

Explanatory Memorandum to The Equine Identification (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Equine Identification (Wales) Regulations 2019 and I am satisfied that the benefits justify the likely costs.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs:

17 January 2019

1. Description

The aim of these Regulations is to improve the system of identification of equidae through the implementation of Commission Regulation (EU) 2015/262.

These Regulations ensure that the system of equine identification set out by Regulation 2015/262 functions effectively in Wales. This system includes requirements in relation to the identification of equines and the identification document in relation to an equine, the marking of equines by way of a transponder, and a central database. These Regulations make provisions in relation to these. They also set out a system of civil sanctions and criminal penalties for offences of breaching Regulation 2015/262 or offences contrary to these Regulations.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

These Regulations implement Commission Implementing Regulation (EU) 2015/262 of 17 February 2015, regarding the identification of equidae and known as Equine Passport Regulation.

The Welsh Ministers are designated (by way of the European Communities (Designation) (No. 5) Order 2010, S.I. 2010/2690) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the common agricultural policy of the European Union. The Equine Identification (Wales) Regulations 2019 are made in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act.

These Regulations revoke the Equine Identification (Wales) Regulations 2009 which implemented Commission Regulation (EC) No 504/2008 of 6 June 2008. (EU) 2015/262 replaces (EC) 504/2008.

These Regulations are being made under the negative resolution procedure.

4. Purpose & intended effect of the legislation

The European Commission issued a 5 point action plan in 2013 in response to the revelations surrounding horse meat contamination within the human food chain. The plan included actions to strengthen the requirements on equine identification in order to reduce the risk of horses which have been treated with certain medicinal products from entering the human food chain. Regulation 2015/262 came into force on 1 January 2016. The Equine Identification (Wales) Regulations 2019 implement Regulation 2015/262 in Wales. These Regulations support the requirement that all equines moving in, to or through the EU must be identified in accordance with Regulation 2015/262 and that the human food chain is protected against animals treated with potentially harmful veterinary medicines.

These Regulations require the unique identification of all equines by way of passport. The Regulations require all equines to be microchipped regardless of age. Previously only equines born after 2009 required a microchip. The new requirement in these Regulations for older equines to possess a microchip comes into force two years from the coming into force of these Regulations.

The main provisions contained within Regulation 2015/262 are fundamentally the same as those contained within the previous Regulation (Commission Regulation (EC) 504/2008), which was

implemented by way of the Equine Identification (Wales) Regulations 2009. The main changes include:

- A requirement for all Member States to operate a central database containing certain information on horses within their territory;
- Tighter controls over microchip numbering;
- A requirement to notify a Passport Issuing Organisation when a horse has been signed out of the food chain on receipt of certain medicinal treatments and the recording of these details on the central equine database;
- New minimum standards for passports together with stronger powers to suspend or withdraw approval to issue passports from organisations which fail to meet the standards.

The Regulations continue to use a derogation for certain equines living under wild or semi-wild conditions (those identified in the lists kept by the Hill Pony Improvement Societies of Wales and the Cymdeithas Merlod y Carneddau) and set out the circumstances in which they remain exempt from the requirement for a passport or transponder.

The Regulations expressly state that an identification document, or any part of it, may be in an additional language. Accompanying guidance will set out the way in which the Welsh Government will support passport issuing organisations in this regard.

Offences and penalties are set out in the Regulations. The Regulations confer on Local Authorities the ability to deal with breaches by way of civil sanctions and to recover the costs of doing so. A person served a notice under these Regulations has the right to appeal. An appeal is to be made to the First-tier Tribunal.

The combination of the more robust identification requirements, the establishment of the UK's Central Equine Database and the availability of civil sanctions for breaches of these Regulations will improve traceability during disease outbreaks as well as support appropriate resolution and enforcement in cases of loss, theft or lapses of welfare.

5. Consultation

A 12 week consultation ran from 7 March 2018 to 30 May 2018. The consultation was drawn to the attention of a wide audience of key stakeholders including Farming Unions, Welfare charities, Passport Issuing Authorities and Local Authorities. The consulters' were e-mailed the weblink to the online consultation and it was advertised in GWLAD, the Welsh Government magazine. There was no express legal requirement to consult. Section 71 of the Government of Wales Act 2006 allows the Welsh Ministers to do anything conducive or incidental to any of their other functions.

