

# **The Food Information (Wales) (Amendment) (EU Exit) Regulations 2019**

## **Explanatory Memorandum**

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 Information (Wales) (Amendment) (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**

1 October 2019

## 1. Description

The Food Information (Wales) (Amendment) (EU Exit) Regulations 2019 (“this Instrument”) corrects deficiencies in a Welsh statutory instrument which arises as a result of the UK’s exit from the European Union (EU). This Instrument is part of a wider legislative programme to ensure the statute book in Wales remains up to date and operable once the UK withdraws from the EU.

The corrective provisions contained in this Instrument 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 31 October 2019 at 11.00 pm.

This Instrument amends the *Food Information (Wales) Regulations 2014*.

## 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 corrective and technical in nature and do not introduce policy changes.

The amendments seek to maintain the status quo by introducing a transitional provision to allow businesses to continue to adhere to pre-Brexit labelling requirements, while adjusting to any new post-Brexit requirements, over a reasonable and set period of time.

The relevant period of time for specified products placed on the market within the period before exit day is until existing stocks of specified products are exhausted. For specified products placed on the market within the period beginning with exit day, it will be three years beginning with the day after exit day. Wine products held by a person as at exit day may continue to be marketed until stocks are exhausted.

A draft of this Instrument is laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the 2018 Act, for approval by resolution of the National Assembly for Wales. The Welsh Government were not in a position to make the amendments contained in this instrument by the deadline for laying Brexit related Regulations by way of the Negative Procedure, hence why they are laid subject to the Affirmative Procedure.

### **3. Legislative background**

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.

This Instrument is subject to the draft affirmative procedure in accordance with paragraph 1(9) 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 corrective and technical change made by this Instrument is necessary to ensure the statute book in Wales is fully operable following from the UK's exit from the EU.

The amendments provide producers, wholesalers and retailers with a fair and reasonable opportunity to adapt to any new labelling and information requirements arising from EU exit. Consideration is also given to produce placed on the market prior to the UK's exit from the EU and the continued marketing of existing stocks.

#### **4.1 Food Information (Wales) Regulations 2014 (FIR)**

These regulations enforce, in Wales, certain provisions of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004. .

Regulation (EU) No 1169/2011 concerns the provision of food information to consumers, and includes provisions dealing with fair information practices to ensure consumers are not misled by information on food packaging. This covers information relating to country of origin or place of provenance.

#### **4.2 Why is it being changed?**

Following the UK's exit from the EU, the continued use of EU logos and the introduction of a new UK Protected Food Name / Geographical Indication Scheme (PFN/GI) will prove challenging to the Welsh food industry.

The amendments therefore seek to ensure that producers, wholesalers and retailers will have a fair and reasonable opportunity to adapt to any new labelling and information requirements arising from EU exit, while also acknowledging the presence of produce that complies with pre-exit labelling requirements.

#### **4.3 What will the amendments do?**

The amendments insert a transitional provision, which will provide that improvement notices will not be issued if a product complies with the pre-exit labelling requirements.

The relevant transition periods for different products will be: for :

- specified products placed on the market within the period before exit day, until existing stocks of specified products are exhausted;
- wine products held by a person as at exit day, until stocks are exhausted;
- specified (non-wine) products placed on the market within the period beginning with exit day, three years, beginning with the day after exit day.

#### **5. Consultation**

The amendments included in this Instrument have been subject to bilingual consultation, 'Amendments to Welsh Food Legislation', which was open from 20 May 2019 to 28 June 2019. Separately, a targeted stakeholder letter was also issued.

As a result of this consultation, over 90 stakeholder experts and organisations were contacted directly, to ensure those groups and parties most interested in these changes were targeted and fully informed.

The respondents supported the proposal to include the transitional provision in the Instrument.

## **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  |
|-----------------|--|--|---|
| Appropriateness | 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) 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            | 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.<br><br>A statement that the Minister has had due regard to the need to eliminate discrimination and |

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|-------------------|--|---|--|
|                   |  | Schedule 2  | 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.<br><br>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.   |

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|---------|--|---|-------------|
| 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. 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 Information (Wales) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate. This is the case because the Regulations address a deficiency in Welsh legislation that will arise on exit of the EU.

The Regulations ensure that the Food Information (Wales) Regulations 2014 will protect the status quo, by providing a reasonable period for the food and retail industry in Wales to adjust to any new requirements for food information to consumers, based on the condition of adhering to the pre-Brexit requirements. This is in line with government policy.”

### **2. 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 provision ensures that necessary protections are included in Welsh regulations to prevent the Welsh food and retail industry from being unduly disadvantaged by our withdrawal from the EU.”

### **3. Equalities**

#### **3.1 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.”

#### **3.2 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.

**4. Explanations**

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

**5. Criminal offences**

Not applicable/required

**6. Legislative sub-delegation**

Not applicable/required.

**7. Urgency**

Not applicable/required.