

Explanatory Memorandum to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of the Welsh Government 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 Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020.

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

Lesley Griffiths MS

Minister for Environment, Energy and Rural Affairs

24 November 2020

Part 1

1. Description

The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020 (the “instrument”) will make amendments to subordinate legislation, which apply in relation to Wales and the Welsh zone, in relation to the trade in animals and related products .

Part 1 and Part 3 of this instrument will come into force immediately before implementation period (IP) completion day and Part 2 of this instrument comes into force on IP completion day.

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

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (the ‘Withdrawal Act’), in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed this instrument is subject to the draft affirmative procedure. The instrument makes minor and technical changes and should therefore be subject to annulment.

There is a requirement under paragraph 4 of Schedule 2 to the European Union Withdrawal Act 2018 for the Welsh Ministers to consult with the Secretary of State on any provisions that are due to come into force prior to IP completion. In accordance with this requirement, the Secretary of State has been consulted through a separate letter issued on 17 November 2020.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK’s exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before IP completion day into domestic law and preserves laws made in the UK which implement EU obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK’s exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

In accordance with the requirements of the Withdrawal Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

The purpose of the instrument is to ensure retained EU law operates effectively once the UK leaves the EU. It will amend redundant references to EU laws and systems which will no longer be relevant at the end of the IP and is necessary to ensure a functioning system for the importation of live animals (including equines), products of animal origin (including meat), animal by-products, and germplasm whilst maintaining biosecurity and welfare standards.

The proposed amendments aim to maintain the existing import regime and will ensure that Wales will have a deliverable and well-functioning imports system for animals and animal products at the end of the IP. The proposed amendments will also introduce transitional arrangements for specified territories (by inserting a new Schedule 5 to the Trade in Animals and Related Products (Wales) Regulations 2011) to deliver the UK Government's decision to phase in official controls on imports from those countries subject to special transitional measures.

The phased approach from 1st April 2021 will allow Great Britain to protect itself from EU imports of Products of Animal Origin ("POAO") that may pose a biosecurity risk. Given Great Britain is currently part of the EU's Sanitary and Phytosanitary ("SPS") regime, this risk is currently very low. Additionally, through the pre-notification requirement, the new regime will provide data on the risk posed by EU imports. This data will be able to inform decisions on future controls, leading to a more efficient regime.

The final stage of the phased approach will mean that from July 1 2021, all POAO and Live Animals will enter and be checked at a Border Control Post (BCP). Welsh Government Officials in conjunction with other delivery agencies are currently assessing the impact of this change and planning the construction and delivery of these BCPs. The amendments made by this instrument will work in conjunction with The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 and Regulation (EU) 2017/625 to ensure that our BCPs have an operable legislative framework to function within.

The proposed amendments are made in accordance with the Withdrawal Act to ensure no legislative hindrance to movement of live animals including equines, and trade in animal products including meat with the EU and other listed third countries, at the end of the IP.

What the instrument does

Part 2 of the instrument (regulations 2 through to 32) make operability amendments to the Trade in Animal and Related Products Regulations 2011.

Part 3 of the instrument (Regulation 33 through to 37) makes consequential amendments to other statutory instruments to take account of the amendments in Part 2.

5. Consultation

No public consultation was undertaken. The purpose of the instrument is to enable the current domestic legislative and policy framework to remain unchanged by the withdrawal of the UK from the EU.

6. Regulatory Impact Assessment (RIA)

No impact assessment has been produced in relation to this instrument as no impact is foreseen on the private, voluntary or public sectors.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

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

Statement	Where the requirement sits	To whom it applies	What it requires
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement which the Minister has had due regard to the need

		when exercising powers in Schedule 2	to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement

Part 2

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

1. Appropriateness statement

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

“In my view the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

2. Good reasons

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

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

3. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020 does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

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

“In relation to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

4. Explanations

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

5. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

Not applicable/required.