



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Materials and Articles in Contact with Food (Amendment)
(EU Exit) Regulations 2019**

DATE **6 February 2019**

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The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2019

The retained EU law which is being amended

- Regulation (EC) No 1935/2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC
- Regulation (EC) No 1895/2005 on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food
- Regulation (EC) No 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food
- Regulation (EC) No 450/2009 on active and intelligent materials and articles intended to come into contact with food
- Regulation (EC) No 10/2011 on plastic materials and articles intended to come into contact with food
- Regulation (EC) No 282/2008 on recycled plastic materials and articles intended to come into contact with foods and amending Regulation (EC) No 2023/2006
- Regulation (EU) 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food and amending Regulation (EU) No 10/2011 as regards the use of that substance in plastic food contact materials

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

This SI will enhance the Welsh Ministers' executive powers. It will transfer the European Commission's current powers, including regulation-making functions, to the Welsh Ministers in relation to Wales. Among other things, this will enable Welsh Ministers to:

- decide whether or not to approve applications for new food contact materials and articles to be placed on the market in Wales.
- authorise recycling processes.
- introduce specific measures for the temporary suspension or restricted application of authorised substances.

The Welsh Ministers' regulation-making powers will be subject to annulment by resolution of the National Assembly. The SI will not have any impact on the Assembly's legislative competence.

The purpose of the amendments

The SI relates to retained direct EU law on 'food contact materials'. These are the materials and articles that are either:

- intended to be brought into contact with food;
- are already in contact with food;
- can reasonably be brought into contact with food or transfer their constituents to food under normal or foreseeable use.

This covers both direct or indirect contact, and examples include containers for transporting food, machinery to process food, packaging materials, kitchenware and tableware.

The correcting Regulations will make various technical fixes, which include omitting references to EU institutions, "Community", "Member States" and "the Commission". All existing food contact materials used within the UK prior to exit day will continue to be permitted after exit day, and all conditions attached to their use will be preserved.

As a more substantive change, the correcting Regulations will, in relation to Wales, transfer the functions exercised by European Food Safety Authority (EFSA) to the FSA. The functions include adopting and publishing scientific opinions, and providing scientific advice to the Welsh Ministers in their role as risk managers (see below) on the safety of food contact materials and related processes (e.g. recycling of plastics).

The correcting Regulations will also transfer the Commission's functions, including regulation-making functions under the directly applicable EU law, to the Welsh Ministers. The powers and duties in question with the appropriate Regulation and Articles are:

Regulation 1935/2004

The power to prescribe specific rules for groups of materials and articles (for example, authorising a list of substances for use in the manufacturing of materials and articles) (Article 5), the power to authorise new substances (Article 11), amend the authorisation of listed items (Article 12), or introduce specific measures for the temporary suspension or restricted application of the provisions (Article 18).

Regulation 10/2011

The power to prescribe updates to the list of authorised plastic substances (Article 5), updating the provisional list of additives (Article 7), and the prescribing of specific provisions for Multi-material multi-layer materials and articles (Article 14).

Regulation 282/2008

The power to prescribe the authorisation of the recycling processes (Article 6) and the prescribing of amendments to the authorisation of a recycling process (Article 8).

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/wz10ix8B>

Why consent was given

There is no divergence between the Welsh Government/FSA Wales and the UK Government (FSA UK) on the policy for the corrections. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, FSA Wales/the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.