

Explanatory Memorandum to The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

This Explanatory Memorandum has been prepared by Department for Environment, Energy and Rural Affairs 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 Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

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 AM

Minister for Environment, Energy and Rural Affairs
15 January 2019

PART 1

1. Description

- 1.1. This instrument makes amendments to subordinate legislation, which apply in relation to Wales, in the field of control and prevention of exotic diseases in animals. The instrument ensures that the subordinate legislation applicable in Wales which relates to control and prevention of exotic diseases in animals will continue to be operable in Wales after the United Kingdom leaves the European Union.
- 1.2. The instrument comes into force on “exit day”, which section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) defines as 29 March 2019 at 11.00 pm.

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

- 2.1. This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 (“the 2018 Act”).
- 2.2. As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

3. Legislative background

- 3.1. This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

- 4.1. The ten instruments that are subject to these deficiency amendments are listed below together with the Directives/EU Regulations which are implemented by the instruments:
 - (i) The Foot and Mouth Disease (Wales) Order 2006 (which implements, in part, [Council Directive 2003/85/EC](#) of the 29 September 2003 on Community measures for the control of foot and mouth disease.)
 - (ii) The Foot-and-Mouth Disease (Control of Vaccination) (Wales) Regulations 2006 (which implement those aspects of [Council Directive](#)

[2003/85/EC](#) on Community measures for the control of foot and mouth disease that relate to vaccination against foot and mouth disease

(iii) The Avian Influenza (Preventive Measures) (Wales) Regulations 2006 (which implement provisions requiring or dependant on the identification of poultry premises under [Council Directive 2005/94/EC](#) on Community measures for the control of avian influenza and repealing [Directive 92/40/EC](#).)

(iv) The Avian Influenza and Influenza of Avian Origin in Mammals (Wales) (No 2) Order 2006 (which implements [Council Directive 2005/94/EC](#) on Community measures for the control of avian influenza and repealing [Directive 92/40/EC](#), and partly implements in part (a) [Commission Decision 2005/734/EC](#) laying down biosecurity measures to reduce the risk of transmission of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 from birds living in the wild to poultry and other captive birds and providing for an early detection system in areas at particular risk and [Commission Decision 2006/474/EC](#) concerning measures to prevent the spread of highly pathogenic avian influenza caused by influenza A virus of subtype H5N1 to birds kept in zoos and approved bodies, institutes and centres in the Member States and repealing [Decision 2005/744/EC](#).)

(v) The Avian Influenza (Vaccination) (Wales) (No.2) Regulations 2006 (which implement [Council Directive 2005/94/EC](#) on Community measures for the control of avian influenza repealing [Directive 92/40/EEC](#) (OJ No L10, 14.1.2006, p 16) insofar as it deals with vaccination against avian influenza.)

(vi) The Avian Influenza (H5N1 in Poultry) (Wales) Order 2006 (which implements [Commission Decision 2006/415/EC](#) concerning certain protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in poultry in the Community and repealing [Decision 2006/135/EC](#).)

(vii) The Bluetongue (Wales) Regulations 2008 (which implement [Council Directive 2000/75/EC](#) laying down specific provisions for the control and eradication of bluetongue.)

(viii)The Products of Animal Origin (Disease Control) (Wales) Regulations 2008 (which implement [Articles 3 and 4](#) of [Council Directive 2002/99/EC](#) laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption.)

(ix) The Poultry Compartments (Wales) Order 2010 (which implements [Commission Regulation \(EC\) No 616/2009](#) which makes provision for the recognition of poultry compartments which meet high standards of biosecurity.)

(x) The African Horse Sickness (Wales) Regulations 2013 (which implement the provisions of [Council Directive 92/35/EEC](#) laying down control rules and measures to combat African horse sickness.)

- 4.2. These instruments deal with the controls for exotic notifiable diseases, where owners and their veterinarians are obliged to notify Welsh Government of suspicion of the relevant disease. The instruments also cover preventative measures, vaccination and products of animal origin.
- 4.3. These instruments ensure that if there is an outbreak of such disease (including Foot and Mouth Disease, Bluetongue or Avian Influenza), the Welsh Government is able to respond in a timely, effective and coordinated manner to control and eradicate disease, demonstrate disease freedom, restore normal trade in the affected species and then work to assist the recovery of local communities.

Why is it being changed?

- 4.4. The minor and technical changes made by the instrument are necessary to ensure that the amended instruments continue to operate effectively following the UK's withdrawal from the European Union.
- 4.5. The changes are made to ensure the operability of the ten amended instruments by, for example, the omission of references to the European Commission which will no longer be relevant after exit day; the omission of references to "intra-Community trade"; and amendments which correct references which are characterised by their inclusion of Wales as a constituent nation of a "Member State", or, likewise, by the exclusion of Wales from the ambit of a "third country".

What will it now do?

- 4.6. The instrument will ensure that Wales will continue to be able to respond to outbreaks of exotic notifiable animal disease as before. There are no policy changes introduced in this instrument.

5. Consultation

- 5.1. As there is no policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

6. Regulatory Impact Assessment (RIA)

- 6.1. An RIA has not been conducted as these are minor technical changes necessary as a result of the UK's withdrawal from the EU. A public

consultation was not required because no policy changes are being made via this statutory instrument. As this instrument relates to maintaining existing legislation after EU Exit there is no, or no significant, impact on business, charities or voluntary bodies. There is no, or no significant, impact on the public sector.

Annex [x] Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

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

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
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 when exercising powers in Schedule 2	<p>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.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	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 18(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.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

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

1. Sifting statement(s)

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

“In my view The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”. This is the case because the changes being made are technical in nature and make no substantive changes to how the ten instruments included in the Regulations operate.

2. 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 Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 does 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.”

3. 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. This is because the provisions ensure that protections provided by The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 continue to be operable after the UK leaves the European Union.

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs, has made the following statement(s) “The [draft] instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 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:

4.3 “In relation to the instrument, I, Lesley Griffiths have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

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

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.