

## **Explanatory Memorandum to the Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) 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 (Miscellaneous Amendments) (Wales) (EU Exit) (No.2) 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.

Vaughan Gething AM  
**Minister for Health and Social Services**  
5 March 2019

## **PART 1**

### **1. Description**

The Food (Miscellaneous Amendments) (Wales) (EU Exit) (No. 2) Regulations 2019 (“this Instrument”) amend the Statutory Instruments listed below. 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
- The Food Hygiene (Wales) Regulations 2006
- The Fishery Products (Official Controls Charges) (Wales) Regulations 2007
- Official Feed and Food Controls (Wales) Regulations 2009
- The Materials and Articles in Contact with Food (Wales) Regulations 2012
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013
- The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015
- The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016
- The Novel Foods (Wales) Regulations 2017

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 11.00pm.

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

This instrument is being made using powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21(b) of Schedule 7 to the 2018 Act.

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 affirmative procedure under paragraph 1(8) of Schedule 7 to the 2018 Act.

### **3. Legislative background**

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. 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?***

#### **General Food Regulations 2004**

These Regulations provide for the enforcement of Regulation (EC) No 178/2002 in relation to Wales. The Regulations originally applied in relation to England, Scotland and Wales but have subsequently revoked in relation to England.

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 establishes principles of traceability through the food chain. Together, 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 such as the European Food Safety Authority and administrative functions concerning food and feed safety such as the network for the notification of direct and indirect risk to human health arising from food and feed (the 'Rapid Alert System').

#### **The Food Hygiene (Wales) Regulations 2006**

These Regulations provide for the execution and enforcement of the following EU instruments in relation to Wales:

- Regulation (EC) 852/2004 laying down general principles for the hygienic production of foodstuffs by food business operators.
- Regulation (EC) 853/2004 laying down specific hygiene rules for food of animal origin.
- Regulation (EC) 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.
- Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs.
- Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat.

The 2006 Regulations establish the enforcement mechanisms for competent authorities to implement EU food hygiene rules and set out the remedies available to enforcement authorities on the discovery of non-compliance.

Additionally, the 2006 Regulations provide for the procurement and analysis of samples and create a presumption that specified food is intended for human consumption.

#### **The Fishery Products (Official Controls Charges) (Wales) Regulations 2007**

These Regulations set out the charges required to be levied for official controls undertaken on relevant fishery products as specified in Regulation (EC) No. 854/2004.

Regulation (EC) No. 854/2004 lays down specific rules for the organisation of official controls on products of animal origin, including fishery products, intended for human consumption.

### **Official Feed and Food Controls (Wales) Regulations 2009**

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EC) No. 882/2004 providing 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 setting 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 providing specific rules for the organisation of official controls on products of animal origin intended for human consumption.

The 2009 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.

### **The Materials and Articles in Contact with Food (Wales) Regulations 2012**

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EU) No 10/2011 providing rules on plastic materials and articles intended to come into contact with food.
- Regulation (EC) No 1935/2004 providing rules on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC.
- Regulation (EC) No 1895/2005 providing rules on restrictions of use of certain epoxy derivatives in materials and articles intended to come into contact with food.
- Regulation (EC) No 2023/2006 establishing good manufacturing practices for materials and articles intended to come into contact with food.
- Regulation (EC) No 450/2009 providing rules on active and intelligent materials and articles intended to come into contact with food.

The EU Regulations, as implemented by the 2012 Regulations, provide for the protection of food from hazards that may arise from materials and articles with which they may come into contact throughout the food chain.

### **The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013**

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EC) No. 2065/2003 on smoke flavouring used or intended for use in or on foods).
- Regulation (EC) No. 1332/2008 on food enzymes.
- Regulation (EC) No. 1333/2008 on food additives.
- Commission Regulation EU No. 231/2012 laying down specifications for food additives approved under 1333/2008.
- Regulation (EC) No. 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods flavourings.

The Regulation also transposes Directive 2009/32/EC on extraction solvents used in the production of foodstuffs and food ingredients.

