

**Explanatory Memorandum to The Food (Withdrawal of Recognition)
(Miscellaneous Amendments and Transitional Provisions) (Wales) (EU Exit)
Regulations 2022**

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 (Withdrawal of Recognition) (Miscellaneous Amendments and Transitional Provisions) (Wales) (EU Exit) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Lynne Neagle MS
Deputy Minister for Mental Health and Wellbeing

09 February 2022

PART 1

1. Description

The Food (Withdrawal of Recognition) (Miscellaneous Amendments and Transitional Provisions) (Wales) (EU Exit) Regulations 2022 (“this Instrument”) amends the Bread and Flour Regulations 1998 (S.I. 1998/141), the Jam and Similar Products (Wales) Regulations 2018 (S.I. 2018/274), the Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (Wales) Regulations 2008 (S.I. 2008/1341) and the Products Containing Meat etc. (Wales) Regulations 2014 (S.I. 2014/3087). This Instrument will remove certain exemptions in the named Regulations following the withdrawal of the United Kingdom from the European Union. It applies in relation to Wales only.

Regulation 2 also amends the Bread and Flour Regulations 1998 to provide additional exemptions from those Regulations relating to exports to third countries.

Regulations 3,5,7 and 9 make transitional provisions.

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

None.

3. Legislative background

The Welsh Ministers make this Instrument in exercise of the powers conferred by sections 16(1)(a) and (e), 26(1) and 48(1) of the Food Safety Act 1990. Those functions, formerly exercisable by “the Ministers”, were conferred on the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Those functions, so far as exercisable in relation to Wales, were transferred to the then National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act. Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

This Instrument is made under the negative resolution procedure. This Instrument comes into force 21 days after the day on which it was laid.

4. Purpose and intended effect of the legislation

The Deputy Minister's objectives in implementing this policy through legislation are to ensure, following the UK's withdrawal from the EU, compliance with the World Trade Organisation's (WTO) Most Favoured Nation rules. Also, to provide businesses with a transitional adjustment period that will end on 30 September 2022, in which to make any labelling or compositional changes to food products that are necessary.

The legislation amends certain domestic legislation in relation to Wales, removing or amending the mutual recognition clauses that allowed food products that are lawfully produced and sold in EU Member States, the EEA or the Republic of Turkey, to be sold in the UK, even though non-compliant with requirements of UK law.

The legislation also amends the Bread and Flour Regulations 1998 to provide exemptions for bread or unfortified flour produced in Wales that is to be exported to a third country, and for unfortified flour to be produced in Wales or imported into Wales, provided that it is only to be used in food that is to be exported to a third country.

The legislation will ensure that Welsh businesses do not suffer from unfair competition, by requiring imported products to comply with Welsh legislation. It also provides opportunities for unfortified flour to be produced in Wales, or imported, and sold provided the flour or products made from it, are exported to third countries or the unfortified flour is incorporated into foods by other food manufacturers that are then exported to third countries.

The legislation affects food businesses, consumers and local authorities in Wales.

There is a risk of challenge from WTO Member Countries if this subordinate legislation is not made, under Most Favoured Nation Rules. In addition, food businesses in Wales will continue to suffer unfair competition from imported products that may not meet the requirements of Welsh domestic legislation.

There are no impacts for disadvantaged or excluded sections of society.

The legislation will apply in relation to Wales only.

The Regulatory Impact Assessment below calculates the costs associated with the preferred option to businesses, consumers and local authorities in Wales under 'worst-case' or highest-cost scenario assumptions. Even if the most pessimistic of cases were to arise, the burden of the changes on affected parties is estimated to be small and certainly less than the cost of sanctions associated with any WTO challenge. Additional benefits are expected in the form of the elimination of artificial/unfair competition from EEA/Turkey imports and there may also be additional health benefits to the Welsh population, through ensuring that only products that meet UK standards are on sale in Wales, including fortified flour and flour products.

