SL(5)153 - Novel Foods (Wales) Regulations 2017

Background and Purpose

The Novel Food (Wales) Regulations 2017 will revoke and replace in Wales the Novel Food and Novel Food Ingredients Regulations 1997 (1997/1335), which provide for the enforcement of the Novel Foods Regulations (EC) No 258/97. Regulations will also revoke the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997 (1997/1336) in relation to Wales and the Food Enzymes (Wales) Regulations 2009 (2009/3377).

The purpose of the Novel Foods (Wales) Regulations 2017 is to:

i. Ensure that those placing novel foods on the market within Wales are fully compliant with the new EU legislative requirements. This supports consumers accessing safe food innovation and facilitates trade in new foods by UK businesses, whilst providing protection of human health and consumer interests;

ii. Provide for the enforcement of the new EU Regulation on novel foods through the use of improved enforcement tools that may be employed to deal with suspected non-compliances with the EU Regulation and a range of civil penalties;

iii. Maintain access to a back stop criminal offence and provide for defences against prosecution and establish a right of appeal against the imposition of an improvement notice in particular circumstances;

iv. Specify penalties that the Courts may impose upon conviction and enable the award of compensation where enforcement authorities are found not to have taken appropriate action.

Procedure

Negative.

Technical Scrutiny

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

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Implications arising from exiting the European Union

The following analysis is based on the European Union (Withdrawal) Bill ("the Bill") as introduced.

These Regulations form part of "EU-derived domestic legislation" under clause 2 of the Bill. Therefore, these Regulations will be retained as domestic law and will continue to have effect in Wales on and after exit day. The Bill gives the Welsh Ministers power to modify these Regulations in order to deal with deficiencies arising from EU withdrawal, subject to certain limitations.

The Regulations also provide for the enforcement of the Novel Foods Regulations (EC) No. 258/97. EU Regulation 258/97 currently has direct effect in EU member states, including Wales. On exit, this Regulation will be frozen and will be retained as / converted into domestic law called "retained direct EU legislation".

The Bill will not give the Welsh Ministers (or the National Assembly for Wales) power to modify any retained direct EU legislation, including EU Regulation 258/97 which is concerned with the devolved area of food. Power to modify all retained direct EU legislation is given to UK Ministers; this includes the power to modify retained direct EU legislation in devolved areas without the need for the consent of the National Assembly for Wales or the Welsh Ministers.

Therefore, if UK Ministers use their powers to modify EU Regulation 258/97 as retained direct EU legislation, the power of the Welsh Ministers to modify these Regulations will be limited so that the Welsh Ministers cannot do anything that is inconsistent with the modification made by UK Ministers.

Government Response

No government response is required.

Committee consideration

The committee considered the instrument and was content. The Committee reports to the Assembly to highlight the points identified as a result of the UK exiting the European Union.