

Explanatory Memorandum to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) 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 the Senedd 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 Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) 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 and North Wales, and Trefnydd

28 September 2021

Part 1

1. Description

This Explanatory Memorandum relates to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) Regulations 2021 (“the Instrument”)

The Instrument is required to ensure alignment with changes which are being brought forward 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 OCR”).

The Instrument will make amendments to subordinate legislation, which applies in relation to Wales and the Welsh zone, in the field of biosecurity controls for the imports of live animals and animal products. The Instrument applies to Wales and will come into force on 29 September 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 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 made under the “made-affirmative” procedure and the Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

The Instrument amends deficiencies which remain in the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379) (W. 252) (“the 2011 Regulations”), namely the need to change the date from which transitional prior notification requirements for products of animal origin apply, and to remove the requirement for products of animal origin and animal by-product to be accompanied by the appropriate health certificate for third country imports before the end of the transitional staging period.

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 (IP) 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.

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 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 provided for transitional arrangements to expire on 31 July 2021. These

dates were further amended by The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 2) Regulations 2021 (S.I. 2021/847) (W. 197) (“the 2021 Amendment Regulations”). The 2021 Amendment regulations amended the 31 July date in paragraphs 5 and 6 of Schedule 5 to the 2011 Regulations to 1 October 2021. The Instrument now further amends the 2011 regulations to align with the extension decided by UK Government and subsequently agreed with by the Minister for Rural Affairs and North Wales, and Trefnydd.

In accordance with the requirements of the Withdrawal Act the Minister for Rural Affairs and North Wales, and Trefnydd, Lesley Griffiths MS, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

The Instrument will delay the introduction of the pre-notification requirements for relevant goods consisting of products of animal origin from 1 October 2021 to 1 January 2022.

The Instrument will also remove the requirement for products of animal origin, and animal by-products, to be accompanied by the appropriate health certificate for third country imports before the end of the transitional staging period.

Following a review by officials of the implementation plan for import controls including Sanitary and Phytosanitary (“SPS”) checks on live animals and products of animal origin, a decision has been made to delay the introduction of documentary and physical checks at designated BCPs. This is because since the end of the transition period, businesses and competent authorities have had to adapt and meet extensive new EU and UK requirements when moving goods under the new trading relationship with the EU. Whilst the work being undertaken by UK and Welsh Government Officials and their delivery agencies, to prepare for these new controls has progressed since the last change made to relevant legislation, the same issues with infrastructure delivery and operator readiness remain.

This supports the revised timetable that delays the introduction of pre-notification requirements, documentary, identity and physical checks, at designated BCPs. These border controls will be introduced in a phased approach (‘the transitional staging period’), from 1 January 2021 to 1 July 2022.

This revised timetable will allow businesses and competent authorities more time to prepare as they adapt to the new trading relationships and recover from the longer, deeper impacts of the COVID-19 pandemic.

5. What the instrument does

The Instrument delays the introduction of pre-notification checks by amending the 1 October 2021 date in paragraph 5(3) of Schedule 5 to the 2011 Regulations and substituting it for 1 January 2022.

The instrument also amends paragraph 6 of Schedule 5 by removing the requirement in paragraph 6(1)(c) for products of animal origin and animal by-products to be accompanied by the appropriate health certificate for third country imports before the end of the transitional staging period. The instrument also amends paragraph 6(2) of Schedule 5 to remove the reference to paragraph 6(1)(c).

Paragraph 5(3) of Schedule 5 to the 2011 Regulations relates to the pre-notification requirement for relevant goods consisting of products of animal origin.

Paragraph 6(1)(c) of Schedule 5 relates to the requirement that relevant goods consisting of products of animal origins or animal by-products be accompanied by an appropriate health certificate for third country imports in the form published by the Welsh Ministers or the Secretary of State.

These amendments are needed to ensure alignment with changes being made to the OCR by the UK Government on a GB-wide basis. These proposed changes will in effect delay the introduction of documentary and physical checks at designated BCPs.

6. Consultation

UK Government consulted on 17 September 2021, seeking the views of stakeholders on the delay to the implementation of the phased imports regime in relation to The Official Controls (Extension of Transitional Periods) (England and Wales) (Amendment) Regulations 2021. The consultation asked whether stakeholders agreed with the delay, or whether they felt that the original planned timeline, with the introduction of full SPS controls, should come into effect as planned from 01 October 2021.

There was limited response to this consultation; however, from ongoing conversations in Wales, we are aware that industry stakeholders would prefer GB controls on imports from the EU are introduced sooner rather than later, as they generally feel it is unfair that exports from GB have faced such controls by the EU since January 2021. The wider stakeholder responses highlighted the need for clarity to be provided by government, on future border arrangements both on imports and exports, but showed that there is broad and general consensus that the changes being delivered with this SI to the controls timeline

are necessary for effective sector readiness, and failure to implement these changes by the end of September as delivered by this instrument would create requirements which neither importers could meet nor competent authorities could deliver.

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. Welsh Government consider this is an exceptional and urgent situation. The amendments need to be in place by 30 September 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. No impact, or no significant impact, on the private, voluntary or public sector is foreseen, with these regulations affording traders and agencies additional time to prepare for a new regime during a period of recovery from the impacts of Covid, these regulations forming an essential piece of implementing this delay.

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 Standing Order 27.1A	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. 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 Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) 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.”

2. 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 Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) 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 the new imports regime following the UK’s withdrawal from the EU during the COVID-19 pandemic and recovery period.”

3. Equalities

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

“The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) Regulations 2021 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.”

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 Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) 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.”

4. 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.

5. Urgency

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

“In my opinion, by reason of urgency, it is necessary to make the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) (No. 3) Regulations 2021, without a draft of the Regulations being laid before, and approved by a resolution of the Senedd”.

This is because the Welsh Ministers have concluded that the ‘urgent made affirmative’ procedure provided for in the European Union (Withdrawal) Act 2018 is needed to ensure that this instrument comes into force before 01 October 2021. If not, from 01 October 2021 importers will have to comply with specific new control measures when importing 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.”