

Explanatory Memorandum to the Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member'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 and Revocations) (Wales) Regulations 2018

Vaughan Gething AM

Cabinet Secretary for Health and Social Services

4 July 2018

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1. Description

The Regulations address a number of issues identified during an analysis of all food and feed legislation for which the Food Standards Agency has policy responsibility in Wales and all food nutrition legislation applying in Wales. These issues arise independently of the UK's proposed exit from the EU and the issues are being addressed now, in advance of the UK's exit from the EU, to ensure the accuracy and currency of the statute book in Wales in relation to food and feed before the UK exits the EU.

The Regulations amend various food and feed-related statutory instruments to, among other things, correct out of date references to domestic legislation and EU instruments, revoke expired or redundant provisions and SIs and correct other minor errors.

2. Matters of Special Interest to the Constitutional Affairs Committee

None.

3. Legislative Background

The Welsh Ministers have the required powers to make these Regulations under sections 16(1) and 48(1) of the Food Safety Act 1990 and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972.

The powers given by the Food Safety Act 1990, which were vested in UK Government Ministers prior to devolution, were transferred to the National Assembly for Wales in 1999 by the National Assembly for Wales (Transfer of Functions) Order 1999 (SI 1999/672) and were subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 ("GoWA").

The Regulations will be made by statutory instrument subject to the negative resolution procedure.

4. Purpose and Intended Effect of the Legislation

The Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018 will:

- I. Provide for the enforcement in Wales of an amendment made to Directive 2001/112/EC relating to fruit juices and similar products by Commission Delegated Regulation (EU) No 1040/2014.

The amendment allows plant proteins from wheat, peas or potatoes to be used to clarify fruit juices. The amendment to the Directive is directly applicable and came into force automatically in Wales in October 2014.

The Regulations amend the Fruit Juices and Fruit Nectars (Wales) Regulations 2013 to make clear to stakeholders that the list of authorised treatments has been extended in this way;

- II. Amend the Food Hygiene (Wales) Regulations 2006 to draw businesses' attention to Regulation (EU) No 2017/2158 on acrylamide.

Regulation (EU) No 2017/2158 is made under Article 4(3) of Regulation (EC) 852/2004 and sets benchmark levels for acrylamide in particular foods, with which businesses must seek to comply.

The substantive obligation on businesses remains in Article 4 of Regulation (EC) 852/2004 (to adopt procedures necessary to meet targets, including the acrylamide benchmark levels). The requirement is already enforced in Wales by the Food Hygiene (Wales) Regulations 2006. The Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018 amend the definition of Regulation (EC) 852/2004 in the 2006 Regulations in order to draw businesses' attention to the new benchmark levels on acrylamide.

- III. Make other miscellaneous amendments and revocations to several Statutory Instruments (SIs) in order to:
 - I. fix or remove out of date references to domestic and EU legislation;
 - II. insert ambulatory references to EU legislation where necessary and appropriate;
 - III. revoke expired transitional measures;
 - IV. revoke redundant provisions and whole SIs where necessary; and
 - V. correct other minor errors.

5. Consultation

The Food Standards Agency ran an eight-week consultation from 1 March to 30 April 2018. There were no responses to the consultation in Wales.

6. Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared to accompany these Regulations as there are no changes to the current controls and therefore no identified costs to consumers, businesses or enforcement authorities associated with implementation of these Regulations.