

SL(5)513 – The Trade in Animals and Related Products (Wales) (Amendment) Regulations 2020

Background and Purpose

The Trade in Animals and Related Products (Wales) (Amendment) Regulations 2020 ("the Regulations") amend the Trade in Animals and Related Products (Wales) Regulations 2011 ("the 2011 Regulations"), which had previously been amended by the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 ("the Official Controls Regulations").

Amendments were made by the Official Controls Regulations to regulations 20(7) and 23(6) of the 2011 Regulations which, as described in the Explanatory Memorandum to these Regulations, "could be interpreted as an unintended financial liability for government to compensate importers for non-compliant consignments [of products of animal origin or animals] that are destroyed." These Regulations remove the wording in regulations 20(7), and 23(6) in order that the legislation provides that the importer is liable for any expenses incurred in dealing with the measures imposed on the importer following the import of a non-compliant consignment.

Regulation 12(4) of the 2011 Regulations is amended, in relation to the remit of official fish inspectors. The amendment clarifies that official fish inspectors are responsible for decisions relating to composite products containing processed fishery products.

Regulation 20(8) of the 2011 Regulations, which concerns the importer or the importer's representative being entitled to be heard regarding a non-compliant consignment, is omitted.

Paragraph 9(1) of Schedule 2 to the 2011 Regulations is amended to address an error that was introduced into this Schedule by the Official Controls Regulations.

The Regulations are made under the powers conferred by section 2(2) of the European Communities Act 1972.

Procedure

Negative.

Technical Scrutiny

No technical 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.

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

1. Regulation 20(8) of the 2011 Regulations which concerns the importer or the importer's representative being entitled to be heard regarding a non-compliant consignment, is omitted by these Regulations. It is unclear why regulation 20(8) has been removed.



Regulation 20(8) provides that *"the importer or the importer's representative may immediately, and within one working day after notification of the non-compliance, make written representations to the Welsh Ministers regarding any decision taken under this regulation, and any such representations must be considered and a written response must be given by the Welsh Ministers within one working day of receiving such representations."*

Paragraph 4.2 of the Explanatory Memorandum provides that regulation 20(8) is omitted as the importer (or the importer's representative) is *"already entitled to be heard regarding a non-compliant consignment by relying directly on Article 66(3) of EU Regulation 2017/625"*.

The final paragraph of article 66(3) of EU Regulation 2017/625 provides that before the operator is ordered to take action, *"the competent authority shall hear the operator concerned, **unless immediate action is necessary** in order to respond to a risk to human, animal or plant health, animal welfare or, as regards the GMOs and plant protection products, also to the environment"*.

We are of the view that the Explanatory Note accurately reflects the wording of article 66(3), whilst the Explanatory Memorandum does not. The Explanatory Note accurately provides that by virtue of article 66(3) the importer or the importer's representative is entitled to be heard in **certain circumstances** regarding a requirement proposed to be imposed in relation to a non-compliant consignment. However, the Explanatory Memorandum does not acknowledge that there are exceptions to the entitlement to be heard, and fails to make it sufficiently clear to the importer or the importer's representative that in certain circumstances they may not be entitled to be heard.

Removing regulation 20(8) appears to leave the importer or the importer's representative with less of an entitlement to be heard than is currently provided. It is not sufficiently clear why this provision has been removed, and what impact the removal of this provision may have.

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

We accept that the expression of the explanatory note is clearer than the explanatory memorandum. However, accurate legal citation in both documents lead the reader to the pertinent provision of the EU Regulation. Further, both documents indicate the reason for and effect of the amendment – the entitlement to be heard is provided by the pertinent provision of the EU Regulation. As such, on balance, we do not propose to amend the explanatory memorandum.

Legal Advisers

Legislation, Justice and Constitution Committee

4 March 2020



Cynulliad Cenedlaethol Cymru
Pwyllgor Deddfwriaeth, Cyfiawnder a'r Cyfansoddiad
—
National Assembly for Wales
Legislation, Justice and Constitution Committee