

SL(6)292 – The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022

Background and Purpose

These Regulations address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The Regulations do this by modifying retained EU law and amending the Trade in Animals and Related Products (Wales) Regulations 2011 (“TARP Wales”) and the Animal Health (Miscellaneous Fees) (Wales) Regulations 2018 (“the 2018 Regulations”). The Regulations also amend TARP Wales to extend an exemption from the requirement for certain animals to undergo official controls.

TARP Wales requires consignments of animals or animal products that are being imported into, or transiting through, Wales to comply with the animal and public health requirements of EU Directives, Regulations and Decisions set out in Schedule 1 to those Regulations.

The 2018 Regulations set out fees payable to the Welsh Ministers for approvals and inspections in the field of animal health.

Procedure

Affirmative.

The Welsh Ministers have laid a draft of the Regulations before the Senedd. The Welsh Ministers cannot make the Regulations unless the Senedd approves the draft Regulations.

Technical Scrutiny

The following 27 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 8 provides for further interpretation of certain words and expressions for the purpose of both Part 5 of the Regulations and in the EU Directives that are modified by Part 5. In the case of the EU Directives, the modifications made in Part 5 do not appear to signpost the reader of those Directives to these Regulations to enable them to understand the meaning of the words and expressions that are being inserted into the Directives. These



issues could cause problems with the accessibility of the Regulations and the Directives that they modify.

The Welsh Government is asked to explain how readers of the EU Directives are supposed to know to refer to these Regulations when reading the Directives.

2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulations 5(1) and 8(2) include reference to “the appropriate authority”. The Regulations do not contain a definition of “the appropriate authority” for the purpose of these Regulations.

3. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 8(2) provides for further interpretation of certain words and expressions used in the Regulations. It provides a meaning for “third country” as “any country or territory outside the British Islands”. A footnote is then included which states that “British Islands” has the meaning given in Schedule 1 to the Interpretation Act 1978. As “British Islands” is used in the operative text of the Regulations, its meaning should also be set out in the operative text, not in a footnote.

4. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 8(2) includes the definition “the TARP (ALF) (Wales) (EU Exit) Regulations 2022” means these Regulations”. In accordance with regulation 8(1), this definition is to be read into the EU Directives that are modified by Part 5 of the Regulations. However, when read as part of those Directives, the words “these Regulations” will have no meaning. We consider that the definition should read “the TARP (ALF) (Wales) (EU Exit) Regulations 2022” means the Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022” and should then include an appropriate footnote providing the citation.

5. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulations 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 modify the wording of various Directives and include reference to “the appropriate authority”. The modified Directives do not have a definition of the phrase “appropriate authority” and the Regulations do not provide for such a definition either.

6. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 11(9)(b) modifies the wording of Directive 89/556 to lay down a new procedure for authorised flushing and washing fluids, washing techniques and, where necessary,



enzymatic treatments together with authorised transportation media. The modified wording means that an appropriate authority may now draw up a protocol, in accordance with a procedure set out by that appropriate authority in regulations. The Welsh Government is asked to confirm why the modified wording gives the appropriate authority a discretion to draw up a protocol when the original wording of the Directive required a protocol to be drawn up. Clarification is also sought as to whether the same appropriate authority will make regulations to set out the process for itself to draw up a protocol.

7. Standing Order 21.2 (vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 3(3), in the Welsh text, the amendment is defective as it does not repeat the words “os yw’r” (“if the”) at the beginning of the new sub-paragraph (a) in regulation 15(3) of the Trade in Animals and Related Products (Wales) Regulations 2011. Instead it has simply said “bod y” (“that the”), but it is necessary to repeat “os yw’r” for the amendment to fit into the existing structure of regulation 15(3).

In this regard, the Welsh translation appears to have been based on the text of the original regulation 15(3) found in the 2011 Regulations rather than the amended regulation 15(3) as substituted by SI 2020/44 (W. 5), reg. 23(13), which has resulted in the error.

8. Standing Order 21.2 (vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 4(2)(a)(viii), the English text refers to “Annexes 1 and 3” but the Welsh text has translated the meaning as “Annexes 1 to 3”.

9. Standing Order 21.2 (vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 5(3), the English text refers to “the legislative competence of Senedd Cymru” but the Welsh text has translated “legislative” as “devolved” so that it reads “the devolved competence of Senedd Cymru” (i.e., it repeats the earlier reference to “devolved competence”).

10. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 13(3)(b)(iii) removes the reference to “dealer” and “approved dealer’s premises” from Article 2 of Directive 91/68, but retains the terms in other places within the Directive.

