

EXPLANATORY MEMORANDUM TO

The Animal Feed (Basic Safety Standards) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Animal Feed (Basic Safety Standards) (Wales) Regulations 2018.

Vaughan Gething AM
Cabinet Secretary for Health and Social Services
16 January 2018

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1. Description

The Regulations transpose in relation to Wales a requirement in the EU Basic Safety Standards Directive (Council Directive 2013/59/Euratom) prohibiting the deliberate addition of radioactive substances in the production of animal feeding stuffs and prohibiting the import of animal feeding stuffs to which radioactive substances have been added.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative Background

The powers enabling the Regulations to be made are conferred by sections 66, 74A and 84 of the Agriculture Act 1970 and section 2(2) of the European Communities Act 1972, for the purposes of which the Welsh Ministers are designated by SI 2005/1971 in relation to measures relating to animal feed.

The powers given by the Agriculture Act 1970, which were vested in UK Government Ministers prior to devolution, were transferred to the National Assembly for Wales in 1999 by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and were subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations are to be subject to the negative procedure. Paragraph 2(2) of Schedule 2 to the 1972 Act provides that regulations that are made under section 2(2) of the same Act may be subject to the negative or affirmative procedure. In this case, in light of the fact that the section 2(2) powers are being combined with other powers (i.e. those in the 1970 Act), and the fact that the Regulations do not involve substantial government expenditure or any other particularly sensitive matters, it is considered appropriate to subject the Regulations to the negative procedure.

In accordance with Article 33 of the Euratom Treaty, the draft Regulations were notified to the European Commission and a three-month standstill period was observed before the Regulations were made.

4. Purpose and Intended Effect of the Legislation

The objective of the Regulations is to:

- prohibit the deliberate addition of radioactive substances in the production of animal feeding stuffs, and prohibit the import or export of animal feeding stuffs to which radioactive substances have been added;
- provide the necessary enforcement powers to ensure compliance.

5. Consultation

An informal consultation was carried out with key stakeholders in industry, farming and enforcement authorities in early summer 2017. This established that no operators in Wales were known to be deliberately adding radioactive materials to animal feed or importing animal feed to which radioactive materials had been deliberately added.

A formal public consultation exercise was carried out by the Food Standards Agency (FSA) from 23 August to 4 October 2017. The FSA in Wales received two responses.

One response from local government sought guidance on the implementation of the Regulations. This will be provided in due course. Enforcement sanctions will be consistent with those provided to enforcement authorities by existing animal feed Regulations.

The Office of the Government Chemist provided some advice on testing and verification methods and potential technical issues to be addressed in the enforcement of the Regulations. This will be considered when advising local authorities.

Neither of these responses required amendment to the draft Statutory Instrument, nor highlighted any costs that arise out of these Regulations.

6. Regulatory Impact Assessment

Because no operators in Wales are known to be currently adding radioactive substances to feed (or importing such feed), it is not considered that there will be any costs incurred in the implementation of the Regulations, either by Government, enforcement authorities or the feed industry. Enforcement sanctions will be consistent with those provided to enforcement authorities by existing animal feed Regulations.