

Number: **WG36782**



Llywodraeth Cymru  
Welsh Government

Welsh Government  
**Consultation Document**

## Updating Welsh food law in preparation for Brexit

Date of issue: 5 February 2019

Action required: Responses by 19 February 2019

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

## Overview

This consultation concerns amendments Welsh Ministers propose to make:

(a) to Welsh Statutory Instruments to update references to EU law which are considered to be out of date. These proposed amendments, in the view of the Welsh Ministers, will ensure the legislative framework in this area is up to date when the UK leaves the EU; and

(b) under the European Union (Withdrawal) Act 2018 (EUWA) to Welsh Statutory Instruments derived from EU law, relating to food marketing standards and labelling and school milk. These proposed amendments, in the view of the Welsh Ministers, will ensure the legislative framework in this area remains operable if the UK leaves from the European Union in a 'no deal' scenario.

## Online

The consultation document can be accessed from the Welsh Government's website at [beta.gov.wales/consultations](https://beta.gov.wales/consultations)

## How to respond

### Write to us:

Food Division Second Floor West, Pillar MO4  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

## Further information and related documents

**Large print, Braille and alternative language versions of this document are available on request.**

Mae'r ddogfen yma hefyd ar gael yn Gymraeg / This document is also available in Welsh

## Contact details

For further information:

[FoodEUExitConsultation@gov.wales](mailto:FoodEUExitConsultation@gov.wales)  
[YmgynghoriadBwydYmadaelA'rUE@llyw.cymru](mailto:YmgynghoriadBwydYmadaelA'rUE@llyw.cymru)

email: [Daiana.Baldovin@gov.wales](mailto:Daiana.Baldovin@gov.wales)

telephone: 03000258736

## General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation.

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

### Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:  
Data Protection Officer:  
Welsh Government  
Cathays Park  
CARDIFF  
CF10 3NQ

e-mail:

[Data.ProtectionOfficer@gov.wales](mailto:Data.ProtectionOfficer@gov.wales)

The contact details for the Information Commissioner's Office are:

Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 01625 545 745 or  
0303 123 1113

Website: <https://ico.org.uk/>

## **DETAIL OF CONSULTATION**

### **What is the subject of this consultation?**

This consultation sets out details of the Welsh Government's proposals to correct deficiencies in Welsh Statutory Instruments ("SIs") which arise as a result of the UK withdrawal from the European Union. These amendments are necessary to ensure the legislation remains operable post withdrawal in a 'no-deal' scenario.

This consultation also sets out details of the Welsh Government's proposals to amend references to EU law in Welsh SIs which are considered to be out of date. These amendments in the view of the Welsh Government are necessary to ensure the legislation in this area is up to date on exit day.

The consultation outlines the general principles of these proposed amendments, and the views of industry stakeholders and business owners are welcomed.

This consultation document has been prepared by the Welsh Government and applies to Wales only.

### **What is the purpose of this consultation?**

To seek the views of food and animal feed businesses; enforcement authorities; consumer groups; other stakeholders and the wider public on the amendments proposed by Ministers. The proposed amendments, in the view of the Welsh Ministers, will ensure Welsh domestic legislation is up to date and remains operable if the UK withdraws from the European Union in a 'no-deal' scenario.

A copy of the consultation documents will also be available on our website in due course.

### **Who will this consultation be of most interest to?**

Food industry organisations, businesses (e.g. manufacturers, wholesalers and retailers of food products) and enforcement bodies. This consultation may also be of interest to consumer groups and others (e.g. non-government organisations) with an interest in food related legislation. This consultation applies to Wales only.

# INTRODUCTION

The Welsh Government's priority is to maintain high-standards of food safety and supply chain transparency in Wales, and to ensure the legislative framework in this area is up to date and remains operable after the UK withdraws from the European Union.

To do so, references to EU law which are out of date and deficiencies in Welsh SIs need to be corrected.

This consultation is therefore seeking views on the proposed amendments to Welsh SIs relating to:

- a) food marketing standards;
- b) food compositional standards and labelling;
- c) school milk; and
- d) the reporting on prices of milk products.

The proposals in this consultation do not introduce new policy but seek to maintain the status quo.

This consultation does not address areas which are the responsibility of the Food Standards Agency Wales ("FSA"). If any consultation is required for those areas, it will be carried out by the FSA.

## Background & Proposals

### **Miscellaneous Amendments**

There is a need to correct out-of-date references relating to European law in domestic legislation, for instance where European Directives and Regulations have been amended or replaced, before the UK's exit from the EU. The corrections will ensure the statute book is up to date post-Brexit.

It is proposed that the Welsh Ministers make miscellaneous amendments to the Reporting on Prices of Milk (Wales) Regulations 2011 to amend or replace out of date references.

### **Operability**

Following the Referendum, on 26 June 2018 the European Union (Withdrawal) Act 2018 (EUWA) was passed.

