EXPLANATORY MEMORANDUM TO

THE WELFARE OF ANIMALS AT THE TIME OF KILLING (ENGLAND AND NORTHERN IRELAND) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 1308

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") 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 Welfare of Animals at the Time of Killing (England and Northern Ireland) (Amendment) (EU Exit) Regulations 2019 amend the definitions of "evidence of training and examination" in regulation 3 of the Welfare of Animals at the Time of Killing (Northern Ireland) Regulations 2014 (S.R. 2014 No. 107) ("the 2014 Regulations") and the Welfare of Animals at the Time of Killing (England) Regulations 2015 (S.I. 2015/1782) ("the 2015 Regulations"). The amendments mean that an individual wishing to apply for a certificate of competence (which is needed in order to kill animals or carry out related operations in a slaughterhouse) may rely on approved training and examination undertaken in the Republic of Ireland. This change is required to ensure that the UK Government meets its obligations under the UK-Ireland Common Travel Area.

Explanations

What did any relevant EU law do before exit day?

2.2 Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing requires slaughterers to hold a certificate of competence issued by any Member State. Article 21(4) of Council Regulation (EC) 1099/2009 requires a Member State to recognise a certificate of competence issued in any other Member State. The 2014 and 2015 Regulations set out the evidence needed to obtain such a certificate in the UK.

Why is it being changed?

2.3 When the UK leaves the EU, the obligation on Member States to recognise certificates of competence issued by the UK will cease to apply. It is, therefore, appropriate to end UK recognition of EU certificates. The UK does, however, continue to have an obligation under the UK-Ireland Common Travel Area to recognise qualifications from the Republic of Ireland.

What will it now do?

2.4 After exit day, a slaughterer will have to have a UK certificate of competence in order to work in the UK. However, evidence of training in the Republic of Ireland can be submitted as part of any application.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is made subject to the urgent made affirmative procedure. The Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

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 The territorial application of this instrument includes Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England, Wales and Northern Ireland.

4.2 The territorial application of this instrument is England and Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister of State for International Environment and Animal Welfare, Zac Goldsmith MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Welfare of Animals at the Time of Killing (England and Northern Ireland) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is being made using powers in the European Union (Withdrawal) Act 2018, to correct deficiencies arising from EU Exit. It is intended to operate in conjunction with the Animal Welfare (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/802). Regulation 4(8)(b) of that instrument removes Article 21(4) of Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing, which requires Member States to recognise slaughterer certificates of competence issued in another Member State. This instrument amends the definition of "evidence of training and examination" in regulation 3 of the 2014 and 2015 Regulations to ensure that, after exit day, the UK continues to recognise evidence of training and examination undertaken in the Republic of Ireland.

7. Policy background

What is being done and why?

7.1 Article 7(1) of Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing requires that "killing and related operations shall only be carried out by persons with the appropriate level of competence to do so without causing the animals any avoidable pain, distress or suffering".

7.2 Article 21(1) of Council Regulation (EC) 1099/2009 requires Member States to designate a competent authority to be responsible for issuing certificates of competence to individuals and ensuring appropriate training is available. In England and Northern Ireland, the Food Standards Agency and the Department of Agriculture, Environment and Rural Affairs ("DAERA") are the relevant competent authorities respectively. The 2014 and 2015 Regulations enforce the requirements of Council Regulation (EC) 1099/2009. Under regulation 8(b) of the 2014 and 2015 Regulations,

an applicant must submit evidence of relevant training and examination before a certificate of competence may be issued.

7.3 The European Union (Withdrawal) Act 2018 retains Regulation (EC) 1099/2009 as UK legislation after the UK leaves the EU. The Animal Welfare (Amendment) (EU Exit) Regulations 2019, which have been approved by both Houses by affirmative resolution, make operability changes to Regulation (EC) 1099/2009 coming into effect on exit day. These changes include the removal of Article 21(4), which recognises certificates of competence issued by Member States. The effect of this is that slaughterers wishing to operate in UK must hold a certificate of competence issued by a UK authority.

