

Explanatory Memorandum to the Rural Affairs and Environment (Miscellaneous Amendments) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Environment Energy and Rural Affairs and is laid before the National Assembly for Wales in conjunction 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 Rural Affairs and Environment (Miscellaneous Amendments) (Wales) Regulations 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

30 October 2019

EXPLANATORY MEMORANDUM TO THE RURAL AFFAIRS AND ENVIRONMENT (MISCELLANEOUS AMENDMENTS) (WALES) REGULATIONS 2019

1. Description

These Regulations amend the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (the “2009 Regulations”). They introduce a requirement for enforcing authorities in Wales to report each confirmed case of environmental damage to the Welsh Ministers.

These Regulations also amend the Poultrymeat (Wales) Regulations 2011 (the “2011 Regulations”) and the Eggs and Chicks (Wales) Regulations 2010 (the “2010 Regulations”). They adjust references to Regulation 1308/2013 and Regulation 1234/2007 to ensure the enforcement provisions for these marketing standards are up to date.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

The Rural Affairs and Environment (Miscellaneous Amendments) (Wales) Regulations 2019 are made under section 2(2) of the European Communities Act 1972. The 1972 Act provides that either negative or affirmative resolution procedure may be used and therefore a decision as to which procedure is appropriate must be made according to the particular circumstances of the individual piece of legislation.

These Regulations are being made under the negative resolution procedure on the basis that they are not controversial or novel, do not amend primary legislation, do not impose or increase a financial burden, and do not include consideration of any matters of public policy such as the creation of a new criminal offence.

3. Legislative background

The Welsh Ministers have the required powers to make these Regulations under section 2(2) of and paragraph 1A to Schedule 2 to the European Communities Act 1972.

The Welsh Ministers are designated to exercise those powers in relation to the common agricultural policy of the European Union, and the prevention and remedy of environmental damage.

These Regulations are made using the negative procedure and amend the 2009, 2010 and 2011 Regulations.

Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

The 2009 Regulations transposed the Environmental Liability Directive (the “Directive”) in Wales. The environment and waste are devolved matters and each part of the UK has transposed the Directive via its own transposing legislation. The Directive established a

framework based on the “polluter pays principle” to prevent and remedy “environmental damage”.

Article 18 of the Directive required Member States to report to the EU Commission on their experiences gained in the application of the Directive by 30 April 2013. The report was required to include the information specified in Annex VI to the Directive. The UK has complied with its Article 18 obligations.

The EU Commission has developed a multi-annual work programme for the years 2017 to 2020 (“Making the Environmental Liability Directive More Fit For Purpose”), based on the action plan set out in its Article 18 report (COM(2016)204 final). The EU Commission identified the need to improve the evidence base for the evaluation of the Directive as the first of its three priority areas for the work programme.

Article 18 of, and Annex VI to, the Directive were amended by Article 3 of Regulation (EU) 2019/1010 of the European Parliament and of the Council on the alignment of reporting obligations in the field of legislation related to the environment.

Article 18 of the Directive, as amended, requires the EU Commission to collect certain information from Member States on their experiences gained in the application of the Directive. The information which the EU Commission must collect is set out in Annex VI to the Directive, as amended, and includes the type of environmental damage, the date of the occurrence or discovery of the damage, and a description of the activity causing the damage.

The EU Commission must collect the relevant information by 30 April 2022, and every five years thereafter. The EU Commission must carry out an evaluation of the Directive and publish it before 30 April 2023, and every five years thereafter.

Regulation 17 of the 2009 Regulations requires an enforcing authority, where damage has been caused and there are reasonable grounds for believing that it is, or may be environmental damage, to establish whether or not it is environmental damage. Once the enforcing authority has established that the damage is, in fact, environmental damage, regulation 18 requires the enforcing authority to notify the responsible operator.

Regulation 2 of these Regulations inserts a new regulation 18A into the 2009 Regulations. This requires enforcing authorities to notify the Welsh Ministers, as soon as reasonably practicable after serving notification on a responsible operator under regulation 18, of the relevant environmental damage. This new requirement applies only where the notification to the responsible operator has been served after regulation 18A has come into force. It does not require enforcing authorities to notify the Welsh Ministers of environmental damage covered by notifications served before the entry into force of these Regulations. The notification provided to the Welsh Ministers under the new regulation must include the type of environmental damage, the date on which the environmental damage occurred or was discovered, the activity which caused the environmental damage, and such other information as the Welsh Ministers may reasonably request.

Eggs and Chicks (Wales) Regulations 2010 and Poultrymeat (Wales) Regulations 2011

The Eggs and Chicks (Wales) Regulations 2010 make provision for the enforcement and execution of directly applicable EU marketing standards relating to eggs for hatching and farmyard poultry chicks, and directly applicable EU marketing standards relating to eggs in shell for consumption. They also make new provision for the enforcement of directly applicable EU controls for Salmonella serotypes with public health significance in relation to the marketing and use of eggs in shell for human consumption.

The Poultrymeat (Wales) Regulations 2011 make provision for the enforcement and execution of directly applicable EU marketing standards relating to poultrymeat. These Regulations make the failure to comply with the provisions of Commission Regulation (EC) No 543/2008 (provisions relating to the marketing of poultrymeat) an offence, and make provision in relation to the registration of slaughterhouses and producers as required by Article 12 of Commission Regulation (EC) No 543/2008 an offence. The regulations also provide for appeals against a decision to refuse such a registration and a decision to cancel such a registration.

