and enforced in Northern Ireland by the following legislation;

- Cattle Identification (Enforcement) Regulations (Northern Ireland) 1998;
- Cattle Identification (No.2) Regulations (Northern Ireland) 1998;

- Cattle Identification (Notification of Births, Deaths and Movements) Regulations (Northern Ireland) 1999; and
 - Cattle Passport Regulations (Northern Ireland) 1999.
- 2.3. Council Regulation (EC) No.21/2004 establishes a system for the identification and registration of sheep and goats. This is supported and enforced in Northern Ireland by the Sheep and Goats (Records, Identification and Movement) Order (Northern Ireland) 2009.
- 2.4. Controls on the identification and registration of pigs are set out in Council Directive 2008/81/EC and Council Directive 64/432/EEC. These are implemented and enforced in Northern Ireland by the Pigs (Records, Identification and Movement) Order (Northern Ireland) 2012.

Why is it being changed?

- 2.5. The amendments are necessary to correct minor deficiencies and, thereby, ensure the operability of the Northern Ireland legislation referred to in paragraphs 2.2 to 2.4 above to ensure that it continues to allow for the effective identification and traceability of livestock following withdrawal from the EU.

What will it now do?

- 2.6. The corrections to the Northern Ireland legislation referred to in paragraph 2.2 to 2.4 above will allow it to be operable once the UK leaves the EU.

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 by the Sifting Committees.

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 Northern Ireland.
- 4.2. The territorial application of this instrument is Northern Ireland.

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 legislative context for the instrument is set out at paragraph 2.2 to 2.4 above. The listed Northern Ireland legislation on cattle identification legislation was made under section 2(2) of the European Communities Act 1972 whilst the listed Northern Ireland

legislation on the identification of pigs, sheep and goats was made under the Diseases of Animals (Northern Ireland) Order 1981.

- 6.2 In addition to this instrument, the Department has introduced other instruments as part of the exit process which will interact with the legislation amended by this instrument.
- 6.3 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 UK from the EU. The instrument is made in exercise of these powers.

7. Policy background

What is being done and why?

- 7.1 This instrument applies to the traceability of livestock which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. The UK Government remains committed to restoring devolution in Northern Ireland. This is particularly important in the context of EU Exit where we want devolved Ministers to take the necessary actions to prepare Northern Ireland for exit. We have been considering how to ensure a functioning statute book across the UK including in Northern Ireland in the absence of a Northern Ireland Executive. With exit day less than one year away, and in the continued absence of a Northern Ireland Executive, the window to prepare Northern Ireland's statute book for exit is narrowing. UK Government Ministers have therefore decided that in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.
- 7.2 The existing EU derived Northern Ireland legislation sets out controls and measures that ensure traceability of livestock. This instrument will amend references in that legislation to terms that are predicated on UK Membership of the EU such as references to 'another member State' and 'intra-Community trade' and it will remove the power of inspectors to bring along EU officials to inspections.
- 7.3 The instrument removes the current legislative requirement that a passport must accompany all imports and exports of live cattle to and from the EU. The requirement for a passport to accompany cattle moved out of Northern Ireland to Great Britain and the Crown Dependencies will remain following departure.
- 7.4 The amendments made by this instrument are necessary to ensure the continuance in Northern Ireland of an effective and efficient livestock identification and traceability system which protects public health.

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 None.

10. Consultation outcome

10.1 The devolved administration in Northern Ireland has been consulted about this instrument. Given its technical nature, no public consultation was considered necessary.

11. Guidance

11.1 There is no guidance being issued.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 There is no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there are no significant impacts on business or the public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 This measure does not introduce duties or burdens on business.

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 Naomi Callaghan at the Department of Agriculture, Environment and Rural Affairs: Telephone: 02877442159 or email: Naomi.Callaghan@daera-ni.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jackie Robinson at the Department of Agriculture, Environment and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner of Kimble 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
Appropriateness	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 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 Livestock (Records, Identification and Movement) (Amendment) (Northern Ireland) (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 this instrument addresses only technical deficiencies in the EU derived Northern Ireland 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 Livestock (Records, Identification and Movement) (Amendment) (Northern Ireland) (EU Exit) Regulations 2018 do no more than is appropriate.”

- 2.2 This is the case because the instrument makes only minor and technical amendments to the EU derived Northern Ireland legislation to ensure that it remains operative following the withdrawal of the United Kingdom from the European Union.”

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”.

- 3.2 These are the necessity to ensure the continuance in Northern Ireland of an effective and efficient livestock identification and traceability system which protects public health.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, 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 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 Livestock (Records, Identification and Movement) (Amendment) (Northern Ireland) (EU Exit) Regulations 2018, 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”.

- 4.3 Given the subject matter of the instruments being amended and the technical nature of this instrument, no opportunities to advance the matters set out in section 149 (1) of the Equality Act 2010 arise.