

Explanatory Memorandum to The Rural Affairs (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.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Rural Affairs (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

Minister for Environment, Energy and Rural Affairs

5 March 2019

PART 1

1. Description

- 1.1. This instrument makes amendments to:
- the Cattle Identification (Wales) Regulations 2007;
 - the Trade in Animals and Related Products (Wales) Regulations 2011;
 - the Seed Marketing (Wales) Regulations 2012;
 - the Animal Health (Miscellaneous Fees) (Wales) Regulations 2018;
 - the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018;
 - the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019;
 - the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019.

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 This instrument is subject to the affirmative 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 As highlighted above, the instrument makes amendments to several pieces of domestic legislation including those which in turn transpose or implement EU rules.

The Cattle Identification (Wales) Regulations 2007

4.2 The EU law ensures that bovines are traceable for the purposes of disease control. The domestic law sets out how these species must be identified, what records their keepers must maintain, how they must report their animals' movements, and how central competent authorities must record this information on central databases. Controls on identification and registration of cattle are set out in the EU Regulations listed below and are enforced in Wales by the Cattle Identification (Wales) Regulation 2007 ("the 2007 Regulations").

- Commission Regulation (EC) 494/1998 laying down detailed rules for the implementation of Regulation (EC) 820/97;
- Commission Regulation (EC) 509/1999 concerning an extension on the maximum period laid down for the application of ear-tags to Bison;
- Council Regulation (EC) 1760/2000 establishing a system for the identification and registration of bovine animals;
- Commission Regulation (EC) 1082/2003 laying down detailed rules for the implementation of Regulation (EC) 1760/2000;
- Commission Regulation (EC) 911/2004 implementing Regulation (EC) 1760/2000 as regards eartags, passports and holding registers;
- Commission Regulation (EC) 644/2005 authorising a special identification system for bovine animals kept for cultural and historical purposes; and
- Commission Implementing Regulation 2017/949 laying down rules for the application of Regulation (EC) 1760/2000.

The Trade in Animals and Related Products (Wales) Regulations 2011

4.3 The domestic legislation amended by this instrument is derived from four pieces of EU legislation which ensure that veterinary controls on EU trade and imports of live animals and animal products are safe with regard to animal and public health and that they meet the specific import conditions laid down in the relevant EU legislation:

- Council Directive 89/662/EEC concerning veterinary checks in intra-Community trade with a view to the completion of the internal market
- Council Directive 90/425/EEC concerning veterinary checks applicable in intra-Union trade in certain live animals and products with a view to the completion of the internal market
- Council Directive 91/496/EEC laying down the principles governing the organization of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC (91/496/EEC); and
- Council Directive 97/78/EC laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries

- 4.4 The 2011 Regulations establish a system for trade with other EU Member States in live animals and genetic material and for the importation of live animals, genetic material, products of animal origin and animal by-products from outside the European Union. They also list the EU legislation required to be complied with before animals or goods can be released from control at the port of importation.

The Seed Marketing (Wales) Regulations 2012

- 4.5 These Regulations set out requirements for marketing seed. In order to be marketed, the seed must comply with the requirements set out for certification, packaging, sealing and labelling. The Regulations also impose record-keeping requirements and require the holding of a licence to carry out certain operations such as marketing seed. The Welsh Ministers may license crop inspectors, seed samplers and seed testing stations to act under these Regulations. Breach of the Regulations is an offence punishable on summary conviction by a fine not exceeding level 5 on the standard scale. The marketing of seed and plant propagating material is regulated at Community level by EU Directives. The Directives prescribe processes to ensure minimum quality standards and traceability. The Directives also set out administrative provisions (including, where appropriate, provision for fees), impose record-keeping requirements and provide for the licensing of crop inspectors, seed samplers and seed testing stations. This instrument amends the Seed Marketing Regulations (Wales) 2012 which implement:

