

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: 9 December 2019

Meeting time: 14.30

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1 Introduction, apologies, substitutions and declarations of interest

14.30

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

14.30–14.35

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CLA(5)–34–19 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 SL(5)472 – The Non–Domestic Rating (Miscellaneous Provisions) (No. 2) (Amendment) (Wales) Regulations 2019

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

14.35–14.40

Negative Resolution Instruments

3.1 SL(5)474 – The Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019

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CLA(5)–34–19 – Paper 2 – Report

CLA(5)–34–19 – Paper 3 – Regulations

CLA(5)–34–19 – Paper 4 – Explanatory Memorandum

**CLA(5)–34–19 – Paper 5 – Letter from the Minister for Finance and Trefnydd
to the Llywydd, 28 November 2019**



3.2 SL(5)475 – The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019

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CLA(5)–34–19 – Paper 6 – Report

CLA(5)–34–19 – Paper 7 – Regulations

CLA(5)–34–19 – Paper 8 – Explanatory Memorandum

CLA(5)–34–19 – Paper 9 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 28 November 2019

3.3 SL(5)476 – The Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019

(Pages 95 – 110)

CLA(5)–34–19 – Paper 10 – Report

CLA(5)–34–19 – Paper 11 – Regulations

CLA(5)–34–19 – Paper 12 – Explanatory Memorandum

CLA(5)–34–19 – Paper 13 – Letter from the Minister for Finance and Trefnydd to the Llywydd, 28 November 2019

3.4 SL(5)477 – The Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2019

(Pages 111 – 119)

CLA(5)–34–19 – Paper 14 – Report

CLA(5)–34–19 – Paper 15 – Order

CLA(5)–34–19 – Paper 16 – Explanatory Memorandum

Affirmative Resolution Instruments

3.5 SL(5)473 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2020

(Pages 120 – 146)

CLA(5)–34–19 – Paper 17 – Report

CLA(5)–34–19 – Paper 18 – Regulations

CLA(5)–34–19 – Paper 19 – Explanatory Memorandum

CLA(5)–34–19 – Paper 20 – Welsh Government written statement, 26 November 2019

Date of the next meeting – 6 January 2020

Statutory Instruments with Clear Reports 09 December 2019

SL(5)472 – The Non-Domestic Rating (Miscellaneous Provisions) (No. 2) (Amendment) (Wales) Regulations 2019

Procedure: Negative

Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that the rateable value of a non-domestic hereditament is taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to be let from year to year (subject to specified assumptions).

In cases where there is no available information on the general rental market and profit and loss cannot be used as an indication of rental value, the rateable value of a non-domestic hereditament is determined by 'decapitalising' the estimated total capital value of the hereditament to turn it into an annual rental equivalent. The decapitalisation rates are prescribed by Regulations made by the Welsh Ministers under paragraph 2(8) of Schedule 6 to the 1988 Act.

These Regulations amend the decapitalisation rates for non-domestic rating lists prescribed on or after 1 April 2021. They set a lower decapitalisation rate of 1.9% for educational, healthcare, public convenience and defence properties and a standard rate of 3.5% for all other properties.

Parent Act: Local Government Finance Act 1988

Date Made: 25 November 2019

Date Laid: 26 November 2019

Coming into force date: 27 January 2020



Agenda Item 3.1

SL(5)474 – The Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019

Background and Purpose

These Regulations make amendments in relation to Wales to a number of pieces of secondary legislation relating to food and feed. These Regulations provide for the partial implementation of EU Regulation 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, and of Implementing and Delegated Regulations made under EU Regulations 2017/625.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans AM, Minister for Finance and Trefnydd, [in a letter to the Llywydd dated 28 November 2019](#).

In particular, we note what the letter says about these Regulations being “critical to maintaining official controls and enforcement” and that if these Regulations do not come into force on 14 December 2019, this would leave Wales “without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the [Regulations] coming into force on 14 December, the [Food Standards Agency] and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws.”

Implications arising from exiting the European Union

We note that the drafting of these Regulations was delayed as a result of uncertainty around the status of the United Kingdom being a member state of the European Union.

Government Response

A government response is not required.

Legal Advisers





W E L S H S T A T U T O R Y
I N S T R U M E N T S

2019 No. 1482 (W. 266)

AGRICULTURE, WALES

FOOD, WALES

**The Official Feed and Food
Controls (Wales) (Miscellaneous
Amendments) Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments in relation to Wales to a number of pieces of secondary legislation relating to food and feed. These Regulations provide for the partial implementation of Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (OJ No. L 95, 7.4.2017, p. 1) and of Implementing and Delegated Regulations made under it.

Regulation 2 amends the Coffee Extracts and Chicory Extracts (Wales) Regulations 2001 (S.I. 2001/1440 (W. 102)).

Regulations 3 to 7 amend the Food Hygiene (Wales) Regulations 2006 (S.I. 2006/31 (W. 5)).

Regulations 8 to 33 amend the Official Feed and Food Controls (Wales) Regulations 2009 (S.I. 2009/3376 (W. 298)).

Regulations 34 to 37 amend the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011 (S.I. 2011/1605 (W. 186)).

Regulation 38 amends the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013 (S.I. 2013/479 (W. 55)).

Regulations 39 to 41 amend the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 (S.I. 2016/387 (W. 121)).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Food Standards Agency, 11th Floor, Southgate House, Cardiff, CF10 1EW.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2019 No. 1482 (W. 266)

AGRICULTURE, WALES

FOOD, WALES

**The Official Feed and Food
Controls (Wales) (Miscellaneous
Amendments) Regulations 2019**

Made 27 November 2019

Laid before the National Assembly for Wales
28 November 2019

Coming into force 14 December 2019

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽¹⁾.

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to—

- (a) measures in respect of food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals⁽²⁾;
- (b) measures in the veterinary and phytosanitary fields for the protection of public health⁽³⁾;

(1) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and was amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

(2) S.I. 2005/1971. The functions conferred on the National Assembly for Wales by this designation are transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(3) S.I. 2008/1792.

- (c) measures in relation to the common agricultural policy of the European Union⁽¹⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for—

- (a) any reference in the Food Hygiene (Wales) Regulations 2006⁽²⁾ to an EU instrument defined in Schedule 1 to those Regulations, as those Regulations are amended by these Regulations, and
- (b) any reference in the Official Food and Feed Controls (Wales) Regulations 2009⁽³⁾ to an EU instrument defined in Schedule 1 to those Regulations, as those Regulations are amended by these Regulations,

to be construed as a reference to that instrument as amended from time to time.

As required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽⁴⁾ there has been open and transparent public consultation during the preparation of these Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019.

(2) These Regulations come into force on 14 December 2019.

(1) S.I. 2010/2690.
(2) S.I. 2006/31 (W. 5); relevant amending instruments are S.I. 2010/893 (W. 92), S.I. 2012/1765 (W. 225), S.I. 2013/479 (W. 55), S.I. 2013/3007 (W. 298), S.I. 2013/3049 (W. 308), S.I. 2014/1858 (W. 192), S.I. 2016/845 (W. 214) and S.I. 2018/806 (W. 162). It is prospectively amended by S.I. 2019/1046 (W. 185).
(3) S.I. 2009/3376 (W. 298), amended by S.I. 2010/2652 (W. 220), S.I. 2011/626 (W. 90), S.I. 2011/1043, S.I. 2013/479 (W. 55), S.I. 2013/3007 (W. 298), S.I. 2013/3049 (W. 308), S.I. 2014/2714 (W. 271), S.I. 2016/386 (W. 120), S.I. 2016/387 (W. 121), S.I. 2018/40 (W. 12), S.I. 2018/806 (W. 162), S.I. 2018/968 (W. 195) and S.I. 2019/463 (W. 111). It is prospectively amended by S.I. 2019/434 (W. 102) and S.I. 2019/1046 (W. 185).
(4) OJ No. L 31, 1.2.2002, p. 1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council (OJ No. L 198, 25.7.2019, p. 241).

Amendment of the Coffee Extracts and Chicory Extracts (Wales) Regulations 2001

2. In the Coffee Extracts and Chicory Extracts (Wales) Regulations 2001(1), in regulation 7 (penalties and enforcement), in paragraph (3), for “Annex 3 to Regulation (EC) No 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules” substitute “Annex 3 of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products”.

Amendment of the Food Hygiene (Wales) Regulations 2006

3. The Food Hygiene (Wales) Regulations 2006 are amended as follows.

4. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) for the definition of “the Community Regulations” substitute—

““the Community Regulations” (*“Rheoliadau’r Gymuned”*) means Regulation 852/2004, Regulation 853/2004, Regulation 2073/2005, Regulation 2015/1375, Regulation 2017/185, Regulation 2017/625 and the Regulation 2017/625 package insofar as it and they apply to food;”;

(ii) for the definition that begins ““Decision 2006/766”” substitute—

““Directive 2004/41” (*“Cyfarwyddeb 2004/41”*), “Regulation 178/2002” (*“Rheoliad 178/2002”*), “Regulation 852/2004” (*“Rheoliad 852/2004”*), “Regulation 853/2004” (*“Rheoliad 853/2004”*), “Regulation 1688/2005” (*“Rheoliad 1668/2005”*), “Regulation 2073/2005” (*“Rheoliad 2073/2005”*), “Regulation 2074/2005” (*“Rheoliad 2074/2005”*), “Regulation 931/2011” (*“Rheoliad 931/2011”*), “Regulation 1169/2011” (*“Rheoliad 1169/2011”*), “Regulation 28/2012” (*“Rheoliad 28/2012”*), “Regulation 208/2013” (*“Rheoliad 208/2013”*), “Regulation 210/2013” (*“Rheoliad 210/2013”*),

(1) S.I. 2001/1440 (W. 102), amended by S.I. 2018/806 (W. 162); there are other amending instruments but none is relevant.

“Regulation 579/2014” (“*Rheoliad 579/2014*”), “Regulation 2015/1375” (“*Rheoliad 2015/1375*”), “Regulation 2017/185” (“*Rheoliad 2017/185*”), “Regulation 2017/625” (“*Rheoliad 2017/625*”), “Regulation 2018/329” (“*Rheoliad 2018/329*”), “Regulation 2018/631” (“*Rheoliad 2018/631*”), “Regulation 2019/66” (“*Rheoliad 2019/66*”), “Regulation 2019/478” (“*Rheoliad 2019/478*”), “Regulation 2019/530” (“*Rheoliad 2019/530*”), “Regulation 2019/624” (“*Rheoliad 2019/624*”), “Regulation 2019/625” (“*Rheoliad 2019/625*”), “Regulation 2019/626” (“*Rheoliad 2019/626*”), “Regulation 2019/627” (“*Rheoliad 2019/627*”), “Regulation 2019/628” (“*Rheoliad 2019/628*”), “Regulation 2019/723” (“*Rheoliad 2019/723*”), “Regulation 2019/1012” (“*Rheoliad 2019/1012*”), “Regulation 2019/1013” (“*Rheoliad 2019/1013*”), “Regulation 2019/1014” (“*Rheoliad 2019/1014*”), “Regulation 2019/1081” (“*Rheoliad 2019/1081*”), “Regulation 2019/1602” (“*Rheoliad 2019/1602*”), “Regulation 2019/1666” (“*Rheoliad 2019/1666*”), “Regulation 2019/1715” (“*Rheoliad 2019/1715*”), “Regulation 2019/1793” (“*Rheoliad 2019/1793*”) and “Regulation 2019/1873” (“*Rheoliad 2019/1873*”), have the meanings respectively given to them in Schedule 1;”;

(iii) at the appropriate place insert—

““the Regulation 2017/625 package” (“*pecyn Rheoliad 2017/625*”) means “Regulation 2018/329”, “Regulation 2018/631”, “Regulation 2019/66”, “Regulation 2019/478”, “Regulation 2019/530”, “Regulation 2019/624”, “Regulation 2019/625”, “Regulation 2019/626”, “Regulation 2019/627”, “Regulation 2019/628”, “Regulation 2019/723”, “Regulation 2019/1012”, “Regulation 2019/1013”, “Regulation 2019/1014”, “Regulation 2019/1081”, “Regulation 2019/1602”, “Regulation 2019/1666”, “Regulation 2019/1715”, “Regulation 2019/1793” and “Regulation 2019/1873”;”;

(b) in paragraph (6), omit “any annex to it may be”.

5. In regulation 5 (enforcement), for paragraph (6) substitute—

“(6) In this regulation—

“cutting plant” (“*safle torri*”) means an establishment which is used for boning and/or cutting up fresh meat for placing on the market and which is approved or conditionally approved under Article 148 of Regulation 2017/625;

“game-handling establishment” (“*sefydliad trin anifeiliaid hela*”) means an establishment in which game and game meat obtained after hunting are prepared for placing on the market and which is approved or conditionally approved under Article 148 of Regulation 2017/625;

“slaughterhouse” (“*lladd-dy*”) means an establishment used for slaughtering and dressing animals, the meat of which is intended for human consumption, and which is approved or conditionally approved under Article 148 of Regulation 2017/625.”

6. For Schedule 1 (definitions of EU legislation) substitute the Schedule set out in Schedule 1 to these Regulations.

7. In Schedule 3A (requirements referred to in regulation 17(5)), in paragraph (e), for “under Article 5 of Regulation 854/2004 as read with point 1 of Part C of Chapter IX of Section IV of Annex I to that Regulation, require examination for *Trichinosis* takes place at the slaughterhouse” substitute “under Article 18(2) of Regulation 2017/625 as read with Article 31 of Regulation 2019/627, require that examination for *Trichinella* takes place in accordance with Article 2 of Regulation 2015/1375”.

Amendment of the Official Feed and Food Controls (Wales) Regulations 2009

8. The Official Feed and Food Controls (Wales) Regulations 2009 are amended as follows.

9. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of “competent authority”, for “Regulation 882/2004” substitute “Regulation 2017/625”;

(ii) for the definition that begins ““Directive 2004/41”” substitute—

““Decision 2007/275” (“*Penderfyniad 2007/275*”), “Directive 2004/41” (“*Cyfarwyddeb 2004/41*”), “Regulation 999/2001” (“*Rheoliad 999/2001*”), “Regulation 178/2002” (“*Rheoliad 178/2002*”), “Regulation 852/2004”

(“*Rheoliad* 852/2004”), “Regulation 853/2004” (“*Rheoliad* 853/2004”), “Regulation 1688/2005” (“*Rheoliad* 1668/2005”), “Regulation 2073/2005” (“*Rheoliad* 2073/2005”), “Regulation 2074/2005” (“*Rheoliad* 2074/2005”), “Regulation 2017/185” (“*Rheoliad* 2017/185”), “Regulation 2017/625” (“*Rheoliad* 2017/625”), “Regulation 2018/329” (“*Rheoliad* 2018/329”), “Regulation 2018/631” (“*Rheoliad* 2018/631”), “Regulation 2019/66” (“*Rheoliad* 2019/66”), “Regulation 2019/478” (“*Rheoliad* 2019/478”), “Regulation 2019/530” (“*Rheoliad* 2019/530”), “Regulation 2019/624” (“*Rheoliad* 2019/624”), “Regulation 2019/625” (“*Rheoliad* 2019/625”), “Regulation 2019/626” (“*Rheoliad* 2019/626”), “Regulation 2019/627” (“*Rheoliad* 2019/627”), “Regulation 2019/628” (“*Rheoliad* 2019/628”), “Regulation 2019/723” (“*Rheoliad* 2019/723”), “Regulation 2019/1012” (“*Rheoliad* 2019/1012”), “Regulation 2019/1013” (“*Rheoliad* 2019/1013”), “Regulation 2019/1014” (“*Rheoliad* 2019/1014”), “Regulation 2019/1081” (“*Rheoliad* 2019/1081”), “Regulation 2019/1602” (“*Rheoliad* 2019/1602”), “Regulation 2019/1666” (“*Rheoliad* 2019/1666”), “Regulation 2019/1715” (“*Rheoliad* 2019/1715”), “Regulation 2019/1793” (“*Rheoliad* 2019/1793”) and “Regulation 2019/1873” (“*Rheoliad* 2019/1873”), have the meanings respectively given to them in Schedule 1;”;

(iii) for the definition of “the Import Provisions” substitute—

““the Import Provisions” (“*y Darpariaethau Mewnforio*”) means Part 3 of these Regulations, Chapter 5 of Title 2 of Regulation 2017/625 and the Regulation 2017/625 package insofar as it and they apply to product as defined in regulation 22;”;

(iv) in the definition of “the Official Control Regulations”, for “Regulation 882/2004” substitute “Regulation 2017/625 or the Regulation 2017/625 package”;

(v) at the appropriate place, insert—

““the Regulation 2017/625 package” (“*pecyn Rheoliad 2017/625*”) means “Regulation 2018/329”, “Regulation 2018/631”, “Regulation 2019/66”, “Regulation 2019/478”, “Regulation

2019/530”, “Regulation 2019/624”,
“Regulation 2019/625”, “Regulation
2019/626”, “Regulation 2019/627”,
“Regulation 2019/628”, “Regulation
2019/723”, “Regulation 2019/1012”,
“Regulation 2019/1013”, “Regulation
2019/1014”, “Regulation 2019/1081”,
“Regulation 2019/1602”, “Regulation
2019/1666”, “Regulation 2019/1715”,
“Regulation 2019/1793” and “Regulation
2019/1873”;;

- (b) in paragraph (3), for “Regulation 882/2004 or Regulation 669/2009”, in both places it occurs, substitute “Regulation 2017/625 or any of the EU Regulations in the Regulation 2017/625 package”.

10. In regulation 3 (competent authorities)—

- (a) in paragraph (1), for “Regulation 882/2004” substitute “Regulation 2017/625”;
- (b) in paragraph (3), for “Regulation 882/2004” substitute “Regulation 2017/625”;
- (c) omit paragraph (5);
- (d) in paragraph (6), for “Article 31(2) of Regulation 882/2004, the designation extends as regards Article 31(2)(a) to (e),” substitute “Article 148 of Regulation 2017/625, the designation extends”.

11. In regulation 4 (exchanging and providing information)—

- (a) in paragraph (1), for “Regulation 882/2004” substitute “Regulation 2017/625”;
- (b) in paragraph (5), for “Regulation 882/2004” substitute “Regulation 2017/625”.

12. In regulation 5 (obtaining information)—

- (a) in paragraph (1)—
- (i) for “control body”, in each place it occurs, substitute “delegated body”;
- (ii) for “Regulation 882/2004” substitute “Regulation 2017/625”;
- (b) in paragraph (4), for “control body”, in both places it occurs, substitute “delegated body”.

13. In regulation 6 (power to issue codes of recommended practice)—

- (a) in paragraph (1)(a), for “Regulation 882/2004” substitute “Regulation 2017/625”;
- (b) in paragraph (3), for “Regulation 882/2004” substitute “Regulation 2017/625”.

14. In regulation 12 (right of appeal), in paragraph (1)—

- (a) in sub-paragraph (a), for “Article 31(2)(c) of Regulation 882/2004 (approval)” substitute “Article 148(3) of Regulation 2017/625 (approval)”;
- (b) in sub-paragraph (b), for “Article 31(2)(d) of Regulation 882/2004 (conditional approval and full approval)” substitute “Article 148(4) of Regulation 2017/625 (conditional approval and full approval)”;
- (c) in sub-paragraph (c), for “Article 31(2)(e) of Regulation 882/2004 (withdrawal of approval and suspension of approval)” substitute “Article 138(2)(j) of Regulation 2017/625 (suspension or withdrawal of approval)”.

15. In regulation 14 (staff of competent authority of another member State), for “Article 36 of Regulation 882/2004” substitute “Article 104(3) of Regulation 2017/625”.

16. In regulation 15 (Commission experts), in paragraph (1)—

- (a) for “to enable that expert” substitute “and a national expert, appointed for the purposes of Article 116(4) of Regulation 2017/625, to accompany and to enable the Commission expert”;
- (b) for “Article 45 of Regulation 882/2004” substitute “Article 116 of Regulation 2017/625”.

17. In regulation 17 (execution and enforcement)—

- (a) in paragraph (1), for “control body” substitute “delegated body”;
- (b) in paragraph (5)(b), after “Commission expert” insert “and, where relevant, a national expert”.

18. In regulation 22 (interpretation of this Part of these Regulations)—

- (a) for the definition of “product” substitute—

““product” (“*cynnyrch*”) means feed and food whose import is regulated by Article 44 of Regulation 2017/625 and includes those composite products and foodstuffs which are not required to be subject to veterinary checks as provided in Commission Decision 2007/275/EC concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC;”;
- (b) in the definition of “the relevant territories” for “Regulation 882/2004” substitute “Regulation 2017/625”;

- (c) for the definition of “specified import provision” substitute—

““specified import provision” (*“darpariaeth fewnforio benodedig”*) means any provision of Regulation 2017/625 or the Regulation 2017/625 package that is specified in Column 1 of Schedule 6 and whose subject-matter is described in Column 2 of that Schedule.”

- 19.** In regulation 23 (feed enforcement responsibilities and competent authority status)—

- (a) in paragraph (2), for “Regulation 669/2009 apart from Article 19” substitute “Regulation 2019/1793”;
- (b) omit paragraph (4).

- 20.** In regulation 24 (food enforcement responsibilities and competent authority status)—

- (a) in paragraph (2), for “Regulation 669/2009 apart from Article 19” substitute “Regulation 2019/1793”;
- (b) omit paragraph (4).

- 21.** In regulation 25 (functions of the Commissioners), for “customs services under Article 24 of Regulation 882/2004 and Article 10 of Regulation 669/2009” substitute “customs authorities under Articles 46, 57, 75 and 76 of Regulation 2017/625 and Article 4 of Regulation 2019/1793”.

- 22.** In regulation 27 (deferred execution and enforcement), in paragraph (6), for “Article 15(5) of Regulation 882/2004” substitute “Article 47(1)(d) and (2)(b) and Article 54(4) of Regulation 2017/625”.

- 23.** In regulation 29 (checks on products), for “Article 16 of Regulation 882/2004”, in each place it occurs, substitute “Articles 34(5) and (6), 44(2) and 45(1), (2) and (4) of Regulation 2017/625”.

- 24.** For regulation 30 (suspension of designation of points of entry) substitute—

“Withdrawal and suspension of border control posts

30.—(1) Where the Agency is satisfied that a border control post has ceased to comply with the requirements referred to in Article 64 of Regulation 2017/625 and Regulation 2019/1014 it may withdraw the designation of the border control post for all or for certain categories of animals and goods for which the designation was made by service on the operator of the border control post of a written notice to that effect.

(2) Where the Agency is satisfied that the conditions referred to in Article 63(1) of Regulation 2017/625 apply it may suspend the designation of the border control post for all or for certain categories of animals and goods for which the designation was made by service on the operator of the border control post of a written notice to that effect and if there is a serious risk to human or animal health the suspension may be with immediate effect.

(3) Upon service of a notice under paragraph (2), the border control post ceases to be a designated border control post to the extent specified in that notice until the suspension is removed by service by the Agency on the operator of the border control post of a written notice to that effect.

(4) Where the Agency is satisfied that it is reasonable to withdraw or suspend the designation for reasons other than those referred to in paragraphs (1) and (2) it may do so for all or for certain categories of animals and goods for which the designation was made by service on the operator of the border control post of a written notice to that effect.”

25. In regulation 31 (detention, destruction, special treatment, re-dispatch and other appropriate measures and costs)—

(a) in paragraph (1), for “Articles 18 to 21 and 24(3) of Regulation 882/2004” substitute “Articles 46, 65 to 69, 71, and 72 of Regulation 2017/625”;

(b) for paragraph (2) substitute—

“(2) The measures taken by the enforcement authority under Articles 66, 67 and 69 of Regulation 2017/625 pursuant to paragraph (1) are to be taken at the expense of the operator responsible for the consignment.”

26. For regulation 32 (notices pursuant to Articles 18 and 19 of Regulation 882/2004 (imports of feed and food from third countries)) substitute—

“Notices in relation to imports of feed and food from third countries

32.—(1) If an authorised officer of an enforcement authority proposes to place a consignment of feed or food under official detention under Article 65, 66 or 67 of Regulation 2017/625 the officer must serve a notice to that effect on the operator responsible for it.

(2) Before ordering the operator to take action in accordance with Article 66(3)(a), (b) or (c),

the enforcement officer must hear that operator as provided in the fourth subparagraph of Article 66(3) of Regulation 2017/625 unless immediate action is necessary.

(3) If an authorised officer of an enforcement authority proposes to take any of the measures referred to in Article 66 or 67 of Regulation 2017/625 in respect of a consignment of feed or food, the officer must serve a notice to that effect on the operator responsible for it.”

27. For regulation 36 (costs and fees) substitute—

“Costs and fees

36.—(1) The costs incurred by the enforcement authority in taking the measures for which the operator is liable under Articles 66, 67 and 69 of Regulation 2017/625 are payable by the operator on the written demand of the enforcement authority.

(2) The costs of official controls and other activities as referred to in Article 80 of Regulation 2017/625 are payable by the operator on the written demand of the enforcement authority.”

28. Omit regulation 43 (expenses arising from additional official controls).

29. Omit regulation 44 (expenses arising in respect of co-ordinated assistance and follow-up by the Commission).

30. For Schedule 1 (definitions of EU legislation) substitute the Schedule that is set out in Schedule 2 to these Regulations.

31. For Schedule 4 (competent authorities for the purposes of certain provisions of Regulation 882/2004 in so far as they apply in relation to relevant feed law), substitute the Schedule set out in Schedule 3 to these Regulations.

