

Explanatory Memorandum to the Food Information (Wales) (Amendment) Regulations 2016

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.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food Information (Wales) (Amendment) Regulations 2016

Rebecca Evans AM

Minister for Social Services and Public Health

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Explanatory Memorandum for the Food Information (Wales) (Amendment) Regulations 2016

1. Description

These Regulations provide for the effective enforcement in Wales for Commission Implementing Regulation (EU) No 828/2014 (“Regulation (EU) No 828/2014”) on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food.

2. Matters of Special Interest to the Constitutional Affairs Committee

None.

3. Legislative Background

The powers enabling this instrument to be made are conferred by sections 16(1), 17 (2), 26(3) and 48 of the Food Safety Act 1990 (“the 1990 Act”) and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”).

The functions of the Secretary of State under the 1990 Act were transferred to the Assembly by the National Assembly for Wales (Transfer of Functions) Order 1999/672. These functions were subsequently transferred to the Welsh Ministers under paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (“GOWA 2006”).

The Welsh Ministers are designated for purposes of section 2(2) of the 1972 Act in relation to measures relating to food (including drink) including the primary production of food. The relevant designation order is the European Communities (Designation No.2) Order 2005/1971, which conferred functions on the National Assembly for Wales. Those functions were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to GOWA 2006.

Regulation (EU) No 609/2013 (“the FSG Regulation”) repeals Regulation (EC) No 41/2009 concerning the composition and labelling of food suitable for people intolerant to gluten from 20 July 2016, and requires the Commission to transfer its rules under the framework of Regulation (EU) No 1169/2011 on the provision of food information to consumers (“the FIC Regulation”).

The FIC Regulation already includes rules requiring the mandatory labelling for all foods of ingredients such as gluten-containing ingredients, with a scientifically proven allergenic or intolerance effect. In order to ensure clarity and consistency, the FSG Regulation foresees that all the rules applying to gluten should be set by the same piece of legislation and, for this reason,

established that Regulation (EU) No 1169/2011 should also be the framework for the rules related to information on the absence of gluten in food.

In order to comply with the requirements of the FSG Regulation, the Commission:

- first amended Regulation (EU) No 1169/2011 through Commission Delegated Regulation (EU) No 1155/2013 (this allowed the Commission to lay down rules on the matter) and;
- subsequently, adopted Commission Implementing Regulation (EU) No 828/2014 which lays down the specific requirements for the provision of information to consumers on the absence or reduced presence of gluten in food.

The Food Information (Wales) Regulations 2014 (“the 2014 Regulations”) currently provide for the enforcement in Wales for Regulation (EU) No 1169/2011. These Regulations will amend the 2014 Regulations to provide enforcement for Regulation (EU) No 828/2014.

These Regulations are made using the negative resolution procedure.

4. Purpose and Intended Effect of the Legislation

These regulations provide for the effective enforcement of Regulation (EU) No 828/2014.

These regulations operate so that an enforcement authority can choose to either issue an improvement notice where it is suspected that a person is failing to comply with the requirements of Regulation (EU) No 828/2014, or they can prosecute immediately where the enforcement authority considers it is appropriate to do so.

These Regulations revoke the Foodstuffs Suitable for People Intolerant to Gluten (Wales) Regulations 2010, which currently provide for the enforcement in Wales of the rules applying to the composition and labelling of food suitable for people intolerant to gluten.

5. Consultation

The Food Standards Agency ran a shortened six-week consultation that ran from the 30 March to 12 May 2016. There were two responses to the consultation in Wales; one from the charity Coeliac UK and one from the Wales Heads of Trading Standards (WHoTS).

The response from Coeliac UK was supportive of the proposal to amend the Food Information (Wales) Regulations 2014 to include provisions for Gluten

Free and Low Gluten labelling and the proposed enforcement regime. Coeliac UK did however raise concerns around clarification on the phrases that can now be used to signpost food in relation to their gluten content, specifically the term 'No gluten-containing ingredients'. The FSA has written to stakeholders informing them that such phrases cannot be used and only the terms set out in Regulation (EU) 828/2014 are permitted. FSA will be updating guidance to sit alongside the Regulations in due course.

The main points from WHoTS were:

- Concerns over potential food safety issues caused by cross contamination and how these are dealt with in the any guidance notes for these Regulations. These Regulations are not introducing new requirements; they are making changes in relation to how the gluten rules are enforced in Wales. How these Regulations now fit within the allergen rules within FIC will be dealt with in any guidance produced by the Food Standards Agency.
- The group also raised concerns about the general use of improvement notices for labelling offences and how they can be used for repeat offenders. The FSA will carry out a review of the use of improvement notices within the Food Information (Wales) Regulations 2014 two years after the coming into force date of the 2014 Regulations which will be December 2016.
- Specifically in relation to the gluten rules, the group raised concerns around the lack of a direct offence for safety breaches in relation to allergens and in this case gluten. The Regulations have been amended to add this direct offence as the FSA agreed that in order to maintain consistency for consumer protection in how food safety concerns for allergens are managed within legislation, the direct offence was required.

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 new Regulations.