

Explanatory Memorandum to The Animal By-Products and Transmissible Spongiform Encephalopathies (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer 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 Animal By-Products and Transmissible Spongiform Encephalopathies (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
Minister for Environment, Energy and Rural Affairs
24 January 2019

PART 1

1. Description

- 1.1. This instrument makes amendments to the Animal By-Products (Enforcement) (Wales) Regulations 2014 and the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018. These amendments are to ensure that the statute book remains operable following the UK's exit from the EU and will address deficiencies in domestic legislation arising from EU Exit.
- 1.2. This instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 defines as 29 March 2019 at 11.00pm.

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 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 the negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.
- 2.3 The Constitutional and Legislative Affairs Committee considered the regulations for sifting on 14 January 2019 and approved that the "appropriate procedure for these Regulations is the negative resolution procedure." It is, therefore, confirmed that the instrument will follow the negative procedure. A copy of the Committee's report can be found [here](#).

3. Legislative background

- 3.1 This instrument is being made using the power conferred by paragraph 1(1) of Schedule 2 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 relevant directly applicable EU legislation, listed below, was first introduced by the EU as a result of the Bovine Spongiform

Encephalopathy (BSE) epidemic in the late 1980s and early 1990s and have been updated frequently over subsequent years to reflect the development and decline of that particular epidemic. Animal by-products (ABPs) legislation is relevant to Transmissible Spongiform Encephalopathy (TSE) controls because scientific evidence has demonstrated that infectivity is concentrated in certain organs which are classified as Specified Risk Material (SRM) and are destroyed to prevent their entry into the food chain. However, in addition, the legislation controls the use and disposal of ABPs to protect public and animal health against other diseases as well. These are:

- (i) Regulation (EC) No. 999/2001 of the European Parliament and the Council (amended 61 times), lays down rules for the prevention, control and eradication of certain TSEs, including BSE in cattle and scrapie in sheep and goats.
- (ii) Regulation (EC) No.1069/2009 of the European Parliament and the Council lays down health rules as regards animal by-products and derived products not intended for human consumption
- (iii) Commission Regulation (EU) No. 142/2011 (amended 14 times) implements the detailed technical requirements for Regulation (EC) No. 1069/2009.

Why is it being changed?

- 4.2 This instrument uses powers conferred by the 2018 Act to make the necessary changes to the domestic legislation to ensure that the following Welsh legislation enforcing the retained direct legislation mentioned above will continue to operate effectively after the UK has left the EU. The instruments being amended are the Animal By-Products (Enforcement) (Wales) Regulations 2014 S.I. 2014/517 and the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018 S.I. 2018/968.
- 4.3 For the control of ABPs as defined by EC controls, the Animal By-Products (Enforcement) (Wales) Regulations 2014 do not permit the export of stained material, identified as ABPs under the instrument to another member state within the EU, unless that member state agrees to the import of the stained material, in line with Article 43 of the European control.
- 4.4 For the control and eradication of TSEs, the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018 outlines specific controls in relation to the testing for the presence of TSEs, including the approval of those laboratories permitted to conduct those tests. Currently, the UK may use those laboratories that include those that are outside of the UK but within the EU and have been approved for that purpose. Post EU-Exit, the UK will no longer identify those European laboratories as a reference laboratory for control purposes. This will not impact on testing capabilities of the UK, who do not currently use laboratories outside of the UK for TSE testing purposes. The Animal and Plant Health Agency

laboratory at Weybridge was the EU reference laboratory for TSEs and is exemplar in this practice. As such, the Welsh Government will continue to have access to this testing facility as we currently do, giving confidence that our testing for the confirmation of disease will continue to be at the highest available standard.

- 4.5 Further minor technical amendments are made to the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018, to remove reference to ‘third countries’ and ‘member states’. The individual references to ‘third countries’ and ‘member states’ will no longer be operable once the UK leaves the EU, and the UK will be required to treat all other countries equally for the placing on the market of products for export and for the import of animals and feeding stuffs. This will ensure disease controls are applied equally and will impose no disease risks as a result of these amendments. The objective is to ensure that the legislation works effectively once the UK has left the EU and ensure that our legislation remains operable, which is essential for continued control and eradication of TSEs in Wales and to the monitoring of ABPs.
- 4.6 The deficiencies which are subject to correction do not constitute policy changes – they are minor, technical amendments to ensure the legislation is operable once the UK leaves the EU through removing legislative references that will become defunct.

What will it now do?

- 4.7 The instrument will address deficiencies in domestic legislation arising from the withdrawal of the UK from the EU, and ensures that controls on ABPs and TSEs continue to operate on EU exit to protect animal and public health.
- 4.8 EU rules for the control of TSEs and ABPs are at least equivalent to, and in some cases higher than, the international standards set by the World Organisation for Animal Health (Office International des Epizooties - OIE). Whilst the UK will be under no legal obligation to adhere to EU rules for TSE and ABP controls following EU Exit, due to the history of the BSE epidemic in Europe (particularly within the UK in the 1980/90s), third countries will expect the UK to at least mirror the key EU controls, even though these exceed OIE safeguard standards.

5. Consultation

- 5.1 No public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain operable 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

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 Animal By-Products and Control and Eradication of Transmissible Spongiform Encephalopathies (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 Animal By-Products (Enforcement) (Wales) Regulations 2014 and the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018 operate.

2. Appropriateness statement

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 Animal By-Products and Control and Eradication of Transmissible Spongiform Encephalopathies (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, Lesley Griffiths, 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 Animal By-Products (Enforcement) (Wales) Regulations 2014 and the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018 continue to be operable after the UK leaves the European Union.

4. Equalities

- 4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

“The 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, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“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.”

- 4.3 Little or no impact on equalities is expected.

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.