Both the 2010 and 2011 Regulations refer to Article 74 of Regulation (EU) No. 1308/2013 establishing a common organisation of the markets in agricultural products as the provision under which marketing standards for poultrymeat, eggs and chicks are made.

Article 74 provides that the “products for which marketing standards by sectors or products have been laid down in accordance with this Section may be marketed in the Union only if they conform to those standards.” These marketing standards, may by virtue of Article 75(1) apply to eggs and poultrymeat.

Article 75(2) gives the power to the European Commission to adopt delegated acts to set marketing standards for these products. However, to date, the European Commission has not utilised this power to set any marketing standards.

The marketing standards for eggs and poultrymeat were made under Article 116 and Annex XIV of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products. By virtue of Article 230(1)(c) of Regulation 1308/2013, the marketing standards made for poultrymeat, eggs and chicks under Article 116 continue to have effect until new rules are made under Article 75(2).

The amendments to the 2010 and 2011 Regulations will replace references to Article 74 of Regulation 1308/2013 with the relevant provisions of Regulation 1234/2007 which continue to have effect. This will ensure that the 2010 Regulations and 2011 Regulations are up to date and accurate in relation to the current marketing standards.

4. Purpose and intended effect of the legislation

Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

The new Article 18 obligation, which entered into force on 26 June 2019, is placed on the EU Commission, but Member States will need to supply the Annex VI information to the EU Commission. The UK therefore needs to begin gathering data on confirmed cases of environmental damage as soon as possible.

In Wales, the 2009 Regulations already place a duty on enforcing authorities to assess damage, identify and notify the responsible operator, and require proposals for remediation of the damage. Depending on the type and location of the damage, the enforcing authorities for Wales include the Natural Resources Body for Wales and the relevant local authority. The Welsh Ministers are the enforcing authority if the damage is to marine waters, or damage to protected species or natural habitats or a Site of Special Scientific Interest (SSSI) where an activity has not been authorised by the Natural Resources Body for Wales. In carrying out their existing duties under the 2009 Regulations, enforcing authorities will already collect the information specified in the new regulation 18A of the 2019 Regulations.

In order to comply with the requirements of the amended Directive, all enforcing authorities must be required to report established cases of environmental damage promptly and consistently to the Welsh Ministers. A mandatory requirement, to report each time an enforcing authority establishes a new case of environmental damage (confirmed by the service of a notification on the responsible operator), will ensure that comprehensive data is obtained.

These Regulations place no additional duties on the enforcing authority beyond reporting the specified information to the Welsh Ministers, and then only where it has first established that environmental damage has been caused.

Enforcing authorities are not required to report on any further developments in the case, such as a successful appeal. In practice, the Welsh Government will, however, liaise closely with enforcing authorities in relation to cases of environmental damage.

Eggs and Chicks (Wales) Regulations 2010 and Poultrymeat (Wales) Regulations 2011

The technical changes made by these Regulations are necessary to ensure the effective and correct functioning of the statute book. Although these changes are made in readiness for our withdrawal from the EU, these changes are not directly related to Brexit, meaning that they do not amend EU Exit deficiencies.

The amendments only amend references to European legislation relating to marketing standards, in order to provide for enforcement of the current EU marketing standards.

The amendments make a technical correction to references and do not make any change to policy. As such, these amendments make no change in the level of protection the Wales

domestic legislation provides to human health, or to the high standards of food and feed (including the provision of food information and labelling). There will also be no implications to business or industry from these changes.

5. Consultation

Eggs and Chicks (Wales) Regulations 2010 and Poultrymeat (Wales) Regulations 2011

These Regulations will amend references to EU legislation within domestic food legislation. Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council, laying down the general principles and requirements of food law, requires that there should be open and transparent public consultation directly or through representative bodies during the preparation evaluation and revision of food law, except where the urgency of the matter does not allow it.

In relation to these regulations, a two-week targeted consultation exercise was conducted between 08 October and 23 October 2019. During the exercise stakeholder organisations and experts were directly contacted. No concerns were raised by any of the stakeholder organisations and individuals regarding the proposed amendments during the consultation period.

In relation to the changes to the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 there has been no public consultation, as these Regulations introduce no changes in policy or impact on business or the public that would make consultation appropriate.

6. Guidance

Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

Guidance is already available at:

<https://gweddill.gov.wales/topics/environmentcountryside/epq/environmental-damage-regulations/?lang=en>.

The Welsh Government will consider making appropriate amendments to this guidance to reflect these Regulations. The Welsh Government will consider in particular providing guidance on (i) how the Welsh Ministers will use any information provided under the new requirement in the context of any appeals overseen by the Welsh Ministers; and (ii) how the Welsh Government will liaise with enforcing authorities when they make notifications under the new requirement.

7. Regulatory Impact Assessment (RIA)

An Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntarily or public sector is foreseen.

8. Regulating small business

The legislation applies to activities that are undertaken by small businesses. No specific action is proposed to mitigate regulatory burdens on small businesses, because these Regulations do not alter them.