

Explanatory Memorandum to the Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by 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 and Feed Hygiene and Safety (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

5 March 2019

PART 1

1. Description

- 4.1 The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“this Instrument”) amends the Statutory Instruments listed below relating to feed and food safety and hygiene. 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.
- General Food Regulations 2004
 - Official Controls (Animals, Feed and Food) (Wales) Regulations 2007
 - Quick-frozen Foodstuffs (Wales) Regulations 2007
 - Meat (Official Controls Charges) (Wales) Regulations 2009
 - Official Feed and Food Controls (Wales) Regulations 2009
 - Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011
- 4.2 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.
- 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 and Feed Hygiene and Safety (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 on 11 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://www.assembly.wales/laid%20documents/cr-ld12150/cr-ld12150-e.pdf>

3. Legislative background

- 3.1 This Instrument is being made 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.

- 3.2 The instrument is also made under paragraph 21 of Schedule 7 to the Act 2018.
- 3.3 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?

General Food Regulations 2004

- 4.1 These Regulations provide for the enforcement of Regulation (EC) No 178/2002 in relation to Wales. The Regulations originally applied in relation to Britain but have subsequently revoked in relation to England.
- 4.2 Regulation (EC) No 178/2002, as implemented in Wales by these Regulations, establishes the responsibility of Food Business Operators (FBOs) to produce food with a high level of protection of human life and health and establish principles of traceability through the food chain. They provide the high-level principles underpinning the placing of safe food and feed on the market in the EU. They also establish and describe institutions and bureaucratic functions concerning food and feed safety.

Official Controls (Animals, Feed and Food) (Wales) Regulations 2007

Official Feed and Food Controls (Wales) Regulations 2009

- 4.3 These Regulations implement the following EU Regulations in relation to Wales.
 - Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 provides for official controls to be performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules
 - Regulation (EU) 2017/625 sets out 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
 - Regulation (EC) 854/2004 provides specific rules for the organisation of official controls on products of animal origin intended for human consumption.
- 4.4 These Regulations set out the competent authorities for the enforcement of feed and food law, the control mechanisms by which enforcement authorities may monitor the production and supply of food and feed in order to ensure a high level of protection for human life and health, as

well as the powers to deal with any non-compliance with the relevant rules.

Quick-frozen Foodstuffs (Wales) Regulations 2007

- 4.5 These Regulations implement Regulation (EC) No. 37/2005 in relation to Wales.
- 4.6 The EU Regulation, as implemented in Wales by these Regulations, provides rules for monitoring of temperature in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption.

Meat (Official Controls Charges) (Wales) Regulations 2009

- 4.7 These Regulations set out the rules and mechanisms for the collection of charges for the delivery of official controls as set out in the European Regulations on official feed and food controls (above).

Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

- 4.8 These Regulations implement Regulation (EU) No 284/2011 in relation to Wales.
- 4.9 The EU Regulation, as implemented in Wales by these Regulations, provides specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China.

Why is it being changed?

- 4.10 This Instrument will make minor and technical changes. They are necessary to ensure that the domestic EU legislation enforcing retained EU legislation continues to operate effectively.
- 4.11 The specific changes being proposed to the Regulations detailed at 1.1 above are as follows:

General Food Regulations 2004

- Defining “third country”

Official Controls (Animals, Feed and Food) (Wales) Regulations 2007

- Removing reference to information sharing with other Member States

- Removing reference to EU experts' or officials' involvement in official controls
- Correcting internal references

Quick-frozen Foodstuffs (Wales) Regulations 2007

- Removing cross-references to EU Directives where other amendments mean that it is no longer necessary to make such cross-references
- Refining references to labelling languages to make clear that the words "quick-frozen" or their equivalent in any other language (not just the languages listed in Directive 89/108) may not be displayed on a product unless certain criteria are met.

Meat (Official Controls Charges) (Wales) Regulations 2009

- Replacing reference to 'EU law' with 'retained EU law'

Official Feed and Food Controls (Wales) Regulations 2009

- Defining 'third country'
- Removing reference to information sharing with other Member States
- Removing reference to EU experts' or officials' involvement in UK controls and cross-references to Regulation 882/2004. The amendments reflect amendments made to the relevant retained direct EU law by the Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019.
- Correcting internal references
- Removing definition of, and redundant references to, 'relevant territories'

Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

- Changing references from 'EU' to 'UK'

4.12 The corrections do not make any substantive change to the way the Welsh regulations operate. This Instrument only makes minor, technical amendments to ensure the Welsh regulations are operable once the UK leaves the EU.

What will it now do?

4.13 This Instrument will ensure the Welsh regulations, which provide enforcement powers for the current EU law (and, subsequently, retained EU law) relating to food and feed safety and hygiene 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 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 committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4)	Applies to Ministers of	A statement to explain what, if

	and (5) of paragraph 28, Schedule 7	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	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. 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	A statement to explain why it is appropriate to create such a sub-delegated power.

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.
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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 and Feed Hygiene and Safety (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 and Feed Hygiene and Safety (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 and food hygiene and safety 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.