The EUWA provides that from the day we withdraw from the EU on 29 March 2019, directly applicable EU laws will become UK domestic law.

As food marketing standards, labelling and safety and school milk are devolved areas, the EUWA enables the Welsh Ministers to make corrections to Wales' domestic legislation on these matters so as to ensure that it continues to operate after the UK has left the EU.

Since the EU Exit referendum result, the Welsh Government has been reviewing the operability of all food and drink related legislation applying in Wales for which it has policy responsibility. The review has identified a list of amendments that are needed to ensure Welsh SIs remain operable and effective.

Corrections are required to the following Welsh SIs:

- The Marketing of Fresh Horticulture Produce (Wales) Regulations 2009;
- The Eggs and Chicks (Wales) Regulations 2010;
- The Beef and Veal Labelling (Wales) Regulations 2011;
- The Poultrymeat (Wales) Regulations 2011;
- Carcase Classification and Price Reporting (Wales) Regulations 2018;
- The School Milk (Wales) Regulations 2017; and
- The Reporting of Prices of Milk Products (Wales) Regulations 2010.

The changes being proposed should not have any impact on Welsh Industry as they are amendments to correct deficiencies and are made in order to ensure the law remains operable, industry remains sustainable and transparent, and consumers are protected.

The proposed changes should not result in any change in the level of protection to human or animal health, or to the standard of food which consumers expect in relation to both domestically produced and imported products.

Further details on the general principles of the proposed changes are set out below.

## **Background to the Regulations**

### **The Beef and Veal Labelling (Wales) Regulations 2011**

These Regulations establish a system for the identification and registration of bovine animals and the labelling of beef and beef products. The Regulations also lay down detailed rules regarding the marketing of the meat of bovine animals aged 12 months or less, and provide rules for the provision of information for pre-packed meat of bovine animals aged 12 months or less at the point of sale.

## **The Poultrymeat (Wales) Regulations 2011**

These Regulations make provision regarding the marketing of poultry meat including whole birds and cuts, fresh and frozen. These Regulations stipulate the stages in the marketing process, consider what checks should be undertaken by enforcement authorities, and they also outline the obligations of those involved in the marketing process i.e. producers, slaughterhouses.

## **The Eggs and Chicks (Wales) Regulations 2010**

These Regulations implement EU marketing standards relating to the production, marketing and grading of eggs. The Regulations also cover salmonella monitoring and controls on eggs intended for human consumption, in accordance with the Salmonella National Control Plan for Laying Flocks.

## **The Carcase Classification and Price Reporting (Wales) Regulations 2018**

These Regulations relate to the carcasses of adult bovine animals and pigs. They contain information regarding the scales for the classification of carcasses, and further details describing the implementation of those scales for the classification of carcasses. They also provide for notifications to be made to the Welsh Ministers by operators of slaughterhouses which slaughter adult bovine animals or pigs, and contain provisions regarding the holding of licenses by persons who classify bovine carcasses or in relation to classification of such carcasses by automated grading equipment.

## **The School Milk (Wales) Regulations 2017**

These Regulations allow the Welsh Ministers to make national “top up” payments to beneficiaries of an EU subsidy for milk and milk products. They also allow the Welsh Ministers to determine which beneficiaries or products may benefit from the national top up payments. The Regulations also provide for the withholding or recovery of any EU aid or any national payments to which the applicant is not entitled or where the applicant is in breach of any commitments given as a condition of such Union aid or national payment. These Regulations confirm that persons authorised by the Welsh Ministers have explicit powers of entry and inspection in relation to the School Milk Scheme in order to facilitate the enforcement of this Scheme. The Regulations also allow the Rural Payments Agency (on behalf of the Welsh Ministers) to administer the national top up schemes in Wales.

## **The Marketing of Fresh Horticulture Produce (Wales) Regulations 2009**

These Regulations provide a framework for the enforcement of the European marketing rules in the fresh fruit and vegetable sector. They designate the Welsh Ministers as inspection body for Wales and allow the Welsh Ministers to appoint authorised officers. The Regulations confer powers on authorised officers to control the movement of horticultural produce and give a right of review to those served with a written notice

informing of the exercise of that power.

## **The Reporting of Prices of Milk Products (Wales) Regulations 2011**

These Regulations require milk processors to provide the Welsh Ministers with information relating to the prices of certain milk products including cheese and raw milk.

## **Description of amendments**

### **Miscellaneous Amendments**

It is proposed miscellaneous amendments be made to the Reporting of Prices of Milk Products (Wales) Regulations 2011 to amend references to EU legislation which are out of date.

These proposed amendments would come in to force prior to the UK's withdrawal from the EU and would ensure the statute book is up to date. The proposed amendments maintain the status quo.

