

SL(5)358 – The Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to the Bovine Semen (Wales) Regulations 2008 and the Trade in Animals and Related Products (Wales) Regulations 2011 to try to ensure that the statute book remains operable following the UK's exit from the EU.

The Regulations are made using the power conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to, the Withdrawal Act 2018.

Procedure

Negative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:-

The English text of regulation 3(11)(c) is divided into two sub-paragraphs; the Welsh text has three. This is because the context of the amendments to the Welsh text requires them to be expressed slightly differently, so that sub-paragraph (ii) in the English text corresponds to sub-paragraphs (ii) and (iii) in the Welsh text. The equivalence would have been clearer if the two changes had been connected by an 'and' within sub-paragraph (ii) of the Welsh text rather than split into two sub-paragraphs.

(Standing Order 21.2 (vi)- that its drafting appears to be defective or it fails to fulfil statutory requirements).

The numbering of the Welsh text of regulation 3(21)(e) is defective and therefore does not correspond to the English numbering. Sub-paragraph (ii) introduces a new sub-paragraph (1A) into the principal Regulations; the text of the insertion should follow immediately rather than appearing as a sub-paragraph (iii). The same problem also arises with sub-paragraphs (iv) and (v). There are therefore two more sub-paragraphs in the Welsh text than in the English text. **(Standing Order 21.2 (vi)- that its drafting appears to be defective or it fails to fulfil statutory requirements).**

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

A draft of these Regulations was laid before the Assembly for sifting in accordance with paragraph 4 of Schedule 7 to the European Union (Withdrawal) Act 2018. The Committee agreed that the negative procedure was the appropriate procedure for these Regulations.



Government Response

The Committee has identified two technical scrutiny points, both of which relate to the Welsh text of the instrument, which are addressed below.

Point 1 – Regulation 3(11)(c)

Regulation 3(11)(c) in both the English and Welsh texts of the instrument have equivalent legal effect. The lack of equivalence highlighted by the report is therefore only structural, rather than substantive, and a person seeking to rely on the Welsh text will be able to do so in the same way as a person seeking to rely on the English.

The report, in the second sentence related to this point, appears to acknowledge that the context of the amendments to the Welsh text legitimately gives rise to at least some degree of variation between the English and Welsh texts, and therefore that any difference in structure between the two does not in and of itself constitute defective drafting.

While the report points to an approach that is considered by the National Assembly's legal advisers to be more appropriate, there are in relation to any given provision often (if not always), a range of options available to drafters and translators alike. As such, while the Welsh Government accept that the approach suggested certainly works, it is also of the view that the differences between the approach suggested and that actually employed are not sufficient to render the instrument 'defective'

Point 2 – Regulation 3(21)(e)

The issue identified by the Committee in relation to regulation 3(21)(e) is relevant only in the context of the published version of the Welsh text. It does not appear in either the version made by the Minister for Environment, Energy and Rural Affairs, or the version that was laid before the National Assembly. The version of the instrument made and laid is accurate and therefore not defective. Given that fact, it is not possible to say with certainty how the issue in question has arisen. However, the means of resolving the issue are straightforward. Indeed, the National Archives has agreed that the version of the instrument published at present can simply be withdrawn and that made and laid published in its place.

Legal Advisers

Constitutional and Legislative Affairs Committee

8th March 2019