- Council Directive 66/401/EEC on the marketing of fodder plant seed
- Council Directive 66/402/EEC on the marketing of cereal seed
- Council Directive 2002/54/EC on the marketing of beet seed
- Council Directive 2002/55/EC on the marketing of vegetable seed
- Council Directive 2002/57/EC on the marketing of seed of oil and fibre plants
- Commission Directive 2009/74/EC amending Council Directives 66/401/EEC, 66/402/EEC, 2002/55/EC and 2002/57/EC as regards the botanical names of plants, the scientific names of other organisms and certain Annexes to Directives 66/401/EEC, 66/402/EEC and 2002/57/EC in the light of developments of scientific and technical knowledge
- Commission Directive 2010/60/EU providing for certain derogations for marketing of fodder plant seed mixtures intended for use in the preservation of the natural environment
- Commission Decision 2011/180/EU implementing Council Directive 2002/55/EC as regards conditions under which the placing on the market of small packages of mixtures of standard seed of different vegetable varieties belonging to the same species may be authorised
- Commission Directive 2008/62/EC providing for certain derogations for acceptance of agricultural landraces and varieties which are naturally adapted to the local and regional conditions and threatened by genetic

- erosion and for marketing of seed and seed potatoes of those landraces and varieties; and
- Commission Directive 2009/145/EC providing for certain derogations, for acceptance of vegetable landraces and varieties which have been traditionally grown in particular localities and regions and are threatened by genetic erosion and of vegetable varieties with no intrinsic value for commercial crop production but developed for growing under particular conditions and for marketing of seed of those landraces and varieties.

The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018

- 4.6 The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018 specify the fees the Welsh Ministers can charge and the Animal and Plant Health Agency (APHA) can collect for certain Animal Health Services, including sampling charges for Salmonella. The control of regulated Salmonella serovars is regulated for at the European level, under Regulation (EC) No. 2160/2003 of the European Parliament and of the Council, The control of Salmonella and other specified food-borne zoonotic agents. This regulation provides for the control of salmonella, including testing and sampling regimes, through the establishment of National Control Programmes. On exiting the European Union, the Welsh Ministers will exercise the administrative functions currently undertaken by the Commission under Regulation (EC) No. 2160/2003, including the establishment of Control Plans to be implemented and adhered to across Wales. As these plans will not apply to the other administrations across the UK, the plans will be Control Plans for Wales, EU Exit Regulations amend the current title, namely “National Control Programme” to “Control Programme.
- 4.7 In line with Regulation (EC) No. 2160/2003, as part of the establishment of the Salmonella control plans, the Animal and Plant Health Agency (an executive agency of Defra, that delivers on the majority of our animal health requirements across GB) collect and test official samples in order to verify progress in achieving the agreed salmonella reduction targets. APHA also provides services to maintain an approved private laboratory network, and carries out proficiency tests for laboratories, to ensure consistency in test results on Salmonella samples. These tests are undertaken at a fee to the food business operator (FBO).
- 4.8 The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018, were introduced to provide for changes to fees payable (and already charged) in relation to seven different services that are delivered by APHA on our behalf, including the Salmonella Control Plan sampling and testing requirements. Under The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018, these fees were moved to full cost recovery, using the HM Treasury agreed model, based on the proposition that costs and services should be borne by those users who benefit directly from the service provided, i.e. the FBOs in relation to Salmonella sampling. The

Regulations amend regulation 4 and Schedule 1 by omitting “National” from the current references to a “National” Control Programme.

