

The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No 3) Regulations 2019

Explanatory Memorandum

This Explanatory Memorandum has been prepared by the Department for Economy, Skills and Natural Resources and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019.

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.

Lesley Griffiths AM

Minister for Environment, Energy and Rural Affairs

25 October 2019

1. Description

The Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No. 3) Regulations 2019 (“this Instrument”) corrects deficiencies in Welsh statutory instruments which arise as a result of the UK’s exit from the European Union (EU). This Instrument will ensure the statute book in Wales remains up to date and operable once the UK withdraws from the EU.

Regulation 5 & 6 of this Instrument, which make amendments to the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019 and the Food (Information (Wales) (Amendment) (EU Exit) Regulations 2019 will come into force immediately before exit day.

All other provisions contained in this Instrument will come into force on ‘exit day’. ‘Exit day’ is defined in section 20(1) of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) as 31 October 2019 at 11.00 pm.

This Instrument amends:

- the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009,
- the Eggs and Chicks (Wales) Regulations 2010,
- the Poultrymeat (Wales) Regulations 2011,
- the Food (Miscellaneous Amendments) (Wales) (EU Exit) Regulations 2019, which in turn amend the Beef and Veal Labelling (Wales) Regulations 2011. (from this point this Memorandum only refers to the latter of those Regulations),
- the Food (Information (Wales) (Amendment) (EU Exit) Regulations 2019 which in turn insert transitional provisions in the Food Information (Wales) Regulations 2014

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This Instrument does not amend primary legislation. The amendments in this Instrument are corrective and technical in nature and do not introduce policy changes.

The changes made by this Instrument are necessary to ensure the effective and correct functioning of the statute book following the UK’s exit from the EU.

The SI is being laid under the “Made Affirmative” procedure and the Ministerial statement in Part 2 of the Annex sets out the reasons for this decision.

3. Legislative background

This Instrument is being made using the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act.

This Instrument is laid subject to the ‘urgent made affirmative’ procedure in accordance with paragraph 7 of Schedule 7 to the 2018 Act.

In accordance with the requirements of the 2018 Act the Minister for Environment, Energy and Rural Affairs, 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

This instrument makes corrective and technical changes to existing Welsh domestic secondary legislation, to ensure the statute book in Wales is fully operable following the UK’s exit from the EU.

The amendments address deficiencies which arise as a result of the UK’s withdrawal from the EU, including transitional arrangements, inserting definitions and updating references in schedules to EU regulations.

This includes the correction of a transitional provision in the *Beef and Veal Labelling (Wales) Regulations 2011* and the *Food (Information (Wales) Regulations 2014*, and inclusion of a fresh transitional provision in the *Marketing of Fresh Horticultural Produce (Wales) Regulations 2009*.

These provisions provide businesses with a 21 month grace period to adapt to possible labelling changes arising from our withdrawal from the EU. The proposed changes includes in this Instrument ensure the transitional provisions will be relevant regardless of the actual date of our withdrawal from the EU.

4.1 What did the domestic regulations do before exit day?

A summary of the domestic Regulations subject to amendment is set out in the following paragraphs.

The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009

The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009 provide a statutory framework for the enforcement of European marketing rules in the fresh fruit and vegetable sector, provided for in Regulation (EC) 1234/2007 and Regulation (EC) 1580/2007. This aligns with the common organisation of agricultural markets. The Regulations designate the Welsh Ministers as the inspection body for Wales, and make a failure to comply with the marketing rules an offence.

The Eggs and Chicks (Wales) Regulations 2010

The Eggs and Chicks (Wales) Regulations 2010 make provision for the enforcement and execution of directly applicable EU marketing standards relating to eggs for hatching and farmyard poultry chicks, and eggs in shell for consumption (Commission Regulation (EC) No 617/2008, and Commission Regulation (EC) No 589/2008). They also make provision for the enforcement of directly applicable EU controls for Salmonella serotypes with public health significance in relation to the marketing and use of eggs in shell for human consumption.

