

# Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 2 – Senedd**

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Meeting date:

**22 September 2014**

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Meeting time:

**14.00**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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## Agenda

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**1 Introduction, apologies, substitutions and declarations of interest**

**2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3** (Pages 1 – 2)

**CLA(4)–22–14 – Paper 1 – Statutory instruments with clear reports**

Negative Resolution Instruments

**CLA443 – The National Health Service (Physiotherapist, Podiatrist or Chiropodist Independent Prescribers) (Miscellaneous Amendments) (Wales) Regulations 2014**

Negative procedure; Date Made: 27 August 2014; Date laid: 29 August 2014;

Coming into force date: 24 September 2014.

**CLA445 – The Education Workforce Council (Membership and Appointment) (Wales) Regulations 2014**

Negative procedure; Date Made: 3 September 2014; Date laid: 5 September 2014; Coming into force date: 29 September 2014 except as provided for in regulation 1(1).

**CLA447 – The Common Agricultural Policy Basic Payment Scheme (Provisional Payment Region Classification) (Wales) (Amendment) Regulations 2014**

Negative procedure; Date Made: 5 September 2014; Date laid: 5 September 2014; Coming into force date: 26 September 2014.

**3 Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

**CLA442 – The Government of Maintained Schools (Training Requirements for Governors) (Wales) (Amendment) Regulations 2014 (Pages 3 – 13)**

Negative procedure; Date Made: 20 August 2014; Date laid: 22 August 2014; Coming into force date: 19 September 2014.

CLA(4)–22–14 – Paper 2 – Report

CLA(4)–22–14 – Paper 3 – Regulations

CLA(4)–22–14 – Paper 4 – Explanatory Memorandum

**CLA444 – The Food Information (Wales) Regulations 2014 (Pages 14 – 86)**

Negative procedure; Date Made: 28 August 2014; Date laid: 29 August 2014; Coming into force in accordance with regulation 1(3) to (6).

CLA(4)–22–14 – Paper 5 – Report

CLA(4)–22–14 – Paper 6 – Regulations

CLA(4)–22–14 – Paper 7 – Explanatory Memorandum

## **4 Paper to note**

**Correspondence regarding the Children's Commissioner for Wales Review** (Pages 87 – 90)

**CLA(4)–22–14 – Paper 8 – Letter**

## **5 Evidence in relation to the Financial Education and Inclusion (Wales)**

**Bill** (Pages 91 – 109)

*(Indicative time 2.15pm)*

Bethan Jenkins AM, Member in Charge of the Financial Education and Inclusion (Wales) Bill;

**CLA(4)–22–14 – Paper 9 – Letter from the Minister for Communities and Tackling Poverty**

**CLA(4)–22–14 – Research Service Briefing**

**CLA(4)–22–14 – Legal Advice Note**

## **6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

**Draft Report Higher Education (Wales) Bill** (Pages 110 – 142)

**CLA(4)–22–14 – Paper 10 – Draft report**

**Forward Work Programme** (Pages 143 – 144)

**CLA(4)–22–14 – Paper 11 – Forward Work Programme**

# Agenda Item 2

Constitutional and Legislative Affairs Committee  
Statutory Instruments with Clear Reports  
22 September 2014

**CLA443 – The National Health Service (Physiotherapist, Podiatrist or Chiropodist Independent Prescribers) (Miscellaneous Amendments) (Wales) Regulations 2014**

**Procedure – Negative**

Supplementary and independent prescribing is permitted by virtue of UK medicines legislation. The Human Medicines Regulations 2012 now permit physiotherapist independent prescribers and chiropodist and podiatrist independent prescribers to provide prescriptions. Devolved administrations may implement this as they wish.

These Regulations amend:–

- The National Health Service (Pharmaceutical Services) (Wales) Regulations 2013;
- The National Health Service (General Medical Services Contracts) (Wales) Regulations 2004; and
- The National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Wales) Regulations 2007;

by extending the definition of prescriber through the insertion of new categories of independent prescriber, namely physiotherapist independent prescriber and podiatrist or chiropodist independent prescriber.

The Single Use Carrier Bags Charge (Wales) Regulations 2010 are amended to extend the exemption from charge applicable to carrier bags used solely to contain medicinal products or listed appliances provided in accordance with a prescription issued by specific prescribers to those issued by

physiotherapist independent prescribers and podiatrist or chiropodist independent prescribers.

#### **CLA445 – The Education Workforce Council (Membership and Appointment) (Wales) Regulations 2014**

**Procedure:** Negative

Section 2 in Part 2 of the Education (Wales) Act 2014 provides that the General Teaching Council for Wales is to continue to exist but will change its name to the Education Workforce Council (“the Council”). Part 2 makes further provision in relation to the Council. These Regulations make provision in relation to membership of the Council and the appointment of the chief officer.

#### **CLA447 – The Common Agricultural Policy Basic Payment Scheme (Provisional Payment Region Classification) (Wales) (Amendment) Regulations 2014**

**Procedure:** Negative

These regulations amend the definitions of the ‘moorland’ and ‘severely disadvantaged area’ payment regions in Wales. They also expand the criteria permitting persons in Wales to appeal the classification of land for payment purposes under the new Basic Payment Scheme.

# Agenda Item 3.1

## Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-22-14

### CLA442 – The Government of Maintained Schools (Training Requirements for Governors) (Wales) (Amendment) Regulations 2014

These Regulations amend the Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013 (“the 2013 Regulations”), which set out the training requirements for governors at maintained schools in Wales.

Regulation 2 makes an amendment to the reference to the training document “Content of training for school governors in Wales on understanding school data” in the 2013 Regulations. A link to the amended document is available on this page –

<http://cymru.gov.uk/topics/educationandskills/schoolhome/schoolfundingandplanning/schoolgov/governors-training/?skip=1&lang=en>

**Procedure: Negative**

#### Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Regulation 2(2) refers to a document published in August 2014, whilst the document that was published shows the publication date as September 2014. Paragraph 4.5 of the Explanatory Memorandum also refers to publication in September. It is not therefore possible to be absolutely certain that this is the document referred to in the Regulations. [Standing Order 21.2(vi) – that the meaning of the instrument requires further explanation.]

## **Merits Scrutiny**

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. If the date noted on the document is correct, the document had not been published when the Regulations were made. Section 22(4) of the Education (Wales) Measure 2011 permits training to be prescribed by reference to a document published by the Welsh Ministers. However, the document should have been published when the Regulations were made, or at least that should have happened at the same time. The reason for that is that the opportunity to scrutinise regulations in accordance with the Measure could be undermined by referring to a document that had not yet been finalised.

In the present case, that has not occurred as (in accordance with Standing Order 21.5) the period for scrutiny by this Committee does not run during the summer recess. Similarly, That has not occurred in relation to the possibility of tabling a motion to annul as (in accordance with Standing Order 27.12) the period for tabling such a motion does not run during the summer recess. Nevertheless, it is a practice that should be avoided.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly;]

## **Legal Advisers**

Constitutional and Legislative Affairs Committee

**September 2014**

## **Government's Response**

The Welsh Government acknowledges that there is some ambiguity in that regulation 2(2) of the Government of Maintained Schools (Training Requirements for Governors) (Wales) (Amendment) Regulations 2014 (“the 2014 Regulations”) amends the definition of “the school performance data training” in regulation 2 of the Government of Maintained Schools (Training

Requirements for Governors) (Wales) Regulations 2013. That amendment refers to the date of publication of the external training document in that regulation as “August”. However, the external training document itself states that it was published in “September”. The correct date of publication is “August” and the Welsh Government will therefore amend the date of publication in the external training document to “August”. The Welsh Government anticipate that change will be made in the next couple of days and certainly before the provisions of the Regulations come into force.

**September 2014**

**2014 No. 2225 (W. 214)**

**EDUCATION, WALES**

**The Government of Maintained  
Schools (Training Requirements for  
Governors) (Wales) (Amendment)  
Regulations 2014**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013 (“the 2013 Regulations”), which set out the training requirements for governors at maintained schools in Wales.

Regulation 2 makes an amendment to the reference to the training document “Content of training for school governors in Wales on understanding school data” in the 2013 Regulations.

Regulation 2 also amends regulation 5 of the 2013 Regulations by substituting a new paragraph (1) which outlines which part of the school performance data training (either Part 1 or Part 2) is required by school governors depending on the type of school.

The effect of this amendment is that governors for community special schools will be required to complete different training to governors of other maintained schools.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

**2014 No. 2225 (W. 214)**

**EDUCATION, WALES**

The Government of Maintained  
Schools (Training Requirements for  
Governors) (Wales) (Amendment)  
Regulations 2014

*Made* 20 August 2014

*Laid before the National Assembly for Wales*  
22 August 2014

*Coming into force* 19 September 2014

The Welsh Ministers, in exercise of the powers in sections 19 and 210 of the Education Act 2002<sup>(1)</sup> and sections 22(3) and (4) and 32 of the Education (Wales) Measure 2011<sup>(2)</sup>, make the following Regulations.

**Title, commencement and application**

1.—(1) The title of these Regulations is the Government of Maintained Schools (Training Requirements for Governors) (Wales) (Amendment) Regulations 2014 and they come into force on 19 September 2014.

(2) These Regulations apply in relation to Wales.

(3) In these Regulations “the 2013 document” (“*dogfen 2013*”) means the document published by the Welsh Ministers called “Content of training for school governors in Wales on understanding school data”<sup>(3)</sup>.

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(1) 2002 c. 32. Section 210(7) was amended by section 21(1), (3)(c)(i) and (ii) of the Learner Travel (Wales) Measure 2008 (nawm 2). The functions of the National Assembly for Wales under these sections were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

(2) 2011 nawm 7.

(3) ISBN no: 978-0-7504-9650-6.

## **Amendment of the Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013**

2.—(1) The Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013(1) are amended as follows.

(2) In regulation 2 in the definition of “the school performance data training” (“*yr hyfforddiant ar ddata perfformiad ysgolion*”) for “September 2013 and called “Content of training for school governors in Wales on understanding school data””, substitute “August 2014 and called “Training for school governors in Wales on understanding school data(2)””.

(3) In regulation 5 for paragraph (1) substitute—

“5.—(1) Where a governor is appointed or elected to a governing body after the coming into force of these Regulations, that governor must within one year of that appointment or election (whichever is the later) (“the school performance data training period”) complete—

- (a) Part 1 of the school performance data training if they are a governor of a community, or voluntary, or foundation school, or maintained nursery school; or
- (b) Part 2 of the school performance data training if they are a governor of a community special school.

(1A) Where a governor of a community, or voluntary, or foundation school or maintained nursery school who has completed Part 1 of the school performance data training in accordance with the Regulations, becomes a governor of a community special school, that governor is not required to complete Part 2 of the school performance data training.

(1B) Where a governor of a community special school who has completed Part 2 of the school performance data training in accordance with the Regulations, becomes a governor of a community, or voluntary, or foundation school or maintained nursery school, that governor is not required to complete Part 1 of the school performance data training.”

### **Savings provision**

3. Nothing in these Regulations applies to a governor who, before the coming into force of these

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(1) S.I. 2013/2124 (W. 207).  
(2) ISBN-978-1-4734-1568-3.

Regulations, completed the school performance data training as set out in the 2013 document.

*Huw Lewis*

Minister of Education and Skills, one of the Welsh Ministers

20 August 2014

**Explanatory Memorandum to the Government of Maintained Schools  
(Training Requirements for Governors) (Wales) (Amendment) Regulations  
2014**

This Explanatory Memorandum has been prepared by the Department for Education and Skills 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 above Regulations.

Huw Lewis, AM  
Minister for Education and Skills  
19 August 2014

## **1. Description**

1.1 The Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2014 (“the 2014 Regulations”) amend the Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013 (“the 2013 Regulations”) which set out the training requirements for governors of maintained schools in Wales.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

2.1 None.

## **3. Legislative background**

3.1 The Welsh Ministers’ powers to make these Regulations is contained in section 22 of the Education (Wales) Measure 2011 (“the Measure”). This section requires local authorities in Wales to provide information and training to governors, free of charge, on a range of issues that enable them to effectively discharge their functions. It also states that the Welsh Ministers may set out the content of that training in a published document.

3.2 In addition, sections 19, 23, and 210 of the Education Act 2002 provide that the Welsh Ministers may make regulations with respect to the eligibility of governors for election and appointment.

3.3 The powers of the National Assembly for Wales in the Education Act 2002 were transferred to the Welsh Ministers under Section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

3.4 These Regulations are subject to annulment and are being made using the negative resolution procedure.

## **4. Purpose & intended effect of the legislation**

4.1 The purpose of these Regulations is to ensure that the mandatory data training being delivered is relevant to governors of community special schools as well as ordinary maintained schools. They achieve this by referring to a revised ‘Content of Training’ document which lists the issues and data that must be delivered as part of the data training module. The ‘Content of Training’ document referred to in the 2013 Regulations has been amended and now includes a new section specifically dedicated to the training of governors of special schools and the data relevant to them.

4.2 All newly appointed, newly elected or re-appointed, re-elected governors must attend the mandatory school performance data training within one year of

their appointment or election. Non completion of the training would result in a six month suspension, and if the training was not completed within that six month suspension period ultimately the governor would be disqualified.

4.3 Following discussions at the conference of head teachers of special schools in May 2013 there was agreement that the generic aspects of the data training would remain but the data discussion for governors of special schools would focus on:

- Development of maturity and behaviour,
- Development of important life skills,
- Development of independence,
- Literacy and numeracy,
- Attendance and
- Accredited qualifications (if appropriate)

4.4 These Regulations also make it clear that any governor who has completed the mandatory data training under the 2013 Regulations does not have to re-do the training in accordance with the 2014 Regulations. They also clarify that any governor who has completed the data training for ordinary maintained schools under the 2014 Regulations and changes governorship to become a governor of a special school, does not have to do the data training for special schools, and vice versa. This also applies to a person who is a governor of a special and ordinary school at the same time. Once they have completed one set of data training they do not have to re-do the training for the other school.

4.5 These Regulations simply refer to a new document listing the content of the mandatory data training for governors which now includes a list of the data relevant to governors of special schools and ordinary maintained schools, which will be published in September 2014.

## **5. Consultation**

5.1 No formal consultation has been undertaken on these Regulations, however, we specifically sought the expertise and assistance of headteachers of special schools in Wales (who are also governors).

5.2 The Director of the all Wales Centre for Governors Research and Training, who was commissioned to help us deliver the specific training programme for governors of special schools, was invited to take part in a conference of headteachers of special schools, held on the 8 and 9 May 2013.

5.3 The headteachers of special schools supported the steps Welsh Government were taking to produce a data training programme that was relevant to them and their governors and the outcome of the conference was that those headteachers had a direct input and influence over the content of the data training which was subsequently approved by the Minister for Education and Skills.

## **6. Regulatory Impact Assessment (RIA)**

6.1 The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations. These Regulations are making a technical amendment to the Government of Maintained Schools (Training Requirements for Governors) (Wales) Regulations 2013 and simply clarify the law in respect of requirements for completion of the data training.

# Agenda Item 3.2

## Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-22-14

### CLA444 – The Food Information (Wales) Regulations 2014

These Regulations make provision to enforce, in Wales, certain provisions of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ No L 304, 22.11.2011, p 18).

They also implement, in Wales, certain provisions of Article 6 of Directive 1999/2/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (OJ No L 66, 13.3.1999, p 16) and the second paragraph of sub-paragraph 1 of Article 3 of Directive 2000/36/EC of the European Parliament and of the Council relating to cocoa and chocolate products intended for human consumption (OJ No L 197, 3.8.2000, p 19).

**Procedure: Negative**

#### Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

The English text of regulation 1(5) specifies 13 December 2016 as the coming into force date of certain provisions, whilst the Welsh text refers to 13 July of that year. The 'Contents' list and the heading above Part 3 of Schedule 5 (to which regulation 1(5) applies) in both languages make it clear

that the correct date is as stated in the English text of the regulation. The Welsh version will therefore need to be corrected before 13 July 2016.

[Standing Order 21.2(vii) – inconsistencies between the English and Welsh texts]

### **Merits Scrutiny**

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

### **Legal Advisers**

Constitutional and Legislative Affairs Committee

**September 2014**

**2014 No. 2303 (W. 227)**

**FOOD, WALES**

**The Food Information (Wales)  
Regulations 2014**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision to enforce, in Wales, certain provisions of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ No L 304, 22.11.2011, p 18) (“FIC”).

They also implement, in Wales, certain provisions of Article 6 of Directive 1999/2/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (OJ No L 66, 13.3.1999, p 16) and the second paragraph of sub-paragraph 1 of Article 3 of Directive 2000/36/EC of the European Parliament and of the Council relating to cocoa and chocolate products intended for human consumption (OJ No L 197, 3.8.2000, p 19).

Regulation 3 contains a derogation relating to milk or milk products presented in a glass bottle intended for reuse. Regulation 4 and Schedule 2 provide a derogation relating to the use of a minced meat designation for minced meat that does not comply with the requirements laid down in point 1 of Part B of Annex VI to FIC.

Regulation 5 enables particulars relating to an allergenic substance or product in a non-prepacked food to be made available (subject to the provisions of the regulation) using any means that a food business operator chooses. The required particulars must be

made available under FIC but can be made available using the means provided for in FIC or in accordance with the provisions of regulation 5.

Regulation 6 requires the name of the food to be provided in the case of certain non-prepacked foods and foods prepacked for direct sale. Regulation 7 requires a quantitative indication of the meat content to be given in the case of certain products. Those particulars must be given in one of the ways specified in regulations 6(4) (in the case of the name of the food) and 7(5) (in the case of the meat content indication). The provisions of regulations 6(4) and 7(5) do not apply to an offer for sale made by means of distance communication. Article 14(2) of FIC (as read with other relevant provisions of FIC) applies in the case of such an offer.

Regulation 8 requires certain information to be provided when irradiated food products or food products containing an irradiated ingredient are sold in bulk and when irradiated ingredients are used in certain prepacked food products.

Regulation 9 imposes an obligation on food authorities and port health authorities to enforce the Regulations. Regulation 10 makes it an offence to fail to comply with specified provisions of FIC and the allergen-related requirement in regulation 5(5). Regulation 11 provides for the punishment of that offence.

Regulation 12 and Schedule 4 apply certain provisions of the Food Safety Act 1990 (1990 c. 16), with modifications. This includes the application (with modifications) of section 10(1), enabling an improvement notice to be served requiring compliance with specified provisions of FIC (except to the extent that some of the provisions apply to the mandatory particular relating to net quantity or quantity in general) or with specified provisions of regulations 5 to 8. The provisions, as applied, make the failure to comply with an improvement notice an offence.