The Transmissible Spongiform Encephalopathies (Wales) Regulations 2018

4.9 These Regulations continue to enforce 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 EU TSE Regulation”). Part 1 of the Regulations provides that the Welsh Ministers are the competent authority for the purposes of the EU TSE Regulation, (except in Schedule 7 where the competent authority is the Food Standards Agency). Animals kept for the purposes of research (and to which the EU TSE Regulation do not apply) must be disposed of in accordance with Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption. Regulation (EC) No. 999/2001 of the European Parliament and the Council (amended over 60 times), lays down rules for the prevention, control and eradication of certain TSEs, including BSE in cattle and scrapie in sheep and goats. The directly applicable EU legislation was introduced by the EU as a result of the Bovine Spongiform Encephalopathy (BSE) epidemic in the late 1980s and early 1990s and have been updated frequently since to reflect the development and decline of that particular epidemic, combined with an improved understanding of the disease and emergence of scientific evidence.. One of the main and most important transmission routes of TSEs is through feed. Schedule 8 of the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018 prescribes the feed controls and prohibitions necessary to help prevent the transmission of TSEs, including banning the processing of processed animal proteins (PAP) and prohibiting the feeding of this material to ruminants and other animals, including prevention of entering the food chain. The EC Regulation is implemented by the Transmissible Spongiform Encephalopathies (Wales) Regulations 2018, which are amended by this instrument.

The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019

4.10 The Regulations provide a technical update to The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997, ensuring animal produce remains safe for consumers from exposure to residue of veterinary drugs, and to prohibit the use of certain illegal drugs. The Regulations also bring Welsh veterinary legislation up to date alongside that of comparative UK and EU legislation. The Regulations include details of prohibited substances, sampling and analysis, and subsequent offences, penalties and enforcement.

The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019

- 4.11 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU (“the Plant Health Directive”) establishes the EU plant health regime. Whilst protecting against plant health risks, the Plant Health Directive also provides for the trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.
- 4.12 Part of the Plant Health Directive is implemented in Wales by the Plant Health (Wales) Order 2018 (S.I. 2018/1064) (W.223). The Order sets out obligations for the control and management of plant health risks from the import of plant material from third countries and the movement of such material within the EU single market, in order to protect biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in Scotland, England and Northern Ireland.
- 4.13 This instrument amends the Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 which amends the Plant Health (Wales) Order 2018, the Plant Health etc. (Fees)(Wales) Regulations 2018 and revokes the Potatoes Originating in Egypt (Wales) Regulations 2004. The amendments made by this instrument deal with further deficiencies in plant health legislation arising on the UK’s withdrawal from the EU.

Why is it being changed?

- 4.14 The changes made by the instrument are necessary to ensure that the current legislation continues to operate effectively after we leave the EU.

The Cattle Identification (Wales) Regulations 2007 (“2007 Regulations”)

- 4.15 This instrument omits paragraph 13(2), Part 2 of Schedule 3 to the 2007 Regulations which provides that when cattle are transported outside Great Britain to a destination within the European Union the transporter must ensure that each animal is accompanied by its passport, and failure to do so is an offence. The provision is omitted because post EU Exit, exporting cattle to the EU would be treated in the same way as export of cattle to a third country which is governed by the rules in 13(1), Part 2 of Schedule 3 of the 2007 Regulations, which requires the keeper to send the cattle passports to the National Assembly within seven days and failure to do so is an offence.

The Trade in Animals and Related Products (Wales) Regulations 2011 (the “2011 Regulations”)

4.16 This instrument makes minor and technical changes to the 2011 Regulations to ensure that the amended instruments continue to operate effectively following the UK's withdrawal from the European Union. The changes include substituting the reference to "European Union" in Regulation 17 to "Wales" and the amending the reference "trade between" Member States to "imports from "Member States" in Regulation 38.

The Seed Marketing (Wales) Regulations 2012 (the "2012 Regulations")

4.17 This instrument amends a provision in the 2012 Regulations which is no longer appropriate following the withdrawal of the UK from the EU. To ensure the law functions correctly after exiting the EU a reference in Regulation 30 to "the Secretary of States acts as the Member State for the purposes of" is substituted with "Welsh Ministers may temporarily permit the marketing of seed not satisfying the requirements of minimum germination under conditions determined in accordance with".

