

Explanatory Memorandum to Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance 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 Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019.

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the Annex to this Memorandum.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

5 March 2019

PART 1

1. Description

The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“this Instrument”) amend out of date references to European and domestic legislation in food-related Welsh statutory instruments; and correct deficiencies in those instruments which arise as a result of the UK’s exit from the European Union (“EU”). This Instrument will ensure that the statute book in Wales remains up to date and operable once the UK withdraws from the EU.

Those provisions which amend out of date references to European and domestic legislation in Welsh statutory instruments will come into force prior to the UK’s withdrawal from the EU. These changes will ensure that the statute book is up to date.

Those provisions which fix deficiencies that arise as a result of the UK’s withdrawal from the EU will come into force on ‘exit day’. ‘Exit day’ is defined in section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) as 29 March 2019 at 11.00 pm.

This Instrument amends the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009, the Eggs and Chicks (Wales) Regulations 2010, the Reporting of Prices of Milk Products (Wales) Regulations 2011, the Beef and Veal Labelling (Wales) Regulations 2011, the Poultrymeat (Wales) Regulations 2011, the School Milk (Wales) Regulations 2017 and the Carcase Classification and Price Reporting (Wales) Regulations 2018.

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

This Instrument does not amend primary legislation. The amendments in this Instrument are technical in nature and do not introduce policy changes.

The amendments include updating references to European and domestic legislation, and minor amendments to address deficiencies which arise in Welsh statutory instruments as a result of the UK’s withdrawal from the EU. The changes made by this Instrument are necessary to ensure the effective and correct functioning of the statute book following the UK’s exit from the EU.

3. Legislative background

This Instrument is being made using the powers conferred by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972 and paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act.

This Instrument is subject to the affirmative procedure in accordance with section 59(3) of the Government of Wales Act 2006, and paragraph 1(8) of Schedule 7 to the 2018 Act.

In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

The technical changes made by this Instrument are necessary to ensure the statute book in Wales is up to date, and operable following the UK's exit from the EU. The amendments include updating references to European and domestic legislation, and minor amendments to address deficiencies which arise as a result of the UK's withdrawal from the EU.

What did any relevant EU law do before exit day?

A summary of the domestic Regulations subject to amendment is set out in the following paragraphs

The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009

The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009 provide a statutory framework for the enforcement of European marketing rules in the fresh fruit and vegetable sector. This aligns with the common organisation of agricultural markets.

The Regulations designate the Welsh Ministers as the inspection body for Wales, and make a failure to comply with the marketing rules an offence.

The Eggs and Chicks (Wales) Regulations 2010

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 eggs in shell for consumption (Commission Regulation (EC) No 617/2008, and Commission Regulation (EC) No 589/2008). They also make 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 Beef and Veal Labelling (Wales) Regulations 2011

The Beef and Veal Labelling (Wales) Regulations 2011 enforce in Wales Regulation (EC) No 1760/2000 which established a system for the identification and registration of bovine animals and the labelling of beef and beef products. The Regulations also enforce provisions relating to the marketing of the meat of bovine animals age 12 months or less, and provide rules for the provision of information for un-prepacked meat of bovine animals aged 12 months or less at the point of sale.

These Regulations are enforced by the local authority, port health authority or Welsh Ministers, and breach of the regulations is an offence.

The Reporting of Prices of Milk Products (Wales) Regulations 2011

The Reporting of Prices of Milk Products (Wales) Regulations 2011 revoked and replaced the Reporting of Prices of Milk Products (Wales) Regulations 2005 which made provision in Wales for the implementation of Commission Regulation (EC) No 562/2005 laying down rules for the implementation of [Council Regulation \(EC\) No 1255/1999](#) as regards communications between the Member States and the Commission in the milk and milk products sector as amended from time to time.

The Regulations require milk processors to provide the Welsh Ministers with such information relating to the prices of certain milk products, as they may require by notice. Failure to comply with such a requirement is an offence.

The Poultrymeat (Wales) Regulations 2011

The Poultrymeat (Wales) Regulations 2011 make the failure to comply with the provisions of Commission Regulation (EC) No 543/2008 as regards to EU Marketing Standards for poultrymeat an offence and make provision in relation to the registration of slaughterhouses and producers as required by that Commission Regulation.

The School Milk (Wales) Regulations 2017

The School Milk (Wales) Regulations 2017 replaced the School Milk (Wales) Regulations 2008.

These Regulations make provision allowing the Welsh Ministers to pay national aid and to determine the type or class of educational establishment or milk products in relation to which national aid may be paid. The Regulations also provide that any national aid payment can be subject to terms and conditions, and the Welsh Ministers may withhold or recover any national payment.

The Carcase Classification and Price Reporting (Wales) Regulations 2018

The Carcase Classification and Price Reporting (Wales) Regulations 2018 revoked and replaced the Beef and Pig Carcase Classification (Wales) Regulations 2011.

These Regulations enforce Regulation (EU) No 1308/2013 of the European Parliament and of the Council which relate to European Union scales for the classification of carcasses; and Commission Delegated [Regulation \(EU\) No 2017/1182](#); and Commission Implementing [Regulation \(EU\) No 2017/1184](#) which set out further details regarding the implementation of those scales.

These Regulations relate to the carcasses of adult bovine animals (being animals aged eight months or more) and pigs. The Regulations provide for a licensing system for anybody who visually classifies bovine carcasses and for the licensing of slaughterhouses using automated grading equipment for classifying such carcasses. Breach of the licensing requirements is an offence

Why is it being changed?

After EU-Exit, without amendment certain provisions will be inoperable and, as a result, existing law will either be unclear or will not function effectively. This Instrument therefore uses powers in the 2018 Act to make predominantly technical changes to the above legislation to ensure that it remains coherent and continues to function correctly after the UK has left the EU. This will provide clarity to stakeholders.

What will it now do?

This Instrument will ensure the Welsh food-related regulations continue to be operable after the UK leaves the EU. This Instrument does not make any change to the way the Welsh food marketing regulations operate.

In relation to the changes proposed to the School Milk (Wales) Regulations, there will no longer be a distinction between 'Union aid' and national 'aid' - the Welsh Ministers will simply have the power to pay 'aid'.

5. Consultation

A public consultation was run between 11 January 2019 and 19 February 2019. The consultation was bilingual and over 90 stakeholder experts and organisations were contacted directly, in addition to the consultation paper being published on the Welsh Government website.

Seven responses were received to this consultation – no concerns were raised in relation to the proposed amendments. All responses supported the proposals to update and correct deficiencies in EU derived domestic legislation.

6. Regulatory Impact Assessment (RIA)

It was not considered necessary to carry out a regulatory impact assessment for this instrument as no impact on the business, public or voluntary sectors are foreseen. The Regulations only introduce minor technical corrections. This is in line with the Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		Authority. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

Not applicable/required.

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate”. This is the case because the Regulations largely correct technical deficiencies in the Welsh legislation that will arise on exit of the EU. The Regulations ensures that food-related Welsh statutory instruments remain up to date and continue to operate effectively in Wales once we leave the EU. This is in line with government policy.

3. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this draft instrument, and I have concluded they are a reasonable course of action”. This is because the provisions ensure that protections provided by the food-related Welsh legislation continue to be operable after the UK leaves the European Union.

4. Equalities

- 4.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

“The draft instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

- 4.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation

and any other conduct that is prohibited by or under the Equality Act 2010”.

4.3 Little or no impact on equalities is expected.

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.