Regulation 13 and entry 1 of the table in Part 1 of Schedule 6 revoke most of the Food Labelling Regulations 1996 (S.I. 1996/1499) on 13 December 2014 so far as those Regulations apply to Wales. Regulation 13 and entry 1 of the table in Part 2 of Schedule 6 revoke the remainder of the provisions in the Food Labelling Regulations 1996 (relating to alcohol-related terms, cream and cheese) on 13 December 2018 so far as those Regulations apply to Wales. Regulation 13 and Schedule 6 also revoke other relevant statutory instruments.

Regulation 14 and Schedule 7 amend the Food Labelling Regulations 1996, so far as those Regulations apply to Wales, during the period before

those Regulations are revoked (as described above). They make amendments to other statutory instruments to take account of the repeal and replacement of the relevant EU legislation and the revocation of the Food Labelling Regulations 1996.

Regulation 14 and Part 1 of Schedule 7 also amend the Food (Lot Marking) Regulations 1996 (S.I. 1996/1502), in their application to Wales, to take account of the repeal and replacement of Council Directive 89/396/EEC (OJ No L 186, 30.6.1989, p 21) by Directive 2011/91/EU of the European Parliament and of the Council on indications or marks identifying the lot to which a foodstuff belongs (OJ No L 334, 16.12.2011, p 1). Part 2 of Schedule 7 contains the provision implementing the second paragraph of subparagraph 1 of Article 3 of Directive 2000/36/EC of the European Parliament and of the Council (mentioned above).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Food Standards Agency at Food Standards Agency Wales, 11<sup>th</sup> Floor, Southgate House, Wood Street, Cardiff, CF10 1EW or from the Agency's website at [www.food.gov.uk/wales](http://www.food.gov.uk/wales).

**2014 No. 2303 (W. 227)**

**FOOD, WALES**

**The Food Information (Wales)  
Regulations 2014**

*Made* 28 August 2014

*Laid before the National Assembly for Wales*  
29 August 2014

*Coming into force in accordance with  
regulation 1(3) to (6)*

**CONTENTS**

1. Title, application and commencement
2. Interpretation
3. Derogation relating to milk and milk products
4. Derogation relating to minced meat
5. Foods that are not prepacked etc. containing an allergenic substance or product etc.
6. Foods that are not prepacked etc. – general requirement to name them
7. Foods that are not prepacked etc. containing meat and other ingredients
8. Irradiated foods
9. Enforcement
10. Offence
11. Penalty
12. Application of provisions of the Act
13. Revocations
14. Consequential and other minor amendments to statutory instruments

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SCHEDULE 1 — Provisions of these  
Regulations that  
contain ambulatory  
references to FIC by  
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2(3)

- SCHEDULE 2 — National mark for derogation relating to minced meat
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- SCHEDULE 5 — Improvement notices - specified FIC provisions
  - PART 1 — FIC provision in relation to which an improvement notice may be served on and from 19 September 2014
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- SCHEDULE 6 — Revocations
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SCHEDULE 7 — Consequential and other minor amendments to statutory instruments

PART 1 — Consequential and other minor amendments coming into force on 19 September 2014

PART 2 — Consequential and other minor amendments coming into force on 13 December 2014

The following Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972<sup>(1)</sup> and it appears to the Welsh Ministers that it is expedient for references to Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004<sup>(2)</sup> in particular provisions of these Regulations to be construed as references to that Regulation as amended from time to time.

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972—

- (a) in relation to measures relating to food (including drink)<sup>(3)</sup>;
- (b) in relation to the common agricultural policy<sup>(4)</sup>.

So far as the following Regulations are made in exercise of powers under the Food Safety Act 1990<sup>(5)</sup>, the Welsh Ministers have had regard to relevant advice

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(1) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7).

(2) OJ No L 304, 22.11.2011, p 18, last amended by Commission Delegated Regulation (EU) No 78/2014 (OJ No L 27, 30.1.2014, p 7).

(3) S.I. 2005/1971, functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c. 32).

(4) S.I. 2010/2690.

(5) 1990 c. 16.

given by the Food Standards Agency in accordance with section 48(4A)(1) of that Act.

There has been consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(2), during the preparation and evaluation of the following Regulations.

The Welsh Ministers make the following Regulations in exercise of the powers conferred by—

- (a) so far as relating to regulation 2(3) and Schedule 1, paragraph 1A of Schedule 2 to the European Communities Act 1972(3);
- (b) so far as relating to regulations 13 and 14 and Schedules 6 and 7—
  - (i) section 2(2) of, and paragraph 1(A) of Schedule 2 to, the European Communities Act 1972;
  - (ii) sections 6(4), 16(1), 17, 18, 26, 45 and 48(1) of, and paragraphs 1 and 4(b) of Schedule 1 to, the Food Safety Act 1990(4) and now vested in the Welsh Ministers(5); and
  - (iii) sections 4(1), (2), (3), (4) and (8) and 10 of the Healthy Eating in Schools (Wales) Measure 2009(6); and
- (c) so far as relating to the remaining regulations and Schedules, sections 6(4), 16(1)(e), 17(1) and (2), 26(3) and 48(1) of the Food Safety

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(1) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999 (c. 28).

(2) OJ No L 31, 1.2.2002, p 1, last amended by Commission Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p 14).

(3) 1972 c.68 Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.

(4) 1990 c.16 Section 6(4) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c. 40) and paragraph 10(1) and (3) of Schedule 5 to the Food Standards Act 1999 (“the 1999 Act”) and partially repealed by Schedule 6 to the 1999 Act and S.I. 2002/794. Section 16(1) was amended by paragraph 8 of Schedule 5 to the 1999 Act. Section 17 was amended by paragraphs 8 and 12 of Schedule 5 to the 1999 Act and S.I. 2011/1043. Section 18 was amended by paragraphs 8 and 13 of Schedule 5 to the 1999 Act. Section 26 was partially repealed by Schedule 6 to the 1999 Act. Section 45 was amended by paragraphs 8 and 20 of Schedule 5 to the 1999 Act. Section 48(1) was amended by paragraph 8 of Schedule 5 to the 1999 Act.

(5) Functions formerly exercisable by “the Ministers” so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(6) 2009 nawm 3.

Act 1990 and now vested in the Welsh Ministers.

### **Title, application and commencement**

**1.**—(1) The title of these Regulations is the Food Information (Wales) Regulations 2014.

(2) These Regulations apply in relation to Wales.

(3) Except as provided for in paragraphs (4) to (6), these Regulations come into force on 13 December 2014.

(4) For the purposes of the following provisions, these Regulations come into force on 19 September 2014—

- (a) regulation 4;
- (b) regulation 12 and Schedule 4 so far as (by applying, with some modifications, specified provisions of the Act) they enable an improvement notice to be served on a person requiring that person to comply with the provision of FIC specified in Part 1 of Schedule 5 and an appeal against such a notice to be made and dealt with, and make the failure to comply with such an improvement notice an offence;
- (c) regulation 14 so far as it relates to Part 1 of Schedule 7;
- (d) Schedule 2;
- (e) Part 1 of Schedule 5; and
- (f) Part 1 of Schedule 7.

(5) For the purposes of the following provisions, these Regulations come into force on 13 December 2016—

- (a) Part 3 of Schedule 5; and
- (b) regulation 12 and Schedule 4 so far as (by applying, with some modifications, specified provisions of the Act) they enable an improvement notice to be served on a person requiring that person to comply with the provision of FIC specified in Part 3 of Schedule 5 and an appeal against such a notice to be made and dealt with, and make the failure to comply with such an improvement notice an offence.

(6) For the purposes of Part 2 of Schedule 6, and regulation 13 so far as it relates to that Part of Schedule 6, these Regulations come into force on 13 December 2018.

### **Interpretation**

**2.**—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“Directive 1999/2/EC” (“*Cyfarwyddeb 1999/2/EC*”) means Directive 1999/2/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation<sup>(1)</sup>;

“FIC” (“*FIC*”) means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004;

“final consumer” (“*defnyddiwr terfynol*”) has the meaning given in point 18 of Article 3 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety;

“food authority” (“*awdurdod bwyd*”) means—

- (a) a county council;
- (b) a county borough council;

“food business operator” (“*gweithredwr busnes bwyd*”) has the meaning given in point 3 of Article 3 of Regulation (EC) No 178/2002 of the European Parliament and of the Council;

“mass caterer” (“*arlwywr mawr*”) has the meaning given in Article 2(2)(d) and “mass caterers” (“*arlwywyr mawr*”) is to be construed accordingly;

“means of distance communication” (“*cyfrwng cyfathrebu o hirbell*”) has the meaning given in Article 2(2)(u);

“offered for sale” (“*a gynigir i’w werthu*”) has the same meaning as in Article 44 and “offers for sale” (“*cynnig gwerthu*”) is to be construed accordingly;

“prepacked food” (“*bwyd wedi ei ragbecynnw*”) has the meaning given in Article 2(2)(e);

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(1) OJ No L 66, 13.3.1999, p 16, last amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council (OJ No L 311, 21.11.2008, p 1).

“prepacked for direct sale” (“*wedi ei ragbectynnu i’w werthu’n uniongyrchol*”) has the same meaning as in Article 2(2)(e); and

“ready for consumption” (“*parod i’w fwyta*”) has the same meaning as in Article 2(2)(d).

(2) Except as otherwise provided for—

(a) any reference in these Regulations to an Article is a reference to an Article of FIC, and

(b) any reference in these Regulations to an Annex is a reference to an Annex to FIC.

(3) Any reference to FIC, or a provision of FIC (including a reference to an Article of, or Annex to, FIC to which paragraph (2) applies), in a provision of these Regulations listed in Schedule 1 is a reference to that provision as amended from time to time.

### **Derogation relating to milk and milk products**

3. The requirements laid down in Articles 9(1) and 10(1) do not apply to milk or milk products presented in a glass bottle where the glass bottle is intended for reuse.

### **Derogation relating to minced meat**

4.—(1) The requirements laid down in point 1 of Part B of Annex VI do not prevent minced meat that does not comply with those requirements being placed on the market using a minced meat designation if the national mark in Part 1 of Schedule 2 appears on the labelling.

(2) Part 2 of Schedule 2 applies to the form of the national mark.

(3) In paragraph (1)—

“on the labelling” (“*ar y label*”) has the same meaning as in point 2 of Part B of Annex VI as read with the definition of “labelling” in Article 2(2)(j);

“placed on the market” (“*ei osod ar y farchnad*”) is to be construed taking into account the meaning of “placing on their national market” as used in point 3 of Part B of Annex VI.

### **Foods that are not prepacked etc. containing an allergenic substance or product etc.**

5.—(1) A food business operator who offers for sale a relevant food to which this regulation applies may make available the particulars specified in Article 9(1)(c) (labelling of certain substances or products causing allergies or intolerances) in relation to that food by any means the operator chooses, including, subject to paragraph (3), orally.

(2) This regulation applies to a relevant food that is offered for sale to a final consumer or to a mass caterer otherwise than by means of distance communication and is—

- (a) not prepacked,
- (b) packed on the sales premises at the consumer's request, or
- (c) prepacked for direct sale.

(3) Where a food business operator intends to make available the particulars specified in Article 9(1)(c) relating to a relevant food orally, and a substance or product listed in Annex II or derived from a substance or product listed in Annex II is used as an ingredient or processing aid in the manufacture or preparation of the food, the operator must indicate that details of that substance or product can be obtained by asking a member of staff.

(4) The indication mentioned in paragraph (3) must be given—

- (a) on a label attached to the food, or
- (b) on a notice, menu, ticket or label that is readily discernible by an intending purchaser at the place where the intending purchaser chooses that food.

(5) In relation to a relevant food to which this regulation applies, the Article 9(1)(c) particulars made available by a food business operator must be made available with a clear reference to the name of the substance or product listed in Annex II where—

- (a) the relevant ingredient or processing aid is derived from a substance or product listed in Annex II, and
- (b) the particulars are made available otherwise than by means provided for in FIC.

(6) In this regulation “relevant food” (“*bwyd perthnasol*”) means a food in which an ingredient or processing aid listed in Annex II, or derived from a substance or product listed in Annex II, has been used in its manufacture or preparation and that is still present in the finished product (even if in an altered form).

**Foods that are not prepacked etc. – general requirement to name them**

6.—(1) A food business operator who offers for sale a food to which this regulation applies must provide the particulars required by Article 9(1)(a) (the name of the food) as read with—

- (a) Article 17(1) to (4), and
- (b) in the case of food offered for sale using a minced meat designation as a name—

(i) Article 17(5) and point 1 of Part B of Annex VI, and

(ii) point 3 of Part B of Annex VI as read with regulation 4 and Schedule 2.

(2) This regulation applies to a food that is offered for sale to a final consumer or a mass caterer and is—

(a) not prepacked,

(b) packed on the sales premises at the consumer's request, or

(c) prepacked for direct sale.

(3) This regulation does not apply to a food prepared to be ready for consumption by a final consumer that is offered for sale to a final consumer by a mass caterer (whether at a mass catering establishment where sales are made in person to a final consumer or by means of distance communication) as part of their business as a mass caterer.

(4) The particulars must appear—

(a) on a label attached to the food, or

(b) on a notice, ticket or label that is readily discernible by an intending purchaser at the place where the intending purchaser chooses that food.

(5) Paragraph (4) does not apply in the case of an offer for sale made by means of distance communication.

#### **Foods that are not prepacked etc. containing meat and other ingredients**

7.—(1) A food business operator who offers for sale a food to which this regulation applies must provide the particulars required by Article 9(1)(d) (quantity of certain ingredients), as read with Article 22 and Annex VIII, in respect of the ingredients in the food that are meat.

(2) This regulation applies to a food (other than a food specified in Schedule 3) that is offered for sale to a final consumer or a mass caterer, contains meat and any other ingredient and is—

(a) not prepacked,

(b) packed on the sales premises at the consumer's request, or

(c) prepacked for direct sale.

(3) This regulation does not apply to a food prepared to be ready for consumption by a final consumer that is offered for sale to a final consumer by a mass caterer (whether at a mass catering establishment where sales are made in person to a final consumer or by means of distance communication) as part of their business as a mass caterer.

(4) The quantity of meat specified in the particulars mentioned in paragraph (1) is to be determined taking into account the provisions relating to total fat and connective tissue content in point 17 of Part B of Annex VII, including any downward adjustment needed in a case where the total fat and connective tissue content in the food exceeds the values indicated in the table in that point.

(5) The particulars must appear—

- (a) on a label attached to the food, or
- (b) on a notice, ticket or label that is readily discernible by an intending purchaser at the place where the intending purchaser chooses that food.

(6) Paragraph (5) does not apply in the case of an offer for sale made by means of distance communication.

(7) In this regulation—

“meat” (“*cig*”) means the skeletal muscles of mammalian and bird species recognised as fit for human consumption with naturally included or adherent tissue but does not include mechanically separated meat; and

“mechanically separated meat” (“*cig a wahrenir yn fecanyddol*”) has the meaning given in point 1.14 of Annex I to Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin<sup>(1)</sup>.

### **Irradiated foods**

**8.**—(1) Any person who places on the market, in bulk, a product to which this paragraph applies must ensure that the relevant indication appears, together with the name of the product, on a display or notice above or beside the container in which the products are placed on the market.

(2) Paragraph (1) applies to—

- (a) a product intended for the ultimate consumer or mass caterers that has been treated with ionising radiation, and
- (b) a product intended for the ultimate consumer or mass caterers that contains an ingredient that has been treated with ionising radiation.

(3) Any person who places on the market a product to which this paragraph applies must ensure that the relevant indication appears in the list of ingredients of

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(1) OJ No L 139, 30.4.2004, p 55, last amended by Commission Regulation (EU) No 633/2014 (OJ No L 175, 16.6.2014, p 6).

that product to indicate the ingredient that has been irradiated.

(4) Paragraph (3) applies to a product intended for the ultimate consumer or mass caterers—

- (a) containing a compound ingredient in a case where an ingredient of that compound ingredient has been treated with ionising radiation, and
- (b) to which, in relation to that compound ingredient, the provisions of point 2 of Part E of Annex VII (setting out cases where a list of ingredients for compound ingredients is not compulsory) would, but for the requirement in paragraph (3), apply.

(5) The relevant indication is the word “irradiated” or the words “treated with ionising radiation”.

(6) This regulation does not apply to—

- (a) a product exposed to ionising radiation generated by measuring or inspection devices, provided the dose absorbed is not greater than 0.01 Gy for inspection devices which utilise neutrons and 0.5 Gy in other cases, at a maximum radiation energy level of 10 MeV in the case of X-rays, 14 MeV in the case of neutrons and 5 MeV in other cases, or
- (b) a product which is prepared for patients requiring sterile diets under medical supervision.

(7) In this regulation—

“in bulk” (“*mewn swmp*”) has the same meaning as in the second sub-paragraph of Article 6(1)(a) of Directive 1999/2/EC;

“ionising radiation” (“*ymbelydredd ìoneiddio*”) has the same meaning as in Directive 1999/2/EC;

“places on the market” (“*gosod ar y farchnad*”) is to be construed taking into account the meaning of “placed on the market” as used in Article 2 of Directive 1999/2/EC; and

“product” (“*cynnyrch*”) has the same meaning as in Directive 1999/2/EC.

## **Enforcement**

**9.** It is the duty of a food authority within its area and a port health authority within its district to enforce these Regulations.

## **Offence**

**10.**—(1) A person is guilty of an offence if the person fails to comply with—

(a) any provision of FIC specified in paragraph (2), as read with Articles 1(3) and 6 and the first sub-paragraph of Article 54(1), or

(b) regulation 5(5).

(2) The provisions of FIC are—

(a) Article 9(1)(c), as also read with Annex II;

(b) Article 21(1)(a), as also read with Articles 9(1)(c) and 18(1) and Annex II;

(c) the second sub-paragraph of Article 21(1), as also read with Articles 9(1)(c) and 19(1) and Annex II; and

(d) Article 44(1)(a), as also read with Article 9(1)(c) and regulation 5.