32. For Schedule 5 (competent authorities for the purposes of certain provisions of Regulation 882/2004 in so far as they apply in relation to relevant food law), substitute the Schedule set out in Schedule 4 to these Regulations.

33. For Schedule 6 (specified import provisions) substitute the Schedule that is set out in Schedule 5 to these Regulations.

Amendment of the Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

34. The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011(1) are amended as follows.

35. In regulation 7 (expenses arising from official controls)—

- (a) in paragraph (1), for “Article 27(1) of Regulation 882/2004” substitute “Article 80 of Regulation 2017/625”;
- (b) in paragraph (2), for “Article 54(5) of Regulation 882/2004” substitute “Article 138(4) of Regulation 2017/625”;
- (c) for paragraph (3) substitute—

“(3) In paragraphs (1) and (2) and in regulation 8(3), “Regulation 2017/625” means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.”

36. In regulation 8 (notices and actions in the case of non-compliance), in paragraph (3)(b), for “Article 54(2) and (5) of Regulation 882/2004” substitute “Article 138(2) and (4) of Regulation 2017/625”.

37. Omit regulation 10 (suspension of designation of first point of introduction).

Amendment of the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013

38. In the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013(2), in Schedule 2, in Part 2, in paragraph 3, for “official control laboratory under Regulation 882/2004” substitute ““official laboratory under Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products””.

(1) S.I. 2011/1605 (W. 186), to which there are amendments not relevant to these Regulations.

(2) S.I. 2013/479 (W. 55), to which there are amendments not relevant to these Regulations.

Amendment of the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016

39. The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016⁽¹⁾ are amended as follows.

40. In regulation 15 (procedure relating to samples for analysis)—

(a) for paragraph (1)(c) substitute—

“(c) send another part to—

(i) the person on whose premises the material was sampled or to that person’s agent; or

(ii) the person who offered the material for sale by means of distance communication if the material was ordered from such a person or to that person’s agent; and”;

(b) for paragraph (4)(a) and (b) substitute—

“(a) the person on whose premises the material was sampled or that person’s agent;

(b) the person who offered the material for sale by means of distance communication if the material was ordered from such a person or to that person’s agent; and

(c) if part of the sample was sent under paragraph (2), to the person to whom that part was sent.”

41. In regulation 33 (liability for expenditure)—

(a) in paragraph (1), for “Article 54(5) (action in the case of non-compliance) of Regulation 882/2004” substitute “Article 138(4) (action in the case of non-compliance) of Regulation 2017/625”;

(b) omit paragraph (2).

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
27 November 2019

(1) S.I. 2016/387 (W. 121), amended by S.I. 2018/40 (W. 12) and S.I. 2018/806 (W. 162).

SCHEDULE 1

Regulation 6

Schedule to be substituted for Schedule 1 to the Food Hygiene (Wales) Regulations 2006

“SCHEDULE 1

Regulation 2(1)

DEFINITIONS OF EU LEGISLATION

“Directive 2004/41” (“*Cyfarwyddeb 2004/41*”) means Directive 2004/41/EC of the European Parliament and of the Council repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC(1);

“Regulation 178/2002” (“*Rheoliad 178/2002*”) means Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(2), as read with Regulation 931/2011, and Regulation 208/2013;

“Regulation 852/2004” (“*Rheoliad 852/2004*”) means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(3) as read with Regulation 2073/2005 and Regulation 210/2013;

“Regulation 853/2004” (“*Rheoliad 853/2004*”) means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal

(1) OJ No. L 157, 30.4.2004, p. 33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L195, 2.6.2004, p. 12).

(2) OJ No. L 31, 1.2.2002, p. 1.

(3) OJ No. L 139, 30.4.2004, p. 1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 3) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).

origin⁽¹⁾ as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005 and Regulation 2017/185;

“Regulation 1688/2005” (*“Rheoliad 1688/2005”*) means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs⁽²⁾;

“Regulation 2073/2005” (*“Rheoliad 2073/2005”*) means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs⁽³⁾;

“Regulation 2074/2005” (*“Rheoliad 2074/2005”*) means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004⁽⁴⁾;

“Regulation 931/2011” (*“Rheoliad 931/2011”*) means Commission Implementing Regulation (EU) No. 931/2011 on the traceability requirements set by Regulation (EC) No. 178/2002 of the European Parliament and of the Council for food of animal origin⁽⁵⁾;

“Regulation 1169/2011” (*“Rheoliad 1169/2011”*) means Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No. 1924/2006 and (EC) No. 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive

(1) OJ No. L 139, 30.4.2004, p. 55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 22) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).

(2) OJ No. L 271, 15.10.2005, p. 17.

(3) OJ No. L 338, 22.12.2005, p. 1, as read with the Corrigenda at OJ No. L 278, 10.10.2006, p. 32 and OJ No. L 283, 14.10.2006, p. 62.

(4) OJ No. L 338, 22.12.2005, p. 27.

(5) OJ No. L 242, 20.9.2011, p. 2.

1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No. 608/2004⁽¹⁾;

“Regulation 28/2012” (“*Rheoliad 28/2012*”) means Commission Regulation (EU) No. 28/2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products and amending Decision 2007/275/EC and Regulation (EC) No. 1162/2009⁽²⁾ as read with Regulation 853/2004;

“Regulation 208/2013” (“*Rheoliad 208/2013*”) means Commission Implementing Regulation (EU) No. 208/2013 on traceability requirements for sprouts and seeds intended for the production of sprouts⁽³⁾;

“Regulation 210/2013” (“*Rheoliad 210/2013*”) means Commission Regulation (EU) No. 210/2013 on the approval of establishments producing sprouts pursuant to Regulation (EC) No. 852/2004 of the European Parliament and of the Council⁽⁴⁾;

“Regulation 579/2014” (“*Rheoliad 579/2014*”) means Commission Regulation (EU) No. 579/2014 granting derogation from certain provisions of Annex II to Regulation (EC) No. 852/2004 of the European Parliament and of the Council as regards the transport of liquid oils and fats by sea⁽⁵⁾;

“Regulation 2015/1375” (“*Rheoliad 2015/1375*”) means Commission Implementing Regulation (EU) 2015/1375 laying down specific rules on official controls for *Trichinella* in meat⁽⁶⁾;

“Regulation 2017/185” (“*Rheoliad 2017/185*”) means Commission Regulation (EU) 2017/185 laying down transitional measures for the application of certain provisions of Regulations (EC) No. 853/2004 and (EC) No. 854/2004 of the European Parliament and of the Council⁽⁷⁾;

“Regulation 2017/625” (“*Rheoliad 2017/625*”) means Regulation (EU) 2017/625 of the European Parliament and of the Council on

(1) OJ No. L 304, 22.11.2011, p. 18.

(2) OJ No. L 12, 14.1.2012, p. 1.

(3) OJ No. L 68, 12.3.2013, p. 16.

(4) OJ No. L 68, 12.3.2013, p. 24.

(5) OJ No. L 160, 29.5.2014, p. 14.

(6) OJ No. L 212, 11.8.2015, p. 7.

(7) OJ No. L 29, 3.2.2017, p. 21.

official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No. 999/2001, (EC) No. 396/2005, (EC) No. 1069/2009, (EC) No. 1107/2009, (EU) No. 1151/2012, (EU) No. 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No. 1/2005 and (EC) No. 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC(1) as read with Regulation 2074/2005, Regulation 2017/185 and the Regulation 2017/625 package;

The Regulation 2017/625 package

“Regulation 2018/329” (“*Rheoliad 2018/329*”) means Commission Implementing Regulation (EU) 2018/329 designating a European Union Reference Centre for Animal Welfare(2);

“Regulation 2018/631” (“*Rheoliad 2018/631*”) means Commission Delegated Regulation (EU) 2018/631 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by establishing European Union reference laboratories for pests of plants(3);

“Regulation 2019/66” (“*Rheoliad 2019/66*”) means Commission Implementing Regulation (EU) 2019/66 on rules on uniform practical arrangements for the performance of official controls on plants, plant products and other objects in order to verify compliance with Union rules on protective measures against pests of plants applicable to those goods(4);

“Regulation 2019/478” (“*Rheoliad 2019/478*”) means Commission Delegated Regulation (EU) 2019/478 amending Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the categories of consignments to be

(1) OJ No. L 95, 7.4.2017, p. 1.
 (2) OJ No. L 63, 6.3.2018, p. 13.
 (3) OJ No. L 105, 25.4.2018, p. 1.
 (4) OJ No. L 15, 17.1.2019, p. 1.

subjected to official controls at border control posts⁽¹⁾;

“Regulation 2019/530” (“*Rheoliad 2019/530*”) means Commission Implementing Regulation (EU) 2019/530 designating European Union reference laboratories for pests of plants on insects and mites, nematodes, bacteria, fungi and oomycetes, viruses, viroids, and phytoplasmas⁽²⁾;

“Regulation 2019/624” (“*Rheoliad 2019/624*”) means Commission Delegated Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat and for production and relaying areas of live bivalve molluscs in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council⁽³⁾;

“Regulation 2019/625” (“*Rheoliad 2019/625*”) means Commission Delegated Regulation (EU) 2019/625 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption⁽⁴⁾;

“Regulation 2019/626” (“*Rheoliad 2019/626*”) means Commission Implementing Regulation (EU) 2019/626 concerning lists of third countries or regions thereof authorised for the entry into the European Union of certain animals and goods intended for human consumption, amending Implementing Regulation (EU) 2016/759 as regards these lists⁽⁵⁾;

“Regulation 2019/627” (“*Rheoliad 2019/627*”) means Commission Implementing Regulation (EU) 2019/627 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No. 2074/2005 as regards official controls⁽⁶⁾;

“Regulation 2019/628” (“*Rheoliad 2019/628*”) means Commission Implementing Regulation (EU) 2019/628 concerning model official

(1) OJ No. L 82, 25.3.2019, p. 4.

(2) OJ No. L 88, 29.3.2019, p. 19.

(3) OJ No. L 131, 17.5.2019, p. 1.

(4) OJ No. L 131, 17.5.2019, p. 18.

(5) OJ No. L 131, 17.5.2019, p. 31.

(6) OJ No. L 131, 17.5.2019, p. 51.

certificates for certain animals and goods and amending Regulation (EC) No. 2074/2005 and Implementing Regulation (EU) 2016/759 as regards these model certificates⁽¹⁾;

“Regulation 2019/723” (*“Rheoliad 2019/723”*) means Commission Implementing Regulation (EU) 2019/723 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the standard model form to be used in the annual reports submitted by Member States⁽²⁾;

“Regulation 2019/1012” (*“Rheoliad 2019/1012”*) means Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts⁽³⁾;

“Regulation 2019/1013” (*“Rheoliad 2019/1013”*) means Commission Implementing Regulation (EU) 2019/1013 on prior notification of consignments of certain categories of animals and goods entering the Union⁽⁴⁾;

“Regulation 2019/1014” (*“Rheoliad 2019/1014”*) means Commission Implementing Regulation (EU) 2019/1014 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points⁽⁵⁾;

“Regulation 2019/1081” (*“Rheoliad 2019/1081”*) means Commission Delegated Regulation (EU) 2019/1081 establishing rules on specific training requirements for staff for performing certain physical checks at border control posts⁽⁶⁾;

“Regulation 2019/1602” (*“Rheoliad 2019/1602”*) means Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document

(1) OJ No. L 131, 17.5.2019, p. 101.

(2) OJ No. L 124, 13.5.2019, p. 1.

(3) OJ No. L 165, 21.6.2019, p. 4.

(4) OJ No. L 165, 21.6.2019, p. 8.

(5) OJ No. L 165, 21.6.2019, p. 10.

(6) OJ No. L 171, 26.6.2019, p. 1.

accompanying consignments of animals and goods to their destination⁽¹⁾;

“Regulation 2019/1666” (*“Rheoliad 2019/1666”*) means Commission Delegated Regulation (EU) 2019/1666 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards conditions for monitoring the transport and arrival of consignments of certain goods from the border control post of arrival to the establishment at the place of destination in the Union⁽²⁾;

“Regulation 2019/1715” (*“Rheoliad 2019/1715”*) means Commission Implementing Regulation (EU) 2019/1715 laying down rules for the functioning of the information management system for official controls and its system components (the IMSOC Regulation)⁽³⁾;

“Regulation 2019/1793” (*“Rheoliad 2019/1793”*) means Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No. 178/2002 of the European Parliament and of the Council and repealing Commission Regulations (EC) No. 669/2009, (EU) No. 884/2014, (EU) 2015/175, (EU) 2017/186 and (EU) 2018/1660⁽⁴⁾;

“Regulation 2019/1873” (*“Rheoliad 2019/1873”*) means Commission Implementing Regulation (EU) 2019/1873 on the procedures at border control posts for a coordinated performance by competent authorities of intensified official controls on products of animal origin, germinal products, animal by-products and composite products⁽⁵⁾.”

(1) OJ No. L 250, 30.9.2019, p. 6.

(2) OJ No. L 255, 4.10.2019, p. 1.

(3) OJ No. L 261, 14.10.2019, p. 37.

(4) OJ No. L 277, 29.10.2019, p. 89.

(5) OJ No. L 289, 8.11.2019, p. 50.

SCHEDULE 2

Regulation 30

Schedule to be substituted for Schedule 1 to the Official Feed and Food Controls (Wales) Regulations 2009

“SCHEDULE 1

Regulation 2(1)

DEFINITIONS OF EU LEGISLATION

“Decision 2007/275” (“*Penderfyniad 2007/275*”) means Commission Decision 2007/275/EC concerning lists of animals and products to be subject to controls at border inspection posts under Council Directives 91/496/EEC and 97/78/EC(1);

“Directive 2004/41” (“*Cyfarwyddeb 2004/41*”) means Directive 2004/41/EC of the European Parliament and of the Council repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC(2);

“Regulation 999/2001” (“*Rheoliad 999/2001*”) means Regulation (EC) No. 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies(3);

“Regulation 178/2002” (“*Rheoliad 178/2002*”) means Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(4);

(1) OJ No. L 116, 4.5.2007, p. 9.

(2) OJ No. L 157, 30.4.2004, p. 33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L 195, 2.6.2004, p. 12).

(3) OJ No. L147, 31.5.2001, p. 1.

(4) OJ No. L 31, 1.2.2002 p. 1.

“Regulation 852/2004” (“*Rheoliad 852/2004*”) means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(1) as read with Regulation 2073/2005;

“Regulation 853/2004” (“*Rheoliad 853/2004*”) means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(2) as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005 and Regulation 2017/185;

“Regulation 1688/2005” (“*Rheoliad 1668/2005*”) means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs(3);

“Regulation 2073/2005” (“*Rheoliad 2073/2005*”) means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs(4);

“Regulation 2074/2005” (“*Rheoliad 2074/2005*”) means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(5);

“Regulation 2017/185” (“*Rheoliad 2017/185*”) means Commission Regulation (EU) 2017/185 laying down transitional measures for the application of certain provisions of Regulations

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- (1) OJ No. L 139, 30.4.2004, p. 1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 3) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).
 - (2) OJ No. L 139, 30.4.2004, p. 55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 22) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).
 - (3) OJ No. L 271, 15.10.2005, p. 17.
 - (4) OJ No. L 338, 22.12.2005, p. 1, as read with the Corrigenda at OJ No. L 278, 10.10.2006, p. 32 and OJ No. L 283, 4.10.2006, p. 62.
 - (5) OJ No. L 338, 22.12.2005, p. 27.

(EC) No. 853/2004 and (EC) No. 854/2004 of the European Parliament and of the Council⁽¹⁾;

“Regulation 2017/625” (“*Rheoliad 2017/625*”) means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No. 999/2001, (EC) No. 396/2005, (EC) No. 1069/2009, (EC) No. 1107/2009, (EU) No. 1151/2012, (EU) No. 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No. 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC⁽²⁾ as read with Regulation 2074/2005, Regulation 2017/185 and the Regulation 2017/625 package;

The Regulation 2017/625 package

“Regulation 2018/329” (“*Rheoliad 2018/329*”) means Commission Implementing Regulation (EU) 2018/329 designating a European Union Reference Centre for Animal Welfare⁽³⁾;

“Regulation 2018/631” (“*Rheoliad 2018/631*”) means Commission Delegated Regulation (EU) 2018/631 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by establishing European Union reference laboratories for pests of plants⁽⁴⁾;

“Regulation 2019/66” (“*Rheoliad 2019/66*”) means Commission Implementing Regulation (EU) 2019/66 on rules on uniform practical arrangements for the performance of official controls on plants, plant products and other objects in order to verify compliance with Union rules on protective measures against pests of plants applicable to those goods⁽⁵⁾;

(1) OJ No. L 29, 3.2.2017, p. 21.

(2) OJ No. L 95, 7.4.2017, p. 1.

(3) OJ No. L 63, 6.3.2018, p. 13.

(4) OJ No. L 105, 25.4.2018, p. 1.

(5) OJ No. L 15, 17.1.2019, p. 1.

“Regulation 2019/478” (“*Rheoliad 2019/478*”) means Commission Delegated Regulation (EU) 2019/478 amending Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the categories of consignments to be subjected to official controls at border control posts⁽¹⁾;

“Regulation 2019/530” (“*Rheoliad 2019/530*”) means Commission Implementing Regulation (EU) 2019/530 designating European Union reference laboratories for pests of plants on insects and mites, nematodes, bacteria, fungi and oomycetes, viruses, viroids, and phytoplasmas⁽²⁾;

“Regulation 2019/624” (“*Rheoliad 2019/624*”) means Commission Delegated Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat and for production and relaying areas of live bivalve molluscs in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council⁽³⁾;

“Regulation 2019/625” (“*Rheoliad 2019/625*”) means Commission Delegated Regulation (EU) 2019/625 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of certain animals and goods intended for human consumption⁽⁴⁾;

“Regulation 2019/626” (“*Rheoliad 2019/626*”) means Commission Implementing Regulation (EU) 2019/626 concerning lists of third countries or regions thereof authorised for the entry into the European Union of certain animals and goods intended for human consumption, amending Implementing Regulation (EU) 2016/759 as regards these lists⁽⁵⁾;

“Regulation 2019/627” (“*Rheoliad 2019/627*”) means Commission Implementing Regulation (EU) 2019/627 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending

(1) OJ No. L 82, 25.3.2019, p. 4.

(2) OJ No. L 88, 29.3.2019, p. 19.

(3) OJ No. L 131, 17.5.2019, p. 1.

(4) OJ No. L 131, 17.5.2019, p. 18.

(5) OJ No. L 131, 17.5.2019, p. 31.

Commission Regulation (EC) No. 2074/2005 as regards official controls⁽¹⁾;

“Regulation 2019/628” (“*Rheoliad 2019/628*”) means Commission Implementing Regulation (EU) 2019/628 concerning model official certificates for certain animals and goods and amending Regulation (EC) No. 2074/2005 and Implementing Regulation (EU) 2016/759 as regards these model certificates⁽²⁾;

“Regulation 2019/723” (“*Rheoliad 2019/723*”) means Commission Implementing Regulation (EU) 2019/723 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the standard model form to be used in the annual reports submitted by Member States⁽³⁾;

“Regulation 2019/1012” (“*Rheoliad 2019/1012*”) means Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts⁽⁴⁾;

“Regulation 2019/1013” (“*Rheoliad 2019/1013*”) means Commission Implementing Regulation (EU) 2019/1013 on prior notification of consignments of certain categories of animals and goods entering the Union⁽⁵⁾;

“Regulation 2019/1014” (“*Rheoliad 2019/1014*”) means Commission Implementing Regulation (EU) 2019/1014 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points⁽⁶⁾;

“Regulation 2019/1081” (“*Rheoliad 2019/1081*”) means Commission Delegated Regulation (EU) 2019/1081 establishing rules on specific training requirements for staff for performing certain physical checks at border control posts⁽⁷⁾;

(1) OJ No. L 131, 17.5.2019, p. 51.

(2) OJ No. L 131, 17.5.2019, p. 101.

(3) OJ No. L 124, 13.5.2019, p. 1.

(4) OJ No. L 165, 21.6.2019, p. 4.

(5) OJ No. L 165, 21.6.2019, p. 8.

(6) OJ No. L 165, 21.6.2019, p. 10.

(7) OJ No. L 171, 26.6.2019, p. 1.

“Regulation 2019/1602” (*“Rheoliad 2019/1602”*) means Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying consignments of animals and goods to their destination⁽¹⁾;

“Regulation 2019/1666” (*“Rheoliad 2019/1666”*) means Commission Delegated Regulation (EU) 2019/1666 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards conditions for monitoring the transport and arrival of consignments of certain goods from the border control post of arrival to the establishment at the place of destination in the Union⁽²⁾;

“Regulation 2019/1715” (*“Rheoliad 2019/1715”*) means Commission Implementing Regulation (EU) 2019/1715 laying down rules for the functioning of the information management system for official controls and its system components (the IMSOC Regulation)⁽³⁾;

“Regulation 2019/1793” (*“Rheoliad 2019/1793”*) means Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries implementing Regulations (EU) 2017/625 and (EC) No. 178/2002 of the European Parliament and of the Council and repealing Commission Regulations (EC) No. 669/2009, (EU) No. 884/2014, (EU) 2015/175, (EU) 2017/186 and (EU) 2018/1660⁽⁴⁾;

“Regulation 2019/1873” (*“Rheoliad 2019/1873”*) means Commission Implementing Regulation (EU) 2019/1873 on the procedures at border control posts for a coordinated performance by competent authorities of intensified official controls on products of animal origin, germinal products, animal by-products and composite products⁽⁵⁾.”

(1) OJ No. L 250, 30.9.2019, p. 6.

(2) OJ No. L 255, 4.10.2019, p. 1.

(3) OJ No. L 261, 14.10.2019, p. 37.

(4) OJ No. L 277, 29.10.2019, p. 89.

(5) OJ No. L 289, 8.11.2019, p. 50.

SCHEDULE 3

Regulation 31

Schedule to be substituted for Schedule 4
to the Official Feed and Food Controls
(Wales) Regulations 2009

“SCHEDULE 4

Regulation 3(1)

**COMPETENT AUTHORITIES
FOR THE PURPOSES OF
CERTAIN PROVISIONS OF
REGULATIONS 2017/625 IN SO
FAR AS THEY APPLY IN
RELATION TO RELEVANT
FEED LAW**

<i>Column 1</i>	<i>Column 2</i>
<i>Competent Authority</i>	<i>Provisions of Regulation 2017/625</i>
The Agency	Articles 4(2), 5(1) and (5), 6, 7, 8, 9, 10, 11, 12, 13, 15, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 42, 63, 65(5), 73, 75, 76, 78, 79, 81, 82, 83, 84, 85, 86, 88, 89, 91, 93, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 116, 124, 130, 135, 137, 138, 140
The feed authority	Articles 4(2) and (3), 5(1), (4) and (5), 6, 7, 8, 9, 10, 11, 12, 13, 15, 26, 28, 29, 30, 31, 32, 33, 35, 36, 37, 44, 45, 46, 47, 49, 50, 55, 56, 57, 63, 65, 66, 67, 68, 69, 71, 72, 73, 75, 76, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 96, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 130, 135, 137, 138, 140.”

SCHEDULE 4

Regulation 32

Schedule to be substituted for
Schedule 5 to the Official Feed and
Food Controls (Wales) Regulations
2009

“SCHEDULE 5

Regulation 3(3)

COMPETENT AUTHORITIES
FOR THE PURPOSES OF
CERTAIN PROVISIONS OF
REGULATION 2017/625 IN SO
FAR AS THEY APPLY IN
RELATION TO RELEVANT
FOOD LAW

<i>Column 1</i>	<i>Column 2</i>
<i>Competent Authority</i>	<i>Provisions of Regulation 2017/625</i>
The Agency	Articles 4(2) and (3), 5(4) and (5), 6, 7, 8, 9, 10, 11, 12, 13, 15, 18, 21, 24, 26, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 42, 44, 45, 46, 47, 49, 50, 51, 53, 55, 56, 57, 63, 65, 66, 67, 68, 69, 71, 72, 73, 75, 76, 78, 79, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 93, 96, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 116, 124, 130, 135, 137, 138, 140, 148, 150
The food authority	Articles 4(3), 5(1) and (5), 6, 7, 8, 9, 10, 11, 12, 13, 15, 18, 21, 24, 26, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 42, 44, 45, 46, 47, 49, 50, 51, 53, 55, 56,

57, 63, 65, 66, 67, 68,
69, 71, 72, 73, 75, 76,
78, 79, 81, 82, 83, 84,
85, 86, 87, 88, 89, 91,
93, 96, 100, 101, 102,
103, 104, 105, 106,
107, 108, 109, 110,
111, 113, 115, 116,
124, 130, 135, 137,
138, 140, 148, 150.”

