



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Animal Health and Genetically Modified Organisms
(Amendment) (EU Exit) Regulations 2019**

DATE **12 September 2019**

BY **Rebecca Evans AM, Minister for Finance and Trefnydd**

The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019

The Law which is being amended

- Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies.
- The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendments Etc.) (EU Exit) Regulations 2019.
- The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019.
- The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019.

The purpose of the amendments

The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019 and the Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019 have been amended as a result of recent amendments to EU law that were settled in the EU, at a point that was too late to be included in earlier EU exit instruments. The recent EU amendments are listed below:

- Commission Implementing Regulation (EU) 2019/1084 of 25 June 2019, amending Regulation (EU) No. 142/2011 as regards the harmonisation of the list of approved or registered establishments, plants and operators and the traceability of certain animal by-products and derived products.

- Commission Implementing Regulation (EU) 2019/1090 of 26 June 2019, amending Annex IV to Regulation (EC) No. 999/2001 of the European Parliament and of the Council as regards the requirements for export of products containing processed animal protein derived from ruminants and non-ruminants.
- Commission Implementing Regulation (EU) 2019/1177 of 10 July 2019 amending Regulation (EU) No 142/2011 as regards imports of gelatine, flavouring innards and rendered fats.

As part of the amendments to the Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019, a single Commission function is transferred in Article 30(1) of Commission Regulation (EU) No. 142/2011 to the Welsh Ministers on a concurrent basis with the Secretary of State, but the function may only be exercised by the Secretary of State if consent is given by the Welsh Ministers. This function relates to the publication of technical specifications published to assist with the process of listing establishments and plants in third countries.

Annex 4 of Regulation (EC) No. 999/2001 is amended to reflect recent changes to Commission Implementing Regulation (EU) 2019/1090. As a result of these changes, two functions are transferred to the Welsh Ministers and Secretary of State on a concurrent basis, but the Secretary of State may only exercise the functions with the consent of Welsh Ministers. Firstly, Welsh Ministers may allow the inclusion of a sufficient proportion of small ruminant or ruminant Processed Animal Protein (PAP) to be included which renders the product unpalatable to animals, or is otherwise effective to prevent misuse of the mixture for feeding purposes. Secondly, Welsh Ministers may accept the use of organic fertilisers or soil improvers containing other components or using other methods to prevent the use of the organic fertilisers or soil improvers as feed, provided they adhere to strict controls.

The Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019 are amended to correct some minor inconsistencies of terminology in Regulations 9(6) (b), (7) (a) and 10(4).

The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019 (2019 Regulations) and accompanying Explanatory Memorandum, setting out the effect of amendments are available here: <https://beta.parliament.uk/work-packages/OlvKCJP3>

Any impact the SI may have on the Welsh Ministers' executive competence

Three functions have been transferred to the Welsh Ministers and Secretary of State on a concurrent basis, but may only be exercised by the Secretary of State with the consent of Welsh Ministers, and are set out above.

Any impact the SI may have on the legislative competence of the National Assembly for Wales

Functions transferred to the Welsh Ministers and the Secretary of State on a concurrent basis may constitute functions of a Minister of the Crown for the purposes Schedule 7B to the Government of Wales Act 2006 (GoWA 2006). This may operate as a constraint on the

Assembly's competence to legislate in the future in these areas.

Why consent was given

The 2019 Regulations make a number of technical changes to existing instruments and take into account recent changes to EU legislation which could not be included in earlier EU Exit SIs. The 2019 Regulations also correct minor errors in earlier EU Exit SIs. The 2019 Regulations will therefore ensure that retained EU law continues to operate effectively after the UK leaves the EU.

The 2019 Regulations will follow the 'urgent made affirmative procedure' which is set out in paragraph 5 of Schedule 7 to the European Union (Withdrawal) Act 2018. In accordance with this procedure, the 2019 Regulations may be made without a draft of the instrument being laid before, and approved by a resolution of, each House of Parliament, provided a declaration is made by the relevant Minister that as a result of urgency, it is necessary to make the regulations without a draft being laid and approved.

Defra has confirmed that the 2019 Regulations were made and laid on 5 September and will come into force immediately before exit day (31 October 2019). However, the 2019 Regulations will still need to be approved by a resolution of each House of Parliament before the end of a period of 28 days beginning from 5 September. Of note, paragraph 5(5) of Schedule 7 to the European Union (Withdrawal) Act 2018 provides that in calculating the period of 28 days, no account is to be taken of any time during which Parliament is prorogued or dissolved or either House of Parliament is adjourned for more than four days.

Defra did not seek consent from Welsh Ministers and the other devolved administrations prior to making and laying the 2019 Regulations. The explanation from Defra for this was expediency. It highlighted the need to ensure that the 2019 Regulations were in place in advance of a meeting of the European Commission's Standing Committee on Plants, Animals, Food and Feed on 11 October; to avoid an application for third country listing being declined.

It should be noted that while the Welsh Government was content with the provisions contained within the 2019 Regulations, as a matter of principle, the UK Government should have sought the consent of Welsh Ministers prior to making and laying the instrument.