

Explanatory Memorandum to the Food and Feed (Miscellaneous Amendments) (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 and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022.

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.

Lynne Neagle MS
Deputy Minister for Mental Health and Wellbeing
22 November 2022

PART 1

1. Description

The Food and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 ('the 2022 Regulations') make amendments to subordinate legislation, which apply in relation to Wales, in the fields of food and feed safety and hygiene.

The purpose of the 2022 Regulations is to:

- to address identified deficiencies in Welsh domestic legislation relating to food and feed hygiene and safety. In particular, to remove cross-references to EU Directives, and transpose certain Annexes to those Directives into the domestic legislation.
- correct references within Welsh domestic legislation defining enforcement authorities in relation to Animal Feed.

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

The 2022 Regulations are subject to the affirmative procedure under paragraph 1(8) of Schedule 7 to the European Union (Withdrawal Agreement) Act 2018 ('2018 Act').

The SI contains provision falling within paragraph 1(2)(a) and/or (d), it creates a power to legislate, which, immediately before IP completion date, was a power in an EU directive to make EU tertiary legislation that the Welsh Ministers consider is appropriate to retain.

Specifically, this is regulation 4(8) which inserts a new regulation 15A in to the Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016.

3. Legislative background

This instrument is being made using the power in Paragraph 1(1) of Schedule 2, and 21(b) of Schedule 7, to the European Union (Withdrawal) Act 2018 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. 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.

Alongside the EU (Withdrawal) Act 2018 powers the instrument is also being made in exercise of powers conferred by sections 66(1), 74A(1) and 84 of the Agriculture Act 1970, in order to correct existing errors.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

Before Implementation Period completion day, relevant EU food and feed law provided a high level of consumer protection with regard to food and feed hygiene and safety. In particular, relevant EU food and feed law set out the general principles for the safe and hygienic production of food and feed. It also prescribed effective and proportionate controls to be applied by food business operators and feed business operators throughout the food chain, from primary production through to the sale or supply to the final consumer. It continued to apply unchanged during the Implementation Period.

The 2022 Regulations use powers under the 2018 Act to amend the below national (Wales) legislation, ensuring that retained EU law is restated in a clearer and more accessible way.

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

This instrument implemented aspects the following EU Directives and EU Regulations in relation to Wales:

- Council Directive 84/500/EEC on the approximation of the laws of the Member States relating to ceramic articles intended to come into contact with foodstuffs.
- Commission Directive 2007/42/EC relating to materials and articles made of regenerated cellulose film intended to come into contact with foodstuffs.
- 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.
- Commission 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.
- Commission Regulation (EC) No 2023/2006 establishing good manufacturing practices for materials and articles intended to come into contact with food.
- Commission Regulation (EC) No 450/2009 providing rules on active and intelligent materials and articles intended to come into contact with food.
- Commission Regulation (EU) No 10/2011 providing rules on plastic materials and articles intended to come into contact with food.
- Commission Regulation (EU) 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food and

amending Regulation (EU) No 10/2011 as regards the use of that substance in plastic food contact materials

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

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

This instrument implemented aspects of the following EU Directives and EU Regulations in relation to Wales:

- Directive 2009/32/EC on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients.
- 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.
- Regulation (EC) No. 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods flavourings.

The food improvement agents regulated by this legislation 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 required a pre-market risk assessment and authorisation before being 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 Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016

This instrument implemented aspects of the following EU Directives and EU Regulations in relation to Wales:

- Commission Directive 82/475/EEC laying down the categories of feed materials which may be used for the purposes of labelling compound feeding stuffs for pet animals.

- Directive 2002/32/EC on undesirable substances in animal feed.
- Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.
- Regulation (EC) No 1829/2003 on genetically modified food and feed.
- Regulation (EC) No 1831/2003 on additives for use in animal nutrition.
- Regulation (EC) No 767/2009 on the placing on the market and use of feed.
- Commission Regulation (EU) 2020/354 establishing a list of intended uses of feed intended for particular nutritional purposes.

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

The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016

This instrument implemented aspects the following EU Regulations in relation to Wales:

- Regulation (EC) No 1831/2003 laying down requirements for feed hygiene.
- Commission Regulation (EC) No 152/2009 laying down the methods of sampling and analysis for the official control of feed.
- Regulation (EC) No 767/2009 on the placing on the market and use of feed.
- Regulation (EU) 2017/625 on 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.
- Commission Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from certain third countries.

