

**Explanatory Memorandum to the Food, Animal Feed and Seeds
(Miscellaneous Amendments and 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.

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food, Animal Feed and Seeds (Miscellaneous Amendments and 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.

Eluned Morgan MS
Minister for Mental Health, Well-Being and Welsh Language
24 March 2021

PART 1

1. Description

1.1. The Food, Animal Feed and Seeds (Miscellaneous Amendments and Transitional Provisions) (Wales) (EU Exit) Regulations 2021 (“this Instrument”) amend the statutory Instruments listed below relating to food and feed hygiene and safety, food compositional standards and labelling and seeds. These amendments are required to address deficiencies arising from EU Exit and ensure that the statute book can operate effectively following the UK’s exit from the EU.

- Food Hygiene (Wales) Regulations 2006
- Quick-frozen Foodstuffs (Wales) Regulations 2007
- The Seed Marketing (Wales) Regulations 2012
- Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013
- Honey (Wales) Regulations 2015
- The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016
- The Caseins and Caseinates (Wales) Regulations 2016

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”).

2.2. This instrument was laid for sifting before a committee of Senedd Cymru in accordance with Standing Order 27.9A.

2.3 On the 22nd March 2021 the Sifting Committee agreed that the appropriate procedure for this instrument is the negative resolution procedure (<https://senedd.wales/media/ek5k3tgm/cr-ld14275-e.pdf>).

2.4 As set out in the Ministerial Statement in Part 2 of the Annex to this Explanatory Memorandum the instrument will be made subject to the negative procedure.

2.5 The Instrument makes transitional provisions and technical changes, so it is considered appropriate to make this Instrument subject to annulment in pursuance of a resolution of Senedd Cymru.

2.6 The Instrument amends the Seed Marketing (Wales) Regulations 2012 to address a point raised in the Legislation, Justice and Constitution Committee’s report on the Marketing of Seeds and Plant Propagating Material (Amendment) (Wales) (EU Exit) Regulations 2020.

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 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 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.

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

Quick-frozen Foodstuffs (Wales) Regulations 2007

The Quick-frozen Foodstuffs (Wales) Regulations 2007 provide for the execution and enforcement of Regulation (EC) No. 37/2005 in relation to Wales.

The EU Regulation 37/2005, as implemented in Wales by these Regulations, provides rules for monitoring of temperature in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption, and for the labelling of those foodstuffs.

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

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013 provide for the execution and enforcement of 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 Regulations also transpose Directive 2009/32/EC on extraction solvents used in the production of foodstuffs and food ingredients.

The food improvement agents regulated by these Regulations 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 Honey (Wales) Regulations 2015

The Honey (Wales) Regulations 2015 transpose Council Directive 2001/110/EC relating to honey. The Directive lays down compositional requirements and reserved names by which honey can be called, and labelling requirements.

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

The Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016 provide for the continuing enforcement or implementation of EU Regulations and Directives on feed safety, genetically modified feed, feed additives, the marketing and use of feed, undesirable substances (contaminants) in feed and feed for particular nutritional purposes.

Caseins and Caseinates (Wales) Regulations 2016.

The Caseins and Caseinates (Wales) Regulations 2016 transpose Directive (EU) 2015/2203 relating to caseins and caseinates intended for human consumption in relation to Wales.

Directive (EU) 2015/2203 on caseins and caseinates intended for human consumption lays down specifications for use of reserved descriptions, manufacturing specifications and labelling of casein products so as to ensure their free movement within the European Union. It also aligns composition requirements with the international standard set by the Codex Alimentarius for the sake of consistency and to avoid trade distortions.

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 Hygiene (Wales) Regulations 2006

Inserting a transitional provision to allow for an adjustment period which will end on 30th September 2022, for producers to use on products of animal origin health and ID marks that comply with the requirements of, respectively, Annex 1 to Regulation (EC) 853/2004 and Annex 1 to Regulation (EC) 854/2004, as they had effect immediately before IPCD.

Quick-frozen Foodstuffs (Wales) Regulations 2007

- Inserting a transitional provision to allow for an adjustment period which will end on 30th September 2022 to allow producers to continue to use existing labels.

The Seed Marketing (Wales) Regulations 2012

- Amending authorisation requirements to provide that an authorisation to market unlisted varieties of vegetable seed may only be requested by the person who has submitted an application for entry of the varieties concerned onto the GB variety list or the NI variety list.

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

- Inserting transitional provision to allow for an adjustment period which will end on 30th September 2022 to allow producers to continue to use existing labels.

Honey (Wales) Regulations 2015

- Amending labelling requirements where honey is blended from honey from more than one country. Currently, instead of listing the individual countries of origin, blended honey can be labelled as "blend of EU honeys", "blend of non-EU honeys" or "blend of EU and non-EU honeys". The amendments will require blended honey that is not labelled with each of the individual countries of origin to display 'a blend of honey from more than one country' or equivalent wording. An equivalent change is made to Welsh language labelling.
- Inserting transitional provision to allow for an adjustment period which will end on 30th September 2022 to allow producers to continue to use existing labels.

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

- Inserting transitional provision to allow for an adjustment period which will end on 30th September 2022 to allow producers to continue to use existing labels.

Caseins and Caseinates (Wales) Regulations 2016

- Inserting a transitional provision to allow for an adjustment period which will end on 30th September 2022 to allow producers to continue to use existing labels.

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 30th 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)
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	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 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.

		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 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, Well-Being and Welsh Language has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food, Animal Feed and Seeds (Miscellaneous Amendments and 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 Minister for Mental Health, Well-Being and Welsh Language has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food, Animal Feed and Seeds (Miscellaneous Amendments and 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 Minister for Mental Health, Well-Being and 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 food hygiene and safety, food compositional standards and labelling and seeds failing to operate effectively after the UK leaves the EU.

4. Equalities

The Minister for Mental Health, Well-Being and 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, Well-Being and 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, the Minister for Mental Health, Well-Being and 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.