

SL(5)285 – The Carcase Classification and Price Reporting (Wales) Regulations 2018

Background and Purpose

The European Commission conducted a formal review of existing EU rules which mandate the categorisation and classification of animals presented for slaughter against common European standards in order to make it more transparent.

As a result, they brought into force Commission Delegated Regulation 2017/1182 and Commission Implementing Regulation 2017/1184 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals.

The previous classification and enforcement regime was contained in the Beef and Pig Carcase Classification (Wales) Regulations 2011. Those Regulations are being revoked and replaced to align with the changes to the EU regime.

Procedure

Negative.

Technical Scrutiny

Two 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

Under regulation 19(b), authorised officers can, when exercising powers of entry:

- have access to computers,
- inspect computers, and
- check the operation of computers,

at the premises being inspected, where the computers are used in connection with records that are required to be kept under the Regulations.

It is unclear to us what is meant by “check the operation” of a computer. We ask the Welsh Government to explain the meaning of “check the operation” of a computer by: (a) providing examples of what it includes, and (b) explaining what can be achieved by checking the operation of a computer that cannot be achieved by having access to the computer and inspecting the computer.

We consider it essential that powers of entry are drafted without unnecessary or unclear provisions, especially when the powers of entry could be exercised in respect of a person’s home.



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

The Regulations say that the Welsh Ministers may grant licences to carry out classification of bovine carcasses. Under regulation 8, a licence may be granted for **visual classification**. Under regulation 9, a licence may be granted for using **automated grading equipment for classification**. It appears to us that regulations 8 and 9 relate to two distinct methods of classifying bovine carcasses.

Regulation 29(1) says it is an offence if a “classification” is carried out without a licence granted under regulation 8.

Regulation 29(2) says it is an offence if “classification...is carried out...by means of automated grading equipment” without a licence granted under regulation 9.

It seems, therefore, that regulation 29(1) is intended to deal with visual classification and regulation 29(2) is intended to deal with classification by automated grading equipment. However, while regulation 29(2) is expressly confined to classification by automated equipment, regulation 29(1) seems, on the face of it, to apply to **all** classifications.

We ask the Welsh Government whether regulation 29(1) should refer to “visual classification”. Regulation 29 creates criminal offences, therefore absolute clarity about the breadth of the criminal offence is required.

Merits Scrutiny

Two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

1. 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 Assembly

Under regulation 10, the Welsh Ministers can appoint a person to consider appeals against decisions of the Welsh Ministers. For example, if the Welsh Ministers refuse a licence to X under regulation 8 because the Welsh Ministers think that X is not fit and proper to have a licence, X can appeal to the person appointed by the Welsh Ministers.

We note there is no reference in the Regulations or the Explanatory Memorandum to the independence of the person considering such appeals. Issues such as being refused a licence or having a licence revoked are serious matters affecting the livelihoods of people. There should be a fair and independent mechanism for appealing decisions made by the Welsh Ministers in relation to licences.

We note that the Rural Payments Agency is responsible for enforcing the Regulations, but we assume that considering appeals against decisions of the Welsh Ministers does not amount to enforcement.

We would welcome clarification from the Welsh Government as to the procedure that applies to appeals under regulation 10 of these Regulations.



2. Standing Order 21.3(iv) - that it inappropriately implements European Union legislation

The updated regime contained in these Regulations should have been implemented by Member States by 11 July 2018. We note the deadline has been missed and we welcome the transparency of the Welsh Government in stating this in the Explanatory Memorandum.

However, the Explanatory Memorandum appears to say that, in complying with the current regime, the industry has in fact already been complying with this new, updated regime. While that appears to be the case for almost all of the requirements of the new regime, it is unclear whether the industry is already complying with the new requirement to include the "U4 deadweight category" in bovine classifications.

We ask the Welsh Government to confirm whether existing suppliers have complied with this new U4 deadweight category requirement under the current regime?

Implications arising from exiting the European Union

These Regulations form part of "EU-derived domestic legislation" under section 2 of the European Union (Withdrawal) Act 2018, therefore these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day.

Government Response

Technical Point 1

The wording in Regulation 19(b) reflects identical provisions in the predecessor Regulations, namely the Beef and Pig Carcase Classification (Wales) Regulations 2011 (S.I. 2011/1826) (W.198). The wording in Regulation 19(b) also broadly mirrors a significant number of other legislative provisions to be found in Assembly and UK Acts and statutory instruments made by the Welsh Ministers, the Secretary of State and the Scottish Ministers and which create powers of entry to inspect records processed and held electronically.

The provision, as drafted, ensures all aspects of considering the computer/machinery in question is covered under the regulation.

The provision provides inspectors with the powers to be able to gain access to the computer, to be able to inspect any records contained on it and check the operation of the computer. If an Inspector suspected that the computer was not being used correctly (for example, duplicate and differing records being stored or information being recorded was incorrect or the Inspector suspected a fraud) or that software was faulty, the Inspector's powers would be adequate to check how the computer was operating. For example, it is occasionally found that when checking price reporting information, the file that sends data to AHDB has become corrupted leading to incorrect data being sent

Technical Point 2

Regulation 29(1) provides that if classification of a bovine carcase is carried out at an approved slaughterhouse without a licence granted under Regulation 8, or in breach of that licence, the person who carries out the classification and the operator of that slaughterhouse are each guilty of an offence.

Regulation 8 expressly provides that a licence is granted for "visual classification". Therefore, it is clear that the offence in 29(1) relates to visual classification only and not all classifications.



Merit Point 1

There have been no appeals to the Welsh Ministers in respect of the granting of classification licences under this, or its predecessor provision. The appeal mechanism is an administrative process rather than a judicial process.

Applications for classification licences under these Regulations are processed on behalf of the Welsh Ministers by the Rural Payment Agency (RPA). The RPA has a reciprocal agreement with Scottish Inspectors that any appeal against the granting of a classifier licence in England or Wales by an RPA Inspector could be considered by Scottish Inspectors as an appointed person. Welsh Ministers support the view of the RPA that the appointed person to whom an appeal must be made must have knowledge of how to classify carcasses and Inspectors have this knowledge. To get an independent view the RPA devised the reciprocal agreement between Scotland and the RPA (acting on behalf of England and Wales). Therefore, Welsh Ministers envisage that, should an appeal need to be made, a Scottish Inspector would act as 'appointed person' under regulation 10.

Merit Point 2

Welsh Government can confirm the industry was already compliant with the new requirement to include "U4 deadweight category" in bovine classifications prior to the implementation of these Regulations.

Committee Consideration

The Committee considered the instrument along with the Government response at its meeting on 10 December 2018 and reports to the Assembly in line with the reporting points identified. The Committee also agreed to write to the Cabinet Secretary for Energy, Planning and Rural Affairs about this issues raised.