### **Penalty**

**11.** A person guilty of an offence under regulation 10 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Application of provisions of the Act**

**12.—**(1) Subsections (1) and (2) of section 10 of the Act (improvement notices) apply, with the modification (in the case of section 10(1)) specified in Part 1 of Schedule 4, for the purposes of—

(a) enabling an improvement notice to be served on a person requiring the person to comply with any of the following provisions—

(i) a provision of FIC specified in Schedule 5, to the extent provided for in section 10 as applied by paragraph (1) and modified by Part 1 of Schedule 4;

(ii) regulation 5(3), (4) or (5);

(iii) regulation 6(1) or (4);

(iv) regulation 7(1), (4) or (5); or

(v) regulation 8(1) or (3); and

(b) making the failure to comply with a notice referred to in sub-paragraph (a) an offence.

(2) Subsections (1) to (8) of section 32(1) of the Act (powers of entry) apply, with the modifications (in the case of section 32(1)) specified in Part 2 of Schedule 4, for the purposes of enabling an authorised officer of a food authority or a port health authority—

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(1) Subsections (5) and (6) of section 32 were amended by paragraph 18 of Schedule 2 to the Criminal Justice and Police Act 2001 (c. 16).

- (a) to exercise a power of entry to ascertain whether there is, or has been, any contravention of a provision of FIC specified in Schedule 5, to the extent provided for in section 32(1)(a) as applied by this paragraph and modified by Part 2 of Schedule 4;
- (b) to exercise a power of entry to ascertain whether there is any evidence of any contravention of such a provision; and
- (c) when exercising a power of entry under the provisions of section 32 as applied by this paragraph, to exercise the powers in subsections (5) and (6) relating to records.

(3) Subsections (1) and (6) of section 37 of the Act (appeals) apply, with the modifications specified in Part 3 of Schedule 4, for the purpose of enabling a decision to serve a notice referred to in paragraph (1)(a) to be appealed.

(4) Section 39 of the Act (appeals against improvement notices) applies, with the modifications (in the case of subsections (1) and (3) of section 39) specified in Part 4 of Schedule 4, for the purpose of dealing with appeals against a decision to serve a notice referred to in paragraph (1)(a).

(5) The provisions of the Act specified in column 1 of the table in Part 5 of Schedule 4 apply, with the modifications specified in column 2 of that Part, for the purposes of these Regulations.

(6) Paragraphs (1) to (4) are without prejudice to the application of sections 10, 32, 37 and 39 of the Act to these Regulations for purposes other than those specified in those paragraphs.

### **Revocations**

**13.** The Regulations listed in Schedule 6 are revoked to the extent specified.

### **Consequential and other minor amendments to statutory instruments**

**14.** Schedule 7 has effect.

*Mark Drakeford*  
Minister for Health and Social Services, one of the  
Welsh Ministers

28 August 2014

## SCHEDULE 1 Regulation 2(3)

### Provisions of these Regulations that contain ambulatory references to FIC by virtue of regulation 2(3)

Regulation 2(1) except for the definition of “FIC”

Regulation 3

Regulation 4(1) and (3)

Regulation 5(1), (3), (5) and (6)

Regulation 6(1)

Regulation 7(1) and (4)

Regulation 8(4)(b)

Regulation 10

Paragraph 3 of Part 2 of Schedule 2

Schedule 5

## SCHEDULE 2 Regulation 4

### National mark for derogation relating to minced meat

#### PART 1

The national mark

■ For UK market only

#### PART 2

Specifications for the national mark

1. Any type of font may be used for the national mark so long as it is clearly legible.
2. Any colour font may be used for the national mark so long as it is easily visible.
3. In the case of prepacked food, the font size used for the national mark must not be smaller than—
  - (a) in the case of a package or container of a size to which Article 13(3) applies, the font size required for mandatory particulars under Article 13(3), and

- (b) in the case of any other package or container, the font size required for mandatory particulars under Article 13(2).

4. The national mark may include the Welsh text “Ar gyfer marchnad y DU yn unig” in addition to the English text in Part 1.

### SCHEDULE 3 Regulation 7

#### Foods to which regulation 7 does not apply

1. Raw meat to which no ingredient other than proteolytic enzymes has been added.

2. Frozen and quick-frozen chicken to which Article 15 of Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat<sup>(1)</sup> applies and the water content of which does not exceed the technically unavoidable values determined as provided for in that Article.

3. Fresh, frozen and quick-frozen poultry-cuts to which Article 20 of Commission Regulation (EC) No 543/2008 applies and the water content of which does not exceed the technically unavoidable values determined as provided for in that Article.

4. Sandwiches, filled rolls and filled products of a similar nature to sandwiches and filled rolls, which are ready for consumption without further processing, except for products containing meat which are sold under the name (whether or not qualified by other words) “burger”, “economy burger” or “hamburger”.

5. Pizzas and similar topped products.

6. Any food for which the name is “broth”, “gravy” or “soup”, whether or not qualified by other words.

7. A food consisting of an assemblage of two or more ingredients that has not been subjected to any processing or treatment once it has been assembled, and which is sold to the final consumer as an individual portion intended to be consumed without further processing or treatment.

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(1) OJ No L 157, 17.6.2008, p 46, last amended by Regulation (EU) No 1308/2013 of the European Parliament and of the Council (OJ No L 347, 20.12.2013, p 671).

Application and modification of provisions of the Act

PART 1

Modification of section 10(1)

1. For section 10(1) (improvement notices) substitute—

“(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a person is failing to comply with a provision specified in subsection (1A), the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the person is failing to comply with the relevant provision;
- (b) specify the matters which constitute the person’s failure so to comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period as may be specified in the notice.

(1A) The provisions are—

- (a) a provision of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers<sup>(1)</sup> specified in entry 1, 3, 5 to 11, 23 to 27, 29, 31 or 66 of the table in Part 2 of Schedule 5 to the Food Information (Wales) Regulations 2014 (as read with regulation 2(3) of, and Schedule 1 to, those Regulations), except to the extent that the provision applies to the mandatory particular relating to net quantity required by Article 9(1)(e) of Regulation (EU) No 1169/2011, as read with Article 23 of, and Annex IX to, that Regulation;
- (b) a provision of Regulation (EU) No 1169/2011 of the European Parliament

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(1) OJ No L 304, 22.11.2011, p 18, last amended by Commission Delegated Regulation (EU) No 78/2014 (OJ No L 27, 30.1.2014, p 7).

and of the Council specified in entry 2, 67 or 68 of the table in Part 2 of Schedule 5 to the Food Information (Wales) Regulations 2014 (as read with regulation 2(3) of, and Schedule 1 to, those Regulations), except to the extent that the provision applies to food information relating to quantity;

- (c) any other provision of Regulation (EU) No 1169/2011 of the European Parliament and of the Council specified in Schedule 5 to the Food Information (Wales) Regulations 2014 (as read with regulation 2(3) of, and Schedule 1 to, those Regulations); or
- (d) any of the following provisions of the Food Information (Wales) Regulations 2014—
  - (i) regulation 5(3), (4) or (5);
  - (ii) regulation 6(1) or (4);
  - (iii) regulation 7(1), (4) or (5); or
  - (iv) regulation 8(1) or (3).”

## PART 2

### Modification of section 32(1)

2. For paragraphs (a) to (c) of section 32(1) (powers of entry) substitute—

“(a) to enter any premises within the authority’s area for the purpose of ascertaining whether there is or has been on the premises any contravention of—

- (i) a provision of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers specified in entry 1, 3, 5 to 11, 23 to 27, 29, 31 or 66 of the table in Part 2 of Schedule 5 to the Food Information (Wales) Regulations 2014 (as read with regulation 2(3) of, and Schedule 1 to, those Regulations), except to the extent that the provision applies to the mandatory particular relating to net quantity required by Article 9(1)(e) of Regulation (EU) No 1169/2011, as read with Article 23 of, and Annex IX to, that Regulation;
- (ii) a provision of Regulation (EU) No 1169/2011 of the European

Parliament and of the Council specified in entry 2, 67 or 68 of the table in Part 2 of Schedule 5 to the Food Information (Wales) Regulations 2014 (as read with regulation 2(3) of, and Schedule 1 to, those Regulations), except to the extent that the provision applies to food information relating to quantity; and

(iii) any other provision of Regulation (EU) No 1169/2011 of the European Parliament and of the Council specified in Schedule 5 to the Food Information (Wales) Regulations 2014 (as read with regulation 2(3) of, and Schedule 1 to, those Regulations); and

(b) to enter any business premises, whether within or outside of the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any contravention within that area of any such provisions;”.

### PART 3

#### Modification of section 37(1) and (6)

3. For section 37(1) (appeals) substitute—

“(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10(1), as applied and modified by regulation 12(1) of, and Part 1 of Schedule 4 to, the Food Information (Wales) Regulations 2014, may appeal to the magistrates' court.”

4. In section 37(6)—

(a) for “(3) or (4)” substitute “(1)”, and

(b) in paragraph (a), omit “or to the sheriff”.

### PART 4

#### Modification of section 39(1) and (3)

5. For section 39(1) (appeals against improvement notices) substitute—

“(1) On an appeal against an improvement notice served under section 10(1), as applied and modified by regulation 12(1) of, and Part 1 of Schedule 4 to, the Food Information (Wales) Regulations 2014, the court may either cancel or

affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.”

**6.** In section 39(3) omit “for want of prosecution”.

## PART 5

### Application and modification of other provisions of the Act

<i>Column 1</i> <i>Provision of the Act</i>	<i>Column 2</i> <i>Modifications</i>
Section 3 (presumptions that food intended for human consumption)	In subsection (1), for “this Act” substitute “the Food Information (Wales) Regulations 2014”
Section 20 (offences due to fault of another person)	For “any of the preceding provisions of this Part” substitute “section 10(2), as applied by regulation 12(1) of the Food Information (Wales) Regulations 2014, or regulation 10 of those Regulations”
Section 21(1) (defence of due diligence)	In subsection (1), for “any of the preceding provisions of this Part” substitute “section 10(2), as applied by regulation 12(1) of the Food Information (Wales) Regulations 2014, or regulation 10 of those Regulations” In subsection (2), for “section 14 or 15 above” substitute “regulation 10 of the Food Information (Wales) Regulations 2014”
Section 22 (defence of publication in the course of business)	For “any of the preceding provisions of this Part” substitute “regulation 10 of the Food Information (Wales) Regulations 2014”
Section 29 (procurement of samples)	In paragraph (b)(ii), after “under section 32 below”, insert “, including under section 32 as applied and modified by regulation 12(2) of, and Part 2 of Schedule 4 to, the Food Information (Wales) Regulations 2014”
Section 30(8) (which relates to evidence of certificates given by a food analyst or examiner)	For “this Act” substitute “the Food Information (Wales) Regulations 2014”
Section 33 (obstruction etc. of officers)	In subsection (1), for “this Act” (in each place occurring) substitute “the Food Information (Wales) Regulations 2014”
Section 35(1)(2) and (2) (punishment of offences)	In subsection (1), after “section 33(1) above”, insert “, as applied and modified by regulation 12(5) of, and Part 5 of Schedule 4 to, the Food Information (Wales) Regulations 2014.” After subsection (1), insert— <p style="text-align: center;">“(1A) A person guilty of an offence under section 10(2), as applied by regulation 12(1) of the Food Information (Wales) Regulations 2014, shall be liable,</p>

(1) Section 21(2) was amended by S.I. 2004/3279.

(2) Section 35(1) is amended by paragraph 42 of Schedule 26 to the Criminal Justice Act 2003 (c. 44) from a date to be appointed.

<i>Column 1</i> <i>Provision of the Act</i>	<i>Column 2</i> <i>Modifications</i>
	on summary conviction, to a fine not exceeding level 5 on the standard scale.”
	In subsection (2)—
	(a) for “any other offence under this Act” substitute “an offence under section 33(2), as applied by regulation 12(5) of, and Part 5 of Schedule 4 to, the Food Information (Wales) Regulations 2014,”; and
	(b) in paragraph (b), for “relevant amount” substitute “statutory maximum”
Section 36 (offences by body corporate)	In subsection (1), for “this Act” substitute “section 10(2), as applied by regulation 12(1) of the Food Information (Wales) Regulations 2014, or regulation 10 of those Regulations,”
Section 36A(1) (offences by Scottish partnerships)	For “this Act” substitute “section 10(2), as applied by regulation 12(1) of the Food Information (Wales) Regulations 2014, or regulation 10 of those Regulations,”
Section 44 (protection of officers acting in good faith)	For “this Act” (in each place occurring) substitute “the Food Information (Wales) Regulations 2014”

## SCHEDULE 5

Regulation 12

### Improvement notices - specified FIC provisions

#### PART 1

FIC provision in relation to which an improvement notice may be served on and from 19 September 2014

<i>Provision of FIC</i>	<i>Provisions to be read with the provision of FIC</i>
Article 17(5) so far as it applies to the requirements in Part B of Annex VI concerning the designation “minced meat” (requirements concerning the designation “minced meat” and the particulars that must accompany it)	Articles 1(3) and 6 and the third sub-paragraph of Article 54(1), the second sub-paragraph of Article 55, Part B of Annex VI, regulation 4 and Schedule 2

(1) Section 36A was inserted by paragraph 16 of Schedule 5 to the Food Standards Act 1999 (c. 28).

## PART 2

### FIC provisions in relation to which an improvement notice may be served on and from 13 December 2014

<i>No.</i>	<i>Provision of FIC</i>	<i>Provisions to be read with the provisions of FIC</i>
1.	Article 6 (basic requirement for food information to accompany food)	Articles 1(3) and 30(2) and (3), the first sub-paragraph of Article 54(1) and the other Articles of FIC listed in column 1, as appropriate
2.	Article 7(1) (prohibition on misleading information)	Articles 1(3), 6 and 7(4) and the first sub-paragraph of Article 54(1)
3.	Article 7(2) (requirement for accurate, clear and easy to understand information)	Articles 1(3), 6 and 7(4) and the first sub-paragraph of Article 54(1)
4.	Article 7(3) (prohibition on food information attributing health benefits to any food subject to certain derogations)	Articles 1(3), 6 and 7(4) and the first sub-paragraph of Article 54(1)
5.	Article 8(2) (requirement for a food business operator to ensure the presence and accuracy of food information)	Articles 1(3), 6 and 8(1) and the first sub-paragraph of Article 54(1)
6.	Article 8(3) (requirement for a food business operator not to supply non-compliant food)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
7.	Article 8(4) (restrictions on the modification of information accompanying a food)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
8.	Article 8(5) (obligation to ensure and verify compliance with food information law etc.)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
9.	Article 8(6) (requirement to transmit information relating to non-prepacked foods)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
10.	Article 8(7) (requirement relating to the mandatory particulars required by Articles 9 and 10)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
11.	Article 8(8) (requirement for a food business operator to provide sufficient information to other food business operators)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
12.	Article 9(1)(a) (mandatory indication relating to the name of the food)	Articles 1(3), 6, 9(2), 16(1) and (2), 17, 22(1)(a) and 40, the first sub-paragraph of Article 54(1), Annex VI and regulation 3
13.	Article 9(1)(b) (mandatory indication relating to the list of ingredients)	Articles 1(3), 6, 9(2), 11 and 16(1) and (2), the first sub-paragraph of Article 16(4), Articles 18, 19(1), 20 and 40, the first sub-paragraph of Article 54(1), Annexes VI and VII and regulation 3
14.	Article 9(1)(c) (mandatory indication relating to ingredients and processing aids causing allergies or intolerances)	Articles 1(3), 6, 9(2), 11, 16(1) and (2), 18(1), 21(1) and 40, the first sub-paragraph of Article 54(1), Annex II and regulation 3
15.	Article 9(1)(d) (mandatory indication relating to the quantity of certain ingredients or categories of ingredients)	Articles 1(3), 6, 9(2), 11, 16(1) and (2), 22 and 40, the first sub-paragraph of Article 54(1), Annex VIII and regulation 3
16.	Article 9(1)(f) (mandatory indication relating to	Articles 1(3), 6, 9(2), 16(1) and (2), 24

<i>No. Provision of FIC</i>	<i>Provisions to be read with the provisions of FIC</i>
date of minimum durability or the “use by” date)	and 40, the first sub-paragraph of Article 54(1), points 1 and 2 of Annex X and regulation 3
17. Article 9(1)(g) (mandatory indication relating to any special storage conditions, the conditions of use, or both)	Articles 1(3), 6, 9(2), 16(1) and (2), 25 and 40, the first sub-paragraph of Article 54(1) and regulation 3
18. Article 9(1)(h) (mandatory indication relating to the name or business name and address of the food business operator)	Articles 1(3), 6, 8(1), 9(2), 16(1) and (2) and 40, the first sub-paragraph of Article 54(1) and regulation 3
19. Article 9(1)(i) (mandatory indication relating to country of origin or place of provenance)	Articles 1(3), 6, 9(2), 16(1) and (2), 26(1) and (2) and 40, the first sub-paragraph of Article 54(1) and regulation 3
20. Article 9(1)(j) (mandatory indication relating to instructions for use)	Articles 1(3), 6, 9(2), 16(1) and (2), 27 and 40, the first sub-paragraph of Article 54(1) and regulation 3
21. Article 9(1)(k) (mandatory indication relating to the actual alcoholic strength of beverages containing more than 1.2% by volume of alcohol)	Articles 1(3), 6, 9(2), 11, 16(1) and (2) and 28, the first sub-paragraph of Article 54(1) and Annex XII
22. Article 10(1) (additional mandatory particulars for specific types of food)	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and Annex III
23. Article 12(1) (availability and placement of mandatory food information)	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and Article 12(2) for pre-packed foods, Articles 12(5) and 44 for non-prepacked foods and Articles 14 and 44 for foods offered for sale by means of distance communication
24. Article 12(2) (general requirement for mandatory food information to appear directly on the package or on a label attached to prepacked food)	Articles 1(3) and 6, the first sub-paragraph of Article 54(1)
25. Article 13(1) (general requirement for the presentation of mandatory particulars)	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and, in the case of foods that are not prepacked etc. containing an allergenic substance or product etc., regulation 5
26. Article 13(2) (requirement relating to the presentation of mandatory particulars referred to in Article 9(1)(a) to (l))	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and Annex IV, and, in relation to Article 13(2) as it applies to the presentation of a mandatory nutrition declaration, the second sub-paragraph of Article 55
27. Article 13(3) (font size of mandatory particulars on smaller packages)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
28. Article 13(5) (field of vision requirements)	Articles 1(3), 6, 13(6) and 16(1) and (2) and the first sub-paragraph of Article 54(1)
29. Article 14(1) (distance selling of prepacked foods)	Articles 1(3), 6, 9 and 14(3) and the first sub-paragraph of Article 54(1)
30. Article 14(2) (distance selling of non-prepacked foods)	Articles 1(3), 6, 14(1) and 42 and the first sub-paragraph of Article 54(1)

<i>No. Provision of FIC</i>	<i>Provisions to be read with the provisions of FIC</i>
31. Article 15(1) (language requirements)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
32. Article 17(1) (name of food)	Articles 1(3), 6 and 9(1), the first sub-paragraph of Article 54(1), regulation 4 and Schedule 2
33. Article 17(2) (use of the name used for food in Member State of production in another Member State: need for other descriptive information in addition to the name of the food in certain cases)	Articles 1(3), 6, 9(1) and 17(1) and the first sub-paragraph of Article 54(1)
34. Article 17(3) (prohibition in certain exceptional cases of the use of a name used for a food in a Member State of production when marketing that food in another Member State)	Articles 1(3), 6, 9(1) and 17(1) and (2) and the first sub-paragraph of Article 54(1)
35. Article 17(4) (prohibition against replacing the name of a food with another name)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
36. Article 17(5) (requirements on the name of a food and particulars that must accompany it) except so far as it applies to the specific requirements in Part B of Annex VI concerning the designation “minced meat”	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and Annex VI
37. Article 18(1) (list of ingredient requirements)	Articles 1(3), 6, 18(4), 19(1) and 20, the first sub-paragraph of Article 54(1), Annex VII, regulation 8 and the first sub-paragraph of paragraph 5 of Article 3 of Council Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption <sup>(1)</sup>
38. Article 18(2) (requirement to designate ingredients by their specific name)	Articles 1(3), 6, 17, 18(4) and 19(1), the first sub-paragraph of Article 54(1) and Annexes VI and VII
39. Article 18(3) (requirement relating to nanomaterial ingredients)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
40. Article 21(1) (requirements relating to certain substances or products that cause an allergy or intolerance)	Articles 1(3), 6, 9(1)(c) and 18(1), the first sub-paragraph of Article 54(1), Annex II and, in the case of foods that are not prepacked etc. containing an allergenic substance or product etc., regulation 5
41. Article 22(1) (requirement relating to the need to provide a quantitative indication of an ingredient)	Articles 1(3), 6 and 22(2), the first sub-paragraph of Article 54(1) and Annex VIII
42. Article 22(2) (technical rules for quantitative indication of ingredients)	Articles 1(3), 6 and 22(1), the first sub-paragraph of Article 54(1) and Annex VIII
43. Article 24(1), first sentence (requirement relating to “use by” dates)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
44. Article 24(2) (requirement to express minimum durability date, “use by” date and date of freezing in a particular way)	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and Annex X

(1) OJ No L 10, 12.1.2002, p 58, last amended by Directive 2012/12/EU of the European Parliament and of the Council (OJ No L 115, 27.4.2012, p 1).

