

Explanatory Memorandum to the Official Controls (Extension of Transitional Periods and Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer within the Department for Environment, Skills and Natural Resources of the Welsh Government 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 Controls (Extension of Transitional Periods and Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021

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 MS

Minister for Rural Affairs, North Wales & Trefnydd

22 December 2021

Part 1

1. Description

This Explanatory Memorandum relates to the Official Controls (Extension of Transitional Periods and Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 (“the Instrument”)

The Instrument is required to ensure alignment with changes made by the UK Government to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (“the Official Controls Regulation”).

The Instrument will make amendments to subordinate legislation, which applies in relation to Wales, in the field of biosecurity controls for the imports of live animals and animal products, which are included in the set of commodities known collectively as sanitary and phyto-sanitary (“SPS”) goods.

The Instrument applies to Wales and will come into force on 30 December 2021.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

The Instrument is being made by the Welsh Ministers in exercise of the powers conferred by:

- (a) paragraph 11A(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011 (“the 2011 Regulations”); and
- (b) paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

The Instrument is being laid under the made affirmative procedure and the Ministerial Statement in Part 2 of the Annex sets out the reasons for this decision.

The Instrument is necessary to align with the revised approach to EU-GB import controls planned by the UK Government from 31 December 2021.

The Instrument also amends deficiencies which remain in the 2011 Regulations, which includes the need to change the date from which transitional prior notification requirements for products of animal origin applies.

3. Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK's exit from the EU.

The Withdrawal Act converted the majority of directly applicable EU law as it stood immediately before Implementation Period completion day into domestic law and preserved laws made in the UK which implement EU obligations. The Withdrawal Act also created temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK's exit. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

On 14 September 2021, the UK Government announced its decision to revise the current timetable for the introduction of all remaining checks – recognising that businesses were facing a range of challenges as they recover from the global pandemic which has impacted supply chains across Europe, and that this impact was being felt particularly by the agri-food sector.

The 2011 Regulations

The Instrument amends deficiencies which remain in the 2011 Regulations.

The 2011 Regulations make provision in relation to the trade in animals and related products including establishing a regulatory framework for trade in live animals and genetic material, and for the importation of live animals, genetic material and products of animal origin. In addition, the 2011 Regulations establish various offences, and give the power to the Welsh Ministers to prohibit the importation into Wales of any animal or product in the event of a disease outbreak outside the UK.

Schedule 5 was inserted into the 2011 Regulations by regulation 32 of the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2020 (SI 2020/1612) (W. 337).

Schedule 5 applies to products and live animals that originate from (a) a territory subject to special transitional import arrangements; or (b) a third country other than a territory subject to special transitional import arrangements where, before importation into Wales, the products or live animals concerned—

- (i) have been presented to a border control post (BCP) designated by the Welsh Ministers;
- (ii) are accompanied by a Common Health Entry Document which has been completed to the satisfaction of the relevant authority; and
- (iii) have been pre-notified.

The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2021 (S.I. 2021/384) (W. 122) (“the 2021 Amendment Regulations”) previously amended the 1 April 2021 date in paragraphs 5 and 6 of Schedule 5 to the 2011 Regulations to 31 July 2021 to align with the changes made to other legislation by the Trade and Official Controls (Transitional Arrangements for Prior Notifications) (Amendment) Regulations 2021 (S.I. 2021/429), and to align with Annex 6 of the OCR (which was inserted by the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481), setting out the requirements for the pre-notification checks) which provides for transitional arrangements to expire on 31 July 2021.

The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021 (S.I. 2021/847 (W. 197)) extended the 31 July date to 1 October 2021. That date was then extended to 31 December 2021 by the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) Regulations 2021 (S.I. 2021/1094 (W. 260)).

The UK Government have made changes to the Official Controls (Extension of Transitional Periods) Regulations 2021 (S.I. 2021/809), in relation to England and Wales, including amending the end date for “the transitional staging period” (defined in Annex 6 to the Official Controls Regulation from 28 February 2022 (and 31 December 2021 in certain cases) to 30 June 2022. These changes are made by the Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) (No. 2) Regulations 2021 (“the UK Regulations”)

The UK Regulations also amend the Official Controls Regulation, in relation to England and Wales, to exclude goods which form part of passengers’ luggage and which are intended for personal consumption or use, and small consignments of products which are not intended to be placed on the market, from requirements to be subject to prior notification during the transitional staging period. Goods which are processed in Northern Ireland or the Republic of Ireland and imported from the Republic of Ireland are also excluded.

The Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) Regulations 2021 (“the 2021 Regulations”)

Prohibitions and restrictions (“P&R”) are trade requirements based in EU law that prevent or restrict the export and import of certain goods from third countries, where the EU believes there is a potential for them to present a level of risk to animal, plant or public health.

To ensure continuity after the transition period, the Welsh Ministers introduced the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/1 (W. 1)) (“the 2021 Regulations”) to permit the import of certain prohibited products of animal origin affected by P&R from the EEA into Wales from 1 January to 31 March 2021.

On 22 March 2021, a further SI was made - the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) Regulations 2021 (S.I. 2021/376 (W. 117)) – to extend the suspension of the prohibition until 30 September 2021.

On 2 September 2021, a further SI was made - the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/977 (W. 231)) to extend the suspension of the prohibition until 31 December 2021. This enabled existing import rules to apply to chilled meat preparations until 31 December 2021 in accordance with the UK Government's announced 'phased approach' to import controls.

4. Purpose and intended effect of the legislation

The Instrument makes changes to the 2011 Regulations and the 2021 Regulations to ensure alignment with the changes made by the UK Regulations.

The 2011 Regulations

The Instrument amends Schedule 5 to the 2011 Regulations to ensure alignment with Article 56A of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities, as inserted for the purposes mentioned in paragraph 3 of Annex 6, and as amended by regulation 2 of the Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) (No. 2) Regulations 2021 (S.I. 2021/1443).

The Instrument amends the 2011 Regulations to require pre-notification from 1 January 2022 of the arrival of all category 3 animal by-products not already subject to controls since 1 January 2021. Category 3 animal by-products are the lowest risk category, and include products such as animal hides, shells, domestic catering waste and some products deemed fit for humans to eat. Personal goods which form part of passengers' luggage and which are intended for personal consumption or use, small consignments of products sent to natural persons which are not intended to be placed on the market, and goods which are produced in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland, are temporarily exempted from pre-notification requirements which otherwise come into force in relation to animal products from 1 January 2022.

The Instrument also amends Schedule 5 to the 2011 Regulations to enable enforcement powers to remain available during the extended transitional staging period other than at border control posts in respect of animals and animal products in Wales.

The 2021 Regulations

The 2021 Regulations are amended to extend the existing temporary suspension of the requirement for meat preparations imported into England from EEA member States, the Faroe Islands, Greenland or Switzerland, to be deep frozen, keeping this temporary easement in line with the revised transitional staging period controls. It will allow meat preparations from the EU to continue to be imported in a chilled condition until 30 June 2022.

The Instrument will ensure alignment with the revised timetable for the introduction of import controls on goods arriving from those countries on 1 July 2022. It will also ensure a consistent approach to imports and provide legal clarity to traders.

Without this legislation it would be illegal for traders to import chilled meat preparations from 1 January 2022. This could adversely affect select businesses and the end consumer in Wales as the availability of certain products could be limited.

This temporary suspension of the prohibition is a proportionate measure to ensure trade continuity as these goods present a low biosecurity risk. These goods are currently imported and there are no immediate public health concerns over these products, as the UK and the EU traded these freely within the EU Single Market.

5. What the instrument does

Regulation 2 makes amendments to Schedule 5 to the 2011 Regulations to ensure alignment with Article 56A of the Official Controls Regulation, as inserted for the purposes mentioned in paragraph 3 of Annex 6, and as amended by regulation 2 of the UK Regulations.

Regulation 2 also amends Schedule 5 to the 2011 Regulations to enable enforcement powers to remain available during the extended transitional staging period other than at border control posts in respect of animals and animal products in Wales.

Regulation 3 amends the 2021 Regulations to extend the temporary suspension of the requirement for meat preparations to be deep frozen where they are imported into Wales from EEA member States, the Faroe Islands, Greenland or Switzerland until midnight on 30 June 2022.

