

Explanatory Memorandum to the Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by the Food Standards Agency 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

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

Vaughan Gething AM
Minister for Health and Social Services
01 April 2019

PART 1

1. Description

- 1.1. The Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“this Instrument”) amend the Statutory Instruments listed below relating to food compositional standards and labelling. These amendments are required to address deficiencies arising from EU Exit and ensure that the statute book remains operable following the UK’s exit from the EU.
- Food (Lot Marking) Regulations 1996
 - Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008
 - Fish Labelling (Wales) Regulations 2013
 - Food Information (Wales) Regulations 2014
 - Honey (Wales) Regulations 2015
 - Country of Origin of Certain Meats (Wales) Regulations 2015
- 1.2. The instrument comes into force on “exit day”, which section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) defines as 29 March 2019 at 11.00 pm.

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

- 2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act. Regulation 6 is being made in exercise of powers under section 16(1) of the Food Safety Act 1990.
- 2.2 As set out in the Ministerial Statement in Part 2 of the Annex to this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure.
- 2.3 The Instrument makes minor and technical changes, so it is considered appropriate to make this Instrument subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- 2.4 The Constitutional and Legislative Affairs Committee considered the Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 on 18 February 2019 and agreed that the appropriate procedure for these Regulations is the negative resolution procedure. A copy of the published report can be found at <http://senedd.assembly.wales/documents/s84645/CLA5-07-19%20-%20Paper%202.pdf>

- 2.4 Regulation 6, made in exercise of powers under the Food Safety Act 1990, amends the Honey (Wales) Regulations 2015 to make provision about the method of analysis that food authorities must use to verify compliance with those Regulations.
- 2.5 In accordance with section 48(4A) of the Food Safety Act 1990, the Welsh Ministers have had regard to relevant advice given by the Food Standards Agency before making these Regulations.

3. Legislative background

- 3.1 This instrument is being made partly using the power in Part 1 of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under paragraph 21 of Schedule 7 to the 2018 Act. In accordance with the requirements of that Act the Minister 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

What did any relevant EU law do before exit day?

The Food (Lot Markings) Regulations 1996

- 4.1 The Food (Lot Markings) Regulations 1996 implement and provide for the enforcement of Directive 2011/91/EU in relation to Wales. The Directive provides for rules governing the application of lot information on certain foods. Lot is defined as follows:

‘a batch of sales units of a foodstuff produced, manufactured or packaged under practically the same conditions’

The Fish Labelling (Wales) Regulations 2013

- 4.2 The Fish Labelling (Wales) Regulations 2013 implement the following EU Regulations in relation to Wales:
- the consumer information requirements of Chapter IV of Regulation (EU) No. 1379/2013. Regulation (EU) No. 1379/2013 provides for the common organisation of the markets in fishery and aquaculture products in the European Union (CMO). Chapter IV provides mandatory labelling information that is required to accompany fishery or aquaculture products where they are sold to the final consumer or mass caterers. This information includes; the commercial designation of the species and its scientific name, the area where the product was caught or farmed and the method of production

- the traceability requirements of Council Regulation (EC) 1224/2009. Regulation (EC) No. 1224/2009 established control systems within the European Union for ensuring compliance with the rules of the common fishery policy. The Regulations require specific information relating to traceability to be provided when fishery products are placed on the market and requires that fishery products are traceable at all stages of production, processing, distribution and retail rules governing Community control systems for ensuring compliance with the rules contained within the Common Fisheries Policy as laid down in Article 67 of Commission Implementing Regulation (EU) No. 404/2011. Article 67 provides for specific information that is required to accompany lots of fishery and aquaculture products

The Spreadable Fats (Marketing Standards) and Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008

- 4.3 So far as relevant to the proposed amendments, these Regulations provide for the execution and enforcement, in relation to Wales, of certain spreadable fats-related provisions of Regulation (EU) No. 1308/2013 establishing a common organisation of the markets in agricultural products.