<i>No. Provision of FIC</i>	<i>Provisions to be read with the provisions of FIC</i>
45. Article 25(1) (requirement for special storage conditions or conditions for use, or both, to be indicated on food)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
46. Article 25(2) (requirement to indicate appropriate storage conditions or time within which food should be consumed after the packaging containing the food is opened or both)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
47. Article 26(2)(a) (requirement for a mandatory indication relating to country of origin or place of provenance in certain cases)	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and Annex XI
48. Article 27(1) (instructions for use indication)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
49. Article 28(2) (alcoholic strength by volume indication for beverages containing more than 1.2% volume of alcohol)	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and Annex XII
50. Article 30(1) (content of mandatory nutrition declaration)	Articles 1(3), 6, 29, 31(1) (as read with Annex XIV) and 31(3), the first sub-paragraph of Article 31(4), Articles 32(1) (as read with Annex XV), 32(2), 33(1) and 35(1) and the first sub-paragraph of Article 54(1)
51. Article 31(1) (conversion factors to be used for calculation of energy value)	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and Annex XIV
52. Article 31(3), first sub-paragraph (requirement for energy value and amounts of nutrients to be those of the foods as sold except as provided for in the second sub-paragraph of Article 31(3))	Articles 1(3), 6 and 30(1) to (5) and the first sub-paragraph of Article 54(1)
53. Article 31(4), first sub-paragraph (requirement for declared values to be average values based on a methodology set out in the first sub-paragraph of Article 31(4))	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
54. Article 32(1) (requirement to use the measurement units listed in Annex XV for energy value and amount of nutrients)	Articles 1(3) and 6, the first sub-paragraph of Article 54(1) and Annex XV
55. Article 32(2) (energy value and amount of nutrients to be expressed per 100 grams or per 100 millilitres)	Articles 1(3), 6, 33(1), (2) and (3), the first sub-paragraph of Article 54(1) and Part B of Annex XIII
56. Article 32(3) (declaration relating to vitamins and minerals also to be expressed as a percentage of reference intakes)	Articles 1(3), 6 and 30(2)(f), the first sub-paragraph of Article 54(1) and Part A of Annex XIII
57. Article 32(5) (requirement for additional statement relating to the reference intake of an average adult)	Articles 1(3), 6 and 32(4) (as read with Part B of Annex XIII) and the first sub-paragraph of Article 54(1)
58. Article 33(1) (requirements in cases where energy value and amount of nutrients may be expressed per portion, per consumption unit, or both per portion and per consumption unit, in addition to, or instead of, per 100 grams or per 100 millilitres)	Articles 1(3), 6 and 32(2), (3) and (4) and the first sub-paragraph of Article 54(1)
59. Article 33(2), second sub-paragraph (requirement for energy value to be expressed both per 100 grams or per 100 millilitres and per	Articles 1(3), 6, 30(3)(b) and 32(2), the first sub-paragraph of Article 33(2) and the first sub-paragraph of Article 54(1)

<i>No. Provision of FIC</i>	<i>Provisions to be read with the provisions of FIC</i>
60. Article 33(4) (requirement for the portion or unit used to be in close proximity to the nutrition declaration)	Articles 1(3), 6 and 33(1) and the first sub-paragraph of Article 54(1)
61. Article 34(1) (presentation of mandatory nutrition declaration and any supplementary information provided in accordance with Article 30(2) – field of vision, format and order of presentation)	Articles 1(3), 6 and 30(1) and (2), the first sub-paragraph of Article 54(1) and Annex XV
62. Article 34(2) (presentation of mandatory nutrition declaration and any supplementary information provided in accordance with Article 30(2) – format and alignment of numbers)	Articles 1(3), 6, and 30(1) and (2), the second sub-paragraph of Article 34(3), Article 34(4) and the first sub-paragraph of Article 54(1)
63. Article 34(3), first sub-paragraph (presentation of nutrition information in a case where certain mandatory nutrition information is repeated (on a voluntary basis) in accordance with Article 30(3))	Articles 1(3), 6 and 30(3), the second sub-paragraph of Article 34(3) and the first sub-paragraph of Article 54(1)
64. Article 34(5), first sub-paragraph (requirement for indication of negligible energy value or amount of nutrients, where used, to be in close proximity to the nutrition declaration, when present)	Articles 1(3), 6 and 30(1) to (5) and the first sub-paragraph of Article 54(1)
65. Article 35(1) (requirements where additional forms of expression and presentation relating to energy value and the amount of nutrients are used)	Articles 1(3), 6, 7, 30(1) to (5), 32(2) and (4), 33 and 34(2), the first sub-paragraph of Article 54(1) and Annex VIII
66. Article 36(1) (requirements that voluntary information must comply with)	Articles 1(3) and 6, sections 2 and 3 of Chapter IV and the first sub-paragraph of Article 54(1)
67. Article 36(2) (additional requirements that voluntary information must comply with)	Articles 1(3), 6 and 7 and the first sub-paragraph of Article 54(1)
68. Article 37 (presentation of voluntary food information – space availability)	Articles 1(3) and 6 and the first sub-paragraph of Article 54(1)
69. Article 44(1)(a) (provision of allergen information for non-prepacked food)	Articles 1(3), 6 and 9(1)(c), the first sub-paragraph of Article 54(1) and regulation 5
70. Article 54(2) (requirement to comply with provisions relating to content, calculation, expression and presentation when nutrition information is provided on a voluntary basis during the period on and from 13 December 2014 to and including 12 December 2016)	Articles 1(3), 6 and 29 to 35

## PART 3

FIC provision in relation to which an improvement notice may be served on and from 13 December 2016

<i>Provision of FIC</i>	<i>Provisions to be read with the provision of FIC</i>
Article 9(1)(l) (mandatory nutrition declaration)	Articles 1(3), 6, 9(2), 11 and 16, section 3 of Chapter IV, Article 40, the second sub-paragraph of Article 54(1), the second sub-paragraph of Article 55, Annex V and regulation 3

## SCHEDULE 6

Regulation 13

### Revocations

## PART 1

Revocations coming into force on 13 December 2014

<i>No.</i>	<i>Statutory Instruments revoked</i>	<i>References</i>	<i>Extent of revocation</i>
1.	The Food Labelling Regulations 1996	S.I. 1996/1499(1)	The whole Regulations except for— (a) regulation 43: (b) in Schedule 8— (i) the entries in Part I of Schedule 8 relating to the descriptions “alcohol-free”, “dealcoholised”, “low alcohol” (or any other word or description which implies that the drink being described is low in alcohol) and “non-alcoholic”; (ii) Part II; and (iii) Part III; and (c) the remainder of the Regulations for the purposes of the provisions specified in sub-paragraphs (a) and (b), including— (i) in regulation 2(1), the definitions of “the Act”, “advertisement”, “cheese”, “clotted cream”, “cream”,

(1) Relevant amending instruments are S.I. 1998/141, 1398, 1999/747, 1136, 1483, 1603, 2000/1925 (W. 134), 2001/1232 (W. 66), 1440 (W. 102), 2003/832 (W. 104), 1635 (W. 177), 3037 (W. 285), 3044 (W. 288), 3047 (W. 290), 3053 (W. 291), 2004/249 (W. 26), 553 (W. 56), 1396 (W. 141), 2558 (W. 229), 2731 (W. 238), 3022 (W. 261), 2005/1309 (W. 91), 2006/31 (W. 5), 2007/2611 (W. 222), 2008/1268 (W. 128), 2009/2705 (W. 224), 3377 (W. 299), 2010/363 (W. 45), 1492 (W. 135), 2288 (W. 200), 2922 (W. 243), 2011/465 (W. 70), 1043, 2936, 2012/1809, 2705 (W. 291), 2013/545 (W. 58), 2750 (W. 267), 2591 (W. 255), 3235. S.I. 1996/1499 is amended on 19 September 2014 by paragraphs 1 to 3 of Schedule 7 to these Regulations.

<i>No.</i>	<i>Statutory Instruments revoked</i>	<i>References</i>	<i>Extent of revocation</i>
			<p>“ingredient”, “labelling”, “milk”, “sell”, “semi-skimmed milk”, “skimmed milk” and “wine”;</p> <p>(ii) regulation 3(1) and (3);</p> <p>(iii) regulation 42;</p> <p>(iv) regulation 44(1)(b);</p> <p>(v) regulation 45;</p> <p>(vi) regulation 48; and</p> <p>(vii) regulation 50(1).</p>
2.	The Bread and Flour Regulations 1998	S.I. 1998/141(1)	Regulations 5(3) and 11
3.	The Food Labelling (Amendment) Regulations 1998	S.I. 1998/1398(2)	The whole Regulations except for regulations 2 and 11
4.	The Food Labelling (Amendment) Regulations 1999	S.I. 1999/747(3)	The whole Regulations except for regulations 2 and 11
5.	The Miscellaneous Food Additives (Amendment) Regulations 1999	S.I. 1999/1136(4)	In regulation 14(1), the words “the Food Labelling Regulations 1996” and the whole of regulation 14(3)
6.	The Food Labelling (Amendment) (No. 2) Regulations 1999	S.I. 1999/1483	The whole Regulations
7.	The Contaminants in Food (Amendment) Regulations 1999	S.I. 1999/1603(5)	The whole Regulations
8.	The Food Irradiation Provisions (Wales) Regulations 2001	S.I. 2001/1232 (W. 66)(6)	The whole Regulations
9.	The Coffee Extracts and Chicory Extracts (Wales) Regulations 2001	S.I. 2001/1440 (W. 102)(7)	Regulations 6 and 11(1) and (2)(g)
10.	The Colours in Food (Amendment) (Wales) Regulations 2001	S.I. 2001/3909 (W. 321)	The whole Regulations
11.	The Food Labelling (Amendment) (Wales) Regulations 2003	S.I. 2003/832 (W. 104)	The whole Regulations
12.	The Cocoa and Chocolate Products	S.I. 2003/3037 (W. 285)(8)	Regulations 7(1) and 11(1) and (2)(f)

- (1) There are amendments to S.I. 1998/141 not relevant to this revocation.  
(2) There are amendments to S.I. 1998/1398 not relevant to this revocation.  
(3) There are amendments to S.I. 1999/747 not relevant to this revocation.  
(4) There are amendments to S.I. 1999/1136 not relevant to these Regulations.  
(5) There are amendments to S.I. 1999/1603 not relevant to these Regulations.  
(6) S.I. 2001/1232 (W. 66) was amended by S.I. 2009/1795 (W. 162).  
(7) There are amendments to S.I. 2001/1440 (W. 102) not relevant to this revocation.  
(8) There are amendments to S.I. 2003/3037 (W. 285) not relevant to these Regulations.

<i>No.</i>	<i>Statutory Instruments revoked</i>	<i>References</i>	<i>Extent of revocation</i>
	(Wales) Regulations 2003		
13.	The Honey (Wales) Regulations 2003	S.I. 2003/3044 (W. 288)(1)	Regulations 6 and 10(2)(g) and (4)
14.	The Specified Sugar Products (Wales) Regulations 2003	S.I. 2003/3047 (W. 290)(2)	Regulations 6 and 10(2)
15.	The Food (Provisions relating to Labelling) (Wales) Regulations 2004	S.I. 2004/249 (W. 26)(3)	The whole Regulations
16.	The Food Labelling (Amendment) (Wales) Regulations 2004	S.I. 2004/2558 (W. 229)	The whole Regulations
17.	The Food Labelling (Amendment) (No. 2) (Wales) Regulations 2004	S.I. 2004/3022 (W. 261)(4)	The whole Regulations
18.	The Food with Added Phytosterols or Phytosterols (Labelling) (Wales) Regulations 2005	S.I. 2005/1224 (W. 82)(5)	The whole Regulations
19.	The Food Labelling (Amendment) (Wales) Regulations 2005	S.I. 2005/1309 (W. 91)	The whole Regulations
20.	The Food Hygiene (Wales) Regulations 2006	S.I. 2006/31 (W. 5)(6)	In Schedule 7, paragraphs 12 to 14.
21.	The Nutrition and Health Claims (Wales) Regulations 2007	S.I. 2007/2611 (W. 222)(7)	Regulation 8
22.	The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007	S.I. 2007/3165 (W. 276)(8)	Regulation 22(2) and (3)
23.	The Food Labelling (Declaration of Allergens) (Wales) Regulations 2008	S.I. 2008/1268 (W. 128)(9)	The whole Regulations

(1) There are amendments to S.I. 2003/3044 (W. 288) not relevant to these Regulations.

(2) There are amendments to S.I. 2003/3047 (W. 290) not relevant to these Regulations.

(3) S.I. 2004/249 (W. 26) was amended by S.I. 2004/3220 (W. 276).

(4) S.I. 2004/3022 (W. 261) was amended by S.I. 2008/1268 (W. 128).

(5) S.I. 2005/1224 (W. 82) was amended by S.I. 2005/3254 (W. 247), 2014/440 (W. 49).

(6) There are amendments to S.I. 2006/31 (W. 5) not relevant to these Regulations.

(7) There are amendments to S.I. 2007/2611 (W. 222) not relevant to this revocation.

(8) There are amendments to S.I. 2007/3165 (W. 276) not relevant to these Regulations.

(9) S.I. 2008/1268 (W. 128) was amended by S.I. 2009/2880 (W. 253).

24.	The Food Labelling (Nutrition Information) (Wales) Regulations 2009	S.I. 2009/2705 (W. 224)(1)	The whole Regulations
25.	The Food Enzymes (Wales) Regulations 2009	S.I. 2009/3377 (W. 299)(2)	Regulation 7
26.	The Drinking Milk (Wales) Regulations 2010	S.I. 2010/1492 (W. 135)(3)	Regulation 9
27.	The Flavourings in Food (Wales) Regulations 2010	S.I. 2010/2922 (W. 243)(4)	Regulation 7
28.	The Food Labelling (Declaration of Allergens) (Wales) Regulations 2011	S.I. 2011/465 (W. 70)	The whole Regulations
29.	The Food (Miscellaneous Amendment and Revocation) (Wales) Regulations 2013	S.I. 2013/545 (W. 58)	The whole Regulations
30.	The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013	S.I. 2013/2591 (W. 255)	Regulation 20
31.	The Fruit Juices and Fruit Nectars (Wales) Regulations 2013	2013/2750 (W. 267)	Paragraph 1 of Schedule 15

## PART 2

### Revocations coming into force on 13 December 2018

<i>No.</i>	<i>Statutory Instruments</i>	<i>References</i>	<i>Extent of revocation</i>
1.	The Food Labelling Regulations 1996	S.I. 1996/1499(5)	The whole Regulations

(1) S.I. 2009/2705 (W. 224) was amended by S.I. 2010/1069 (W. 100).

(2) S.I. 2009/3377 (W. 299) was amended by S.I. 2013/2591 (W. 255).

(3) There are amendments to S.I. 2010/1492 (W. 135) not relevant to these Regulations.

(4) There are amendments to S.I. 2010/2922 (W. 243) not relevant to these Regulations.

(5) Relevant amending instruments are S.I. 1998/141, 1398, 1999/747, 1136, 1483, 1603, 2000/1925 (W. 134), 2001/1232 (W. 66), 1440 (W. 102), 2003/832 (W. 104), 1635 (W. 177), 3037 (W. 285), 3044 (W. 288), 3047 (W. 290), 3053 (W. 291), 2004/249 (W. 26), 553 (W. 56), 1396 (W. 141), 2558 (W. 229), 2731 (W. 238), 3022 (W. 261), 2005/1309 (W. 91), 2006/31 (W. 5), 2007/2611 (W. 222), 2008/1268 (W. 128), 2009/2705 (W. 224), 3377 (W. 299), 2010/363 (W. 45), 1492 (W. 135), 2288 (W. 200), 2922 (W. 243), 2011/465 (W. 70), 1043, 2936, 2012/1809, 2705 (W. 291), 2013/545 (W. 58), 2750 (W. 267), 2591 (W. 255), 3235. S.I. 1996/1499 is amended on 19 September 2014 by paragraphs 1 to 3 of Schedule 7 to these Regulations and on 13 December 2014 by paragraphs 10 to 13 of that Schedule. S.I. 1996/1499 is revoked on 13 December 2018 by entry 1 of the table in Part 2 of Schedule 6 to these Regulations to the extent that it is not already revoked on 13 December 2014 by entry 1 of the table in Part 1 of that Schedule.

