

SL(6)341 – The Food Additives, Food Flavourings, and Novel Foods (Authorisations) and Food and Feed (Miscellaneous Amendments) (Wales) Regulations 2023

Background and Purpose

These Regulations make provision, in relation to Wales, on regulated food product authorisations. They also make minor corrections to food law and animal feed law.

- Part 2 of these Regulations provides for the authorisation, in relation to Wales, of the placing on the market and use of the food additive E 960c (*rebaudioside M produced via enzyme modification of steviol glycosides from Stevia*), the renaming of an existing authorisation for food additive E 960 (*steviol glycosides*) to E 960a (*steviol glycosides from Stevia*), associated transitional provisions and makes minor corrections.
- Part 3 of these Regulations provides for the authorisation, in relation to Wales, of the placing on the market and use of the food flavouring "3-(1-((3,5-dimethylisoxazol-4-yl)methyl)-1H-pyrazol-4-yl)-1-(3-hydroxybenzyl)imidazolidine-2,4-dione".
- Part 4 of these Regulations extends an existing authorisation for the novel food "UV-treated baker's yeast (*Saccharomyces cerevisiae*)" to additional specified food categories and authorises a new vitamin D₂ mushroom powder as a novel food for use in specified food categories.
- Part 5 of these Regulations contains minor corrections to various Welsh subordinate instruments on food law and animal feed law.

Part 5 of these Regulations came into force on 14 April 2023. Parts 2, 3 and 4 come into force on 15 May 2023.

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 5 points are identified for reporting under Standing Order 21.2 in respect of this instrument.



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Welsh Parliament
Legislation, Justice and Constitution Committee

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

Regulation 2 and paragraph 4(h) of Schedule 1 substitute E-numbers “E 960a and E 960c” in category 05.1 in the table appearing in Part E of Annex 2 to Regulation (EC) No 1333/2008. This authorises the use of those E-numbers as food additives in certain cocoa and chocolate products.

However the provision also inserts a reference to footnote “(1)” in connection with the authorisation, which is not a reference to a footnote appearing within category 05.1 in the table. Information relating to the authorisation therefore appears to be missing.

2. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 2 and paragraph 4(i)(ii) of Schedule 1 substitute E-numbers “E 960a and E 960c” in category 05.2 (other confectionery including breath freshening microsweets) of the table in Part E of Annex 2 to Regulation (EC) No 1333/2008. The substituted entry includes a restriction on the authorisation which reads “only cocoa, milk, dried-fruit-**based [emphasis added]** or fat-based sandwich spreads,...”.

This wording appears to authorise the use of the above E-numbers for two specific types of sandwich spread (namely, dried-fruit-based sandwich spreads and fat-based sandwich spreads). However, it is unclear whether this is the intention of the drafting when comparing the wording of that restriction to similar existing restrictions in category 05.2 of the table, which make reference to “only cocoa, milk, dried fruit or fat-based sandwich spreads,...”.

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 2 and sub-paragraphs (o), (p) and (q) of paragraph 4 in Schedule 1 substitute authorisations for E numbers “E 960a and E 960c” in place of “E 960” for various categories of table-top sweeteners, being sweeteners in liquid form, powder form and tablets respectively. However, the substituted authorisations do not specify whether the additives may be added individually or in combination, which is contrary to other authorisations in the table in Part E of Annex 2 to Regulation (EC) No 1333/2008 which refer to E numbers collectively. It is therefore not immediately clear whether this is a deliberate omission and, if so, how the authorisation for these particular additives should be interpreted.

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

Regulation 3 and Schedule 2 amend the Annex to Commission Regulation (EU) No 231/2012 by substituting “E 960a Steviol Glycosides from Stevia” as a heading for the existing entry referring to “E 960 Steviol Glycosides”, and inserting a new entry for E 960c (“Rebaudioside M produced via enzyme modification of steviol glycosides from stevia”).



However Article 4 of Commission Regulation (EU) No 231/2012 (Entry into force) continues to make reference to a specification laid down in the Annex for “steviol glycosides (E 960)”, which no longer appears in the Annex as a result of the amendments made by these Regulations.

5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation.

Regulation 6 and Schedule 5 update the list of authorised novel foods in the Annex to Commission Implementing Regulation (EU) 2017/2470 by inserting a new entry authorising a new vitamin D₂ mushroom powder as a novel food for use in specified food categories.

The list of novel foods in the Annex consists of two tables. “Table 1” lists each authorised novel food and its associated conditions of use and other requirements (for example, various maximum permitted levels of vitamin D₂ in different food categories). “Table 2” lists each authorised novel food and its corresponding specifications.

The Annex (as amended by these Regulations) now contains entries for two types of “Vitamin D₂ mushroom powder”. While the name ascribed to these novel foods in the Annex is the same, the specifications and conditions of use for the two entries differ. Accordingly, there appears to be scope for confusion for a reader of the legislation in determining which specification for Vitamin D₂ mushroom powder in Table 2 corresponds to the relevant conditions and other requirements for use appearing in Table 1.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

6. 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 Senedd.

Part 5 of these Regulations makes correcting amendments to three Welsh statutory instruments to address technical scrutiny points 2, 3 and 5 identified in this Committee’s report on the Food and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022.

The Explanatory Memorandum to these Regulations notes (at paragraph 3) that the other two technical scrutiny points identified by the Committee in that report were addressed prior to publication of those Regulations.

Welsh Government response

A Welsh Government response to the technical scrutiny points is required.



Committee Consideration

The Committee considered the instrument at its meeting on 24 April 2023 and reports to the Senedd in line with the reporting points above.



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