

The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No 2) Regulations 2019

Explanatory Memorandum

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources 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 Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) 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 and Rural Affairs

17 September 2019

1. Description

The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (“this Instrument”) corrects deficiencies in Welsh statutory instruments which arise as a result of the UK’s exit from the European Union (EU). This Instrument will ensure the statute book in Wales remains up to date and operable once the UK withdraws from the EU.

Regulations 3 and 4 of this Instrument, which make amendments to the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 and the Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019 respectively, will come into force immediately before exit day.

Regulation 2 of this instrument, which amends the Trade in Animals and Related Products (Wales) Regulations 2011, will come into force on ‘exit day’.

‘Exit day’ is defined in section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) as 31 October 2019 at 11.00 pm.

This Instrument amends:

- the Trade in Animals and Related Products (Wales) Regulations 2011,
- the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019, which in turn amend the Plant Health (Wales) Order 2018,
- The Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019, which in turn amend the African Horse Sickness (Wales) Regulations 2013.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This Instrument does not amend primary legislation. The amendments in this Instrument are corrective and technical in nature and do not introduce policy changes.

The changes made by this Instrument are necessary to ensure the effective and correct functioning of the statute book following the UK’s exit from the EU.

A draft of this instrument is laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the 2018 Act, for approval by resolution of the National Assembly for Wales. The Welsh Government were not in a position to make the amendments contained in this instrument by the deadline for laying Brexit related Regulations by way of the Negative Procedure, hence why they are laid subject to the Affirmative Procedure.

3. Legislative background

This Instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act.

This Instrument is laid subject to the draft affirmative procedure in accordance with paragraph 1(9) of Schedule 7 to the 2018 Act.

In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, 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

The corrective and technical changes made by this Instrument are necessary to ensure the statute book in Wales is fully operable following the UK's exit from the EU. The amendments address deficiencies which arise as a result of the UK's withdrawal from the EU, and update references to European legislation.

4.1 What did the domestic regulations do before exit day?

A summary of the domestic Regulations subject to amendment is set out in the following paragraphs.

The Trade in Animals and Related Products (Wales) Regulations 2011

The Trade in Animals and Related Products (Wales) Regulations 2011 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. These regulations provide a statutory framework for the enforcement of Council Directives 89/662/EEC and 90/425/EEC concerning veterinary checks in intra-Community trade, and Council Directives 91/496/EEC and 97/78/EC which lay down the principles

governing the organization of veterinary checks on animals entering the Community from third countries. The regulations 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.

The Plant Health (Wales) Order 2018

The Plant Health (Wales) Order 2018 implements Council Directive 2000/29/EC on protective measures against the introduction and spread of organisms harmful to plants or plant products and related European Union plant health legislation.

The Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019

The Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019 update references in a number of pieces of secondary legislation including domestic legislation relating to animal health and welfare, namely the African Horse Sickness (Wales) Regulations 2013 (S.I. 2013/ 1662) which includes measures to combat African horse sickness disease. The proposed amendment made by this Instrument corrects an erroneous provision relating to regulation 20 (1) (a) of the African Horse Sickness (Wales) Regulations 2013 (S.I. 2013/ 1662) which has been identified as being in conflict with a similar amendment in an EU Exit instrument.

4.2 Why is it being changed?

After EU-Exit, without amendment certain provisions will be inoperable and, as a result, existing law will either be unclear or will not function effectively. This Instrument therefore uses powers in the 2018 Act to make predominantly technical changes to the above legislation to ensure that it remains coherent and continues to function correctly after the UK has left the EU. This will provide clarity to producers, enforcement bodies and industry stakeholders.

There is also an imperative to ensure the legislative framework supports the industry to respond to any immediate impacts that may arise from our withdrawal from the EU. For example, changes in labelling requirements

that make reference to the 'UK' in place of the 'EU' should be introduced in manner that allows producers a fair opportunity to adjust without unduly committing an offence.

