

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 5 – Tŷ Hywel

Meeting date: 29 January 2018

Meeting time: 13.30

For further information contact:

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Committee Clerk

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1 Introduction, apologies, substitutions and declarations of interest
13.30

2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

13.30

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CLA(5)–04–18 – Paper 1 – Statutory instruments with clear reports

Negative Resolution Instruments

2.1 SL(5) 174 – The Road Traffic Act 1988 (Motor Racing) (Wales) Regulations 2018

3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

3.1 SL(5)175 – The Animal Feed (Basic Safety Standards) (Wales) Regulations 2018

(Pages 2 – 12)

CLA(5)–04–18 – Paper 2 – Regulations

CLA(5)–04–18 – Paper 3 – Explanatory Memorandum

CLA(5)–04–18 – Paper 4 – Report

4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

5 Stronger Voice for Wales – Draft Report

13.35

(Pages 13 – 71)

CLA(5)–04–18 – Paper 5 – Draft Report

6 The Powers in the EU (Withdrawal) Bill to make subordinate legislation: Roundtable discussion

14.30

(Pages 72 – 209)

CLA(5)–04–18 – Members briefing

CLA(5)–04–18 – Paper 6 – Committee paper

CLA(5)–04–18 – Paper 7 – Legal advice note covering concurrent and joint powers in devolved areas

CLA(5)–04–18 – Paper 8 – Paper from Michael Carpenter

CLA(5)–04–18 – Paper 9 – Paper from Professor Thomas Watkin

CLA(5)–04–18 – Paper 10 – Paper from Wales Governance Centre

CLA(5)–04–18 – Paper 11 – Letter from Secretary of State for Wales to the Llywydd, 16 January 2018

CLA(5)–04–18 – Paper 12 – Hansard Society Blog

CLA(5)–04–18 – Paper 13 – Committee’s report on the EU (Withdrawal) Bill LCM

CLA(5)–04–18 – Paper 14 – Private transcript of the European Union (Withdrawal) Bill—Private Stakeholder Event, 18 September 2017

Date of the next meeting

5 February 2018

Statutory Instruments with Clear Reports

Agenda Item 2

29 January 2018

SL(5)174 – The Road Traffic Act 1988 (Motor Racing) (Wales) Regulations 2018

Procedure: Negative

These Regulations specify those motor sport governing bodies which are authorised to issue permits under section 12B of the Road Traffic Act 1988 for the purpose of motor racing on public highways in Wales. Persons to whom permits have been issued may then apply to highway authorities for orders authorising motor racing events on public roads.

Parent Act: Road Traffic Act 1988

Date Made: 9 January 2018

Date Laid: 12 January 2018

Coming into force date: 2 February 2018



Agenda Item 3.1

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 40 (W. 12)

AGRICULTURE, WALES

**The Animal Feed (Basic Safety
Standards) (Wales) Regulations
2018**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose in Wales, in relation to animal feed, Article 21 of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (OJ No L 13, 17.1.14, p. 1).

Regulation 3 sets out that no person may intentionally add a radioactive substance in the production of animal feed.

Regulation 4 sets out that no person may import or export any animal feed to which a radioactive substance has been intentionally added during production.

Regulation 5 provides that it is an offence to fail to comply with regulation 3 or 4, punishable on conviction in the magistrates' court by a fine or imprisonment for a term not exceeding 3 months, or both.

Regulation 6 sets out that it is the duty of each feed authority to enforce these Regulations in its area.

Regulation 7 amends Schedule 1 to the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 ("the 2016 Regulations") (S.I. 2016/387 (W. 121)). The amendment designates these Regulations as "specified feed law" for the purposes of the 2016 Regulations so that, among other things, authorised officers may serve improvement notices for failure to comply with regulation 3 or 4 of these Regulations and a person aggrieved by a decision to serve an improvement notice may appeal to the magistrates' court. The amendment also allows, if

particular requirements are complied with, a court to impose a prohibition order/emergency prohibition order on a feed business operator for failure to comply with regulation 3 or 4, and allows authorised officers to enter non-dwellings to investigate non-compliance with regulation 3 or 4 and to inspect, take samples, and detain or seize products. The amendment also allows a person accused of failing to comply with regulation 3 or 4 to rely on a due diligence defence in specific circumstances.

Regulation 8 amends Schedule 2 to the Official Feed and Food Controls (Wales) Regulations 2009 (“the 2009 Regulations”) (S.I. 2009/3376 (W. 298)). The amendment designates these Regulations as “relevant feed law” for the purposes of the 2009 Regulations. Among other things, the amendment allows feed authorities to share with other feed authorities any information received by them in the enforcement of these Regulations.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2018 No. 40 (W. 12)

AGRICULTURE, WALES

**The Animal Feed (Basic Safety
Standards) (Wales) Regulations
2018**

Made 15 January 2018

Laid before the National Assembly for Wales
16 January 2018

Coming into force 6 February 2018

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 66(1), 74A(1) and 84 of the Agriculture Act 1970⁽¹⁾ and section 2(2) of the European Communities Act 1972⁽²⁾.