The Welsh Government is asked to provide an explanation for the approach taken, given that these defined terms are still in use in the Directive.

11. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.



In regulation 14(19)(c)(i)(bb), in the new text for the second indent, point (iii), there is a reference to “Directive 92/65/~~EEC~~”. This Directive has been defined as “Directive 92/65” in regulation 2(2) without the “EEC”. Therefore, it does not appear to use the correct defined term.

12. Standing Order 21.2 (vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 14(9)(a)(i), there’s a difference between the English and Welsh language texts. In the English text, there’s a reference to “Directive 2009/158” in the new text, but the Welsh text refers to “Directive 1/158”. The reference in the English text appears to be correct.

13. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 16(1)(a) removes the reference to “distribution” from Article 1 of Directive 2002/99, but retains that term in other places within the Directive, including the definition of “all stages of the production, processing and distribution” contained in point 1 of Article 2 of that Directive. It is not clear whether the modifications have been made to distinguish between two scenarios – on one hand “production, processing and distribution”, as defined, and on the other “production and processing”.

The Welsh Government is asked to provide an explanation for the approach taken.

14. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 16(3)(b)(iii) omits the definition of “products of animal origin” from Article 2 of Directive 2002/99, but that term is retained elsewhere in that Directive. Although that term is defined in other legislation, the modifications made to Directive 2002/99 do not appear to signpost the reader of the legislation where a definition of “products of animal origin” can be found to enable them to understand the meaning of those words. These issues could cause problems with the accessibility of the Regulations.

The Welsh Government is asked to explain how readers of Directive 2002/99 would be able to find a definition of “products of animal origin”.

15. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 16(6)(a)(i)(bb) removes “suspected of being infected,” from Article 4 of Directive 2002/99. This appears to mean that it is no longer possible to authorise production, processing and distribution of products of animal origin which come from a territory or part of a territory subject to animal health restrictions but which do not come from a holding which is suspected of being infected (i.e. only if not coming from a holding which is infected). Such a change, which narrows the scope of a potential authorisation, appears to be more than a technical amendment.



The Welsh Government is asked to explain why the words “suspected of being infected” have been omitted from Article 4 of Directive 2002/99.

16. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

The Regulations modify some, but not all, provisions of Directives. For example, there is no modification of Articles 5, 6 and 10 of Directive 2002/99 (Veterinary certificates; Official veterinary controls; and Community inspections and audits). It is presumed that these Articles are not modified as they will not apply in Wales. However, there is no express reference of this being the case. These issues could cause problems with the accessibility of the Directives.

The Welsh Government is asked to explain how readers of the EU Directives will know which provisions contained in those Directives apply in Wales.

17. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 16(6)(c), in the English text, there is a paragraph which is incorrectly numbered (iii) with the opening words “in the second subparagraph”. This should be numbered paragraph (ii) as already found in the Welsh text.

18. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 16(9)(c)(ii), there is a difference between the Welsh and English texts. In the Welsh text, the words within the quotation marks identified for substitution do not include the definite article “the” before “Community legislation”. This will make a difference as to how the text will read following the modification.

19. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 17(8)(e)(ii) removes the requirement to provide “a specimen veterinary certificate established in accordance with the procedure referred to in Article 14(2)” from Article 7(e) of Directive 2004/68. Whilst other procedures referred to in Article 14(2) have been replaced with provisions that may be set out by the appropriate authority by regulations, there is no similar replacement in relation to specimen veterinary certificates. Such a change, which removes requirements in place in relation to imports of live ungulates, appears to be more than a technical amendment.

The Welsh Government is asked to explain why the requirement to provide “a specimen veterinary certificate” has been omitted from Directive 2002/99.

20. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.



Regulations 18(5)(e) and 19(13)(a) modify Article 4(6) of Directive 2009/156 and Article 16(1) of Directive 2009/158 respectively, to grant regulation making powers to the appropriate authority. The first point under Article 4(6) refers to “the distribution of the disease on its territory” and the first point under Article 16(1) refers to “the distribution of the disease in its territory”. These references appear to be no longer relevant in relation to Wales.

The Welsh Government is asked to explain why the reference to “territory” remains in Article 4(6)(a) of Directive 2009/156 and Article 16(1)(a) of Directive 2009/158.

21. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 19 modifies Directive 2009/158. That Directive contains references to “competent veterinary authority” throughout, including in Article 2(11), which is amended by regulation 19(3)(b). It is not clear whether that definition is still relevant following the UK’s exit from the European Union, and there is no definition of “competent veterinary authority” in the Directive and no signpost to where such a definition can be found. These issues could cause problems with the accessibility of Directive 2009/158.