7.4 The Government accepts that the removal of recognition of certificates of competence issued by Member States may be in conflict with its obligations under the UK-Ireland Common Travel Area which provide for the right of Irish citizens to work in the UK and have professional qualifications recognised.

7.5 To address any conflict, this instrument amends the definition of "evidence of training and examination" contained in regulation 3(1) of the 2014 and 2015 Regulations to recognise approved training and examinations undertaken in the Republic of Ireland. The effect of this is that an applicant applying for a certificate of competence from the competent authority in England and Northern Ireland may rely on this evidence in support of the application to remove the need for further training or examination.

7.6 Animal welfare is a devolved matter. While each Devolved Administration is responsible for its own regulations in this area, 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. 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.

8. European Union (Withdrawal) Act 2018/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 UK from the EU. 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 No consultation has been undertaken. The proposed change is necessary to meet our existing Common Travel Area obligations. Any impacts from this change are considered negligible.

11. Guidance

11.1 The Department for Environment, Food and Rural Affairs does not propose to issue guidance specifically with regard to this instrument.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies. From discussions with the Foods Standards Agency and DAERA, we estimate a very low number of applications each year that would rely on evidence of training or examination from the Republic of Ireland (around two per year). Any impact would be positive insofar as the applicant would not be required to undergo additional training or examination and would not incur these additional costs, which would be approximately £225.

12.2 There is no significant, impact on the public sector. There may be additional costs incurred by the Food Standards Agency and DAERA in checking that evidence of training and examination was issued by an appropriate authority in the Republic of Ireland. However, as we estimate a very low number of applications per annum, these additional costs will be negligible.

12.3 An Impact Assessment has not been prepared for this instrument because we estimate a very low number of applications per year being impacted by this proposal.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed. Monitoring of the policy content of this instrument will take place in the course of normal departmental business.

15. Contact

15.1 Craig Lee at the Department for Environment, Food and Rural Affairs Telephone: 0208 026 6632 or email: craig.lee@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Marc Casale, Deputy Director for Animal Welfare, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Zac Goldsmith MP, Minister of State for International Environment and Animal Welfare 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 Equality 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 2018 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 SI.	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 s. 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 1972.	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under s. 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 1972.	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 Zac Goldsmith MP, Minister of State for International Environment and Animal Welfare, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Welfare of Animals at the Time of Killing (England and Northern Ireland) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate."

1.2 This is the case because this instrument does no more than address a potential conflict between the removal of recognition of EU certificates of competence and obligations arising from the UK-Ireland Common Travel Area, as set out in sections 7.4-7.5 above.

2. Good reasons

2.1 Zac Goldsmith MP, Minister of State for International Environment and Animal Welfare, 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 This is the case because it is important that the UK continues to meet its obligations under the UK-Ireland Common Travel Area once it leaves the EU.

3. Equalities

3.1 Zac Goldsmith MP, Minister of State for International Environment and Animal Welfare, has made the following statement:

"This 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 Zac Goldsmith MP, Minister of State for International Environment and Animal Welfare has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to this instrument, I, Zac Goldsmith 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. Explanations

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

5. Urgency

5.1 Zac Goldsmith MP, Minister of State for International Environment and Animal Welfare has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view by reason of urgency, it is necessary to make the Welfare of Animals at the Time of Killing (England and Northern Ireland) (Amendment) (EU Exit) Regulations 2019, without a draft of this instrument containing the Regulations being laid before, and approved by a resolution of, each House of Parliament."

5.2 This is because the Government has concluded that the 'made affirmative' procedure provided for in the European Union (Withdrawal) Act 2018 is needed to ensure that this instrument is in place on exit day.

5.3 The Government considers it important to have this instrument in place on exit day so as to provide confidence and certainty to the public and business and to ensure the effective functioning of the statute book after exit. If this instrument is not in force on exit day, the UK will not be able to meet its obligations under the UK-Ireland Common Travel Area to recognise professional qualifications from the Republic of Ireland.

5.4 Using this procedure still allows for parliamentary scrutiny and Parliament will need to approve its making for it to remain in force.