SCHEDULE 5

Regulation 33

Schedule to be substituted for Schedule 6
to the Official Feed and Food Controls
(Wales) Regulations 2009

“SCHEDULE 6

Regulations 22 and 41(1)(a)

SPECIFIED IMPORT PROVISIONS

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of EU legislation</i>	<i>Subject matter</i>
Regulation 2017/625 Article 69(1)	Requirement that the operator responsible for the consignment is to carry out all the measures ordered by the competent authorities.
Regulation 2019/1602 Article 3	Requirement that a CHED is to accompany each consignment irrespective of whether or not it is split at the border control post or subsequent to leaving the border control post.
Article 4(a)	Requirement that where a consignment is not split before being released for free circulation, the operator responsible for the consignment is to ensure that a copy of the CHED accompanies the consignment to the place of destination

- and until it is released into free circulation.
- Article 4(b) Requirement that where a consignment is not split before being released for free circulation, the operator responsible for the consignment is to indicate the reference number of the CHED in the customs declaration lodged with the customs authorities and is to keep a copy of the CHED at the disposal of the customs authorities.
- Article 5(1)(a) Requirement that where a consignment is to be split at the border control post, when giving prior notification, the operator responsible for the consignment is to declare the border control post as the place of destination in the CHED for the entire consignment.
- Article 5(1)(b) Requirement that where a consignment is to be split at the border control post, upon finalisation of the CHED for the entire consignment, the operator responsible for the consignment is to request that the consignment be split and is to submit, through the IMSOC a CHED for each part of the split consignment and make a declaration.
- Article 5(1)(d) Requirement that where a consignment is to be split at the border control post, the operator responsible for the consignment is to

Article 5(1)(e)	<p>ensure that a copy of the CHED for each part of the split consignment accompanies the relevant part to the place of destination and until it is released into free circulation.</p> <p>Requirement that where a consignment is to be split at the border control post, the operator responsible for the consignment is to indicate the reference number of the CHED for each part of the split consignment in the customs declaration lodged with the customs authorities and is to keep a copy of that CHED at the disposal of the customs authorities.</p>
Article 5(2)(a)	<p>Requirement that where a non-compliant consignment is to be split at the border control post, upon finalisation of the CHED for the entire consignment, the operator responsible for the consignment is to submit a CHED for each part of the split consignment and make a declaration.</p>
Article 6(a)	<p>Requirement that where a consignment is to be split after leaving the border control post and before being released for free circulation, the operator responsible for the consignment is to ensure that a copy of the CHED accompanies each part of the split</p>

consignment until it is released for free circulation.

Article 6(b) Requirement that where a consignment is to be split after leaving the border control post and before being released for free circulation, the operator responsible for the consignment is to indicate the reference number of the CHED for each part of the split consignment in the customs declaration lodged with the customs authorities and is to keep a copy of that CHED at the disposal of the customs authorities.

Regulation 2019/1666

Article 3(1) Requirement that the operator responsible for the consignment is to, within one day upon arrival of the consignment, inform the competent authority responsible for performing the official controls at the establishment at the place of destination of the arrival of the consignment.”

**Explanatory Memorandum to The Official Feed and Food Controls (Wales)
(Miscellaneous Amendments) Regulations 2019**

This Explanatory Memorandum has been prepared by Food Standards Agency 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of [The Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019. I am satisfied that the benefits justify the likely costs.

Vaughan Gething
Minister for Health and Social Services
28 November 2019

PART 1

1. Description

1. Official Feed and Food Controls are the checks conducted by competent authorities, such as the Food Standards Agency, to verify businesses' compliance with food and feed hygiene and safety legislation. On a European level, legislation creates a framework across the European Union to ensure that Member States are performing official controls with a consistent approach and common standards across the EU to secure public and animal health which facilitates the movement of goods
2. These Regulations amend current Regulations on the administration and delivery of Official Feed and Food Controls made necessary by Regulation (EU) 2017/625 and its subordinate legislation all of which are directly applicable to the UK as a Member State of the European Union.
3. Regulation (EU) 2017/625 sets out a framework of requirements for the competent authorities in Member States which have responsibilities for organising and performing official controls and other official activities to verify compliance with agri-food chain legislation
4. Most of the provisions of Regulation (EU) 2017/625 clarify and simplify existing requirements and aim to introduce a more risk-based approach to controls. Therefore, existing enforcement arrangements in the UK are generally already in line with the new requirements.

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

5. Section (2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the SI because it is giving effect to EU provisions.
6. The current official controls regulation (Regulation (EC) No. 882/2004) will be revoked when the OCR comes into force on 14 December. The SIs are critical to maintaining official controls and enforcement. If these SIs are not laid, this leaves Wales without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the SIs coming into force on 14 December, the FSA and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws. For example, food inspectors will be unable to enter and inspect food businesses. Additionally, there will be no official presence at meat processing plants meaning they will need to cease operation, these has implications for food supplies as well as loss of employment as food business operators will not employ inspectors while they are unable to perform their duties.

7. Official controls are integral to protecting consumers' health and other interests and maintaining the integrity of the agri-food chain that provides consumer and business confidence as well as assurance to other Member States and 3rd countries, which is vital to trade. UK enforcement authorities (such as the FSA and local authorities) carry out official controls at all stages of production, distribution, storage, transport, import and export of food and feed. The controls ensure that food and feed businesses are meeting their obligations to produce safe and wholesome food and feed and that unsafe products are removed from the market.
8. Without the SIs coming into force on 14 December we would fail to meet our legal obligations and the FSA and other enforcement authorities would lose the legal powers to effectively enforce food and feed safety laws.
9. Similar legislation is being made in England, Scotland and Northern Ireland to come into force on 14 December.
10. The drafting of the SIs has been delayed because important parts of them depended on the status of the United Kingdom, insofar as whether it was a Member State of the European Union on the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October.
11. The impact of this on the drafting process in all of the devolved administrations has been significant, and this is the reason why the final SIs were not able to be submitted for scrutiny in time to avoid the recommendation not to adhere to the 21-day convention.

3. Legislative background

12. The Regulations will be made pursuant to powers in section 2(2) of the European Communities Act 1972. Section 2(2) of the European Communities Act 1972 provides that any designated Minister may by order, rules, regulations or scheme make provision for the purpose of implementing any EU obligation of the UK. "Designated Minister" means such Minister of the Crown or government department as may from time to time to be designated by Order in Council in relation to any matter or for any purpose. 2(2) of the European Communities Act 1972 enables
13. Section 59 of the Government of Wales Act 2006 provides that the power to designate a Minister of the Crown or government department under section 2(2) of the European Communities Act 1972 may be exercised to designate the Welsh Ministers, and that accordingly the Welsh Ministers may exercise the power conferred by section 2(2) in relation to any matter or purpose in relation to which they have been designated.
14. The Welsh Ministers are designated in relation to measures in respect of food (including drink) including the primary production of food (see European Communities (Designation) (No. 2) Order 2005/1971).

15. The Regulations follow the negative procedure.

Delivery of Official Controls

16. The FSA is the Central Competent Authority (CCA) responsible for the delivery of official food and feed controls in Wales. In Wales, the FSA is responsible for the delivery of dairy hygiene controls and official controls in approved meat premises, including meat hygiene requirements and regulations on the welfare of animals at slaughter. The FSA is also responsible for the classification of shellfish production areas in Wales.
17. There are 22 Local authorities (LAs) in Wales have also been designated to deliver official food and feed controls for matters which are not within the remit of the Veterinary Medicines Directorate (VMD) or the Animal Plant and Health Agency (APHA)
18. In Wales, the FSA is responsible for setting the standards and monitoring performance of the delivery of official controls for food and feed law. The FSA directs and maintains the consistency of delivery of food controls by local authorities through the Food Law Codes of Practice and associated Practice Guidance and for feed controls, the Feed Law Code of Practice and associated Practice Guidance.
19. The FSA also sets out the standards of performance for official control activity in FSA approved establishments through a published Manual for Official Controls (MOC) in Wales and England.
20. Regulation (EU) 2017/625, referred to as the Official Controls Regulation (OCR), is a directly applicable EU regulation and an overarching piece of legislation that sets operational standards for the performance of official controls and other official activities by competent authorities across the European Union.
21. The OCR entered into force on 27 April 2017, with the applicability of the new rules set to apply gradually over a number of years; with the main application taking effect on 14 December 2019. The OCR empowers the European Commission to adopt implementing acts and introduce delegated acts (tertiary legislation) to supplement the regulation.
22. When the OCR main application takes effect on 14 December 2019 it will give effect to applicable tertiary legislation and the new law will apply in all European Union Member States. It will also repeal and replace existing legislation integral to official control activities, including those carried out by the Food Standards Agency (FSA) and local authorities in England, Wales and Northern Ireland. This includes Regulation (EC) No 882/2004 regarding official controls performed to verify compliance with feed and food law, and Regulation (EC) No 854/2004 on official controls on products of animal origin intended for human consumption.

23. The legal framework created by the OCR allows members of the single market to be sure that the competent authorities in other Member States are conducting controls in a suitably rigorous and impartial fashion. The legislation cuts across aspects of the agri-food chain, such as import controls and laboratories, as well as different commodities, such as live animals, plants and food of animal origin.
24. Welsh Government officials in the Office of the Chief Veterinary Officer (OCVO) have been co-ordinating the efforts of all relevant policy teams in Welsh Government towards the introduction of legislation across all areas other than those within the FSA's remit.

Rationale for intervention

25. Failing to provide for the execution of powers and enforcement in Wales for the OCR would present significant gaps to the legislative framework for the delivery of official controls.
26. UK enforcement authorities (such as the FSA and local authorities) carry out official controls at all stages of production, distribution, use, storage, transport, import and export of food and feed. The controls ensure that food and feed businesses are meeting their obligations to produce safe and wholesome food and feed and that unsafe products are removed from the market. Official controls are integral to protecting consumers' health and other interests and maintaining the integrity of the agri-food chain that provides consumer and business confidence as well as assurance to other Member States and 3rd countries, which is vital to trade.
27. When the main provisions of the OCR take effect on 14 December 2019, the OCR will repeal the European regulations that currently provide the legislative framework for UK official controls in relation to EU food and feed law. To maintain our legislative framework for EU food and feed law official controls the UK must provide for the execution of powers and enforcement of the OCR in domestic legislation. Failure to do so will undermine the effectiveness of official controls and therefore undermine consumer protection as well as confidence in the UK agri-food chain.
28. The FSA estimates that there are around a million cases of foodborne illness in the UK each year, generating an economic burden of treatment costs and loss of productivity in excess of £1 billion each year in resource and welfare costs for the UK¹. A failure to introduce the required legislation to enforce official food and feed controls would undermine the effectiveness of official controls, likely leading to an increase in non-compliance and cases of foodborne disease, involving severe consequences for public health and costs to society.

¹ 2017/18 Annual Reports and Consolidated Accounts, [p. 16](#). It should be noted that the FSA is currently updating the way it estimates the economic burden of foodborne illness. These figures are therefore preliminary and will be updated as soon as new evidence is available.

Policy objective

29. The existing legal framework enables competent authorities to effectively enforce food and feed law. The statutory instruments to provide the execution of power and enforcement for the OCR will ensure sufficient powers are in place in Wales to effectively enforce food and feed law and maintain the high level of consumer protection currently in place. The domestic legislation will also ensure that domestic law is up to date with the European Union acquis including the changes brought about by the provisions of the OCR on 14 December 2019.
30. Through the implementation of legislation in Wales the FSA will repeal and replace current secondary legislation, to provide for the execution of powers and enforcement for the OCR and associated tertiary legislation currently under negotiation by Member States and the European Commission. Implementation of legislation in Wales will maintain a strong legal basis for future official control activity in relation to food and feed law and animal health and welfare. It will also ensure that consumer protection is maintained and that confidence in the UK agri-food chain is maintained through the demonstration of the effectiveness of our regulatory control system including the legal basis for the execution of necessary powers and enforcement of official controls and other official activities.
31. The intention of the European Commission is to simplify and further harmonise control systems across the EU agri-food chain through the implementation of the OCR. The organisation of such controls is harmonised at an EU level to ensure a consistent high-level of consumer protection, provide confidence in the safety and standards of food produced in the EU or imported from third countries and provide for effective functioning of the internal market.
32. The new legislation builds upon and clarifies the existing risk-based approach towards the performance of official controls. The main intended effects identified by the Commission are summarised below:
- A harmonised and coherent regulatory approach to official controls and enforcement actions along the agri-food chain;
 - Increased transparency and greater accountability required by Member States competent authorities through the publication of information about the organisation and performance of official controls;
 - More stringent rules on fraud will provide greater consumer protection and benefit compliant businesses;
 - A common set of rules for controls at EU borders that overcomes the current fragmentation and makes the control system less burdensome for enforcers and businesses;
 - An integrated computerised system to improve the exchange of information between Member States on official controls;

- Greater flexibility in relation to the accreditation of official laboratories (i.e. formal recognition of competence in their field);
 - Businesses and authorities will benefit from reduced administrative burdens, more efficient processes and strengthened controls.
33. For the most part, the legislative changes required in Wales are technical, such as the changing of references to previous EU legislation to refer to Regulation (EU) 2017/625 and associated tertiary legislation.

General Changes to the Delivery of Official Controls

34. The OCR will introduce changes across a number of policy areas. However, for the most part it is expected that these changes will result in relatively few impacts, as they relate to the overarching principles of conducting official controls to which the UK is already aligned. The key changes identified by the FSA in relation to the main provisions of the OCR that apply from 14 December 2019 are set out below.
35. Further impacts, associated with provisions laid down in the tertiary European legislation, which sets out in further detail how official controls should be carried out, are also identified and assessed.

Other official activities

36. Article 2 of the OCR introduces a new definition of ‘other official activities’, which includes activities performed by competent authorities (CAs) or delegated bodies other than official controls. For example, enforcement measures and/or remedial actions following non-compliance; management of lists of registered/approved food and feed business operators or the issuance of official certificates. The OCR sets out rules necessary to ensure that such activities are properly and effectively performed. Our assessment is that the FSA Food and Feed Law Codes of Practice, and associated Practice Guidance, likewise, the FSA Manual for Official Controls, already acknowledge and align with the OCR requirements in respect of the way these activities are carried out by CAs in England, Wales and Northern Ireland. We therefore do not expect any incremental impact associated with this change.

Risk-based controls

37. The general risk-based approach of existing legislation and current practice, detailed in Article 9 of the OCR, is maintained. However, a new provision in Article 9 paragraph 2 strengthens the fight against fraud along the agri-food chain by clarifying that CAs are required to carry out regular, risk-based official controls, directed at identifying fraudulent and deceptive practices.
38. Our assessment is that the FSA Food and Feed Law Codes of Practice, and associated Practice Guidance already acknowledge and have regard to

fraud and deceptive practices as part of the food and animal feed law risk rating schemes. Likewise, the FSA Manual for Official Controls also identifies the need to have regard to fraudulent practices during routine audits. We do not expect any change to the frequency or number of official controls as a result of this new provision.

39. Consumers will benefit from greater protection against misleading claims about the properties, quality, composition or country of provenance of the food they buy where there have been intentional violations perpetrated through fraudulent and deceptive practices. Especially, when purchasing food or feed from a food or feed business operators in an EU country other than the UK, who have not yet adopted measures to identify such violations within their risk rating regimes.
40. Furthermore, there is now a requirement on competent authorities that the penalties associated with fraud convictions must represent the economic advantage gained by the perpetrator as a result of that fraudulent action. Such penalties are already available for fraudulent activities prosecuted in the UK through the Proceeds of Crime Act 2002. We therefore do not expect any incremental impact from this change.

Transparency requirements

41. Transparency requirements for competent authorities are clarified in Article 11 of the OCR by identifying the minimum level of information which must be made public and at what frequency. Competent authorities are required to provide FBOs with copies of reports where non-compliance has been detected as well as where compliance has been achieved. New provisions regulate the delegation of specific tasks relating to 'other official activities' and the conditions to be met for delegating certain official tasks.
42. Our assessment is that the current practice in Wales already meets these requirements. We therefore do not expect any incremental impact from this change.

Sampling

43. Articles 35 and 36 of the OCR relating to 'second expert opinion' and 'sampling of animals and goods offered for sale by means of distance communication' provide greater clarity to enforcers that a sample ordered on-line by the CA without identifying themselves can be validly used for the purposes of an official control. While also making provision that they need to inform the operator that such a sample has been taken and, where appropriate, is being analysed in the context of an official control.
44. Our assessment is that this provision of notification already exists in UK law. We therefore do not expect any incremental impact from this change.

Official Controls for products of animal origin

45. Article 18 of the OCR creates specific rules on official controls and for action taken by the competent authorities in relation to the production of products of animal origin intended for human consumption. This Article derives from the now revoked Regulation 854/2004 and provides the legal basis for the work of the FSA in establishments or areas where products of animal origin for human consumption are produced or processed. The implementing and delegated acts made under Article 18(7) and Article 18(8) establish detailed rules in this area. Our analysis of the OCR requirements indicates that OAs can continue provide assistance to OVs in undertaking ante-mortem and post-mortem inspection. The impact of these changes is analysed in further detail below.

Import controls

46. Articles 43 – 77, 90, 126 -128 and Article 134 of the OCR are revised rules regarding import controls and import conditions on animals and goods arriving in the European Union from third countries. These changes are intended to create a common framework for all goods covered by the OCR across the agri-food chain. Central to this project is the re-designation of all existing specialised border facilities, such as Designated Points of Entry (DPEs) and Border Inspection Posts (BIPs) as Border Control Posts (BCPs). Furthermore, existing entry documents, such as the Common Entry Document (CED) for high-risk food not of animal origin and the Common Veterinary Entry Document (CVED) for products of animal origin, will be amalgamated as Common Health Entry Documents (CHEDs). These systemic changes will be underpinned by a new Information Management System for Official Controls (IMSOC). This platform will link existing systems, such as RASFF and TRACES, rather than replacing any elements of the Commission's computational architecture.

47. Although the groundwork for this new common framework for imports is established in the OCR, the legislation itself provides the power to make detailed implementing tertiary legislation. Since 2017 these rules have been negotiated between European Union Member States and the European Commission. The UK has participated fully in this process. As these detailed rules establish, to a much greater extent, the shape of the new regime, their impact is examined below in greater, individual detail.

National Reference Laboratories (NRLs) & Official Control Laboratories (OCLs)

48. National Reference Laboratories (NRLs) & official control laboratories (OCLs) will see minor changes to the responsibilities placed upon them (Articles 34, 38, 40, 42, 92, 94, 100 & 101). The changes for NRLs have in fact applied since April 2018. Changes to the responsibilities of OCLs (applicable from December 2019) will mean that competent authorities are required to have closer contact with the laboratories and greater oversight of delegated laboratories. The main issue in this area is a legislative change which means that a laboratory can only send a sample to a laboratory in

another member state if the second laboratory has been designated an official laboratory in the receiving member state. The impact of this change has been assessed in further detail in the appraisal section.

Cross-border incidents

49. Articles 102 – 108 of the OCR subjects CAs to tighter rules and more formalised processes for interacting with authorities in other Member States when responding to cross-border incidents. For example, CAs must set out within ten days their intentions regarding notifications from other Member States.

50. Our assessment is that the UK already consistently complies with these requirements. We therefore do not expect any incremental impact.

Financing of Official Controls

51. The OCR also expands upon the European Union's existing legal basis for the financing of official controls. This includes, in particular at Article 85, a greater emphasis on transparency.

52. The FSA does not anticipate introducing any changes now or immediately after 14 December 2019. Further stakeholder engagement will take place as appropriate

Tertiary Legislation: UK Integrated Multi-Annual National Control Plan (MANCP) – Annual Report

53. It is a European Commission requirement that all member states have a national control plan. The purpose of this plan is to ensure that effective systems are in place for monitoring and enforcing feed and food law, animal health and animal welfare rules, and plant health law. Progress on implementation is continually monitored and annual reports are prepared and submitted to the European Commission.

54. In order to ensure the uniform presentation of annual reports, the OCR provides for implementing acts to adopt and update as necessary standard model forms to be used for annual submission of the information. The EU have now finalised and published these model forms under Commission Implementing Regulation (EU) 2019/723. This requirement applies from 14 December 2019, however, the first annual report against the new template is not required until August 2021. We do not expect any incremental impact associated with this requirement.

Tertiary Legislation: Hygiene controls on products of animal origin (POAO) for human consumption

55. Article 7 of Regulation (EU) 2019/624 places maximum thresholds limiting the use of official auxiliaries (OA) carrying out post-mortem inspection (PMI)

at what are now referred to as low-capacity slaughterhouses and low-capacity game handling establishments (GHE) based on maximum number of animals slaughtered annually. The Regulation also permits this level to be raised where the total Member State production of the low-capacity facilities which take advantage of the increased threshold do not exceed 5 percent of the total market for the species concerned.

56. Currently PMI can be undertaken in slaughterhouses and GHEs which do not operate continually throughout the working week by OAs, without an official veterinarian (OV) being present, following a risk-assessment by the competent authority.
57. The FSA will look to make use of the provision within Article 7 of Regulation (EU) 2019/624 to maximise the use of OAs at low-capacity slaughterhouses and low-capacity GHEs on a risk-basis.
58. Article 36 of Regulation (EU) 2019/627 includes a new requirement for CAs to verify food business operator compliance with campylobacter process hygiene criterion (PHC) as set out in Regulation (EU) No 2073/2005 on microbiological criteria of foodstuffs, which applies only to slaughterhouses where the approved activity is broiler production.
59. The Regulation provides two options for how the competent authority can undertake its verification, sampling or collection of industry data:
 - The first option is for official sampling using the same method and sampling area as food business operators. At least 49 random samples shall be taken in each slaughterhouse each year. This number of samples may be reduced in small slaughterhouses based on a risk evaluation.
 - The second option is to collect information on the total number of samples and the number with more than 1,000 cfu/g taken by food business operators in accordance with Article 5 of Regulation (EC) 2073/2005 and take samples only where it is considered necessary.
60. The FSA currently considers option 2 to be the preferred policy option but no decision has yet been taken and proposals will be discussed with industry stakeholders before any final decision is taken.
61. From the implementation of the OCR on 14 December 2019, echinoderms will no longer be permitted to be harvested from unclassified areas. This will create an impact on LAs and the FSA as any FBOs that harvest echinoderms from unclassified areas will require the area to be classified in accordance with the Regulation 2019/627 or else cease harvesting.
62. Article 61 of Regulation (EU) 2019/627 specifies that sampling frequency for toxin analysis in live bivalve molluscs shall be weekly. The provision for less frequent monitoring, through a risk assessment, still applies. This is more

stringent than the current sampling frequency carried out in England, Wales and Northern Ireland. A Risk Assessment has been carried out to consider the appropriateness of the current regimes and consideration of the evidence in relation to the new requirements is still under review. The FSA will consult further with stakeholders, including an assessment of the impacts, once our analysis is complete.

63. The OCR also changes some existing requirements in the following areas of official controls on POAO:

- Ante-mortem inspection allowed to take place at the holding of provenance for all species and not limited to poultry and lagomorphs.
- There is the capacity for delayed post-mortem inspection for up to 24 hours in low capacity slaughterhouses and game handling establishments.
- It is possible for authorities to introduce less supervision of on-line checks of poultry and lagomorphs when certain criteria are met by the food business operator in accordance with Article 25.
- The age at which post-mortem inspection of bovine animals can be carried out without incision has been lifted from six weeks to eight months reducing risks of cross-contamination and retaining the value of meat, a higher percentage of which will remain intact
- There are reduced post-mortem requirements for cattle which are from herds that are certified by the competent authority as being 'free' of cysticercosis.
- There is provision, based on a risk assessment (only on a temporary and non-recurring basis) to permit continued harvesting of live bivalve molluscs when health standards have not been met in Class A areas, without the closure or reclassification as long as the area and all approved establishments are under a single competent authority and are subject to appropriate restrictive measure.

Tertiary Legislation: Import Controls & Conditions

64. The new OCR and its tertiary legislation are intended to streamline, modernise and harmonise rules regarding the import of animals and goods into the European Union. Responsibility for the delivery of official controls on imported food and feed in Wales is shared between Welsh Government and the FSA. Port Health Authorities and Local Authorities (at designated airport points of entry) deliver veterinary controls on products of animal origin arriving from third countries on behalf of the ministerial departments, although these controls have a public health element and therefore a significant degree of FSA interest. Port Health Authorities and Local Authorities (at designated airport points of entry) also perform controls on high-risk foods not of animal origin (FNAO) on behalf of the FSA.

65. Legislative responsibility for the policies which underpin the import controls regime is also shared between the FSA and Welsh Government. This includes legislation which determines the rules and criteria for the performance of controls, as well as import conditions which must be met before goods can enter the European Union. Tertiary legislation empowered by the OCR updates existing rules in the area of import conditions for products of animal origin intended for human consumption in the European Union.
66. Given the division of responsibility in this area between competent authorities, this impact assessment addresses the two aspects of the legislation for which the FSA can be understood to have primary legislative responsibility: controls on high-risk FNAO and import conditions for products of animal origin for human consumption. It is also necessary to examine the impact that the Commission's new Integrated Management System for Official Controls (IMSOC) will have on the general performance of import controls.
67. Although negotiations have been ongoing since 2017, legislation in some areas is yet to be finalised or published. This is clearly set out below where relevant.

Import controls on high-risk FNAO

68. Certain foods are subject to a higher level of import controls as a result of the elevated risk they are deemed to pose to consumers. Specified commodities from specified countries are subject to physical inspection and laboratory sampling at a rate agreed by Member States on a biannual basis. This system is currently based on Regulation (EC) 882/2004 and Regulation (EU) 669/2009. Rules in this area are replaced by the relevant provisions of the OCR and an as yet unpublished Implementing Regulation. It is foreseen that evidence-based frequency rates will be agreed at a committee of Member States at regular intervals. This would allow for a more transparent and efficient review of risks and for a swifter revision of these measures. As the fundamental mechanics of the system will remain the same, no further impact beyond existing practice is expected in this area in the short-term; current sampling frequencies would remain unchanged unless new evidence suggests that the level of risk has changed e.g. the product may be de-listed or subject to a higher frequency of checking or enhanced controls.
69. Existing border control facilities for the control of high-risk FNAO are currently classified as Designated Points of Entry (DPEs). As the OCR unifies all border control facilities under the definition Border Control Posts (BCPs) these facilities will now be required to meet the standards established in Regulation (EU) 2019/1014. These rules go beyond existing standards as set out in Regulation (EU) 669/2009. As a result, the operators of these BCPs will be required to ensure that their facilities are compliant with the new legislation.