5. Consultation

The Food Standards Agency (“FSA”) ran an 8-week consultation on these proposals between the 2 September - 28 October 2021. The consultation was published on the FSA website, and it was drawn to the attention of interested stakeholders, including food businesses, trade associations, local authorities and other stakeholders. Two responses were received to the consultation, both of which supported the proposed mutual recognition changes and the amendment of the Bread and Flour Regulations 1998 to allow for unfortified flour to be used in products that will be exported.

One of the respondents to the FSA consultation commented that they felt the transitional adjustment period, particularly for the changes to the Bread and Flour Regulations 1998 was too short. The end of the transitional adjustment period was co-ordinated between the FSA, Defra and Food Standards Scotland to end on the same date. Businesses who operate across England and Wales will have been aware of the proposals from the earlier Defra consultation on the same subject. The FSA therefore feels that the end date should remain the same as that consulted upon and that businesses in Wales will not be disadvantaged by the shorter adjustment period, as it will still allow sufficient time to make any changes that may be necessary.

The consultation documents and a summary of the responses are available at:

[Consultation on the Proposed Amendment of the Mutual Recognition Clauses in Certain Domestic Food Legislation in Wales | Food Standards Agency](#)

PART 2 – REGULATORY IMPACT ASSESSMENT

An initial assessment has been undertaken to estimate the level of imports that are affected by the regulations where data is available, i.e., the level of imports on the products under the specific reserved names, sourced from the specific countries and the share of those that may not be compliant with Welsh food compositional standards.

This evidence includes a combination of anecdotal evidence from policy experts in the area, industry engagement, HMRC trade data¹ and a Defra survey on ‘non-compliance’ of products containing meat. Despite all of the above being utilised where available, there are still evidence gaps in places and assumptions are made where that is the case to produce monetised costs.

In many cases, the level of non-compliant’ trade cannot be estimated precisely and the associated costs for Welsh businesses will be proportionate to the level of relevant imports. However, given Defra data on the average profit margins of the top 30 UK food and drink wholesalers, profit margins for UK importers

¹ UK trade data from HMRC, 2021: <https://www.uktradeinfo.com/trade-data/ots-custom-table/>

(wholesalers) are low (being 2.3% on average)², This suggests that the overall revenues that could be at stake for Welsh businesses is limited.

Detailed analysis for each product category in relation to the preferred option is set out below. The burden of the regulatory changes on businesses, local authorities and consumers is expected to be low. As a result, monetised costs for the other options considered are not presented. Instead, the costs and benefits are assessed qualitatively.

Whilst the costs associated with the policy intervention have been quantified where possible, the benefits have been assessed qualitatively. It is very difficult to quantify the benefit of avoiding WTO sanctions, as the sanctions imposed can vary greatly depending on the size and nature of the perceived failure to comply. However, they aim, by design, to be significant enough to deter members from remaining non-compliant with the relevant rules and will almost certainly be much higher than the costs of compliance.

6. Options

Within this assessment, we consider the impact of three options in relation to food compositional standards legislation. For the preferred option (and for each of the four types of products), costs are considered in either the “worst-case”/highest cost or most realistic scenario, depending on the level of data available for analysis in each case. The options are set out below, while the assumptions and calculations underpinning the various detailed cost estimates produced can be found later in this section.

Option 0: Do nothing

If no regulatory action is taken, exemptions for certain domestic food compositional standards will continue to apply for specific EEA countries and Turkey. This may result in a trade dispute with other WTO members which could potentially result in sanctions being applied. Although the nature of sanctions potentially imposed can vary depending on the size and nature of the perceived failure to comply, they aim, by design, to present a threat significant enough to deter WTO country members from staying non-compliant with the relevant rules. It is for this reason that this option is not included for further analysis – as the potential costs are high enough that the option is not considered credible.

There have been multiple examples of trade disputes going into WTO that involved significant sanctions being imposed on ‘non-compliant’ countries. For example, the US had filed a complaint against the EU arguing it gave special market access to banana producers from former colonies in the Caribbean³. During this dispute the US imposed retaliatory import duties of 100 per cent on a range of European products, ranging from Scottish cashmere to French cheese.

² Collated from [Companies House](#) and the [FAME database](#)

³ See [this link](#).

