

SL(5)304 – The Equine Identification (Wales) Regulations 2019

Background and Purpose

These Regulations supplement, and make provision for the enforcement of Commission Implementing Regulation (EU) 2015/262 (the EU Regulation), in Wales. The Regulations provide for the identification of equines, and replace the Equine Identification (Wales) Regulations 2009 (the 2009 Regulations).

Part 2 contains provisions which set out various administrative and procedural requirements. These include requirements in relation to the identification of equines and the identification document in relation to an equine.

Part 3 contains exceptions in respect of equines living under wild or semi-wild conditions.

Part 4 sets out various criminal offences for breach of these Regulations and the EU Regulation.

Part 5 contains provisions about enforcement and penalties, and gives powers to inspectors appointed by the Welsh Ministers or an enforcing authority (a local authority).

Part 6 makes provision for civil sanctions available to enforcing authorities.

Part 7 revokes the 2009 Regulations.

Procedure

Negative.

Technical Scrutiny

One point is identified for reporting under Standing Order 21.2(v) (that for any particular reason its form or meaning needs further explanation) in respect of this instrument.

Regulation 8 (in Part 2 of the Regulations) requires an owner to ask the issuing body to modify or update an equine's ID, if the responsible person (the owner or the keeper) believes that any identity details contained in the equine's ID require modification or updating. In cases where the responsible person is not the owner (but the keeper), there may be potential for an owner to not be aware of the keeper's belief that the ID needs to be amended. Regulation 8 does not include a requirement for the responsible person (where this is a keeper and not an owner) to notify the owner of their belief that amendment to the ID is necessary. Regulation 22(1) provides that an owner is guilty of an offence if the owner breaches a prohibition, or fails to comply with a requirement that applies to an owner, including under Part 2. As such, there is potential for an owner to commit an offence, and be punished for that offence, even where the owner did not know, and perhaps could not have known, that the equine's ID needed to be amended.

The equivalent regulations for England, The Equine Identification (England) Regulations 2018 (the English Regulations), make provision at regulation 8 for the modification of identity details. However, this requires the owner to ask the issuing body to modify or update the ID if "the owner believes that any identity details contained in the equine's ID require modification or updating". As such, the same issue does not exist in the English Regulations as is noted above for Wales. Under the English Regulations, an owner would only commit an offence in respect of non-compliance with regulation 8, if they did not ask for changes to be made that they believed were needed.



Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

These Regulations are made under section 2(2) of the European Communities Act 1972 and form part of “EU-derived domestic legislation” under section 2 of the European Union (Withdrawal) Act 2018, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day.

Government response

This response refers to the Technical point raised in the draft CLAC report on the Equine Identification (Wales) Regulations 2019, in respect of regulation 8 (in Part 2 of the Regulations). Regulation 8 requires an owner to ask the issuing body to modify or update an equine’s ID, if the responsible person (the owner or keeper) believes that any identity details contained in the equine’s ID require modification or updating. The point raised by CLAC relates to cases where the responsible person is the keeper (not the owner), where there may be potential for an owner to be unaware of the keeper’s belief that the ID needs to be amended. Regulation 22(1) provides that an owner is guilty of an offence if the owner breaches a prohibition, or fails to comply with a requirement that applies to an owner, including under Part 2. As such, CLAC’s concern is that there is potential for an owner to commit an offence, and to be punished for that offence, where the owner did not know, and perhaps could not have known, that the equine’s ID needed to be amended.

We have carefully considered the technical point raised. When drafting regulation 8, reliance was placed on Article 3(3) of Commission Regulation (EU) 2015/262 (as regards the methods for the identification of equidae) which provides: ‘Member States and the issuing bodies referred to in Article 5(1)(a) and Article 5(1)(b) may require that the application to an issuing body for obtaining an identification document as provided for in Article 11 or for modifying identification details in an existing identification document as provided for in Article 27 is to be submitted by the owner’. This approach was taken so as to achieve consistency with the obligation on an owner to make the application for an equine ID. We recognise that regulation 8 of the Equine Identification (Wales) Regulations 2019 does not place an express responsibility on the responsible person – where that person is the keeper – to notify the owner if the keeper believes that any identity details contained in the equine’s ID require modification or updating. We are of the view this is not strictly necessary, in light of the wording of Article 3(2) of Regulation 2015/262: ‘where the keeper is not the owner or one of the owners of the equine animal, it shall act in accordance with this Regulation on behalf of and in agreement with the owner’. In practice, the relationship between keeper and owner tends to be a strong one, in which information concerning the need to modify identity details within an equine ID would flow freely between the parties.

On reflection, and recognising that an owner is guilty of an offence where there is failure to comply with the requirement under regulation 8, we recognise that an amendment to regulation 8 would aid clarity. Having considered the issue in light of the point identified, we intend to make amending Regulations as soon as possible, so as to provide that where the owner believes that any identity details contained in the equine’s ID require modification or updating, whether pursuant to Article 27(1) or otherwise, the owner must ask the issuing body to modify or update the ID. This will mirror the position adopted under the



equivalent regulations for England, and remove the potential for an owner to be unaware of the keeper's belief that the ID needs to be amended. It will involve drafting a short SI, which will substitute 'responsible person' in regulation 8 with 'owner', and can be made under the negative resolution procedure. We believe that this addresses the point raised in the draft CLAC report.

Committee consideration

The Committee considered the instrument at its meeting on 4 February 2019 and reports to the Assembly in line with the technical point identified and also to highlight issues as a result of the UK exiting the EU. The Committee subsequently considered the Government response at its meeting on 11 February 2019.

