

The Products of Animal Origin (Third Country Imports) (Wales) Regulations 2005

The purpose of these Regulations, which are intended to come into force on 31st January 2005, is to consolidate various Regulations dealing with the import of products of animal origin from certain third countries. The Regulations implement various European Directives and Regulations requiring specified products to be examined at border inspection posts and also requiring that products that are refused entry be redispached or disposed of in the manner specified. The Regulations also require that unused catering supplies from means of transport operating internationally be disposed of and the means by which such disposal shall be effected.

The Regulations also implement for Wales European Directive 97/78/EC which lays down the principles governing the organisation of veterinary checks on products of animal origin being meat, fish (including shellfish), milk and products made from these together with egg products and various animal by-products.

The Regulations also make provisions for their enforcement and establish offences of non-compliance and obstruction of enforcement officers.

Legislation in this area was last consolidated in The Products of Animal Origin (Third Country Imports) (Wales) Regulations 2004 made on the 25th May 2004

Standing Order 11.7

The following points have been identified for reporting under SO 11.7.

These Regulations reflect changes incorporated in England by the Products of Animal Origin (Third Country Imports) (England) Regulations 2004. Whilst consolidation is generally a desirable way of proceeding with legislation, so that all the relevant legislation is contained in a single instrument, the preparation of such legislation can be a protracted process, particularly in a bilingual format. The result is that changes made in two subsequent sets of Regulations in England are not incorporated in this draft.

Changes to European legislation make it virtually impossible to keep up to date legislation such as this, with its numerous cross-references to European legislation. Nevertheless, there are particular problems with these draft Regulations that need to be addressed.

Part II of Schedule 3 to these Regulations deals with consignments from specified third countries. Included in that Part II is a reference to the Czech Republic, which ceased to be a "third country" when it became a member of the European Union on the 1st May 2004. An appropriate form of words for this Part can be seen in the Products of Animal Origin (Third Country Imports) (England) (No.3) Regulations 2004. [Standing Order 11.7(v)]

In the Schedules, a small number of the substantive items relate to Commission Decisions that are no longer in force (for example items 2,3 and 4 in Part IV of Schedule 1). Purporting to enforce legislation no longer in force is considered an unusual or unexpected use of the power. [Standing Order 11.7(i)]

Some of these have been replaced by new pieces of Community legislation, which should therefore be included.

The following further matters also require correction.

In the English text of regulation 1, the Regulations are said to apply “in relation to Wales”. The Welsh text says that they apply “i Gymru” (to Wales). Given that these Regulations deal with products crossing borders, the distinction is significant, and the Welsh text should be changed. “mewn perthynas â Chymru” is the form of words used in the preceding paragraph for “in relation to”; “o ran Cymru” would be appropriate alternative in both cases. [Standing Order 11.7(vi)]

In the English text of the definition of Directive 92/118/EEC, there is a reference to Directive 89/662/EEC. The corresponding Welsh text contains a reference to Directive 90/662/EEC. This is a discrepancy between the two languages that needs to be corrected. [Standing Order 11.7(vi)]

In paragraph (d) of the English definition of “fishery products”, there is a reference to “health conditions”. In the corresponding Welsh text, there is a need for “amodau” to be inserted before “iechyd”. “Amodau is again missing (before “mewnforio”) in the definition of “cynnyrch nad yw’n cydymffurfio” (“*non-conforming product*”) and (before “ynglyn”) in the definition of “amodau mewnforio” (“*import conditions*”). In regulation 19(3) and again in regulation 21(4) “amodau” is also missing after “o dan yr”. [Standing Order 11.7(v)]

In the definition of “product”, there is reference to a “any product of animal origin”. In view of the title of these Regulations, it was considered that the Welsh equivalent should refer to “unrhyw gynnyrch sy’n tarddu o anifeiliaid” rather than “unrhyw gynnyrch sy’n dod o anifeiliaid”. However, it is understood that a terminological decision has been taken to use “dod o” in the current context, reserving “tarddu” for places. In that case this should be done in relation to the title of these Regulations and any other appropriate places in these Regulations. [Standing Order 11.7(v)]

Regulation 9 provides that “An official veterinary surgeon, official fish inspector or authorised officer may, amongst other things, (a) require any person appearing to the official veterinary surgeon to have charge of a product...(c) make and retain such copies as the official veterinary surgeon may think fit...”. Regulation 14 provides that “In Parts 3 to 9 and Part 13, where a fishery product is concerned, the expression “official veterinary surgeon” shall be construed as indicating an official fish inspector as defined in regulation 2(1).” This provision does not apply to regulation 9, but the provisions of that section suggest that it should apply. Similar apparent inconsistencies between the powers of the three officials and just the official veterinary surgeon appear in regulation 8. Unless it was intended that regulation 14 should apply to regulations 8 and 9 (in which case that should be explicitly stated) it is considered that the exercise of the powers in regulation 9 (and to a lesser extent regulation 8) require further explanation as to how a power accorded to three officials can, in part, only be exercised by one of them. [Standing Order 11.7(iv)]