There was broad agreement to the proposals in the consultation.

A summary of the consultation responses is available at www.gov.wales

6. Regulatory Impact Assessment (RIA)

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

Option 1 – Do Nothing

Under this option we would not implement the EU regulation. This would create a significant risk to food safety and the horse meat trade. Additionally it would likely lead to legal proceedings and potentially fines (infraction) from the EU. This option has therefore been ruled out, but will be used as a baseline for analysis of other available options.

Option 2 - Do the minimum set out in the EU Regulations

Under this option, the Regulations necessary to enforce Commission Regulation 2015/262 would be made but the opportunity to introduce further improvements to the equine identification regime in Wales would be missed. For this reason, this option has been rejected.

Option 3 – Implement the EU Regulations with some enhancement

This option considers a small number of enhancements to the EU legislation. The enhancements, which are set out in Table 1, are considered necessary to ensure the regime is safe, effective and practical and adequately protects public health. These options are gold plating but the Welsh Government considers they are justified, and they are also broadly supported by the sector itself, evidenced through Welsh government’s engagement across the equine sector through our joint engagement with Defra of attending meetings, sending out policy updates and inviting views. From written and verbal feedback, we know the Equine Sector Council and enforcement bodies support these measures. All gold plating that incurs an overall cost to business has been consulted on.

Table 1: Enhancements being considered under option 3

Proposed additional measure	Further details	Article (EU Regulation 2015/262)	Justification
Microchipping			
Mandatory microchipping of older horses	Gold plating – additional requirement permitted by EU legislation which may incur some additional cost	Article 18 (5) (c)	Horses identified before 2009 did not previously need to be micro-chipped. As a result it is often hard to identify older horses causing difficulty with enforcement of identification, welfare and food safety legislation. Mandatory micro-chipping of older horses could help to overcome this. Many parts of the equine sector support mandatory microchipping of older horses as a means to ensure robust equine identification. However, views are polarised and there is a minority who oppose this change. Horse owners who have equines born before 2009 who are not already microchipped will incur additional costs.
Mandatory replacement of	Gold plating –	Article 18 (5)	Microchip failure is thought to be

failed microchips	additional requirement permitted by EU legislation which may incur some additional cost	(a)	<p>extremely rare. However, if a horse's microchip were to fail this would create difficulties in ascertaining its identity. Outline diagrams are not always mandatory for horses that were originally microchipped, so the replacement of failed microchips is essential to link these horses to their passports.</p> <p>In the case of microchip failure horse owners will incur additional costs.</p>
Central Equine Database (CED)			
PIOs to update CED with changes to horse details within 24 hours	Gold plating – goes beyond the minimum EU requirement	Article 38 (3)	<p>New EU legislation requires Passport Issuing Organisations (PIOs) to notify CED of changes to a horse's details within 15 days. However the intention of the new EU Regulations is to tighten the identification of all equines. It is therefore essential that the CED contains up to date information on a horse's status so that the regime can be managed and enforced effectively. The majority of the sector agrees that a tighter updating timeframe for PIOs is required.</p> <p>PIOs may incur additional costs.</p>
Basic horse details available to the public	Non-regulatory – additional to EU requirement	N/A	<p>EU legislation requires certain horse details held on CED to be made available to other Member States. The same system, allowing searches of the CED for limited non-personal information, could be made available to the general public at negligible additional cost to the Devolved Administrations. Public access to data would enable owners to ensure that their records are correct, and would also be of uses to businesses to inform commercial decisions.</p> <p>Small cost to Government only</p>
Option for owners to notify PIOs of changes to equine identification details via	Non-regulatory – use is	Articles 27 (3) and 37 (4)	Owners are responsible for reporting changes to their horse's details, including ownership

CED before forwarding their passport to the relevant PIO.	optional		information, to PIOs. Anecdotally equine stakeholders state that levels of reporting are currently low, which creates difficulties for enforcement authorities and PIOs as the data they hold is out of date. Stakeholders, including the British Horse Council (Formerly Equine Sector Council) believe that giving owners access to an optional online mechanism to notify PIOs of necessary changes to their records is vital to increasing reporting and therefore improving the efficacy of the regime. Defra have confirmed that this extra functionality would be simple to develop and would provide significant benefits as well as being provided at a low cost to Government.
Option for CED to notify changes in equine identification details to other Member States on behalf of PIOs	Non-regulatory – use is optional	Articles 38 and 40	EU legislation requires

7. Costs and benefits

To a large extent, the requirements set out in Commission Regulation 2015/262 reflect the UK's existing regime and are not expected to result in an additional cost to public bodies or horse owners. This section therefore focuses on the costs and benefits of the enhancements proposed under option 3.