The Animal Health (Miscellaneous Fees) (Wales) Regulations 2018 (the "2018 Regulations")

4.18 This instruments make a minor corrections to the 2018 Regulations to ensure the law continues to function after exiting the EU. It omits "national" from regulation 4(1) and its title when referring to the control programme for salmonella and other specified food-borne zoonotic agents. This in no way relaxes the requirements of the controls in place to control salmonella and protect public health.

The Transmissible Spongiform Encephalopathies (Wales) Regulations 2018 (the "2018 Regulations")

4.19 This instrument makes a minor technical amendment to the 2018 Regulations to substitute the reference in regulation 5(6)(e) to "EU Commission" to "Welsh Ministers" as it will no longer be appropriate once the UK leaves the EU. This results in no policy change or production change for industry, and no relaxation of controls to prevent the spread of TSEs.

The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019 (the "2019 Regulations")

4.20 This instrument makes a minor technical amendment to the definition of "unauthorised substance" in regulation 2(1) of the 2019 Regulations. It substitutes the reference to "EU legislation" with "retained EU law" to reflect the status of EU legislation once the UK leaves the EU.

The Plant Health (Amendment) (Wales) (EU Exit) Regulations 2019 (the "2019 Regulations")

4.21 Amendments are being made to the 2019 Regulations to facilitate trade with the Crown Dependencies. The Crown Dependencies are currently treated as part of the United Kingdom for the purposes of EU plant health legislation and therefore plants and plant products move between the Crown Dependencies, the UK and the rest of the EU under the same EU plant health rules. Details of the changes being made to the UK regime to address deficiencies arising from the UK's withdrawal from the European Union are set out in the explanatory memoranda to the 2019 Regulations and the Plant Health (EU Exit) Regulations 2019. Following recent discussions with the Crown Dependencies, it has been agreed that the Crown Dependencies will adopt similar controls as the United Kingdom to facilitate the trade in plants and plant products to the UK and vice versa. The changes made to the 2019 Regulations give effect to these arrangements.

4.22 A number of minor amendments are also being made to the 2019 Regulations to correct minor errors and to ensure that all identified deficiencies from EU Exit are dealt with appropriately. In particular, the 2019 Regulations are being amended to enable UK plant passports to contain certain information in relation to fruit plant propagating material and fruit plants. The 2019 Regulations are also being amended to ensure that people travelling from the EU will be subject to the same rules as they currently are when bringing plants and plant products into the UK in their passenger baggage.

What will it now do?

4.23 The instrument will ensure that legislation that underpins the following will operate effectively in the UK after leaving the EU:

- the traceability of livestock for disease prevention and control;
- trade in animals and animal related products with the EU, and halting any animals or products that are deemed to be a threat to animal and/or public health;
- seed marketing to ensure continuity of supply and marketing for an interim period after that withdrawal;
- animal health requirements in relation to Salmonella control programmes continue to be adhered to, and that sampling services are paid for, in order to maintain our control programme to reduce the prevalence of regulated serovars, and to protect both animal and public health;
- controls on TSEs continue to operate to protect animal and public health, through the prevention of prohibited materials entering the feed and food chain. Prohibitions concerning animal feeding to those animals under a TSE related movement restriction will continue to be enforced, unless that feed is produced and processed in a manner approved by the Welsh Ministers;

- the trade of plant material with Crown Dependencies and the maintenance of biosecurity.

5. Consultation

- 5.1 A four week consultation on the Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (Wales) Regulations 2019 was undertaken and ended on 26 February. No responses were received.

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.

8. Monitoring & review

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

Annex

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
Appropriate-ness	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 committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
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	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.

		committed to make the same statement when exercising powers in Schedule 2	A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) 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 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 8(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. 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	A statement to explain why it is appropriate to create such a sub-delegated power.

		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. Appropriateness statement

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

“In my view The Rural Affairs (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.”

2. Good reasons

The Minister for Environment, Energy 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.”

3. Equalities

3.1 The Minister for Environment, Energy and Rural Affairs has made the following statement(s):

“The Rural Affairs (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.”

3.2 The Minister for Environment, Energy 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.”