Since the end of the transition period, businesses and competent authorities have had to meet extensive new EU and UK requirements when moving goods under the new trading relationship with the EU. Many such businesses and competent authorities face challenges and shortage of resources in preparing for such changes in a short period of time, whilst dealing with the response to the COVID-19 pandemic.

Without the Instrument, from 1 January 2022, businesses in GB importing products of animal origins from the EU and EU businesses exporting to GB will be obliged to comply with documentary, physical and identity checks at Border Control Posts. Personal goods which form part of passengers' luggage and are intended for consumption or use, small consignments of products sent to natural persons which are not intended to be placed on the market, and goods produced processed in the island of Ireland, including qualifying Northern Ireland goods moving to GB via the Republic of Ireland, would be subject to pre-notification requirements from 1 January 2022.

The temporary exemption from pre-notification requirements for goods produced processed in Northern Ireland or the Republic of Ireland and moved or imported into Great Britain from the Republic of Ireland, is intended to maintain the current treatment of SPS goods arriving in GB from the Republic of Ireland, and ensure alignment with changes made by the UK Government to the Official Controls Regulations.

Without the Instrument, attempting to comply with the SPS requirements currently scheduled for 1 January 2022 would create a significant risk of sector confusion and disruption to the food supply chain into Great Britain.

6. Consultation

Given the urgent nature of the Regulations, no public consultation has been undertaken; however, there has been GB-wide extensive stakeholder engagement with the Agri-Food industry and with delivery partners with responsibilities over SPS border controls (such as local border authorities, the Animal and Plant Health Agency and the Foods Standards Agency), since January 2021.

In relation to the UK Regulations, a very short consultation exercise was undertaken from 10 – 13 December 2021 by UK Government, recognising some changes affect Wales. It summarised the changes to be made by this instrument and invited comments, in particular on the impact of revising the timeline for phased introduction of SPS checks, and on the potential impact if this instrument were not to be brought into force.

The consultation was targeted at key stakeholders in the SPS sector, including representative trade and industry organisations and interest groups. The consultation sought views from a wide range of stakeholders on the proposed changes, was a short in time, targeted exercise. At the close of consultation, officials had received only one response, which was supportive of the changes proposed.

7. Regulatory Impact Assessment (RIA)

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. Officials considered this is an exceptional and urgent situation. The amendments need to be in place by 31 December to ensure alignment across the UK. Whilst there is discretion in Welsh Ministers' exercise of statutory powers, taking a divergent approach from the GB-wide imports regime set by UK Government would lead to confusion to traders and disruption to trade. In particular, goods imported into the UK could face different import requirements in different countries within the UK, whilst being able to move freely within the UK once imported. These changes constitute a temporary extension of the current imports regime.

Annex: Statements under the European Union (Withdrawal) Act 2018

Part 1: Table of Statements under the 2018 Act

This table sets out the statements which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which 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 Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)	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 LJC 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 which 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 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	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Crown or a Devolved Authority.</p> <p>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</p>	
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

Part 2

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

1. Sifting

Not applicable/required

2. Appropriateness statement

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

“In my view the Official Controls (Extension of Transitional Periods and Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 do 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 Minister for Rural Affairs and North Wales, and Trefnydd 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 the Official Controls (Extension of Transitional Periods and Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021, and I have concluded they are a reasonable course of action. There are benefits to businesses and local authorities who have to prepare for new imports regime following the UK’s withdrawal from the EU during the COVID-19 pandemic and recovery period.”

4. Equalities

The Minister for Rural Affairs and North Wales, and Trefnydd has made the following statement:

“The Official Controls (Extension of Transitional Periods and Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021 do 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.”

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

“In relation to the Official Controls (Extension of Transitional Periods and Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010.”

5. Explanations

The Explanations statement has been made in paragraph 4 (Purpose and 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

The Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my opinion, by reason of urgency, it is necessary to make the Official Controls (Extension of Transitional Periods and Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2021, without a draft of the Regulations being laid before, and approved by a resolution of the Senedd”.

The Welsh Ministers have concluded that the made affirmative procedure provided for in the European Union (Withdrawal) Act 2018 is necessary to ensure that the Instrument comes into force by 31 December 2021. If not, from 1 January 2022 importers and persons will have to comply with specific new control measures when importing or personally carrying certain animal commodities.

Using this procedure still allows for scrutiny and the Senedd will need to approve the Regulations for them to remain in force.”