

SL(5)695 – The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020

Background and Purpose

The Official Feed and Food Controls (Miscellaneous Amendments) (Wales) Regulations 2020 ("the Regulations") amend:

- the Food Hygiene (Wales) Regulations 2006,
- the Official Feed and Food Controls (Wales) Regulations 2009, and
- the Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016.

The Regulations are made by the Welsh Ministers in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 ("the ECA 1972"). The Welsh Ministers are designated in relation to:

- measures relating to feed produced for or fed to food-producing animals (see European Communities (Designation) (No. 2) Order 2005/1971).
- measures in the veterinary and phytosanitary fields for the protection of public health (see European Communities (Designation) (No. 2) Order 2008/1792); and
- measures in relation to the common agricultural policy of the European Union (see the European Communities (Designation) (No. 5) Order 2010/2690).

The Regulations allow for the further implementation and enforcement of EU Implementing and Delegated Regulations ("EU tertiary legislation") that are made under Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law ("the OCR").

Implementation and enforcement of the OCR and such EU tertiary legislation as had been published in the Official Journal of the European Union by November 2019 was enabled by way of the Official Feed and Food Controls (Wales) (Miscellaneous Amendments) Regulations 2019 ("The 2019 Regulations"). The amendments made by the 2019 Regulations also covered a package of EU tertiary legislation (Implementing and Delegated Regulations), made under the OCR. It was noted at the time that additional EU tertiary legislation was being prepared by the EU would not be published in time for provisions giving effect to that legislation to be included in the 2019 Regulations if those Regulations were to come into force by the 14 December 2019 deadline - the date the OCR took effect.

The Regulations captures that additional EU tertiary legislation within the lists of legislation set out in the Food Hygiene (Wales) Regulations 2006 and the Official Feed and Food Controls (Wales) Regulations 2009, and make limited consequential changes. This tertiary legislation sets out the detailed rules for applying the OCR in specific areas, such as the



frequency and methods of applying physical checks to consignments of food or feed at ports and some of the rules for further action required on completion of these checks.

In addition to the tertiary legislation, some limited errors/omissions have been identified in the amendments made by the 2019 Regulations that require correction. These required corrections are necessary to ensure that the OCR is properly implemented in relation to Wales and the Regulations will amend the necessary instruments to provide for enforcement of the tertiary legislation and fix these errors and omissions in the 2019 Regulations.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

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

References to specific regulations in this point are to the Welsh text of the regulations.

The reference in regulation 2(2)(a)(ii) to text that is to be omitted from regulation 2 of the Food Hygiene (Wales) Regulations 2006 ("the 2006 Regulations") does not seem to be correct. We cannot see a definition that begins "*ystyr "Cyfarwyddeb 2004/41"*" in regulation 2 of the 2006 Regulations. We believe regulation 2(2)(a)(ii) should refer to the definition that begins "*mae i "Cyfarwyddeb 2004/41"*" (emphasis added).

Similarly, the reference in regulation 3(2)(a)(i) does not seem to be correct. We cannot see a definition that begins "*ystyr "Penderfyniad 2007/275"*" in regulation 2 of the Official Feed and Food Controls (Wales) Regulations 2009. We believe regulation 3(2)(a)(i) should refer to the definition that begins "*mae i "Cyfarwyddeb 2004/41"*" (emphasis added).

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

In the English text of the Regulations, in the table inserted by Schedule 5 (replacing Schedule 6 to the Official Feed and Food Controls (Wales) Regulations 2009), the paragraph in the subject matter column for "Article 6(4) of Regulation 2019/2123" does not specify that the operator is the operator "responsible for the consignments", as is the case in the Welsh text and in other entries in the table.



Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Welsh Government response

A Welsh Government response is required.

Committee Consideration

The Committee considered the instrument at its meeting on 18 January 2021 and reports to the Senedd in line with the reporting points above.

