EXPLANATORY MEMORANDUM TO

THE LIVESTOCK (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 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 To ensure that retained EU legislation on the identification and registration of livestock will continue to be operable in the UK after the UK leaves the EU. The EU retained legislation being amended are:

Bovines

- EC Commission Regulation 494/98
  (Sanctions for non-compliance).
- EC Commission Regulation 509/1999
  (Extension of the maximum period to ear-tag bison).
- EC Council and Parliament Regulation 1760/2000
  (Registration and identification)
- EC Commission Regulation (EC) No 1082/2003
  (Minimum level of controls (inspections)).
- EC Commission Regulation 911/2004
  (Rules on ear tags, holding registers, and passports).
- EC Commission Regulation 644/2005
  (ID if kept for cultural / historical purposes)
- EC Commission Decision 2006/28
  (Extension of period for applying eartags to certain bovines)
- EU Commission Implementing Regulation 2017/949
  (Configuration of the electronic ID code).

Sheep & Goats

- EC Council Regulation 21/2004
  (Registration and Identification)
- EC Commission Regulation 1505/2006
  (Minimum level of controls (inspections)).
- EC Commission Decision 2006/968
  (Approval of electronic identifiers)

Bovines and Sheep & Goats

- The EEA Agreement

(Identification of Bovines and Sheep & Goats from certain EEA countries)

Explanations

What did any relevant EU law do before exit day?

2.2 To ensure that these species are traceable for the purposes of disease control the relevant EU law sets out how these species must be identified, what records their keepers must maintain, how they must report their animal's movements, and how central competent authorities must record this information on central databases.

Why is it being changed?

2.3 The changes made by the instrument are necessary to ensure that the retained EU legislation continues to operate effectively. The changes made to ensure that it operates effectively include the removal of references to the "EU", "Union" and "the Commission" and their replacement with terms such as "the United Kingdom" and "the Appropriate Minister". It also removes references to requirements to report to, or notify to the EU Commission information on actions taken to implement the EU legislation – such as the results of on farm compliance inspections. Regulation 10(6) makes amendments to EC Council Regulation 21/2004 that preserves the possibility of certain action by relevant competent authorities in the UK which they previously had when the UK was a member State. These relate to options for prescribing that keepers of sheep and goats must enter in registers information other than that prescribed by Regulation 21/2004. The specific requirement to include other information is found in domestic legislation (See in particular Article 21(2)(b) of the Sheep and Goats (Records, Identification and Movement) (England) Order 2009)

What will it now do?

2.4 The instrument will ensure that legislation that underpins the traceability of livestock continues to operate effectively in the UK after we leave 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) (Amendment) (EU Exit) Regulations 2018 were presented to the Sifting Committees on 14th November. Both Committees recommended that the instrument should be subject to the affirmative resolution procedure.

3.2 The Lords Sifting Committee made this recommendation because the effect of one regulation was to allow Ministers to charge fees to cover the costs of the identification and registration of cattle. In addition, it believed that the instrument conferred powers to legislate. The Committee considered that both of these were sufficient to make the instrument mandatory affirmative.

3.3 The Commons Sifting Committee made this recommendation because the effect of one regulation was to allow Ministers to charge fees to cover the costs of the identification and registration of cattle. It believed that the instrument conferred powers to legislate on Ministers. Finally, it disagreed with the Department's Position as set out in the Explanatory Memorandum that the amendments made by the instrument were 'minor and technical'. The Committee considered that these were all reasons for the instrument to be subject to the affirmative procedure.

3.4 Consequently, Lord Gardiner of Kimble, Parliamentary Under-Secretary of State for Rural Affairs and Biosecurity, has agreed for this instrument to be subject to the affirmative procedure.

3.5 A change has been made to the definition of 'third country' in regulations 4 and 10 since the instrument was presented to the Sifting Committees. Some minor amendments have been made to formatting and wording.

3.6 This instrument amends EC Council and Parliament Regulation 1760/2000. That regulation is also amended by another instrument, the Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019. This was laid in draft on 13th February.

3.7 Regulation 1760/2000 is amended by two different instruments because it covers two discrete areas, 'Identification and registration of bovine animals' (Title I) and 'Labelling of beef and beef products' (Title II). These areas have been worked on separately within Defra, and the two instruments originally had quite different timetables, as stated above the original version of this draft was laid almost three months ago.

3.8 This instrument amends Title I. Amendments to Title II are made by the Market Measures SI. This other SI will also amend Title III of Regulation 1760/2000, 'Common provisions'.

3.9 Regulation 3(13) of the Market Measures SI inserts a new article a22 into Regulation 1760/2000. New article a22 contains a definition of 'appropriate Minister'.

3.10 Therefore the phrase 'appropriate Minister', which is included in a number of amendments this instrument makes to Regulation 1760/2000, is not defined in this instrument itself, but in the Market Measures (Marketing Standards) (Amendment) (EU Exit) Regulations 2019. We attach a copy of this other SI.

3.11 For clarity, please note that this instrument also amends Council Regulation 21/2004 on the identification and registration of ovine and caprine animals. In this case the amendments also use 'appropriate Minister', but the definition is inserted by this instrument.

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)

3.12 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 Lord Gardiner has made the following statement regarding Human Rights:

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

6. Legislative Context

6.1 The EC Regulations and Decision referenced at paragraph 2.1 above will be directly applicable UK law once they are retained after EU exit day. This instrument amends these instruments to remedy deficiencies arising from the withdrawal of the United Kingdom from the EU.

6.2 Defra or the relevant Devolved Administrations make Statutory Instruments in their own territories to implement the abovementioned legislation. Defra or the relevant Devolved Administrations will make their own EU exit SIs to fix any deficiencies in those SIs as a result of EU exit.

6.3 EC Regulation 1760/2000 (Registration and Identification of Bovines) contains a provision (Article 9) for Member States to charge to keepers of bovines the costs of the traceability controls. No such charges are made in the UK. No such provisions exist in the equivalent legislation for sheep and goats, and for pigs.

7. Policy background

What is being done and why?

7.1 The Government wishes to retain the current high standards of traceability as provided for by the EU legislation referenced at section 2 and which underpins effective disease control. That is why this instrument will make necessary changes to that end to that retained EU law when the UK leaves the EU.

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 – see section 12.

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 because there are no significant impacts on businesses.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. (See paragraph 12.3 above).

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 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.
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	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

Statement	Where the requirement sits	To whom it applies	What it requires
		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: 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 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) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because the instrument makes necessary amendments to retained EU Legislation to ensure that it remains operative following the withdrawal of the United Kingdom from the European Union."

2. Good reasons

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 there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

2.2 These are summarised in Section 7 of the Explanatory Memorandum.

3. Equalities

3.1 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."

3.2 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) (EU Exit) Regulations 2019 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."

4. Explanations

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