

**Explanatory Memorandum to The Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020.**

This Explanatory Memorandum has been prepared by Food Standards Agency and is laid before Senedd Cymru 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 Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020

Eluned Morgan MS  
Minister for Mental Health, Wellbeing and Welsh Language  
2 December 2020

## **PART 1**

### **Description**

1. The Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020 amend the Animal Feed (Marketing, Composition and Use) (Wales) Regulations 2016 and the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 (together “the 2016 Regulations”) to provide for the enforcement in Wales (including offences) of Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes. This instrument substitutes provisions for enforcement of Regulation (EU) 2020/354 for the current provisions that implement Directive 2008/38/EC, which is repealed as of 25<sup>th</sup> December 2020.
2. This instrument also updates the references in the 2016 Regulations to other EU instruments.
3. Regulation (EU) 2020/354:
  - (a) Replaces the general provisions of Directive 2008/38/EC with those noted in Regulation (EU) 2020/354
  - (b) Updates the list of intended uses for particular nutritional purposes by; adding and removing intended uses, updating the essential nutritional characteristics column, the labelling declarations, the time provisions and the requirements in the ‘other provisions’ column.
  - (c) Allows for a transitional period for feed intended for particular nutritional purposes which have been labelled before 25 March 2022 in accordance with the rules applicable before 25 March 2020 (i.e. compliant with Directive 2008/38/EC). This stock may continue to be placed on the market and used until exhausted.

### **Matters of special interest to the Legislative, Justice and Constitution Committee**

4. None

### **Legislative background**

5. The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the ECA 1972”). The Welsh Ministers are designated in relation to:
  - a. measures relating to feed produced for or fed to food-producing animals (see European Communities (Designation) (No. 2) Order 2005/1971).
  - b. measures in the veterinary and phytosanitary fields for the protection of public health (see European Communities (Designation) (No. 2) Order 2008/1792); and
  - c. measures in relation to the common agricultural policy of the European Union (see the European Communities (Designation) (No. 5) Order 2010/2690).
6. The ECA 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 with effect from exit day. Despite that repeal, section 2(2) of the 1972 Act continues to have effect with modifications until implementation period completion day by virtue of section 1A of EUWA.
7. These Regulations make provision for a purpose mentioned in section 2(2) of the ECA 1972, and it appears to the Welsh Ministers that it is expedient for references to EU instruments within the 2016 Regulations to be construed as references to those instruments as amended from time to time.
8. Section 2(2) of the European Communities Act 1972 (as read with section 59(3) of the Government of Wales Act 2006) offers a choice between negative and affirmative procedures. This instrument makes limited provision, which is technical in nature and which gives effect to EU law (including updating references to EU legislation), in relation to which the Welsh Ministers have limited discretion. As such, these Regulations are being made under the negative resolution procedure

### **Purpose and intended effect of the legislation**

9. The purpose of this Instrument is to implement Regulation (EU) 2020/354 and to remove references to the repealed Directive 2008/38/EC. This instrument also updates the references in the 2016 Regulations to other EU instruments

10. Commission Regulation (EU) 2020/354 will take effect on 25<sup>th</sup> December 2020. An amendment is therefore required to the Animal Feed (Marketing, Composition and Use) (Wales) Regulations 2016 and the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016, which provide for the enforcement in Wales (including offences) of the EU legislation in this area. This instrument substitutes provisions for enforcement of Regulation (EU) 2020/354 for the current provisions that implement Directive 2008/38/EC, which is repealed as of 25<sup>th</sup> December 2020.
  
11. All feed businesses that produce, supply or use animal feed, for particular nutritional purposes are covered by this Instrument.
  
12. Corresponding implementing legislation is being made in relation to England, Scotland and Northern Ireland.

## **Consultation**

13. A six-week consultation ran from 2 October 2020 to 13 November 2020 on the proposal to draft domestic legislation to provide for the enforcement in Wales of Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes and repealing Directive 2008/38/EC. The consultation was drawn to the attention of key stakeholders including feed business operators and local authorities.
  
14. One response was received from an industry group which was supportive of the plan to draft domestic legislation enforcing Reg (EU) 2020/354 in Wales. No amendments were considered necessary to the draft Regulations.
  
15. A summary of the consultation responses will be published on the Food Standard's Agency website within three months of the Regulations being laid.

## **Regulatory Impact Assessment (RIA)**

16. The FSA considers the impact on both businesses and enforcement authorities of this instrument will be negligible. The FSA has identified no significant change to the requirements for business, or in the regulatory approach undertaken. Regulation (EU) 2020/354 contains transitional measures that will allow existing stocks of product labelled before 25

March 2022 under the present rules to be used up. Therefore, an impact assessment has not been produced.

17. The FSA envisages minimal one-off familiarisation costs for Local Authorities in Wales to read and familiarise themselves with the EU Regulations and then disseminate to enforcement officers.

18. The Animal Feed (Particular Nutritional Purposes and Miscellaneous Amendments) (Wales) Regulations 2020 have no impact on the statutory duties or statutory partners of the Government of Wales Act 2006.