

Explanatory Memorandum to the Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before Senedd Cymru 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 Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020.

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.

Eluned Morgan MS

Minister for Mental Health, Wellbeing and the Welsh Language

12 November 2020

PART 1

1. Description

- 1.1. The Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 (“this Instrument”) amend the Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 (“the 2019 instrument”) to ensure a workable enforcement regime remains in Wales following the end of the transition period (“TP”) on 31 December 2020. This instrument also reflects the Protocol on Ireland/Northern Ireland (“NIP”) and removes or replaces references which as a consequence of the NIP are no longer applicable.
- 1.2. The instrument comes into force immediately before Implementation Period (“IP”) completion date (11pm 31 December 2020).

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

- 2.1 This instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”).
- 2.2 As set out in the Ministerial statement in the annex to this Explanatory Memorandum it is proposed that the instrument be subject to the negative procedure. As required by the 2018 Act, the instrument was considered for sifting by the Legislation, Justice and Constitution Committee on 9 November and the Committee was satisfied that the Regulations should be subject to the negative procedure. The instrument will therefore be subject to the negative procedure. A link to the LJC Committee’s report can be found at: <https://senedd.wales/laid%20documents/cr-ld1392/cr-ld1392-e.pdf>.

3. Legislative background

- 3.1 This instrument is being made using the power in Part 1 of Schedule 2 to the European Union (Withdrawal) 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 2019 Instrument, which comes into force on IP completion date, was made to remedy deficiencies in domestic nutrition legislation (“Welsh Regulations”) arising from the withdrawal of the UK from the EU. This instrument amends the 2019 Instrument to reflect the Protocol on Ireland/Northern Ireland (NIP). This instrument does not amend EU law.

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

- 4.3 The 2019 Instrument amended domestic legislation which established the enforcement regime for obligations arising from EU Nutrition related labelling, composition and standards law to ensure it remained workable in the event the UK left the EU without a deal.
- 4.4 The amendments were technical in nature replacing for example references to EU institutions to UK institutions. No new powers were granted to the Welsh Ministers.
- 4.5 This instrument amends the 2019 Instrument to reflect the Protocol on Ireland/Northern Ireland (NIP) to remove references to the Food Standards Agency in Northern Ireland and, replace references to the UK with GB. The references which are subject to correction 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 following the end of the TP. **This instrument does not amend EU law.**

5. Consultation

- 5.1 A three-week consultation was conducted in Wales on the principle of the proposed amendments in September. No responses were received. Parallel consultation on their equivalent domestic regulations were conducted in England, Scotland and Northern Ireland. All responses received in relation to the domestic fixes were in favour of the approach proposed.
- 5.2 As set out in paragraph 4(a) of Schedule 2 to the European Union (Withdrawal) Act 2018 officials also consulted the Secretary of State for Health in the UK Government on proposals to implement this Instrument. No comments nor objections were required from the Secretary of State for Health.
- 5.3 No amendments to this Instrument were made as a consequence of the consultation.

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. 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 LJC 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	<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 that 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 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Authority.</p> <p>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</p>	
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 Mental Health, Wellbeing and the Welsh Language has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 should be subject to annulment in pursuance of a resolution of the Welsh Parliament (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 Mental Health, Wellbeing and the Welsh Language has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Nutrition (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2020 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 Mental Health, Wellbeing and the Welsh Language 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 nutrition, composition and labelling failing to operate effectively after the UK leave the EU.”

4. Equalities

The Minister for Mental Health, Wellbeing and the Welsh Language 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 Mental Health, Wellbeing and the Welsh Language has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Eluned Morgan MS, Minister for Mental Health, Wellbeing and the Welsh Language, 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.