EXPLANATORY MEMORANDUM TO

THE EQUINE (RECORDS, IDENTIFICATION AND MOVEMENT) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for the 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 purpose of these Regulations is to ensure that direct EU legislation regarding equine identification and retained by section 3 of the EU (Withdrawal) Act 2018 remains operable once the UK leaves the EU.

2.2 The current system of equine identification is set out in EU legislation, primarily by Commission Implementing Regulation (EU) 2015/262 (Equine Passport Regulation).

2.3 The aim is to retain a robust system of equine identification to support high standards of equine biosecurity, enforcement, food safety, fraud prevention, welfare and international trade.

Explanations

What did any relevant EU law do before exit day?

2.4 EU law sets out the current system of equine identification. Key features include single lifetime identification documents that identify individual equines, their markings (e.g. microchips and diagrams) and food chain eligibility.

2.5 EU law also prescribes the Central Equine Database, and the UK's database holds much of the aforementioned information and is of particular use for enforcement, biosecurity, food safety, fraud prevention and welfare purposes.

Why is it being changed?

2.6 These Regulations will make those amendments necessary to retain an effective system of equine identification in order to sustain biosecurity, equine movements, food safety and welfare.

2.7 The Regulations have been drafted using the assumption of a 'no deal' EU Exit.

What will it now do?

2.8 These Regulations will ensure that equines continue to be identified both by way of a single lifetime document and Central Equine Database, and will maintain high standards of biosecurity, equine movements, food safety and welfare.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018 were presented to the Sifting Committees on 20 November 2018. The Commons Sifting Committee agreed with the Government that this statutory instrument does not have to have a debate in Parliament, though one may still occur. However, the Lords Sifting Committee disagreed with the Government and recommended that this statutory instrument needs to be debated in Parliament. The recommendation was published on GOV.UK on 6 December 2018.

3.2 The Lords Sifting Committee noted potential costs associated with moving an equine from the UK to the EU mentioned in the Technical Notice on 'taking horses abroad if there's no Brexit deal', which was published on GOV.UK on 12 October 2018 and referred to in the Explanatory Memorandum presented to the Sifting Committees alongside the Regulations. In recommending that the instrument was made subject to the affirmative resolution procedure, the Lords Sifting Committee remarked (in its 8th Report of Session 2017-19 on proposed negative statutory instruments under the European Union (Withdrawal) Act 2018, published on 6 December 2018 on parliament.uk) that while Defra emphasises that the additional costs and administrative requirements would not be a result of the instrument itself but of a 'no deal' withdrawal from the EU, the Committee nevertheless is of the view that the instrument highlights the considerable impact that a 'no deal' withdrawal from the EU could have in this area, and that the House may wish to debate some of these issues.

3.3 Consequently, the Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has agreed for this instrument to be made subject to the affirmative procedure.

3.4 No substantive changes have been made to the instrument since it was presented to 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)

3.5 The territorial application of this instrument is the UK.

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 The Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:

5.2 "In my view the provisions of the Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) ('the Withdrawal Act') (in particular under section 8(1) to (3) and (6) of, and paragraph 21 of Schedule 7 to, that Act) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

6.2 These Regulations make amendments to EU legislation in the field of equine identification, which, prior to withdrawal from the United Kingdom, had direct effect in the United Kingdom and are retained by virtue the Withdrawal Act.

6.3 Part 1 of these Regulations makes amendments to Commission Implementing (EU) Regulation 2015/262 laying down rules pursuant to Council Directives 90/427/EEC and 2009/156/EC as regards the methods for the identification of equidae (OJ L 59, 3.3.2015 p 1 – 51). Part 3 makes similar amendments to Commission Decision 92/216/EEC, Commission Decision 92/353 and Commission Decision 92/354/EEC. Part 4 makes corresponding amendments to Annex 1 of the Agreement on the European Economic Area.

7. Policy background

What is being done and why?

7.1 These Regulations will ensure that equines continue to be identified by way of a single lifetime document to underpin high standards in biosecurity, food safety and welfare.

7.2 This includes ensuring that the human food chain continues to be protected from potentially harmful substances that may be given to equines.

7.3 These Regulations help ensure that UK equines continue to be able to travel to and from the EU with the minimum of disruption, whilst maintaining high biosecurity and welfare standards.