The Welsh Government is asked to explain whether the definition of “competent veterinary authority” remains relevant and if so how readers of Directive 2009/158 would be able to find a definition for the term.

22. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 19(19)(b), there is a difference between the English and Welsh texts. The English text correctly identifies the text to be modified by the substitution as including a reference to “Article 33(2)” but the Welsh text incorrectly refers to “Article 33(33)”.

23. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In regulation 19(21)(a)(iii), there is a difference between the English and Welsh texts. The English text incorrectly identifies the text to be modified by the substitution as saying “languages or the Member State”. The Welsh text correctly says “languages of the Member State”.

24. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

There is a difference between the English and Welsh texts at the beginning of Part 6. The English text has a Part heading saying “Amendment of the Animal Health (Miscellaneous Fees) (Wales) Regulations 2018”. There is no heading for Part 6 of the Welsh text and it is completely missing from the translation.

25. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.



The Schedule lists the provisions of the Directives that contain functions conferred on the Welsh Ministers as appropriate authority, together with any other provisions that are either relevant or connected to the exercise of a listed function. It is not clear why the provisions of the Schedule have been drafted in the way they have. To assist with the accessibility of the legislation, an explanation of the approach taken in relation to the following provisions would be helpful:

- Reference to the third subparagraph of Article 9(2) of Directive 88/407 in paragraph 2(b).
- Reference to Article 8(a) and not Article 8(b) of Directive 92/65 in paragraph 6(e).
- Reference to the second subparagraph of Article 4(3) of Directive 2002/99 in paragraphs 8(c) and (d).
- Reference only to the second to fourth subparagraphs of Article 8(1) of Directive 2002/99, but not the fifth to tenth subparagraphs.
- Reference to individual subparagraphs in some cases, but not all, for example Articles 19(a) and 19(b) of Directive 92/65 in paragraphs 6(s) and 6(t); Articles 6(1), 6(2) and 6(3) of Directive 2004/68 in paragraph 9(e); the first and second subparagraphs of Article 4(6) of Directive 2009/156 in paragraph 10(c) and (d); and Articles 19(a), 19(b), 19(c) and 19(d) of Directive 2009/156 in paragraphs 10(q) to (t).
- No reference to Article 5(5)(a) of Directive 2009/156, in contrast to the reference to Article 5(5)(c) of that Directive.

26. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts.

In the Schedule, there are a few differences between the English and Welsh texts. In both paragraph 1(e) and (f), "Section" has been incorrectly translated as "Rhan" which means "Part" in Welsh SIs. Elsewhere, "Adran" has been correctly used as the translation for "Section" throughout the Regulations.

27. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

In the Schedule, in paragraph 3(g)(i), the drafting of the provision appears to be defective as points (h), (m) and (n) are all found in point 1. Therefore the reference to point "1" should be inserted in the opening words of sub-paragraph (g), so that it applies to paragraphs (i), (ii) and (iii).

Merits Scrutiny

The following 7 points are identified for reporting under Standing Order 21.3 in respect of this instrument.



28. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

Regulation 3(6) amends regulation 38 of the Trade in Animals and Related Products (Wales) Regulations 2011 (“the 2011 Regulations”). Regulation 38 of the 2011 Regulations currently provides that local authorities and port health authorities must charge a reasonable fee in relation to any official control activity in accordance with the charging provisions contained in Chapter 6, Title 2 of the EU Official Controls Regulation, and that such fee is payable by the operator responsible for the consignment or its representative. The amendment that regulation 3(6) of these Regulations makes to regulation 38 of the 2011 Regulations extends to the Welsh Ministers the duty to charge the fees referred to in regulation 38.

29. 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 Senedd

These Regulations give the Welsh Ministers powers that are equivalent to powers given to UK Ministers in the Trade in Animals and Related Products (Amendment and Legislative Functions) Regulations 2022 (“the UK Regulations”).

The powers given to UK Ministers in the UK Regulations include powers to act in devolved areas in Wales. Therefore, there are concurrent powers in this area of law, i.e. there are powers that can be exercised in Wales by either:

- a) the Welsh Ministers under these Regulations, or
- b) UK Ministers under the UK Regulations (but only with the consent of the Welsh Ministers).

In a [letter](#) to the Legislation, Justice and Constitution Committee dated 21 October, Lesley Griffiths MS, Minister for Rural Affairs and North Wales, and Trefnydd said that the Welsh Ministers would consent to UK Ministers using their powers under the UK Regulations in devolved areas only in “exceptional circumstances”.