Option 1 (preferred): Remove recognition clauses, with an additional provision for unfortified flour

The preferred option is to remove the recognition clauses and include a provision allowing for unfortified flour to be made in or imported into Wales, provided that it is directly exported or used as an ingredient in a product destined for exports.

Removing the recognition clauses would mean that any future imports covered by those clauses would now have to meet our higher domestic compositional standards (other than any flour that is used in products that will be exported). Hence, there are effectively three options facing EEA/Turkey exporters – 1) only export products that comply with our standards 2) market products under different, non-reserved names (Jam and Products Containing Meat) or 3) cease exporting the products entirely.

Whichever option is chosen, compliance with WTO MFN rules would be achieved and hence the risk of sanctions being imposed on the UK would be eliminated. There are some costs to importers, which are far outweighed by the potential risk of sanctions being imposed, as is the case in the “do nothing” option. This option also significantly reduces “artificial⁴” competition to UK businesses from third countries with lower compositional standards – as imported non-compliant products from more than 30 countries can currently be lawfully sold on our market.

There may also be some costs to consumers, if they are unable to source certain products and cannot find suitable substitutes. It is likely that suitable substitutes will be available, given the products that are in scope of this regulatory change. Consumers may, however, have to pay more for substitute goods, albeit goods that meet a higher standard than that purchased previously.

In addition, including the provision for unfortified flour in the amending legislation would maintain access to unfortified flour by Welsh food manufacturers and would enable new commercial opportunities for Welsh millers who would be able to produce unfortified flour for the first time (providing that the flour or the product created from it is subsequently exported). Current legislation states that Welsh food businesses can import unfortified flour but cannot not produce it in Wales.

However, although the provision for unfortified flour will still allow manufacturers to produce products for the export market, this regulatory change will mean that manufacturers are now unable to produce one product using unfortified flour for both the export and domestic market. Therefore, any affected manufacturers may have to incur additional costs to adapt their production processes in order to use two different types of flour.

⁴ I.E. based on compositional standards only, all other factors staying equal

Whilst this is undoubtedly a risk for food businesses in Wales now and going forward, there is no evidence to suggest that this is currently an issue.

Whilst the UK can produce enough flour to meet domestic needs, some flour is imported, often for provenance (e.g., French flour to make French bread). Under the proposed changes, this flour will either need to be fortified or sourced domestically (foregoing the provenance aspect), which will incur a small additional cost.

As this is the preferred option, detailed cost estimates along with the methodology and assumptions used to produce them, are set out later in this section.

Option 2: Extend mutual recognition to all WTO countries

Another option is to extend the mutual recognition clauses to all WTO countries. This would achieve compliance with WTO rules but also allow food with lower compositional standards to flow into the UK. This could result in a reduction in health benefits for the UK population (for example from unfortified flour products) and introduce artificial competition for UK businesses from third countries with lower food compositional standards.

7. Costs and benefits

Option 1 (preferred): Remove recognition clauses, with an additional provision for unfortified flour.

Summary of costs and benefits

Costs

There are two types of costs we expect to be incurred by main affected groups under this policy option: trade costs and familiarisation costs. The individual cost estimates (that are often based on “worst-case” scenario assumptions) are summarised below.

Trade costs – multi-year impacts, modelled over 10 years⁵:

- Products containing meat - £13,000 per year (10-year present value of £111,000)
- Spreadable Fats - £200 per year (10-year present value of £1,900)
- Curds and Mincemeat - £200 per year (10-year present value of £1,900)
- Bread and Flour products - £2,500 per year (10-year present value of £21,500)

Familiarisation costs in the first year:

- Products containing meat - £28,000

⁵ Figures are presented in 2020 prices. HM Treasury’s central discount rate of 3.5% has been used throughout.

- Spreadable Fats - £10,900
- Curds and Mincemeat - £21,000
- Bread and Flour products - £6,600
- Local authorities (as enforcing bodies) - £700.

Total discounted monetised costs, over a 10-year appraisal period in 2020 prices: £204,000.