Food improvement agents are used in or on food for a technological purpose during its production or storage. They are also used to improve the taste, texture, and appearance of food. In general, the harmonised EU legislation governing these substances requires a pre-market risk assessment and authorisation before they may be placed on the market. The legislation provides lists of permitted substances, applicable specifications, conditions of use, as well as categories of foods in which they may be used. The legislation also provides specific labelling requirements for certain food products sold to consumers. This includes a mandatory warning on products containing aspartame as it is a source of phenylalanine, which could be detrimental to those suffering from Phenylketonuria.

### **The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015**

These Regulations transpose the following EU Directives in relation to Wales:

- Directive 98/83/EC on the quality of water intended for human consumption.
- Directive 2002/40/EC establishing the list, concentration limits and labelling requirements for the constituents of natural mineral waters and

the conditions for using ozone-enriched air for the treatment of natural mineral waters and spring waters.

- Directive 2009/54/EC of the European Parliament and of the Council on the exploitation and marketing of natural mineral waters.
- Directive 2013/51/EURATOM laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption.

The Regulations also implement the following EU Regulations in relation to Wales:

Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters.

Of particular relevance to the amendments in this Instrument, Directive 2009/54/EC requires natural mineral waters to go through a process of recognition to prove that they have the necessary composition and characteristics to be sold and marketed as natural mineral waters in all EU member States. Recognition is carried out by individual member States.

### **The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016**

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EC) No 178/2002 in relation to general safety requirements.
- Regulation (EC) No 1829/2003 on genetically modified food and feed.
- Regulation (EC) No 1831/2003 on additives for use in animal feed.
- Regulation (EC) No 767/2009 on placing on the market and use of feed.

The Regulations also transpose:

- Directive 2002/32/EC on undesirable substances in animal feed.
- Directive 2008/38/EC to establish a list of intended uses for animal feedingstuffs for particular nutritional uses.

Regulation (EC) No 178/2002, as far as related to feed and implemented in Wales by these Regulations, establishes the responsibility of Feed Business Operators (FBOs) to produce feed with a high level of protection of animal and human life and health and establishes principles of traceability through the food chain.

Together, these regulations lay down the conditions relating to feed hygiene, feed additives, placing on the market of genetically modified food and feed, sampling and marketing and use of feed including labelling (including high-level principles around the placing of safe animal feed on the market).

### **The Novel Foods (Wales) Regulations 2017**

These Regulations implement the following EU Regulations in relation to Wales:

- Regulation (EU) 2015/2283 on novel foods.

Novel Foods are foods or food ingredients that do not have a significant history of consumption within the EU before 15 May 1997. The EU legislation on Novel Foods is harmonised across the EU. In the interests of safeguarding public health, they are required to have a pre-market risk assessment and authorisation before being placed on the market. A recent example of this is chia seeds. The pre-market risk assessment examines a range of issues to establish whether consumers would be at risk if they consumed the novel food, how high the level of risk is likely to be and how, if a risk is established, that risk would be managed.

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

The Instrument will predominantly make minor and technical changes. They are necessary to ensure that the domestic legislation implementing retained direct EU legislation continues to operate effectively after EU exit.

The amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015 ensure there will continue to be a functioning statute book on exit day and will continue in force existing recognitions of natural mineral waters which obtained their recognitions in other EU/EEA States before exit day. The amendments also provide for an effective mechanism to cease, in appropriate circumstances, this ongoing recognition in order to retain control over the recognition and sale of natural mineral waters in Wales.

The specific changes being proposed to the regulations are detailed below.

### **General Food Regulations 2004**

- Replacing references to 'European Union' in a descriptor of an Article of Regulation 178/2002 that is amended by the General Food Law (Amendment etc.) (EU Exit) Regulations 2019<sup>1</sup>.

### **The Food Hygiene (Wales) Regulations 2006**

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<sup>1</sup> S.I. 2019/XX.

- Replacing reference to ‘EU legislation or national law’ with ‘UK law’.
- Omitting references to ‘European Union’ in a descriptor of an Article of Regulation 178/2002 that is amended by the Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019<sup>2</sup> and removing the descriptor of another in consequence of that Article being omitted.
- Ensuring that provision for the use of the Welsh language is included. Previously, documentation accompanying raw sugar had to be accompanied by the words, ‘in one or more Community languages’, ‘This product must be refined before being used for human consumption’. As amended, those words will have to be displayed in English, or in English and Welsh.