The Welsh Ministers have been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to feed produced for or fed to food-producing animals⁽³⁾, measures in the veterinary and phytosanitary fields for the protection of public health⁽⁴⁾ and measures in

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- (1) 1970 c. 40. Functions formerly exercisable by “the Ministers”, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672, and subsequently transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Section 74A was inserted by paragraph 6 of Schedule 4 to the European Communities Act 1972 (c. 68). Section 84 was amended by S.I. 2004/3254.
- (2) 1972 c. 68.
- (3) S.I. 2005/1971. The functions conferred on the National Assembly for Wales by this designation are transferred to the Welsh Ministers by virtue of section 162 of, and paragraphs 28 and 30 of Schedule 11 to, the Government of Wales Act 2006. The designation does not extend to measures concerning feed containing medicinal products (including growth regulators) or medicinal products when destined for use in feed except provision concerning digestibility enhancers, gut flora stabilisers, or substances which favourably affect the environment.
- (4) S.I. 2008/1792.

relation to the common agricultural policy of the European Union⁽¹⁾.

There has been open and transparent public consultation during the preparation of these Regulations in accordance with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽²⁾ and, in the case of provisions relating to feed for non food-producing animals, of section 84(1) of the Agriculture Act 1970.

Title, application and commencement

1.—(1) The title of these Regulations is the Animal Feed (Basic Safety Standards) (Wales) Regulations 2018.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 6 February 2018.

Interpretation

2.—(1) In these Regulations—

“feed” (“*bwyd anifeiliaid*”) has the meaning given in Article 3 of Regulation (EC) No 178/2002 of the European Parliament and of the Council;

“feed authority” (“*awdurdod bwyd anifeiliaid*”) means an authority identified in section 67(1A) of the Agriculture Act 1970 as having the duty to enforce Part IV of that Act within its area or district as the case may be;

“radioactive substance” (“*sylwedd ymbelydrol*”) means any substance that contains one or more radionuclides the activity or activity concentration of which cannot be disregarded from a radiation protection point of view.

(2) For the purpose of these Regulations, “import” (“*mewnforio*”) and “export” (“*allforio*”) are to be construed in accordance with the meanings that

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- (1) S.I. 2010/2690. The designation does not extend to making provision in respect of feed that contains medicinal products destined for use in feed, except provision concerning substances that favourably affect the environment, digestibility enhancers, or gut flora stabilisers.
- (2) OJ No L 31, 1.2.2002, p 1, as last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material (OJ No L 189, 27.6.2014, p 1).

“importation” and “exportation” bear for the purposes of the Customs and Excise Management Act 1979⁽¹⁾.

Prohibition of practices

3. No person may intentionally add a radioactive substance in the production of animal feed.

4. No person may import or export any animal feed in respect of which a radioactive substance has been intentionally added in the production of that feed.

Offences and penalties

5. Any person who contravenes regulation 3 or regulation 4 is guilty of an offence and liable on summary conviction to a fine or to imprisonment for a term not exceeding 3 months, or both.

Enforcement

6. It is the duty of a feed authority within its area to enforce these Regulations.

Amendment of the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016

7.—(1) The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016⁽²⁾ are amended in accordance with paragraph (2).

(2) In Schedule 1 (specified feed law), after the entry for “The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016”, insert—

“The Animal Feed (Basic Safety Standards) (Wales) Regulations 2018”.

Amendment of the Official Feed and Food Controls (Wales) Regulations 2009

8.—(1) The Official Feed and Food Controls (Wales) Regulations 2009⁽³⁾ are amended in accordance with paragraph (2).

(2) In Schedule 2 (definition of relevant feed law), after paragraph (f), insert the following paragraph—

“(g) the Animal Feed (Basic Safety Standards) (Wales) Regulations 2018.”

(1) 1979 c. 2.

(2) S.I. 2016/387 (W. 121).

(3) S.I. 2009/3376 (W. 298).

Vaughan Gething
Cabinet Secretary for Health and Social Services, one
of the Welsh Ministers

15 January 2018

EXPLANATORY MEMORANDUM TO

The Animal Feed (Basic Safety Standards) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Animal Feed (Basic Safety Standards) (Wales) Regulations 2018.