There may also be a cost to consumers if certain products are no longer available for purchase under the new regulations and they are unable to find suitable substitutes. However, due to the nature of the change and the products involved, the risk of this (and the associated cost) is likely to be low. Consumers may, however, have to pay more for any substitute goods, albeit goods that meet a higher standard than those purchased previously. Consumers may also experience price rises if exporters choose to comply with our additional standards and pass the costs of doing so onto consumers.

Benefits

This option would achieve compliance with WTO rules and thus eliminate the risk of trade sanctions being imposed to the UK. As alluded to above, it is not possible to say in advance what kind of sanctions would have been applied, hence there has been no attempt to monetise this benefit. However, it is likely, by design, to far outweigh the costs of compliance.

It would eliminate artificial/unfair competition from EEA/Turkey imports.

This option may also result in additional health benefits to the Welsh population, by requiring that only products that meet UK standards are on sale in Wales, including fortified flour and flour products.

This option would preserve unfortified flour supply for UK food manufactures whilst also creating new commercial opportunities for Welsh millers to begin producing unfortified flour for certain markets.

A detailed assessment of costs and benefits is set out below.

Costs

Approach

The main costs associated with the preferred option relate to trade costs and familiarisation costs. These are proportionate to the level of trade on those products, for which limited data is available for some products.

Removal of the mutual recognition clauses that are currently in place in Wales for imports of specific products from EEA countries and Turkey would provide exporters in those countries with a decision to make in terms of future shipments to the UK. Any future imports covered by those clauses would now have to meet our higher domestic compositional standards. Hence, there are effectively three options facing EEA/Turkey exporters – 1) only export products

that comply with our standards⁶ 2) market products under different, non-reserved names (as it is just those products bearing the exact reserved name which need to meet the associated compositional standards) or 3) cease exporting the products entirely. Each of these options entail different costs to EEA/Turkey exporters and UK importers.

In reality and despite the “worst-case” scenario of ceasing exports entirely being used for many of the cost estimates that follow (principally due to data and evidence gaps), we believe the most likely response of EEA/Turkey exporters is that they will choose to comply with our standards and continue exporting to the UK. Limited evidence from a series of meetings held by Defra with industry stakeholders in 2016-2018, together with policy experts’ opinions, suggest that the associated costs with meeting our standards are often low, hence business will most likely choose this route rather than abandoning export of those products to the UK entirely.

In contrast, we believe the choice of rebranding products is expected to have a low uptake, as options to do that may be limited for some of the products affected if they are to maintain their existing markets. For instance, a consumer will be much more familiar with a “burger” than a “meat patty.” If rebranding is feasible, this option would entail re-labelling costs for EEA/Turkey exporters, which could be passed-on to UK importers to some extent. A 2010 Defra commissioned report⁷ estimates average relabelling costs at between £1,500 to £5,000 per SKU (stock-keeping unit).

The ‘worst-case scenario’ in terms of costs to UK importers is considered to be the ‘stop trading’ scenario and it is this scenario that is considered for much of the analysis that follows. If any of the other two options is more profitable for EEA/Turkey exporters, then they will choose to continue trading and the costs to UK importers will be lower.

Additionally, in the ‘worst-case scenario’ where EEA/Turkey exporters choose to stop exporting those products, UK importers will themselves have multiple options to mitigate the potential impact:

- Substitute imports from other countries instead – this would reduce or eliminate the reduction in revenue of UK importers.
- Substitute with domestic production instead – this would reduce or eliminate any potential reductions in revenue for UK importers and would also increase revenues of domestic UK producers.
- Run down existing stocks – likely to be a short-term option only.

Hence much of the detailed cost estimates per product that now follow – which assume both that EEA/Turkey exporters choose to cease exporting to the UK and domestic importers do not have effective mitigation options (as set out above) available to them – should be viewed as a worst-case scenario.

⁶ Food compositional standards lay down minimum compositional requirements for specific commodities, for example: Honey, Jam, Chocolate Products, Sugars, Instant Coffee, Bottled Waters and Fruit Juices. These laws ensure minimum quality standards are maintained, provide a level playing field for industry and protect consumers against lower quality substitution. More details can be found at the Gov.uk page on compositional standards.