The Plant Health (Wales) Order 2018

This Instrument includes provision that makes a consequential amendment to regulation 28(c) of the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 which, in part, omits article 21(7) of the Plant Health (Wales) Order 2018. Regulation 28(c) is amended to reflect that article 21(7) has been omitted by the Plant Health (Wales) (Amendment) (No. 2) Order 2019.

The Trade in Animals and Related Products (Wales) Regulations 2011

This instrument makes further operability amendments to the Trade in Animals and Related Products (Wales) Regulations 2011 in addition to those previously inserted by the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019.

Given the biosecurity implications of the subject matter, the amendments made are also intended to secure regulatory alignment with other devolved administrations (see similar amendments made to the English and Northern Irish equivalents of Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019 by the Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019).

This instrument also takes account of operability changes made to retained EU legislation by the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019 (itself as amended by the Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019).

Most notably, as a result of further operability amendments to the retained EU Commission Decision 2007/275/EC the Secretary of State with the consent of the Welsh Ministers, the Scottish Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland can publish product lists to ensure that movement of animals and animal products on arrival into the UK will continue without disruption, whilst maintaining current biosecurity levels, following the UK's withdrawal from the EU. This is reflected in this instrument.

The Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendment)

This Instrument includes provision to correct an erroneous provision in regulation 13 of the Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019 relating to regulation 20 (1) (a) of the African Horse Sickness (Wales) Regulations 2013 (S.I. 2013/ 1662) which has been identified as being in conflict with a similar amendment in regulation 11 (2) of the Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019. The effect of the proposed correction is to leave in place the changes to regulation 20(1)(a) of the African Horse Sickness (Wales) Regulations 2013 made by regulation 11 (2) of the Exotic Diseases in Animals (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (S.I. 2019/371 which removes reference to African horse sickness being “*officially confirmed for the purpose of Council Directive 92/35/EEC...*”. If the provision were left in place, it would mean that that the presence of the virus could be confirmed in a member State but not in another part of the UK. The amendments made by S.I. 2013/371 have effect (by omitting reference to the Directive) so that if the presence of the African horse sickness virus is suspected or confirmed anywhere outside Wales, the Welsh Ministers may declare zones if they consider there is a risk of it spreading to Wales. Regulation 13 of the Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019 erroneously updated the Directive omitted by S.I. 2013/371.

4.3 What will it now do?

This Instrument will ensure the Welsh regulations being amended continue to be relevant and operable after the UK leaves the EU.

Transitional provisions have been included where necessary to provide producers with a reasonable period in order to adapt to potential new requirements in labelling and to continue to place existing stocks on the market without committing an offence, if the UK withdraws from the EU on a ‘no deal’ basis. The changes included in this Instrument ensure the provisions are relevant regardless of the actual date of EU exit.

5. Consultation

There is a requirement under paragraph 4 of Schedule 2 to the 2018 Act to consult with the Secretary of State on any provisions that are due to come into force prior to exit day. In accordance with this requirement, a letter notifying the Secretary of State of the amendments included in

regulation 3 was issued on 5 September 2019. In addition, the Secretary of State was notified of the amendments in regulation 4 on 12 September 2019.

6. Regulatory Impact Assessment (RIA)

It was not considered necessary to carry out a regulatory impact assessment for this instrument as no impact on the business, public or voluntary sectors are foreseen. The Regulations only introduce minor technical corrections. This is in line with the Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments

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
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 committed to make the same statement when 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.
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</p>

			the Equality Act 2010.
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. 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	A statement to explain why it is appropriate to create such a sub-delegated power.
Urgency	Sub-paragraph (2) and (8) of	Welsh Ministers exercising powers in	A statement

	paragraph 7, Schedule 7	Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	
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Part 2: Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

Not applicable/required.

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 The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No 2) Regulations 2019 do no more than is appropriate. This is the case because the Regulations largely correct technical deficiencies in the Welsh legislation that will arise on exit of the EU. The Regulations ensure that the Welsh statutory instruments included remain up to date and continue to operate effectively in Wales once we leave the EU. This is in line with government policy.”

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 draft instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by the Welsh regulations included 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 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:

“In relation to the draft 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”.

5. Explanations

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.