### **Operability**

The Welsh Ministers are proposing to make a number of miscellaneous technical amendments to correct deficiencies in Welsh legislation which arise as a result of the UK withdrawing from the EU.

The proposed amendments are relatively minor technical fixes, covering a range of issues such as:

- Consequential amendments caused by amendments/revocations to Articles in EU Regulations which these domestic Regulations enforce;
- References to "other' Member States'/third Countries' which are no longer appropriate post-exit and
- Removing redundant provisions in Welsh legislation referring to European Commission (Commission) functions exercisable in Wales (e.g. provisions conferring power on Commission employees to enter property in Wales). The corrections to be made to retained direct EU law by the UK Government will remove the Commission's functions in relation to Wales.

Examples of the proposed corrections are set out below.

In relation to:

- The Eggs and Chicks (Wales) Regulations 2010;
- The Beef and Veal Labelling (Wales) Regulations 2011;
- The Poultrymeat (Wales) Regulations 2011; and

- The Marketing of Fresh Horticulture Produce (Wales) Regulations 2009.

The Welsh Ministers are proposing to make a number of amendments to correct deficiencies in this legislation. The Welsh Ministers are proposing to make numerous amendments, including corrections updating references to EU legislation in the Welsh SIs to ensure operability and clarity.

By way of an example, it is proposed the reference to “EU Legislation” in Regulation 4(1) of the Beef and Veal Labelling (Wales) Regulations 2011 be amended to “Retained EU Legislation”. The provisions themselves would remain unchanged – this would simply be a technical amendment to better reflect the position post-Brexit.

All four sets of Regulations listed above allow authorised officers, such as local authority officers, to carry out enforcement action such as spot checks or inspections to help ensure compliance with the Regulations. The Regulations provide authorised officers with a power of entry into premises in Wales to allow them to carry out these functions. There are examples in the SIs whereby an authorised officer is allowed to be accompanied by a representative of the European Commission.

Once the UK withdraws from the European Union, it will no longer be appropriate or necessary to include representatives of the European Commission within this power of entry for premises in Wales. As such it is proposed these references be removed from the Regulations.

As a result of the UK withdrawing from the EU, there are instances where amendments are required to definitions in Welsh SIs.

In relation to:

The Beef and Veal Labelling (Wales) Regulations 2011

The Welsh Ministers are proposing to make a number of amendments to reflect the changes being made to the direct EU legislation. This includes amendments required to reflect the changes which ensure beef labelled in accordance with EU legislation prior to exit day can continue to be placed on the market until 31 December 2010, and can remain on the market until stocks have been exhausted.

In relation to:

- The Eggs and Chicks (Wales) Regulations 2010; and
- The Poultrymeat (Wales) Regulations 2011;

The Welsh Ministers are proposing to make a number of amendments to correct deficiencies in this legislation. The Welsh Ministers are proposing to make numerous corrections, including but not limited to amendments to amending references to ‘third countries’. Once we leave the EU, these references need to be updated to ensure they capture EU countries, to ensure that EU countries are treated in the same way as other third countries such as Canada.

It is proposed the following definition of “third country” be inserted:

“Third country means any country other than (a) the United Kingdom (b) the Bailiwick of Jersey (c) the Bailiwick of Guernsey or (d) the Isle of Man”.

- In relation to the Eggs and Chicks (Wales) Regulations 2010

The Welsh Ministers are proposing to make a number of amendments to correct deficiencies in this legislation. The Welsh Ministers are proposing to make numerous technical amendments and corrections, including but not limited to for example amending references in these Regulations to Council Directive 1999/74/EC which sets out the minimum standards of protection for laying hens. When the UK leaves the EU, Council Directives will cease to apply in the UK, and as such these references need to be updated. The relevant provisions of Council Directive 1999/74/EC was implemented in Wales by the Welfare of Farmed Animals (Wales) Regulations 2007. It is therefore proposed references to the Directive be amended to references to the Regulations to ensure the legislation is operable and allow the current system to continue in Wales.

In addition, in these Regulations the term “region” is currently defined as “Wales” by reference to section 1(2)(b) of the European Parliamentary Elections Act 2002. The European Parliamentary Elections Act 2002 is due to be repealed by Schedule 9 of EUWA and so this definition needs to be amended. The definition of region feed into the definition of “region of production”, which when read with Part 3 provides for exemptions from the marketing rules.

Paragraph (a) of the definition of “region of production”, when read with the exemptions in Part 3, allows producers who have a production site in Wales to sell eggs directly by door-to-door selling or at a local public market within an 80km radius of the boundary of their site, or anywhere else within their “region” which is Wales for these purposes.

Paragraph (b) of the definition of “region of production” is currently inoperable, as it makes provision for production sites which are situated in more than one region (i.e. partly in one region, partly in another). As there is only one ‘region’ in Wales (which is Wales), paragraph (b) requires amendment.

