

EXPLANATORY MEMORANDUM TO
THE FARRIERS AND ANIMAL HEALTH (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 Act.

2. Purpose of the instrument

- 2.1 This SI makes amendments to the Farriers (Registration) Act 1975, the Animal Health Act 1981 and three pieces of secondary legislation made under the Veterinary Surgeons Act 1966, in order to address deficiencies arising from the United Kingdom's withdrawal from the European Union.

Explanations

What did any relevant EU law do before exit day?

- 2.2 The relevant parts of the Farriers (Registration) Act 1975 transposed Directives 2005/36/EC and 2013/55/EU, providing the means by which EEA farriers could register and practise in Great Britain. Section 64A of the Animal Health Act 1981 provides a power of entry to check compliance with any secondary legislation made under the Act in implementation of an EU obligation. Paragraph 2A (4) of Schedule 4 to that Act requires a relevant authority, before deciding not to slaughter susceptible animals on premises infected with food and mouth disease, to be satisfied that EU interests would not be endangered by that decision. The relevant provisions of the three pieces of secondary legislation made under the Veterinary Surgeons Act 1966 permit certain minor procedures to be carried out by persons other than veterinary surgeons, provided those persons have undertaken relevant appropriate training in a Member State.

Why is it being changed?

- 2.3 Amendments to the Farriers (Registration) Act 1975, secondary legislation made under the Veterinary Surgeons Act 1966 and paragraph 2A (4) of Schedule 4 are being made because, after exit day, reciprocal arrangements with the EU will cease to exist. In the circumstances, it is no longer considered appropriate to provide more favourable treatment to EEA States. The amendment to section 64A of the Animal Health Act 1981 is necessary to ensure existing powers of entry remain available.

What will it now do?

- 2.4 After exit day:
- a. persons with farriery qualifications obtained in the EEA who wish to register and practice in the UK will need to meet the same conditions as those with farriery qualifications obtained in third countries;

- b. powers of entry which exist in respect of secondary legislation made under the Animal Health Act 1981 will continue to be available;
- c. a relevant authority will no longer need to be satisfied that EU interests would not be endangered before deciding not to slaughter susceptible animals on premises infected with foot and mouth disease;
- d. a person who is not a veterinary surgeon who wishes to perform certain minor veterinary procedures will first have to have undertaken a course approved by the Secretary of State or, in respect of certain procedures, the Department of Agriculture, Environment and Rural Affairs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 varies between provisions.
- 3.3 The territorial application mirrors the extent of the instruments being amended. Part 2 of these regulations applies to Scotland, England and Wales. Part 3 applies to England and Wales. Part 4 applies to the United Kingdom.

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 different for each part of the Regulation, mirroring the legislation being amended. Part 2 of these regulations applies to Scotland, England and Wales. Part 3 applies to England and Wales. Part 4 applies to the United Kingdom.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble, has made the following statement regarding Human Rights:

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

6. Legislative Context

- 6.1 This SI makes amendments to the Farriers (Registration) Act 1975, the Animal Health Act 1981 and three pieces of legislation made under the Veterinary Surgeons Act 1966 in order to address deficiencies arising from the United Kingdom’s withdrawal from the European Union.
- 6.2 The Farriers (Registration) Act 1975, together with the European Recognition of Professional Qualifications Regulations 2015 (SI 2015/2059), transposed Directives 2005/36EC and 2013/55/EU in so far as they applied to the profession of farriery. SI 2015/2059 will, on exit day, be amended by the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019. Those regulations

contain transitional and saving provisions of relevance to these Regulations (see regulation 3(2)(i)(aa) and regulation 4(1)(b) and (c)).

7. Policy Background

What is being done and why?

