

Explanatory Memorandum to the Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

This Explanatory Memorandum has been prepared by Department for Energy, Planning and Rural Affairs 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 Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
9 January 2019

PART 1

1. Description

- 1.1. This instrument makes amendments to The Registration of Establishments (Laying Hens) (Wales) Regulations 2004, The Welfare of Animals (Transport) (Wales) Order 2007, The Welfare of Farmed Animals (Wales) Regulations 2007 and The Welfare of Animals at the Time of Killing (Wales) Regulations 2014. These amendments are to ensure that the statute book remains operable following the UK's exit from the EU and will address deficiencies in domestic legislation arising from EU Exit.
- 1.2. The instrument comes into force on "exit day", which section 20(1) of the European Union (Withdrawal) Act 2018 ("the 2018 Act") defines as 29 March 2019 at 11.00 pm.

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

- 2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 ("the 2018 Act").
- 2.2 As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to negative procedure.

3. Legislative background

- 3.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

- 4.1 The Registration of Establishments (Laying Hens) (Wales) Regulations 2004 implemented into Welsh law the requirements in relation to the registration of establishments with laying hens, which were set out in Directive 2002/4/EC.

Directive 2002/4/EC specifies registration requirements for establishments in the European Union which are covered by Directive 1999/74. Directive 1999/74 applies to all establishments keeping laying hens other than those with fewer than 350 laying hens or establishments that only rear breeding laying hens. Directive 1999/74 sets the minimum welfare standards required in the EU for the protection of laying hens.

Directive 2002/4/EC requires member states to establish a system for registering establishments caught by Directive 1999/74 and assigning each a unique identification number. Member States are required to ensure that this register is accessible to the relevant competent authority in that Member State for the purposes of tracing eggs put on the market for human consumption.

The distinguishing number under Directive 2002/4/EC was also required to specify the farming method used for the eggs and the Member State of registration. The farming methods and the corresponding numbers to be used in the unique number are defined in Regulation (EC) No 589/2008. Regulation (EC) No 589/2008, which lays down rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs, defines the farming methods as 1: for free range eggs, 2: for barn eggs; and 3: for cage laid eggs. In addition, Regulation (EC) No 834/2007 sets out requirements for organic egg production and the corresponding farming method code for organic production is 0.

The Registration of Establishments (Laying Hens) (Wales) Regulations 2004 implemented these requirements in Wales. It places an obligation on the Welsh Ministers to establish such a register and assign unique identification numbers to establishments meeting the requirements of Directive 1999/74 in Wales.

- 4.2 The Welfare of Animals (Transport) (Wales) Order 2007 implements and provides enforcement powers in relation to Regulation (EC) No. 1/2005 on the protection of animals during transport and related operations. Regulation (EC) No. 1/2005 applies to the transport of live vertebrate animals carried out within the Community and includes specific checks which are to be carried out by officials on consignments of animals entering or leaving the customs territory of the Community. It also includes several derogations to Regulation (EC) No. 1/2005 that apply to Wales only.
- 4.3 The Welfare of Farmed Animals (Wales) Regulations 2007 transposes several EU Directives relating to the welfare of farm animals into Welsh law. These Directives are:
 - a) Directive 91/630/EEC, Directive 2001/88/EC and Directive 2001/93/EC which all related to the welfare of pigs. These Directives were repealed and consolidated in 2008 by Directive 2008/120/EC. Directive 2008/120/EC specifies the minimum standards required for pig production in the EU.
 - b) Directive 2007/43/EC which specifies the minimum requirements for the welfare of conventional meat chickens in the EU, including the maximum permitted stocking densities.

- c) Directive 1999/74/EC which sets out the specific minimum requirements for the welfare of laying hens in the EU for different permitted production systems.
- d) Directive 91/629/EEC, Directive 92/2/EC and Directive 97/182/EC in relation to calf welfare. These Directives were repealed and consolidated in 2008 by Directive 2008/119/EC which sets out specific minimum requirements for the keeping of calves. These include the prohibition of individual veal crates, the tethering of calves and the requirement for roughage to be provided in their diet.

The Welfare of Farmed Animals (Wales) Regulations 2007 also transposed the requirements of Directive 98/58/EC, which formed the framework directive for farm animal welfare in the EU. Directive 98/58/EC sets out minimum essential requirements for all farmed livestock, irrespective of the species.

- 4.4 The Welfare of Animals at the Time of Killing (Wales) Regulations 2014 implements and provides enforcement powers in Wales for the requirements of Regulation (EC) 1099/2009 on the protection of animals at the time of killing. Regulation (EC) 1099/2009 specifies the accepted method of killing and stunning for animals in the EU. The Welfare of Animals at the Time of Killing (Wales) Regulations 2014 includes these standards but it also includes several stricter national rules and higher welfare standards which apply to Wales only and includes provisions relating to the religious slaughter of animals in Wales.

Why is it being changed?

- 4.5 The changes made by the instrument are necessary to ensure that the current legislation continues to operate effectively after we leave the EU. It also introduces a policy change in relation to certificates of competence for slaughtermen that is required as a consequence of leaving the EU.
- 4.6 The instrument amends the Registration of Establishments (Laying Hens) (Wales) Regulations 2004 to ensure that the provisions relating the system of registration continue to be operable post exit. These amendments make no material changes to the requirements of the Registration of Establishments (Laying Hens) (Wales) Regulations 2004.