2.	The Food Labelling (Amendment) Regulations 1998	S.I. 1998/1398(1)	The whole Regulations
3.	The Food Labelling (Amendment) Regulations 1999	S.I. 1999/747(2)	The whole Regulations

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- (1) S.I. 1998/1398 is revoked on 13 December 2018 by entry 2 of the table in Part 2 of Schedule 6 to these Regulations to the extent that it is not already revoked on 13 December 2014 by entry 3 of the table in Part 1 of that Schedule; there are other instruments amending S.I. 1998/1398 but none is relevant.
- (2) S.I. 1999/747 is revoked on 13 December 2018 by entry 3 of the table in Part 2 of Schedule 6 to these Regulations to the extent that it is not already revoked on 13 December 2014 by entry 4 of the table in Part 1 of that Schedule; there are other instruments amending S.I. 1999/747 but none is relevant.

Consequential and other minor  
amendments to statutory instruments

PART 1

Consequential and other minor amendments  
coming into force on 19 September 2014

**The Food Labelling Regulations 1996**

1. The Food Labelling Regulations 1996(1) are amended as follows.

2. In regulation 4(2) (scope of Part II), in each of sub-paragraphs (h), (i) and (j), for “Commission Regulation (EC) No 607/2009” to the end substitute “Commission Regulation (EC) No 607/2009 laying down certain detailed rules for the implementation of Council Regulation (EC) No 479/2008 as regards protected designations of origin and geographical indications, traditional terms, labelling and presentation of certain wine sector products(2);”.

3. For regulation 41(4) (supplementary provisions relating to nutrition labelling) substitute—

“(4) Where nutrition labelling not being prescribed nutrition labelling is given, it must be given in the manner specified in paragraph (4A) or (4B).

(4A) The nutrition labelling must be given in all respects as if it were prescribed nutrition labelling except that in applying the requirements for prescribed nutrition labelling described in Schedule 7, Part II of that Schedule is to be read as if—

- (a) in paragraph 1, the words “or that is labelled as provided for in regulation 41(4B)” were inserted after the words “paragraph 2 below applies”,
- (b) in paragraph 1(a)(ii), the words from “provided that” to the end of that paragraph were omitted, and
- (c) paragraph 1(d) were omitted.

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(1) S.I. 1996/1499, amended by S.I. 2011/2936; there are other amending instruments but none is relevant to the amendments made by paragraphs 1 to 3.

(2) OJ No L 193, 24.7.2009, p 60, last amended by Commission Implementing Regulation (EU) No 753/2013 (OJ No L 210, 6.8.2013, p 21).

(4B) The nutrition labelling must be given in accordance with Articles 29 to 35 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004.”

#### **The Food (Lot Marking) Regulations 1996**

4. The Food (Lot Marking) Regulations 1996(1) are amended as follows.

5. In regulation 2 (interpretation), in the definition of “first seller established within the European Union”, for “Council Directive 89/396/EEC(2)” substitute “Directive 2011/91/EU of the European Parliament and of the Council on indications or marks identifying the lot to which a foodstuff belongs(3)”.

#### **The Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007**

6. The Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007(4) are amended as follows.

7. In regulation 4(2)(e) (offences and penalties), after “have been added)”, insert “, as read with the first subparagraph of Article 54(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and

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(1) S.I. 1996/1502, amended by S.I. 2011/1043.

(2) OJ No L 186, 30.6.1989, p 21, repealed by Directive 2011/91/EU of the European Parliament and of the Council (OJ No L 334, 16.12.2011, p 1).

(3) OJ No L 334, 16.12.2011, p 1.

(4) S.I. 2007/1984 (W. 165), to which there are amendments not relevant to the amendments made by paragraphs 6 and 7.

2008/5/EC and Commission Regulation (EC) No 608/2004(1)”.

### **The Nutrition and Health Claims (Wales) Regulations 2007**

**8.** The Nutrition and Health Claims (Wales) Regulations 2007(2) are amended as follows.

**9.** In regulation 5(2)(d) (offences and penalties), after “(requirements for nutrition information)”, insert “, as read with the first sub-paragraph of Article 54(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004”.

## **PART 2**

Consequential and other minor amendments  
coming into force on 13 December 2014

### **The Food Labelling Regulations 1996**

**10.** The Food Labelling Regulations 1996(3) are amended as follows.

**11.** In regulation 2(1) (interpretation), for the definition of “ingredient” substitute—

““ingredient” has the meaning given in Article 2(2)(e) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers as amended from time to time;”.

**12.** In regulation 3 (exemptions), for paragraph (1) substitute—

“(1) This regulation does not apply to a food that is brought into Wales from another part of the United Kingdom, an EEA State (other than the United Kingdom), a member State (other than the United

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(1) OJ No L 304, 22.11.2011, p 18, last amended by Commission Delegated Regulation (EU) No 78/2014 (OJ No L 27, 30.1.2014, p 7).

(2) S.I. 2007/2611 (W. 222), to which there are amendments not relevant to the amendment made by paragraphs 8 and 9.

(3) S.I. 1996/1499, relevant amending instruments are S.I. 1998/1398, 1999/747, 2011/1043. S.I. 1996/1499 is partially revoked on 13 December 2014 by entry 1 of the table in Part 1 of Schedule 6 to these Regulations.

Kingdom) or from the Republic of Turkey in which it was lawfully produced or marketed.”

**13.** In Schedule 8 (misleading descriptions), Part I—

- (a) in the second column of entry relating to the description “alcohol-free”, for sub-paragraph (b) substitute—

“(b) the drink is marked or labelled with—

- (i) an indication of its maximum alcoholic strength in a form comprising the words “not more than” followed by a figure to not more than one decimal place indicating its maximum alcoholic strength and the symbol “% vol.” (required form 1), “alcohol % vol.” (required form 2), or “alc. % vol.” (required form 3), or

- (ii) in an appropriate case, an indication that it contains no alcohol.”

- (b) in the second column of entry relating to the description “dealcoholized”, for sub-paragraph (b) substitute—

“(b) the drink is marked or labelled with—

- (i) an indication of its maximum alcoholic strength in required form 1, 2 or 3, or

- (ii) in an appropriate case, an indication that it contains no alcohol.”; and

- (c) in the second column of entry relating to the description “low alcohol” (or any other word or description which implies that the drink being described is low in alcohol), for sub-paragraph (b) substitute—

“(b) an indication of its maximum alcoholic strength in required form 1, 2 or 3.”

**The Food (Lot Marking) Regulations 1996**

**14.** The Food (Lot Marking) Regulations 1996<sup>(1)</sup> are amended as follows.

**15.** For regulation 2 (interpretation) substitute—

“**2.** In these Regulations—

“the Act” means the Food Safety Act 1990;

“date of minimum durability” is to be construed taking into account the definition

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(1) S.I. 1996/1502, amended by S.I. 2011/1043. S.I. 1996/1502 is amended on 19 September 2014 by paragraphs 4 and 5 of Schedule 7 to these Regulations.

of “date of minimum durability of food” in Article 2(2)(r) of Regulation (EU) No 1169/2011;

“first seller established within the Community” has the same meaning as in Directive 2011/91/EU of the European Parliament and of the Council on indications or marks identifying the lot to which a foodstuff belongs;

“food” means food, within the meaning of the Act, intended for sale for human consumption;

“ice cream” has the same meaning as in Directive 2011/91/EU of the European Parliament and of the Council;

“lot” means a batch of sales units of food produced, manufactured or packaged under similar conditions;

“lot marking indication” means an indication which allows identification of the lot to which a sales unit of food belongs;

“prepacked food” has the meaning given in Article 2(2)(e) of Regulation (EU) No 1169/2011;

“prepacked for immediate sale” has the same meaning as “prepacked for direct sale” in Regulation (EU) No 1169/2011;

“Regulation (EU) No 1169/2011” means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004;

“sell” includes offer or expose for sale and have in possession for sale, and “sale” and “sold” are to be construed accordingly;

“ultimate consumer” has the same meaning as “final consumer” in point 18 of Article 3 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying

down procedures in matters of food safety<sup>(1)</sup>;

““use by” date” has the same meaning as in Regulation (EU) No 1169/2011.”

**16.** In regulation 4 (exceptions for particular types of sale and sales units)—

- (a) in sub-paragraph (e), for “edible ice” substitute “ice cream”; and
- (b) in sub-paragraph (g)—
  - (i) for “an indication of minimum durability” substitute “the date of minimum durability”; and
  - (ii) for “the Food Labelling Regulations require” substitute “Regulation (EU) No 1169/2011 requires”.

### **The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997**

**17.** The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997<sup>(2)</sup> are amended as follows.

**18.** In regulation 3(b) (labelling requirements), for “Tables A and B of Part II of Schedule 6 to the Food Labelling Regulations 1996” substitute “point 1 of Part A of Annex XIII to Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers”.

### **The Bread and Flour Regulations 1998**

**19.** The Bread and Flour Regulations 1998<sup>(3)</sup> are amended as follows.

**20.** In regulation 2(1) (interpretation)—

- (a) in the definition of “ingredient”, for “the Food Labelling Regulations 1996” substitute “Article 2(2)(f) of Regulation (EU) No 1169/2011”;
- (b) in the definition of “labelling”, for “the Food Labelling Regulations 1996” substitute “Article 2(2)(j) of Regulation (EU) No 1169/2011”;
- (c) omit the definitions of “the labelling regulations” and “member State”; and
- (d) after the definition of “labelling”, insert—

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(1) OJ No L 31, 1.2.2002, p 1, last amended by Commission Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p 14).

(2) S.I. 1997/2182, to which there are amendments not relevant to these Regulations.

(3) S.I. 1998/141, amended by S.I. 2011/1043; there are other amending instruments but none is relevant.

“Regulation (EU) No 1169/2011” means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004;”.

### **The Coffee Extracts and Chicory Extracts (Wales) Regulations 2001**

**21.** The Coffee Extracts and Chicory Extracts (Wales) Regulations 2001<sup>(1)</sup> are amended as follows.

**22.** In regulation 2(1) (interpretation)—

- (a) omit the definition of “the 1996 Regulations” (“*Rheoliadau 1996*”); and
- (b) after the definition of “designated product” (“*cynnyrch dynodedig*”), insert—

““Regulation (EU) No 1169/2011” (“*Rheoliad (EU) Rhif 1169/2011*”) means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004;”.

**23.** In regulation 5(1) (labelling and description of designated products)—

- (a) in the introductory wording, for “the 1996 Regulations” substitute “Regulation (EU) No 1169/2011”;
- (b) in sub-paragraph (a), for “regulation 6(1) of the 1996 Regulations” substitute “Article 17 of Regulation (EU) No 1169/2011”; and

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(1) S.I. 2001/1440 (W. 102), amended by S.I. 2003/3047 (W. 290); there are other amending instruments but none is relevant.

- (c) in sub-paragraph (c), for “the 1996 Regulations” substitute “Article 17 of Regulation (EU) No 1169/2011”.

### **The Food Supplements (Wales) Regulations 2003**

**24.** The Food Supplements (Wales) Regulations 2003(1) are amended as follows.

**25.** In regulation 2(1) (interpretation)—

- (a) omit the definition of “Directive 90/496(2)” (“*Cyfarwyddeb 90/496*”); and

- (b) after the definition of “preparation” (“*paratoi*”), insert—

““Regulation (EU) No 1169/2011” (“*Rheoliad (EU) Rhif 1169/2011*”) means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004;”.

**26.** In regulation 6 (restrictions on sale relating to labelling etc. of food supplements)—

- (a) in paragraph (2), for “the Food Labelling Regulations 1996” substitute “Regulation (EU) No 1169/2011”; and

- (b) in paragraph (3)(e)—

- (i) for “the Annex to Directive 90/496” substitute “point 1 of Part A of Annex XIII to Regulation (EU) No 1169/2011”; and

- (ii) for “relevant recommended daily allowance specified in that Annex” substitute “relevant reference value specified in that point”.

**27.** In regulation 7(1) (manner of marking or labelling), for “regulation 5(a), (c) and (e) of the Food Labelling Regulations 1996” substitute “points (a), (f),

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(1) S.I. 2003/1719 (W. 186), amended by S.I. 2009/3252 (W. 282); there are other amending instruments but none is relevant.

(2) OJ No L 276, 06.10.1990, p 40, repealed by Regulation (EU) No 1169/2011 of the European Parliament and of the Council (OJ No L 304, 22.11.2011, p 18).

(g) and (h) of Article 9(1) Regulation (EU) No 1169/2011”.

### **The Cocoa and Chocolate Products (Wales) Regulations 2003**

**28.** The Cocoa and Chocolate Products (Wales) Regulations 2003<sup>(1)</sup> are amended as follows.

**29.** In regulation 2(1) (interpretation)—

(a) omit the definition of “the 1996 Regulations” (“*Rheoliadau 1996*”); and

(b) after the definition of “preparation” (“*paratoi*”), insert—

““Regulation (EU) No 1169/2011” (“*Rheoliad (EU) Rhif 1169/2011*”) means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004<sup>(2)</sup>”.

**30.** In regulation 5 (reserved descriptions), for paragraphs (b) and (c) substitute—

“(b) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is only an ingredient of that food;

(c) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that such food is not and does not contain a designated product; or

(d) the use of such description, derivative or word to designate the food is in accordance with the customs applicable in the United Kingdom and the food cannot be confused with a product listed in column 1 of Schedule 1.”

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(1) S.I. 2003/3037 (W. 285), to which there are amendments not relevant to these Regulations.

(2) OJ No L 304, 22.11.2011, p 18, last amended by Commission Delegated Regulation (EU) No 78/2014 (OJ No L 27, 30.1.2014, p 7).

**31.** In regulation 6 (labelling and description of designated products)—

- (a) in paragraph (1), for “Part II of the 1996 Regulations” substitute “Regulation (EU) No 1169/2011”; and
- (b) in paragraph (2)(b), for “the 1996 Regulations” substitute “Article 9(1)(b) of Regulation (EU) No 1169/2011”.

### **The Honey (Wales) Regulations 2003**

**32.** The Honey (Wales) Regulations 2003(1) are amended as follows.

**33.** In regulation 2(1) (interpretation)—

- (a) in the definition of “ingredient” (“*cynhwysyn*”), for “the 1996 Regulations” substitute “Article 2(2)(f) of Regulation (EU) No 1169/2011”;
- (b) in the definition of “labelling” (“*labelu*”), for “the 1996 Regulations” substitute “Article 2(2)(j) of Regulation (EU) No 1169/2011”;
- (c) omit the definition of “the 1996 Regulations” (“*Rheoliadau 1996*”); and
- (d) after the definition of “preparation” (“*paratoi*”), insert—

““Regulation (EU) No 1169/2011” (“*Rheoliad (EU) Rhif 1169/2011*”) means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004;”.

**34.** In regulation 4(1) (labelling and description of specified honey products), for “Part II of the 1996 Regulations” substitute “Regulation (EU) No 1169/2011”.

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(1) S.I. 2003/3044 (W. 288), to which there are amendments not relevant to these Regulations.

### **The Specified Sugar Products (Wales) Regulations 2003**

**35.** The Specified Sugar Products (Wales) Regulations 2003(1) are amended as follows.

**36.** In regulation 2 (interpretation), omit the definition of “the 1996 Regulations” (“*Rheoliadau 1996*”).

**37.** In regulation 5 (labelling and description of specified sugar products), for “Part II of the 1996 Regulations” substitute “Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers”.

### **The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Wales) Regulations 2004**

**38.** The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Wales) Regulations 2004(2) are amended as follows.

**39.** In regulation 8(1) (labelling), for “Part II of the Food Labelling Regulations 1996” substitute “Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers”.

### **The Food Hygiene (Wales) Regulations 2006**

**40.** The Food Hygiene (Wales) Regulations 2006(3) are amended as follows.

**41.** In Schedule 4 (temperature control requirements), in paragraph 8 (interpretation), for subparagraphs (a) and (b) in the definition of “shelf life” (“*oes silff*”) substitute—

- “(a) in relation to food for which a date of minimum durability is required in accordance with Article 9(1)(f) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as read with Article 24(1) and (2) of that Regulation, the period up to and including the required date of minimum durability;
- (b) in relation to food for which a “use by” date is required in accordance with

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(1) S.I. 2003/3047 (W. 290), to which there are amendments not relevant to these Regulations.  
(2) S.I. 2004/314 (W. 32), to which there are amendments not relevant to these Regulations.  
(3) S.I. 2006/31 (W. 5), to which there are amendments not relevant to these Regulations.

Article 9(1)(f) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council, as read with Article 24(1) and (2) of that Regulation, the period up to and including the required “use by” date; and”.

### **The Quick-frozen Foodstuffs (Wales) Regulations 2007**

**42.** The Quick-frozen Foodstuffs (Wales) Regulations 2007(1) are amended as follows.

**43.** In regulation 2(1) (interpretation)—

- (a) omit the definition of “catering establishment” (“*sefydliad arlwyo*”);
- (b) in the definition of “local distribution” (“*dosbarthiad lleol*” and “*dosbarthu’n lleol*”), for “catering establishment” substitute “mass caterer”;
- (c) after the definition of “local distribution” (“*dosbarthiad lleol*” and “*dosbarthu’n lleol*”), insert—

““mass caterer” (“*arlwywr mawr*”) has the meaning given by Article 2(2)(d) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers;”;
- (d) in the definition of “prepackaging” (“*rhagbecyn*”), for “the Food Labelling Regulations 1996” substitute “Article 2(2)(e) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers”; and
- (e) for the definition of “ultimate consumer” (“*defnyddiwr olaf*”) substitute—

““ultimate consumer” (“*defnyddiwr olaf*”) has the same meaning as “final consumer” in point 18 of Article 3 of Regulation 178/2002.”

**44.** In paragraphs (1) and (3) of regulation 5 (marketing or labelling of quick-frozen foodstuffs), for “catering establishment” substitute “mass caterer”.

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(1) S.I. 2007/389 (W. 40), to which there are amendments not relevant to these Regulations.

