

SL(5)337 – The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

Background and Purpose

These draft Regulations are made under paragraph 1(1) of Schedule 2, and paragraph 21 of Schedule 7, to the European Union (Withdrawal) Act 2018 (**the 2018 Act**). They seek 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.

They amend four pieces of subordinate legislation in the field of animal health and welfare:

- the Registration of Establishments (Laying Hens) (Wales) Regulations 2004;
- the Welfare of Animals (Transport)(Wales) Order 2007;
- the Welfare of Farmed Animals (Wales) Regulations 2007;
- and the Welfare of Animals at the time of killing (Wales) Regulations 2014;

all of which constitute retained EU law under the 2018 Act.

Most of the provisions are minor, technical and do not change the effect of the subordinate legislation being amended. However, regulations 5(4) and 5(5) make more substantive amendments. These are dealt with below.

Procedure

Affirmative (uplifted from proposed negative on the recommendation of the Committee, after scrutiny under Standing Order 21.3B).

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. 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 Assembly

We consider the way the Explanatory Memorandum explains why regulation 2 refers to EU Regulations is not entirely helpful, either to the Assembly or to the end-user of the legislation.

Paragraph 4.6 (second sub-paragraph) of the EM states that the references “are references to [the EU Regulations] as they will form part of domestic law by virtue of section 3 of the 2018 Act”. The Explanatory Memorandum then goes on to say: “Such legal effect is to be provided by the proposed “European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019, to be made by the UK Government shortly”.

We consider that this wording is somewhat unhelpful. We would prefer to draw a clearer distinction between:



- section 3 of the 2018 Act doing the job of actually retaining EU Regulations so that they form part of domestic law on exit, and
- the European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations) (EU Exit) Regulations 2019 doing the job of clarifying that a reference, in domestic legislation, to an EU Regulation is a reference to that EU Regulation as retained in its frozen state on exit (and is not a reference to, for example, the EU Regulation as it may have been amended post-exit by the European Union).

This is a matter of public importance, as the meaning and effect of legislation, including how it interacts with other legislation, should be transparent to those scrutinising it, and, even more importantly, to those affected by it.

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 Assembly

Regulation 5(4) and (5) remove the provisions whereby a certificate of competence issued to slaughterhouse workers by other Member States is recognised for the purposes of the Welfare of Animals at the time of Killing (Wales) Regulations 2014. This effectively means that people carrying out certain functions in slaughterhouses in Wales will have to apply for a new, UK, certificate.

The arrangement whereby certificates of competence issued in one EU Member State are recognised in all other Member States appears to be a reciprocal arrangement between either the UK and each other EU Member State, or between a UK public authority (in practice, the Food Standards Agency) and authorities in all other EU Member States.

Thus, regulation 5(4) and (5) appear to remove a reciprocal arrangement between Wales (as part of the UK) and EU member States or public authorities in those States. If so, this is removing a reciprocal arrangement of a kind mentioned in section 8(2)(c) or (e) of the 2018 Act, in which case the Welsh Ministers have no power to make regulation 5(4) and (5) unless they have consulted the Secretary of State (see paragraph 4 of Schedule 2 to the 2018 Act).

Neither the preamble nor the Explanatory Memorandum to the Regulations refer to such consultation.

While we have been informed (informally at the time of preparing this report) that the Welsh Government has consulted the Secretary of State as required by the 2018 Act and that the Welsh Government will seek to amend the Explanatory Memorandum to say as much, we wish to emphasise the importance of good legislative practice.

In this context, we believe that good legislative practice requires preambles to statutory instruments to refer expressly to the fulfilment of any statutory conditions (such as a duty to consult) that must be fulfilled before the statutory instrument can be made.

Implications arising from exiting the European Union

The statutory instruments amended by these draft Regulations will constitute “retained EU law” for the purposes of the EUWA. That can have implications for Assembly competence, as the Assembly can be prevented from modifying retained EU law, by means of UK Government regulations under section 12 of the 2018 Act (often referred to as “freezing” regulations).



However, most of the substantive provision made by these draft Regulations could not be “frozen out” of Assembly competence, because the Assembly could have made the equivalent provision under pre-Brexit EU law. An exception would be the provisions in regulation 5, ending the recognition of slaughterhouse-worker certificates issued by other Member States. The Assembly could not have ended such recognition before Brexit, as it would have been in breach of EU law. However, it could restore that recognition in future, as to do so would have been compatible with pre-Brexit EU law – even if the UK Government made freezing regulations to that effect.

We note that the Explanatory Memorandum (paragraph 7.2) recognises that the ending of mutual recognition of certificates of competence for slaughterhouse workers will have practical and financial implications for some individuals in Wales. The Welsh Government states their understanding that only five people in Wales will be affected in this way. The small number of people affected forms the basis of the Welsh Government’s decision not to carry out a Regulatory Impact Assessment of the costs and benefits of complying with the Regulations.

We consider that the Welsh Government should explain the basis on which it understands that only five persons will be affected in this way.

Government Response

A government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

5 March 2019