70. Detailed rules regarding how competent authorities should deal with transit and transshipment of goods entering the European Union have also been developed. This legislation, to be made under Article 51(1)(a) of the OCR, has, however, not yet been published. The rules, as currently drafted, build on existing processes but have introduced an increased degree of flexibility for Member States in most instances. For example, there are some proposed changes to the minimum time in port requirements and the Commission is proposing no checks at the BCP of first arrival on animal products which are destined to third countries when consignments are staying on the same means of transport for onward travel to the BCP of destination. As a result of the limited nature of these changes, no costs beyond familiarisation costs for operators or competent authorities are foreseen.
71. Regulation (EU) 2019/1013 establishes that the operator responsible for a consignment of high-risk food and feed not of animal origin arriving in the European Union must be notified at least one working day prior to the expected arrival of the consignment. This is consistent with many of the existing requirements which also require notification one day prior to the expected arrival except for POAO which must be notified 'in advance'. In certain scenarios, where there are 'logistical constraints', for example a short journey, this can be reduced to four hours at the discretion of the competent authorities of the BCP. As such minimal additional impacts are anticipated as a result of this new legislation, on operators or competent authorities.
72. A draft regulation is also under development which would allow for the performance of identity and physical checks on high-risk FNAO to be performed at an inland control point, away from the immediate point of entry for the commodity. This inland control point would be required to meet the same criteria as an inspection centre at a BCP. A process for permitting and management of the transfer of goods would also be established, to ensure the traceability of potentially high-risk foods. As this is flexibility available to the operators of BCPs it does not create potential impacts but could be used in the future to allow for the establishment of more inspection facilities at lower costs. These would require suitable legal designation and approval. Current rules which allow for the onward movement of consignments of high-risk FNAO pending the results of laboratory testing have also been retained.
73. The basic act of the OCR establishes that existing formats of certification will be unified as Common Health Entry Documents (CHEDs). The contents of these categories will vary according to the relevant commodity. The current format of the Common Entry Document (CED), used for consignments of high-risk FNAO, will become the CHED-D. This will require some familiarisation costs for operators and competent authorities alike. The FSA is currently undergoing an internal piece of work to better understand the details of the proposed changes to entry documents and the potential impacts on importers beyond familiarisation costs.

74. Legislation is also yet to be finalised regarding certain derogations for border controls. For example, legislation regarding derogations for the designation of BCPs (such as instances where facilities can be situated away from an entry point into the Union). As these rules create the potential for derogations and flexibilities, no immediate significant impact is foreseen.

Import Conditions for POAO for human consumption

75. Regulation (EC) No 853/2004 establishes that all products of animal origin imported into the European Union must come from a listed third country. This requirement has not been applied fully in the EU since its inception and has been subject to recurrent transitional measures. Legislation, empowered by the OCR, has been made in order to effectively enforce this requirement and to further harmonise import conditions for POAO and some other high-risk goods across the European Union. Regulation (EU) 2019/625 creates an overarching framework for the reformed import conditions regime. This is supplemented by Regulation (EU) 2019/626, as regards third country listing, and Regulation (EU) 2019/628, as regards certification.

76. The most significant new element of this package of legislation is the increased scope of goods which will be subject to certain forms of harmonised import conditions for the first time. These changes will affect the movement of reptile meat, insects and products derived from insects, composite products, raw materials for the production of gelatine and collagen, sprouts for human consumption and fats and greaves.

77. Regulation 2019/625 reforms to the way composite products are controlled. All composite products (with some exceptions) will need to be channelled through BCPs and there will be a move away from a percentage approach to temperature control requirements. The Regulation will not take effect until April 2021, and as such is not included in the appraisal section.

78. Reptile meat is currently imported in the United Kingdom from third countries under domestic legislation. It is still subject to official controls at Border Inspection Posts. The new rules will require imports of reptile meat to derive from an approved third country, as set out in Regulation (EU) 2019/626. As of December 2019, this list will include only Switzerland, Botswana, Vietnam, South Africa and Zimbabwe. These consignments must also arrive with a model health certificate as established in Annex III Part XII of Regulation (EU) 2019/628, which clearly sets out that the products have been produced in line with the relevant European hygiene legislation. This requirement for a model health certificate is subject to a transitional period until 13 March 2020, allowing time for familiarisation and preparation. Regardless, this introduction of harmonised paperwork may create further work for Port Health Authorities and operators involved with the trade of reptile meat for human consumption. Operators in third countries will require the services of an official veterinarian to sign certificates prior to export.

79. Food consisting of, isolated from or produced from insects or their parts will also now be subject to harmonised import conditions in a similar fashion to reptile meat. This will involve the introduction of a third country list established in Regulation (EU) 2019/626 and a certificate in Regulation 2019/628 Annex III Part XIII. In terms of third country listing, this is dependent upon the prior approval of exporting countries or regions in line with novel foods legislation, Regulation (EU) 2015/2283 and Regulation (EU) 2017/2470. Equally this may create a greater administrative burden on Port Health Authorities and new regulatory requirements on operators.
80. Regulation (EU) 2019/625 also establishes a framework of new risk-based rules on importing composite products from third countries based on shelf stability and composition. These measures, however, will not apply until April 2021. As such their impact will not be assessed at this time.
81. Raw materials for the production of gelatine and collagen are also subject to a slight change in the legislation. The new rules provide that raw materials, intended for the production of gelatine and collagen, referred to in point 4(a), Chapter I of Sections XIV and XV, Annex III to Regulation (EC) No 853/2004, for import into the European Union must be obtained from listed slaughterhouses, game-handling establishments, cutting plants and establishments handling fishery products. Existing rules state that raw materials for the production of gelatine and collagen must derive from a listed third country (as set out in Regulation (EU) 2016/759) and originate from a registered or approved establishment. Although at present there exists an approved list of establishments for *treated* raw material for the production of gelatine and collagen, Regulation (EU) 2019/625 sets out that this requirement will be expanded to such raw materials. As these goods are already subject to certification and veterinary controls, this means that the impact on Port Health Authorities will be limited. However, this could potentially have an impact on the movement of goods from third countries and could affect operators adversely as a result of short-term trade disruption.
82. Sprouts and seeds intended for human consumption produced within the European Union are currently subject to heightened rules as a result of the risk they pose to spread foodborne illnesses. In addition, sprouts and seeds imported into the European Union from third countries must be accompanied by a health certificate, as set out in Regulation (EU) 211/2013. As a result of Regulation (EU) 2019/625, sprouts falling under specific CN codes will be required to derive from a listed establishment in a third country which is approved in accordance with the requirements of Article 2 of Regulation (EU) 210/2013 and Regulation (EU) 852/2004. This means that third country establishments producing sprouts are subject to equivalent legislation as those within the European Union. The model health certificate for sprouts is also reformatted and is now published in Annex 3 Part 15 of Regulation (EU) 2019/628. While this could, in theory necessitate some familiarisation costs for Port Health Authorities and operators, it is understood that this is primarily an inland control.

83. Rendered fats and greaves are currently required to derive from an approved establishment in any third country. Regulation (EU) 2019/626, however, requires these products in future to derive from third countries authorised for the import of meat products into the Union in accordance with point (b)(i) of Article 3 of Decision 2007/777/EC.
84. Regulation (EU) 2019/626 will introduce a list for products of animal origin not otherwise covered by the regulations. This will provide greater clarity than is currently the case under Article 6 of Regulation (EC) No. 853/2004. It is not foreseen yet what this will encompass, but we do not anticipate that this will have a significant impact.
85. Regulation (EU) 2019/628 also creates a new format for the model health certificate required for specific goods. Although this format will only be introduced for goods for which the previous certificates had a legal basis pursuant to Regulation (EC) No. 882/2004, it is anticipated that the new format will eventually be extended to all commodities. This new format will incur familiarisation costs for operators and Port Health Authorities alike.
86. Regulation (EU) 2019/628 also creates new rules for the issuance of replacement certificates at Article 6. It is anticipated that these will also result in familiarisation costs.

Tertiary Legislation: Integrated Management System for Official Controls (IMSOC)

87. The IMSOC will act as a unifying platform for existing EU system such as TRACES, RASFF, Administrative Assistance and Cooperation and the Food Fraud Network. The legal basis for the IMSOC and how it will function will be further expanded upon in an Implementing Regulation empowered under Article 134 of the OCR.
88. Operators and competent authorities will be required to familiarise themselves with the new platform and its interface. However, it is anticipated that in the long run the new system will create efficiency savings for businesses and authorities alike.

5. Consultation

89. The FSA in Wales published a six-week consultation on the proposals from 28 October to 9 October 2019
90. Four substantive responses were received. Three were from enforcement bodies and one was from a consumer advocacy organisation.
91. There was broad agreement to all of the proposals in the consultation regarding the legislation. No amendments were considered necessary to the draft Regulations.

92. Some comments requested a reassessment of the costs, particularly of familiarisation costs for enforcement authorities, where responders suggested that we had underestimated the impact. We have therefore updated the costs to reflect this.
93. A question was asked on the provision of sanctions for non-compliance, to conflicting responses. Enforcement authorities welcomed an examination of criminal sanctions to see if there were any areas that were suitable for replacing with civil sanctions, with a backstop criminal offence for continued non-compliance. The consumer organisation suggested that such changes would send the wrong message.
94. In the event the examination of the sanctions did not identify any areas where criminal sanctions could be replaced and so reference is made to this question for completeness only.
95. A summary of the responses will be available on the FSA website at www.food.gov.uk within two months of the close of the consultation.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Baseline: Status Quo

96. This is the baseline option against which all other options have been assessed. It reflects the status quo, i.e. a situation in which there were no incremental changes to the current legislation.
97. It should be noted that this is not a realistic option as the OCR has already been published in April 2017 and will be directly applicable in the UK from 14 December 2019 in an Article 50 extension or transition period. The baseline solely serves the purpose to quantify the expected impacts of all policy options against a consistent baseline.

Option 1: Implement domestic legislation to provide for the execution of powers and enforcement of the OCR and associated tertiary legislation.

98. Take appropriate action to fully implement the provisions of the OCR into UK law. This would require making legislation to enable the delivery of the requirements.
99. This is the preferred option.

Option 2: Do Nothing – Do not implement domestic legislation to provide for the execution of powers and enforcement of the OCR.

100. Regulati
on 2017/625 (OCR) will repeal the current legislation on official controls. If the new legislation is not implemented prior to the current legislation being revoked, the UK would have no legal framework to enforce official controls and therefore the UK would be unable to demonstrate that it can meet one of its primary objectives which is to protect human health.

101. The
OCR is directly applicable European legislation, so failure to put in place the measures needed to implement could lead to the European Union bringing infraction proceedings against the UK. This policy option is rejected.

7. Costs and benefits

Option 1: Implement Regulation 2017/625 - OCR

COSTS & BENEFITS

102. The cost
benefit analysis that follows assesses a range of different costs and benefits that we expect under option 2. These are:

- **Familiarisation costs** : one-off / transitional costs for all affected stakeholders to acquaint themselves with the new requirements of the legislation. This ensures a smooth transition between the two regimes. Figures are presented in current prices.
- **Training costs**: one-off costs to the central competent authority providing training to local authorities that deliver official controls and for local authorities to complete the training.
- **Non-monetised costs**: potential outcomes from the legislation where it is currently not possible to quantify their impact. Where we are unable to quantify expected impacts, we have explained in detail why the required data is not available and how we seek to substantiate the assessment and our understanding going forward.

103. All
quantified costs and benefits in this section are estimated in current prices and measured over a 10-year appraisal period. This appraisal period was deemed appropriate as all monetised costs and benefits are transitional in nature. All total costs and benefits highlighted throughout are rounded to the nearest '000 to aid interpretation.

104. To
ensure consistency in our calculations we have adopted an established method based on the Standard Cost Model (SCM) Approach published by BEIS. Where we have used wage rate data, we have taken hourly wage

rates from the 2018 Annual Survey of Hours and Earnings (ASHE)², using the median rate of pay. Furthermore, when using wage rate data, we have uplifted rates to account for overheads by 30%, in line with The Green Book³ guidance.

2

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/ashe1997to2015selectedestimates>

³ <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

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Affected Groups

Food and Feed Business Operators

105. As the current landscape and the general performance of official controls under the OCR remains substantially the same for FSA policy areas, for the majority of food and feed industry stakeholders there will be no requirement to familiarise themselves with the requirements of the Regulation.

106. However, where the OCR necessitates changes to the tertiary legislation, selected Food and Feed Business Operators will need to familiarise themselves with the changes and comply with new requirements. Selected FSA Approved Establishments, which are subject to official hygiene controls performed for the verification of compliance, will be affected by new tertiary requirements. These include businesses in the following sub-sectors:

- a) Slaughterhouses
- b) Cutting Plants
- c) Fish Auctions
- d) Wholesale fish markets, factory vessel and freezer vessels
- e) Game Handling Establishments
- f) Operators of vessels catching and handling live bivalve molluscs, shellfish and fishery products
- g) Milk and Colostrum Production Holdings

107. In addition, we assume that all UK importers of high-risk food and feed will be affected by new import requirements and changes to border procedures.

108. Official Control Laboratories (OCLs) are designated by CAs for the purpose of analysing samples taken during official controls and for food and feed enforcement. They will see minor changes to the responsibilities placed upon them, requiring them to have closer contact with the laboratories and greater oversight of delegated laboratories. As some OCLs are privately funded those laboratories have been identified as an affected industry stakeholder.

109. We appreciate that additional industry stakeholders might be affected by incoming tertiary legislation which has not yet been agreed. Due to the high level of uncertainty surrounding this legislation we have been unable to assess the associated impacts at this stage.

Enforcement Authorities

110. The OCR primarily addresses the responsibilities of Member States' CCA and their designated enforcement authorities who carry out official controls to check that business operators comply with the relevant law.
111. Local Authorities, as CAs, which deliver official regulatory controls across food and feed will have to familiarise themselves with the new requirements. Similarly, some LAs as CAs, for the delivery of official regulatory controls with regards to imports of POAO and high-risk FNAO will be affected by the new requirements. As there are no PHAs in Wales that are recognised as official BIPs, DPEs or DPls, we assume that the new import requirements for controls undertaken on high-risk food and feed will not affect any PHAs in Wales
112. Operational staff from FSA (in England and Wales) and DAERA (in Northern Ireland) will be affected by changes to the delivery of official controls in relation to meat hygiene, which are directly undertaken by FSA and DAERA operational staff respectively. In addition, selected FSA staff will be required to familiarise themselves with the proposed changes and acquire sufficient expertise to provide guidance and training to stakeholders.
113. Official Control Laboratories (OCLs) are designated by CAs for the purpose of analysing samples taken during official controls and for food and feed enforcement. They will see minor changes to the responsibilities placed upon them, requiring them to have closer contact with the laboratories and greater oversight of delegated laboratories.

Consumers

114. Consumers are not directly affected by the OCR, although a more integrated and simplified approach to controls across the EU should in theory lead to improved consumer protection and increase consumer confidence in food and feed produced within the EU and imported third countries. Harmonisation of official controls will provide reassurance to consumers on the functioning of control systems and increase their ability to make informed choices.
115. These indirect impacts on consumers have not been further assessed in the cost-benefit section which follows.
116. Tables on the following page show the numbers affected in the groups identified.

Total number of affected stakeholders

The table below summarises the number of affected Food Business Operators (FBOs), Enforcement Authorities and Enforcement Officers in Wales that we have identified. Where figures for Wales were not available, numbers have been estimated.

FBOs	
Approved Establishments ⁴	133
Importers of high-risk food and feed ⁵	19
Private OCLs	1
Competent / enforcement authority	
Local Authorities (LAs) ⁶	22
Public Official Control Laboratories ⁷	3
Competent / enforcement authority	
Local Authorities ⁸	
EHOs	155
TSOs	56
Lead Analysts in Official Control Laboratories (public) ⁹	3
FSA Field Operations managers ¹⁰	2 ¹¹

⁴ A list of all approved establishments is available at: <https://data.food.gov.uk/catalog/datasets/1e61736a-2a1a-4c6a-b8b1-e45912ebc8e3>

⁵ The total number of UK-based importers has been extracted from TRACES (https://ec.europa.eu/food/animals/traces_en). Welsh numbers were calculated using the proportion of importers recorded in the LAEMS annual report (<https://signin.riams.org/connect/revision/msy26/Environmental-Health/LAEMS-Annual-report-2017-2018>).

⁶ Annual report on local authority food law enforcement 2017/18, <https://signin.riams.org/connect/revision/msy26/Environmental-Health/LAEMS-Annual-report-2017-2018>

⁷ <https://www.food.gov.uk/about-us/official-feed-and-food-control-laboratories>

⁸ LAEMS 2018/2019 data

⁹ These numbers are based on the assumption that only one lead Analyst will need to familiarise themselves with the changes. They do not represent the number of Analysts employed in OCLs.

¹⁰ Figures based on internal intelligence.

¹¹ The number of field ops managers in Wales has been estimated, assuming there is one area manager, one veterinary lead, one head of operational delivery and one Operations Manager who is in charge of (West of England and) Wales.

Costs

Industry

Familiarisation

117. Importers of high-risk FNAO and POAO (including Freight Handlers) will have to familiarise themselves with the new legislation as it affects the streamlining of new systems and formatting requirements. According to TRACES, there were 1869 unique UK-based importers of high-risk FNAO or POAO who submitted either a CED or CVED in 2018 (see Table 1). Based on the percentage of importers reported on LAEMS, we estimate that 19 of these are based in Wales. This can be regarded as the minimum number of UK businesses that need to familiarise themselves with the proposed legislation as they will be directly affected by changes to official entry documents. We assume that one manager from each importing business will spend one hour reading the legislation, and another hour disseminating to staff and key stakeholders. Following the SCM approach, we multiply the wage rate with the number of importing businesses to calculate the total familiarisation costs. This generates a total cost of familiarisation to importers of £800 (or £45.29 per importer)¹².

118. Selected FSA Approved Establishments will also have to familiarise themselves with the legislation. These FBOs are subject to official controls for verification purposes and may be impacted by the new requirements for OV attendance and campylobacter sampling. They may also be affected by the additional flexibilities that the OCR introduces. As of May 2019, there were 133 applicable Approved Establishments operating in Wales which are expected to be affected by the new legislation (see Table 1). We assume that one manager from each establishment will dedicate one hour reading the guidance and another disseminating it to staff and key stakeholders. This implies a total one-off cost to affected Approved Establishments of £5,000 (or £30.51, on average, per establishment)¹³.

119. At the aggregate level, we estimate the total familiarisation cost to the Welsh industry to be £6,000. This is equivalent to £36.12 per business.

120. As outlined above, this estimate assumes that the majority of food and feed industry stakeholders will not need to familiarise themselves with the requirements of the regulation for those areas where the FSA has policy responsibility.

Changes to the delivery of Official Controls

¹² Based on the median wage rate for *Managers and directors in transport and distribution* (Code 1161), ASHE (2018), table 14.6a.

¹³ Based on the median wage rate for *Managers and proprietors in agriculture and horticulture* (Code 1211) and *Managers and proprietors in forestry, fishing and related services* (Code 1213), ASHE (2018), table 14.6a.

General performance of Official Controls

121. In terms of the secondary legislation, the current landscape and the general performance of official controls under the OCR remains substantially the same. Editorial changes will be made to the FSA Food and Feed Law Codes of Practice, and associated Practice Guidance, the Feed Law Enforcement Guidance document (Northern Ireland) and Manual for Official Controls, which will require familiarisation by local authorities, FSA and DAERA staff performing official controls and other official activities. This will be captured by a separate impact assessment at a later date.

Hygiene controls on products of animal origin (POAO) for human consumption

122. The legislation requires competent authorities to verify the correct implementation by operators of broiler slaughterhouses, of the *Campylobacter* process hygiene criterion (PHC). As of May 2019, there were 63 FSA approved slaughterhouses where the approved activity was broiler production, in England, Wales and Northern Ireland. Collection of sampling data would require FBOs to supply data in a form that permits it to be centrally collated by the FSA. As affected slaughterhouses have existing requirements to test for campylobacter, this additional burden on industry is anticipated to be marginal; the majority of costs will fall on the FSA, as the CCA. Work to look at the feasibility of collecting data as part of OV verification checks has been undertaken which indicate this can be incorporated into their existing duties using current data collection systems. Further work is required to implement this system and will be communicated to industry before it goes ahead. As the details of the system develop, a supporting piece of analysis will be completed which will estimate both the cost to industry and the FSA of the preferred verification option.

123. The introduction of maximum annual throughput thresholds at low capacity slaughterhouses and GMEs will potentially have an impact on the required presence of OVs conducting PMIs at these establishments. It is expected that some affected slaughterhouses and GHEs will exceed threshold levels that have been set, requiring establishments to replace OAs with OVs. However, the FSA would look to maximise the threshold applicable to these establishments, in line with the total Member State production provision outlined in Regulation 2019/624, as explained in paragraph 44. Where this is not possible then extra OV presence required at affected establishments would generate an additional cost to these businesses due to OVs rate of pay being higher than that of OAs. An OV's charge rate is approximately 30% higher than that of an OA/inspector, before any applicable discount.¹⁴

124. Assessing the total throughput levels of low capacity slaughterhouses and GHEs, as well as allocating individual establishments above or below

¹⁴ Based on 2019/20 Charge Rates to Food Business Operators (<https://www.food.gov.uk/sites/default/files/media/document/official-controls-charging-guidance-201920.pdf>), Annex A

the maximum annual threshold constitutes a substantial piece of work. Internal engagement and discussions with the OCR Delivery Working Group are taking place to better understand if centrally held data can provide additional understanding in this area.

125. From the implementation of the OCR on 14 December 2019, echinoderms will no longer be permitted to be harvested from unclassified areas. As the number of potential FBOs harvesting echinoderms from unclassified areas is unknown and no new evidence could be collected during the consultation period, we are currently unable to assess the impact of the change being introduced. In addition, it is understood that the inclusion of 'Holothuroidea' was a drafting error and it is not yet known when this error will be corrected. It is understood that there may be minor changes and additional costs incurred in relation to toxin testing of shellfish as a result of the OCR regulations. The impact of these changes will be assessed in a separate impact assessment and consultation which is scheduled for 2020.

New import requirements

126. On balance, we anticipate a marginal overall increase in official controls for imported POAO or high-risk FNAO products. The legislation outlines harmonised controls, for the first time, for imports of reptile meat, insects and products derived from insects, raw materials for the production of gelatine and collagen, sprouts for human consumption and fats and greaves. Previously, enforcement of these commodities was at the discretion of MSs.

127. Increased import controls are associated with a corresponding rise in compliance costs for the importer. Potential costs include charges and time spent for approval processing, relevant certificates and Sanitary and Phytosanitary checks at the border as well as potential disruption to the supply chain if new import routes have to be established. Robust evidence on the scale of these costs is scarce and highly product specific.

128. In addition, the FSA understands that some of the affected products are already subject to border checks under the current operating regime which will mitigate the tangible impact of a formal harmonisation of controls. We are currently engaging with port officials to understand the practical changes to border procedures and the likelihood of trade disruption in more detail.

129. While we are unable to monetise the costs associated with the new import requirements at this stage, it should be noted that the number of affected consignments is likely to be very small. In particular, we understand that there are currently no imports of reptile meat for human consumption from third countries. Furthermore, the estimated import volume of sprouts for human consumption and rendered animal fats and greaves in 2018

accumulated at most 20,000 tonnes, which is equivalent to less than one percent of all UK food and drink imports from third countries in that year¹⁵.

130. Under OCR 2017/625 IMSOC, as well as other criteria, will determine the level of sampling which has to take place for each high-risk commodity. The system seeks to create a unified platform for existing EU systems, including TRACES, rather than replacing the computational architecture. It is understood that initially, changes in frequencies will still be determined by an EU committee that will meet at regular intervals; we anticipate that IMSOC will influence decisions once enforced. The assumption, under our current understanding, is that IMSOC may automatically change frequencies as IMSOC is implemented further into EU processes. These rates will be based on levels of compliance meaning we could see a decrease or an increase in the number of samples required to be taken. As such, it is intrinsically difficult to quantify what the cost will be for business or understand the potential shift in magnitude at the macro level.
131. However, it is assumed that from the outset current rates and frequency of sampling will remain constant. The FSA supports these changes in principle. However, we realise that we will have to work with industry to ensure compliant trade is not disrupted.

Total costs to Food Business Operators

132. As preparations to implement the OCR are currently in their infancy, the FSA is unable to monetise any of the expected impacts on FBOs beyond one-off familiarisation costs. As such, the total monetised cost to industry is estimated to be £6,000 over a ten-year appraisal period.

