

SL(5)360 – The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

The Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“these Regulations”) are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to subordinate legislation, which apply in relation to Wales, in the field of control and prevention of exotic diseases in animals.

Procedure

Negative.

Technical Scrutiny

Four points are identified for reporting under Standing Order 21.2 in respect of this instrument.

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

Regulation 3(2) of these Regulations refers to references to “Member States” and “Article 2(u) of Directive 2001/89/EC” in point 3.2 of Annex X of Council Directive 2003/85/EC (“the 2003 Directive”). However, neither of these references appear in point 3.2 of Annex X to the 2003 Directive. Both do, however, appear in point 3.1 of Annex X to the 2003 Directive, which suggests that this was the appropriate reference.

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

Regulation 4(2) of these Regulations substitutes wording in regulation 9(5) of the Avian Influenza (Preventive Measures) (Wales) Regulations 2006. The effect of this new wording is that the National Assembly for Wales must ensure that vaccination is carried out in accordance with the preventive vaccination plan approved in accordance with Article 56(2) of Council Directive 2005/94/EC (“the 2005 Directive”), as read with Article 5 of Commission Decision 2007/598. However, Article 56(2) of the 2005 Directive provides that the preventive vaccination plan must be submitted to the EU Commission for approval, and these Regulations do not provide that the reference to the EU Commission in Article 56(2) of the 2005 Directive be read differently. Therefore, this appears to be defective.

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



Regulation 7(3) of these Regulations omits the word “other” from article 9(1) of the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006 (“the 2006 Order”). However, the word “other” appears twice in article 9(1) of the 2006 Order. It is not clear whether regulation 7(3) of these Regulations refers to both instances where the word “other” appears, especially given that one of the references, “other captive bird”, is a defined phrase in article 2 of the 2006 Order.

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

Regulation 7(5) of these Regulations revokes paragraphs (1)(b) and (2) of article 12 of the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006. However, these provisions have already been revoked by the Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018.

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

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

Government Response

The Committee has raised four reporting points under Standing Order 21.2

(1) Cross reference

The first reporting point relates to incorrect cross references. Welsh Government acknowledges the point. An amendment will be made at the next available opportunity.

(2) Amendment of EU Instrument

Amendments are made by Regulation 13 of the Exotic Disease (Amendment etc.) (EU Exit) Regulations 2018 No.1410 to Commission Decision 2007/598 which has effect so that future preventive vaccination plans will no longer be approved by the Commission.

Paragraph (1) of article 5 of Commission Decision 2007/598 provides for the approval of preventive vaccination plans submitted in accordance with Article 56(2) of Directive 2005/94/EC and listed in Part I of Annex III to that Decision. Paragraph (2) of article 5 provides that the Commission is to publish the approved preventive vaccination plans referred to in paragraph 1.

Regulation 13 of the Exotic Disease (Amendment etc.) (EU Exit) Regulations 2018 substitutes article 5 of Commission Decision 2007/598/EC with effect that preventive vaccination plans for the United Kingdom already submitted in accordance with Article 56(2) of Directive 2005/94/EC and approved by the EU Commission on 27 June 2007 under Article 57(2) of that Directive continue in force.

The amendment also provides that the Secretary of State, with the consent of each other authority who in relation to any constituent part of the United Kingdom is the appropriate Minister, must publish preventive vaccination plans approved under Article 57 of Directive 2005/94/EC, on the basis that functions of Member States were to be read as if they refer to the functions of the appropriate Minister.

(3) Reference to term “other”

Regulation 7(3) of these Regulations omits the word “other” from article 9(1), 10 (1) and 11(1) of the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006 (“the 2006 Order”). Although the word “other” appears twice in article 9(1) of the 2006 Order, it is clear that regulation 7(3) of these Regulations refers to the instance where the word appears before “member state” given that the amendments are made to



address failures of retained EU law to operate effectively and the same amendments are made in relation to articles 10(1) and 11(1).

(4) Revocation of provision

Regulation 7(5) of these Regulations revokes paragraphs (1)(b) and (2) of article 12 of the Avian Influenza (H5N1 in Poultry) (Wales) Order 2006. The Welsh Government acknowledges that these provisions have already been revoked by the Environment, Planning and Rural Affairs (Miscellaneous Amendments) (Wales) Regulations 2018. An amendment will be made at the next available opportunity.

Legal Advisers

Constitutional and Legislative Affairs Committee

12 March 2019