⁷ Titled ““Developing a Framework for Assessing the Costs of Labelling Changes in the UK” and found here: [labelling-changes.pdf \(nationalarchives.gov.uk\)](http://nationalarchives.gov.uk/labelling-changes.pdf)

Products containing meat

This recognition clause includes the following categories:

- Burger
- Economy Burger
- Hamburger
- Chopped X (where X is name of meat/type of meat)
- Luncheon X
- Corned X
- Meat Pie, Game Pie
- Scottish Pie or Scotch Pie
- Pasty, Pastie Birdie, Sausage Roll
- Sausage, chipolata or sausage meat
- Pie or pudding — where 'meat/cured meat' directly precedes or follows

For any product to be affected by those regulations, the name of the traded product needs to be exactly as stated in the regulation. E.g., "Chopped X" would apply to any product marketed as "Chopped Chicken" but not "Chicken breasts".

Trade data for such specific product names are not available. However, the specificity entailed in those reserved names, is expected to be a limiting factor on the amount of related trade.

Industry and policy expert anecdotal evidence suggests that the main products affected by the recognition clause are sausages and – to a lesser extent - burgers.

Defra has conducted a currently draft and unpublished survey on Products Containing Meat (that looks at compliance with minimum meat content standards) to assess the level of non-compliance on the main products affected. The resulting estimates are based on a limited sample of 350 products and should be interpreted with caution.

Product/reserved name	"Non-compliance" rate for EU imports
Sausages	20%
Sausage rolls	0%
Burgers	18%
Meat pies	0%

These can be used to produce a 'worst-case scenario' estimate of potential costs for UK businesses.

The only product category for which HMRC trade data⁸ is available is sausages, with the most relevant HMRC trade classification name being

⁸ UK trade data from HMRC, 2021: <https://www.uktradeinfo.com/trade-data/ots-custom-table/>

“Sausages and related products”. Overall imports to the UK of this trade classification, according to HMRC trade data, average at around £20 million over the past decade (in 2020 prices). Assuming that trade to Wales would be proportionate to Wales’s proportion of the UK population (4.7%), this would equate to around £936,000 annually.

If we assume an illustrative non-compliance rate of 20% (taken from above), this will equate to an estimate of “sausages and related products” imports of around £187,000, that are non-compliant.

The ‘worst-case scenario’ would be for this trade to cease completely and Welsh importers losing out on all of the related profits. Assuming the average Welsh food and drink wholesalers profit margin of 2.3% (taken from Defra data on the average profit margins of the top 30 UK food and drink wholesalers⁹), this would equate to lost profits of around £4,300 in relation to sausage imports.

Similar trade data for burgers do not exist, however, relevant trade is thought to be lower than sausages. Assuming a similar level of trade to sausages (and the same non-compliance rate of 20%, marginally higher than the Defra survey suggested), equivalent ‘worst-case scenario’ costs of approximately £4,300 would apply for burgers.

In addition, there may be some small costs relating to the other meat products (outside of sausages and burgers)¹⁰ which are difficult to estimate given lack of available data. It is not expected costs relating to these products will be significant as 1) they are more bespoke products (e.g., “Game Pie”) and 2) given the reserved name issue highlighted at the start of this section. Given this, an absolute worst-case scenario is expected to be that costs will be the same as that estimated for sausages and burgers – i.e., £4,300. This creates total potential trade costs of around £13,000 per year (10-year present value estimate of £111,000).

In terms of potential familiarisation costs, these are calculated by considering the median hourly wage rates of those in occupation 2462 *Quality assurance and regulatory professionals* in (at £22.16 an hour, taken from the 2020 ASHE¹¹ survey), assuming two hours per worker is required to become familiar with the new arrangements. We estimate that up to 640 businesses could be affected in Wales, in the following industries¹²:

1011 : Processing and preserving of meat

1012 : Processing and preserving of poultry meat

1013 : Production of meat and poultry meat products

⁹ Collated from [Companies House](#) and the [FAME database](#)

¹⁰ These products are Chopped X (X is name of meat/type of meat), Luncheon X, Meat Pie, Game pie, Corned X, Scottish pie or Scotch Pie, Pasty, Pastie Birdie, Sausage Roll, Pie or pudding—qualified by the ‘meat/cured meat’ preceding or following the non-meat word.