The instrument inserts into regulation 4 of the Registration of Establishments (Laying Hens) (Wales) Regulations 2004 a new reference to Council Regulation (EC) No 834/2007 on organic production and labelling of organic products and a new reference to Commission Regulation (EC) No 1234/2007 as regards marketing standards for eggs. These references are references to such instruments as they will form part of domestic law by virtue of section 3 of the 2018 Act. Such legal effect is to be provided by the proposed “European Union (Withdrawal) Act 2018 (Consequential Modifications and Repeals and Revocations)

(EU Exit) Regulations 2019”, to be made by the UK Government in January 2019.

This instrument also makes consequential amendments to the Registration of Establishments (Laying Hens) (Wales) Regulations 2004 in order to change references to the National Assembly to Welsh Ministers instead."

- 4.7 For the Welfare of Animals (Transport) (Wales) Order 2007 the instrument omits article 20 which specifies the Welsh Ministers as the competent authority for the purposes of provisions contained within Council Regulation No 1/2005 and Council Regulation 1255/97. Such an omission is as a direct consequence of the UK Government making amendments to these EU Regulations so that on exit day, references in these EU Regulations to the competent authority in relation to Wales are to be read as the Welsh Ministers. This instrument also makes consequential amendments to the Welfare of Animals (Transport) (Wales) Order 2007 in order to change references to the National Assembly to Welsh Ministers instead.
- 4.8 The instrument makes amendments to the Welfare of Farmed Animals (Wales) Regulations 2007, in order to correct certain cross references to EU Directives which will no longer be operable on exit day. The definition of “zootechnical treatment” has been taken out of Council Directive 96/22/EC concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of beta agonists and inserted into these Regulations. Requirements in relation to training certificates have been taken out of Council Directive 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production and inserted into these Regulations. This will make no material changes to the requirements of the Regulations.
- 4.9 In relation to the Welfare of Animals at the Time of Killing (Wales) Regulations 2014 the instrument makes technical amendments to remove references to Member States and European Commission officials. As well as these technical changes to ensure operability of the Regulation after exit, the instrument also introduces a policy change. Currently, certificates of competence, issued to slaughtermen by other Member States, must be recognised in the UK. Certificates of competence are required by slaughterhouses in the EU to evidence that an individual has been trained and successfully assessed as reaching a sufficient level of competence to undertake the animal handling, stunning and killing and related operations required of them. The amendments made to regulations 11 and 19 of the Welfare of Animals at the Time of Killing (Wales) Regulations 2014 remove this mutual recognition requirement.

The European Commission has already confirmed that certificates of competence issued in the UK will not be recognised in other Member States after the UK has left the EU. Continued recognition of certificates

issued in other Member States would also open up enforcement problems after we leave as we would be unable to suspend or revoke a certificate issued in another Member State in the event a slaughterman breached the requirements of the Welfare of Animals at the Time of Killing (Wales) Regulations 2014. Other than the removal of mutual recognition the changes made by this instrument make no material changes to the requirements of these Regulations.

What will it now do?

- 4.10 The instrument will ensure that Welsh law, which implements current EU requirements for the registration of laying hen establishments, the welfare of animals on-farm, the welfare of animals during transport and the welfare of animals at the time of killing remain effective in Wales after we leave the EU. It will also end the mutual recognition of certificates of competence issued in other Member States in relation to Regulation 1099/2009.
- 4.10 The Welsh Government shares the British public's high regards for animal welfare and plans to retain the current standards set out in EU legislation and EU derived domestic regulations that protect the health and welfare of animals on-farm, the welfare of animals during transport, the welfare of animals at the time of killing and the system of registration for laying hen establishments when the UK leaves the EU.

5. Consultation

- 5.1 No public consultation was undertaken.

6. Guidance

- 6.1 There is no associated guidance in respect of this Statutory Instrument.

7. Regulatory Impact Assessment (RIA)

- 7.1 The impact on business, charities or voluntary bodies is minimal.
- 7.2 This instrument will end mutual recognition of certificates of competence that have been issued in respect of Regulation (EC) 1099/2009 on the protection of animals at the time of killing in another Member State. As a result a very limited number of slaughterhouse employees in Wales will need to apply for a certificate of competence issued by a competent authority in the UK in order to be able to continue to work in Wales from exit day. Doing so will cause these individuals to incur a cost. Applying and being assessed for a certificate of competence in the UK carries a cost (of around £225). We understand that 5 individuals in Wales will be affected in this way.

8. Monitoring & review

8.1 As this instrument is made under the Withdrawal Act, no extra review arrangement is required.

Annex [x] Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Cabinet Secretary for Energy, Planning and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure)”. This is the case because the changes being made are technical in nature and make no substantive changes to how Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 operate.

2. Appropriateness statement

The Cabinet Secretary for Energy, Planning and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate”. This is the case because all the changes being made are solely in order to address deficiencies arising from EU exit.”

3. Good reasons

The Cabinet Secretary for Energy, Planning and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by all the statutory instruments being amended continue to be operable after the UK leaves the European Union.”

4. Equalities

4.1 The Cabinet Secretary for Energy, Planning and Rural Affairs has made the following statement(s):

“The Animal Health and Welfare (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Cabinet Secretary for Energy, Planning and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

- 5.1 The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.