

The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer and is laid before the Senedd 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 Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum

Lesley Griffiths MS
Minister for Environment, Energy, Planning and Rural Affairs

29 December 2020

1. Description

The Official Controls (Animals, Feed and Food, Plant Health Fees etc) (Wales) Regulations 2020

These regulations make EU Exit operability corrections to The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020. They form part of a wider legislative programme to amend domestic legislation derived from European Union (EU) law under the European Union Withdrawal Action 2018. The purpose of this programme is to ensure the efficient and effective operability of the statute book following the UK's withdrawal from the EU.

Trade in Animals and Related Products (Wales) Regulations 2011

An amendment is also being made to The Trade in Animals and Related Products (Wales) Regulations 2011. These Regulations establish a system for trade in live animals, genetic material and products of animal origin.

These regulations are being made at the same time as two UK Official Controls Regulations. These both make amendments to Regulation 625/2017, amend and revoke EU tertiary legislation and make amendments to UK subordinate legislation.

The Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020

Part 2 of these Regulations make amendments to Regulation (EU) 2017/625 and Part 3 amends EU tertiary legislation. These EU tertiary instruments concern official controls to be carried out on entry of animals and goods into Great Britain, from countries outside the British Islands. They also cover requirements relating to transit of animals and good through Great Britain. They provide for various functions of the European Commission, including making instruments of a legislative character, to be exercisable instead by the "appropriate authority" and for other functions to be exercised by the "competent authority". Both of these terms are defined in Article 3 of Regulation (EU) 2017/625.

The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) (No. 2) Regulations 2020

These Regulations make amendments to and revocations of legislation in the field of official controls and other official activities performed by the authorities to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. Part 2 amends UK subordinate legislation, Part 3 amends retained direct EU legislation and Part 4 revokes retained direct EU legislation.

Part 5 makes a general transitional provision relating to the presentation or other use of model certificates on or after IP completion day in connection with the importation into, or movement through or from, Great Britain, of goods, or the inspection and placing on the market of goods in Great Britain, or the slaughter of animals in Great Britain. It also provides transitional arrangements for model certificates for animals and related products, including products of animal origin.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The SI is being laid under the “Made Affirmative” procedure due to the need for it to come into force on implementation period completion day and the Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

The amendments in the Regulations include a new regulation making power which will need to be exercised early in the New Year in order to dis-apply certain conditions on imports from the EU into Wales. The Regulations, which would ordinarily be subject to the negative procedure, have to proceed under the ‘urgent made affirmative’ procedure on the basis that there is neither sufficient time to satisfy the sifting conditions set out the Withdrawal Act, nor lay the Regulations voluntarily in accordance with the ‘draft affirmative’ procedure.

3. Legislative background

This instrument is made in exercise of the powers conferred upon the Welsh Ministers by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to 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.

4. Purpose & intended effect of the legislation

EU Regulation 2017/625 governs official controls and other official activities perform to ensure the application of food and feed law, rules on animal health and welfare, plant health. The controls are enforced in Wales by The

Official Controls (Animals, Feed and Food, Plant Health Fees, etc.) Regulations (Wales) Regulations 2020.

5. Why is it being changed?

The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020

OCR covers a complex legislative landscape, where reserved and devolved functions are closely interlinked in practice. The amendments propose to correct deficiencies in Welsh SIs, which arise as a result of the UK withdrawal from the EU. These amendments are necessary to ensure the legislation remains operable post withdrawal. The amendments are technical or minor in nature and make no policy changes. The amendments do not impact on the devolution settlement.

The Trade in Animals and Related Products (Wales) Regulations 2011

It is necessary to temporarily dis-apply the prohibitions and restrictions (P&R) on certain meat preparations imported from the EU from 1 January 2021. As currently legislated and retained, the geographical proximity and the harmonisation of food safety and animal health legislation between the UK and EU Member States means the P&R requirement that imported meat preparations be frozen is disproportionate to the Sanitary and Phytosanitary (SPS) risk.

The power to change this requirement has been included as an amendment to Schedule 2 of the Trade in Animals and Related Products (Wales) Regulations 2011. The provision transfers the power of the European Commission to establish special import conditions in Article 8(4) of Council Directive 2002/99/EC to the Welsh Ministers. Following discussions with UK administrations we considered this the most appropriate place to insert the power and to ensure a joined up approach across the UK. The imports regime should be consistent across GB to avoid trade distortions.

In addition, various P&Rs for imports to GB have been already removed through corrections in The Import of and Trade in Animals and Animals Products (Miscellaneous amendments) (EU Exit) Regulations 2020. The intention is that this will be a temporary fix to disapply P&Rs in line with the UK Government's Border Operating Model. When certificates are required for those items in April, the P&R may be re-applied and retained in the new certificates once industry has had time to adapt. Such decision will follow the governance of the Animal Health and Welfare Framework.

6. What will it now do?

The instrument will ensure that official controls and other official activities on food and feed law, rules on animal health and welfare, plant health and plant protection products will continue to operate effectively in the UK after we leave the EU.

Policy objectives of this subordinate legislation are to ensure that the bodies responsible for enforcing the requirements of the Official Control Regulation in Wales will continue to have the enforcement powers, such as power of inspection that they require, post the implementation period date.

7. Consultation

As there is no policy change, no public consultation was undertaken. The purpose of this instrument is solely to enable the current domestic legislative and policy framework to remain unchanged by the withdrawal of the UK from the EU.

8. Regulatory Impact Assessment (RIA)

No discrete RIA has been conducted for these EU Exit corrections to existing domestic legislation. This was covered when the original regulations were made in January 2020, and the changes proposed will have no additional impacts.

Annex 1

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 of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|-----------------|---|--|---|
| Sifting | Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i> | The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement | A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the LJC Committee (as sifting committee) |
| Appropriateness | Sub-paragraph (2) of paragraph 28, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action. |
| Equalities | Sub-paragraphs (4) | Applies to Ministers of | A statement to explain what, if |

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|-------------------|--|---|---|
| | and (5) of paragraph 28, Schedule 7 | the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement 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 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement to 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 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 | A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached. |
| Sub-delegation | Paragraph 30, Schedule 7 | Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority | A statement to explain why it is appropriate to create such a sub-delegated power. |

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|---------|--|---|--|
| Urgency | Sub-paragraph (2) and (8) of paragraph 7, Schedule 7 | Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7 | A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion. |
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Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

Not Applicable

2. Appropriateness statement

The Minister for Environment, Energy, Planning and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) Regulations (Wales) (Amendment) (EU Exit) Regulations 2020, do no more than is appropriate”. This is the case because they are limited to make previous Welsh legislation operable, post implementation date.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths 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”.

4. Equalities

The Minister for Environment, Energy, Planning and Rural Affairs, Lesley Griffiths, 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”.*

The Minister for Environment, Energy, Planning and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Minister for Environment, Energy, Planning and Rural Affairs, Lesley Griffiths, 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.”.

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable/required

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, 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 Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020, without a draft of this instrument containing the Regulations being laid before, and approved by a resolution of Senedd Cymru.

This is because the Welsh Ministers have 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 implementation period completion day.”

It is important to have this instrument in place on implementation period completion 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.

Using this procedure still allows for scrutiny and Senedd Cymru will need to approve its making for it to remain in force.