

Explanatory Memorandum to the Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021.

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.

**Lynne Neagle MS
Deputy Minister for Mental Health and Wellbeing**

29 June 2021

PART 1

1. Description

- 1.1. The Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021 (“this Instrument”) amend the Food Information (Wales) Regulations 2014 and the Country of Origin of Certain Meats (Wales) Regulations 2015. These amendments are required to address deficiencies arising from EU Exit and to ensure that the statute book can operate effectively following the UK’s exit from the EU.
- 1.2. The date the instrument comes into force will be confirmed once the scrutiny process it will follow is decided, taking into account the recommendations of the sifting committee.

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 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (“the 2018 Act”).
- 2.4 As set out in the Ministerial Statements in Part 2 of the Annex to this Explanatory Memorandum it is proposed that the instrument be made subject to the negative procedure.
- 2.5 The Instrument makes purely transitional provisions, so it is considered appropriate to make this Instrument subject to annulment in pursuance of a resolution of Senedd Cymru.

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. The instrument is also made under paragraph 21 of Schedule 7 to the 2018 Act which provides any power to make regulations under the 2018 Act includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision. In accordance with the requirements of that Act the Deputy 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 Implementation Period Completion Day (IPCD)?

Food Information (Wales) Regulations 2014

These Regulations, in relation to Wales, provide for the execution and enforcement of 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 Regulation (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 brought EU rules on general and nutrition labelling together into a single Regulation to simplify and consolidate existing labelling legislation and sets out the requirements for the labelling, advertising and presentation of foodstuffs.

Country of Origin of Certain Meats (Wales) Regulations 2015

These Regulations, in relation to Wales, provide for the execution and enforcement of Implementing Regulation (EU) No. 1337/2013, laying down rules for the application of Regulation (EU) No 1169/2011 of the European Parliament and of the Council as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry.

Why is it being changed?

The changes made by this Instrument are necessary to ensure that the domestic legislation enforcing the retained EU law continues to operate effectively following the UK's withdrawal from the EU and to add a transitional adjustment period that will end on 30th September 2022 for certain changes.

The specific changes being proposed to the Regulations detailed at 1.1 above are as follows:

What will it now do?

Food Information (Wales) Regulations 2014

- Insert a 21 months transitional provision into the legislation, ensuring an authorised officer must not serve an improvement notice relating to non-compliance with labelling changes if the products was placed on the market on or before 30th of September 2022.

Country of Origin of Certain Meats (Wales) Regulations 2015

- Insert a 21 months transitional provision into the legislation, ensuring an authorised officer must not serve an improvement notice relating to non-compliance with labelling changes if the products was placed on the market on or before 30 September 2022.

5. Consultation

Several FSA and Defra consultations have been published over the last few years in relation to proposed changes to laws as a consequence of leaving the EU. Industry and local authorities in Wales are aware of these proposals and are supportive. The concept of the transitional adjustment period ending on 30 September 2022 is already in the public domain.

6. Regulatory Impact Assessment (RIA)

- 6.1 An Impact Assessment has not been prepared for this instrument as its purpose is to maintain the operability of the existing regimes. No significant impact on the private, voluntary or public sectors is foreseen as a result of these Regulations.
- 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 Standing Order 27.1A	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	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. 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 77	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 Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		<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	<p>Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7</p>	<p>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.</p>

Part 2

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

1. Sifting statement(s)

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

“In my view the Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021 should be subject to annulment in pursuance of a resolution of Senedd Cymru (i.e. the negative procedure).”

There is no change to policy.

2. Appropriateness statement

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

“In my view the Food and Drink (Transitional Provisions) (Wales) (EU Exit) Regulations 2021 do no more than is appropriate.”

This is the case because all the changes being made are solely in order to maintain operational effectiveness following the exit from the EU. There is no change to policy.

3. Good reasons

The Deputy Minister for Mental Health and Wellbeing 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 hygiene and safety, food compositional standards and labelling and seeds failing to operate effectively following the UK's departure from the EU.

4. Equalities

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

“In relation to the instrument, I, Lynne Neagle, Deputy Minister for Mental Health and Wellbeing, 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.