

Explanatory Memorandum to The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020.

This Explanatory Memorandum has been prepared by Food Standards Agency and is laid before Senedd Cymru 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 Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020

Eluned Morgan MS
Minister for Mental Health, Wellbeing and Welsh Language
10 December 2020

PART 1

Description

1. The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020 amend
 - the Food Hygiene (Wales) Regulations 2006,
 - the Official Feed and Food Controls (Wales) Regulations 2009, and
 - the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016.
2. This instrument allows for the further implementation and enforcement of EU Implementing and Delegated Regulations (“EU tertiary legislation”) that are made under Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law (“the OCR”).

Background

3. Implementation and enforcement of the OCR and such EU tertiary legislation as had been published in the Official Journal of the European Union by November 2019 was enabled by way of the Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019 (“The 2019 Regulations”)
4. The amendments made by the 2019 Regulations also covered a package of EU tertiary legislation (Implementing and Delegated Regulations), made under the OCR.
5. It was noted at the time that additional EU tertiary legislation was being prepared by the EU would not be published in time for provisions giving effect to that legislation to be included in the 2019 Regulations if those Regulations were to come into force by the 14 December 2019 deadline - the date the OCR took effect.
6. This instrument captures that additional EU tertiary legislation within the lists of legislation set out in the Food Hygiene (Wales) Regulations 2006 and the Official Feed and Food Controls (Wales) Regulations 2009 (“the 2009 Regulations”), and make limited consequential changes.
7. In addition to the tertiary legislation, officials have identified some limited errors/omissions in the amendments made by the 2019 Regulations that

require correction. These required corrections are necessary to ensure that the OCR is properly implemented in relation to Wales.

8. The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020 will amend the necessary instruments to provide for enforcement of the tertiary legislation and fix the errors and omissions in the 2019 Regulations

Matters of special interest to the Legislative, Justice and Constitution Committee

9. None

Legislative background

10. The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the ECA 1972”). The Welsh Ministers are designated in relation to:
 - a. measures relating to feed produced for or fed to food-producing animals (see European Communities (Designation) (No. 2) Order 2005/1971).
 - b. measures in the veterinary and phytosanitary fields for the protection of public health (see European Communities (Designation) (No. 2) Order 2008/1792); and
 - c. measures in relation to the common agricultural policy of the European Union (see the European Communities (Designation) (No. 5) Order 2010/2690).
11. The ECA 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 with effect from exit day. Despite that repeal, section 2(2) of the 1972 Act continues to have effect with modifications until implementation period completion day by virtue of section 1A of EUWA.
12. These Regulations make provision for a purpose mentioned in section 2(2) of the ECA 1972, and it appears to the Welsh Ministers that it is expedient for references to EU instruments within the Regulations to be construed as references to those instruments as amended from time to time.
13. Section 2(2) of the European Communities Act 1972 (as read with section 59(3) of the Government of Wales Act 2006) offers a choice between negative and affirmative procedures. This instrument makes limited provision, which is technical in nature and which gives effect to EU law (including updating references to EU legislation), in relation to which the

Welsh Ministers have limited discretion. As such, these Regulations are being made under the negative resolution procedure

Purpose and intended effect of the legislation

14. The purpose of this Instrument is to allow for the further implementation of tertiary legislation made under the OCR and to address omissions and errors in the provision made by the 2019 Regulations.

15. This tertiary legislation sets out the detailed rules for applying the OCR in specific areas, such as the frequency and methods of applying physical checks to consignments of food or feed at ports and some of the rules for further action required on completion of these checks.

16. The full set of tertiary legislation that this instrument provides for, as listed below, is predominantly connected to the import into and movement of food and feed through points of entry.

- Commission Implementing Regulation (EU) 2019/2007
- Commission Delegated Regulation (EU) 2019/2074
- Commission Delegated Regulation (EU) 2019/2122
- Commission Delegated Regulation (EU) 2019/2123
- Commission Delegated Regulation (EU) 2019/2124
- Commission Delegated Regulation (EU) 2019/2126
- Commission Implementing Regulation (EU) 2019/2129
- Commission Implementing Regulation (EU) 2019/2130
- Commission Implementing Regulation (EU) 2020/1158
- Commission Implementing Regulation (EU) 2020/466

17. The detailed titles of all the tertiary legislation, which gives further indications of the specific areas each Regulation applies to is given in Annex 1 below

Correction of address errors and omissions in the 2019 Regulations

Official Feed and Food Controls (Wales) Regulations 2009 (S.I. 2009/3376 (W. 298))

18. This instrument:

- a) Updates and replaces schedules 1,4,5 and 6 to ensure that all references to EU Regulations are up to date and correct.