Microchipping of older horses

Cost

Horses identified before 2009 do not currently need to be microchipped. As a result it is often hard to identify these horses in the field, causing difficulty with enforcement of identification, welfare and food safety legislation. Mandatory microchipping of older horses would overcome this. The majority of the costs associated with the measure would fall on private individuals rather than businesses, as most horses are owned by private individuals. This being the case it is likely that changes introduced in the Regulations would need to be phased in over an extended period to give owners the chance to comply with the requirement.

Data on the Central Equine Database (CED) shows almost 149,000 horses in Wales, of which approximately 86,000 (58%) were born before the 1st of July 2009. Some of these older horses are likely to have already been microchipped by their owner, however, the number this applies to is unknown. For the purposes of the RIA it is assumed that between 50% and 100% of older horses will need to be micro-chipped.

The consultation stage impact assessment published by Defra in 2016¹ indicated that 86% of horses in the UK are owned by private individuals, with the remaining 14% owned by businesses. In the absence of alternative or more up-to-date information for Wales, it is assumed that this split is representative of horse ownership in Wales.

The cost of microchipping a horse falls to the owner of the animal. The unit costs in Table 2 are taken from Defra's consultation stage IA but updated to reflect inflation during the intervening period. On this basis, the cost to a private owner to microchip a horse is £45.18 and the cost to a business owner is £46.32.

Table 2 Unit cost of microchipping a horse*

Microchip insertion	£27.84	Typical veterinary charge for insertion of a microchip during a routine visit (Equine Industry Report)
Cost of passport update	£14.32	Typical charge levied by PIO for updating passport (Horse Passports Agency)
Postage	1.01	
Value of private owner time (15 minutes)	$8.08 \times 0.25 = 2.02$	Value of travel/leisure time (DfT). This assumes it takes someone about a quarter of an hour to undertake the paperwork associated with recording the microchip number with the PIO.
Value of business owner time (15 minutes)	$9.70 \times 1.3 \times 0.25 = 3.15$	Median gross hourly pay related to raising horses and equines (ASHE 2018) increased by 30% to cover employer NI contribution and other employment costs.

* Figures are based on Defra's consultation stage IA published in 2016. The costs of microchip insertion, passport update, postage and private owner time have been updated using the GDP deflator series. The value of business owner time is based on hourly earnings data for 'agricultural and related trades' in the Annual Survey of Earnings and Hours (ASHE) 2018.

The total cost to microchip all horses in Wales born before July 2009 is therefore estimated to be between £1.96 million and £3.91 million, of which between £0.28million and £0.56million is expected to fall to business owners. Owners of horses born before July 2009 will have two-years from when the Regulations come into force to get their horse microchipped, this is to provide them with an opportunity to have their animal microchipped during a routine veterinary visit. The costs are therefore expected to be spread over the period to February 2021.

Table 3 Cost of microchipping horses in Wales born before July 2009

¹https://consult.defra.gov.uk/equine-id/revised-eu-rules-on-equine-id-eu-reg-eu-2015-262/supporting_documents/Appendix%20A%20%20Equine%20Identification%20England%20Regulations%20Impact%20Assessment%20IA%20No.%20Defra%201785.pdf

	Percentage of horses born before July 2009 which require microchipping	
	50%	100%
Total cost for all private owners	1,677,300	3,354,700
Total cost for all business owners	279,900	559,800
Total cost	1,957,200	3,914,500

To put the costs of microchipping a horse into context, figures from Equine World UK² suggest that the cost of owning a horse may range between £3,000 and £10,000 per annum depending upon the type of livery used. The, in most cases, one-off cost to microchip a horse of £45.18 - £46.32 therefore represents between 0.5% and 1.5% of the **annual** cost of owning a horse.