In the Welsh text of regulation 23(3) there is no expression to correspond to “from that establishment” in the English text. Without them, “the next ten consignments” becomes a much more difficult concept to understand. [Standing Order 11.7(v) and (vi)]

In the Welsh text of regulation 23(6), the direction to the official veterinary surgeon is missing. The word “shall” regularly causes difficulty in translation, but in this case the corresponding term “rhaid” is missing altogether and should be inserted before “i’r milfeddyg swyddogol”. [Standing Order 11.7(v) and (vi)]

At the end of regulation 26(1), the English text refers to “the next ten consignments introduced into the United Kingdom from that third country, part of a third country or establishment...”. The Welsh text refers to “y deg llwyth nesaf a gyflwynwyd i'r Deyrnas Unedig o'r drydedd wlad honno, o ran o drydedd wlad neu o sefydliad...”. This appears to miss the point that the “that” in the English text applies to the part of a third country and to the establishment as well as to the third country. The correct Welsh expression would be “y deg llwyth nesaf a gyflwynwyd i'r Deyrnas Unedig o'r drydedd wlad honno, o'r ran honno o drydedd wlad neu o'r sefydliad hwnnw...”. [Standing Order 11.7(vi)]

In the Welsh text of regulation 28(1) there is no expression to correspond to “on demand” in the English. It should either be removed from the English or an insertion made in the Welsh text. [Standing Order 11.7(vi)]

In the Welsh text of regulation 30(1) the words “os wedi'i fodloni” before sub-paragraph (a) should be removed as they repeat unnecessarily an expression that appears at the start of that paragraph. [Standing Order 11.7(v)]

In the English text of regulation 30(4), the National Assembly for Wales is referred to as “she”, which should be replaced by it. The Welsh is correct. [Standing Order 11.7(v)]

In the Welsh text of regulation 32(3) and(4) there is a reference to paragraph “32”. This should refer to paragraph “(1)”. [Standing Order 11.7(v)]

In the Welsh text of regulation 34, the cross-reference to regulation 18 should refer to 18(1). [Standing Order 11.7(v) and (vi)]

The Welsh text of regulation 37(3) contains the expression “a ddyroddwyd mewn perthynas â'r cynnyrch” which does not have a corresponding expression in the English text. It should be removed from the Welsh or an addition made to the English. [Standing Order 11.7(vi)]

In the Welsh text of regulation 50, two provisions of regulation 6 have been referred to, but without a space or a conjunction between them, causing ambiguity. They are separated by “or” in the English text, and therefore “neu” should be inserted into the Welsh. [Standing Order 11.7(v) and (vi)]

In the Schedule, there are numerous references to “the Act of Accession”. This is referred to variously in the Welsh text as “y Ddeddf Ymaelodi” and “y Ddeddf Ymuno”. Whilst either could be considered correct, a consistent version should have been adopted to avoid confusion that different acts might be being referred to. The use of Gweithred or Act in place of Deddf would also assist in avoiding the impression that this is an Act of Parliament. [Standing Order 11.7(v)]

The Welsh text of paragraph 15 of Part III of Schedule 1 refers to “Penderfyniad y Cyngor” (Council Decision). The Community instrument in question was in fact a Directive, and the text should therefore read “Cyfarwyddeb y Cyngor”. [Standing Order 11.7(v) and (vi)]

In the English text of paragraph 7 of Part VIII of Schedule 1, there is a reference to Commission Decision 2004/144/EC. The corresponding Welsh text contains a reference to Commission Decision 2004/114/EC. This is a discrepancy between the two languages that needs to be corrected. [Standing Order 11.7(vi)]

This is a large number of reporting points under Standing Order 11.7. Each of them, taken on its own, might have been regarded as minor drafting or typographical error appropriate for correction by a Memorandum of Corrections under Standing Order 24.13. However, having regard to the number of corrections required, and to the significant number of additional changes proposed below, it is considered that the draft should be withdrawn and corrected before proceeding.

Observations

Regulation 2(3) provides that any reference to a Community instrument is a reference to that instrument as amended on the date on which these Regulations are made. There also appear a host of references in Schedule 1 to when such Community instruments were last amended. A large number of those are no longer correct, and it could be expected that only amendments up to that last listed in the Regulations are included in the provisions being enforced. That would be contrary to the specific declaration in regulation 2(3), so that the incorrect references in Schedule 1 are, to say the least, misleading. Whilst the rapid flow of Community legislation makes it impossible to keep these references totally up to date, the number of incorrect references is such that they should be corrected before the legislation is made.

The Welsh text of the index at the beginning of the Regulations includes a paragraph by paragraph list of the contents in a way that is not replicated in the English text. The numbering in the Welsh index is also incorrect as there are two additional items shown at the beginning of the list. The index does not form an operative part of the Regulations, so that minor corrections could be made on printing. However, the inclusion of two pages of additional material in one language makes it desirable that the matter be rectified before the Regulations are made.

There are also a number of points relating to the Explanatory Note or footnotes, or relating to formatting, that have been notified to the drafting lawyer for correction.

Dai Lloyd AM

Temporary Chair, Legislation Committee

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