- b) Corrects the definition of “product” in regulation 22 of the 2009 Regulations , which was amended incorrectly by regulation 18(a) of the 2019 Regulations.
- c) Corrects the list of OCR provisions listed in regulation 29 of the 2009 Regulations to include reference to an article omitted in error by regulation 23 of the 2018 Regulations.
- d) Corrects a charging provision in regulation 36 of the 2009 Regulations that was amended incorrectly by regulation 27 of the 2019 Regulations. This is required to implement the mandatory charging provisions within Article 79 of the OCR to allow competent authorities to levy the correct charge for official controls undertaken on consignments of high-risk food and feed of non-animal origin.
- e) Re-instates provision for expenses incurred by a competent authority from additional official controls to be recovered from the food or feed business operator as required by Article 79(2)(c) of the OCR. This provision was contained in regulation 43 of the 2009 Regulations, which was revoked in error by the 2019 regulations
- f) Corrects an out of date reference to a revoked EU Regulation to ensure the continuation of the offence of failing to comply with certification requirements for imports of sprouts or seeds intended to sprout.

Food Hygiene (Wales) Regulations 2006 (S.I. 2006/31 (W. 5))

- 19. This instrument replaces and updates the list of EU Regulations set out in Schedule 1

Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 (S.I. 2016/387 (W. 121))

- 20. This instrument replaces and updates references to EU instruments that are repealed and replaced by the OCR and Regulation (EU) 2019/1793

Legislation in other parts of the UK

- 21. Corresponding legislation is being made in relation to England, Scotland and Northern Ireland.

22. Due to financial implications to enforcement authorities at Border Control Posts (BCPs) in England and Northern Ireland, an error in the application of a provision for charging for official controls at BCPs has been made in earlier instruments in those parts of the UK.
23. As there are currently no BCPs in Wales, and therefore no additional financial implications arise, the implementation of this change has been held back for inclusion in the current instrument.
24. It is important to address this issue as it is likely that Welsh ports will seek to be designated as BCPs in future.

Consultation

25. The FSA conducted an 8-week public consultation on the general principles outlined in the 2019 Regulations to offer interested parties sufficient opportunity to express their views. The FSA also undertook focused stakeholder engagement with stakeholders across industry and enforcement communities, both at a Wales and a UK-wide level. Minimal interest was expressed by stakeholders in relation to the proposed changes, with only four responses being received to the consultation.
26. The changes made by this instrument are entirely technical in nature and make no alteration to the principles outlined in the consultation on the 2019 Regulations.
27. Therefore, no additional consultation has been undertaken in connection with this instrument

Regulatory Impact Assessment (RIA)

28. A full impact assessment was prepared for the 2019 Regulations and it is not considered that additional costs will accrue from this instrument that has not already been accounted for in that impact assessment, which forms part of the Explanatory Memorandum to the 2019 Regulations.

Annex 1 full titles of tertiary legislation included in this instrument

Commission Implementing Regulation (EU) 2019/2007 of 18 November 2019 laying down rules for the application of Regulation (EU) 2017/625 of the European Parliament and of the Council as regards the lists of animals, products of animal origin, germinal products, animal by-products and derived products and hay and straw subject to official controls at border control posts and amending Decision 2007/275/E

Commission Delegated Regulation (EU) 2019/2074 of 23 September 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules on specific official controls on consignments of certain animals and goods originating from, and returning to the Union following a refusal of entry by a third country

Commission Delegated Regulation (EU) 2019/2122 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market and amending Commission Regulation (EU) No 142/201

Commission Delegated Regulation (EU) 2019/2123 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts (Text with EEA relevance)

Commission Delegated Regulation (EU) 2019/2124 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union, and amending Commission Regulations (EC) No 798/2008, (EC) No 1251/2008, (EC) No 119/2009, (EU) No 206/2010, (EU) No 605/2010, (EU) No 142/2011, (EU) No 28/2012, Commission Implementing Regulation (EU) 2016/759 and Commission Decision 2007/777/EC

Commission Delegated Regulation (EU) 2019/2126 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for specific official controls for certain categories of animals and goods, measures to be taken following the performance of such controls and certain categories of animals and goods exempted from official controls at border control posts

Commission Implementing Regulation (EU) 2019/2129 of 25 November 2019 establishing rules for the uniform application of frequency rates for identity checks and physical checks on certain consignments of animals and goods entering the Union

Commission Implementing Regulation (EU) 2019/2130 of 25 November 2019 establishing detailed rules on the operations to be carried out during and after documentary checks, identity checks and physical checks on animals and goods subject to official controls at border control posts

Commission Implementing Regulation (EU) 2020/1158 of 5 August 2020 on the conditions governing imports of food and feed originating in third countries following the accident at the Chernobyl nuclear power station

Commission Implementing Regulation (EU) 2020/466 of 30 March 2020 on temporary measures to contain risks to human, animal and plant health and animal welfare during certain serious disruptions of Member States' control systems due to coronavirus disease (COVID-19)