Benefit

Animal welfare organisations and local authorities deal with hundreds of cases of abandoned horses across the UK each year. In a number of cases, those organisations struggle to identify the horse and consequently the owner. Requiring all horses be microchipped will provide authorities with a quicker and more reliable means of identifying older horses. This will help to ensure the horses can be given the appropriate care, it increases the chances of recovering the costs incurred by welfare organisations in caring for the animals from the owner and it enables the authorities to take further action in cases of abuse or neglect. This is expected to result in a reduction in the number of horses being abandoned and an improvement in animal welfare.

Microchipping will also make it quicker and easier for authorities to reunite lost or stolen horses with their owners and may help to deter theft.

The UK has a relatively small export market for horse meat and providing a more efficient and reliable way of identifying horses reduces the risk of a horse which has been signed out of the food chain ending up in an abattoir, thus improving food safety.

It has not been possible to monetise these benefits as the relevant data is not available and it would be disproportionately costly to collect it.

Replacement of failed microchips

Cost

The number of microchips failing each year is unknown but it is thought to be extremely rare. However, if a horse's microchip were to fail this would create difficulties in ascertaining its identity. Outline diagrams, (a silhouette drawing of the horse on the passport where the markings have been annotated by the owner/keeper and verified by a qualified veterinary surgeon) are not always mandatory for horses that were originally microchipped, so the replacement of failed

² <http://www.equineworld.co.uk/buying-loaning-selling-horses/buying-a-horse/cost-of-owning-a-horse>

microchips is essential to link these horses to their passports and therefore their food safety records.

As identified above, the cost to a private owner to microchip a horse is estimated to be £45.18 and the cost to a business owner is estimated to be £46.32.

Benefit

The benefits of replacing failed microchips are similar to those of microchipping older horses. The move will ensure horses can be quickly and easily identified in the field and abattoir, improving animal welfare and food safety.

Time allowed for PIOs to update central equine database

The EU legislation requires PIOs to notify the central database of changes to a horse's details within 15 days of the change and within 24 hours of a passport being issued or updated. It is essential that the central database contains information that is as accurate and up to date as possible for the status of all horses identified or kept on holdings in the UK so that the equine identification regime can be managed and enforced effectively by PIOs and enforcement authorities. We propose that PIOs notify the central database within 24 hours (excluding non-working days) for the following reasons.

Food Standards Agency staff at abattoirs use the database to verify that the identification and food chain information on horse passports matches the central database and that horses presented for slaughter are safe for human consumption. If it does not match the horse must be excluded from the food chain. (Notably, before issuing a passport PIOs are required to check that a passport has not already been issued for that horse. If it has, the PIO is allowed to issue another passport but must record on the passport and database that the animal must not enter the food chain.) Also, when Local Authority officers find a horse that has been abandoned, lost or straying they will scan its microchip and use it to find the address of the owner on the database.

These controls rely on information being as up to date as possible. Most parts of the sector – including the Equine Sector Council Steering Committee, the National Panel for Animal Health and Welfare Officers and the FSA – have argued for real time information exchange between PIOs and the central database. This is not possible but as a balance we have proposed that PIOs notify changes to the central database within the permissible 24 hours after they have updated their own database. This should be achievable at negligible additional cost to PIOs (see table below). Some rare breed PIOs dealing with low horse volumes are not staffed full time by specific agreement with Defra but it should not be onerous for them to transfer changes electronically to the database within 24 hours of updating their database.

Cost

There are six Passport Issuing Offices (PIOs) based in Wales. Currently, a PIO will submit a batch of records to the CED at least every 15 days, this means a minimum of 24 updates to the CED each year. Under the new proposals, a PIO will be required to notify the CED within 24 hours of a horse passport being issued or updated. This equates to a maximum of one update each working day or 252 updates each year per PIO in Wales. Given that there are six PIOs based in Wales, this means there will be a maximum of an additional 1,368 updates from Wales each year.

The systems used by a number of the PIOs in Wales includes an automated link to the CED, so the CED is notified of any new or updated records automatically at no additional cost. Even where the update is sent manually, the amount of time taken by the PIO is expected to be minimal.

Engagement with the sector suggests the amount of time needed to send one update is around 3 minutes. Using a figure of £12.61 to reflect the value of one hour of a PIO owner's time, the maximum cost based on sending an additional 1,368 updates each year would be approximately £860. The cost of the policy change is therefore estimated to be between £0 and £860 per annum in Wales.