Enforcement Authorities

133. The 'basic act' of the OCR, Regulation (EU) 2017/625, will make changes across a number of policy areas. However, for the most part these changes will create relatively few impacts for enforcement authorities. Where there are impacts, they will predominantly affect CAs and delegated delivery bodies that perform official controls across a range of areas.
134. In order to perform and deliver statutory obligations, we have identified the number of applicable enforcement authorities across England, Wales and Northern Ireland.

Familiarisation

135. Three of the stakeholders who have responded to our consultation have suggested that familiarisation costs for Local Authorities and Port Health

¹⁵ Import volumes of affected products are based on HMRC UK Trade Info data. It should be noted that we are unable to quantify the import volume of insects and products derived from insects due to a lack of suitable trade statistics.

Authorities will be considerably larger than initially assumed. We have revised the assumptions for each of the affected EAs and updated our assumption where appropriate.

136. Local Authorities, as CAs, which deliver official regulatory controls across food and feed will have to familiarise themselves with the new requirements. This should enable a smooth transition between the two regimes. It should be noted that the familiarisation costs assessed in this IA only consider the time it takes LAs, OCLs and FSA staff to familiarise themselves with the general provisions laid out in the OCR and the Statutory Instruments. The time it will take LAs to understand the practicalities with implementing the changes will be covered in the Impact Assessment for the next Food and Feed Law Codes of Practice, and associated Practice Guidance review which the FSA will consult on in 2020.
137. We anticipate that for each of the 22 LAs, one manager will spend one hour reading the new SIs and two hours disseminating this information to affected staff (EHO, TSO etc.). In addition, we expect that it will take each member of staff 30 mins to read the disseminated information. We estimate a total one-off familiarisation cost to LAs of £4,000.
138. Port Health Authorities (PHAs), as CAs, deliver official regulatory controls with regards to imports of POAO and high-risk FNAO will have to familiarise themselves with the new requirements laid out in the OCR as they will have a direct impact on their operations.
139. There are no Port Health Authorities in Wales that are classed as Designated Points of Entry (DPEs) and Designated Points of Import (DPIs) for high-risk FNAO and Border Inspection Posts (BIPs) for POAO products.
140. Official Control Laboratories (OCLs) are designated by CAs for the purpose of analysing samples taken during official controls and for food and feed enforcement purposes. The analysis of official control samples is carried out in OCLs by official control scientists. As National Reference Laboratories (NRLs) are already familiar with the new changes only OCLs will be required to familiarise themselves.
141. Anticipating that one professional scientist at each laboratory will spend one hour reading the legislation and two hours disseminating it to staff during routine staff meetings we estimate a cost of need to each OCL of £75.27, or £200 in total.
142. All field operation managers involved in the delivery of official controls in relation to meat hygiene will have to familiarise themselves with the new requirements. As the substance of many of the new provisions do not change the performance of official controls; instead providing nuanced revisions in how they are delivered, it is understood that only field operational managers will have to read the guidance and disseminate it as they see fit. Headcount data identifies 28 field operational managers operating across England and Wales (Wales containing 2). Assuming, as a

central estimate, that each field manager is a Grade 7 employee and that each manager will spend one hour reading the guidance and two hours disseminating to staff, this generates a cost estimate of £126.320 per manager, or £500 in total for Wales.

143. We estimate a total one-off familiarisation cost to Welsh Enforcement Authorities of £5,000.

Training

144. We assume that some Enforcement Officers will require training to effectively enforce the new legislation and to provide guidance to stakeholders. While we understand that PHAs will require most training, consultation respondents have raised the concern that the training costs have been underestimated in the consultation IA. In particular, they have raised the concern that Local Authorities will also require training in IMSOC as they will be asked to provide guidance to importers. They have also suggested that the costs incurred by port health officers would be higher than initially expected. We have revised the following assessment accordingly.

145. 1 officer from each LA, and 6 FSA employees will receive IMSOC training of some sort. Assuming that the training (incl. time to familiarise themselves with the system) will take two working days, IMSOC training would incur a one-off cost, in productive time lost, to Enforcement Authorities in Wales of £1,000¹⁶.

146. Following consultation responses, we also understand that some Local Authorities will need to be trained in TRACES NT as they will need to provide guidance to importing businesses with regards to import certificates, onwards transportation, etc. We assume that this would only be required for Local Authorities with an external temporary storage facility (ETSF) that is currently used for storage of high-risk food and feed not of animal origin. We estimate that there are currently at most 20 different Local Authorities with an ETSF that is used as part of an onward transportation facility (under Article 9 of Regulation (EC) 669/2009) in the UK.¹⁷ We assume that at most 1 of these LAs (or 6% of affected LAs) is situated in Wales. Assuming that one EHO and one TSO at this LA will also need to attend the TRACES NT training and that one EHO and one TSO from all other inland LAs will spend one hour reading new guidelines to develop an understanding of the system in case they need to inform local businesses of the changes that will take

¹⁶ These estimates only include 10% of costs incurred on the FSA, as 10% of EHOs across England, Wales and Northern Ireland are located in Welsh LAs, as per LAEMS 2018/19 returns.

¹⁷ A full list of ETSF facilities as at July 2018 can be found on the FSA's website:

https://www.food.gov.uk/sites/default/files/media/document/external-temporary-storage-facility-list-july-2018.xlsx_2.pdf.

While we are not aware of the exact number of EFTS in use, we assume that the number does not exceed 20.

Assuming that in a worst case, each of these EFTS falls in a different Local Authorities, we estimate that there are at most 20 affected LAs in which EHOs need specific TRACES NT training.

place, we estimate a one-off cost to Welsh inland LAs of £2,000 to receive TRACES-NT training.

147. As the CCA, the FSA will be required to hold expert in-house knowledge of the IMSOC system, both in terms of its content and interface but also in its practical applications. It is believed that one FTE employee will familiarise themselves with the IMSOC system until such point they can be deemed an 'expert'. This is in order to provide support in its wider implementation and also in an advisory capacity to affected policy teams. Assuming a SEO grade employee will become the in-house expert and adopting a central estimate of 24 hours (3 full working days) to become fully versed with the IMSOC system, this one-off cost in productive time lost is estimated to be £800 to the FSA. As only a small proportion of this training will be delivered to Welsh Enforcement Officers, we have apportioned the costs accordingly. As 10% of all EHOs in England, Wales and Northern Ireland are based in Welsh LAs, we apportion 10% of the total FSA costs to FSA Wales. This is equivalent to a one-off cost of £80 for Wales.
148. Official Control Laboratories (OCLs) might need additional training for sampling and any analytical methods that might be required to carry out enforcement under the OCL, provided these methods change. OCLs will incur costs for the time it takes to complete the training as well as costs to develop and validate methods in house and participation in proficiency testing, i.e. verification of the training received. As it is uncertain whether the required methods will change and whether additional training would be required, we have not quantified this cost.
149. Overall, we estimate a total one-off training cost of £3,000 for Welsh Enforcement Authorities (including a proportion of costs incurred on the FSA).
150. It should be noted that the above estimates are based on assumptions around potential training requirements and delivery. These assumptions reflect our current understanding and could be subject to change.

Changes to the delivery of Official Controls

General performance of Official Controls

151. The secondary legislation necessary to provide for the execution of powers and enforcement for the OCR makes no significant changes which would impact on the frequency or number of inland official food and feed controls undertaken by enforcement authorities. Rather it seeks to clarify and enhance current provisions for example by introducing more stringent rules on fraud and provide greater transparency and accountability required by CAs through the publication of information about the organisation and performance of official controls. Such requirements are already being met in the UK.

Campylobacter sampling in broiler slaughterhouses

152. The legislation requires CAs to verify that broiler slaughterhouses have correctly implemented the *Campylobacter* PHC. As explained above, no policy decision has yet been taken as to how the FSA will undertake the verification. If the FSA decides to collect and analyse industry data, this will likely have cost implications to the FSA, as the CCA. Additional administrative resource would be required to create and maintain a framework that centrally gathers and analyses data. This would enable the FSA to monitor compliance at the individual FBO level and on a UK-wide scale. Once the FSA clarifies its preferred policy position, a supporting piece of analysis will be completed which will estimate both the cost to industry and the FSA of the preferred verification option.

New imports requirements

153. New products covered by the legislation, such as insects and reptile meat, will in future be required to be derived from approved third countries. Raw materials for the production of gelatine and collagen, sprouts for human consumption and fats and grieves will have to be derived from approved establishments in third countries. Under harmonising legislation across these commodities, new controls could result in additional administrative requirements; increasing the burden of work on PHAs. For example, consignments of reptile meat products will be required to arrive with model health certificates, for PHAs to assess and sanction. As trade in these commodities is expected to remain low, any increase in administrative burden for enforcement authorities is expected to be relatively muted; and might further be offset by general simplifications of administrative procedures.

154. *During the consultation period, concerns have been raised that under the preferred option, Environmental Health Practitioners (EHPs) and Authorised Officers (AO's) might no longer be authorised to undertake UK checks on imported fish, fish products and shellfish.*

155. While Articles 49 and 55 of the OCR do not specifically refer to EHPs or AO's they continue to allow suitably trained staff such as EHP and AO the opportunity to continue delivering Official controls for imported fish, fish products and shellfish and the capacity to make the final decision concerning the safe importation of these products.

156. The FSA acknowledges that the current system of OV's and other professionals involved in the delivery of official controls for imported products of animal origin and food not of animal origin works very well for the UK, there is no expectation that future arrangements will change.

Official Veterinarian resource requirements

157. Additional OV resource may be required at low capacity slaughterhouses and GMEs for PMI. Additional costs of OV presence will fall on the affected individual establishment, although there may be some associated

administrative costs to the CCA. Any such additional cost is expected to be marginal as resource activity costs (in this case switching OAs for OVs) would be included in the direct cost element of the hourly rates charged to industry.

Funding of analyses carried out by OCLs

158. It is known that there are UK OCLs that currently sub-contract samples for analysis to partner laboratories in other member states (where the partner laboratory is not officially designated as an OCL in that MS) and these may also receive, and subsequently sub-contract samples from other UK OCLs. Such sub-contracting of samples to other MS would not be permissible under the changes to the OCR which could have a financial impact on OCLs.

159. We are currently unable to quantify this impact as it would have to be calculated on a case-by-case basis where it is known exactly what tests and how many samples are being sub-contracted. The impact of such increased costs of sub-contracting the analysis of samples will be dependent on finding suitable alternative sources for analysis, either by an alternative UK laboratory or another MS OCL. Depending on options, this could have an associated cost for LAs, as the primary funders of OCLs.

160. Importantly, alternative arrangements are being explored for the affected laboratories such that any new situation may not have any incremental impact. As these arrangements are still uncertain, we are unable to assess this impact in further detail. The FSA is conducting work on the future laboratory model and UK OCLs will be consulted in the process and likely impacts.

Total costs to Enforcement Authorities

161. We are only able to monetise the one-off familiarisation costs (including familiarisation and associated training requirements) to enforcement bodies with regards to the new SIs and provisions included within OCR 2017/625. The total identified transitional costs are £7,000.

162. It should be noted that, where there is an overlap between affected Enforcement Authorities between Welsh Government and FSA, transitional costs (of up to £7,000) might be double counted.

Total costs

163. The total costs associated with Policy Option 1 over a 10-year appraisal period are £13,000 with a Net Present Value (NPV) of £13,000. Industry will assume 44% of total costs imposed as a result of this policy, with enforcement agencies assuming the remaining 56%. Benefits were not monetised, therefore the total net cost over the 10-year appraisal period is £13,000

BENEFITS

Food and Feed Business Operators

Simplified legislative framework

164. Overall, industry should benefit from a harmonised and coherent regulatory approach to official controls and enforcement actions along the agri-food chain, and from a better targeting of risks.
165. In particular import controls would be streamlined and adjusted to actual risk levels in the long-term. It is expected that the harmonisation of entry documents and the establishment of a comprehensive management system, IMSOC, will reduce the administrative burden for importers of high-risk food and feed. As CAs and business operators have not yet had the opportunity to test early versions of IMSOC, it is difficult at this time to estimate the extent of these changes. IMSOC aims to provide numerous benefits. The harmonisation of documents will create a familiar and consistent format, making it easier and more accessible for importers and stakeholders to use. IMSOC will allow competent authorities access to various relevant data/intelligence by interlinking a variety of current systems used for imported products. The intended long-term risk-based adjustments to levels of controls aims to make more efficient use of resource, with the aim of shifting resource as levels of risk change. These adjustments aim to allow changes of frequencies to occur quicker as data and information is analysed on an ongoing basis.
166. Closer cooperation among CAs would improve the overall effectiveness of delivery of official controls, reducing duplication, increasing consistency and ensuring non-compliance is dealt with in a timely manner.

Additional changes (POAO official controls)

167. The impact of changing some existing requirements on official controls of POAO should enable certain FBOs to generate cost savings across their operations. As the changes will depend on the take up by FBOs, as well as a high level of uncertainty surrounding the future delivery process, it is not possible to estimate the potential cost savings at present. The ability for an FBO to apply these changes depends on a confirmatory risk assessment by the CA which could limit application at some establishments.

Compliance with EU Regulations

168. By making the Regulations, which allow for the implementation and enforcement of directly applicable EU Regulations, the Welsh Government removes the risk of infraction proceedings from the EU. These proceedings can result in significant fines to a Member State

Enforcement Authorities

Reduced administrative burden

169. We do not expect any substantial benefits for enforcement authorities. While they could benefit, overall, from a simplification and consolidation of the legislative framework, we are unable to substantiate this due to a high level of uncertainty surrounding the future delivery process.

TOTAL NET COST

170. As no monetised benefits are identified the total net cost over the 10-year appraisal period is £13,000

9. Competition Assessment

171. As these Regulations apply to all food businesses operating in the UK (and wider EU), it is not considered that a competition assessment is required.

10. Post implementation review

172. The FSA will be undertaking a further consultation on changes to the Food and Feed Law Codes of Practice and Practice Guidance in 2020. This will give a further opportunity to test the assumptions made in the Impact Assessment and amend them if necessary.



Eich cyf/Your ref
Ein cyf/Our ref MA/VG/5533/19

Elin Jones, AM
Llywydd
National Assembly for Wales
Cardiff Bay
CF99 1NA

28 November 2019

Dear Elin,

The Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019
The Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019
The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019.

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that these statutory instruments come into force less than 21 days from the date of laying. The Explanatory Memoranda for these Regulations are attached for your information.

The Official Controls Regulation (Regulation (EU) 2017/625) (OCR) will come fully into force across the EU on 14 December 2019 and revoke the existing framework legislation for official controls along the agri-food chain. The Regulation is part of the EU Smarter Rules for Safer Food (SRSF) package and is directly applicable EU law. The UK is obliged, as a matter of EU law, to make provision to enforce the OCR.

The drafting of the Statutory Instruments has been delayed because important parts of them depended on the status of the United Kingdom, insofar as whether it was a Member State of the European Union on the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October.

The impact of this on the drafting process in all the UK administrations has been significant, and this is the reason why the final SIs are not able to be submitted for scrutiny in time to allow the period of 21 days between laying and coming into force on 14 December.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
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CF99 1NA

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The current official controls regulation (Regulation (EC) No. 882/2004) will be revoked when the OCR comes into force on 14 December. The SIs are critical to maintaining official controls and enforcement. If these SIs are not made, this leaves Wales without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the SIs coming into force on 14 December, the FSA and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws.

Consultation has been carried out on the SIs in accordance with Welsh Government guidelines and as required by European law. Responses are analysed in the Explanatory Memoranda but required no specific alteration of the SIs.

Similar Regulations are being made in all other administrations of the UK.

I am copying this letter to Mick Antoniw, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)475 – The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019

Background and Purpose

These Regulations amend the Fishery Products Official Controls Charges (Wales) Regulations 2007 (S.I. 2007/3462 (W. 307)) to provide for the execution of powers and enforcement in Wales of Regulation (EC) No.2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (the Official Controls Regulation).

The current official controls regulation (Regulation (EC) No. 882/2004) will be revoked on 14 December. As such, these Regulations are needed to provide Wales with a legal framework to enforce official controls.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

The 21 day rule under the Statutory Instruments Act provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can occur if legislation is annulled after it has been implemented. However, in this case, the Welsh Government considers that the circumstances justify a breach of that rule.

An explanation for the breach has been provided by Rebecca Evans AM, Minister for Finance and Trefnydd, **in a letter to the Llywydd dated 28 November 2019.**

We note that the letter states that the Regulations are “critical to maintaining official controls and enforcement” and that if these Regulations do not come into force on 14 December 2019, this would leave Wales “without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the [Regulations] coming into force on 14 December, the [Food Standards Agency] and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws.”

The Explanatory Memorandum (EM) also explains the reason for the breach of the 21 day rule at page 3:

...8. The drafting of the SIs has been delayed because important parts of them depended on the status of the United Kingdom, insofar as whether it was a Member State of the European Union on



the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October.

9. The Impact of this on the drafting process in all of the devolved administrations has been significant, and this is the reason why the final SIs were not able to be submitted for scrutiny in time to avoid the recommendation not to adhere to the 21-day convention...

Implications arising from exiting the European Union

We note that the drafting of these Regulations was delayed as a result of uncertainty around the status of the United Kingdom being a member state of the European Union.

Government Response

A government response is not required.

Legal Advisers

Constitutional and Legislative Affairs Committee

December 2019



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2019 No. 1481 (W. 265)

FOOD, WALES

**The Fishery Products (Official
Controls Charges) (Wales)
(Amendment) Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Fishery Products (Official Controls Charges) (Wales) Regulations 2007 (S.I. 2007/3462) (W. 307). These Regulations provide for the partial implementation of Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (OJ No. L 95, 7.4.2017, p. 1) and of Implementing and Delegated Regulations made under it.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2019 No. 1481 (W. 265)

FOOD, WALES

**The Fishery Products (Official
Controls Charges) (Wales)
(Amendment) Regulations 2019**

Made 27 November 2019

Laid before the National Assembly for Wales
28 November 2019

Coming into force 14 December 2019

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽¹⁾.

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures in respect of food (including drink) including the primary production of food⁽²⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for any reference in the Fishery Product (Official Controls Charges) (Wales) Regulations 2007⁽³⁾ to an EU instrument defined in the Schedule to those Regulations, as those Regulations are amended by these Regulations, to be construed as a reference to that instrument as amended from time to time.

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- (1) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
- (2) S.I. 2005/1971. By virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), functions conferred on the National Assembly for Wales by this designation are exercisable by the Welsh Ministers
- (3) S.I. 2007/3462 (W. 307), amended by S.I. 2018/806 (W. 162) and S.I. 2019/463 (W. 111). It is prospectively amended by S.I. 2019/1046 (W. 185).

As required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾ there has been open and transparent public consultation during the preparation of these Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019.

(2) These Regulations come into force on 14 December 2019.

Amendment of the Fishery Products (Official Controls Charges) (Wales) Regulations 2007

2. The Fishery Products (Official Controls Charges) (Wales) Regulations 2007 are amended as follows.

3. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) for the definition that begins ““Directive 2004/41”” substitute—

““Directive 2004/41” (“*Cyfarwyddeb 2004/41*”), “Regulation 2406/96” (“*Rheoliad 2406/96*”), “Regulation 852/2004” (“*Rheoliad 852/2004*”), “Regulation 853/2004” (“*Rheoliad 853/2004*”), “Regulation 1688/2005” (“*Rheoliad 1688/2005*”), “Regulation 2073/2005” (“*Rheoliad 2073/2005*”), “Regulation 2074/2005” (“*Rheoliad 2074/2005*”), “Regulation 2015/1375” (“*Rheoliad 2015/1375*”), “Regulation 2017/185” (“*Rheoliad 2017/185*”), “Regulation 2017/625” (“*Rheoliad 2017/625*”), “Regulation 2019/624” (“*Rheoliad 2019/624*”) and “Regulation 2019/627” (“*Rheoliad 2019/627*”) have the meanings respectively given to them in the Schedule;”;

(ii) in the definition of “first placing on the market”, for “Regulation 882/2004” substitute “Regulation 2017/625”;

(iii) in the definition of “first sale in a fish market”, for “Regulation 882/2004” substitute “Regulation 2017/625”;

⁽¹⁾ OJ No. L 31, 1.2.2002, p. 1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council (OJ No. L 198, 25.7.2019, p. 241).

(iv) for the definition of “official controls” substitute—

““official controls” (*rheolaethau swyddogol*) has the meaning given to it in Article 2(1) of Regulation 2017/625;”;

(v) in the definition of “processing”, for “Chapter V of Section B of Annex IV to Regulation 882/2004” substitute “Regulation 2017/625”;

(vi) in the definition of “third country import”, for “a charge is payable under Regulation 882/2004” substitute “a charge set out in Annex 4 to Regulation 2017/625 is payable”;

(b) after paragraph (2) insert—

“(3) In these Regulations, any reference to an EU instrument defined in the Schedule is a reference to that instrument as amended from time to time.”

4. In regulation 3 (actual costs)—

(a) for “listed in Annex VI to Regulation 882/2004” substitute “referred to in Articles 81 and 82 of Regulation 2017/625”;

(b) for “Annex III to Regulation 854/2004” substitute “Title 6 of and Annex 6 to Regulation 2019/627”.

5. In regulation 4 (Sterling equivalents of Euro), in paragraph (3)—

(a) in sub-paragraph (b), after “in each subsequent year” insert “until the coming into force of the Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019”;

(b) after sub-paragraph (b) insert—

“(c) after the coming into force of the Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019, the average of the rates published in the C Series of the Official Journal of the European Union for each of the days during the period of charge when the rate is published.”

6. In regulation 9 (sums remitted from one food authority to another), for “Annex III to Regulation 854/2004” substitute “Title 6 of and Annex 6 to Regulation 2019/627”.

7. In regulation 10 (payment of landings charge), for “Annex III to Regulation 854/2004”, in each place it occurs, substitute “Title 6 of and Annex 6 to Regulation 2019/627”.

8. In regulation 12 (charge in respect of processing establishments), for “Annex III to Regulation 854/2004”, in both places it occurs, substitute “Title 6 of and Annex 6 to Regulation 2019/627”.

9. For the Schedule (definitions of EU legislation), substitute the Schedule set out in the Schedule to these Regulations.

Vaughan Gething

Minister for Health and Social Services, one of the
Welsh Ministers

27 November 2019

SCHEDULE

Regulation 9

“THE SCHEDULE DEFINITIONS OF EU LEGISLATION

Regulation 2

“Directive 2004/41” (“*Cyfarwyddeb 2004/41*”) means Directive 2004/41/EC of the European Parliament and of the Council repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC⁽¹⁾;

“Regulation 2406/96” (“*Rheoliad 2406/96*”) means Council Regulation (EC) No. 2406/96 laying down common marketing standards for certain fishery products⁽²⁾

“Regulation 852/2004” (“*Rheoliad 852/2004*”) means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs⁽³⁾ as read with Regulation 2073/2005;

“Regulation 853/2004” (“*Rheoliad 853/2004*”) means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin⁽⁴⁾ as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005 and Regulation 2017/185;

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- (1) OJ No. L 157, 30.4.2004, p. 33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L 195, 2.6.2004, p. 12).
- (2) OJ No. L 334, 23.12.1996, p. 1.
- (3) OJ No. L 139, 30.4.2004, p. 1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 3) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).
- (4) OJ No. L1 39, 30.4.2004, p. 55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 22) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).

“Regulation 1688/2005” (*“Rheoliad 1688/2005”*) means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs⁽¹⁾;

“Regulation 2073/2005” (*“Rheoliad 2073/2005”*) means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs⁽²⁾;

“Regulation 2074/2005” (*“Rheoliad 2074/2005”*) means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004⁽³⁾;

“Regulation 2015/1375” (*“Rheoliad 2015/1375”*) means Commission Implementing Regulation (EU) 2015/1375 laying down specific rules on official controls for *Trichinella* in meat⁽⁴⁾;

“Regulation 2017/625” (*“Rheoliad 2017/625”*) means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No. 999/2001, (EC) No. 396/2005, (EC) No. 1069/2009, (EC) No. 1107/2009, (EU) No. 1151/2012, (EU) No. 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No. 1/2005 and (EC) No. 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the

(1) OJ No. L 271, 15.10.2005, p. 17.

(2) OJ No. L 338, 22.12.2005, p. 1, as read with the Corrigenda at OJ No. L 278, 10.10.2006, p. 32 and OJ No. L 283, 14.10.2006, p. 62.

(3) OJ No. L 338, 22.12.2005, p. 27.

(4) OJ L No. L 212, 11.8.2015, p. 7.

Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC⁽¹⁾ as read with Directive 2004/41, Regulation 2074/2005, Regulation 2015/1375 and Regulation 2017/185;

“Regulation 2019/624” (“*Rheoliad 2019/624*”) means Commission Delegated Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat and for production and relaying areas of live bivalve molluscs in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council⁽²⁾ as read with Directive 2004/41, Regulation 2074/2005, Regulation 2015/1375 and Regulation 2017/185;

“Regulation 2019/627” (“*Rheoliad 2019/627*”) means Commission Implementing Regulation (EU) 2019/627 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No. 2074/2005 as regards official controls⁽³⁾ as read with Directive 2004/41, Regulation 2074/2005, Regulation 2015/1375 and Regulation 2017/185.”

(1) OJ No. L 95, 7.4.2017, p. 1.

(2) OJ No. L 131, 17.5.2019, p. 1.

(3) OJ No. L 131, 17.5.2019, p. 51.

