

# SL(5)476 – The Meat (Official Control Charges) (Wales) (Amendment) (EU Exit) Regulations 2019

## Background and Purpose

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The Meat (Official Controls Charges) (Wales) (Amendment) Regulation 2019 (“Regulations”) amend the Meat (Official Control Charges) (Wales) Regulations 2009 (“2009 Regulations”), to partially implement EU regulations on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products. Similar regulations are being made in all other administrations of the UK.

The Regulations maintain the requirement upon the Food Standards Agency (“FSA”) to charge operators of approved meat premises in Wales, in order to recover a percentage of the costs incurred by the FSA in carrying out official controls at such premises to check for compliance with applicable meat hygiene and animal welfare and slaughter requirements. No changes to the charges themselves are made by the Regulations.

These Regulations are being made using powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

## Procedure

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Negative.

## Technical Scrutiny

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No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

## Merits Scrutiny

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Three 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**

1.1 We note the breach of the 21-day rule (i.e. the rule that 21 days should pass between the date subordinate legislation is laid before the Assembly and the date the subordinate legislation comes into force), and the explanation for the breach provided by Rebecca Evans AM, Minister for Finance and Trefnydd, in a [letter to the Llywydd dated 28 November 2019](#).

In particular, we note what the letter says about these Regulations being “critical to maintaining official controls and enforcement” and that if these Regulations do not come into force on 14 December 2019, this would leave Wales “without a legal framework to enforce official controls and therefore puts public health at risk (as well as animal health and welfare), undermines business and consumer confidence and risks market access to the EU. Without the [Regulations] coming into force on 14 December, the [Food Standards Agency] and other enforcement authorities in Wales will not have the legislative powers to enforce food and feed safety laws.”



1.2 The Welsh Ministers had a choice of which procedure to apply to these Regulations under section 2(2) of, and paragraph 2 of Schedule 2 to, the European Communities Act 1972. The choice of procedure appears to be appropriate.

1.3 These Regulations amend regulation 2 of the 2009 Regulations as follows:

- regulation 3(c)(ii) removes paragraph (b) from the definition of “cutting plant”, which gives an additional definition of a cutting plant for the purpose of the 2009 Regulations, stating that it is a cutting plant which (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed cutting premises under the Fresh Meat (Hygiene and Inspection) Regulations 1995 or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995;
- regulation 3(e)(ii) removes paragraph (b) from the definition of “game-handling establishment”, which gives an additional definition of a game-handling establishment for the purpose of the 2009 Regulations, stating that it is a game-handling establishment which (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed wild game processing facility under the Wild Game Meat (Hygiene and Inspection) Regulations 1995; and
- regulation 3(i)(ii) removes paragraph (b) from the definition of “slaughterhouse”, which gives an additional definition of a slaughterhouse for the purpose of the 2009 Regulations, stating that it is a slaughterhouse which (although lacking the approval or conditional approval that it requires under Article 4.3 of Regulation 853/2004) was, on 31 December 2005, operating as a licensed slaughterhouse under the Fresh Meat (Hygiene and Inspection) Regulations 1995 or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995.

The effect of the provisions listed above could be that some plants/establishments/ slaughterhouses which were previously authorised for the purposes of the 2009 Regulations may no longer be authorised. The Explanatory Memorandum does not give any information as to whether, and if so how, this will affect the plants/establishments/slaughterhouses which are authorised under the 2009 Regulations. It may be the case that these categories of authorisation are no longer relevant as Regulation 854/2004 has been superseded and the Wild Game Meat (Hygiene and Inspection) Regulations 1995 have been repealed, but further information is required from the Welsh Government to confirm what the effect of provisions listed above will be.

## Implications arising from exiting the European Union

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We note that the drafting of these Regulations was delayed as a result of uncertainty around the status of the United Kingdom being a member state of the European Union.

## Government Response

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In the final paragraph of point 3, it states:

“The effect of the provisions listed above could be that some plants/establishments/ slaughterhouses which were previously authorised for the purposes of the 2009 Regulations may no longer be authorised.”



This statement is not correct. The Principal Regulations do not provide for the authorisation of the establishments in question. They provide for the implementation of aspects of Regulation (EC) No. 882/2004 (articles 26 and 27), in relation to the recovery of fees relating to costs arising from official controls performed at relevant establishments. The actual authorisation of such establishments is dealt with elsewhere in the EU regime.

The Principal Regulations provide for the implementation of articles 26 and 27 of Regulation (EC) No. 882/2004, in relation to the recovery of fees relating to costs arising from official controls performed at relevant establishments. That EU Regulation forms part of a wider regime made up of a package of EU Regulations that principally came into effect in January 2006 (some aspects applied from later dates).

That package of EU Regulations (which includes Regulations (EC) 852/2004, 853/2004, 854/2004 and 882/2004) makes provision in relation to, inter alia, official controls at establishments that, at the time, were regulated under the following statutory instruments:

- The Fresh Meat (Hygiene and Inspection) Regulations 1995;
- The Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995; and
- The Wild Game Meat (Hygiene and Inspection) Regulations 1995.

These three statutory instruments were, in relation to Wales, revoked in their entirety as of 1 January 2006, by regulation 33 of, and Schedule 7 to, the Food Hygiene (Wales) Regulations 2005/3292 – as part of the implementation of the package of EU Regulations mentioned above. The 2005 Regulations was subsequently revoked and replaced by Food Hygiene (Wales) Regulations 2006/31.

Approval of the relevant establishments remains governed by the EU Regime (see also the Food Hygiene (Wales) Regulations 2006), not by the Principal Regulations, which deal only with recovery of costs of official controls. It was considered necessary, when making the Principal Regulations to include provision that ensured that costs of official controls could be recovered from all relevant establishments notwithstanding the transition from the previous to the current regimes. That transitional provision is now being removed as it is redundant. There are no longer establishments in Wales that require the continued inclusion of that transitional provision.

## Committee Consideration

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The Committee considered the instrument and Government response at its meeting on 6 January 2020 and reports to the Assembly in line with the reporting points above.