### **The Fishery Products (Official Controls Charges) (Wales) Regulations 2007**

- Amending the definition of a ‘third Country’.
- Amending the Euro/Sterling conversion rate for the purposes of the Regulations so as to be consistent with the conversion rate used in the parent retained direct EU legislation (Regulation (EC) No. 882/2004 of the European Parliament and the Council on official controls, as amended by the Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2019<sup>3</sup>) and to remove the dependency on the Official Journal of the European Union.

### **The Official Feed and Food Controls (Wales) Regulations 2009**

- Amending several cross-references to Articles of Regulation (EC) No 882/2004 to 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.
- Amending the descriptor of Article 7 of Regulation (EC) 669/2009 to reflect amendments made to it by the Food and Feed Imports (Amendment) (EU Exit) Regulations 2019<sup>4</sup>. Those amendments provide that information concerning consignments of imported food and feed may now be provided in “English, or in English and Welsh”, rather than in “one or more Community languages”.

### **The Materials and Articles in Contact with Food (Wales) Regulations 2012.**

- Amending descriptors of Articles of relevant EU instruments in light of amendments made by the Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019<sup>5</sup>.

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<sup>2</sup> S.I. 2019/XX.

<sup>3</sup> S.I. 2019/XX.

<sup>4</sup> S.I. 2019/XX.

<sup>5</sup> S.I. 2019/XX.



## **The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013**

- Amending several cross-references to, and descriptors of, Articles of retained direct EU legislation as a result of revocations of or amendments to those Articles by the Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment etc.) (EU Exit) Regulations 2019<sup>6</sup>. The amendments include amending the descriptor of Article 21.1 of Regulation (EC) 1333/2008 to reflect the amendment that food additives not intended for sale to the final consumer must now be labelled in ‘English, or in English and Welsh’ rather than in ‘a language easily understandable to purchasers’.

## **The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015**

- Removing various redundant references to Directive 98/83, Directive 2001/83, Directive 2003/40, Directive 2009/54 and Directive 2013/51.
- Inserting a definition of ‘third country’ capturing any country other than the UK (and associated amendments).
- Replacing reference to recognition of natural mineral water ‘in accordance with Directive 2009/54’ with reference to recognition in accordance with the relevant regulations in force in other parts of the UK to ensure that natural mineral waters recognised in other parts of the UK may continue to be sold in Wales.
- Providing that from exit day, water from all third countries must be recognised in Wales by the Food Standards Agency (“FSA”) or by the relevant authority in another part of the UK before it may be placed on the market in Wales.
- Removing reference to publication in the Official Journal of the European Union of lists of recognised natural mineral waters.
- Inserting a transitional provision providing that water recognised before exit day in or by EU/EEA States as natural mineral waters may continue to be sold in Wales post-exit day and conferring a power on the Welsh Ministers to issue a notice to cease that ongoing recognition in specified circumstances. The amendments also impose a duty on the Welsh Ministers to publish a list of the EU/EEA waters that remain recognised natural mineral waters in Wales.
- Providing that fluoride removal treatments and ozone reduction treatments carried out in any third country must have been approved by the relevant authority in that country, and that the approval procedures used in that third country must be approved by the FSA or other responsible UK authority as being equivalent to the ones in force in

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<sup>6</sup> S.I. 2019/XX.

Wales/the UK, before water which has been subjected to such treatment may be sold in Wales.

- Removing an exemption from enforcement action for spring water from EEA countries that does not satisfy specific domestic requirements.

### **The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016**

- Amending cross-references to, and descriptors of, Articles 20(6) and 21(3) of retained direct EU legislation Regulation (EC) 1829/2003 to reflect amendments made to that Regulation by the Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019<sup>7</sup>.
- Amending descriptors of Article 12(2) (changing reference from 'Commission' to 'appropriate authority' for reporting purposes) of retained direct EU law Regulation (EC) 1831/2003 and cross-references to, and descriptors of, Articles 13(1)(b) and 26(1)(b) of Regulation 767/2009 to reflect amendments made by the Animal Feed (Amendment) (EU Exit) Regulations 2019<sup>8</sup>.
- Replacing Schedule 1 to the 2016 Regulations on the specified application of Regulation 767/2009. All of the amendments are being made in consequence of amendments made to the relevant Articles by the Animal Feed (Amendment) (EU Exit) Regulations 2019.

