

Explanatory Memorandum to The Fishery Products (Official Control Charges) (Wales) (Amendment) Regulations 2019

This Explanatory Memorandum has been prepared by Food Standards Agency 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 Fishery Products (Official Control Charges) (Wales) (Amendment) Regulations 2019

Vaughan Gething

Minister for Health and Social services

28 November 2019

PART 1

1. Description

1. The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 amend the Fishery Products (Official Controls Charges) (Wales) Regulations 2007 [SI 2007/3462 (W. 307)] to provide for the execution of powers and enforcement, in Wales of Regulation (EC) No.2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.
2. It continues to require the Food Standards Agency (“FSA”) to charge food business operators in Wales, in order to recover a percentage of the costs incurred by the FSA in carrying out official controls at such premises to check for compliance with applicable requirements.

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

3. Section (2) of the European Communities Act 1972 offers a choice between negative and affirmative procedures. The negative procedure will be used in this case as the discretion of the Welsh Ministers is limited over the content of the SI because it is giving effect to EU provisions
4. The current official controls regulation (Regulation (EC) No. 882/2004) will be revoked when the OCR comes into force on 14 December. The SIs are critical to maintaining official controls and enforcement. If these SIs are not laid, this leaves Wales without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the SIs coming into force on 14 December, the FSA and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws. For example, food inspectors will be unable to enter and inspect food businesses. Additionally, there will be no official presence at meat processing plants meaning they will need to cease operation, these has implications for food supplies as well as loss of employment as food business operators will not employ inspectors while they are unable to perform their duties.
5. Official controls are integral to protecting consumers’ health and other interests and maintaining the integrity of the agri-food chain that provides consumer and business confidence as well as assurance to other Member States and 3rd countries, which is vital to trade. UK enforcement authorities (such as the FSA and local authorities) carry out official controls at all stages of production, distribution, storage, transport, import and export of food and feed. The controls ensure that

food and feed businesses are meeting their obligations to produce safe and wholesome food and feed and that unsafe products are removed from the market.

6. Without the SIs coming into force on 14 December we would fail to meet our legal obligations and the FSA and other enforcement authorities would lose the legal powers to effectively enforce food and feed safety laws.
7. Similar legislation is being made in England, Scotland and Northern Ireland to come into force on 14 December.
8. The drafting of the SIs has been delayed because important parts of them depended on the status of the United Kingdom, insofar as whether it was a Member State of the European Union on the coming into force date (14 December 2019) of the OCR. Certainty over this position was not forthcoming from UK Government and the European Union until very shortly before the 31 October.
9. The impact of this on the drafting process in all of the devolved administrations has been significant, and this is the reason why the final SIs were not able to be submitted for scrutiny in time to avoid the recommendation not to adhere to the 21-day convention.

3. Legislative background

10. Regulation (EU) 2017/625 entered into force on the 27 April 2017, the applicability of the new rules was set to apply gradually over several years; with the main application taking effect 14 December 2019.
11. Regulation (EU) 2017/625 sets out a framework of requirements for the competent authorities in Member States which have responsibilities for organising and performing official controls and other official activities to verify compliance with agri-food chain legislation. The Regulation broadens the scope of the original official food and feed controls Regulation (EC) 853/2004 to cover plant health and animal by-products legislation (and other agricultural areas such as plant protection products and organic production) in order to introduce a more consistent approach to official controls along the entire agri-food chain.
12. Regulation (EU) 2017/625 amends Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC.
13. Regulation (EU) 2017/625 repeals Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC,

96/23/EC, 96/93/EC and 97/78/ EC and Council Decision 92/438/EEC (“Official Controls Regulation”).

14. In addition, the Regulations provides for a number of empowerments to set out in Commission tertiary legislation more detailed rules for the performance of official controls and other official activities.
15. Most of the provisions of Regulation (EU) 2017/625 clarify and simplify existing requirements and aim to introduce a more risk-based approach to controls. Therefore, existing enforcement arrangements in the UK are generally already aligned to the new Regulation.
16. The FSA is the Central Competent Authority (CCA) responsible for checks carried out on compliance with feed and food law, including imported feed and food in Wales. The main provisions of the new EU Regulation will take effect across the European Union from 14 December 2019. This is part of a wider initiative to harmonise and simplify existing EU legislation and to establish a more integrated approach to official controls in all areas across the agri-food chain.

Legal issues, powers and statutory duties

17. The Regulations will be made pursuant to powers in section 2(2) of the European Communities Act 1972. Section 2(2) of the European Communities Act 1972 provides that any designated Minister may by order, rules, regulations or scheme make provision for the purpose of implementing any EU obligation of the UK. "Designated Minister" means such Minister of the Crown or government department as may from time to time to be designated by Order in Council in relation to any matter or for any purpose. 2(2) of the European Communities Act 1972 enables
18. Section 59 of the Government of Wales Act 2006 provides that the power to designate a Minister of the Crown or government department under section 2(2) of the European Communities Act 1972 may be exercised to designate the Welsh Ministers, and that accordingly the Welsh Ministers may exercise the power conferred by section 2(2) in relation to any matter or purpose in relation to which they have been designated.
19. The Welsh Ministers are designated in relation to measures in respect of food (including drink) including the primary production of food (see European Communities (Designation) (No. 2) Order 2005/1971).
20. The Regulations follow the negative procedure.

4. Purpose and intended effect of the legislation

21. This Statutory Instrument amends The Fishery Products (Official Controls Charges) (Wales) Regulations 2009
22. The amendment to the domestic legislation is mechanical in nature to update existing references to reflect the new EU Regulation.
23. This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.
24. The Statutory Instrument makes no significant changes to current official control practices and consolidates and amends legislative references to take account of the new EU legislation.

5. Consultation

25. The FSA in Wales carried out a public consultation on the overarching Regulations and draft Impact Assessment between 28 August and 9 October 2019.
26. Four substantive comments were received. None of those made any comment relating to the amendment to the Fishery Products (Official Controls Charges) (Wales) Regulations 2009.

6. Regulatory Impact Assessment (RIA)

27. The amendments made in The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019 are mechanical in nature, intended only to update existing references to reflect the new EU Regulation. These changes are not expected to have a major policy impact and, as such, a Regulatory Impact Assessment is not considered necessary. This is in line with the Welsh Ministers' RIA Code.

9. Competition Assessment

28. As these regulations apply to all businesses affected, regardless of size or market share, it is not considered that there is any impact on competition.

10. Post implementation review

29. As these regulations are technical in nature, and in practice make no appreciable change to the current application of Official Controls no post-implementation review is currently planned. Should any unforeseen consequences arise, the FSA will review this.