

SL(5)366 – The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019

Background and Purpose

These draft Regulations are made under paragraph 1(1) of Schedule 2, and paragraph 21(b) of Schedule 7, to the European Union (Withdrawal) Act 2018. They seek to address failures of retained EU law to operate effectively, and other deficiencies, arising from the withdrawal of the United Kingdom from the European Union.

These draft Regulations amend nine pieces of subordinate legislation in the field of food and agriculture:

- General Food Regulations 2004
- The Food Hygiene (Wales) Regulations 2006
- The Fishery Products (Official Controls Charges) (Wales) Regulations 2007
- Official Feed and Food Controls (Wales) Regulations 2009
- The Materials and Articles in Contact with Food (Wales) Regulations 2012
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013
- The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015
- The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016
- The Novel Foods (Wales) Regulations 2017.

Most of the provisions make minor technical changes to ensure that the Welsh regulations, which provide for the implementation of retained EU law relating to food and feed hygiene and safety, food compositional standards and labelling and food and feed regulated products, will continue to be operable and enforceable in Wales after the UK leaves the EU.

However, the amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 also provide that from exit day, waters from the EU/EEA, like waters from other third countries, must be recognised as natural mineral water in Wales/the UK before they may be placed on the market in Wales. This is subject to a transitional provision which continues in force the existing recognition in Wales of natural mineral waters recognised before exit day in the EU/EEA until such time as the Welsh Ministers issue a notice that such recognition is to cease.

Procedure

Affirmative.



Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under 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:

- Legal Advisers welcome the clarity and detail of the Explanatory Memorandum and how much that helps the Committee to scrutinise effectively.

Implications arising from exiting the European Union

The subordinate legislation amended by these draft Regulations will constitute “retained EU law” for the purposes of the European Union (Withdrawal) Act 2018. That can have implications for Assembly competence, as the Assembly can be prevented from modifying retained EU law, by means of UK Government regulations under section 12 of the 2018 Act (often referred to as “freezing” regulations).

However, most of the substantive provision made by these draft Regulations could not be “frozen out” of Assembly competence, because the Assembly could have made the equivalent provision under pre-Brexit EU law. An exception would be the provisions in regulation 8, which provides the Welsh Ministers with a mechanism to cease recognition of natural mineral waters which obtained recognitions in other EU/EEA States before exit day. The Assembly could not have ended such recognition before Brexit, as it would have been in breach of EU law. However, it could restore that recognition in future, as to do so would have been compatible with pre-Brexit EU law – even if the UK Government made freezing regulations to that effect.

Government Response

No government response is required.

Legal Advisers

Constitutional and Legislative Affairs Committee

6 March 2019