¹¹ ONS, Employee Earnings in the UK:

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/2020>

¹² All business numbers are taken from the ONS’ UK business: activity, size and location data release: <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/datasets/ukbusinessactivitysizeandlocation>

1085 : Manufacture of prepared meals and dishes

4632 : Wholesale of meat and meat products

4722 : Retail sale of meat and meat products in specialised stores

4729 : Other retail sale of food in specialised stores

The 640 business reflects the total number of Welsh businesses in each of these industry groups. In reality, fewer than this number will be affected, since the proposed arrangements only affects imported products. However, we have taken this full figure for use in the worst-case scenario. We assume that one person in each organisation will need to familiarise themselves with the proposed changes.

Overall, costs for Welsh importers under this option and the above-described 'worst-case scenario' are thus estimated at around £41,000 in year one - £13,000 relating to trade costs and £28,000 relating to familiarisation costs.

Spreadable Fats

The recognition clause relevant to spreadable fats refers to imports of margarine, butter, dairy spreads, dehydrated butter and ghee from Norway, Iceland and Liechtenstein.

HMRC trade data shows that the average annual value of UK margarine imports from these three countries over the last ten years is around £199,000, in 2020 prices.

Assuming that trade to Wales would be proportionate to Wales' proportion of the UK population (4.7%), this would equate to around £9,400.

The share of imported spreadable fats that do not meet our minimum standards is expected to be a fraction of the above-described trade. However, for the purpose of this analysis, applying the estimated profit margin of 2.3% to the full value of trade figure of £9,400 yields a potential trade costs figure, in terms of lost profit, of around £200 per year (10-year present value of £1,900) as a "worst-case" scenario.

In terms of familiarisation costs, as above these are calculated by considering the median hourly wage rates of those in occupation 2462 *Quality assurance and regulatory professionals* (at £22.16 an hour, taken from the 2020 ASHE survey), assuming two hours per worker is required to become familiar with the new arrangements. We estimate that up to 245 businesses could be affected, from the following industries:

4633 : Wholesale of dairy products; eggs and edible oils and fats

4729 : Other retail sale of food in specialised stores

1042 : Manufacture of margarine and similar edible fats

Again, this is likely to be an overestimate, but the full figure is used as a worst-case scenario, assuming that one person in each organisation will have to familiarise themselves with the changes.

Overall, costs for Welsh importers under this option and the above-described 'worst-case scenario' are thus estimated at around £11,100 in year one - £200 relating to trade costs and £10,900 relating to familiarisation costs.

Fruit Curds and Mincemeat

There are no known data on imports of fruit curd or mincemeat products into the UK. Insight gained from industry suggests negligible quantities of the products are imported. Mincemeat is seen to be so traditionally British it would not make any obvious commercial sense for EU countries to try and enter this market, nor have they done in the past. In relation to curds, the view from industry is that exporters would look to rename products in order to adapt to the updated food compositional standards.

To provide some estimates of impact on potential imports in the absence of available data, we have assumed for this analysis that costs are the same as the "worst case" scenario applied to spreadable fats, as both types of categories are not believed to be as widely traded as meat or flour products, of around £200 per year (10-year present value of £1,900).

In terms of familiarisation costs, as above these are calculated by considering the median hourly wage rates of those in occupation 2462 Quality assurance and regulatory professionals (at £22.16 an hour, taken from the 2020 ASHE survey), assuming two hours per worker is required to become familiar with the new arrangements. We estimate that up to 480 Welsh businesses could be affected, from the following industries:

1071 : Manufacture of bread; manufacture of fresh pastry goods and cakes

1072 : Manufacture of rusks and biscuits; manufacture of preserved pastry goods and cakes

4724 : Retail sale of bread; cakes; flour confectionery and sugar confectionery in specialised stores

4729 : Other retail sale of food in specialised stores

As above, in reality not all of the 480 businesses will be affected, but this figure is taken to represent the worst-case scenario and we assume that one worker in each organisation is required to familiarise themselves with the changes.

