

**EXPLANATORY MEMORANDUM TO**  
**THE ANIMAL HEALTH AND WELFARE (AMENDMENT) (NORTHERN**  
**IRELAND) (EU EXIT) REGULATIONS 2019**

**2019 No. 158**

**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 Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The instrument ensures that the Northern Ireland legislation which implements EU Directives protecting the welfare of animals on-farm and the registration of establishments with laying hens will continue to be operable in Northern Ireland after the UK leaves the EU. It also ensures that the Northern Ireland legislation which provides enforcement powers (and, in some cases, stricter national rules) to support EU Regulations on the protection of the welfare of animals at the time of killing and during transport will continue to be operable and enforceable in Northern Ireland after the UK leaves the EU.

*Explanations*

What did any relevant EU law do before exit day?

- 2.2 Directive 2002/4/EC specifies registration requirements for hen laying establishments in the EU 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 and 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 assign 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.
- 2.3 The distinguishing identification number under Directive 2002/4/EC is 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 lays down rules for implementing Council Regulation (EC) No. 1234/2007 as regards marketing standards for eggs and 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.
- 2.4 The Registration of Establishments (Laying Hens) Regulations (Northern Ireland) 2003 implemented into Northern Ireland law the requirements set out in Directive

2002/4/EC. It places an obligation on the Department to establish a register and assign unique identification numbers to establishments in Northern Ireland to meet the requirements of Directive 1999/74.

2.5 Regulation (EC) No. 1/2005 applies to the transport of live vertebrate animals carried out within the EU and sets out specific checks which are to be carried out by officials on consignments of animals entering or leaving the customs territory of the EU. It also includes several derogations to Regulation (EC) No. 1/2005 that apply to Northern Ireland only. It is implemented in Northern Ireland by the Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 which provides the necessary enforcement powers in respect of the protection of animals during transport and related operations.

2.6 There are several EU Directives relating to the welfare of farm animals, namely;

- Directive 2008/120/EC (which repealed and consolidated Directive 91/630/EEC, Directive 2001/88/EC and Directive 2001/93/EC) specifying the minimum standards required for pig production in the EU;
- 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;
- Directive 1999/74/EC which sets out specific minimum requirements for the welfare of laying hens in the EU for different permitted production systems; and
- Directive 2008/119/EC (which repealed and consolidated Directive 91/629/EEC, Directive 97/2/EC and Directive 97/182/EC) setting 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.

These Directives have been transposed in Northern Ireland by the Welfare of Farmed Animals Regulations (Northern Ireland) 2012.

2.7 Directive 98/58/EC sets out minimum essential requirements for all farmed livestock, irrespective of the species and is transposed in Northern Ireland by the Welfare of Farmed Animals Regulations (Northern Ireland) 2012.

2.8 Regulation (EC) 1099/2009 on the protection of animals at the time of killing specifies the accepted method of killing and stunning for animals in the EU. The Welfare of Animals at the Time of Killing Regulations (Northern Ireland) 2014 supports the implementation of Regulation (EC) 1099/2009 in Northern Ireland and provides the enforcement powers necessary to enforce its requirements. It includes the EU standards but also includes several stricter national rules and higher welfare standards which apply to Northern Ireland and includes provisions relating to the religious slaughter of animals there.

2.9 The Diseases of Animals (Northern Ireland) Order 1981 (as amended) and the Welfare of Animals Act (Northern Ireland) 2011 provide a power for inspectors to enter premises to ensure compliance with EU law on animal disease control and welfare respectively and to be accompanied by European representatives for this purpose.

Why is it being changed?

- 2.10 The amendments are necessary to correct minor deficiencies and, thereby, ensure the operability of the relevant Northern Ireland legislation in a way that continues to secure the welfare of animals following exit. The instrument also makes a consequential change to Northern Ireland domestic legislation to reflect that certificates of competence for slaughtermen issued in the EU will not be recognised in the UK following EU exit.
- 2.11 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. Regulation (EC) No.1099/2009 provides that certificates issued in one Member State must be recognised in another. 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 in the UK 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 of a breach of requirements. A separate instrument introduced by the Department will remove the provision providing for mutual recognition from Regulation (EC) No. 1099/2009 (as converted into UK law). Some of the amendments made to the Welfare of Animals at the Time of Killing Regulations (Northern Ireland) 2014 make the necessary consequential provision to Northern Ireland domestic law.

What will it now do?

- 2.12 The instrument will ensure that Northern Ireland law which implements current EU requirements for the registration of laying hen establishments, the welfare of animals on-farm, during transport and at the time of killing remain effective in Northern Ireland after we leave the EU. The instrument reflects in Northern Ireland legislation that certificates of competence for slaughtermen issued in the EU will not be recognised in the UK following EU exit. It also reflects in Northern Ireland law an amendment which is being made to EU Regulation No. 1099/2009 on the protection of animals at the time of killing which clarifies that the Department of Health in Northern Ireland is responsible for supervising scientific experiments on animals there.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument was presented to the EU Exit Committees for consideration on 30 November 2018 and the process was completed on 18 December 2018. The EU Exit Sifting Committees have reviewed this instrument and agreed with the government that this statutory instrument does not need to be debated in parliament.