Also, as regards the use of the powers by the Welsh Ministers under these Regulations, we note the important context provided by the Common Framework on Animal Health and Welfare and its requirements for cross-government engagement.

30. 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 Senedd.

Regulation 6 states that regulations made by the Welsh Ministers under any of the functions mentioned in the Schedule are to be made using the negative scrutiny procedure. Regulation 6(3) states that such regulations can amend, repeal or revoke any enactment, which means that the regulation making powers are Henry VIII powers. The Welsh Government is asked to confirm why the negative procedure is appropriate for these regulation making powers. The



Welsh Government is also asked to confirm whether regulation 6 changes the current procedure that is applied to these regulation making powers.

31. 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 Senedd.

The Regulations provide the Welsh Ministers with regulation making powers under several Directives to replace procedures which were previously included under those Directives. It is unclear what the intentions and the timescales are for the use of these additional powers. Specifically, what are the reasons for adding additional regulation making powers into the Directives?

32. 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 Senedd.

In addition to the specific points made above, these Regulations do not provide a reader with a straightforward route to understanding what the law is in this area. A number of pieces of legislation are being amended in a piecemeal fashion by these Regulations. It is very difficult to ascertain the legislative position generally, and to find the information needed to understand the requirements in this area.

In particular, the approach found in regulations 2 and 8 in relation to interpretation provisions appear to mark a novel departure from the approach usually found in Welsh statutory instruments.

All of the regulations in Part 5 relating to Directives include provisions that modify the existing interpretation provisions already found in those Directives (by modifying the existing definitions or introducing new definitions). From a practical point of view, it means that readers of those EU Directives on legislation.gov.uk, Westlaw and LexisNexis should be alerted to the existence of those modifications. However, the other definitions for those EU Directives found in regulations 2 and 8 will not be included in the textual comments for the EU Directives on those online resources which means that readers will not necessarily be aware of their existence. Therefore, it could be argued that it undermines the accessibility of Welsh Law (see section 1 of the Legislation (Wales) Act 2019). The Welsh Government is asked to explain why it took the approach of including definitions in regulations 2 and 8 rather than including them in the regulations that modify the interpretation provisions in each Directive.

Similarly, in regulation 8(2), the terms “national reference laboratory” and “official laboratory” are defined but are not used in these Regulations or in the modifications to the EU Directives found in Part 5. This approach could potentially confuse or mislead readers of these Regulations. The defined terms are used in the existing text of some of the Directives listed in Part 5, even if they are not used in the modifications found in these Regulations. The Welsh Government is therefore asked to explain why it did not modify the interpretation provisions found in those Directives for the purposes of accessibility



33. 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 Senedd.

Limited consultation has taken place in relation to these Regulations. The Explanatory Memorandum explains that:

No consultation requirement arises from the use of the [European Union] Withdrawal Act [2018], and there are no policy changes therefore we do not expect this instrument to have an impact on stakeholders. Conditions for importation of animal or animal products or approval of establishments for example are not being affected by these modifications. This instrument does not introduce any new duties or obligations to users or enforcement agencies. These modifications will allow the existing rules to continue to apply in Wales following our departure from the EU.

There is a consultation requirement for changes by virtue of regulation 3(8) which amends Schedule 3, paragraph (8) of TARP Wales. Consultation was led by the UK Government on a GB-wide basis in 2021 and the responses were very favourable.

The preamble to the Regulations state that:

...the Welsh Ministers have consulted such bodies and persons as appear to the Welsh Ministers to be representative of the interests likely to be substantially affected by these Regulations and such other bodies or persons as the Welsh Ministers consider appropriate.

This appears to be inconsistent with the final paragraph of the quote from the Explanatory Memorandum above, which states that the consultation was led by the UK Government. Clarification is therefore requested from the Welsh Government as to how the consultation took place.

34. 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 Senedd.

Over 70 typographical errors and errors in the footnotes to these Regulations have been found, which have been notified separately to Welsh Government officials. The Committee notes that footnotes do not form part of the Regulations themselves, but they are a useful tool for readers of legislation only insofar as they are accurate and the Committee therefore encourages the Welsh Government to ensure that this is the case.

Welsh Government response

A Welsh Government response is required to the technical reporting points and the merits points except for point 28 and 34.

Committee Consideration

The Committee considered the instrument at its meeting on 12 December 2022 and reports to the Senedd in line with the reporting points above.

