

SL(5)491 – The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020

Background and Purpose

These Regulations replace the Official Controls (Animals, Food and Feed) (Wales) Regulations and substantially amend the Trade in Animals and Related Products (Wales) Regulations.

They implement and enforce Regulation (EU) 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 EU Regulation”).

Implementation and enforcement of other provisions of the EU Regulation relating to food and feed are the subject of the Official Feed and Food Controls (Wales) Regulations 2009.

Part 2 of the Regulations provides for audits to be undertaken of official controls and other official activities in accordance with the EU Regulation. Part 3 provides for assistance and co-operation under Title IV of the EU Regulation and recovery of expenses. Part 4 provides for enforcement and penalties. Part 5 deals with consequential amendments as a result of the application of the EU Regulation. Part 6 contains amendments to secondary legislation relating to plant health fees as a result of the application of the EU Regulation and Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants.

Procedure

Negative.

Technical Scrutiny

Seven technical points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Standing Order 21.2 (v) - that for any particular reason its form or meaning needs further explanation.

1. Regulation 29(a) omits regulation 2(1) of the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019. Regulation 29 (b) omits regulations 3(7)(i) (see reporting point 5) 3 (20) and (22). Regulation 2(1) introduces the amendments to the Bovine Semen (Wales) Regulations 2008 and Regulation 3(20) introduces the amendments to Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011. It is unclear why these provisions have been deleted.

Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements.

2. Regulation 12(1)(g) is concerned with the action an enforcement officer can take if they have reason to believe that a person is in possession of data that may be relevant to a contravention of the Regulations or the EU Official Controls Regulations. It allows an enforcement officer to “*seize and detain any computer equipment for the purpose of copying the data or, if it has not been possible carry out adequate inspection on the premises, of further inspection*”. It is not clear what is meant by this.



3. Regulation 23(33)(b) and (c) add entries into Schedule 1 of the Trade in Animals and Related Products (Wales) Regulations 2011 that relate to Regulation EU 2016/1012. This entry already appears to exist, having been added by regulation 9(3) of the Zootechnical Standards (Wales) Regulations 2018.
4. Regulation 23(34)(f) amends paragraph 9(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011. There appears to be a missing 'of' which should appear at the end of the text to be inserted. It should read "the import of certain birds and quarantine conditions for the purposes **of**".
5. Regulation 29(b) deletes regulation 3(7)(i) from the Trade in Animals and Related Products (Amendment) (Wales) (EU Exit) Regulations 2019. Regulation 3 (7)(i) does not exist, we presume regulation 29 (b) should refer to regulation 3(7)(c)(i).

Standing Order 21.2 (vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts.

6. In regulation 13(5)(b), "y bodlonir neu ragor o'r amodau ym mharagraff (6)" should read "y bodlonir un neu ragor o'r amodau ym mharagraff (6)".
7. In regulation 23(10), the English version of new regulation 11(2)(a) states that the relevant authority may serve a notice "specifying the breach" of the requirements. The Welsh version states that the relevant authority may serve a notice "sydd yn...pennu'r modd y torrwyd y gofynion". By referring to the way the requirement is breached, the Welsh version appears to be more specific than the English version.

Merits Scrutiny

Three merits point are identified for reporting under Standing Order 21.3 in respect of this instrument.

Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

8. These Regulations make amendments to secondary legislation relating to Plant Health Fees payable to the Welsh Ministers.

Standing Order 21.3 (ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be interest to the Assembly.

9. We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by the Minister for Finance and Trefnydd in a [letter](#) dated 22 January 2020 to the Llywydd.

The letter states that "*the drafting of the Statutory Instrument has been delayed because important parts of it 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. In addition the Council Regulation is very complex and supplemented by 28 items of tertiary legislation which set out important detailed aspects of official controls and other official activities. Drafting*



of the Welsh Ministers' Regulation has been completed as quickly as possible, the final item of tertiary legislation made under the Council Regulation was finalised on 12 December 2019."

We note what the letter says about it being "essential that these Regulations are brought into force as soon as practicable, providing enforcement bodies with additional enforcement options and bringing Wales into line with the rest of the UK, as the other UK Administrations have already introduced their equivalent enforcement legislation".

We note that the equivalent regulations made by UK Parliament and the Scottish Parliament came into force on the 14 December 2019 (the coming into force date of the EU Regulation) and are not clear why these Regulations could not have come into force before 31 January 2020.

10. The Welsh Ministers had a choice of which procedure to apply to these Regulations under section 2(2) of the European Communities Act 1972. The choice of procedure appears to be appropriate.

Implications arising from exiting the European Union

These Regulations will form part of retained EU law after IP completion day (i.e. the end of the implementation period, on 31 December 2020).

Government Response

A government response is required to reporting points 1-7 and 9.

Legal Advisers

Legislation, Justice and Constitution Committee

5 February 2020



Cynulliad Cenedlaethol Cymru

Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad

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National Assembly for Wales

Legislation, Justice and Constitution Committee