

Explanatory Memorandum to the Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Rural Development & Legislation Division within the Department for Environment, Skills and Natural Resources of the Welsh Government and is laid before Senedd Cymru 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 and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

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 MS

Minister for Environment, Energy and Rural Affairs

3 November 2020

Part 1

1.0 Description

The Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (the “instrument”) make amendments to subordinate legislation, which apply in relation to Wales in the areas of food and rural affairs, in order to address failures of retained European Union (EU) law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom (UK) from the EU, to reflect the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement (“the Protocol), and to correct transitional provision.

In particular, this instrument makes minor technical corrections required to the Eggs and Chicks (Wales) Regulations 2010, the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, the Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No 3) Regulations 2019. The instrument also revokes the Food Information (Wales) (Amendment) (EU Exit) Regulations 2019.

2.0 Matters of special interest to the Legislation, Justice and Constitution Committee

The instrument is being made by the Welsh Ministers in exercise of the powers conferred by paragraph 1(1) and 11M of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), in order to correct deficiencies in Welsh domestic regulations arising as a result of the UK’s withdrawal from the EU, to reflect the terms of the ‘UK EU Withdrawal Agreement’ (the Withdrawal Agreement), and to ensure provisions continue to operate as intended following the end of the Implementation Period.

As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum, it is proposed this instrument is subject to the negative resolution procedure. The instrument makes minor and technical amendments and should therefore be subject to annulment.

3.0 Legislative background

There is a need to amend domestic legislation derived from EU law to ensure the efficient and effective operability of the statute book following the UK’s exit from the EU.

The Withdrawal Act converts the majority of directly applicable EU law as it stands immediately before the end of the Implementation Period into domestic law and preserves laws made in the UK which implement EU

obligations. The Withdrawal Act also creates temporary powers to make secondary legislation to deal with deficiencies that would arise from the UK's withdrawal from the EU. Section 11 of and paragraph 1 of Schedule 2 to the Withdrawal Act provides the Welsh Ministers with powers to address deficiencies.

Welsh Statutory Instruments (SIs) which correct deficiencies in Welsh domestic legislation due to the UK's withdrawal from the EU and are proposed to be made under the negative resolution procedure will be required to be considered by a sifting committee, in accordance with paragraph 4(2) of Schedule 7 to the Withdrawal Act. The purpose of the sifting committee is to determine whether the proposed negative resolution procedure is the appropriate Senedd procedure for the relevant SI. For the purpose of Welsh SIs, the sifting committee functions are undertaken by the Legislation, Justice and Constitution Committee.

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

4.0 Purpose and intended effect of the legislation

This Instrument makes amendments to existing Welsh domestic secondary legislation, under powers in the European Union (Withdrawal) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020), to ensure the statute book in Wales is fully operable following the end of the Implementation Period.

The regulations corrected by this Instrument were previously amended on the basis the UK would leave the EU without an agreement and transitional provisions were inserted to support continued trade and minimise border disruptions after EU Exit day, which was on 31 January 2020, in a 'no deal' scenario.

However, the UK withdrew from the EU with an agreement in place and, as such, the regulations now need to be further amended to correct deficiencies that would arise at the end of the Implementation Period and to reflect the withdrawal agreement, in particular, the Protocol on Ireland / Northern Ireland.

4.1 What Welsh secondary legislation is being amended?

- The Eggs and Chicks (Wales) Regulations 2010
- The Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019

- The Retained EU Law (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019
- The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No.3) Regulations 2019
- Revocation of the Food Information (Wales) (Amendment) (EU Exit) Regulations 2019

These in turn amend the follow Welsh domestic regulations:

- The Eggs and Chicks (Wales) Regulations 2010

These Regulations make provision for the enforcement and execution of EU marketing standards relating to eggs for hatching and farmyard poultry chicks, and eggs in shell for consumption, contained in Regulation (EC) 617/2008 and Regulation (EC) 589/2008.

- The Poultrymeat (Wales) Regulations 2011

These Regulations make provision for the enforcement and execution of EU marketing standards relating to poultry meat and the registration of slaughterhouses, contained in Regulation (EC) 543/2008.

- The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009

These Regulations provide a statutory framework for the enforcement of European marketing rules in the fresh fruit and vegetable sector, provided for in Regulation (EC) 1234/2007 and Regulation (EC) 1580/2007.

- The Beef and Veal Labelling (Wales) Regulations 2011.

These Regulations provide a statutory framework for the enforcement of Title II of Regulation (EC) 1760/2000 for the identification and registration of bovine animals and regarding the labelling of beef and beef products. They provide for the enforcement of provisions relating to meat and the marketing of meat of bovine animals aged 12 months or less in Regulation (EC) 1234/2007 and Regulation (EC) 566/2008. They also provide for the enforcement of certain provisions in Regulation (EC) 1825/2000.

