



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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

DATE **23 October 2020**

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

SO30C – Notification in Relation to Statutory Instruments made by UK Ministers in devolved areas under the European Union (Withdrawal) Act 2018 not laid before the Senedd.

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

The law which is being amended

Domestic Legislation

The Spirit Drinks Regulations 2008
The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009
The Wine Regulations 2011
The Quality Schemes (Agricultural Products and Foodstuffs) Regulations
The Trade Marks (Amendment etc.) (EU Exit) Regulations 2019
The Food and Farming (Amendment) (EU Exit) Regulations 2019
The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019
The Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019

EU Legislation

Commission Regulation (EC) No 2870/2000 of 19 December 2000 laying down Community reference methods for the analysis of spirits drinks.

Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008.

Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012.

Commission Implementing Regulation (EU) No 716/2013 of 25 July 2013 laying down rules for the application of Regulation (EC) No 110/2008 of the European Parliament and of the Council

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013.

Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014.

Commission Delegated Regulation (EU) No 664/2014 of 18 December 2013 supplementing Regulation (EU) No 1151/2012 of the European Parliament and of the Council
Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2018/273 of 11 December 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Commission Implementing Regulation (EU) 2018/274 of 11 December 2017 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Commission Delegated Regulation (EU) 2019/33 of 17 October 2018 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Commission Implementing Regulation (EU) 2019/34 of 17 October 2018 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019.

Commission Delegated Regulation (EU) 2019/934 of 12 March 2019 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Commission Implementing Regulation (EU) 2019/935 of 16 April 2019 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council

Regulation (EU) 2019/1753 of the European Parliament and of the Council of 23 October 2019

Commission Implementing Regulation (EU) 2020/198 laying down rules for the application of Regulation (EU) No 251/2014 of the European Parliament and of the Council

Any impact the SI may have on the Assembly'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 2020 Regulations also contain provision that enables functions conferred on the Welsh Ministers to be exercisable by the Secretary of State in relation to Wales with consent of the Welsh Ministers. Further, certain functions are conferred on the Secretary of State alone, but are exercisable in relation to Wales only with the consent of the Welsh Ministers. These functions have potential to engage the consent requirements in Schedule 7B to GoWA and as such represent a potential restriction on the future competence of the Senedd. However, Welsh Government officials are in negotiations with the Office of the Secretary of State for Wales in relation to an Order under section 109 of GoWA to amend Schedule 7B so as to negate the potential restriction on the future competence of the Senedd.

The purpose of the amendments

The 2020 Regulations provide for the domestic administration and enforcement of UK GIs, which will provide legal protection from imitation for all products recognised by the schemes. This instrument also creates UK operable regulations to administer and enforce the wine and spirit drink sector standards on definition, description, presentation and labelling.

The 2020 Regulations also consolidates (with amendment) the following instruments previously consented to by Welsh Ministers:

- Remaking (with amendments) provision originally contained within the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2019 previously laid before the UK Parliament as an urgent "made affirmative" instrument. That instrument was made and laid on 14 October 2019. However, that instrument required approval by resolution of each House of Parliament within twenty-eight days beginning with the day on which the Regulations were made. It was not approved by Parliament within that period and so has ceased to have effect.
- Remaking (with amendments) provision originally contained within the Agricultural Products, Food and Drink (Amendment) (EU Exit) Regulations 2019 previously laid before the UK Parliament as an urgent "made affirmative" instrument. That instrument was made and laid on 21 October 2019. However, that instrument required approval by resolution of each House of Parliament within twenty-eight days

beginning with the day on which the Regulations were made. It was not approved by Parliament within that period and so has ceased to have effect.

- Revoking and remaking (with amendments) elements of the Food and Farming (Amendment) (EU Exit) Regulations 2019, the Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019 and the Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019.

GIs

Currently EU Regulations provide for the registration and protection of GIs in the UK. These cover i) agricultural products and foodstuffs ii) wines iii) spirit drinks and iv) aromatised wines.

There are sixteen Welsh food products registered under the European Scheme, including PGI Welsh lamb and PGI Welsh beef. GI is an important award as it is seen as a mark of quality which can give producers a greater economic benefit for their produce. The schemes provide legal protection from imitation for both regional and traditional specialties, whose authenticity and origin can be guaranteed. This gives assurance to consumers that products are genuine and enables producers to better promote and market their products.

EU regulations have also governed the definition, description, presentation and labelling rules for spirit drinks, as well as the definition, description, presentation, labelling and oenological rules for wines and aromatised wines.

As the UK leaves the EU, it is vital that rules are in place to continue the protection afforded to these products by these EU Regulations. Under the European Union (Withdrawal) Act 2018, the relevant EU regulations will be converted into UK law. This instrument amends those regulations (and existing domestic regulations) on GI schemes and the wine and spirit drink sectors. The amendments made by this instrument will create working UK GI schemes, and domestically enforceable UK regulations for the wine and spirit drink sectors. This will ensure the UK continues to protect the 86 product names from the UK that are registered as GIs under the EU schemes and continues to meet its World Trade Organisation obligations.

The amendments made by this instrument make a number of corrections, for example:

- 1) The GI schemes will be administered as UK schemes, not as European schemes. All GI applications will go through a single UK scrutiny and opposition process, rather than the current two-stage process (the current Member State and European Commission stages will be combined into a single modified UK scheme process);
- 2) Appeals provisions are being introduced as a result of the UK assuming new responsibilities and functions, previously belonging to the EU. These allow those

with a legitimate interest to appeal to the First-tier Tribunal where they disagree with decisions made in the administration of the scheme; and

- 3) The instrument paves the way for the creation and use of new UK GI logos, including allowing existing UK agri-food GIs three years to comply with the requirement to use the new UK logo when trading in the UK market.

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

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

Consent

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency, expediency and due to the technical nature of the amendments. There is no divergence in policy after full and careful consideration of the proposed amendments, assessment of the policy instructions and legal analysis of the drafting. These amendments are to ensure that the statute book remains functional at the end of the Implementation Period.

In relation to GI schemes, we have a strong interest in ensuring that Welsh GIs are protected throughout the UK (and ideally, through the negotiations on the future partnership, the EU). Previous instruments that are being consolidated into the 2020 Regulations have been the subject of continued correspondence between Defra and the Welsh Government, with Welsh Government officials disputing Defra's position that GIs relate to reserved matters. However, following discussions, it was agreed that Welsh Ministers will have a meaningful role in the governance arrangements for the GI scheme.