The Welsh Ministers propose to definition of “region of production” to remove paragraph (b), and include an express reference to ‘Wales’. This proposal will fix the operability issues, and improve the clarity of the law. The Regulations will continue to have the same effect, and the status quo will continue.

There are currently references in Schedules 2 and 3 to these Regulations to various Articles of direct-EU legislation. DEFRA are making amendments to direct-EU legislation including removing articles as part of their ongoing deficiency correction programme. Schedules 2 and 3 will therefore be updated to reflect the changes being made by DEFRA to the direct-EU legislation.

- In relation to the Carcase Classification and Price Reporting (Wales) Regulations 2018

The Welsh Ministers are proposing to make a number of amendments to correct deficiencies in this legislation. The Welsh Ministers are proposing to make corrections, including, amongst others, amending the phrases “European Pig Provision” and “European Beef Provision”.

The regulations use the phrases “European Pig Provision” and “European Beef Provision”. It is proposed to amend these references to insert the word “retained” so they will then read “retained EU Pig Provision” and likewise for “European Beef Provision”. This is a technical amendment to better reflect the position post-Brexit.

- In relation to the School Milk (Wales) Regulations 2017

It is proposed that references to “EU aid” are updated to ensure the regulations continue to operate effectively.

Member States are required to undertake administrative checks and on-the-spot checks of applicants’ premises. These regulations help the Welsh Ministers (via authorised persons) to comply with these obligations to undertake effective on-the-spot checks to ensure compliance and prevent error and fraud. Provision is then made for the authorised person to be accompanied by any such persons as the officer considers necessary, including any representative of the European Commission.

As with the food marketing and labelling Regulations, once the UK withdraws from the European Union, it will no longer be appropriate or necessary to grant representatives of Member States or the European Commission this power of entry for premises in Wales. As such it is proposed that any such references in these Regulations are removed.

- In relation to the Reporting of Prices of Milk Products (Wales) Regulations 2011

It is proposed references to the Commission Implementing Regulation (EU) 2017/118 be updated. That Regulation makes provision about notifications to the European Commission, and once the UK withdraws from the European Union these provisions will be redundant.

It is also proposed the definition of “milk products” be amended as this is currently done by reference to the Commission Implementing Regulation. The Welsh Ministers propose to amend the definition so it simply lists the items which are currently captured within the definition. This will ensure operability and maintain the status quo.

## **Impact**

No financial impacts were identified by the Welsh Government when the proposals were developed.

We assume all registered food establishments are concerned with this area of legislation and will therefore have to invest in understanding the new legislation. According to the ONS Inter Departmental Business Register (IDBR) there were 292,860 businesses active in the agri-food sector in 2017. We envisage minimal one-off familiarisation costs to business; where we estimate that it will take each business less than 30 minutes to read and understand the proposed regulations and then disseminate the information to key staff within their firm. It is unlikely the envisaged changes will present any other impact on businesses' day to day operations as the rules are not changing as a result of these proposals.

## **Engagement and Consultation Process**

### **Consultation Process**

- A 4 -week consultation is being launched to provide interested parties with the opportunity to comment on these proposals.
- This consultation seeks views on the approach for updating references to EU law and fixing deficiencies in EU-derived Welsh Statutory Instruments, with particular regard to the functions, and terminology references of certain EU bodies.

Any responses received as part of this consultation will be given careful consideration and a summary of the responses received may be published on our website.

### **Groups affected**

The proposed technical amendments to domestic law relating to food compositional, marketing standards, and labelling will be relevant to all Wales's food (including feed) businesses, local authority food law enforcement officers as well as consumers and other stakeholders with an interest in UK food and animal feed law.

Businesses and food law enforcement stakeholders will want to familiarise themselves with the main corrections which are being proposed, and which will require action from them to ensure they continue to operate effectively once the UK withdraws from the European Union.

The Welsh Government is not conducting an Impact Assessment as no impact on businesses or enforcement authorities is foreseen.

## **Consultation Response Form**

Your name:

Organisation (if applicable):

email / telephone number:

Your address:

**Question 1:** We would like to know your views on the effects would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

**Question 2:** Please also explain how you believe the proposed policy could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

**Question 3:** Do you agree with the proposed amendments regarding the Regulations mentioned above?

**Question 4:** Are there any additional points you would like to make regarding the proposed changes to legislation relating to food compositional, marketing standards and labelling?

**Question 5:** We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please state here:

## **Responding to the Consultation**

We appreciate you taking your time to read and respond to this consultation.

Responses are required by 19 February. Any responses received after this time will not be included in the analysis of the consultation responses. If you are responding on behalf of an organisation we ask for your name and the organisation's name. However,

you have the option to remain anonymous if you wish. Please refer to the Data Protection section for further information about how this is used.

Thank you on behalf of the Welsh government for participating in this public consultation.