

SL(6)608 – The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) (Amendment) Order 2025

Background and Purpose

The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 (“the 2022 Regulations”) were made in December 2022 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. In particular, the 2022 Regulations retained and vested functions on the Welsh Ministers that were previously contained in EU Directives.

One such function was that conferred by article 5(5)(a) of the Equine Directive¹ which, as modified by the 2022 Regulations, was intended to allow the Welsh Ministers to make provision for periods of the year during which Equidae may be dispatched from parts of third countries infected with African Horse Sickness into Wales.

The Legislation, Justice and Constitution Committee’s [report on the 2022 Regulations](#) noted, among other reporting points, that reference to article 5(5)(a) of the Equine Directive had not been included in the Schedule to the 2022 Regulations. This omission means that article 5(5)(a) of the Equine Directive as modified by the 2022 Regulations is not a functional regulation-making power.

The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) (Amendment) Order 2025 (“the Order”) corrects this error by amending the modification of article 5(5)(a) in the 2022 Regulations. As amended, modified article 5(5)(a) provides that Equidae must be dispatched only during certain periods of the year, having regard to the activity of vector insects, to be determined by order made by the Welsh Ministers under section 10 of the Animal Health Act 1981 (“the 1981 Act”).

According to the Explanatory Memorandum, section 10 orders enable equivalent provision to be made to the function that was erroneously omitted from the Schedule to the 2022 Regulations. The amendment will enable any order made under section 10 of the 1981 Act for the purposes of African Horse Sickness to be incorporated within the trade in animals and related products (“TARP”) enforcement regime.

¹ Council Directive 2009/156/EC on animal health conditions governing the movement and importation from third countries of Equidae.



Procedure

No procedure.

The 1981 Act provides that the Order must be laid before the Senedd after it is made by the Welsh Ministers.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

The Order corrects an error in the 2022 Regulations and, according to paragraph 2.2 of the Explanatory Memorandum, the free issue procedure will be applied. The Welsh Government is asked to explain why there is no banner or headnote on the Order explaining that it is being made to correct an error in an earlier instrument and will be issued free of charge to all known recipients of that instrument.

Merits Scrutiny

The following five points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

The Order corrects an outstanding issue identified in the LJC Committee's report on the 2022 Regulations. There remains one further issue identified in that report which has not yet been addressed by the Welsh Government. This relates to reporting point 30, which noted that the 2022 Regulations create Henry VIII powers which are subject to the negative procedure. In response, during the debate on the 2022 Regulations, the then Minister for Rural Affairs and North Wales and Trefnydd gave an undertaking to change this to the affirmative procedure.

Correspondence from the Deputy First Minister and Cabinet Secretary for Climate Change and Rural Affairs to the LJC Committee dated [9 September 2024](#) and [18 October 2024](#) explained that no suitable vires to achieve this change to procedure had yet been found, and that no suitable legislative vehicle was currently available to make the change through a Welsh Bill or statutory instrument. The Welsh Government is asked to confirm whether this remains the case.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.



The Order came into force on 31 March 2025. The LJC Committee reported to the Senedd on the 2022 Regulations, including identifying the error being addressed in the Order, on 12 December 2022. The 2022 Regulations came into force on 16 December 2022.

The Welsh Government is asked to explain whether there has been any practical impact of the error in the 2022 Regulations remaining on the statute book for over two years.

4. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

It is noted that orders under section 10 of the 1981 Act are not subject to any Senedd scrutiny procedure, being subject only to a requirement that the order is laid before the Senedd after being made.

If not for the error in the 2022 Regulations, any regulations made under modified article 5(5)(a) of the Equine Directive would have been subject to the negative procedure (see regulation 6 of the 2022 Regulations), providing Members of the Senedd with the opportunity to table a motion to annul the regulations. There is no such opportunity in relation to an order under section 10 of the 1981 Act.

5. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Section 91(1) of the 1981 Act requires the Welsh Ministers to publish a notice in the London Gazette and the Edinburgh Gazette stating that the Order has been made and where copies of the Order may be obtained. The Welsh Government is asked to confirm that such a notice has been published.

6. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Section 91(2) of the 1981 Act requires every local authority to publish, at their own expense, every order sent to them by the Welsh Ministers in such manner as the Welsh Ministers direct or, in the absence of any such direction, by advertisement in a newspaper circulating in the district of the local authority.

The Welsh Government is asked:

- a) to confirm that the order has been sent to local authorities for publication, and
- b) whether the Welsh Government has assessed the potential financial implications for local authorities of the requirement to publish the Order and any future section 10 orders made as part of the TARP enforcement regime.

Welsh Government response

A Welsh Government response is required reporting points 1, 2, 3, 5 and 6.



Legal Advisers
Legislation, Justice and Constitution Committee
23 April 2025



Senedd Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
Welsh Parliament
Legislation, Justice and Constitution Committee