Explanatory Memorandum to The Fishery Products (Official Control Charges) (Wales) (Amendment) Regulations 2019

This Explanatory Memorandum has been prepared by Food Standards Agency 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 Fishery Products (Official Control Charges) (Wales) (Amendment) Regulations 2019

Vaughan Gething

Minister for Health and Social services

28 November 2019

PART 1

1. Description

1. The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 amend the Fishery Products (Official Controls Charges) (Wales) Regulations 2007 [SI 2007/3462 (W. 307)] to provide for the execution of powers and enforcement, in Wales of Regulation (EC) No.2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.
2. It continues to require the Food Standards Agency (“FSA”) to charge food business operators in Wales, in order to recover a percentage of the costs incurred by the FSA in carrying out official controls at such premises to check for compliance with applicable requirements.

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

3. Section (2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the SI because it is giving effect to EU provisions
4. The current official controls regulation (Regulation (EC) No. 882/2004) will be revoked when the OCR comes into force on 14 December. The SIs are critical to maintaining official controls and enforcement. If these SIs are not laid, this leaves Wales without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the SIs coming into force on 14 December, the FSA and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws. For example, food inspectors will be unable to enter and inspect food businesses. Additionally, there will be no official presence at meat processing plants meaning they will need to cease operation, these has implications for food supplies as well as loss of employment as food business operators will not employ inspectors while they are unable to perform their duties.
5. Official controls are integral to protecting consumers’ health and other interests and maintaining the integrity of the agri-food chain that provides consumer and business confidence as well as assurance to other Member States and 3rd countries, which is vital to trade. UK enforcement authorities (such as the FSA and local authorities) carry out official controls at all stages of production, distribution, storage, transport, import and export of food and feed. The controls ensure that

food and feed businesses are meeting their obligations to produce safe and wholesome food and feed and that unsafe products are removed from the market.

6. Without the SIs coming into force on 14 December we would fail to meet our legal obligations and the FSA and other enforcement authorities would lose the legal powers to effectively enforce food and feed safety laws.
7. Similar legislation is being made in England, Scotland and Northern Ireland to come into force on 14 December.
8. The drafting of the SIs has been delayed because important parts of them depended on the status of the United Kingdom, insofar as whether it was a Member State of the European Union on the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October.
9. The impact of this on the drafting process in all of the devolved administrations has been significant, and this is the reason why the final SIs were not able to be submitted for scrutiny in time to avoid the recommendation not to adhere to the 21-day convention.

3. Legislative background

10. Regulation (EU) 2017/625 entered into force on the 27 April 2017, the applicability of the new rules was set to apply gradually over several years; with the main application taking effect 14 December 2019.
11. Regulation (EU) 2017/625 sets out a framework of requirements for the competent authorities in Member States which have responsibilities for organising and performing official controls and other official activities to verify compliance with agri-food chain legislation. The Regulation broadens the scope of the original official food and feed controls Regulation (EC) 882/2004 to cover plant health and animal by-products legislation (and other agricultural areas such as plant protection products and organic production) in order to introduce a more consistent approach to official controls along the entire agri-food chain.
12. Regulation (EU) 2017/625 amends Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC.
13. Regulation (EU) 2017/625 repeals Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC,

96/23/EC, 96/93/EC and 97/78/ EC and Council Decision 92/438/EEC (“Official Controls Regulation”).

14. In addition, the Regulations provides for a number of empowerments to set out in Commission tertiary legislation more detailed rules for the performance of official controls and other official activities.
15. Most of the provisions of Regulation (EU) 2017/625 clarify and simplify existing requirements and aim to introduce a more risk-based approach to controls. Therefore, existing enforcement arrangements in the UK are generally already aligned to the new Regulation.
16. The FSA is the Central Competent Authority (CCA) responsible for checks carried out on compliance with feed and food law, including imported feed and food in Wales. The main provisions of the new EU Regulation will take effect across the European Union from 14 December 2019. This is part of a wider initiative to harmonise and simplify existing EU legislation and to establish a more integrated approach to official controls in all areas across the agri-food chain.

Legal issues, powers and statutory duties

17. The Regulations will be made pursuant to powers in section 2(2) of the European Communities Act 1972. Section 2(2) of the European Communities Act 1972 provides that any designated Minister may by order, rules, regulations or scheme make provision for the purpose of implementing any EU obligation of the UK. “Designated Minister” means such Minister of the Crown or government department as may from time to time to be designated by Order in Council in relation to any matter or for any purpose. 2(2) of the European Communities Act 1972 enables
18. Section 59 of the Government of Wales Act 2006 provides that the power to designate a Minister of the Crown or government department under section 2(2) of the European Communities Act 1972 may be exercised to designate the Welsh Ministers, and that accordingly the Welsh Ministers may exercise the power conferred by section 2(2) in

relation to any matter or purpose in relation to which they have been designated.

19. The Welsh Ministers are designated in relation to measures in respect of food (including drink) including the primary production of food (see European Communities (Designation) (No. 2) Order 2005/1971).

20. The Regulations follow the negative procedure.

4. Purpose and intended effect of the legislation

21. This Statutory Instrument amends The Fishery Products (Official Controls Charges) (Wales) Regulations 2009

22. The amendment to the domestic legislation is mechanical in nature to update existing references to reflect the new EU Regulation.

23. This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

24. The Statutory Instrument makes no significant changes to current official control practices and consolidates and amends legislative references to take account of the new EU legislation.

5. Consultation

25. The FSA in Wales carried out a public consultation on the overarching Regulations and draft Impact Assessment between 28 August and 9 October 2019.

26. Four substantive comments were received. None of those made any comment relating to the amendment to the Fishery Products (Official Controls Charges) (Wales) Regulations 2009.

6. Regulatory Impact Assessment (RIA)

27. The amendments made in The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 are mechanical in nature, intended only to update existing references to reflect the new EU Regulation. These changes are not expected to have a major policy impact and, as such, a Regulatory Impact Assessment is not considered necessary. This is in line with the Welsh Ministers' RIA Code.

9. Competition Assessment

28. As these regulations apply to all businesses affected, regardless of size or market share, it is not considered that there is any impact on competition.

10. Post implementation review

29. As these regulations are technical in nature, and in practice make no appreciable change to the current application of Official Controls no post-implementation review is currently planned. Should any unforeseen consequences arise, the FSA will review this.



Eich cyf/Your ref
Ein cyf/Our ref MA/VG/5533/19

Elin Jones, AM
Llywydd
National Assembly for Wales
Cardiff Bay
CF99 1NA

28 November 2019

Dear Elin,

The Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019
The Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019
The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019.

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that these statutory instruments come into force less than 21 days from the date of laying. The Explanatory Memoranda for these Regulations are attached for your information.

The Official Controls Regulation (Regulation (EU) 2017/625) (OCR) will come fully into force across the EU on 14 December 2019 and revoke the existing framework legislation for official controls along the agri-food chain. The Regulation is part of the EU Smarter Rules for Safer Food (SRSF) package and is directly applicable EU law. The UK is obliged, as a matter of EU law, to make provision to enforce the OCR.

The drafting of the Statutory Instruments has been delayed because important parts of them depended on the status of the United Kingdom, insofar as whether it was a Member State of the European Union on the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October.

The impact of this on the drafting process in all the UK administrations has been significant, and this is the reason why the final SIs are not able to be submitted for scrutiny in time to allow the period of 21 days between laying and coming into force on 14 December.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The current official controls regulation (Regulation (EC) No. 882/2004) will be revoked when the OCR comes into force on 14 December. The SIs are critical to maintaining official controls and enforcement. If these SIs are not made, this leaves Wales without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the SIs coming into force on 14 December, the FSA and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws.

Consultation has been carried out on the SIs in accordance with Welsh Government guidelines and as required by European law. Responses are analysed in the Explanatory Memoranda but required no specific alteration of the SIs.

Similar Regulations are being made in all other administrations of the UK.

I am copying this letter to Mick Antoniw, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive, flowing style.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)476 – The Meat (Official Control Charges) (Wales) (Amendment) Regulations 2019

Background and Purpose

The Meat (Official Controls Charges) (Wales) (Amendment) Regulation 2019 (“Regulations”) amend the Meat (Official Control Charges) (Wales) Regulations 2009 (“2009 Regulations”), to partially implement EU regulations on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. Similar regulations are being made in all other administrations of the UK.

The Regulations maintain the requirement upon the Food Standards Agency (“FSA”) to charge operators of approved meat premises in Wales, in order to recover a percentage of the costs incurred by the FSA in carrying out official controls at such premises to check for compliance with applicable meat hygiene and animal welfare and slaughter requirements. No changes to the charges themselves are made by the Regulations.

These Regulations are being made using powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Three points are identified for reporting under Standing Order 21.3 in respect of this instrument:

1. **Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly**

1.1 We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans AM, Minister for Finance and Trefnydd, in a [letter to the Llywydd dated 28 November 2019](#).

In particular, we note what the letter says about these Regulations being “critical to maintaining official controls and enforcement” and that if these Regulations do not come into force on 14 December 2019, this would leave Wales “without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the [Regulations] coming into force on 14 December, the [Food Standards Agency] and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws.”



1.2 The Welsh Ministers had a choice of which procedure to apply to these Regulations under section 2(2) of, and paragraph 2 of Schedule 2 to, the European Communities Act 1972. The choice of procedure appears to be appropriate.

1.3 These Regulations amend regulation 2 of the 2009 Regulations as follows:

- regulation 3(c)(ii) removes paragraph (b) from the definition of “cutting plant”, which gives an additional definition of a cutting plant for the purpose of the 2009 Regulations, stating that it is a cutting plant which (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed cutting premises under the Wild Game Meat (Hygiene and Inspection) Regulations 1995;
- regulation 3(e)(ii) removes paragraph (b) from the definition of “game-handling establishment”, which gives an additional definition of a game-handling establishment for the purpose of the 2009 Regulations, stating that it is a game-handling establishment which (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed wild game processing facility under the Wild Game Meat (Hygiene and Inspection) Regulations 1995; and
- regulation 3(i)(ii) removes paragraph (b) from the definition of “slaughterhouse”, which gives an additional definition of a slaughterhouse for the purpose of the 2009 Regulations, stating that it is a slaughterhouse which (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed slaughterhouse under the Wild Game Meat (Hygiene and Inspection) Regulations 1995.

The effect of the provisions listed above could be that some plants/establishments/ slaughterhouses which were previously authorised for the purposes of the 2009 Regulations may no longer be authorised. The Explanatory Memorandum does not give any information as to whether, and if so how, this will affect the plants/establishments/slaughterhouses which are authorised under the 2009 Regulations. It may be the case that these categories of authorisation are no longer relevant as Regulation 853/2004 has been superseded and the Wild Game Meat (Hygiene and Inspection) Regulations 1995 have been repealed, but further information is required from the Welsh Government to confirm what the effect of provisions listed above will be.

Implications arising from exiting the European Union

We note that the drafting of these Regulations was delayed as a result of uncertainty around the status of the United Kingdom being a member state of the European Union.

Government Response

A government response is required in respect of reporting point 3.

Legal Advisers

Constitutional and Legislative Affairs Committee

4 December 2019



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2019 No. 1480 (W. 264)

FOOD, WALES

**The Meat (Official Controls
Charges) (Wales) (Amendment)
Regulations 2019**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Meat (Official Controls Charges) (Wales) Regulations 2009 (S.I. 2009/1557) (W. 152). These Regulations provide for the partial implementation of Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (OJ No. L 95, 7.4.2017, p. 1) and of Implementing and Delegated Regulations made under it.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2019 No. 1480 (W. 264)

FOOD, WALES

**The Meat (Official Controls
Charges) (Wales) (Amendment)
Regulations 2019**

Made 27 November 2019

Laid before the National Assembly for Wales
28 November 2019

Coming into force 14 December 2019

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽¹⁾.

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures in respect of food (including drink) including the primary production of food⁽²⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for any reference in the Meat (Official Controls Charges) (Wales) Regulations 2009⁽³⁾ to an EU instrument defined in Schedule 1 to those Regulations, as those Regulations are amended by these Regulations, to be construed as a reference to that instrument as amended from time to time.

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- (1) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).
- (2) S.I. 2005/1971. By virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), functions conferred on the National Assembly for Wales by this designation are exercisable by the Welsh Ministers.
- (3) S.I. 2009/1557 (W. 152), amended by S.I. 2011/1043, 2014/951 (W. 92) and 2018/806 (W. 162). It has been prospectively amended by S.I. 2019/434 (W. 102).

As required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾ there has been open and transparent public consultation during the preparation of these Regulations.

Title and commencement

1.—(1) The title of these Regulations is the Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019.

(2) These Regulations come into force on 14 December 2019.

Amendment of the Meat (Official Controls Charges) (Wales) Regulations 2009

2. The Meat (Official Controls Charges) (Wales) Regulations 2009 are amended as follows.

3. In regulation 2 (interpretation), in paragraph (1)—

- (a) in the definition of “audit”, for “Article 2.6 of Regulation 882/2004” substitute “Article 3(30) of Regulation 2017/625”;
- (b) in the definition of “controls”, for “pursuant to Regulation 854/2004,”, in both places it occurs, substitute “pursuant to Regulation 2017/625, Regulation 2019/624 and Regulation 2019/627,”;
- (c) in the definition of “cutting plant”—
 - (i) in paragraph (a), for “Article 31.2 of Regulation 882/2004” substitute “Article 148 of Regulation 2017/625”;
 - (ii) omit paragraph (b);
- (d) for the definition that begins ““Directive 2004/41””, substitute—

““Directive 2004/41”	(“Cyfarwyddeb 2004/41”),	“Regulation 178/2002”
(“Rheoliad 852/2004”	(“Rheoliad 852/2004”),	“Regulation 853/2004”
(“Rheoliad 853/2004”),	“Regulation 1688/2005”	(“Rheoliad 1688/2005”),
(“Rheoliad 2073/2005”	(“Rheoliad 2073/2005”),	“Regulation 2074/2005”
(“Rheoliad 2074/2005”),	“Regulation 2015/1375”	(“Rheoliad 2015/1375”),
(“Rheoliad 2015/1375”),	“Regulation	

(1) OJ No. L 31, 1.2.2002, p. 1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council (OJ No. L 198, 25.7.2019, p. 241).

2017/185” (“*Rheoliad 2017/185*”),
“Regulation 2017/625” (“*Rheoliad 2017/625*”),
“Regulation 2019/624” (“*Rheoliad 2019/624*”) and
“Regulation 2019/627” (“*Rheoliad 2019/627*”) have the
meanings respectively given to them in
Schedule 1;”;

- (e) in the definition of “game-handling establishment”—
 - (i) in paragraph (a), for “Article 31.2 of Regulation 882/2004” substitute “Article 148 of Regulation 2017/625”;
 - (ii) omit paragraph (b);
- (f) at the appropriate place, insert—
 - ““official auxiliary” (“*cynorthwydd swyddogol*”) has the meaning given to it in Article 3(49) of Regulation 2017/625;”;
- (g) in the definition of “official controls”, for “Article 2.1 of Regulation 882/2004” substitute “Article 2(1) of Regulation 2017/625”;
- (h) in the definition of “official veterinarian”, for “Article 2.1(f) of Regulation 854/2004” substitute “Article 3(32) of Regulation 2017/625”;
- (i) in the definition of “slaughterhouse”—
 - (i) in paragraph (a), for “Article 31.2 of Regulation 882/2004” substitute “Article 148 of Regulation 2017/625”;
 - (ii) omit paragraph (b).

4. For Schedule 1 (definitions of EU legislation), substitute the Schedule set out in the Schedule to these Regulations.

5. In Schedule 2 (calculation of the official controls charge)—

- (a) in paragraph 6—
 - (i) for “specified in Article 1.1 of Regulation 882/2004” substitute “of Regulation 2017/625”;
 - (ii) for “Article 3.1” substitute “Article 9(1)”;
- (b) in paragraph 11, for “Annex VI to Regulation 882/2004” substitute “Articles 81 and 82 of Regulation 2017/625”.

Vaughan Gething
Minister for Health and Social Services, one of the
Welsh Ministers
27 November 2019

SCHEDULE

Regulation 4

“SCHEDULE 1 DEFINITIONS OF EU LEGISLATION

Regulation 2(1)

“Directive 2004/41” (“*Cyfarwyddeb 2004/41*”) means Directive 2004/41/EC of the European Parliament and of the Council repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC(1);

“Regulation 178/2002” (“*Rheoliad 178/2002*”) means Regulation (EC) No.178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(2);

“Regulation 852/2004” (“*Rheoliad 852/2004*”) means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(3) as read with Regulation 2073/2005;

“Regulation 853/2004” (“*Rheoliad 853/2004*”) means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(4) as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005 and Regulation 2017/185;

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- (1) OJ No. L 157, 30.4.2004, p. 33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L 195, 2.6.2004, p. 12).
- (2) OJ No. L 31, 1.2.2002, p. 1.
- (3) OJ No. L 139, 30.4.2004, p. 1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 3) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).
- (4) OJ No. L 139, 30.4.2004, p. 55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L 226, 25.6.2004, p. 22) which should be read with a further Corrigendum (OJ No. L 204, 4.8.2007, p. 26).

“Regulation 1688/2005” (*“Rheoliad 1688/2005”*) means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs⁽¹⁾;

“Regulation 2073/2005” (*“Rheoliad 2073/2005”*) means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs⁽²⁾;

“Regulation 2074/2005” (*“Rheoliad 2074/2005”*) means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004⁽³⁾;

“Regulation 2015/1375” (*“Rheoliad 2015/1375”*) means Commission Implementing Regulation (EU) 2015/1375 laying down specific rules on official controls for *Trichinella* in meat⁽⁴⁾;

“Regulation 2017/185” (*“Rheoliad 2017/185”*) means Commission Regulation (EU) 2017/185 laying down transitional measures for the application of certain provisions of Regulations (EC) No 853/2004 and (EC) No 854/2004 of the European Parliament and of the Council⁽⁵⁾;

“Regulation 2017/625” (*“Rheoliad 2017/625”*) means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No

(1) OJ No. L 271, 15.10.2005, p. 17.

(2) OJ No. L 338, 22.12.2005, p. 1, as read with the Corrigenda at OJ No. L 278, 10.10.2006, p. 32 and OJ No. L 283, 14.10.2006, p. 62.

(3) OJ No. L 338, 22.12.2005, p. 27.

(4) OJ No. L 212, 11.8.2015, p. 7.

(5) OJ No. L 29, 3.2.2017, p. 21.

652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC⁽¹⁾ as read with Directive 2004/41, Regulation 2074/2005, Regulation 2015/1375 and Regulation 2017/185;

“Regulation 2019/624” (“*Rheoliad 2019/624*”) means Commission Delegated Regulation (EU) 2019/624 concerning specific rules for the performance of official controls on the production of meat and for production and relaying areas of live bivalve molluscs in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council⁽²⁾ as read with Directive 2004/41, Regulation 2074/2005, Regulation 2015/1375 and Regulation 2017/185;

“Regulation 2019/627” (“*Rheoliad 2019/627*”) means Commission Implementing Regulation (EU) 2019/627 laying down uniform practical arrangements for the performance of official controls on products of animal origin intended for human consumption in accordance with Regulation (EU) 2017/625 of the European Parliament and of the Council and amending Commission Regulation (EC) No 2074/2005 as regards official controls⁽³⁾ as read with Directive 2004/41, Regulation 2074/2005, Regulation 2015/1375 and Regulation 2017/185.”

(1) OJ No. L 95, 7.4.2017, p. 1.

(2) OJ No. L 131, 17.5.2019, p. 1.

(3) OJ No. L 131, 17.5.2019, p. 51.

**Explanatory Memorandum to The Meat (Official Control Charges) (Wales)
(Amendment) Regulations 2019**

This Explanatory Memorandum has been prepared by Food Standards Agency 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 Meat (Official Control Charges) (Wales) (Amendment) Regulations 2019

Vaughan Gething

Minister for Health and Social Services

28 November 2019

PART 1

1. Description

1. The Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019 amends the Meat (Official Controls Charges) (Wales) Regulations 2009 [SI 2009/1557 (W. 152)] to provide for the execution of powers and enforcement, in Wales of Regulation (EC) No.2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.
2. It continues to require the Food Standards Agency (“FSA”) to charge the operators of approved meat premises in England, in order to recover a percentage of the costs incurred by the FSA in carrying out official controls at such premises to check for compliance with applicable meat hygiene and animal welfare at slaughter requirements.

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

3. Section (2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the SI because it is giving effect to EU provisions
4. The current official controls regulation (Regulation (EC) No. 882/2004) will be revoked when the OCR comes into force on 14 December. The SIs are critical to maintaining official controls and enforcement. If these SIs are not laid, this leaves Wales without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the SIs coming into force on 14 December, the FSA and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws. For example, food inspectors will be unable to enter and inspect food businesses. Additionally, there will be no official presence at meat processing plants meaning they will need to cease operation, these has implications for food supplies as well as loss of employment as food business operators will not employ inspectors while they are unable to perform their duties.
5. Official controls are integral to protecting consumers’ health and other interests and maintaining the integrity of the agri-food chain that provides consumer and business confidence as well as assurance to other Member States and 3rd countries, which is vital to trade. UK enforcement authorities (such as the FSA and local authorities) carry out official controls at all stages of production, distribution, storage,

transport, import and export of food and feed. The controls ensure that food and feed businesses are meeting their obligations to produce safe and wholesome food and feed and that unsafe products are removed from the market.

6. Without the SIs coming into force on 14 December we would fail to meet our legal obligations and the FSA and other enforcement authorities would lose the legal powers to effectively enforce food and feed safety laws.
7. Similar legislation is being made in England, Scotland and Northern Ireland to come into force on 14 December.
8. The drafting of the SIs has been delayed because important parts of them depended on the status of the United Kingdom, insofar as whether it was a Member State of the European Union on the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October.
9. The impact of this on the drafting process in all of the devolved administrations has been significant, and this is the reason why the final SIs were not able to be submitted for scrutiny in time to avoid the recommendation not to adhere to the 21-day convention.

3. Legislative background

10. Regulation (EU) 2017/625 entered into force on the 27 April 2017, the applicability of the new rules was set to apply gradually over several years; with the main application taking effect 14 December 2019.
11. Regulation (EU) 2017/625 sets out a framework of requirements for the competent authorities in Member States which have responsibilities for organising and performing official controls and other official activities to verify compliance with agri-food chain legislation. The Regulation broadens the scope of the original official food and feed controls Regulation (EC) 882/2004 to cover plant health and animal by-products legislation (and other agricultural areas such as plant protection products and organic production) in order to introduce a more consistent approach to official controls along the entire agri-food chain.
12. Regulation (EU) 2017/625 amends Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC.
13. Regulation (EU) 2017/625 repeals Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council,

Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/ EC and Council Decision 92/438/EEC (“Official Controls Regulation”).

14. In addition, the Regulations provides for a number of empowerments to set out in Commission tertiary legislation more detailed rules for the performance of official controls and other official activities.
15. Most of the provisions of Regulation (EU) 2017/625 clarify and simplify existing requirements and aim to introduce a more risk-based approach to controls. Therefore, existing enforcement arrangements in the UK are generally already aligned to the new Regulation.
16. The FSA is the Central Competent Authority (CCA) responsible for checks carried out on compliance with feed and food law, including imported feed and food in Wales. The main provisions of the new EU Regulation will take effect across the European Union from 14 December 2019. This is part of a wider initiative to harmonise and simplify existing EU legislation and to establish a more integrated approach to official controls in all areas across the agri-food chain.

Legal issues, powers & statutory duties

17. The Regulations will be made pursuant to powers in section 2(2) of the European Communities Act 1972. Section 2(2) of the European Communities Act 1972 provides that any designated Minister may by order, rules, regulations or scheme make provision for the purpose of implementing any EU obligation of the UK. “Designated Minister” means such Minister of the Crown or government department as may from time to time to be designated by Order in Council in relation to any matter or for any purpose. 2(2) of the European Communities Act 1972 enables
18. Section 59 of the Government of Wales Act 2006 provides that the power to designate a Minister of the Crown or government department under section 2(2) of the European Communities Act 1972 may be exercised to designate the Welsh Ministers, and that accordingly the Welsh Ministers may exercise the power conferred by section 2(2) in relation to any matter or purpose in relation to which they have been designated.
19. The Welsh Ministers are designated in relation to measures in respect of food (including drink) including the primary production of food (see European Communities (Designation) (No. 2) Order 2005/1971).
20. The Regulations follow the negative procedure.

4. Purpose and intended effect of the legislation

21. This Statutory Instrument amends The Meat (Official Controls Charges) (Wales) Regulations 2009.
22. The amendment to the domestic legislation is mechanical in nature to update existing references to reflect the new EU Regulation.
23. This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.
24. The Statutory Instrument makes no significant changes to current official control practices and consolidates and amends legislative references to take account of the new EU legislation.

5. Consultation

25. The FSA in Wales carried out a public consultation on the overarching Regulations and draft Impact Assessment between 28 August and 9 October 2019.
26. Four substantive comments were received. None of those made any comment relating to the amendment to the Meat (Official Controls Charges) (Wales) Regulations 2009.

6. Regulatory Impact Assessment (RIA)

27. The amendments made in The Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019 are mechanical in nature, intended only to update existing references to reflect the new EU Regulation. These changes are not expected to have a major policy impact and, as such, a Regulatory Impact Assessment is not considered necessary. This is in line with the Welsh Ministers' RIA Code

9. Competition Assessment

28. As these regulations apply to all businesses affected, regardless of size or market share, it is not considered that there is any impact on competition.

