

Explanatory Memorandum to The Zoonotic Disease Eradication and Control (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.

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Zoonotic Disease Eradication and Control (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 & Rural Affairs
27 February 2019

PART 1

1. Description

- 1.1. This instrument makes amendments to the Zoonoses (Monitoring) (Wales) Regulations 2007 and the Tuberculosis (Wales) Order 2010. 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, 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.
- 2.3 The CLA Committee considered a draft of these regulations on 28 January 2019 and agreed that the negative procedure is appropriate for these regulations. A copy of the published CLA report can be accessed via the following link: <http://www.assembly.wales/laid%20documents/cr-ld12093/cr-ld12093-e.pdf>

3. Legislative background

- 3.1 The Zoonoses (Monitoring) (Wales) Regulations 2007 were made using powers under section 2(2) of the European Communities Act 1972. The Tuberculosis (Wales) Order 2010 is made under the powers in sections 1 , 7(1) , 8(1) , 15(4) , 25 , 32(2) , 34(7) , 83(2) and 88(2) of the Animal Health Act 1981.
- 3.2 This instrument is being made 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 Council Directive 2003/99/EC of the European Parliament and of the Council of 17 November 2003 on the monitoring of zoonoses and zoonotic agents, amending Council Decision 90/424/EEC and repealing Council Directive 92/117/EEC (“Directive 2003/99/EC”) sets out the requirements for the monitoring of zoonoses and antimicrobial resistance to zoonotic agents and other agents that pose a threat to public health. It is implemented in part by the Zoonoses (Monitoring) (Wales) Regulations 2007, which include powers of entry for inspectors to carry out monitoring activity.
- 4.2 The animal health requirements for intra-Union trade in bovine animals are laid down in Council Directive 64/432/EEC. This Directive (which has been amended several times) harmonises the rules for intra-Union trade in bovine animals and establishes the animal health guarantees needed for the trade in these animals between Member States. The objective of this harmonisation is to ensure that the same requirements are applied for trade between all the Member States thereby ensuring the safe and free circulation of the animals in the European Union territory. The Directive lays down rules regarding the health status in relation to animal diseases, including tuberculosis, and provisions for tests to detect these diseases to be carried out by official veterinarian. Enforcement of these rules in Wales is given effect primarily by the Tuberculosis (Wales) Order 2010.

Why is existing legislation 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 will continue to operate effectively after the UK has left the EU. The instruments being amended are the Zoonoses (Monitoring) (Wales) Regulations 2007 S.I. 2007/2459 (W.207) and the Tuberculosis (Wales) Order 2010 S.I. 2010/1379 (W.122).
- 4.3 The Zoonoses (Monitoring) (Wales) Regulations 2007 implement Directive 2003/99/EC for the monitoring of zoonoses and zoonotic agents. The purpose of the Directive is to ensure that zoonoses, zoonotic agents and related antimicrobial resistance are properly monitored, and that food-borne outbreaks receive proper epidemiological investigation, to enable the collection to enable the evaluation of in the community of the information necessary to evaluate relevant trends and sources.
- 4.4 The Zoonoses (Monitoring) (Wales) Regulations 2007 provide inspectors with the powers of entry onto premises to monitor zoonoses and antimicrobial resistance to agents which pose a threat to public health. Regulation 3 contains a reference to the appointment of a competent

authority for the purpose of the Directive. As the Directive will not be part of domestic law post exit day, the reference is removed. A minor drafting change is also made as to the meaning of “Directive” which, following this change, is only referred to in regulation 2(2). Regulation 5 of the 2007 Regulations enables an inspector exercising a power of entry under the 2007 Regulations to take with them any representative of the European Commission . An example of when this might happen, would be for an EU audit of zoonotic disease capability. The European Commission will no longer have an interest in activity post exist and so the reference is removed. The powers of the inspectors within Wales, remain otherwise unchanged however, and the Welsh Government will ensure the same provision of inspectors presence and duties in order to ensure effective controls of the food and feed chain remain in place.

- 4.5 The Tuberculosis (Wales) Order 2010 implement Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine (“Directive 64/432/EEC”), in particular concerning the eradication of Tuberculosis. This Directive 64/432/EEC lays down rules regarding the health status in relation to animal diseases, including tuberculosis, and provisions for tests to detect these diseases to be carried out by official veterinarians. Enforcement of these rules in Wales is given effect in Wales primarily by The Tuberculosis (Wales) Order 2010. The Order defines “tuberculosis free status” by reference to the Directive. The concept of “tuberculosis free status” is the inverse of a restricted herd and so appropriate changes are made to reflect this in the Order.
- 4.6 The deficiencies which are subject to appropriate 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 ensure that the relevant requirements for zoonoses, including tuberculosis, continue to operate on EU exit to protect animal and public health.

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 following 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, and there are no policy changes being implemented via this statutory instrument. As a consequence, there is no perceived impact on the public sector, business, charities or voluntary bodies, of the implementation of this statutory instrument.

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.	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Welsh Ministers have 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 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	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Authority.</p> <p>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</p>	
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 Zoonotic Disease Eradication and Control (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 Zoonoses (Monitoring) (Wales) Regulations 2007 and the Tuberculosis (Wales) Order 2010 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 Zoonotic Disease Eradication and Control (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 amending provisions ensure that both public and animal health protection remains in place as the Zoonoses (Monitoring) (Wales) Regulations 2007 and the Tuberculosis (Wales) Order 2010 will 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:
“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, Lesley Griffiths, 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.”
- 4.4 “There is little or no impact on any protected group or protected characteristic anticipated as a result of this statutory instrument.”

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.