Vaughan Gething AM

Cabinet Secretary for Health and Social Services

16 January 2018

EXPLANATORY MEMORANDUM TO

Animal Feed (Basic Safety Standards) (Wales) Regulations 2018

1. Description

The Regulations transpose in relation to Wales a requirement in the EU Basic Safety Standards Directive (Council Directive 2013/59/Euratom) prohibiting the deliberate addition of radioactive substances in the production of animal feeding stuffs and prohibiting the import of animal feeding stuffs to which radioactive substances have been added.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative Background

The powers enabling the Regulations to be made are conferred by sections 66, 74A and 84 of the Agriculture Act 1970 and section 2(2) of the European Communities Act 1972, for the purposes of which the Welsh Ministers are designated by SI 2005/1971 in relation to measures relating to animal feed.

The powers given by the Agriculture Act 1970, which were vested in UK Government Ministers prior to devolution, were transferred to the National Assembly for Wales in 1999 by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and were subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Regulations are to be subject to the negative procedure. Paragraph 2(2) of Schedule 2 to the 1972 Act provides that regulations that are made under section 2(2) of the same Act may be subject to the negative or affirmative procedure. In this case, in light of the fact that the section 2(2) powers are being combined with other powers (i.e. those in the 1970 Act), and the fact that the Regulations do not involve substantial government expenditure or any other particularly sensitive matters, it is considered appropriate to subject the Regulations to the negative procedure.

In accordance with Article 33 of the Euratom Treaty, the draft Regulations were notified to the European Commission and a three-month standstill period was observed before the Regulations were made.

4. Purpose and Intended Effect of the Legislation

The objective of the Regulations is to:

- prohibit the deliberate addition of radioactive substances in the production of animal feeding stuffs, and prohibit the import or export of animal feeding stuffs to which radioactive substances have been added;
- provide the necessary enforcement powers to ensure compliance.

5. Consultation

An informal consultation was carried out with key stakeholders in industry, farming and enforcement authorities in early summer 2017. This established that no operators in Wales were known to be deliberately adding radioactive materials to animal feed or importing animal feed to which radioactive materials had been deliberately added.

A formal public consultation exercise was carried out by the Food Standards Agency (FSA) from 23 August to 4 October 2017. The FSA in Wales received two responses.

One response from local government sought guidance on the implementation of the Regulations. This will be provided in due course. Enforcement sanctions will be consistent with those provided to enforcement authorities by existing animal feed Regulations.

The Office of the Government Chemist provided some advice on testing and verification methods and potential technical issues to be addressed in the enforcement of the Regulations. This will be considered when advising local authorities.

Neither of these responses required amendment to the draft Statutory Instrument, nor highlighted any costs that arise out of these Regulations.

6. Regulatory Impact Assessment

Because no operators in Wales are known to be currently adding radioactive substances to feed (or importing such feed), it is not considered that there will be any costs incurred in the implementation of the Regulations, either by Government, enforcement authorities or the feed industry. Enforcement sanctions will be consistent with those provided to enforcement authorities by existing animal feed Regulations.

SL(5)175 – The Animal Feed (Basic Safety Standards) (Wales) Regulations 2018

Background and Purpose

These Regulations transpose in Wales, in relation to animal feed, Article 21 of Council Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom.

The Regulations:

- prohibit the intentional addition of a radioactive substance in the production of animal feed;
- prohibit the import or export of any animal feed to which a radioactive substance has been intentionally added during production;
- provide for it to be an offence to fail to comply with the prohibitions set out in the Regulations; and
- contain obligations regarding enforcement of the Regulations and technical amendments concerning monitoring and enforcement.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument, in that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly (Standing Order 21.3(ii)).

These Regulations are made under section 2(2) of the European Communities Act 1972 in combination with enabling powers contained in the Agriculture Act 1970. The 1972 Act gives a discretion as to whether the negative procedure or the affirmative procedure should apply to these Regulations, whereas the 1970 Act requires the negative procedure. The negative procedure has been chosen, which seems appropriate given:

1. the combination of powers referred to; and
2. that the Regulations do not involve substantial government expenditure.

Implications arising from exiting the European Union

The following analysis is based on the European Union (Withdrawal) Bill ("the Bill") as introduced in the House of Lords on 18 January 2018.



1. These Regulations form part of “EU-derived domestic legislation” under clause 2 of the Bill, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations (for example, the Welsh Ministers will not be able to use this power to do something that is inconsistent with modifications to “retained direct EU legislation” made by UK Ministers under the Bill).
2. The Regulations define “feed” by reference to EU legislation, i.e. EU Regulation 178/2002 which lays down the general principles and requirements of food law, establishes the European Food Safety Authority and lays down procedures in matters of food safety. Under the European Union (Withdrawal) Bill (as currently drafted) that EU Regulation will be frozen and will form part of retained EU law on exit day. The EU Regulation will be within the body of retained EU law that only the UK Ministers and the UK Parliament can amend, so UK Ministers or the UK Parliament will be able to change the meaning of “feed”. Neither the National Assembly for Wales nor the Welsh Ministers will be given any powers to amend any element of the EU Regulation in its application in Wales.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

25 January 2018



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Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

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