



Llywodraeth Cymru
Welsh Government

**WRITTEN STATEMENT
BY
THE WELSH GOVERNMENT**

TITLE **The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020**

DATE **12 March 2021**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

SI laid in Parliament, which amends secondary legislation in a devolved area

The Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2020

The law which is being amended

Domestic Legislation

- The Spirit Drinks Regulations 2008
- The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019
- The Organic Production (Control of Imports) (Amendment) (EU Exit) Regulations 2019
- The Food and Farming (Amendment) (EU Exit) Regulations 2019
- The Agriculture (Legislative Functions) (EU Exit) (No. 2) Regulations 2019
- The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020

Retained Direct EU Legislation

- Commission Regulation (EC) No 1416/2006 laying down specific rules on the implementation of Article 7(2) of the Agreement between the European Community and the United States of America on trade in wine concerning the protection of US names of origin in the Community
- Commission Regulation (EC) No 936/2009 applying the agreements between the European Union and third countries on the mutual recognition of certain spirit drinks
- Regulation (EU) No 1151/2012 of the European Parliament and of the Council on

quality schemes for agricultural products and foodstuffs

- Commission Implementing Regulation No 716/2013 laying down rules for the application of Regulation (EC) 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks
- Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products
- Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products
- Commission Implementing Regulation 668/2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs
- Commission Delegated Regulation (EU) 2019/33 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards applications for protections of designations of origin, geographical indications and traditional terms in the wine sector, the objection procedure, restrictions of use, amendments to product specifications, cancellation of protection, and labelling and presentation
- Regulation (EU) 2019/787 of the European Parliament and of the Council on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

Welsh Government officials are of the view that the 2020 Regulations contain provisions conferring functions on the Secretary of State in areas that are within the scope of the Senedd's legislative competence. Functions conferred on the Secretary of State without encumbrance will constitute functions of a Minister of the Crown for the purposes of paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006 ('GoWA'), which restricts the Senedd's legislative competence to remove or modify such functions without consulting the relevant UK government minister.

The purpose of the amendments

The 2020 Regulations amend retained EU food and drink Regulations and domestic subordinate legislation concerning geographical indication ("GI") schemes, wine and organic products. It is subject to the made-affirmative procedure as the provisions contained needed

to enter into force as soon as the transition period ended, but for timing reasons, could not be included in previous secondary legislation.

Primarily, the 2020 Regulations amends retained direct EU legislation to enable the UK to provide for interim protection of third country GIs and traditional wine terms agreed in continuity trade agreements between the UK and third countries, but which have not yet been ratified- referred to as “bridging arrangements”.

The 2020 Regulations also included some other minor amendments which needed to enter in to force at the end of the transition period, including on wine import certifications, US wine names of origin, the importing of organic food and feed, ongoing protection of US and Mexican product designations, the functionality of retained spirits drinks regulations and adding a new class of GI to support the UK-Japan trade agreement.

The 2020 Regulations were laid to address deficiencies in retained EU legislation arising from EU Exit. It is required to ensure that the retained EU legislation is operable in the UK (as provided for by the European Union (Withdrawal) Act 2018).

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348214109/contents>

Consent

The Welsh Government’s position is that geographical indications schemes, wine, spirit drinks and organic food and feed are devolved and do not relate to the reserved matters under any heading in Schedule 7A to the Government of Wales Act 2006. However, the UK Government does not agree, and believes the subject matter of the 2020 Regulations is reserved. Therefore, the UK Government has not requested Welsh Ministerial consent.

However, Welsh Government confirms that Welsh Minister consent to make these corrections in relation to, and on behalf of, Wales would have been given had it been sought for reasons of efficiency and expediency. There is no divergence in policy between the Welsh Government and the UK Government in relation to the substantive provision made by the 2020 Regulations. These amendments are to ensure that the retained direct EU legislation concern, and the regimes underpinned by that legislation, continues to operate effectively as of the end of the transition period.

Welsh Government has written to the UK Government to inform them of our view that it is not appropriate for UK Government Ministers to take unilateral decisions on matters which have a direct effect upon areas of devolved competence’