The Poultrymeat (Wales) Regulations 2011

These Regulations make provision for the enforcement and execution of directly applicable EU marketing standards relating to poultrymeat. These Regulations make the failure to comply with certain provisions of Regulation (EC) 543/2008, relating to the marketing of poultrymeat and registration of slaughterhouses, an offence.

The Beef and Veal Labelling (Wales) Regulations 2011

These Regulations enforce Title II of Regulation (EC) 1760/2000 for the identification and registration of bovine animals and regarding the labelling of beef and beef products. They also enforce the provisions, relating to meat and the marketing of meat of bovine animals aged 12 months or less, contained in Regulation (EC) 1234/2007 and Regulation (EC) 566/2008. These Regulations also enforce certain provisions in Regulation (EC) 1825/2000 and provide rules for the provision of information for un-prepacked meat of bovine animals aged 12 months or less at the point of sale.

The Food Information (Wales) Regulation 2014

These Regulations enforce 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. Regulation (EU) No 1169/2011 makes provision for food information to consumers, including fair information practices to ensure consumers are not misled by information on food packaging.

4.2 Why is it being changed?

After EU-Exit, without amendment, certain provisions will be inoperable and, as a result, existing law will either be unclear or will not function effectively. This Instrument therefore uses powers in the 2018 Act to make predominantly technical changes to the above legislation to ensure that it remains coherent and continues to function correctly after the UK has left the EU. This will provide clarity to producers, enforcement bodies and industry stakeholders.

There is also an imperative to ensure the legislative framework supports the industry to respond to any immediate impacts that may arise from our withdrawal from the EU. For example, changes in labelling requirements that make reference to the 'UK' in place of the 'EU' should be introduced in manner that allows producers a fair opportunity to adjust without unduly committing an offence.

No policy changes are being introduced by these amendments.

4.3 What amendments are being made?

The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009 & the Beef and Veal Labelling (Wales) Regulations 2011

Correction of a transitional provision in the Beef and Veal Labelling (Wales) Regulations 2011 and inclusion of a fresh transitional provision in the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009, to ensure businesses are provided with a 21 month grace period to adapt to possible labelling changes arising from our withdrawal from the EU. These proposed changes also ensure the transitional provisions will be relevant regardless of the actual date of the UK's withdrawal from the EU.

The Eggs and Chicks (Wales) Regulations 2010 & the Poultrymeat (Wales) Regulations 2011

The insertion of the definition of “third country” – this definition needs to align with the definition being inserted by Defra into the EU Regulations to ensure consistency of enforcement across the UK.

Technical amendments to the Schedules to the Eggs and Chicks (Wales) Regulations 2010 to remove or update references to EU Regulations which UK government are proposing to omit or amend.

The Food Information (Wales) Regulation 2014

Amendment of the transitional provisions inserted by the Food Information (Wales) (Amendment) (EU Exit) Regulations 2019. The removal of reference to stocks held “within the period before exit day” and “as at exit day” will reasonably allow businesses to incorporate labelling changes within their normal labelling cycles.

Inserting provision which clarifies, for the avoidance of doubt, that protected food name/geographical indicator products other than wine placed on the market in the period starting the day after exit day may continue to be marketed until the end of the “relevant period” which is three years from the day after exit day.

5. Consultation

Under Article 9 of Regulation (EC) 178/ 2002, there is a statutory duty to consult in relation to ‘food law’. The amendments included in this Instrument have been subject to two separate bilingual consultations, which were published on the Welsh Government consultation website. ‘Updating Welsh food law in preparation for Brexit’ was open from 11 January 2019 to 19 February 2019 and ‘Amendments to Welsh food legislation’ was open from 20 May 2019 to 28 June 2019.

Stakeholder experts and organisations were contacted directly, to ensure those groups and parties most interested in these changes were targeted and fully informed.

A stakeholder letter was also issued on 9 August 2019 in relation to corrections included in Regulations 2 and 5 which were required to reflect the amendment to the 2018 Act to change exit day from 29 March 2019 to 31 October 2019.

The vast majority of responses across these consultations supported the proposals to update and correct deficiencies in EU derived domestic legislation and to make transitional provisions.