10. Post implementation review

29. As these Regulations are technical in nature, and in practice make no appreciable change to the current application of Official Controls no post-implementation review is currently planned. Should any unforeseen consequences arise, the FSA will review this.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref MA/VG/5533/19

Elin Jones, AM
Llywydd
National Assembly for Wales
Cardiff Bay
CF99 1NA

28 November 2019

Dear Elin,

The Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019
The Meat (Official Controls Charges) (Wales) (Amendment) Regulations 2019
The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019.

In accordance with section 11A(4) of the Statutory Instruments Act 1946, as inserted by Sch.10 para 3 of the Government of Wales Act 2006, I am notifying you that these statutory instruments come into force less than 21 days from the date of laying. The Explanatory Memoranda for these Regulations are attached for your information.

The Official Controls Regulation (Regulation (EU) 2017/625) (OCR) will come fully into force across the EU on 14 December 2019 and revoke the existing framework legislation for official controls along the agri-food chain. The Regulation is part of the EU Smarter Rules for Safer Food (SRSF) package and is directly applicable EU law. The UK is obliged, as a matter of EU law, to make provision to enforce the OCR.

The drafting of the Statutory Instruments has been delayed because important parts of them depended on the status of the United Kingdom, insofar as whether it was a Member State of the European Union on the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October.

The impact of this on the drafting process in all the UK administrations has been significant, and this is the reason why the final SIs are not able to be submitted for scrutiny in time to allow the period of 21 days between laying and coming into force on 14 December.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Correspondence.Rebecca.Evans@gov.wales
Gohebiaeth.Rebecca.Evans@llyw.cymru

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The current official controls regulation (Regulation (EC) No. 882/2004) will be revoked when the OCR comes into force on 14 December. The SIs are critical to maintaining official controls and enforcement. If these SIs are not made, this leaves Wales without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the SIs coming into force on 14 December, the FSA and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws.

Consultation has been carried out on the SIs in accordance with Welsh Government guidelines and as required by European law. Responses are analysed in the Explanatory Memoranda but required no specific alteration of the SIs.

Similar Regulations are being made in all other administrations of the UK.

I am copying this letter to Mick Antoniw, Chair of the Constitutional and Legislative Affairs Committee and Sian Wilkins, Head of Chamber and Committee Services.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans". The signature is written in a cursive style.

Rebecca Evans AC/AM
Y Gweinidog Cyllid a'r Trefnydd
Minister for Finance and Trefnydd

SL(5)477 – The Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2019

Background and Purpose

This Order amends the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 which designates specified bodies in relation to the Welsh Ministers for the purpose of including within a Budget motion the resources expected to be used by those bodies.

This Order inserts three new bodies into the list of designated bodies contained within the Schedule to the 2018 Order.

Procedure

Negative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument:

- 1. Standing Order 21.3(ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.**

The Welsh Ministers had a choice of procedure for this instrument pursuant to sections 126A(9) and 126A(10) of the Government of Wales Act 2006 and chose the negative procedure, which appears to be appropriate.

Implications arising from exiting the European Union

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

Government Response

A government response is not required.

Legal Advisers

Constitutional and Legislative Affairs Committee

2 December 2019



2019 No. (W.)

CONSTITUTIONAL LAW

**The Government of Wales Act 2006
(Budget Motions and Designated
Bodies) (Amendment) Order 2019**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 (S.I. 2018/1173 (W. 237)) (“the 2018 Order”). It inserts three new bodies into the list of designated bodies contained within the Schedule to the 2018 Order. These bodies are Health Education and Improvement Wales, International Business Wales Limited and the Royal Commission on the Ancient and Historical Monuments of Wales.

The effect of this amendment is that the resources expected to be used by the bodies listed above will be included within a Budget Motion.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to this Order. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with this Order.

2019 No. (W.)

CONSTITUTIONAL LAW

**The Government of Wales Act 2006
(Budget Motions and Designated
Bodies) (Amendment) Order 2019**

Made 27 November 2019

Laid before the National Assembly for Wales
29 November 2019

Coming into force 1 January 2020

The Welsh Ministers make the following Order in exercise of the powers conferred on them by section 126A(2) and (3) of the Government of Wales Act 2006(1).

In accordance with section 126A(4) and (6) of that Act the Welsh Ministers have consulted, where they think it appropriate, the Treasury and the Treasury has consented to the making of this Order.

Title and commencement

1.—(1) The title of this Order is the Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2019.

(2) This Order comes into force on 1 January 2020.

**Amendments to the Government of Wales Act 2006
(Budget Motions and Designated Bodies) Order
2018**

2.—(1) The Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018(2) is amended as follows.

(2) In the Schedule (Designated Bodies), at the appropriate places insert—

(1) 2006 c. 32. Section 126A was inserted by section 44(2) of the Constitutional Reform and Governance Act 2010 (c. 25).
(2) S.I. 2018/1173 (W. 237).

“Health Education and Improvement Wales
(HEIW)”

“International Business Wales Limited”

“Royal Commission on the Ancient and
Historical Monuments of Wales”.

Rebecca Evans

Minister for Finance and Trefnydd, one of the Welsh
Ministers

27 November 2019

Explanatory Memorandum to the Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2019

This Explanatory Memorandum has been prepared by Permanent Secretary's Group 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 Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2019.

Rebecca Evans
Minister for Finance and Trefnydd
27 November 2019

PART 1

1. Description

1.1 The Government of Wales Act 2006 (Budget Motions and Designated Bodies) (Amendment) Order 2019 (“the 2019 Order”) amends the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 that designates bodies in relation to the Welsh Ministers. The purpose of such designation is so that information relating to the resources expected to be used by such bodies can be included within a Budget Motion.

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

2.1 Section 126A(9) and (10) of the Government of Wales Act 2006 (“GOWA 2006”) provide for the Order to be subject to either the affirmative or the negative resolution procedure.

2.2 The Minister for Finance and Trefnydd is of the view that the Order be subject to the negative resolution procedure as there are no factors indicating the use of the affirmative procedure. The Order designates bodies for the purposes of including within a Budget motion, information relating to the resources expected to be used by those bodies. Inclusion of the resources of the designated bodies within the Budget Motion will minimise alignment discrepancies between the Budget, Budget Motion and consolidated accounts, but will have no effect on the resource limits of those bodies. The subject matter of the Order can therefore be regarded as administrative as the effect on the Budget will be presentational.

3. Legislative background

3.1 This Order is made by the Welsh Ministers in exercise of the powers conferred on them by section 126A(2) and (3) GOWA 2006. This is the fourth Order made by the Welsh Ministers under these powers.

3.2 In accordance with section 126A(4) and (6) GOWA 2006, the Welsh Ministers have consulted, where they think it appropriate, with HM Treasury, and the Treasury has consented to the making of this Order.

3.3 The Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

Background

4.1 In March 2015, the Finance Committee of the Fourth Assembly recommended, as part of its inquiry into Best Practice Budget Processes,

that “the Welsh Government work closely with the Wales Audit Office to help ensure that the alignment of the budget and the Welsh Government’s accounts with the Treasury’s budget boundary is completed timeously and successfully”.

- 4.2 Under current arrangements, there are 3 main documents which set out the financial position of the bodies funded by the Welsh Consolidated Fund;
- the Budget to plan, monitor and control income and expenditure;
 - the Annual and Supplementary Budget Motions to gain Assembly approval for income and expenditure; and
 - after the year end, the Consolidated Accounts, to report and account for income and expenditure.

The boundaries of each of these documents i.e., the income and expenditure of the bodies which are included, differ for each causing misalignment and, accordingly can make it difficult to understand the links and inter-relationships between them. This can lead to a lack of transparency and understanding of the Welsh Government public expenditure.

- 4.3 Budget Motions voted by the National Assembly for Wales were aligned to the Welsh Government core account boundary. This was a different boundary to that used for the Welsh Government Consolidated Accounts and was subsequently different again to the boundary used for the HM Treasury Budget. The first two phases of alignment corrected the material differences.
- 4.4 Alignment ensures that the Welsh Government’s consolidated accounts use the same boundary for the Budget Motions as that used by HM Treasury for the control of public expenditure, where those bodies are designated and material. Alignment will mean that the scope of the main control mechanisms is consistent.

Purpose

- 4.5 The 2019 Order amends the Government of Wales Act 2006 (Budget Motions and Designated Bodies) Order 2018 that designates specified bodies in relation to the Welsh Ministers for the purpose of including within a Budget motion the resources expected to be used by those bodies.

Effect

- 4.6 The designation of the bodies in the Order will allow closer alignment of the Budget Motions to the existing Welsh Government Consolidated Accounts Boundary. The resources expected to be used by the designated bodies can therefore be included within a Budget Motion replacing the cash funding they receive.
- 4.7 The Order, therefore, aligns the HM Treasury budget boundary to the Budget Motions and the Welsh Government Consolidated Accounts, enabling expenditure to be more easily tracked through the Budget Motions and

Consolidated Accounts process. This will provide the benefits of increased transparency and understanding of Welsh public expenditure, making it easier for the Assembly, and the wider public, to understand and challenge spending plans and outturn. In turn, this should contribute to better involvement and awareness of public expenditure in Wales, therefore, indirectly contributing to well-being goals.

4.8 The Order leads to a more efficient approach to the impact on scrutiny of Budget Motions by the Finance Committee and the consolidated accounts by the Public Accounts Committee as variances between budget and outturn will be more consistent. In addition, the number of reconciliations required within the schedules supporting the Budget Motions will be reduced.

4.9 There would be no impact on the MEG budgets and limited impact on preparation of the consolidated accounts.

4.10 The Order does not amend or consolidate any other piece of legislation.

5. Consultation

5.1 A 12 week consultation took place from 1 May 2019 to 31 July 2019 on amending the Government of Wales Act 2006 (Budget Motion and Designated Bodies) Order 2018. This was targeted at the remaining arms-length bodies.

5.2 As a result of the responses to the consultation a recommendation was made to designate Health Education and Improvement Wales, International Business Wales Limited and the Royal Commission on the Ancient and Historical Monuments of Wales in the 2019 Order, where no issues of budgeting and accounting have been identified, and postpone the designation of the remaining bodies.

5.2 HM Treasury were consulted in accordance with section 126A(6) GOWA 2006, on the three arms-length bodies proposed for designation.

5.6 The remaining arms-length bodies are expected to be designated by 2021-22.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been prepared to accompany the Order; it is not expected to impose any cost on business, local government or the voluntary sector. This is consistent with the Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation.

6.2 Bodies to be designated in the Order already form part of the Welsh Government budgetary controls and so Welsh Government Groups are already monitoring in-year spending.

SL(5)473 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2020

Background and Purpose

Council Tax Reduction Schemes (**CTRS**) are the mechanism by which local authorities provide support to low income households in meeting their council tax liability.

These Regulations amend the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013. They uprate certain figures used to calculate an applicant's entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction and makes certain technical and consequential amendments.

The Regulations make amendments that are consequential on The Civil Partnership (Opposite-sex Couples) Regulations 2019 and a suite of regulations that will implement provision in the Parental Bereavement (Leave and Pay) Act 2018.

Procedure

Affirmative.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument.

1. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

The Regulations refer to "article 3...of the Immigration (European Economic Area Nationals) (EU Exit) Order 2019 *made under section 3A of [the Immigration Act 1971]*" (emphasis added).

We ask why it is necessary to refer to the fact that the 2019 Order was made under section 3A of the Immigration Act 1971, and what would have been different if the Regulations had simply referred to article 3 of the 2019 Order (without citing the power under which the 2019 Order was made).

The same point arises in respect of the immigration rules *made under section 3(2) of the Immigration Act 1971*.

Implications arising from exiting the European Union

A new basis of stay has been created for EEA (European Economic Area) and Swiss nationals under the EU Settlement Scheme (**EUSS**) as of 30 March 2019. The EUSS is the means by which EEA and Swiss nationals and their family members, resident in the UK by the specified date, can apply for a UK immigration status which will protect their entitlements and right to remain in the UK. The specified date



has been set at 31 December 2020 in the event the UK agrees a deal with the EU and the deadline for applying to the EUSS is 30 June 2021. If the UK leaves the EU without a deal, then EEA and Swiss nationals will need to be living in the UK before it leaves the EU to apply and the deadline for applying will be 31 December 2020.

Provision in the CTRS about persons treated as not being in Great Britain has been updated to clarify that limited leave to enter or remain granted under the EUSS is not a relevant right to reside for the purposes of being habitually resident in the United Kingdom.

The Regulations also provide that a number of rights to reside established for nationals of European Economic Area states in connection with the United Kingdom's withdrawal from the EU are not relevant rights to reside for the purposes of establishing habitual residence.

Government Response

Regulation 6 amends regulation 28 of the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 (Persons treated as not being in Great Britain). The amendment inserts a number of new rights to reside established for nationals of European Economic Area states in connection with the United Kingdom's withdrawal from the EU. Identical provision is made in Regulation 15 amending paragraph 19 of the Schedule in the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013.

There is precedent for the drafting approach taken in referencing the relevant section of the Immigration Act 1971. See for example Regulation 28(5)(e) of the Prescribed Requirements Regulations 2013 and Paragraph 19(5)(e) of the Default Scheme Regulations 2013. It is also consistent with EU Exit provision made in other recent Regulations made by the Welsh Ministers and approved by the Assembly. See, for example, Regulation 2(3) of the [Allocation of Housing and Homelessness \(Eligibility\) \(Wales\) \(Amendment\) Regulations 2019](#) and Regulation 2(3) of the [Allocation of Housing and Homelessness \(Eligibility\) \(Wales\) \(Amendment\) \(No 2\) Regulations 2019](#). Both sets of Regulations reference Appendix EU to the immigration rules made under section 3 of the 1971 Act.

Legal Advisers

Constitutional and Legislative Affairs Committee

29 November 2019



Draft Regulations laid before the National Assembly for Wales under section 13A(8) of the Local Government Finance Act 1992, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

COUNCIL TAX, WALES

**The Council Tax Reduction
Schemes (Prescribed Requirements
and Default Scheme) (Wales)
(Amendment) Regulations 2020**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 (“the Prescribed Requirements Regulations”) and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (“the Default Scheme Regulations”) made under section 13A(4) and (5) of, and Schedule 1B to, the Local Government Finance Act 1992.

The Prescribed Requirements Regulations require each billing authority in Wales to make a scheme specifying the reductions which are to apply to amounts of council tax payable by persons, or classes of persons, whom the authority considers are in financial need. The Prescribed Requirements Regulations also set out the matters that must be included within such a scheme.

The Default Scheme Regulations set out a scheme that will take effect, in respect of dwellings situated in the area of a billing authority, if the authority fails to make its own scheme.

These Regulations amend both the Prescribed Requirements and the Default Scheme Regulations.

The amendments to the Prescribed Requirements Regulations made by regulations 3, 5, 7(b) to (e) and 9(b) to (d) are made in consequence of the introduction of Parental Bereavement Leave and Pay for eligible parents under powers provided for in the Parental

Bereavement (Leave and Pay) Act 2018. The same amendments are made to the Default Scheme Regulations by regulations 12, 14 and 17 to 22.

The amendment to the Prescribed Requirements Regulations made by regulation 4 is made in consequence of the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019 and regulations made under that Act that make provision for opposite sex civil partnerships. The definition of “couple” is amended to include two people who are living together as if they are civil partners. The same amendment is made in relation to the Default Scheme Regulations by regulation 13.

The amendments to the Prescribed Requirements Regulations made by regulation 6 are made to the prescribed requirement that persons treated as not being in Great Britain must not be included in an authority’s scheme. A person is treated as not being in Great Britain if they are not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland. No person shall be treated as habitually resident without a relevant right to reside. Regulation 6(a) and (c) updates references to the Immigration (European Economic Area) Regulations 2006 with references to the Immigration (European Economic Area) Regulations 2016 as the latter revoked the former. Regulation 6(b) provides that a number of rights to reside established for nationals of European Economic Area states in connection with the United Kingdom’s withdrawal from the EU are not relevant rights to reside for the purposes of establishing habitual residence. The same amendments are made to the Default Scheme Regulations by regulation 15.

The amendments to the Prescribed Requirements Regulations made by regulations 7(a), 8, 9(a) and 10 increase certain figures that are used in calculating whether a person is entitled to a reduction and the amount of that reduction. The updated figures relate to non-dependant deductions (adjustments made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependants of the applicant); and the applicable amount in relation to an application for a reduction (the amount against which an applicant’s income is compared in order to determine the amount of reduction to which the applicant is entitled). The same amendments are made in relation to the Default Scheme Regulations by regulations 16, 23 and 24.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Local

Government Strategic Finance Division, Welsh
Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 13A(8) of the Local Government Finance Act 1992, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2020 No. (W.)

COUNCIL TAX, WALES

**The Council Tax Reduction
Schemes (Prescribed Requirements
and Default Scheme) (Wales)
(Amendment) Regulations 2020**

Made ***

*Coming into force in accordance with
regulation 1(2)* ***

The Welsh Ministers make the following Regulations in exercise of the powers conferred upon them by section 13A(4) and (5) of, and paragraphs 2 to 7 of Schedule 1B to, the Local Government Finance Act 1992(1).

In accordance with section 13A(8) of that Act, a draft of this instrument has been laid before and approved by resolution of the National Assembly for Wales.

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2020.

(2) These Regulations come into force the day after the day on which they are made.

(1) 1992 c. 14. Section 13A was substituted by section 10(1) of the Local Government Finance Act 2012 (c. 17) and Schedule 1B was inserted by section 10(2) of, and Schedule 4 to, that Act.

(3) These Regulations apply in relation to a council tax reduction scheme made for a financial year beginning on or after 1 April 2020.

(4) In these Regulations “council tax reduction scheme” (“*cynllun gostyngiadau'r dreth gynor*”) means a scheme made by a billing authority in accordance with the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013(1), or the scheme that applies in default by virtue of paragraph 6(1)(e) of Schedule 1B to the Local Government Finance Act 1992.

Amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013

2. The Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 are amended in accordance with regulations 3 to 10.

3. In regulation 2(1) (interpretation) in the appropriate place insert—

““parental bereavement leave” (“*absenoldeb profedigaeth rhiant*”) means leave under section 80EA of the Employment Rights Act 1996(2);”.

4. In regulation 4 (meaning of “couple”), in paragraph (b), after “married couple” insert “or civil partners”.

5. In regulation 10 (remunerative work), in paragraph 7, after “shared parental leave” insert “, parental bereavement leave”.

6. In regulation 28 (persons treated as not being in Great Britain)—

(a) in paragraph 4—

(i) at the end of sub-paragraph (c) omit “or”;

(ii) in sub-paragraph (d)—

(aa) for “15A(1)” substitute “16”;

(bb) for “(4A)” substitute “(5)”; and

(cc) at the end omit “.” and insert “; or”;

(iii) after sub-paragraph (d) insert—

“(e) a person having been granted limited leave to enter, or remain in, the United

(1) S.I. 2013/3029 (W. 301), as amended by S.I. 2014/66 (W. 6), S.I. 2014/825 (W. 83), S.I. 2015/44 (W. 3), S.I. 2015/971, S.I. 2016/50 (W. 21), S.I. 2017/46 (W. 20), S.I. 2018/14 (W. 7) and S.I. 2019/11 (W. 5).

(2) 1996 c. 18. Section 80EA was inserted by paragraph 2 of the Schedule to the Parental Bereavement (Leave and Pay) Act 2018 (c. 24) but the provision is not yet in force.

Kingdom under the Immigration Act 1971 by virtue of—

- (i) Appendix EU to the immigration rules made under section 3(2) of that Act;
 - (ii) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the immigration rules made under section 3(2) of that Act; or
 - (iii) article 3 (grant of leave to EEA and Swiss nationals) of the Immigration (European Economic Area Nationals) (EU Exit) Order 2019⁽¹⁾ made under section 3A of that Act.”;
- (b) in paragraph 8, in the definition of “EEA Regulations” for “2006” substitute “2016”.

7. In Schedule 1 (determining eligibility for a reduction: pensioners)—

- (a) in paragraph 3 (non-dependent deductions: pensioners)—
 - (i) in sub-paragraph (1)(a) for “£13.75” substitute “£14.65”;
 - (ii) in sub-paragraph (1)(b) for “£4.55” substitute “£4.85”;
 - (iii) in sub-paragraph (2)(a) for “£210.00” substitute “£217.00”;
 - (iv) in sub-paragraph (2)(b) for “£210.00”, “£365.00” and “£9.15” substitute “£217.00”, “£377.00” and “£9.75” respectively;
 - (v) in sub-paragraph (2)(c) for “£365.00”, “£450.00” and “£11.50” substitute “£377.00”, “£469.00” and “£12.25” respectively;
- (b) in paragraph 10(1)(j) (meaning of “income”: pensioners), after paragraph (xvia), insert—
 - “(xvib) statutory parental bereavement pay under Part 12ZD of the SSCBA⁽²⁾”;

(1) S.I. 2019/686.

(2) The “SSCBA” means the Social Security Contributions and Benefits Act 1992 (c. 4); see definition in regulation 2 of the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and in paragraph 2 of the scheme set out in the Schedule to the Council Tax Reduction Schemes (Default Scheme)(Wales) Regulations 2013. Part 12ZD was inserted by Part 2 of the Schedule to the Parental Bereavement (Leave and Pay) Act 2018 (c. 24)(“the 2018 Act”) but the provisions are not yet in force.

- (c) in paragraph 12 (earnings of employed earners: pensioners), after sub-paragraph 1(ja) insert—

“(jb) statutory parental bereavement pay under Part 12ZD of that Act;”;

- (d) in paragraph 13 (calculation of net earnings of employed earners: pensioners), in sub-paragraph 2(d), after “statutory shared parental pay” insert “, statutory parental bereavement pay”;

- (e) in paragraph 19 (treatment of child care charges: pensioners)—

- (i) in sub-paragraph (15)—

- (aa) in the words before paragraph (a), after “shared parental leave” insert “, parental bereavement leave”;

- (bb) in paragraph (a) , after shared parental leave” insert “, parental bereavement leave”;

- (cc) in paragraph (c), after “statutory shared parental pay by virtue of section 171ZU or 171ZV of that Act” insert “, statutory parental bereavement pay by virtue of section 171ZZ of that Act(1)”;

- (ii) in sub-paragraph (16)—

- (aa) in the words before paragraph (a), after “shared parental leave” insert “, parental bereavement leave”;

- (bb) in paragraphs (b) and (c), after “statutory shared parental pay” insert “, statutory parental bereavement pay”.

8. In Schedule 2 (applicable amounts: pensioners)—

- (a) in column (2) of the Table in paragraph 1 (personal allowance)—

- (i) in sub-paragraph (1) for “£167.25” and “£181.00” substitute “£173.80” and “£187.80” respectively;

- (ii) in sub-paragraph (2) for “£255.25” and “£270.60” substitute “£265.20” and “£280.85” respectively;

- (iii) in sub-paragraph (3) for “£255.25” and “£88.00” substitute “£265.20” and “£91.40” respectively;

(1) Sections 171ZZ6 to 171ZZ15 in Part 12ZD were inserted by Part 2 of the Schedule to the 2018 Act but are not yet in force.

- (iv) in sub-paragraph (4) for “£270.60” and “£89.60” substitute “£280.85” and “£93.05” respectively;
- (b) in the Table in Part 4 (amounts of premium specified in Part 3), in the second column—
 - (i) in sub-paragraph (1) for “£65.85” in each place where it occurs substitute “£66.95” and for “£131.70” substitute “£133.90”;
 - (ii) in sub-paragraph (2) for “£26.04” substitute “£26.60”;
 - (iii) in sub-paragraph (3) for “£64.19” substitute “£65.52”;
 - (iv) in sub-paragraph (4) for “£36.85” substitute “£37.50”.

9. In Schedule 6 (determining eligibility for a reduction under an authority’s scheme, amount of reduction and calculation of income and capital: persons who are not pensioners)—

- (a) in paragraph 5 (non-dependant deductions: persons who are not pensioners)—
 - (i) in sub-paragraph (1)(a) for “£13.75” substitute “£14.65”;
 - (ii) in sub-paragraph (1)(b) for “£4.55” substitute “£4.85”;
 - (iii) in sub-paragraph (2)(a) for “£210.00” substitute “£217.00”;
 - (iv) in sub-paragraph (2)(b) for “£210.00”, “£365.00” and “£9.15” substitute “£217.00”, “£377.00” and “£9.75” respectively;
 - (v) in sub-paragraph (2)(c) for “£365.00”, “£450.00” and “£11.50” substitute “£377.00”, “£469.00” and “£12.25” respectively;
- (b) in paragraph 14 (earnings of employed earners: persons who are not pensioners)—
 - (i) in sub-paragraph (1)(j), after “statutory shared parental pay” insert “, statutory parental bereavement pay”;
 - (ii) in sub-paragraph (1)(k), after “shared parental leave” insert “, parental bereavement leave”;
- (c) in paragraph 15 (calculation of net earnings of employed earners: persons who are not pensioners), in sub-paragraph (3)(d), after “statutory shared parental pay” insert “, statutory parental bereavement pay”;
- (d) in paragraph 21 (treatment of child care charges)—
 - (i) in sub-paragraph (15)—

- (aa) in the words before paragraph (a), after “shared parental leave” insert “, parental bereavement leave”;
- (bb) in paragraph (a), after “shared parental leave” insert “, parental bereavement leave”;
- (cc) in paragraph (c), after “ statutory shared parental pay under section 171ZU or 171ZV of that Act” insert “, statutory parental bereavement pay by virtue of section 171ZZ of that Act”;
- (ii) in sub-paragraph (16)—
 - (aa) in the words before paragraph (a), after “shared parental leave” insert “, parental bereavement leave”;
 - (bb) in paragraphs (b) and (c), after “statutory shared parental pay” insert “, statutory parental bereavement pay”.