### **The Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007**

45. The Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007(1) are amended as follows.

46. In regulation 4(2) (offences and penalties), for sub-paragraph (e) substitute—

“(e) Article 7(1), (2) and (3)(2) (restrictions and conditions applying to labelling, presentation and advertising of foods to which vitamins or minerals have been added).”

### **The Nutrition and Health Claims (Wales) Regulations 2007**

47. The Nutrition and Health Claims (Wales) Regulations 2007(3) are amended as follows.

48. In regulation 5(2) (offences and penalties), for sub-paragraph (d) substitute—

“(d) Article 7(4) (requirements for nutrition information);”.

### **The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007**

49. The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007(5) are amended as follows.

50. In regulation 2(1) (interpretation), for the definition of “advertisement” (“*hysbyseb*”) and “advertise” (“*hysbysebu*”) substitute—

““advertisement” (“*hysbyseb*”) means a representation in any form in connection with a trade or business in order to promote the supply of goods and “advertise”

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- (1) S.I. 2007/1984 (W. 165) is amended on 19 September 2014 by paragraphs 6 and 7 of Schedule 7 to these Regulations; there are other amending instruments but none is relevant.
  - (2) Article 7(3) of Regulation (EC) No 1925/2006 of the European Parliament and of the Council (OJ No L 404, 30.12.2006, p 26) was amended by Article 50 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council; by virtue of the second sub-paragraph of Article 55 of Regulation (EU) No 1169/2011 that amendment applies from 13 December 2014.
  - (3) S.I. 2007/2611 (W. 222) is amended on 19 September 2014 by paragraphs 8 and 9 of Schedule 7 to these Regulations; there are other amending instruments but none is relevant.
  - (4) Article 7 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council (OJ No L 404, 30.12.2006, p 9) was amended by Article 49 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council; by virtue of the second sub-paragraph of Article 55 of Regulation (EU) No 1169/2011 that amendment applies from 13 December 2014.
  - (5) S.I. 2007/3165 (W. 276), to which there are amendments not relevant to these Regulations.

(“*hysbysebu*”) is to be construed accordingly;”.

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

**51.** The Eggs and Chicks (Wales) Regulations 2010(1) are amended as follows.

**52.** In regulation 3(1) (interpretation)—

(a) omit the definition of “Directive 2000/13/EC” (“*Cyfarwyddeb 2000/13/EC*”);

(b) for the definition of “Regulation (EC) No 2160/2003” (“*Rheoliad (EC) Rhif 2160/2003*”), substitute—

““Regulation (EC) No 2160/2003” (“*Rheoliad (EC) Rhif 2160/2003*”) means Regulation (EC) No 2160/2003 of the European Parliament and of the Council on the control of salmonella and other specified food-borne zoonotic agents(2);

“Regulation (EU) No 1169/2011” (“*Rheoliad (EU) Rhif 1169/2011*”) means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004;”.

**53.** In Part 2 of Schedule 2 (provisions of Commission Regulation (EC) No 589/2008 laying down detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs(3) contravention of which is an offence)—

(a) in the second column of the entry in the table relating to Article 4(2) of Commission Regulation (EC) No 589/2008, for “Directive 2000/13/EC” substitute “Regulation (EU) No 1169/2011”;

(b) in the second column of the entry in the table relating to Article 6(3) of Commission

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(1) S.I. 2010/1671 (W. 158), to which there are amendments not relevant to these Regulations.

(2) OJ No L 325, 12.12.2003, p 1, last amended by Council Regulation (EU) No 517/2013 (OJ No L 158, 10.06.2013, p 1).

(3) OJ No L 163, 24.6.2008, p 6, last amended by Commission Regulation (EU) No 519/2013 (OJ No L 158, 10.6.2013, p 74).

Regulation (EC) No 589/2008, for “Article 9(2) of Directive 2000/13/EC” substitute “point 1(a) of Annex X to Regulation (EU) No 1169/2011”; and

- (c) in the second column of the entry in the table relating to Article 13 of Commission Regulation (EC) No 589/2008, for “Article 3(1)(5) of Directive 2000/13/EC” substitute “Article 9(1)(f) of Regulation (EU) No 1169/2011”.

### **The Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013**

**54.** The Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013<sup>(1)</sup> are amended as follows.

**55.** In regulation 2(1) (interpretation), for the definition of “meat” (“*cig*”) substitute—

““meat” (“*cig*”) means the skeletal muscles of mammalian and bird species recognised as fit for human consumption with naturally included or adherent tissue but does not include mechanically separated meat (which has the meaning given in point 1.14 of Annex I to Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin)<sup>(2)</sup>”.

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(1) S.I. 2013/1984 (W. 194), to which there are amendments not relevant to these Regulations.

(2) OJ No L 139, 30.4.2004, p 55, last amended by Commission Regulation (EU) No 633/2014 (OJ No L 175, 14.6.2014, p 6).

## **Explanatory Memorandum to the Food Information (Wales) Regulations 2014**

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Member's Declaration**

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food Information (Wales) Regulations 2014. I am satisfied that the benefits outweigh any costs.

**Mark Drakeford, AM**

Minister for Health and Social Services, one of the Welsh Ministers

27 August 2014

## **The Food Information (Wales) Regulations 2014**

### **1. Description**

The proposed Regulations provide for the domestic enforcement of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers ("FIC")<sup>1</sup> to be enforced in Wales. The new Regulations also consolidate and update existing general food and nutrition labelling Regulations in Wales. In addition, the Regulations take advantage of derogations contained in FIC and carrying forward some (EU permitted) national measures.

### **2. Matter of Special Interest to the Constitutional and Legislative Affairs Committee**

None.

### **3. Legislative Background**

The powers enabling this instrument to be made are as follows:

- section 2(2) of and paragraph (1A) of Schedule 2 to the European Communities Act 1972;
- sections 6(4), 16(1), 17, 18, 26, 45 and 48 of, and paragraphs 1 and 4(b) of Schedule 1 to, the Food Safety Act 1990; and
- sections 4(1), (2), (3), (4) and (8) and 10 of the Healthy Eating in Schools (Wales) Measure 2009.

There are no issues of regularity or propriety for the Welsh Government arising from the making of the 2014 Regulations.

### **4. Purpose and Intended Effect of the Legislation**

EU FIC came into force in the EU on 13 December 2011 but the majority of provisions apply from 13 December 2014 however, the minced meat provisions have applied from 1 January 2014.

The EU FIC is a large piece of EU legislation regulating general food labelling requirements in Europe. This includes important mandatory particulars on food labels such as: name of food, ingredients list, quantitative ingredients listing (QUID), allergen information, nutrition information, country of origin, date marks, storage conditions.

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<sup>1</sup> The full title is: Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ No L 304, 22.11.2011, p 18).

The policy aims are:

(a) to meet the UK's legal obligations by including a proportionate, effective and risk based approach to the enforcement of the directly applicable EU FIC, and to remove any overlapping UK food labelling legislation;

(b) to allow consumers to have the information they need to make informed and healthy food choices and to ensure they are not being misled; and


(c) to protect allergic consumers by allowing them to have sufficient and clear information to make safe food choices.

The Regulations also take advantage of optional derogations and (as in the Food Labelling Regulations 1996) includes EU permitted national measures requiring the name of the food to be given in the case of non-prepacked etc. foods and a meat quantity indicator to be given for certain non-prepacked etc, e.g foods containing meat.

A change to the existing enforcement regime has also been taken forward with a move away from the across-the-board use of frontline criminal offences to a more proportionate and targeted regime using improvement notices. A backstop criminal offence will be in place where there is failure to comply with an improvement notice, with an offender being liable, on summary conviction, to a fine not exceeding level 5 (currently £5,000 but this will change when section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is commenced). Criminal offences will continue for the contravention of certain provisions, namely mislabelling of foods containing allergenic ingredients because a failure to comply with the allergen provisions may result in a risk to consumer health and safety. Businesses will have the opportunity to appeal against an improvement notice to the Magistrates Court

Some of the main aspects of interest are:

**(a) Derogations**

- Inclusion of a derogation of not requiring all the mandatory particulars for milk and milk products presented in glass bottles intended for re-use. This is because it avoids unnecessary additional burdens and enables an effective re-use of materials.
- Inclusion of a derogation for minced meat that does not comply with the fat and/or collagen compositional requirements of EU FIC. Such products will have to be labelled with a national mark e.g.  'For UK Market only' indicating that these products are for the UK market only.

**(b) National Measures (permitted by EU FIC)**

- A national provision that the 'name of food' should be provided for loose foods. This is similar to the national measure that already exists in the Food Labelling Regulations 1996.
- A national provision requiring a 'quantitative ingredient declaration' (QUID) of the meat content of loose meat products. This is similar to the national measures that already exist in the Food Labelling Regulations 1996.

- A national provision allowing information on allergens for non-prepacked to be provided in any manner, including orally. Where oral communication is used, there must be a clear indication via a label attached to the food, or on a notice/menu/ticket/label that the allergen information can be obtained from a member of staff. Unlike the national provisions relating to the name of the food and the quantity indicator for products containing meat, this national provision applies in the case of loose foods sold by mass caterers to a final consumer and provision is therefore made allowing for the necessary information to be given on a menu.

**(c) Other National Measures**

- National composition rules on ice cream will be revoked on 13 December 2014.
- National composition and labelling rules on cheese, cream and alcohol-related claims will be revoked on 13 December 2018. During the four years from the coming into force date of the FIC, with consumers, industry and enforcement authorities to consider what, if anything, might be appropriate in terms of the future control and protection of these products.
- All other National Measures contained within the Food Labelling Regulations will be revoked when these Regulations come into force.

**(d) Other Labelling Requirements**

- There is a requirement that the words “irradiated” or “treated with ionising radiation” must be provided when irradiated food products or food products containing an irradiated ingredient are sold in bulk and when irradiated ingredients are used in certain pre-packed foods. This implements certain provisions of Article 6 of Directive 1999/2/EC and replaces a similar provision in the Food Labelling Regulations 1996.

**5. Regulatory Impact Assessment.**

**Costs and Benefits**

1. The IA considers the impact of those provisions over which there is a choice available.

**Baseline (Do Nothing)**

2. The EU FIC will result in some costs to businesses. An estimate of these costs was included as Annex A in the consultation stage Impact Assessment (for information, given that FIC is directly applicable regulation, rather than as a part of the cost and benefit assessment)<sup>2</sup>. These stem chiefly from the requirement to provide mandatory information that is currently provided voluntarily, and from the requirement in many cases to alter the way that this information is presented to the consumer. Examples of the latter include the order in which nutrients are presented, the method of highlighting allergens and the placement of ‘best before’ information.

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<sup>2</sup> <http://www.food.gov.uk/news-updates/consultations/consultations-wales/2012/fir-wales-2013>

3. This 'Do nothing' option as described above is the reference option against which all other options as assessed.

## **Option 1A**

### **Costs**

### **Industry**

#### **Implementation of Member State Flexibility, FIC point 3 of Part B of Annex VI – Implementation of a national mark for minced meat**

4. Under the conditions laid down in the Food information to Consumers Regulation (EU 2011/1169, Annex VI part B), designations of minced meat may only be used where the minced meat complies with certain compositional standards, checked on the basis of a daily average, as set out in the following table (point 1 of 2011/1169, Annex VI part B);

Table 1

	Fat content	Collagen/Meat protein ratio
Lean minced meat	≤7%	≤12%
Minced pure beef	≤20%	≤15%
Minced meat containing pigmeat	≤30%	≤18%
Minced meat of other species	≤25%	≤15%

5. In addition, the following expression must appear on the labelling; *'percentage of fat content under ...' and 'collagen/meat protein ratio under ...'*. (point 2 of 2011/1169, Annex VI part B ).

Point 3 of Annex VI Part B states that 'The Member States may allow the placing on their market of minced meat which does not comply with the criteria laid down in point 1 of [Part B] under a national mark...'

6. The UK takes 'a national mark' to mean an indication to the potential consumer that the product does not comply with the criteria laid down in the FIC, and specifically that either fat or collagen content is higher than the upper limit allowed under the Regulations.

7. The derogation only allows minced meat outside the upper fat and collagen limits to be placed on the national market under a national mark. It does not allow in addition a change of meaning of the designation 'lean minced meat', which may only be used for meat that, on the basis of a daily average, falls within the relevant composition limits.
8. Minced beef currently on sale in UK supermarkets tends to fall into one of five broad categories:
  - Value minced beef, around 20% fat content
  - Pure/standard minced beef, somewhere between 16 and 20% fat content
  - Lean minced beef, targeted at around 12% fat content
  - Extra lean minced beef, 7% or lower fat content.
  - 'Premium' branding, for example 'steak' or 'Aberdeen Angus' can be anywhere along the range of fat levels
9. These correspond to the practical implementation of previous guidance and industry practice on labelling of minced beef.
10. There are therefore two assumed costs associated with this measure, either:
  - Relabeling costs to include the national mark on packaging
  - Reformulation costs to bring minced meat products below the required fat and collagen proportions. (N.B. This cost would not apply should affected businesses choose to take advantage of the derogation).
11. The UK has made an estimate of the costs for the minced beef industry in the following paragraphs.
12. In order to assess **re-labelling costs**, we estimate from engagement with the food industry that there are around 20 stock-keeping units (SKUs) above the 20% fat percentage and collagen/meat protein ratio for beef mince. We assume that they take advantage of the derogation in 2014-15, and re-label their products.
13. The UK estimates that there are 20 beef mince products which do not meet the requirements (out of a total number of beef mince SKUs of around 150<sup>3</sup>). Although economy mince makes up approximately only 5% (by value) of the market, we have assumed that there are disproportionately more SKUs (compared to market value) as it is a cheaper product. Assuming a labelling cost of £1,800 per product<sup>4</sup>, this equates to a one-off re-labelling cost of £36,000.
14. In terms of **compliance costs**, there are uncertainties about how the market might evolve in response to revised rules. There are a variety of responses which could be taken by businesses in order to meet new requirements. They may choose to rename

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<sup>3</sup> Source: Kantar Worldpanel, 2013

<sup>4</sup> See Annex B on estimating costs of label changes

their product so that it is no longer 'minced beef' (or similar) and therefore falls outside of the regulations. They may choose to reformulate their products so that they meet the new requirements and are able to continue to market their product as 'minced beef' (or similar). They may choose to exit the market altogether. Any of these responses could have second-round impacts. Consumers may or may not respond to whether a product is called 'minced beef' (or similar), or some alternative name. If companies decided to exit the market, there is a question of how other firms might respond to fill the gap, and how they might do so. With reformulation, the leftover fat and collagen will either need to be disposed of, or will make it into the food chain through other products. Prices elsewhere in the market could therefore be affected (and waste potentially increased).

15. We have estimated the reformulation costs as £174k per annum in this option, where the derogation is not taken. This represents around 1% of the overall market value, so is relatively small in those terms. However, we should note that this is based upon only incurring additional costs to reduce fat. Whilst minced meat is currently manufactured and routinely analysed for fat content, data for collagen is less complete and it may be, as industry sources have contested, that meeting the collagen criteria would be significantly more costly than our estimates. A figure of £300million has been cited by industry, though it is not at all clear how this could have been estimated given that the overall market is only worth £400-500m. What is clear is that if the collagen levels are significantly in excess of 15% across a wider range of products, this may lead to significantly higher costs than estimated here.
16. Although this only assesses the beef element of the minced meat market, this represents by far the majority of the minced meat market, and is the only major concern of producers. The fat and collagen limits for minced meat of other species are well within current production levels, pigmeat in particular being lower in fat than prescribed by the FIC criteria.
17. Assuming a competitive market, and therefore that this cost is passed through, consumers will face the final burden of the increased cost. In which case, consumer demand may adjust in response to the higher prices. Consumers may substitute to other products, meat and otherwise, although there are reasons to think that demand will not be disproportionately affected by the increased cost. Demand may not be particularly elastic as the increased cost will be general to this class of mince product, rather than being product-specific. On the other hand, the increased cost of economy minced beef will be relatively significant – it is estimated to be an average increase of 24% for economy mince. Even a relatively inelastic demand, of -0.6%<sup>5</sup>, would lead to a nearly 15% reduction in demand for affected minced beef products. Adjusted for expected demand changes, the direct cost is therefore reduced (this adjustment is already reflected in the £174k per annum cost above, estimated at £204k per annum without the demand adjustment).

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<sup>5</sup> Family Food Survey 2011

## **Enforcement**

18. Enforcement costs are derived from the EU FIC rather than the national Regulations under examination here and are non-monetised. In the longer term, it is expected that the on-going costs to enforcement are likely to be comparable with enforcement action currently taken by local authorities as part of a risk based approach to enforcement. However, in the short term there may be some additional enforcement costs from the new approach (which have not been monetised) arising from:

- Training on improvement notices and appeals for enforcers, although these may not be very significant as similar procedures are already being rolled out across food labelling and compositional regulations.
- Increased informal enforcement activity – enforcers are likely to have increased activity while businesses become familiar with the new requirements. This would be through the coaching role they play and through dealing with non-compliances under the new procedures.
- Potential for increased appeals – as this will be a new tool for enforcers and businesses. There may be increased appeals while all parties become familiar with the new requirements and processes.

## **Consumers**

### **Removal of Member State flexibility, power to impose a national measure to retain requirement to provide Quantitative Ingredient Declarations (QUID) declarations on the meat content of meat products sold non-prepacked**

19. The removal of this measure means the potential loss of information consumers are used to seeing on their food, although information is likely to be caught under the Unfair Commercial Practices Directive, this removed the direct requirement to provide the information.

### **Removal of Member State flexibility, requirement to provide name of food on products sold non-prepacked**

20. The removal of this measure means the potential loss of information consumers are used to seeing on their food, although information is likely to be caught under the Unfair Commercial Practices Directive this removed the requirement to provide the information.

## **Familiarisation Costs**

### Government

21. This cost has been monetised though it is contestable that these costs derive from the EU FIC rather than from the domestic Regulations (FIR). Enforcement authorities will

need to become familiar with the updated Regulations and revised enforcement provisions. It is estimated that it would take one Trading Standards officer **1 hour** to read the guidance. Wage rates have been up-rated by 30% to account for non-wage labour costs and overheads, in accordance with the standard cost model.

22. Based on the number of enforcement authorities (22) with responsibility for food in Wales this is estimated to **cost around £415 per hour**. Following a period of familiarisation, the burden of work will remain largely as before.