Overall, costs for Welsh importers under this option and the above-described 'worst-case scenario' are thus estimated at £21,200 in year one - £200 relating to trade costs and £21,000 relating to familiarisation costs.

Bread and Flour

This recognition clause covers imports of unfortified wheat flour from EEA countries. However, a proposed provision is included in this option which would still allow for UK food businesses to source unfortified flour for the production of products that are destined for exports and will allow Welsh flour millers to sell unfortified flour for export.

However, businesses that serve both domestic and international markets may incur additional production costs, driven by the need to adapt their production processes to use two different types of flour: unfortified flour for the export

market and fortified flour for the domestic market. Businesses could also choose to manufacture products containing unfortified flour abroad.

Whilst this is a risk to food manufacturing businesses now and in the future, there is no evidence to suggest that many, if any, businesses will be affected immediately. Although this was highlighted as a potential issue by the Food and Drink Federation as part of their consultation response, they were not able to say how many of their members would be affected. This issue was not highlighted by any other consultation respondents.

Therefore, whilst we acknowledge this as a risk, we believe that few, if any, businesses in Wales will be affected in the near term.

Whilst UK mills can provide enough flour to meet domestic requirements, some flour is imported, often for provenance, with the largest proportion of this coming from France (UK Flour Millers).

As this provision does not allow the use of unfortified flour in the production of goods for the domestic market, producers will need to source UK milled fortified flour (therefore forgoing the provenance aspect), or EEA exporters will need to fortify their flour to UK standards.

We consider the scenario where EEA exporters choose to fortify the flour they are sending to Wales, as the costs of fortifying flour are very small compared to the overall price of flour.

Previous Defra evidence from a 2013 Impact Assessment¹³ on whether to retain mandatory fortification suggested that the cost of fortifying flour was around £0.71 per tonne, equivalent to £0.79 per tonne in 2020 prices. For context, the ONS estimate that a tonne of UK self-raising flour is priced at circa £400 per tonne in October 2021. Hence it is viewed to be very unlikely that an EEA exporter would choose the option of ceasing exports entirely over exporting fortified flour instead. The cost estimates below focus on what the costs of fortifying the relevant supplies of flour might be – and make the assumption all of these costs are passed onto UK importers in the worst-case scenario.

According to HMRC data, imports of wheat flour from EEA countries are around £25 million (or 67,000 tonnes) annually. Assuming that trade to Wales would be in line with Wales' proportion of the overall UK population (4.7%), this would equate to around £1.2 million (or 3,200 tonnes) annually.

It is unlikely that all of this imported flour will be destined for the domestic market. However, if we assume that all of those existing wheat flour imports were unfortified and destined for consumption in Wales – both “worst-case” scenario assumptions – at a cost of around £0.79 per tonne (which is the £0.71 from 2013 in 2020 prices, inflated using the ONS CPIH index), this would equate to costs of £2,500 per year (10-year present value of around £21,500) associated with the 3,300 tonnes in question.

In terms of familiarisation costs, as above these are calculated by considering the median hourly wage rates of those in occupation 2462 Quality assurance

¹³ Figures on fortification of flour costs were provided by industry and had been used in the 2013 IA on the review of the Bread and Flour Regulations 1998. The relevant figures can be found in the public consultation document [here](#) (p.13).

and regulatory professionals (at £22.16 an hour, taken from the 2020 ASHE survey), assuming two hours per worker is required to become familiar with the new arrangements. We estimate that up to 150 Welsh businesses could be affected, from the following industries:

1061 : Manufacture of grain mill products

1071 : Manufacture of bread; manufacture of fresh pastry goods and cakes

1072 : Manufacture of rusks and biscuits; manufacture of preserved pastry goods and cakes

In reality, the number of businesses affected are likely to be much lower as the proposed arrangements only affect imported product. However, we have taken this full figure for use in the worst-case scenario. Therefore, total familiarisation costs are expected to be around £6,600 in the first year.