*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 The Parliamentary Under Secretary of State, for Food and Animal Welfare, Mr David Rutley, MP has made the following statement regarding Human Rights:

“In my view the provisions of the Animal Health and Welfare (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

**6. Legislative Context**

- 6.1 The key legislative context for this instrument is set out at paragraphs 2.1 to 2.9 above. This instrument makes deficiency amendments under the European Union (Withdrawal) Act 2018 to ensure the operability of the following Northern Ireland legislation which was made under section 2(2) of the European Communities Act 1972;

- Registration of Establishments (Laying Hens) Regulations (Northern Ireland) 2003;
- Welfare of Animals (Transport) Regulations (Northern Ireland) 2006; and
- Welfare of Animals at the Time of Killing Regulations (Northern Ireland) 2014.

- 6.2 It also amends deficiencies arising from exit in the;

- Diseases of Animals (Northern Ireland) Order 1981 which was made under the Northern Ireland Act 1974;
- Welfare of Animals Act (Northern Ireland) 2011; and
- Welfare of Farmed Animals Regulations (Northern Ireland) 2012 which was made under the Welfare of Animals Act (Northern Ireland) 2011;

- 6.3 In addition to this instrument, the Department has introduced other instruments as part of the exit process which interact with the legislation amended by this instrument. These instruments cover several areas related to animal welfare and transfer functions of the European Commission under various Directives relating to farm animal welfare and make amendments needed to the EU Regulations on welfare at the time of killing and welfare during transport to ensure that they function effectively after we leave the EU.

- 6.4 Section 8 (1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provisions 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 This instrument applies to animal health and welfare 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 for exit day 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 Government shares the public's high regard for animal welfare and plans to retain the current standards set out in EU legislation and EU derived domestic legislation that protect the health and welfare of animals on-farm, the welfare of animals during transport, at the time of killing and the system of registration for laying hen establishments when the UK leaves the EU. The amendments made by this instrument are necessary to ensure that the relevant Northern Ireland legislation can operate effectively so as to allow the devolved administration in Northern Ireland to continue to secure the welfare of animals following EU exit.

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

- 8.1 This instrument is being made using the powers 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 UK 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 associated guidance.

## **12. Impact**

12.1 The impact on business, charities or voluntary bodies is minimal.

12.2 This instrument will reflect the decision to end the mutual recognition of certificates of competence to slaughter under Regulation (EC) 1099/2009. It is not expected that any existing slaughterhouse employees in Northern Ireland will need to apply for a certificate of competence issued by a competent authority anywhere in the UK (as they already hold UK issued certificates). It is possible that those slaughterhouses in Northern Ireland who at times deploy staff from the Republic of Ireland may need to ensure that those staff have UK certificates issued. There is currently no cost to apply for a certificate issued in Northern Ireland.

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 because there are no significant impacts on business or on 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. 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 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 this 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 Mr David Rutley MP 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.<br><br>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<br>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  | Set out the 'good reasons' for creating a criminal offence, and the penalty attached.  |

|   |                          |   |  |
|---|--------------------------|---|--|
|   |                          | 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence   |  |
| 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:<br>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,<br>b) containing information about the relevant authority's response to—<br>(i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and<br>(ii) any other representations made to the relevant authority about the published draft instrument, and,<br>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 Food and Animal Welfare, Mr David Rutley MP, 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 (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 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 EU derived Northern Ireland legislation that will arise from withdrawal.

#### **2. Appropriateness statement**

- 2.1 The Parliamentary Under Secretary of State, for Food and Animal Welfare, Mr David Rutley MP, 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 (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 do no more than is appropriate”.

- 2.2 This is the case because the instrument largely corrects technical deficiencies that will arise from withdrawal and ensure that the existing regimes for the registration of laying hen establishments, welfare of farm animals, welfare of animals during transport and at the time of killing will continue to operate effectively once we leave the EU. Reflecting the decision to end the recognition of certificates of competence issued in Member States will ensure that the devolved administration in Northern Ireland has the ability to suspend or revoke certificates in the event that slaughtermen are found to be in breach of animal welfare requirements.

#### **3. Good reasons**

- 3.1 The Parliamentary Under Secretary of State, for Food and Animal Welfare, Mr David Rutley MP, 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 It is important to retain the existing standards in animal health and welfare. This instrument will ensure protections are maintained. It is also important to ensure that enforcement action can be taken against slaughtermen in Northern Ireland that are in breach of animal welfare legislation

#### **4. Equalities**

- 4.1 The Parliamentary Under Secretary of State, for Food and Animal Welfare, Mr David Rutley MP, 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 Food and Animal Welfare, Mr David Rutley MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Mr David Rutley 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.”

- 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.