Industry

23. Industry will, in general, have to familiarise themselves with the directly applicable regulation. As discussed previously, we do not assess the impacts of that in this Impact Assessment. We instead are concerned whether there are any additional familiarisation costs as a result of the national measures, primarily in relation to the minced meat derogation. We assume that this element of familiarisation takes 1 hour for relevant manufacturers, retailers and wholesalers. The total familiarisation cost for these sectors is estimated to be £53,802, occurring in the first year of revised regulations only. This is illustrated below in Table 4. The cost figure is a conservative estimate, because these cover all food and drink businesses in the relevant categories. Not all of these will need to familiarise themselves with the minced meat measure, and therefore costs could be lower.

Table 4: Industry familiarisation costs

	No. Of FBOs	Costs
Manufacturers	410	£ 10,917
Wholesale and Retailers	2,980	£ 42,885
<b>Total cost</b>		<b>£ 53,802</b>

Benefits

**SI consolidation**

Industry

24. Where currently there are 14 pieces of legislation to contend with, FIC and the SI consolidate these into one. There is an element of simplification in this though it should not be over-stated – the responsibilities on businesses do not reduce as a result of the number of SIs reducing. However, certainly those businesses which are inclined to get their information from primary sources in legislation rather than, and as well as, from guidance documents may derive a benefit from the provisions for their businesses being in one place.

25. Micro businesses will not tend to use legislative documents to access information on legal requirements, but will look to guidance from Government, local enforcement and trade bodies etc. Larger businesses however will, we assume, look to the legislation itself and therefore may derive simplification benefits from the consolidation of food information legislation from fourteen pieces of legislation down to one Statutory Instrument. We have not monetised this benefit, as it is not clear the extent of the benefits that business may derive.

### Enforcers

26. Similarly to companies, enforcers may also benefit from SI consolidation through spending less time referring to several SI documents, which takes time. Instead, the relevant regulations will be contained within one SI, to which enforcers can refer. We have not monetised this benefit as the benefits to enforcers are also uncertain.

### **Enforcement**

#### **More flexible enforcement procedures for enforcement officers**

27. As with enforcement costs, these benefits are derived from implementation of EU FIC and are non-monetised. There is a potential benefit to Government in terms of moving from the current criminal sanctions regime to the new civil sanctions regime. It is anticipated that the gains would originate from reduced court costs as the number of hearings will be reduced as issues will be resolved through issuing improvement notices, and the time saved to enforcement officers in resolving the issues more quickly instead of preparing for a court case. Therefore, as well as benefits for enforcers, magistrate court costs may also be reduced.

28. However, this benefit is likely to be relatively small given the number of cases associated with food labelling dealt with by enforcers is anticipated to be small and, in the case of the new approach, there will be appeals against improvement notices to deal with.

#### **A more proportionate enforcement regime for business**

29. There may be benefit to industry in terms of moving from the current criminal sanctions regime to the new regime (for most FIC contraventions) of improvement notices backed up with a criminal offence. Any savings would originate from reduced costs and time saved to businesses, as fewer contraventions would need to be escalated to a Magistrates Court. It is anticipated that the vast majority will be resolved through the issuing of improvement notices.

30. During consultation, some businesses expressed some concern that Improvement Notices represented an additional and unnecessary enforcement capability, which they feared would replace informal action in some cases. We intend to provide clear guidance in respect of this matter for enforcers and food business operators

### **Consumers**

30. There are no significant benefits for consumers.

## **Option 1B (Preferred Option)**

### **Costs**

#### **Industry**

31. Costs are the same as for option 1A except those set out below:

**Continuation of Member State flexibility, Article 44 (1) power to impose a national measure to retain requirement to provide Quantitative Ingredient Declarations (QUID) declarations on the meat content of meat products sold non-prepacked.**

32. There are no additional costs for this measure as businesses are already required to provide this information.

**Continuation of Member State flexibility, Article 44 (1) power to impose a national measure to retain the requirement to provide the name of the food on products sold non-prepacked packs.**

33. There are no additional costs for this measure as businesses are already required to provide this information.

**Member State flexibility, Article 44 (1) (a) allowing information on allergens for loose foods to be provided in any manner including orally. Where oral communication is used, there must be clear indication via a label attached to the food, or on a notice/menu/ticket/label that the allergen information can be obtained from a member of staff. Unlike the national provisions relating to the name of the food and the quantity indicator for products containing meat, this national provision applies in the case of loose foods sold by mass caterers to a final consumer and provision is therefore made allowing for the necessary information to be given on a menu.**

34. The costs of this measure are subsumed into the familiarisation cost for businesses and compliance with the directly applicable EU Regulations. There is no additional cost for businesses.

#### **Enforcement Costs**

35. Costs are the same as option 1A

## **Consumers Costs**

36. There are no significant costs to consumers

## **Familiarisation Cost**

### Government

37. Costs are the same as option 1A

### Industry

38. Costs are the same as option 1A

## **Benefits**

## **SI Consolidation**

### Industry

39. Costs are the same as option 1A

### Enforcers

40. Costs are the same as option 1A

## **Enforcement**

### More flexible enforcement procedures for enforcement officers

41. Costs are the same as option 1A

### A more proportionate enforcement regime for business

42. Costs are the same as option 1A

## **Consumer**

43. This is a non monetised benefit. The retention of National Measures on Quid and Name of food means the continuation of valuable consumer information.

## **Option 2**

### **Costs**

#### **Industry**

44. Costs are the same as option 1B except those set out below:

**Member State Flexibility on use of Article 44 (1) power to impose national measures requiring some or all of the mandatory particulars detailed in Articles 9(1) other than the name of the food, (separately addressed in point 2 above) e.g. list of ingredients, storage conditions and/or conditions of use, the name or business name and address of the food business operator, etc. and 10(1) to be provided in relation to non-prepacked food .**

**Member State Flexibility on use of Article 43 power to impose a national measure on the voluntary indication of reference intakes for specific population groups. For example, the provision of guideline daily amounts (GDAs) reference intakes for children, in addition to the current requirement to provide GDAs for an average adult. As provision of reference intakes for specific groups would remain voluntary, this national measure would not itself impose costs on business. However, there would be a cost to FBOs that chose to adopt them.**

**Member State Flexibility on use of Article 35(3) power to require FBOs to notify any Additional Forms of Expression (AFE's) used for front of pack nutrition labelling and to provide justification regarding fulfilment of the AFE criteria. As AFEs are voluntary, this national measure would not itself impose costs on business. However, there would be a cost to FBOs that chose to adopt them.**

45. These costs are all non-monetised.

#### **Enforcement**

46. Costs are the same as option 1A & 1B

#### **Consumers**

47. There are no significant costs to consumers

#### **Familiarisation Cost**

### **Government**

48. Costs are the same as option 1A & 1B

#### Industry

49. Costs are the same as option 1A & 1B

#### **Benefits**

#### **SI Consolidation**

#### Industry

50. Costs are the same as option 1A & 1B

#### Enforcers

51. Costs are the same as option 1A & 1B

#### **Enforcement**

#### More flexible enforcement procedures for enforcement officers

52. Costs are the same as option 1A & 1B

#### A more proportionate enforcement regime for business

53. Costs are the same as option 1A & 1B

#### **Consumers**

54. This is a non monetised benefit. The retention of additional three National Measures on This will increase consumer information and choice.

#### **Approach to small businesses**

55. An exemption for small businesses was not included in FIC as a significant proportion of businesses in this sector in Europe are small to medium size enterprises (SMEs). To introduce an exemption would undermine the provisions and reduce the likelihood of achieving the identified benefits. Table 5 shows the significant presence of SMEs in the food and drink sector<sup>6</sup>.

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<sup>6</sup> All figures refer to bespoke analysis from the 2012 ONS Business Demography publication. The analysis was taken from all businesses that are active within the specified year.

56. In 2012, 9,580 businesses were operating in the food and drink manufacturing, wholesaling, retailing or catering sectors in Wales, of which over 99 per cent were identified as having SME status. Only 1% of FBOs are medium and large companies.

Table 5: Food Business Operator numbers operating in Wales in 2012, by firm size

	Micro	Small	Medium	Large	Total
Manufacture	346	57	6	1	410
Retail	2,113	349	35	8	2,505
Catering	5,221	861	87	21	6,190
Wholesale	401	66	7	2	475
<b>Total</b>	<b>8,081</b>	<b>1,333</b>	<b>134</b>	<b>32</b>	<b>9,580</b>

57. A number of measures have been included in FIC to minimise burdens on SMEs where possible. Examples of these include exemptions from the mandatory nutrition declaration when manufacturers of small quantities of handcrafted food supply directly to the final consumer or to local retail establishments supplying directly to the consumer as well as minimal requirements for foods sold pre-packed for direct sale.

58. As noted, in this Impact Assessment we are assessing the impact only of the preferred national measures. For the Options considered here, only allergen information will be required for non-prepacked food, including food pre-packed for direct sale, and there is some flexibility in how this information should be given. Should FBOs choose to supply nutrition information on a voluntary basis, the Regulation sets out rules governing its content and presentation in order that consumers are not misled. FIC only applies to the activities of FBOs. The Regulation makes clear those charity events where private individuals are supplying food to, for example, a church fete, otherwise than in the course of a business would be exempt from labelling their food, although they might want to supply allergen information on a voluntary basis.

59. For the minced meat derogation, the business profile size for those organisations affected is less tilted towards the micro size band, given that caterers are not expected to be affected. However, the size profile is still overwhelmingly SME. As such, small businesses would have been affected had the derogation not been taken.

### Preferred option

60. The preferred option (option 1B) is summarised below:

- Providing enforcement provisions in the form of an SI, revoking 14 existing SIs and minimising the additional burdens to business by taking advantage, where appropriate of available derogations and national measures.
- Through this option an SI will be produced putting into place offences and enforcement provisions, and setting out in Wales law those areas of Member State flexibility which are in UK businesses and consumers' best interests. EU obligations would be fully met
- Inconsistent domestic legislation – affecting the transitional arrangement under FIC will be amended. This will clear the way for industry to take advantage of the transition period relating to the format of nutrition declarations whilst complying with domestic legislation. It will give businesses sufficient time to introduce any necessary label changes and familiarisation training for workers, incorporating these into ongoing and scheduled activity.

61. The following derogation taken forward as national measures are:

- Use of Article 40 national measure for milk or milk products presented in glass bottles intended for reuse – ability to derogate from the mandatory requirements, to provide nutrition information in Article 9(1)
- Use of Article 44 (1) power to impose a national measure to retain requirements to provide QUID declarations on the meat content of meat products sold non-prepacked.
- Use of Article 44 (1) power to impose a national measure requiring the provision of the name of non-prepacked food.
- Use of Article 44 (1) (a) power to impose a national measure allowing information on allergens for loose food to be provided in any manner including orally. Where oral communication is used, there must be clear indication via a label attached to the food, or on a notice/menu/ticket/label that the allergen information can be obtained from a member of staff.

62. A derogation allowing minced meat to be marked in Wales that does not meet the requirements of Annex VI Part B will be allowed.

63. Existing national measures setting compositional standards for some ice-cream designations will be revoked. Existing national measures setting compositional standards for some chesses and creams will be revoked in 4 years.

## Annex A

Council Directive 89/396/EEC which regulated food lot marking had been substantially amended several times. Because of this it needed replacing with a codified version of the amended Directive in the interests of clarity and was replaced by Directive 2011/91/EU. There were no changes of substance. Our domestic Food (Lot Marking) Regulations 1996 include a reference to Directive 89/396/EEC (reference is in the definition of the expression 'first seller established within the European Union'). The reference to Directive 89/396/EEC in our domestic Regulations needs to be updated so that it refers to Directive 2011/91/EU instead. The consequential amendment (in paragraph 2 of Part I of Schedule 6 to the draft Regulations) effects this simple amendment.

The revocation of the Food Labelling Regulations 1996 and repeal of Directive 2000/13/EC as part of the FIC exercise will result in the need for other amendments to be made to the Food (Lot Marking) Regulations 1996 as from 13 December 2014. These amendments are contained in paragraph 1 of Part 2 of Schedule 6 to the draft UK Food Information Regulations.

The amendments that are being made, mainly to definitions, should have minimal if any impact on businesses.

## Annex B – Estimating costs of label changes for FIC requirements

### Label costs

Information from the 2010 Campden BRI study “Developing a framework for assessing the costs of labelling changes in the UK” looks at the total cost of all stages of the label cycle, from familiarisation of new legal requirements, re-design and auditing through to printing. The study concluded that the following costs would be incurred by businesses making minor or major label changes:

<b>Extent of change</b>	<b>Average cost (£/SKU)</b>	<b>Trimmed Mean (£/SKU)</b>
Minor change	£1,810	£1,800
Major change	£3,800	£3,330

Source: Developing a framework for assessing the costs of labelling changes in the UK

There are a number of variables which affect the costs of relabeling including size of firm, printing methods, type of market and type of product. In distinguishing between major and minor label changes the following descriptions are used:

*Minor label change: only the text has been changed on a single face of the label and no packaging size modification was required to accommodate this.*

*Major label change: the text but also the layout and/or colours and/or format were changed and/or multiple faces of the package were affected. The change is also considered as major in each case when the process entailed packaging size modification.*

We consider that the label changes consequent to the FIC and enabling SI are, by these descriptions, minor.

## Annex C

### Main changes effected by EU FIC

1. European requirements on food information and labelling have been in place since 1978 and been subject to a significant number of amendments. The rationale for Commission intervention and these Regulations was the need to update and consolidate regulation in this area, with the intention that review and simplification would be beneficial to consumers and businesses. The Regulation brings together both general and nutrition labelling provisions in a single directly applicable regulation. There is also a recognition that while a number of horizontal directives are already in place, for example foods containing quinine and caffeine, the area would benefit from review and consolidation of all such requirements into a single Regulation. A further objective was to ensure consistency of labelling requirements across Europe by replacing the current Directives with a single Regulation, ensuring a 'level playing field' and a competitive market for all businesses operating within the EU.
2. There was also a need to ensure that labelling information is in line with consumer needs and reflects changes in eating habits and consumer lifestyles. Provisions that reflect this include:-
  - Distance selling. With the increase in sales of food online it was recognised that measures were needed in order to ensure consumers were receiving similar amounts of information when purchasing using distance communication such as catalogues and the internet as they would when shopping in store
  - Mandatory nutrition labelling for most pre-packed foods
  - Easy to access voluntary nutrition information. FIC provides a common basis for easy to access voluntary front of pack labelling. This makes it easier for consumers to understand the information when provided and helps ensure that where additional forms of expression are used that it can be demonstrated that they are understood by consumers.
  - Easier to access food allergy information. Highlighting the allergens in the ingredients list in pre-packed foods will allow allergic consumers to access the information quickly so that they can make safe food choices.
  - Extension of provisions for allergen information for non-pre-packed foods, including in cafes and restaurants.
3. The FIC contributes to the healthy eating and obesity challenge through improved information for consumers on the nutrients present in their food. This is due not only to the requirement for a mandatory nutrition declaration, but also to the provision of a framework for voluntary nutrition information, ensuring that where information is provided on a voluntary basis, it does not undermine the benefits to consumers of the mandatory requirements. Through this framework, labelling schemes developed in the UK can

continue and will be used across Europe, ensuring that there is a level playing field for industry and that consumers are not confused or misled by the information they receive

4. For minced meat, the requirement that it should bear a statement of both fat percentage and collagen/meat protein ratio are important consumer benefits. These are essential indicators of the nutritional value and quality of the product and provide consumers with consistent information with which to make purchasing decisions.
5. For meat products, meat preparations and fishery products containing added proteins such as hydrolysed proteins, of a different animal origin, the name of the food shall bear an indication of the presence of those proteins and of their origin. This will benefit consumers who for cultural or religious reasons choose not to eat certain species of meat.
6. For meat and fish products and preparations which have the appearance of a cut, joint, slice, fillet or whole fish where added water makes up more than 5% of the weight of the finished product the name of the food shall include an indication of the presence of added water. .
7. Meat products, meat preparations and fishery products which may give the impression that they are made of a whole piece of meat or fish, but actually consist of different pieces combined together by other ingredients, including food additives and food enzymes or by other means, shall show 'formed meat' or 'formed fish' as appropriate.
8. The FIC also contributes to managing public health issues such as the presence of liquorice or phytosterols in food, which particular groups need to be aware of in order to ensure that products containing these ingredients are not over-consumed to avoid adverse health effects.
9. The FIC extends the mandatory requirement for allergy information to non-prepacked food but allows the FBO some flexibility in how this is provided. This has previously been a sector where the greatest proportion of severe/fatal food allergic reactions has occurred, with some 75% of reactions occurring after eating food sold non-prepacked<sup>7</sup>.
10. The impacts of the provisions on country of origin labelling and net quantity requirements are not included in this IA. Some country of origin requirements come into force without the need for further EU action, i.e. those in Article 26(2)(a) of FIC<sup>8</sup>. The nature of the

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<sup>7</sup> Pumphrey, RS. 2000. Lessons for the management of anaphylaxis from a study of fatal reaction. *Clinical and Experimental Allergy*. Vol 30, pages 1144-1150. Pumphrey, RS and Gowland, MH. 2007. Further fatal allergic reactions to food in the United Kingdom 1992-2006. *J Allergy and Clinical Immunology*. Vol 119, pages 1018-9.

<sup>8</sup> Indication of the country of origin or place of provenance shall be mandatory [...] where failure to indicate this might mislead the consumer as to the true country of origin or place of provenance of the food, in particular if the information

information to be given when country of origin information becomes mandatory remains under discussion in the EU. [Defra has established a negotiating position on this based around principles of minimising burdens to business while providing consumers with the information they need to make safe and informed choices.] Once agreed, enforcement provisions to support these areas will be needed and the impact of these provisions will be assessed at that time.

11. The net quantity provisions are being considered as part of a separate simplification exercise on weights and measures requirements and legislation for food being undertaken by the National Measurement Office (NMO). The cost and benefits of those provisions will therefore be assessed in that exercise and are not outlined here.

12. At present the requirements for general labelling of food are set out in Directive 2000/13/EC of the European Parliament and of the Council and requirements relating to nutrition labelling are set out in Council Directive 90/496/EEC. Both are implemented in the GB (with separate regulations in Northern Ireland) by the Food Labelling Regulations 1996 (as amended) (FLR). These cover much of the same areas as the new EU FIC Regulation although as a result of the consolidation and review in Europe some of the requirements have changed or been extended. FIC repeals both 2000/13 and 90/496/EEC, as well as other EU legislation. We need to revoke the FLR as the domestic legislation implementing the requirements of 2000/13/EC and 90/496/EEC. We also need to introduce provisions to enforce the FIC in Northern Ireland due to EU legal requirements and to take advantage of derogations and any additional permitted national measures which serve Northern Ireland's interests.

