

SL(5)197 – The Jam and Similar Products (Wales) Regulations 2018

Background and Purpose

These Regulations, which apply in relation to Wales, provide for the continuing implementation of Council Directive 2001/113/EC relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption (OJ No L 10, 12.1.2002, p. 67). They also retain existing national measures relating to curds, lemon cheese and mincemeat. The Regulations revoke and replace the Jam and Similar Products (Wales) Regulations 2004 (S.I. 2004/553 (W. 56)).

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument.

In Schedule 5, the entry for section 35 of the Food Safety Act 1990 inserts a new subsection (1A). Scottish legislation has already inserted a subsection (1A). That only applies to Scotland, though it does not say so explicitly. A duplication of the number of the provision risks causing confusion. An alternative number could have avoided that risk. This is an example of the complicated state of the statute book when different legislatures amend the same legislation in different ways and at different times.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of political or legal importance likely to be of interest to the Assembly.]

Implications arising from exiting the European Union

These Regulations update the way Council Directive 2001/113/EC is implemented in Wales. They contain cross-references to EU legislation, such as the reference in paragraph 7 of Schedule 1 to Regulation (EC) No 1924/2006 on nutrition and health claims made on foods. Seeking to facilitate trade in jams may mean that there is no urgent need to change these provisions following Brexit. However, it will be necessary for the Welsh Government to review provisions such as these to be satisfied as to which remain appropriate and which need to be revised or replaced to ensure the continuing quality of jams.

Government Response

The Welsh Government notes the point made in the 'merits scrutiny' element of the report.

Regulation 10 of, and Schedule 5 to, the Jam and Similar Products (Wales) Regulations 2018 do not textually amend section 35 of the Food Safety Act 1990 to insert new subsection (1A). Rather, they provide for the application and non-textual modification of section 35(1) and (2), including the insertion of subsection (1A) for the purposes of these Regulations only.



In our view, users of legislation in this field are likely to be well accustomed to this drafting method, requiring the user to read particular things into the text of the Act, which is regularly used in food standards/hygiene legislation; at least seven Wales-only SIs in this field have applied, and made similar modifications to, section 35(1) and (2) of the Food Safety Act 1990 since 2014.

Nevertheless, we will consider whether future subordinate legislation could be drafted in a way that makes clearer that this type of provision only makes non-textual modifications and does not textually amend any legislation.

Section 35(1A) of the Food Safety Act 1990, as inserted by the Scottish legislation, does not form part of the law of England and Wales. We note, however, that the effect of the Scottish amendment is not made clear on the free-to-use legal database and on at least once commercial database and that this in itself may cause confusion as to what provisions form part of the law of England and Wales in this respect.

Legal Advisers

Constitutional and Legislative Affairs Committee

March 2018