- 7.1 Farriery is defined in the Farriers (Registration) Act 1975 as ‘any work in connection with the preparation or treatment of the foot of a horse for the immediate reception of a shoe thereon, the fitting by nailing or otherwise of a shoe to the foot or the finishing off of such work to the foot’. The Farriers (Registration) Act 1975, together with the European Recognition of Professional Qualifications Regulations 2015 (SI 2015/2059), transpose Directives 2005/36EC and 2013/55/EU in so far as they applied to the profession of farriery in Great Britain. Farriery is not regulated in Northern Ireland.
- 7.2 The purpose of the Directives is to facilitate free movement of persons with professional qualifications in the EU. Implementation of the Directives gave farriers with EEA qualifications or experience more favourable access to practice in Great Britain than those with qualifications from the rest of the world. When the UK leaves the EU, the EU will no longer recognise UK qualifications and experience. In those circumstances, it is no longer considered appropriate to provide more favourable treatment to EEA States. EEA nationals will still be able to register to practice in Great Britain, but will need to satisfy the same conditions as any third country.
- 7.3 These amendments do not affect the rights of those already registered to practice farriery in Great Britain. Transitional arrangements ensure that those who are in the process of registering with the Farriers Registration Council on exit day are entitled to have their application (and any related appeal) considered under the rules as they applied before exit day.
- 7.4 This SI also makes two minor amendments to the Animal Health Act 1981 (AHA) that:
- a. ensure that, where a power of entry currently exists so that an inspector can assess compliance with secondary legislation under the Animal Health Act that implements an EU obligation, that power of entry remains. The power of entry would not apply in respect of secondary legislation made under the Act after exit day;
 - b. removes the express requirement to take European Community interests into account when deciding whether or not to slaughter susceptible animals. These considerations are adequately covered by the requirement to put measures in place to prevent further spread of foot-and-mouth disease.
- 7.5 The Veterinary Surgery (Rectal Ultrasound Scanning of Bovines) Order 2010, Veterinary Surgery (Epidural Anaesthesia of Bovines) Order 2010 and Veterinary Surgery (Artificial Insemination) Order 2010 all permit minor veterinary surgery procedures to be carried out by persons other than veterinary surgeons provided that they have successfully undertaken an “approved course”. At present an “approved course” includes a course approved in a Member State. As reciprocal arrangements with the EU will come to an end on exit day, this is no longer considered to be appropriate. In future, it will be for the relevant authority (be it the Secretary of State or the Department of Agriculture, Environment and Rural Affairs) to determine whether training undertaken outside the UK should be approved.

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 failure 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 being made under paragraph 21(b) of Schedule 7 to the 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 Consolidation is not being done at this time.

10. Consultation Outcome

10.1 The Scottish, Welsh and Northern Irish administrations have been consulted about these proposed amendments and their views have been taken into account in the drafting of this instrument. The Farriers Registration Council have also been consulted about amendments to the Farriers (Registration) Act 1975.

11. Guidance

11.1 The Farriers Registration Council will produce any necessary guidance ahead of the UK leaving the EU on 29 March 2019.

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 this will have a very low/negligible level of impact on business.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is continued dialogue with stakeholders.

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

15. Contact

15.1 Gary Eldon at the Department of Environment, Food and Rural Affairs Telephone: 0208 026 3159 or email Gary.Eldon@defra.gov.uk

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

15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department of 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	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: 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 Farriers and Animal Health Act (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate”.

- 1.2 This is the case because these amendments address deficiencies in the Farriers (Registration) Act 1975, Animal Health Act 1981 and three pieces of secondary legislation made under the Veterinary Surgeons Act 1966 arising from the United Kingdom’s withdrawal 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 the 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 that they give the statutory regulator, the Farriers Registration Council more power to evaluate whether or not a farriery qualification from other European countries is of a comparable standard to UK approved farriery qualifications.

3. Equalities

- 3.1 The Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, Lord Gardiner of Kimble has made the following statement:

“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 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”.

- 3.3 Given the subject matter of the instruments being amended and the technical nature of the instrument, no opportunities to advance the matters set out in section 149(1) of the Equality Act 2010 arise.

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.