Benefit

This will keep the CED up to date, as close to real time as possible, and will help improve enforcement of identification, horse welfare and food safety. Other users of the Database will also have access to up to date information.

Public availability of horse details

Cost

EU legislation requires certain horse details held on CED to be made available to other Member States. The same system could be used by the public to allow them to also search the database for limited non-personal information. The necessary system changes have already been made to the CED and as such there are no additional costs in Wales.

Benefit

Public access to data would enable owners to ensure that their records are correct, and would also be of use to businesses such as abattoirs to inform commercial decisions.

Pre-notification of changes to equine identification details

Owners are responsible for reporting changes of their horse's details, including ownership information, to PIOs. Anecdotally equine stakeholders state that levels of reporting are currently low, which creates difficulties for enforcement authorities and PIOs as the data they hold is out of date. Stakeholders, including the Equine Sector Council, believe that giving owners access to an optional online mechanism (through the CED) to notify PIOs of necessary changes to their records is vital to increasing reporting and therefore improving the efficacy of the regime.

Cost

Defra has confirmed with the Government Digital Service that this extra functionality would be simple to develop and does not require additional complexity such as GOV.UK Verify. Defra therefore consider the cost of adding the necessary functionality to be low.

There is also a small cost for those who update the online facility associated with the time it takes them but this will be entirely voluntary and is an example of how we are seeking to use non-regulatory measure.

Benefit

Providing horse owners with a simple online facility to enable them to inform the PIOs of any changes to their horse's details is expected to increase the current, low reporting rates. Ensuring horse details are kept up-to-date provides a number of benefits to enforcement authorities and the PIOs.

Database to notify changes in equine identification on behalf of PIOs

EU legislation requires CED to notify other Member State's databases of changes to horse's details in certain situations. PIOs will be required to notify other Member State's databases of

changes to horse's details in other situations. It is proposed that the CED is adapted to enable it to provide these notifications to the other Member States on behalf of the PIOs.

Cost

The CED will need to be adapted to enable it to make notifications to other Member State's databases and these changes would also enable the CED to make the other, similar notifications on behalf of PIOs. The cost of making the necessary changes to the CED is expected to be very low. The Welsh Government is expected to pay 9% of the total UK cost.

Benefit

Adapting the CED to make notifications on behalf of the PIOs will reduce the administrative burden placed on PIOs, generating cost-savings for the latter. The move is also expected to improve the reliability of data-sharing between Member States.

Familiarisation Costs

There are costs (to businesses and to private horse owners) associated with the need to become familiar with the requirements of the new regulation and the way the database works. These are estimated to amount to about £97,400.

The six PIOs in Wales are each expected to need around two hours to familiarise themselves with the requirements of the Regulations. Assuming a value of time of £12.61 per hour (as described in the microchipping section), this gives a total cost of approximately £150.

All horse-owners will need to read the guidance that will accompany the Regulations and familiarise themselves with the new requirements. The CED indicates there are approximately 149,000 horses in Wales, with 86% of these thought to be privately owned and the remaining 14% believed to be owned by businesses. Assuming each private owner has an average of two horses and each business owner has an average of four horses, this equates to approximately 64,100 private owners and 5,200 business owners.

It is assumed that each owner will require ten minutes to familiarise themselves with the guidance which, based on the values of time identified above of £8.08 and £12.61 for private and business owners respectively, equates to a cost of approximately £97,200.

Enforcement

As with the current regime, local authorities will act as the enforcement authority for these Regulations. Local authorities will be able to use civil sanctions such as compliance notices and fixed monetary penalties to address non-compliance. Serious cases of non-compliance can still be prosecuted through the courts.

Specific impact tests

Welsh Language

A Welsh Language Impact Assessment has been undertaken and no direct impacts have been identified. The PIOs have always had the option to supply a passport in Welsh should their customers request, therefore they have the necessary translations in place.

Equality, Children and Human Rights

There are no issues relating to children’s rights or any impacts specifically for children and young people. Neither are there any issues of concern relating to the UN Human Rights Convention or equality.

9. Competition Assessment

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

10. Post implementation review

A review will be undertaken after 3 years to assess the effectiveness of the legislation in delivering the objective.