Overall, the costs under this option in the 'worst-case scenario' described are estimated at £7,100 in year one - £2,500 relating to trade costs and £6,600 relating to familiarisation costs.

Local authorities

As enforcer organisations, local authorities in Wales will also need to familiarise themselves with any changes.

There are 22 local authorities in Wales and as above, we assume that one person from each local authority will need to take two hours to familiarise themselves with any changes made. This cost is valued using the hourly rate associated with occupation 3581 *Inspectors of standards and regulations* (at £15.71 per hour, from the ASHE 2020 survey). Therefore, the total familiarisation costs for local authorities in year one is estimated to be around £700. Any additional inspection costs are expected to be negligible.

Consumers

Consumers may lose out as a result of this legislative change if they are not able to source goods they are used to buying and cannot find suitable substitutes. However, this is unlikely, given the low level of non-compliance and the type of products in scope. Consumers may, however, have to pay more for any substitute goods, albeit goods that meet a higher standard than those purchased previously.

Consumers may also experience price rises if exporters choose to comply with our additional standards and the costs of doing so are passed onto consumers.

Benefits

This option would achieve compliance with WTO rules and thus eliminate the risk of trade sanctions being imposed to the UK.

It would eliminate artificial/unfair competition from EEA/Turkey imports.

This option may also result in additional health benefits to the Welsh population, through ensuring that only products that meet UK standards are on sale in Wales, including fortified flour and flour products.

This option would preserve unfortified flour supply for UK food manufactures whilst also creating new commercial opportunities for Welsh millers to begin producing unfortified flour for certain markets.

Option 2: Extend mutual recognition to all WTO countries

Costs

Extending the recognition clauses to all WTO countries would allow for products with lower food compositional standards from all WTO countries to be imported into the UK.

This would put Welsh businesses at a significant disadvantage, as they would have to follow regulations that overseas businesses importing into Wales would not have to follow. This would mean Welsh manufacturers may not be able to produce goods as cheaply as overseas businesses and could have a decreased market share (negatively affecting domestic industry).

It is also possible that certain non-EEA 3rd countries will have lower product standards than are typical for EEA countries, potentially leading to a cumulative reduction in standards if their market share of Welsh sales were to increase.

It is possible that there may be a 'race to the bottom' as overseas businesses exempt from the legislation continuously decrease standards in order to decrease costs and prices, lowering the quality of products available to consumers. The lack of fortification of flour and flour products could have a negative impact on the nation's health and could also lead to a minor reduction in consumer confidence if consumers perceive compositional standards to be decreasing.

Benefits

This option would achieve compliance with WTO rules and thus eliminate the risk of high trade sanctions being imposed to the UK, as well as other costs related to reputational damage and Government resource.

It would retain unrestricted trade between UK and EEA countries on the relevant products affected and allow manufacturers to produce a single product using unfortified flour for both the domestic and export markets.

It would enable freer trade with all WTO countries on the products covered by these regulations.

8. Competition Assessment

A competition assessment has been carried out, below. The legislation is not expected to have a detrimental effect on competition.

Question	Answer (Yes/No)
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<i>Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?</i>	Unknown, but possible.
<i>Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?</i>	Unknown, but possible.
<i>Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?</i>	Unknown, unlikely, no.
<i>Q4: Would the costs of the regulation affect some firms substantially more than others?</i>	No
<i>Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?</i>	No
<i>Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?</i>	No
<i>Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?</i>	No
<i>Q8: Is the sector characterised by rapid technological change?</i>	No
<i>Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?</i>	Yes

9. Post implementation review

Although the RIA suggests the burden of the legislation will be small, this will be reviewed after a period of one year from the date of implementation to ensure this is still the case and that no unintended consequences are becoming apparent. This review will consider relevant data and stakeholder feedback; and any significant differences in the costs and benefits experienced by affected parties relative to those outlined in this RIA will be investigated.