

Explanatory Memorandum to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2021 and the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) 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) Regulations 2021 and the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) Regulations 2021

In relation to the Trade in Animals and Related Products (Wales) (Amendment) (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 Environment, Energy and Rural Affairs

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Part 1

1. Description

This Explanatory Memorandum relates to the Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) Regulations 2021 (“TARP Instrument”), and the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) (Amendment) Regulations 2021 (“Meat Preparation Instrument”).

Both Instruments are required to ensure alignment with changes which will shortly be 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 TARP 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 TARP Instrument applies to Wales and will come into force on 31 March 2021.

The Meat Preparation Instrument will make an amendment to subordinate legislation, which applies in relation to Wales and the Welsh zone, in relation to the trade in animal products. The Meat Preparation Instrument applies to Wales and will come into force on 30 March 2021.

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

The TARP Instrument

The TARP 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 TARP 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 TARP 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.

The Meat Preparation Instrument

The Meat Preparation Instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 11A(1) of Schedule 2 to the Trade in Animals and Related Products (Wales) Regulations 2011 (S.I. 2011/2379) (W. 252). Paragraph 11A of Schedule 2 is inserted by the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) (Amendment) (EU Exit) Regulations 2020.

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Meat Preparation Instrument will come into force less than 21 days after the instrument has been laid.

This legislation is necessary to align with the revised EU-GB import controls timetable accounted by the UK Government on 11 March 2021. The introduction of health certification and pre-notification requirements will not be enforced on Products of Animal Origin until 1 October 2021. Without this legislation it would be illegal for traders to import chilled meat preparations from the EEA, the Faroe Islands, Greenland or Switzerland from 1 April 2021. The Meat Preparation Instrument is necessary to prevent disruption to businesses and to provide legal clarity to traders as of 1 April 2021.

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 TARP Instrument

The TARP 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.

In relation to the TARP Instrument, and in accordance with the requirements of the Withdrawal Act the Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

The Meat Preparation Instrument

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 address this, Welsh Ministers introduced the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/1 (W. 1)) (“Meat Regulations 2021”) to permit the import of certain prohibited Products of Animal Origin affected by P&R from the EU to GB from 1 January to 31 March 2021. This effectively suspended a ban on the import of chilled meat preparations from the EEA, the Faroe Islands, Greenland or Switzerland.

The Meat Regulations 2021 temporarily removed the prohibition on importing chilled meat preparations from those countries into Wales between 1 January and 31 March 2021. This was to ensure continuity after the transition period with the EU came to an end. It enabled existing import rules to apply to chilled meat preparations until 31 March 2021 in accordance with the UK Government’s previously announced ‘phased approach’ to import controls.

The Meat Preparation Instrument will extend that temporary suspension of P&R on chilled meat preparations from EEA member States, the Faroe Islands, Greenland and Switzerland until 30 September 2021. This will bring P&R application in line with the revised timetable for the phased introduction of

import controls on goods arriving from those countries. 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 April 2021. This could adversely affect select businesses and the end consumer in Wales as the availability of certain products could be limited.

The temporary removal of P&R on POAO 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 public health concerns over these products. This position is not expected to change on 1 April 2021.

4. Purpose and intended effect of the legislation

The TARP Instrument

The TARP instrument will delay the introduction of the pre-notification requirements for relevant goods consisting of products of animal origin from 1 April 2021 to 31 July 2021.

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.

This supports the revised timetable that delays the introduction of documentary and physical checks at designated BCPs. These checks will be introduced in a phased approach, from 1 Oct 2021 to 1 January 2022 and beyond.

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.

The Meat Preparation Instrument

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.

The Meat Preparation Instrument makes an amendment to the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021 (S.I. 2021/1 (W. 1)) (“Meat Regulations 2021”). The Meat

Preparation Instrument extends the temporary removal of the requirement for meat preparations imported from the EEA, the Faroe Islands, Greenland or Switzerland into Wales to be deep frozen, from 31 March until 30 September 2021. The continued temporary removal of this requirement is intended to bring policy in line with the revised timetable for the phased introduction of import controls on goods arriving from these countries. This will provide a consistent approach towards imports and prevent disruption to businesses. This approach presents a low biosecurity risk as the UK currently imports these goods from these countries.

5. What the instruments do

The TARP Instrument

The TARP Instrument amends the 1 April 2021 date in paragraphs 5(3) and 6(1)(c) of Schedule 5 to the 2011 Regulations, and substitutes it for 31 July 2021. 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)).

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 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 shortly 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.

The Meat Preparation Instrument

The Meat Preparation Instrument amends the Meat Preparations (Amendment and Transitory Modification) (Wales) (EU Exit) Regulations 2021 to extend the temporary suspension of the requirement for meat preparations imported into Wales from establishments situated in the EEA member States, the Faroe Islands, Greenland or Switzerland to be deep frozen, by changing the date of 31 March 2021, and extending it to 30 September 2021. This aligns with the approach being taken by Defra and Scottish Government, ensuring consistency.

6. Consultation

Given the urgent nature of these changes, 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.

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 30 and 31 March 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, which is set to change in October 2021.

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 CLA Committee (as sifting committee)
Appropriate-ness	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 Environment, Energy and Rural Affairs 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) 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 Environment, Energy and Rural Affairs 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) 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.”

3. Equalities

The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) 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 Environment, Energy and Rural Affairs 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) 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. Criminal offences

Not applicable/required.

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

The Minister for Environment, Energy and Rural Affairs, 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 Trade in Animals and Related Products (Wales) (Amendment) (EU Exit) 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 1 April 2021. If not, from 1 April 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.”