

**EXPLANATORY MEMORANDUM TO**  
**THE LIVESTOCK (RECORDS, IDENTIFICATION AND MOVEMENT)**  
**(ENGLAND) (AMENDMENT) (EU EXIT) REGULATIONS 2018**

**2018 No. 1238**

**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 Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 To ensure that legislation which implements and provides enforcement powers for EU legislation on the identification and registration of livestock will continue to be operable in England after the UK leaves the EU.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 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 domestically by the Cattle Identification Regulations 2007.

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 domestically by the Sheep and Goats (Records, Identification and Movement) Order 2009.

The Pigs (Records, Identification and Movement) Order 2011 implemented into English law 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.

The EU law ensures that cattle, sheep, goats and pigs are traceable and identifiable, sets out what records their keepers must maintain and how competent authorities must record this information on central databases.

Why is it being changed?

- 2.3 This instrument makes minor and technical changes to domestic legislation referred to in paragraph 2.2 above to ensure that it functions correctly after the UK has left the EU. It addresses deficiencies that will arise in that legislation arising from EU exit.

What will it now do?

- 2.4 The corrections to the domestic legislation referred to in paragraph 2.3 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 Joint Committee on Statutory Instruments*

- 3.1 The Livestock (Records, Identification and Movement) (England) (Amendment) (EU Exit) Regulations 2018 were presented to the Sifting Committees for consideration on 31st October 2018. On 13th November 2018 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in parliament, though one may still occur. The instrument will therefore remain subject to the negative resolution procedure.

*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 legislative context for the instrument is set out at paragraph 2.2 above.  
6.2 In addition to the instrument which is the subject of this memorandum the Department will also introduce another related instrument as part of the exit process This will amend the EU law which will become retained EU law to ensure it operates effectively after withdrawal.

### **7. Policy background**

*What is being done and why?*

- 7.1 The existing EU derived English legislation sets out controls that underpin the traceability of livestock which is vital for disease control. This instrument addresses deficiencies arising in that legislation arising from EU exit to allow it to continue to operate effectively.

7.2 Examples of the deficiencies corrected are that it clarifies the definition of a ‘Cattle Passport’ and what happens to this document when an animal is exported from England to outside of the UK post EU exit, it removes the obligation to allow for a representative of the EU Commission to attend on-farm compliance inspections and it deletes the reference to reviewing the implementation of EU legislation in EU Member states from the standard five yearly review clauses in the domestic SIs.

## **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 Scottish, Welsh and Northern Irish devolved administrations have been consulted about this proposed instrument. No consultation with industry or other stakeholders is required.

## **11. Guidance**

11.1 There is no associated guidance.

## **12. Impact**

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

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

12.3 An Impact Assessment has not been prepared for this instrument as 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. 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 Patrick Brophy at the Department for Environment, Food and Rural Affairs Telephone: 020 8026 3834 or email: [patrick.brophy@defra.gsi.gov.uk](mailto:patrick.brophy@defra.gsi.gov.uk) can be contacted with any queries regarding the instrument.

- 15.2 Catherine Harrold at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, 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
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.

<b>Statement</b>	<b>Where the requirement sits</b>	<b>To whom it applies</b>	<b>What it requires</b>
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) (England) (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). This is the case because: this instrument addresses only technical deficiencies in the EU derived English legislation referred to in paragraph 2 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) (England) (Amendment) (EU Exit) Regulations 2018 does no more than is appropriate. This is the case because: the instrument makes only minor and technical amendments to the EU derived English 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 summarised in Section 7.1 of the Explanatory Memorandum.

#### 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) (England) (Amendment) (EU Exit) Regulations 2018 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 any 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.