



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Agricultural Products, Food and Drink (Amendment etc.)(EU Exit) Regulations 2019**

DATE **16 October 2019**

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

The Agricultural Products, Food and Drink (Amendment etc.)(EU Exit) Regulations 2019

The law which is being amended

Domestic Legislation

- The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009
- The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015
- The Food and Farming (Amendment) (EU Exit) Regulations 2019
- The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019

EU Legislation

- Regulation (EC) No 110/2008 of the European Parliament and of the Council
- Commission Regulation (EC) No 606/2009
- Commission Delegated Regulation (EU) No 664/2014
- Commission Implementing Regulation (EU) No 668/2014
- Commission Delegated Regulation (EU) 2018/273
- Commission Implementing Regulation (EU) 2018/274
- Regulation (EU) 2018/1670 of the European Parliament and of the Council
- Commission Delegated Regulation (EU) 2019/33
- Commission Implementing Regulation (EU) 2019/34
- Regulation (EU) 2019/787 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

Although these Regulations make only minor changes to Statutory Instruments which have already been consented to by Welsh Ministers, largely due to the entry into force of Regulation (EU) 2019/787 in May 2019, they relate to an area of competence which is in dispute. In our view, the transfer of functions to the Secretary of State without encumbrance in relation to Geographical Indicator Schemes (GIs) will impact the legislative competence of the National Assembly for Wales, and the executive competence of the Welsh Ministers. This is not recognised by the UK Government who believe that such schemes fall within reserved matters.

Consequently, while the Welsh Government has previously sought joint decision making functions within this instrument in relation to approving food names and GIs, the UK Government has maintained its view that these matters are reserved.

However, in an exchange of letters between the Minister for Environment, Energy and Rural Affairs and the Secretary of State, written assurances have been given that all Devolved Administrations will be involved in the operation of the new scheme. The Welsh Government will continue to work to ensure that the arrangements that will underpin the instrument provides for a clear role for Welsh Ministers in the administration of the scheme.

Where a function has been transferred to the Secretary of State with the consent of Welsh Ministers this will constitute functions of a Minister of the Crown for the purposes of paragraph 11(2) of Schedule 7B to GoWA 2006, which restricts the Assembly's legislative competence to remove or modify such functions without consulting the relevant UK Government Minister. This means that a future Assembly Bill seeking to remove or modify this function could trigger a requirement to consult, but would not require consent from the UK Government prior to modification.

The purpose of the amendments

This instrument provides 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.

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 Welsh lamb and 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.

This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the powers in paragraph 1 of Schedule 4 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018.

The Regulations and accompanying Explanatory Memorandum, setting out the effect of amendments is available here: <https://beta.parliament.uk/work-packages/95VyiSCG>

Consent

Welsh Ministers had to weigh up fully the importance of maintaining the Welsh Government's view on competence against the practical importance of ensuring protection for the 16 Welsh GIs should the UK leave the EU. There is no divergence in underlying policy and these amendments are necessary to ensure that the statute book remains functional following the UK's exit from the EU.

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). While the Welsh

Government's position is that these matters are devolved, the UK Government considers them to be reserved, and therefore these matters are not subject to the terms of the Intergovernmental Agreement, from its perspective. It has not been possible to resolve these matters within the timeframe required to ensure a functioning statute book.

We have not been able to secure joint decision making functions for Welsh Ministers in relation to approving food names and GIs. However, the Secretary of State has provided written assurances that all Devolved Administrations will have a clear role in the development and operation of the new scheme. Consent has therefore been given subject to the satisfactory conclusion of establishing the arrangements for the scheme which will deliver on this commitment and on the basis that it is without prejudice to our position on legislative competence.