There is a requirement under paragraph 4(a) of Schedule 2 to the 2018 Act to consult with the Secretary of State on any provisions that are due to come into force prior to exit day. In accordance with this requirement, the Secretary of State has been consulted through separate letters covering the amendments to the Beef and Veal Labelling (Wales) Regulations 2011 and the Food Information (Wales) Regulation 2014. These letters advise the proposals mirror the approach made by DEFRA to the regulations applying in England.

6. Regulatory Impact Assessment (RIA)

It was not considered necessary to carry out a regulatory impact assessment for this instrument as no impact on the business, public or voluntary sectors are foreseen. The Regulations only introduce minor technical corrections. This is in line with the Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments

Annex: 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
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 committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
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</p>

			the Equality Act 2010.
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. 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	A statement to explain why it is appropriate to create such a sub-delegated power.
Urgency	Sub-paragraph (2) and (8) of	Welsh Ministers exercising powers in	A statement

	paragraph 7, Schedule 7	Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	
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Part 2: Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No 3) Regulations 2019 do no more than is appropriate. This is the case because the Regulations largely correct technical deficiencies in the Welsh legislation that will arise on exit of the EU. The Regulations ensure that the Welsh statutory instruments included remain up to date and continue to operate effectively in Wales once we leave the EU. This is in line with government policy.”

2. Good reasons

The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths 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. This is because the provisions ensure that protections provided by the Welsh regulations included continue to be operable after the UK leaves the European Union.”

3. Equalities

3.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement(s):

“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.”

3.2 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths, 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”.

4. Explanations

The explanations statement has been made in paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

5. Criminal offences

Not applicable/required

6. Legislative sub-delegation

Not applicable/required.

7. Urgency

- 7.1 The Minister for Environment, Energy and Rural Affairs, Lesley Griffiths, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 7.2 In my view by reason of urgency, it is necessary to make the Rural Affairs (Miscellaneous Amendments) (Wales) (EU Exit) (No 3) Regulations 2019, without a draft of the instrument being laid before, and approved by a resolution of the National Assembly for Wales.
- 7.3 This is because if this instrument is not in force in readiness for exit day, the Wales domestic regulations being amended would contain inoperable provisions, preventing the effective operation of enforcement regimes for food marketing standards in Wales. The enforcement of marketing standards is critical for ensuring food marketed in Wales is safe, traceable and authentic, so that failure to deliver a correctly functioning legislative framework to provide for this is an unacceptable risk to consumers.
- 7.4 This relates particularly to the amendments included in this instrument for The Eggs and Chicks (Wales) Regulations 2010 & the Poultrymeat (Wales) Regulations 2011, where the inclusion of definitions for third country and the updating of schedules contained within these regulations are critical for the correct functioning of these regulations on day one of our exit from the EU.
- 7.5 This instrument introduces a new transitional provision to the Marketing of Fresh Horticultural Produce (Wales) Regulations 2009 and amends a transitional provision within the Beef and Veal Labelling (Wales) Regulations 2011. These provisions allow a reasonable and set period for food businesses to adapt to changes in certain food labelling requirements arising from necessary corrections to EU retained law. During this period, these provisions prevent persons from being guilty of an offence on condition the pre-Brexit labelling requirements are adhered to. If this instrument is not in place in readiness for exit day then there is a risk of disruption in the food supply chain and to regulatory bodies in

Wales in consideration of produce already marketed and for the updating of ongoing processes.

- 7.6 Transitional provisions are made to The Food Information (Wales) Regulations 2014 by virtue of the Food Information (Wales) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day. This instrument makes minor amendments to those transitional provisions in order to provide clarity and certainty regarding their application. In order for there to be a clear body of text available on exit day and to minimise the risk of uncertainty, these amendments need to come into force immediately before exit day. If the amended provisions are not in place in readiness for exit day there is a risk of uncertainty for regulatory bodies and food businesses in Wales, together with a risk of inconsistent enforcement regarding the issue of improvement notices throughout the proposed transitional periods.