### **The Novel Foods (Wales) Regulations 2017**

- Amending references to the 'Commission' and 'Union' in descriptors of Articles 6(2) and 25 of Regulation (EU) 2015/2283 to reflect amendments made to those Articles by the Novel Food (Amendment) (EU Exit) Regulations 2019<sup>9</sup>.

### ***What will it now do?***

Principally, this Instrument will make minor technical changes to ensure that the Welsh regulations, which provide for the implementation of retained EU law relating to food and feed hygiene and safety, food compositional standards and labelling and food and feed regulated products, will continue to be operable and enforceable in Wales after the UK leaves the EU. These amendments do not make any changes to the way the Welsh regulations operate.

In relation to the amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015, the amendments also provide that from exit day, waters from the EU/EEA, like waters from other third countries, must be recognised as natural mineral water in Wales/the UK before they may be placed on the market in Wales. This is subject to a transitional

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<sup>7</sup> S.I. 2019/XX.

<sup>8</sup> S.I. 2019/XX.

<sup>9</sup> S.I. 2019/XX.

provision which continues in force the existing recognition in Wales of natural mineral waters recognised before exit day in the EU/EEA until such time as the Welsh Ministers issue a notice that such recognition is to cease.

## **5. Consultation**

A four-week consultation was conducted in Wales on the principle of the proposed amendments. The consultation closed on 4 February 2019. We received three responses to the consultation in Wales. We did not receive any comments on the technical amendments to be made by these proposed amendments.

Two of the three responses received commented on the proposed amendments relating to natural mineral water. The responses were identical, sent by representatives of enforcement authorities. They agreed that there ought to be a transitional period post-exit during which EU27/EEA recognised natural mineral waters should continue to be recognised as natural mineral water in Wales.

While the respondents' preference was for a fixed five-year transition period, we consider that the transitional provision proposed in these Regulations, which continues existing EU27/EEA recognitions in force on exit day but enabling the Welsh Ministers to issue a notice to cease those recognitions when certain criteria are met, is preferable. It strikes the appropriate balance between ensuring consumer confidence and continuity of supply immediately after exit but also maintaining the Welsh Ministers' control over the recognition of EU27/EEA natural mineral waters in Wales. It also has the benefit of maintaining consistency with the approach adopted elsewhere in the United Kingdom.

## **6. Regulatory Impact Assessment (RIA)**

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 [x] 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)
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.	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		Welsh Ministers have 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)

Not applicable/required.

#### 2. Appropriateness statement

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

“In my view the Food (Miscellaneous Amendments) (Wales) (EU Exit) (No.2) Regulations 2019 do no more than is appropriate.”

This is the case because the Instrument predominantly corrects technical deficiencies arising from EU exit. In relation to the amendments relating to natural mineral water, in a no deal scenario, the Instrument will continue in force after exit the existing recognition of natural mineral waters which obtained their recognition in or by another member State in the EU/EEA and will introduce a power for the Welsh Ministers to end the recognition on giving notice. This policy will ensure market stability immediately after EU exit, facilitating trade and business confidence, and will protect consumers against price increases as a direct consequence of EU exit, but will also enable the Welsh Ministers to maintain their control over the recognition and sale of EU/EEA natural mineral waters in Wales.

#### 3. Good reasons

The Minister for Health and Social Services, Vaughan Gething, 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 feed and food hygiene, food compositional standards and labelling and food and feed regulated products failing to operate effectively after the UK leaves the EU.

#### 4. Equalities

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

“In relation to the [draft] instrument, I, Vaughan Gething 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 & intended effect of the legislation) of the main body of this Explanatory Memorandum.

## **6. Criminal offences**

Not applicable/required.

## **7. Legislative sub-delegation**

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

”In my view it is appropriate to create a relevant sub-delegated power in the Food (Miscellaneous Amendments) (Wales) (EU Exit) (No.2) Regulations 2019.”.

This is appropriate because it enables the Welsh Ministers to withdraw recognition of natural mineral waters which obtained their recognition in or by another member State in the EU or EEA, giving a period of notice for businesses to adjust, should the need arise, therefore maintaining the Welsh Ministers’ control over the recognition and sale of EU/EEA natural mineral waters in Wales.

## **8. Urgency**

Not applicable/required.