7.4 Equine welfare is enforced by local authority Trading Standards and robust identification information makes it easier to deal with cases of abandoned, lost or stolen equines.

7.5 The UK's Central Equine Database, established in accordance with (EU) 2015/262, provides accurate, up to date, information about equines, their owners and food chain eligibility, all of which are important features of a robust system of equine identification and enforcement. These Regulations prove a clear legal basis for these important features.

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. The instrument is also made in accordance with Paragraph 21 of Schedule 7 of the 2018 Act. 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 Devolved Administrations have been consulted and are content.

11. Guidance

11.1 Guidance amended as necessary to reflect these Regulations will be offered to UK Passport Issuing Organisations and local authority Trading Standards.

12. Impact

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

12.2 The impact on the public sector is minimal. Local authorities and the Food Standard Agency may need to update some references in their respective guidance relating to their implementation and enforcement procedures.

12.3 An Impact Assessment has not been prepared for this instrument because the total cost of the proposals falls below the £5 million de minimus requirement for Impact Assessments. These Regulations relate to the maintenance of existing regulatory standards and will not introduce new policy.

12.4 For the purposes of clarity, guidance on 'taking horses abroad if there's no Brexit deal' was published on 12 October 2018 on GOV.UK. This explains possible costs to owners if additional blood tests are required a part of the export certification process. Whilst these Regulations support the continued movement of equines into and through the EU with the minimum of disruption, any such costs do not result from these Regulations.

13. Regulating small business

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

13.2 The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 are vital in order to address failures of retained EU law to operate effectively, or other deficiencies relating to equine identification arising from the withdrawal of the United Kingdom from the European Union, to ensure that equines are able to continue to move into and through the European Union. All principal policy and enforcement changes to equine identification policy were previously introduced by the domestic Equine (Identification) (England) Regulations 2018. These domestic Regulations were fully consulted on in 2017. The domestic legislation was laid before Parliament on 25 June 2018, and came into force on 1 October 2018, apart from a provision for retrospective microchipping older horses, which will apply from 1 October 2020, with parallel domestic legislation being prepared in Devolved Administrations.

13.3 The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 were not separately consulted on following the full consultation exercise carried out in 2017 for domestic equine identification legislation, as the Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 do not change policy, but seek only to address failures of retained EU law to operate effectively following withdrawal.

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

14.2 However, certain reviews will be carried out, such as the one described in the Explanatory Memorandum to the Equine Identification (England) Regulations 2018 (S.I. 2018 No. 761) that describes a review of the impact and operation of UK Passport Issuing Organisations, local authorities and the Food Standards Agency (in the context of equine identification regulations) to be completed by no later than October 2023.

15. Contact

15.1 Queries may be directed to the Equine Identification Team at the Department for Environment, Food and Rural Affairs by telephone on 02080264133 or by email to Equine.Identification@defra.gsi.gov.uk.

15.2 Catherine Harrold, Deputy Director for Future Animal and Plant Health, Endemics and Traceability, at the Department for Environment, Food and Rural Affairs confirm that this Explanatory Memorandum meets the required standard.

15.3 The Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, 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. Appropriateness statement

1.1 The Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, 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 Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 make appropriate use of the powers in the European Union (Withdrawal) Act 2018."

This is because it is necessary to retain a robust system of equine identification that facilitates high standards of biosecurity, food safety and animal welfare and the movement of equines into and then through the EU with the minimum of disruption".

2. Good reasons

2.1 The Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, 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".

2.2 As above, the primary reason is to retain a robust system of equine identification that facilitates high standards of biosecurity, food safety and animal welfare and the movement of equines into and then through the EU with the minimum of disruption.

3. Equalities

3.1 The Parliamentary Under Secretary of State for the Department for Environment, Food and Rural Affairs, Lord Gardiner of Kimble, has made the following statements:

"The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019 do 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."

"In relation to the instrument, I, the relevant Minister within the United Kingdom have had due regard for the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

Little or no impact on equalities is expected.

4. Explanations

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

5. Criminal offences

5.1 Not applicable. No new offences are created.

6. Legislative sub-delegation

6.1 Not applicable.

7. Urgency

7.1 It is vital that these Regulations are made before EU Withdrawal in order to ensure continued movement of equines into and through the EU.

8. Section 2(2) of ECA 1972

8.1 Not applicable. These Regulations are not made under 2(2) of the ECA 1972.