

## **Explanatory Memorandum to the Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022**

This Explanatory Memorandum has been prepared by the Office of the Chief Veterinary Officer within the Department for Climate Change and Rural Affairs 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 Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022.

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  
22 November 2022

# Part 1

## 1. Description

This Explanatory Memorandum relates to The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 (“the Instrument”).

The Instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The Instrument does this by 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”). It also amends the 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.

The Instrument applies to Wales and will come into force on 16 December 2022.

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

The Instrument is being made using powers contained in paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 and Articles 48(b) and 144(6) of Regulation (EU) 2017/625.

The Instrument is subject to the approval of the Senedd by the affirmative resolution procedure. The Ministerial statement in Part 2 of the Annex sets out the justifications required when using enabling powers under the Withdrawal Act.

## 3. Legislative background

The Withdrawal Act converted and preserved EU law at the end of the Transition Period into domestic law (“retained EU law”). At that time, the importation of animals and animal products was governed at an EU level by a set of 12 EU Directives, Regulations and Decisions listed in Schedule 1 of TARP Wales.

Consignments of animals and animal products entering Great Britain through a border control post and destined for Wales, or transiting through Wales, were required to comply with the legislation listed in Schedule 1 of TARP Wales. This instrument preserves and maintains that policy and legislative regime.

The Exemptions from Official Controls at Border Control Posts (Amendment) Regulations 2021 (“the 2021 Regulations”) exempted from official controls at Border Control Posts (“BCPs”) certain categories of animals. TARP Wales had not yet been amended to align with the 2021 Regulations. In addition, the 2021 regulations require minor fixes as certain animals should not have been exempted for official controls at BCPs, and certain taxonomy references should have been clearer. The amendment in Schedule 3, paragraph (8) of TARP Wales resolves those issues.

This instrument also makes a series of corrective amendments to both TARP Wales and the 2018 Regulations intended to fix errors or omissions from previous legislative changes.

#### **4. Purpose and intended effect of the legislation**

Modifications to EU Directives are being made to ensure clear operability now following our departure from the EU. The Directives are part of the framework under which our domestic and retained EU legislation were made so therefore these modifications are technical fixes to assist with the interpretation and application of domestic and retained EU legislation.

The Directives being modified by the Instrument provided for the animal and public health requirements for the importation into, and movements between EU Member States of live animals, products of animal origin including germplasm (semen, ova and embryos). The modifications ensure that the Directives, which contain detailed rules for imports of animals and animal products, have a legal basis in Wales by enshrining them on to our statute book.

The Directives also provided appropriate powers for the European Commission to make and implement changes to legislation for the importation and intra-European movements of live animals and animal products, and the modifications being made by the Instrument give the appropriate authority the relevant powers to make and implement changes to legislation for imports into Wales of animals and animal products.

The modifications contained in this instrument will provide for the continuation of the existing legal framework within Wales and Great Britain for the importation of

live animals and animal products. Imported goods will continue to be required to meet the specific import conditions laid down in the relevant domestic and retained EU legislation, including their compliance with the relevant import requirements such as the correct health certification, testing, quarantine and conditions for transport.

These changes are important to ensure as little disruption to imports when the transitional staging period (TSP) ends, and the new import controls apply fully to EU imports once phasing in of import checks is complete in line with the UK Government's Future Borders Target Operating Model.

TARP Wales is being updated to become aligned with the 2021 Regulations, which apply across GB and extended the exemptions of categories of animals from undergoing official controls at border control posts, including animals used for scientific purposes. The purpose of those exemptions is to reduce the risk of animal rights activism targeting BCPs undertaking those controls, which can instead be conducted at licensed premises of destination. At the same time, minor fixes are being made to remove the exemption from BCP checks for zebra fish, which had been included in error, and to clarify certain taxonomical references in the 2021 Regulations.

Further amendments are made to TARP Wales to correct errors made by previous EU Exit legislation. These are minor and technical in nature and include reinstating the Welsh Ministers' ability to detain certain products at BCPs, and/or prohibit further importation from regions suspected of containing zoonotic diseases. The Instrument also reinstates the Welsh Ministers alongside the previous addition of Enforcement Agencies as the bodies able to charge a reasonable fee in relation to official control activities.