10. In Schedule 7 (applicable amounts: persons who are not pensioners)—

- (a) in column (2) of the Table in paragraph 1 (personal allowances)—
 - (i) in sub-paragraph (1) for “£77.90” in each place in which it occurs substitute “£79.20” and for “£61.70” substitute “£62.75”;
 - (ii) in sub-paragraph (2) for “£77.90” substitute “£79.20”;
 - (iii) in sub-paragraph (3) for “£122.35” substitute “£124.45”;
- (b) in the Table in Part 4 (amounts of premiums specified in Part 3), in the second column—
 - (i) in sub-paragraph (1) for “£34.35” and “£48.95” substitute “£34.95” and “£49.80” respectively;
 - (ii) in sub-paragraph (2) for “£65.85” in each place in which it occurs substitute “£66.95” and for “£131.70” substitute “£133.90”;
 - (iii) in sub-paragraph (3) for “£64.19” substitute “£65.52”;
 - (iv) in sub-paragraph (4) for “£36.85” substitute “£37.50”;
 - (v) in sub-paragraph (5) for “£26.04”, “£16.80” and “£24.10” substitute “£26.60”, “£17.10” and “£24.50” respectively;

- (c) in Part 6 (amount of components), in paragraph 24 (amount of support component), for “£38.55” substitute “£39.20”.

Amendments to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013

11. The scheme set out in the Schedule to the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013⁽¹⁾ is amended in accordance with regulations 12 to 24.

12. In paragraph 2(1) (interpretation), in the appropriate place insert—

““parental bereavement leave”
 (“*absenoldeb profedigaeth rhiant*”) means
 leave under section 80EA of the
 Employment Rights Act 1996;”.

13. In paragraph 4(b) (meaning of “couple”), after “married couple” insert “or civil partners”.

14. In paragraph 10 (remunerative work), in sub-paragraph 7, after “shared parental leave” insert “, parental bereavement leave”.

15. In paragraph 19 (class of person excluded from this scheme: persons treated as not being in Great Britain)—

(a) in sub-paragraph (4)—

(i) at the end of paragraph (c) omit “or”;

(ii) in paragraph (d)—

(aa) for “15A(1)” substitute “16”;

(bb) for “(4A)” substitute “(5)”;

(cc) at the end omit “.” and insert “; or”;

(b) after sub-paragraph (4) insert—

“(e) a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of—

(i) Appendix EU to the immigration rules made under section 3(2) of that Act;

(ii) being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the

(1) S.I. 2013/3035 (W. 303), as amended by S.I. 2014/66(W. 6), S.I. 2014/825 (W. 83), S.I. 2015/44 (W. 3), S.I. 2015/971, S.I. 2016/50 (W. 21), S.I. 2017/46 (W. 20), S.I. 2018/14 (W. 7) and S.I. 2019/11 (W. 5).

immigration rules made under section 3(2) of that Act; or

(iii) article 3 (grant of leave to EEA and Swiss nationals) of the Immigration (European Economic Area Nationals) (EU Exit) Order 2019(1) made under section 3A of that Act.”;

(c) in sub-paragraph (8), in the definition of “EEA Regulations” for “2006” substitute “2016”.

16. In paragraph 28 (non-dependant deductions: pensioners and persons who are not pensioners)—

(a) in sub-paragraph (1)(a) for “£13.75” substitute “£14.65”;

(b) in sub-paragraph (1)(b) for “£4.55” substitute “4.85”;

(c) in sub-paragraph (2)(a) for “£210.00” substitute “£217.00”;

(d) in sub-paragraph (2)(b) for “£210.00”, “£365.00” and “£9.15” substitute “£217.00”, “£377.00” and “£9.75” respectively;

(e) in sub-paragraph (2)(c) for “£365.00”, “£450.00” and “£11.50” substitute “£377.00”, “£469.00” and “£12.25” respectively.

17. In paragraph 36(1)(j) (meaning of “income”: pensioners), after paragraph (xvia), insert—

“(xvib) statutory parental bereavement pay under Part 12ZD of SSCBA;”.

18. In paragraph 38(1) (earnings of employed earners: pensioners), after paragraph (ja) insert—

“(jb) statutory parental bereavement pay under Part 12ZD of SSCBA;”.

19. In paragraph 39(2)(d) (calculation of net earnings of employed earners: pensioners), after “statutory shared parental pay” insert “, statutory parental bereavement pay”.

20. In paragraph 48(1) (earnings of employed earners: persons who are not pensioners)—

(a) in paragraph (j) after “statutory shared parental pay” insert “, statutory parental bereavement pay”;

(b) in paragraph (k) after “shared parental leave” insert “, parental bereavement leave”.

21. In paragraph 49(3)(d) (calculation of net earnings of employed earners: persons who are not pensioners),

(1) S.I. 2019/686.

after “statutory shared parental pay” insert “, statutory parental bereavement pay”.

22. In paragraph 55 (treatment of child care charges)—

- (a) in sub-paragraph (15)—
 - (i) in the words before paragraph (a), after “shared parental leave” insert “, parental bereavement leave”;
 - (ii) in paragraph (a), after “shared parental leave” insert “, parental bereavement leave”;
 - (iii) in paragraph (c), after “statutory shared parental pay under section 171ZU or 171ZV of that Act” insert “, statutory parental bereavement pay by virtue of section 171ZZ of that Act”;
- (b) in sub-paragraph (16)—
 - (i) in the words before paragraph (a), after “shared parental leave” insert “, parental bereavement leave”;
 - (ii) in paragraph (b) after “statutory shared parental pay” insert “statutory parental bereavement pay”;
 - (iii) in paragraph (c) for “statutory shared parental pay ends or statutory adoption pay ends,” substitute “statutory shared parental pay, statutory parental bereavement pay or statutory adoption pay ends,”.

23. In Schedule 2 (applicable amounts: pensioners)—

- (a) in column (2) of the Table in paragraph 1 (personal allowances)—
 - (i) in sub-paragraph (1) for “£167.25” and “£181.00” substitute “£173.80” and “£187.80” respectively;
 - (ii) in sub-paragraph (2) for “£255.25” and “£270.60” substitute “£265.20” and “£280.85” respectively;
 - (iii) in sub-paragraph (3) for “£255.25” and “£88.00” substitute “£265.20” and “£91.40” respectively;
 - (iv) in sub-paragraph (4) for “£270.60” and “£89.60” substitute “£280.85” and “£93.05” respectively;
- (b) in the Table in Part 4 (amounts of premiums specified in Part 3), in the second column—
 - (i) in sub-paragraph (1) for “£65.85” in each place in which it occurs substitute “£66.95” and for “£131.70” substitute “£133.90”;

- (ii) in sub-paragraph (2) for “£26.04” substitute “£26.60;
- (iii) in sub-paragraph (3) for “£64.19” substitute “£65.52”;
- (iv) in sub-paragraph (4) for “£36.85” substitute “£37.50”.

24. In Schedule 3 (applicable amounts:: persons who are not pensioners)—

- (a) in column (2) of the Table in paragraph 1 (personal allowances)—
 - (i) in sub-paragraph (1) for “£77.90” in each place in which it occurs substitute “£79.20” and for “£61.70” substitute “£62.75”;
 - (ii) in sub-paragraph (2) for “£77.90” substitute “£79.20”;
 - (iii) in sub-paragraph (3) for “£122.35” substitute “£124.45”;
- (b) in the Table in Part 4 (amount of premiums specified in Part 3), in the second column—
 - (i) in sub-paragraph (1) for “£34.35” and “£48.95” substitute “£34.95” and “£49.80” respectively;
 - (ii) in sub-paragraph (2) for “£65.85” in each place in which it occurs substitute “£66.95” and for “£131.70” substitute “£133.90”;
 - (iii) in sub-paragraph (3) for “£64.19” substitute “£65.52”;
 - (iv) in sub-paragraph (4) for “£36.85” substitute “£37.50”;
 - (v) in sub-paragraph (5) for “£26.04”, “£16.80” and “£24.10” substitute “£26.60”, “£17.10” and “£24.50” respectively;
- (c) in Part 6 (amount of components), in paragraph 24 (amount of support component), for “£38.55” substitute “£39.20”.

Name

Minister for Finance and Trefnydd, one of the Welsh Ministers

Date

**Explanatory Memorandum to the Council Tax Reduction Schemes
(Prescribed Requirements and Default Scheme) (Wales) (Amendment)
Regulations 2020**

This Explanatory Memorandum has been prepared by Local Government Strategic Finance Division 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 Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2020. I am satisfied that the benefits outweigh any costs.

Rebecca Evans
Minister for Finance and Trefnydd
26 November 2019

PART 1: DESCRIPTION

1 Overview

- 1.1 Council Tax Reduction Schemes (CTRS) are the mechanism by which local authorities provide support to low income households in meeting their council tax liability.
- 1.2 This statutory instrument makes amendments to the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 (referred to collectively in this Explanatory Memorandum as ‘the 2013 CTRS Regulations’). It updates certain figures used to calculate an applicant’s entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction and makes certain technical and consequential amendments.

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

- 2.1 Paragraph 4.17 makes reference to amendments being made that are consequential on The Civil Partnership (Opposite-sex Couples) Regulations 2019. Those Regulations were made on 5 November 2019 and come into force in 2 December 2019. It is recognised that at the point of laying the changes will not have come into force. It is considered necessary to allow the instrument to be laid and approved in time for local authorities to approve their schemes for 2020-21 by the statutory deadline of 31 January 2020 and to provide the Assembly with sufficient time for scrutiny in line with Standing Orders.
- 2.2 Paragraph 4.19 makes reference to amendments being made that are consequential on a suite of Regulations that will implement provision in the Parental Bereavement (Leave and Pay) Act 2018 that are not expected to come into force until April 2020. It is considered necessary to allow the changes to be incorporated into council tax reduction schemes for 2020-21 in order to avoid having any period where persons in receipt of parental bereavement pay would not be able to access a reduction that they would have been entitled to but for that parental bereavement pay.

3 Legislative background

- 3.1 Section 10 of, and Schedule 4 to, the Local Government Finance Act 2012 inserted a new Section 13A and new Schedule 1B into the Local Government Finance Act 1992 (the 1992 Act). These provisions enabled the Welsh Ministers to introduce Council Tax Reduction Schemes (CTRS) in Wales via regulations.
- 3.2 The relevant provisions in the Local Government Finance Act 2012 were subject to a Legislative Consent Motion which was approved by the National

Assembly for Wales on 26 June 2012. The Local Government Finance Act 2012 received Royal Assent on 1 November 2012.

- 3.3 This statutory instrument is laid and made under the new section 13A of, and the new Schedule 1B to, the Local Government Finance Act 1992. The instrument is subject to approval of the Assembly (the affirmative procedure).

4 Purpose and intended effect of the legislation

- 4.1 This statutory instrument amends the 2013 CTRS Regulations to uprate certain figures in those Regulations used to calculate entitlement to a council tax reduction, and the amount of any reduction awarded to applicants in the 2019-20 financial year to reflect increases in the cost-of living. It also makes minor technical and consequential changes to the 2013 CTRS Regulations.

Background

- 4.2 The Welfare Reform Act 2012 contained provisions to abolish Council Tax Benefit from 31 March 2013. From 1 April 2013, responsibility for providing support for council tax was devolved to local authorities in England. Fixed funding, reduced by 10% compared to the 2012-13 costs, was passed to the Welsh Government and to the Scottish Government to allow the Devolved Administrations to develop replacement schemes.
- 4.3 Following the UK Government's decision, the Welsh Government sought provisions in the Local Government Finance Act 2012 which amended the Local Government Finance Act 1992 (the 1992 Act), to provide the Welsh Ministers with executive powers to introduce Council Tax Reduction Schemes in Wales via regulations.
- 4.4 The 2013 CTRS Regulations were approved by the National Assembly for Wales on 26 November 2013.
- 4.5 The Welsh Government provided £244m in the Local Government Settlement for CTRS for 2013-14. This was partly funded through the fixed budget of £222m which was transferred from the UK Government. The Welsh Government provided an additional £22m to enable local authorities to continue to provide all eligible applicants with their full entitlement to support. The Welsh Government has continued to provide £244m within the local government settlement each year since.

2013 CTRS Regulations

- 4.6 Aligned with the provisions in the 1992 Act, the 2013 CTRS Regulations govern the operation of CTRS in Wales. These regulations were closely based on the previous Council Tax Benefit rules to prevent low-income households facing sharp changes in the level of support they received. All eligible applicants were automatically and seamlessly transferred from Council Tax Benefit onto Council Tax Reduction Schemes from 1 April 2013. If an applicant receives Income Support, Income-Based Jobseeker's Allowance

(JSA), Income-Based Employment and Support Allowance (ESA), Pension Credit, or Pension Credit Guarantee, they are entitled to the maximum, full, reduction in their council tax liability. Approximately 70% of CTRS applicants in Wales receive these passporting benefits.

- 4.7 If an applicant does not receive any of the passporting benefits, the weekly amount of money which they are judged to need to live on is calculated. This is known as the 'applicable amount' and consists of two components:
- The first is the personal allowance – the basic amount a person needs to live, which varies according to the household's circumstances. For example, the allowance for a couple with children is higher than for a single person without children. These allowances are also set at higher rates for those who have reached State Pension Age.
 - The second component is the premium – additional amounts added to reflect any personal circumstances which increase the cost of living, such as a disability or carer's responsibilities. Once the applicable amount has been determined, the applicant's level of income is calculated.
- 4.8 For CTRS, Universal Credit (UC) recipients are treated in a similar way to non-passported applicants. However, instead of an 'applicable amount' being calculated, the 'maximum amount' (calculated within their UC application) is used instead.
- 4.9 If the applicable amount (or maximum amount) is higher than an applicant's calculated income, they are entitled to the maximum reduction in their council tax liability. If income exceeds the applicable amount, the weekly entitlement is reduced by 20p for each £1 of excess weekly income, until entitlement is withdrawn – this is known as the taper.
- 4.10 Adjustments can be made to the maximum amount of reduction a person can receive to take account of adults living in the dwelling who are not dependants of the applicant and who are therefore assumed to make a financial contribution to the household (non-dependant deductions).
- 4.11 Adjustments can also be made to take into account of savings. If an applicant has capital of £6,000 (or £10,000 for pension age claimants) or less, this will be ignored when working out whether they are entitled to a reduction.
- 4.12 If a working-age applicant has capital of between £6,000 and £16,000, the local authority will treat it as income. This is known as tariff income. The local authority will assume an applicant has an income of £1 a week for each £250 of capital between £6,000 and £16,000. This will be added to other income to work out whether an applicant is entitled to a reduction and how much they are entitled to.
- 4.13 If a pension-age applicant has capital of between £10,000 and £16,000, the local authority will treat it as income. The local authority will assume an

applicant has an income of £1 a week for each £500 of capital between £10,000 and £16,000. This will be added to other income to work out whether an applicant is entitled to a reduction and how much they are entitled to.

Uprating figures for 2020-21

4.14 This statutory instrument amends the 2013 CTRS Regulations to uprate financial figures used to calculate entitlement to a reduction in line with Welsh Government policy.

4.15 The statutory instrument seeks to uprate a number of other figures included in the 2013 CTRS Regulations. These include:

- Personal allowances in relation to working age, and carer and disabled premiums
The financial figures in respect of these allowances have been amended and have increased in line with the cost-of-living rises. The convention is to uprate in line with the Consumer Price Index figure for September from the previous year (2019), which is 1.7%.
- Personal allowances in relation to pensioners
The financial figures in respect of pensioner rates have been amended and are aligned with Housing Benefit. These have been calculated with assistance from the Department of Work and Pensions and have been uprated by different mechanisms. For example, the Pension Credit Standard Minimum Guarantee is uprated by earnings, whereas the Additional Pension and increments are uprated by prices.
- Non-dependant deductions
The financial figures for the income bands and deductions made in relation to non-dependants have been uprated. If amendments are not made, the deductions from CTRS awards would not be appropriate as the income thresholds would no longer reflect average earnings and the deduction would no longer reflect the overall cost of council tax.

Additional Consequential Amendments

4.16 In addition to uprating the financial figures, this statutory instrument makes a number of consequential amendments to the 2013 CTRS Regulations. These ensure the 2013 Regulations remain up-to-date and fit for purpose.

Same sex civil partnerships

4.17 Under the Civil Partnerships, Marriages and Deaths (Registration etc.) Act 2019, the Civil Partnership Act 2004 must be amended by 31 December 2019 to allow for opposite sex civil partnerships. This statutory instrument therefore includes amendments to ensure that opposite sex civil partnerships are treated on an equitable basis with opposite sex and same sex marriages and same sex civil partnerships for the purposes of CTRS.

4.18 The Civil Partnership (Opposite-sex Couples) Regulations 2019 were made on 5 November 2019 and come into force in 2 December 2019. It is recognised that at the point of laying this statutory instrument anticipates the changes to the primary legislation but this is necessary to allow the instrument to be laid and approved in time for local authorities to approve their schemes for 2020-21 by the statutory deadline of 31 January 2020 and to provide the Assembly with sufficient time for scrutiny in line with Standing Orders.

Parental Bereavement Leave and Pay

4.19 The Parental Bereavement (Leave and Pay) Act 2018 amends or inserts a number of provisions into the Employment Rights Act 1996 and the Social Security Contributions and Benefits Act 1992, providing powers to make regulations in relation to Parental Bereavement Leave and pay for eligible parents. The introduction of a specific, statutory entitlement to parental bereavement is intended to provide certainty for employed parents and employers in relation to parents' right to time off from work following the death of a child.

4.20 The Regulations that implement parental bereavement leave and pay are intended to come into force on 6 April 2020 and changes to the 2013 regulations to reflect this are being made in this statutory instrument. Again it is recognised that this statutory instrument anticipates the coming into effect of the primary legislation but, as above, this is necessary to allow the changes to be incorporated into council tax reduction schemes for 2020-21 and to avoid having any period where persons in receipt of parental bereavement pay would not be able to access a reduction that they would have been entitled to but for that parental bereavement pay.

EU Exit related changes

4.21 A new basis of stay has been created for EEA (European Economic Area) and Swiss nationals under the EU Settlement Scheme (EUSS) as of 30 March 2019. The EUSS is the means by which EEA and Swiss nationals and their family members, resident in the UK by the specified date, can apply for a UK immigration status which will protect their entitlements and right to remain in the UK. The specified date has been set at 31 December 2020 in the event the UK agrees a deal with the EU and the deadline for applying to the EUSS is 30 June 2021. If the UK leaves the EU without a deal, then EEA and Swiss nationals will need to be living in the UK before it leaves the EU to apply and the deadline for applying will be 31 December 2020.

4.22 Provision in the CTRS which makes provision about persons treated as not being in Great Britain has been updated to clarify that limited leave to enter or remain granted under the EUSS (also referred to as pre settled status) is not a relevant right to reside for the purposes of being habitually resident in the United Kingdom. The Regulations update references to the Immigration (European Economic Area) Regulations 2006 with references to the Immigration (European Economic Area) Regulations 2016 as the latter revoked the former. The Regulations also provide that a number of rights to

rights to reside established for nationals of European Economic Area states in connection with the United Kingdom's withdrawal from the EU are not relevant for the purposes of establishing habitual residence.

PART 2: REGULATORY IMPACT ASSESSMENT (RIA)

Options

Option 1 – Do nothing

- 1 If the financial figures used to assess household allowances in the council tax reduction means-test remained static, the criteria used would be slightly less generous for non-passported applicants and would lead to small decreases in support in real terms.
- 2 The financial figures used to assess the eligibility of households with non-dependants would be out-of-date. The income thresholds would no longer reflect average earnings and the adjustment made to the final council tax reduction would no longer reflect overall cost of council tax.
- 3 If consequential amendments are not made to the 2013 CTRS Regulations, this would mean that they would not take account of changes to related welfare benefits and other legislation. This could disadvantage some applicants by reducing or stopping their entitlement to support. It could also create confusion for applicants and increase the administrative burden for local authorities and advice providers.

Option 2 – Make amending Regulations

- 4 This option would mean that amendments would be made to uprate the financial figures in the 2013 CTRS Regulations in line with to Welsh Government policy, cost-of-living increases and changes to qualifying benefits.
- 5 The financial figures in relation to working age, disability or carer rates will continue to increase with the cost of living for 2020-21 (1.7%, as measured by CPI). The personal allowances for pensioners will be uprated to align with those for Housing Benefit and the benefits system. The increase would be aligned to the UK Government's Standard Minimum Guarantee and Savings Credit.
- 6 The financial figures used to calculate the adjustment for non-dependant deductions would be uprated. The income thresholds in relation to non-dependants would be uprated to reflect average earnings and the non-dependant deduction from CTRS would reflect the average increase in council tax.
- 7 The necessary technical and consequential amendments would also be made.

Costs and Benefits

Costs

Option 1 – Do nothing

- 8 If the financial figures for working age and pensioner allowances do not increase with the cost of living (as measured by CPI), CTRS recipients would be slightly worse off in real terms.
- 9 The financial figures used to assess the eligibility of households with non-dependants would also be out-of-date. The calculation would no longer make a fair assessment of the income of non-dependants or the overall cost of council tax. There is a risk that this aspect of the scheme would be viewed as unfair or inequitable.
- 10 If the technical and consequential amendments to the 2013 CTRS Regulations are not made, they would no longer align with Housing Benefit provisions and other related benefits. It would lead to references being out of sync with the overall benefits system and could disadvantage certain applicants by reducing their entitlement to support. This could potentially lead to additional administrative burden on local authorities and advice providers. It may also lead to confusion for some applicants who, as a result, could be treated significantly differently under benefit schemes.

Benefits

- 11 Not uprating pensioner and working age figures would help to limit any increases in total reductions under CTRS. However not uprating figures in relation to non-dependant deductions, would result in council tax reductions for relevant households being higher than they would otherwise be.

Option 2 – Make amending Regulations

Costs

- 12 Uprating the financial figures in respect of pensioners and working age allowances would slightly increase total reductions under CTRS. However, if the financial figures in relation to non-dependant deductions were also uprated, this would mitigate some of the increase in total reductions. Consequently, total council tax reductions are not expected to rise significantly as a result of the uprating.

Benefits

- 13 Uprating the financial figures in the 2013 CTRS Regulations will ensure that the personal allowance for working age applicants continues to increase in line with the CPI (1.7%).

- 14 Uprating the financial figures in respect of the personal allowance for pensioners continues to increase in line with the Standard Minimum Guarantee and Savings Credit.
- 15 If the financial figures in relation to non-dependant deduction rates are updated, this will ensure the calculation used to assess the eligibility of non-dependant households remains up-to-date. The calculation would continue to make a fair assessment of the income of non-dependants and the cost of council tax. This will ensure the system remains fair and equitable.
- 16 As part of these Regulations, consequential and technical amendments are made that are associated with wider welfare changes made by the UK government. This would ensure CTRS reflects changes made to interrelated social security benefits which often determine entitlement to a reduction. It would also avoid any additional administrative burden for local authorities or advice providers arising from managing different regimes.

Sectors

- 17 Local government and the voluntary sector were consulted during the development of proposals to introduce CTRS in Wales. Draft regulations for 2020-21 have been shared with local authorities.
- 18 This legislation will not affect the business sector.

Duties

- 19 In drafting these Regulations consideration has been given to the duty on Welsh Ministers to promote equality and eliminate discrimination.
- 20 An Equality Impact Assessment was completed for the introduction of the 2013 CTRS Regulations.
- 21 This statutory instrument is provided bilingually. CTRS is implemented and operated by local authorities who are under general duties to comply with Welsh language and sustainable development duties.
- 22 Further consideration has been given as to whether CTRS could be used to improve the opportunities of persons to use the Welsh language treating the Welsh language no less favourably than the English language. As the sole purpose of CTRS is to provide support to low-income households in meeting their council tax liability, it is considered there are no such opportunities.
- 23 Maintaining full entitlements to CTRS will continue to help low-income households in meeting their council tax liability and, as such, will contribute to the Welsh Government's commitment to make council tax fairer.

Competition Assessment

- 24 These Regulations have been scored against the competition filter test which indicated that there will be no detrimental effect on competition.

Consultation

- 25 No consultation has been undertaken in respect of this statutory instrument. The 2013 CTRS Regulations were consulted upon and details are provided in the Regulatory Impact Assessments accompanying those Regulations.

Post implementation review

- 26 Amendments are required on an annual basis to uprate the financial figures used to calculate entitlements to reductions. This provides an opportunity to review the legislation.



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The laying of the Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2020**

DATE **26 November 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

Today, I have laid the draft Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2020 before the Assembly.

Subject to the approval of the Assembly, these Regulations will uprate the financial figures in the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013 to ensure that the scheme in place for the 2020-21 financial year reflects increases in the cost-of-living. This helps to ensure that the scheme maintains entitlements for the 280,000 households across Wales who rely on this support.

Earlier this month, I launched the next phase of our awareness campaign which aims to help everyone across Wales understand if they are entitled to support with paying their council tax bill and provides advice on how to access it.

I look forward to the debate on the Regulations early in the new year.