The Animal Feed (Hygiene, Sampling etc. and Enforcement) (Wales) Regulations 2016 provide for the continuing execution and enforcement of EU

Regulations and Directives on feed hygiene, methods of sampling and analysis for the official control of feed, to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

Why is it being changed?

The principal changes introduced by the 2022 Regulations will ensure that retained EU law is restated in a clearer and more accessible way in relation to Wales.

What will it now do?

In particular, the amendments remove cross-references to EU Directives and transpose certain Annexes to those Directives, which are currently incorporated by cross-reference as they had effect immediate before implementation period completion day (11pm, 31 December 2020), as new Schedules to the instruments concerned. The 2022 Regulations will make the following notable changes:

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

Annex 2 from Commission Directive 2007/42/EC relating to materials and articles made of regenerated cellulose film intended to come into contact with foodstuffs (OJ L 172, 30.6.2007, p. 71–82) is transposed into the Materials and Articles in Contact with Food (Wales) Regulations 2012 as a new Schedule 6 to those Regulations.

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

Annex 1 to Directive 2009/32/EC of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (OJ L 141, 6.6.2009, p. 3–11) is transposed into the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013 as a new Schedule 4A to those Regulations.

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

Annex to Commission Directive 82/475/EEC laying down the categories of ingredients which may be used for the purposes of labelling compound feeding stuffs for pet animals (OJ L 213, 21.7.1982, p. 27–28) is transposed into the Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016 as a new Schedule 1A to those Regulations, and Annexes 1 and 2 to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed (OJ L 140, 30.5.2002, p. 10–22) is transposed into those Regulations as new Schedules 1B and 1C.

The tertiary legislation-making powers of the EU Commission in Articles 7 and 8 of Directive 2002/32/EC to amend the lists of undesirable substances in Annexes 1 and 2 of that Directive, and to define acceptability criteria for detoxification processes, are retained. Regulation 4(8) of the 2022 Regulations inserts a new Regulation 15A into the Animal Feed (Composition, Marketing and Use) (Wales) Regulations 2016, conferring corresponding regulation-making powers on the Welsh Ministers, exercisable in relation to Wales.

Any cross references within Statutory Instruments to EU Directives will be replaced with a reference to the relevant new Schedule(s). Copying out the lists from those Directives into the Statutory Instruments (rather than incorporation by cross-reference) will facilitate future amendments to those lists. It will ensure clarity and accessibility by ensuring that the up-to-date list applicable in Wales is accessible only by reference to the relevant Welsh legislation.

5. Consultation

The FSA in Wales undertook a four week consultation between the 4 August 2022 and the 1 September 2022 on “proposed changes to Welsh law in relation to EU Directives on animal feed, food contact materials and extraction solvents”.

The purpose of this consultation was to provide stakeholders with the opportunity to comment on the FSA’s proposals to correct deficiencies and to make technical fixes to national (Wales only) legislation.

The consultation was published on the FSA website, social media channels and emails sent to Local Authority Food Law Enforcement Officers and Key Stakeholder organisations.

A copy of the consultation is available here:

<https://www.food.gov.uk/news-alerts/consultations/consultation-on-proposed-changes-to-welsh-law-in-relation-to-eu-directives-on-animal-feed-food-contact-materials-and-extraction>

The consultation received two responses from interested parties, with all supporting the proposed approach being outlined within the consultation document. A summary of the consultation responses will be published on the FSA’s website.

6. Regulatory Impact Assessment (RIA)

No Regulatory Impact Assessment has been produced in relation to these Regulations as no significant impact on the private, voluntary or public sectors is foreseen.

Additionally, after reviewing guidance for producing a RIA, the Regulations fit under one or both of the following exemption conditions:

- Where technical amendments are required to change the wording of the law rather than its purpose or effect.
- Where factual amendments are being made to update subordinate legislation and which do not alter the policy (or its impact) in any significant way or how it is applied in a given situation.

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 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 8(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)

Not applicable/required.

2. Appropriateness statement

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

“In my view the Food and Feed (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2022 does no more than is appropriate”.

This is the case because the Instrument addresses failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

3. Good reasons

The Deputy Minister for Mental Health and Wellbeing, Lynne Neagle, 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 to ensure national Regulations are operable and remove remaining inoperabilities in retained EU law.

4. Equalities

The Deputy Minister for Mental Health and Wellbeing, Lynne Neagle, has made the following statement(s)

“The draft 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, Lynne Neagle, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the draft instrument, I, Lynne Neagle, 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

Not applicable/required.

8. Urgency

Not applicable/required.