The Instrument also updates the 2018 Regulations so that it correctly refers to third countries as any country or territory other than the British Isles.

## **5. What the instrument does**

TARP Wales requires consignments of animals or animal products that are being imported into, or transiting through, Wales to comply with animal and public health requirements of EU Directives, Regulations and Decisions that are currently set out in Schedule 1 to those Regulations. The purpose of this Instrument is to ensure a continuing fit for purpose import system by amending TARP Wales to fix deficiencies in those Regulations arising from the withdrawal of the UK from the EU. The instrument also makes a small number of further amendments.

The Instrument:

- modifies references made in the Trade in Animals and Related Products (Wales) Regulations 2011 (“TARP Wales”) to animal and public health requirements found in a list of EU Directives, originally set out in Schedule 1 to those instruments but now set out in an updated list in regulation 4(2)(a) of these Regulations,
- transfers functions, including legislative powers, in those EU Directives from EU bodies to the Welsh Ministers as appropriate authority (set out in regulation 5), and it makes the necessary amendments to TARP Wales to implement those changes,
- further amends the TARP Wales to extend an exemption from the requirement for certain animals to undergo official controls,
- corrects minor errors made in previous amendments made under the European Union (Withdrawal) Act 2018.

Part 2 of the Instrument amends TARP Wales to implement the changes made by these Regulations, to correct minor errors made in previous amendments made under the European Union (Withdrawal) Act 2018 (regulation 3(5) & (6)) and amends Schedule 3 in relation to the scope of exemptions from official controls at border control posts for animals intended for scientific purposes (regulation 3(8)).

Part 3 of the Instrument replaces Schedule 1 to TARP Wales with a new and updated list of legislation in regulation 4 particularly in relation to the EU Directives where the Articles and Annexes of each Directive that provide for animal or public health requirements are identified (see regulation 4(2)(a)). The provisions of the EU Directives listed in regulation 4(2)(a) are then modified in Part 5. No modifications have been made to the instruments listed in regulation 4(2)(b) as those instruments are either retained direct EU law, which have been amended separately in other projects, or in the case of the Aquatic Animal Health (England and Wales) Regulations 2009, updated domestic legislation that (amongst other things) replaces the EU Directive that preceded it (i.e. Directive 2006/88/EC which was originally listed in Schedule 1).

Part 4 of the Instrument provides for the list of functions in the Schedule, together with any other provisions of the EU Directives that need to be retained because they are either relevant to the exercise of the specified function and are to be read with that function or are connected to that function. All the listed functions and supporting provisions in the Schedule are modified in Part 5. The functions conferred by the EU Directives are made exercisable in the relevant jurisdiction by the regulation 5(2). The functions are to be treated as if they are conferred by these Regulations.

Part 5 of the Instrument makes modifications necessary to the animal and public health requirements, the transferred functions and their supporting provisions in each EU Directive in order to ensure that the legislative regime for the importation of animals and animal products is up-to-date, clear, enforceable and easy to use. The modifications are made to fix deficiencies, restate the law in a clearer or more accessible way and include, where necessary, consequential or incidental amendments.

Part 6 amends the 2018 Regulations 2018 to correct a minor error made in a previous amendment made under the European Union (Withdrawal) Act 2018.

## **6. Consultation**

No consultation requirement arises from the use of the Withdrawal Act, 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.

## **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 consider this is part of the transition following the departure from the European Union into the UK's long-term border controls and 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  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:

“The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 do no more than is appropriate. This is the case because all the changes being made are solely in order to address existing deficiencies or correct previous errors made by legislation 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 (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022, and I have concluded they are a reasonable course of action. The modifications will ensure that official controls on imports of live animals and animal products are effective by safeguarding animal and public health in Great Britain. They are not making any changes to policy but rather maintaining, harmonising and fully enshrining the rules that were in place as of exit day”

#### **3. Equalities**

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

“The Trade in Animals and Related Products (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 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 (Amendment and Legislative Functions) and Animal Health (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022, 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**

Not applicable.