

SL(5)475 – The Fishery Products (Official Controls Charges) (Wales) (Amendment) Regulations 2019

Background and Purpose

These Regulations amend the Fishery Products Official Controls Charges (Wales) Regulations 2007 (S.I. 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 (the Official Controls Regulation).

The current official controls regulation (Regulation (EC) No. 882/2004) will be revoked on 14 December. As such, these Regulations are needed to provide Wales with a legal framework to enforce official controls.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

One point 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

The 21 day rule under the Statutory Instruments Act provides that instruments should be laid 21 days before they come into force. This enables Members to seek to annul such instruments before they have effect, as confusion can occur if legislation is annulled after it has been implemented. However, in this case, the Welsh Government considers that the circumstances justify a breach of that rule.

An explanation for the breach has been provided by Rebecca Evans AM, Minister for Finance and Trefnydd, **in a letter to the Llywydd dated 28 November 2019.**

We note that the letter states that the Regulations are “critical to maintaining official controls and enforcement” and that if these Regulations do not come into force on 14 December 2019, this would leave 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 [Regulations] coming into force on 14 December, the [Food Standards Agency] and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws.”

The Explanatory Memorandum (EM) also explains the reason for the breach of the 21 day rule at page 3:

...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...

Implications arising from exiting the European Union

We note that the drafting of these Regulations was delayed as a result of uncertainty around the status of the United Kingdom being a member state of the European Union.

Government Response

A government response is not required.

Legal Advisers

Constitutional and Legislative Affairs Committee

December 2019