Food Information (Wales) Regulations 2014

- 4.4 The Food Information (Wales) Regulations 2014 provide for the execution and enforcement of Regulation (EU) No. 1169/2011. Regulation (EU) No. 1169/2011 brought EU rules on general and nutrition labelling together into a single Regulation to simplify and consolidate existing labelling legislation and sets out the requirements for the labelling, advertising and presentation of foodstuffs.

The Honey (Wales) Regulations 2015

- 4.5 The Honey (Wales) Regulations 2015 transpose Council Directive 2001/110/EC relating to honey. The Directive lays down compositional requirements and reserved names by which honey can be called.

The Country of Origin of Certain Meats (Wales) Regulations 2015

- 4.6 The Country of Origin of Certain Meats (Wales) Regulations 2015 provide for the enforcement of Implementing Regulation (EU) No. 1337/2013, which sets out the country of origin labelling provisions of Regulation (EU) No 1169/2011 for certain meats.

Why is it being changed?

- 4.7 The minor and technical changes made by this Instrument are necessary to ensure that the domestic legislation enforcing the retained EU law continues to operate effectively.

- 4.8 The specific changes being proposed to the Regulations detailed at 1.1 above are as follows:

Food (Lot Markings) Regulations 1996

- Substitute references to the 'European Union' with 'UK' relating to the definition of the first seller of foods sold as part of a lot.

Fish Labelling (Wales) Regulations 2013

- Amend references to the 'European
- Change references to payments in Euros to an equivalent amount in pounds sterling in relation to an exemption from the fish labelling requirements provided

The Spreadable Fats (Marketing Standards) and Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008

- Amend references to the 'EU provisions'

Food Information (Wales) Regulations 2014

- Remove references to Article 17(2) and (3) of Regulation (EU) 1169/2011, which is being revoked by the Food (Amendment) (EU Exit) Regulations 2019¹.
- Remove reference to 'Member States' and '3rd countries' in a descriptor of Article 5(1) of Regulation (EU) 1337/2013, which is being revoked by the Food (Amendment) (EU Exit) Regulations 2019.

What will it now do?

- 4.9 This Instrument will ensure the Welsh regulations, which provide for the implementation of the current EU law (and, subsequently, retained EU law) relating to food compositional standards and labelling will continue to be operable and enforceable in Wales after the UK leaves the EU. The Instrument does not make any change to the way the Welsh regulations operate. The changes make only minor, technical amendments to ensure the Welsh regulations are operable after the UK leaves the EU.

5. Consultation

- 5.1 A four-week consultation was undertaken in Wales on the principle of the proposed amendments. No responses were received in relation to the

¹ SI 2019/XX.

amendments made by these Regulations and no changes have been made as a result of consultation. Parallel consultation was undertaken in England, Scotland and Northern Ireland.

6. Regulatory Impact Assessment (RIA)

- 6.1 No impact assessment has been produced in relation to these Regulations as no impact on the private, voluntary or public sectors is foreseen.
- 6.2 This legislation has no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of the Government of Wales Act 2006).

Annex 1

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 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		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 that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

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

1. Sifting statement(s)

The Minister for Health and Social Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure).”

This is the case because the changes being made are minor and technical in nature. There is no change to policy.

2. Appropriateness statement

The Minister for Health and Social Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food Standards and Labelling (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 do no more than is appropriate.”

This is the case because all the changes being made are solely in order to address inoperabilities arising from EU exit. There is no change to policy.

3. Good reasons

The Minister for Health and Social Services 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 instrument, and I have concluded they are a reasonable course of action.”

These are that failure to make this legislation would result in Welsh legislation relating to food compositional standards and labelling failing to operate effectively after the UK leave the EU.

4. Equalities

The Minister for Health and Social Services has made the following statement:

“The 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.”

The Minister for Health and Social Services has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Vaughan Gething, the Minister for Health and Social Services, 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.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and 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.