

Explanatory Memorandum to the Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by 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

Cabinet Secretary/Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Rural Affairs, Environment, Fisheries and Food (Miscellaneous Amendments and Revocations) (Wales) Regulations 2019.

Lesley Griffiths
Minister for Environment, Energy and Rural Affairs
6 March 2019

PART 1

1. Description

1.1 These Regulations introduce miscellaneous amendments to a number of statutory instruments relating to education, environmental protection, agriculture, animal health and welfare, education, environment, food, plant health, sea fisheries and water. The majority of the changes amend out of date references to European and domestic legislation. The instrument also makes a small number of revocations in relation to redundant legislation.

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

2.1 The Regulations are made under section 2(2) of the European Communities Act 1972 and under sections 1,7,8,10,14 and 23 of the Animal Health Act 1981. Under section 10 of that Act the Regulations are subject to approval by negative resolution procedure. In so far as the Regulations are made under the European Communities Act 1972 that Act provides that either negative or affirmative resolution approval procedure may be used and therefore a decision as to which procedure is appropriate must be made according to the particular circumstances of the individual piece of legislation.

2.2 These Regulations are being made under negative resolution on the basis that they are not controversial or novel, do not amend primary legislation, do not impose or increase a financial burden and do not include consideration of any matters of public policy such as the creation of a new criminal offence.

3. Legislative background

3.1 The Welsh Ministers have the required powers to make these Regulations under section 2(2) of and paragraph 1A to Schedule 2 to, the European Communities Act 1972 and under sections 1, 7, 8, 10, 14 and 23 of the Animal Health Act 1981.

The powers under the Animal Health Act 1981 were transferred to the Welsh Ministers by virtue of the National Assembly of Wales (Transfer of Functions Order) 1999 and by operation of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

In relation to section 2(2) of the European Communities Act 1972 the Welsh Ministers are designated to exercise those powers in relation to veterinary and phytosanitary fields for the protection of human health, the common agricultural policy, food, pollution, waste, GMOs, air quality, nutrients for plants and water quality.

3.2 These Regulations relate to the withdrawal of the United Kingdom from the EU because they correct out of date references to European and domestic legislation prior to the UK's exit from the EU.

3.3 These Regulations are made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

4.1 The technical changes made by these Regulations are necessary to ensure the effective and correct functioning of the statute book following the UK's exit from the EU. The amendments include updating references to European and domestic legislation, minor drafting corrections and the revocation of legislation which is no longer applicable.

4.2 Additional amendments cover the following:

- Changes to the Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013 to introduce an ambulatory reference to Directives 2008/1333/EC, 2008/1334/EEC;
- Amendment to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 to reflect the addition of hazardous substances to the list of dangerous substances, plant protection products and biocidal products;
- Amendment to the Private Water Supplies (Wales) Regulations 2017 to ensure up to date transposition of the Drinking Water Directive (Council Directive 98/83/EC).

4.3 The Regulations listed below are revoked by regulation 31:

- the Fish Producers' Organisations (Formation Grants) Regulations 1999(3);
- the Agricultural Subsidies (Appeals) (Wales) Regulations 2001(4);
- the Fisheries and Aquaculture Structures (Grants) (Wales) Regulations 2002(1);
- the Common Agricultural Policy Basic Payment Scheme (Provisional Payment Region Classification) (Wales) Regulations 2014(2).

5. Consultation

5.1 The proposed regulations will amend references within food legislation. Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council, laying down the general principles and requirements of food law, requires that there should be open and transparent public consultation directly or through representative bodies during the preparation evaluation and revision of food law, except where the urgency of the matter does not allow it.

5.2 The consultation requirement applies to the following regulations:

- The Fishery Products (Official Controls Charges) (Wales) Regulations 2007

- The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008
- The Official Feed and Food Controls (Wales) Regulation 2009;
- The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009;
- The Drinking Milk (Wales) Regulations 2010;
- The Eggs and Chicks (Wales) Regulations 2010;
- The Poultrymeat (Wales) Regulations 2011;
- The Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013; and
- Private Water Supplies (Wales) Regulations 2017.

5.3 A four-week targeted consultation exercise was conducted between 16 February and 13 March 2019. During the exercise over 90 stakeholder organisations and experts were directly contacted. No concerns were raised by any of the stakeholder organisations and individuals regarding the proposed amendments during the consultation period.

6. Regulatory Impact Assessment (RIA)

6.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, 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 is foreseen. The Regulations only introduce minor technical corrections.