- The School Milk (Wales) Regulations 2017

Subject to Commission Regulations (EU) 1308/2013, (EU) 2017/39 and (EU) 2017/40, these Regulations allow the Welsh Ministers to make national 'top up' payments to beneficiaries of an EU subsidy for milk and milk products. The regulations also provide for the withholding or recovery of any Union or national aid where the applicant is not entitled or is in breach of commitments or conditions.

- The Food Information (Wales) Regulations 2014

These Regulations enforce 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. Regulation (EU) No 1169/2011 makes provision for food information to consumers, including fair information practices to ensure consumers are not misled by food packaging.

4.2 Why is it being changed?

After the Implementation Period, without amendment, certain provisions would not operate as intended and, as a result, existing law will either be unclear or will not function effectively. This includes transitional provisions which are intended to ensure the legislative framework supports industry to respond to any immediate impacts that may arise from our withdrawal from the EU, such as potential changes in labelling requirements.

This Instrument therefore uses powers in the Withdrawal Act to make technical changes to the above legislation to ensure that it aligns with provisions in the Withdrawal Agreement and continues to function correctly following the Implementation Period. This will provide clarity to producers, enforcement bodies and industry stakeholders.

No policy changes are being introduced by these amendments.

4.3 What amendments are being made?

- Corrections to remove redundant references in Welsh legislation to ‘the European Union’ and ‘the United Kingdom’. These references will be replaced with the term ‘Great Britain’, in order to align with/reflect provisions of the ‘UK-EU withdrawal agreement’, in particular, the Protocol on Ireland / Northern Ireland. Any direct EU legislation included in the Protocol will continue to have effect in Northern Ireland and the retained EU legislation will only apply in Great Britain. As such, provision has been made, where applicable, to indicate that Northern Ireland remains aligned with the EU, according to the terms of the Protocol.

These corrections will apply to the *Eggs and Chicks (Wales) Regulations 2010*, the *Poultrymeat (Wales) Regulations 2011* and the *Marketing of Fresh Horticultural Produce (Wales) Regulations 2009*.

- The removal of references to ‘exit day’, which are now out of date, due to the ‘UK-EU withdrawal agreement’ and the Implementation Period. These will be updated by using the term ‘implementation period completion day’ to ensure provisions are coherent and will function as intended following the implementation period.

These corrections will be applied to transitional provisions contained in the *Marketing of Fresh Horticultural Produce (Wales) Regulations 2009* and the *Beef and Veal Labelling (Wales) Regulations 2011*, which ensure businesses are provided with a 21 month grace period to adapt to potential labelling changes arising from our withdrawal from the EU. This correction will also be applied to a definition for 'aid' included in the *School Milk (Wales) Regulations 2017*.

- Removal of a redundant transitional provision in the *Food Information (Wales) Regulations 2014*, which was to address possible circumstances, as may have arisen in a 'no deal' scenario on EU exit day (31 January 2020), but which are no longer relevant.

5. Consultation

There is a legal duty to consult in relation to 'food law', under Article 9 of EU Regulation 718/2002, unless the matter is urgent, and, as such, a two week targeted consultation was undertaken on the proposals. A bi-lingual stakeholder letter was issued on 13 October 2020, to over 90 industry experts and organisations, to fully explain the amendments and to provide an opportunity for comment.

Probably due to the minor, technical and very specific nature of proposals being consulted on, no responses were received.

This engagement was undertaken in addition to previous published bi-lingual consultations, 'Updating Welsh food law in preparation for Brexit' and 'Amendments to Welsh food legislation', which were open from 11 January to 19 February 2019 and from 20 May to 28 June 2019 respectively. A targeted stakeholder letter was also previously issued on 9 August 2019.

These previous consultations also substantially explained the policy rationale addressed by the 2020 Regulations, such as making minor technical corrections and inserting transitional provisions, as made necessary by the withdrawal of the UK from the EU.

There is a requirement under paragraph 4 of Schedule 7 to the Withdrawal Act to consult with the Secretary of State on any provisions that are due to come into force prior to implementation period completion day. In accordance with this requirement, the Secretary of State has been consulted through a separate letter issued on 14 October 2020.

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 which may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements which 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 Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)	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	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		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	<p>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.</p> <p>A statement which the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
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

Part 2

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

1. Sifting statement(s)

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

“In my view the Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of the Senedd Cymru (i.e. the negative procedure). This is the case because the changes made are minor and technical in nature. There is no change to policy”

2. Appropriateness statement

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

“In my view the Food and Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 does no more than is appropriate. This is the case because the Regulations largely correct technical deficiencies in the Welsh legislation that will arise at the end of the Implementation Period. The Regulations ensure that the Welsh statutory instruments included remain up to date and continue to operate effectively in Wales following the Implementation Period. This is in line with government policy.”

3. Good reasons

The Minister for Environment, Energy and Rural Affairs 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. This is because the provisions ensure that the Welsh regulations amended by this instrument continue to be operable following the end of the Implementation Period”.

4. Equalities

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

“In relation to the instrument, I, Lesley Griffiths, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct which 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.