

Explanatory Memorandum to The Trade in Animals and Related Products (Amendment) (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 Trade in Animals and Related Products (Amendment) (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
27 February 2019

PART 1

1. Description

- 1.1. This instrument makes amendments to the Bovine Semen (Wales) Regulations 2008 (“the 2008 Regulations” and the Trade in Animals and Related Products (Wales) Regulations 2011 (“the 2011 Regulations”). 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 (“the 2018 Act”) 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 Withdrawal Act 2018.
- 2.2 As set out in the Ministerial statement in Annex 2 to 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 11 February 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-ld12150/cr-ld12150-e.pdf>

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 domestic legislation amended by this instrument is derived from four pieces of EU legislation (Council Directive 89/662/EEC,, Council Directive 90/425/EEC, Council Directive 91/496/EEC and Council Directive 97/78/EC) which ensure that veterinary controls on EU trade

and imports of live animals and animal products are safe with regard to animal and public health and that they meet the specific import conditions laid down in the relevant EU legislation.

- 4.2 That domestic legislation is related to imports of live animals, products of animal origin, germplasm, animal by-products, and the non-commercial movement of pet animals and equines. Its primary aim is to ensure sufficient pre-notification of arrival, proper certification, checks of certain consignments and isolation and vaccination facilities where necessary to ensure strong biosecurity protection of animals and related products brought into Great Britain.
- 4.3 A summary of the domestic Regulations subject to amendment is set out in the following paragraphs.
- 4.4 The 2008 Regulations implement Council Directive 2003/43/EC laying down the animal requirements applicable to intra-Community trade in, and imports of, semen of domestic animals of the bovine species. They control the collection, processing and storage of bovine semen, and establish two regimes: one by which semen may be collected and processed for trade with other EU Member States, and one by which semen may be collected for use in other parts of the UK. Failure to comply with the Regulations is an offence under the Animal Health and Welfare Act 1984, which also provides for inspectors appointed by the Welsh Ministers to enforce the Regulations.
- 4.5 The 2011 Regulations establish a system for trade with other EU Member States in live animals and genetic material and for the importation of live animals, genetic material, products of animal origin and animal by-products from outside the European Union. They also list the EU legislation required to be complied with before animals or goods can be released from control at the port of importation. The Welsh Ministers are empowered to prohibit importation into Wales of any animal or product in the event of a disease outbreak outside the UK. They are enforced by the Welsh Ministers, port health authorities, local authorities and the United Kingdom Border Force. The Regulations establish various offences, punishable on summary conviction to a fine up to the statutory maximum or on conviction on indictment to an unlimited fine.

Why is it being changed?

- 4.6 After EU Exit, without amendment, certain provisions within the 2008 and 2011 Regulations will be inoperable and, as a result, existing law will either be unclear or will not function effectively. The Welsh Ministers make this instrument in exercise of the powers conferred by the Withdrawal Act to make the necessary technical changes to ensure that it will continue to operate effectively after the UK has left the EU.

4.7 The changes include:

- references to “EC” collection, quarantine and storage centres so that they are rendered references to collection, quarantine and storage centres licensed by the Welsh Ministers;
- references to “intra—Community trade” becoming references to “trade with a member State”;
- occurrences of trade “between Member States” becoming references to trade “into Wales”; and
- occurrences of “Movement between Member States” becoming references to “Import from Member States”;
- references to European legislation concerning current EU health certificates becoming references to replacement documentation;
- references to the “EU Traces system” becoming references to “the system for the notification of imports that in the United Kingdom replaces the EU Traces system”;
- the EU Commission’s powers to approve a Border Inspection Post being assumed by the Welsh Ministers;
- lists of approved third countries that certain animals or products of animal origin can be imported drawn up by the EU becoming references to lists drawn up by the Welsh Ministers.

What will it now do?

- 4.8 The instrument will make technical amendments to allow the 2008 and 2011 Regulations to be fully operable after exit day and thereby enable the trade in bovine semen, animals and animal related products to operate effectively, and halt any animals or products that are deemed to be a threat to animal and/or public health. 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 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 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 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 Trade in Animals and Related Products (Amendment) (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 two instruments included in the Regulations 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 Trade in Animals and Related Products (Amendment) (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 Trade in Animals and Related Products (Amendment) (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, 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, Minister for Environment, Energy and Rural Affairs, 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.