13. As noted above, the Impact Assessment is concerned with those measures over which the UK has a choice, including derogations and national measures. Some national measures permitted by FIC already exist in current UK legislation. These include the following:

- mandatory requirement to provide a Quantitative Ingredient Declaration ('QUID') indication of meat content in meat products sold loose; and
- mandatory requirement to indicate the 'name of food' for foods sold loose.

14. In addition, the Regulations will;

- (a) Implement the relevant irradiated food provisions in Article 6 (1) of 1999/2/EC. No food is currently irradiated in the UK and very little, if any, irradiated food is sold in the UK, so this is simply for legal completeness. These provisions were previously implemented by the

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accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance;

Food Labelling Regulations (Northern Ireland) 1996, as amended, and no substantive changes are being introduced.

- (b) Update the Food (Lot Marking) Regulations (Northern Ireland) 1996 to take account of the recast of 89/396/EEC. Most of the amendments that are being made, mainly to definitions, should have minimal if any impact on businesses.

David Melding AM  
Chair, NAW Constitutional  
Affairs Committee  
National Assembly for Wales,  
Cardiff Bay,  
Cardiff.  
CF99 1NA

*Copy Gareth e ante for advice*

Our Ref:

Your Ref:

Date: 23 July 2014

Dear Mr Melding

You may be aware that the Minister for Communities and Tackling Poverty has announced that I am to lead an independent review into the role and functions of the Children's Commissioner for Wales (CCfW). I feel very privileged to be taking forward this important work.

I wanted to draw your attention to the review in your capacity as chair of the Constitutional Affairs Committee. My intention is to engage extensively with the National Assembly for Wales, particularly with the Presiding Officer, your committee and the Children, Young People and Education Committee. I also hope to be providing further opportunities for AMs to meet me individually.

The broad themes of the review are set out in the full remit letter (attached) from the Minister. Members of your committee may be particularly interested in my remit to examine the interface between the CCfW, the Welsh Government and the National Assembly for Wales.

I will want to consider if the current arrangements enable the appropriate scrutiny of the Commissioner's role and functions and, equally, the extent to which the independence of the office is appropriately and sufficiently secured.

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Another key aspect will be the examination of the CCfW's remit limitations, currently linked to the devolution settlement. I will look at how clear are the divisions of responsibilities between the CCfW and UK counterparts, and what practical issues, if any, do or could arise. I will also ask about the degree to which the current legislative framework clarifies and supports the role and the impact it might make.

If you wish to contribute to the review formally via the call for evidence (in writing) or would like me to meet the Committee (or with you as chair) informally to discuss some of the issues to which I have referred, please get in touch with my review team ([via ccfwreview@wales](mailto:via_ccfwreview@wales)).

My intention is to publish a finalised report with recommendations in December. I therefore aim to have established the emerging key themes and concluded much of my external engagement by October.

I look forward to hearing from you.

Yours sincerely



**Dr Mike Shooter CBE**

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## **Sharpe, Sarah (AM Support, David Melding)**

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**From:** Children in Wales / Plant yng Nghymru <info@childreninwales-org-uk.ccsend.com>  
on behalf of Children in Wales / Plant yng Nghymru <info@childreninwales.org.uk>  
**Sent:** 23 July 2014 15:18  
**To:** Melding, David (AM, Deputy Presiding Officer)  
**Subject:** Call for Evidence - Review of the role and functions of the Children's Commissioner for Wales

### **Call for Evidence - Review of the role and functions of the Children's Commissioner for Wales**

As you may know, I have been asked by the Minister for Communities and Tackling Poverty to undertake a review to the role and functions of the Children's Commissioner for Wales. Wales was the first UK country to have such a commissioner, with the office being established in 2001; mine is the first review of the office since its establishment. The current Children's Commissioner for Wales, Keith Towler, has previously called for and has welcomed this review.

My review will focus on six key areas:

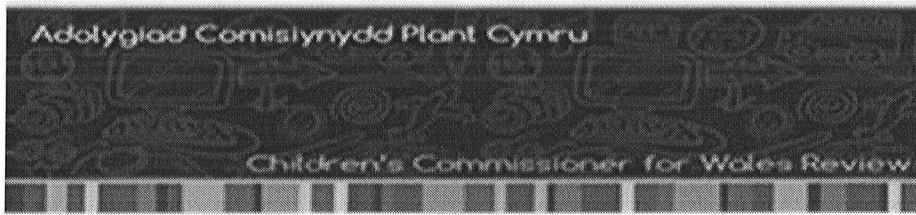
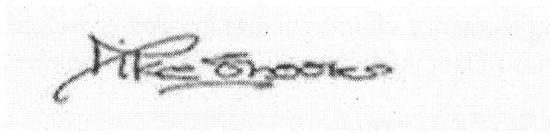
1. the role and functions of a Children's Commissioner for Wales;
2. the impact that the role has had;
3. the suitability and effectiveness of the underpinning legislation;
4. accountability and governance;
5. value for money; and
6. accessibility.

In December I will provide the Welsh Government with a report and recommendations across these six areas. To achieve this I will meet a range of people across Wales and beyond to listen to and seek to understand their views and perspectives on the Children's Commissioner. I would like to hear from as many people as possible. With this in mind, I am issuing my 'Call for Evidence'. This is intended to provide an opportunity to gather a range of in-depth information. Alongside the Call for Evidence, and as an alternative or supplementary option, we have also developed an online survey. The survey will consist mainly of yes/no questions with an option to expand on answers. Please feel free to use either - or both - engagement tools, as you see fit.

Children and young people are, of course, vital to the review. Two separate versions of the survey have also been specifically designed for different age groups (although it is of course open to children and young people to complete any of the other surveys). It would be great if you could encourage children and young people to feedback to us. If you work with children and young people you may wish to conduct your own workshop and to let us know how that goes. All documents are downloadable. I have also recently awarded a contract to deliver a large number of workshops for children and young people across Wales. Further details will appear shortly.

I would be grateful if you could circulate the Call for Evidence to your stakeholders. Please help ensure that voices are heard so I can make recommendations that build on and strengthen the role of the Children's Commissioner for Wales.

You can complete the Call for Evidence [here](#).



**Forward this email**



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Llywodraeth Cymru  
Welsh Government

Lesley Griffiths AC / AM  
Y Gweinidog Cymunedau a Threchu Tlodi  
Minister for Communities and Tackling Poverty

David Melding AM  
Chair of the Constitutional and  
Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

16 September 2014

*Dear David*

**Financial Education and Inclusion (Wales) Bill**

Thank you for your letter of 22 July inviting the Government to give evidence to the Constitutional and Legislative Affairs Committee on 22 September. In advance of my appearance before the Committee, I am grateful for the opportunity to provide you with my written evidence on the Bill.

I have copied this letter, and my evidence, to the Chair of the Children, Young People and Education Committee.

*Regards*

*Lesley*

**Lesley Griffiths AC / AM**  
Y Gweinidog Cymunedau a Threchu Tlodi  
Minister for Communities and Tackling Poverty

## **Constitutional and Legislative Affairs Committee: consideration of the Financial Education and Inclusion (Wales) Bill**

### **Introduction**

1. I understand the main intention of the Bill is preventative, namely to address the position where many people in Wales are falling into financial difficulty due to a lack of knowledge and skills in managing money. Whilst I fully support the aim of strengthening financial education and financial literacy, I do not consider the proposals in the Bill will result in anything additional to what is currently delivered. Indeed I am concerned the Bill may deflect from frontline delivery as it introduces new processes and, potentially, additional bureaucracy without a clear explanation of the measurable outcomes being sought.

### **Existing legislation**

2. It is the case almost all the proposals in the Bill could be delivered using existing legislation. For example a Local Authority could use its general well-being powers in section 2(1) of the Local Government Act 2000 (“the 2000 Act”) to produce a strategy to promote financial inclusion. This provides every Local Authority in Wales with the power to do anything they consider likely to achieve the promotion or improvement of the economic, social or environmental well-being of their area. Arguably the promotion of financial inclusion would fall into promoting the economic and social well-being of their area. In addition, section 3(5) of the 2000 Act requires a Local Authority to have regard to any guidance issued by the Welsh Ministers before exercising their power. Guidance could potentially deal with the promotion of financial inclusion.
3. Local Authorities also currently have a duty under the Local Government (Wales) Measure 2009 (“the Measure”) to create a community strategy relating to long term objectives for improving the social, economic and environmental well-being of the area.
4. The Well-being of Future Generations (Wales) Bill (“the Future Generations Bill”) which has been recently introduced seeks to repeal provisions relating to community strategies and proposes to make provision in relation to new local well-being plans prepared by public service boards. Whilst the Future Generations Bill may be subject to amendment as part of the Assembly’s consideration, a number of the provisions in the Bill, as introduced, could be used by Local Authorities to promote financial inclusion.
5. The law on the curriculum in Wales is set out in Part 7 of the Education Act 2002 (“the 2002 Act”); section 101 of the 2002 Act sets out the requirements of the Basic Curriculum in Wales. That Basic Curriculum comprises of a number of different elements including the National Curriculum for Wales. The National Curriculum includes the foundation phase, the second, third and fourth key stages and the local curriculum. The specific subjects that form part of the National Curriculum for Wales are set out in sections 105 and 106 of the 2002 Act. Those subjects are called the foundation and core subjects.

6. There is a power in section 108 of the 2002 Act for the Welsh Ministers to set out by way of subordinate legislation areas of learning, desirable outcomes, educational programmes assessment arrangements for the foundation phase. That section also provides a power for the Welsh Ministers to set out in subordinate legislation programmes of learning, attainment targets and assessment arrangements for the foundation and core subjects in the key stages. In essence, this allows the Welsh Ministers to specify what must be taught and how it must be assessed. It is a means of being able to set out a complete National Curriculum for Wales. It is worth noting the power in section 108 of the 2002 Act was used to make the literacy and numeracy framework a statutory part of the National Curriculum.
7. Therefore, the Welsh Ministers already have extensive powers in existing education legislation to set out curriculum and assessment arrangements for the foundation phase and the key stages for the subjects required to be taught in those phases of education. The Welsh Ministers also have powers in existing education legislation to add new areas of learning to the foundation phase and new foundation subjects to the national curriculum for the key stages by way of subordinate legislation. Therefore, I consider sections 4 and 5 of the Bill to be an unnecessary duplication.
8. The Bill prescribes that financial inclusion strategy should include facilitating free access to online financial education and management services (whether through libraries or otherwise). However, Section 7 of the Public Libraries and Museums Act 1964 (“the 1964 Act”) imposes a duty on each library authority (which in practice is each Local Authority by virtue of section 4 of that Act) to provide a comprehensive and efficient library service; section 8 of the 1964 Act provides no charge shall be made by a library authority for library facilities made available by the authority, unless specified in regulations made by the Welsh Ministers<sup>1</sup> - currently the Library Charges (England and Wales) Regulations 1991 (“Library Charges Regulations”) make such provision.
9. 1964 Act and the Library Charges Regulations provide that libraries currently are able to charge for internet access. However, that position could change, given the Welsh Ministers have the executive powers to amend these Regulations which could be exercised so as to prevent libraries from charging for internet access.
10. The Fifth Framework of the Welsh Library Public Standards, issued by the Welsh Ministers, outlines the core entitlements public library services should provide. This includes “*free use of computers and the internet, including Wi-Fi.*”
11. Finally, there are existing legislative functions which have a similar effect as sections 7 and 11 of the Bill, namely provisions under the Children Act 1989 and the Children (Leaving Care) (Wales) Regulations 2001. There are also powers that will be able to be utilised under the Social Services and Well-Being (Wales) Act 2014 once that Act comes into force in respect of looked after children.

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<sup>1</sup> Functions of the Secretary of State have been transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, and subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to Government of Wales Act 2006

## Detail of the Bill

12. Notwithstanding my position that this Bill is unnecessary, I remain to be convinced the Bill as drafted, conveys the policy intentions set out in the accompanying Explanatory Memorandum. For example, a Local Authority's financial inclusion strategy must set out how the Authority will use its powers to promote the financial inclusion of individuals who live in its area. 'Financial inclusion' is defined as meaning access to financial services and financial education at a reasonable cost. The intended relationship between commercial entities and local authorities in the exercise of this provision is not clear; who decides that a financial service is at a reasonable cost, and will this have the effect of the local authority '*promoting*' commercial products? Will an Authority come under pressure from, for example, a bank for not promoting its latest loan products which the bank considers is available at a reasonable cost?
13. Turning to section 5 of the Bill, I believe the Member in Charge considers the Welsh Ministers could make an order under section 108(3) of the Education Act 2002 setting out a programme of study, attainment targets and assessment arrangements for financial education. However, whilst section 4 of the Bill proposes financial education be made a new requirement of the Basic Curriculum (by means of adding it to section 101 of the 2002 Act), it is not made an area of learning for the foundation phase or a foundation subject for any of the key stages by the Bill. The power to set out curriculum and assessment arrangements by way of an order made under section 108(3) only applies to areas of learning and foundation subjects.
14. Further, the Bill seeks to impose a duty to consult upon financial education orders, but to do so creates some unnecessary duplication as it does not take account of section 117 of the 2002 Act. This places a duty upon the Welsh Ministers to consult such persons as they think appropriate when making an order under section 108, setting out desirable outcomes or educational programmes for the foundation phase or attainment targets or programmes of study for the key stages.
15. I am concerned some of the provisions in section 9 relating to the content of a Local Authority's financial inclusion strategy are ambiguous. For example, I am not clear as to what the 'implications and effects of street-trading and cold-calling' are, and how they relate to financial literacy (which is not defined), and it is not clear whether free access to the internet as a whole is to be facilitated, or access only to financial education and management services. Nor is it clear what financial education is to be provided on-line and by whom.
16. A further example of the Bill as introduced not necessarily meeting the policy intention can be seen in section 12 of the Bill. Under section 12(1) an Authority must signpost where to find advice about financial management, and under section 12 (2) the Local Authority may provide advice about financial management where it thinks the advice is not reasonably available otherwise. Therefore, there could be a situation where the Local Authority thinks there is not advice reasonably available in its area, but decides not to provide any such

advice itself. As drafted, the Bill does not make provision which ensures reasonable advice is provided within an authority's area.

17. Under section 13, a Local Authority must take reasonable steps to ensure universities and further education corporations in its area provide advice about financial management to students. I am concerned about this provision. Local Authorities have no direct relationship with either universities or further education corporations which would, in turn, give them authority to enforce this requirement. It is not a duty which would be within an Authority's power to discharge, nor could the duty be enforced. I am also concerned with the ambiguity of the drafting of this section: there are no definitions of the terms used; further education corporations are just one type of further education institution, and it is not clear why other ones are not included; it touches on the fundamental principle of the independence and autonomy of higher education and its position at arms length from government. The Welsh Government believes there are other, more effective ways of focussing resources on financial education, for both higher and further education. There already exists a broad range of provisions of financial education at both higher and further educational institutions in Wales, as part of pastoral and welfare services.

#### **Powers to make subordinate legislation**

18. As outlined above, financial education and inclusion can already be addressed in existing legislation. For example, there are detailed skills relating to managing money and financial education within the literacy and numeracy framework which has been in force since September 2013. These were developed in partnership with the Welsh Financial Education Unit, and through open consultation.

19. Also we have recently consulted on revisions to be made to the existing programmes of study which are given legal effect by way of subordinate legislation. In particular the mathematics programme of study, which embeds the literacy and numeracy framework into it, and again, has a detailed set of skills statements relating to financial education within the 'Manage money' element. By way of example, this element contains statements regarding using cash, comparing costs from different retailers, discounts, budgeting, planning and tracking savings accounts, profit and loss, bank accounts, bank cards, VAT, saving, borrowing, interest rates, exchange rates and insurance. This will be published in October 2014, and made statutory from September 2015.

20. In the interest of thoroughness, I would like to comment on the provisions for subordinate legislation within the Bill:

- a. *Section 6(2) and (3)*: Section 6 appears to duplicate what is effectively already provided for in legislation. Section 20 of the Education Act 2005 places a duty on Estyn to keep the Welsh Ministers informed about the quality of education provided by schools, how far the education provided meets the needs of the pupils in those schools and the educational standards achieved by those schools. In addition, Estyn has a duty to provide the Welsh Ministers with advice on such matters as they specify.

Additionally, the power in the Bill to 'direct' the Inspector to prepare the report is very limited in nature, and there is no discretion for the Welsh Ministers to specify how the Inspector should conduct the report, or what should be included.

It is also unusual to prepare a progress report by way of direction. The Welsh Ministers have several direction-making powers in education legislation but they apply where the person directed (a school governing body or Local Authority) has acted unreasonably or unlawfully. In those cases the legislation provides such direction can be enforced by way of a court order. The Bill does not do this, and therefore it is unclear how it could be legally enforced or indeed if the policy intention behind the provision is that it should be enforced by way of court order. It is also not clear whether the policy intention is that the direction-making power to be exercisable by subordinate legislation or to be exercised more in the nature of executive instruction enforceable by the courts.

Finally, the approach does not seem to take proper account of the existing statutory scheme of powers and duties of Estyn set out in the Education Act 2005.

- b. *Section 9(2) and (3)*: under these provisions the Welsh Ministers may by way of regulations, made following consultation with Local Authorities, amend the prescribed content of a financial inclusion strategy made under section 9(1) of the Bill.

Notwithstanding my view such a strategy is unnecessary, to the extent that provision is made I consider that the proposal which allows the Welsh Ministers some flexibility in deciding what should be included in the strategy is acceptable. This is because it will allow account to be taken of the changing landscape; I do however have some concerns with the way the power has been drafted, given: the power in section 9(2) is very wide. The Assembly in passing the Bill should be satisfied it can contemplate what a power is likely to be used for. I would be interested in understanding how the Member in Charge of the Bill envisages this power should be used and in what circumstances, so the Government can consider whether the way this provision is drafted is suitable for its purpose.

- c. *Section 10*: this enables the Welsh Ministers to issue guidance about financial inclusion strategies and requires a Local Authority to have regard to any guidance issued. The Welsh Ministers already have the powers to promote financial inclusion and to require a local authority to have regard to any guidance issued by the Welsh Ministers before exercising their power, and therefore the power provided for in the Bill is unnecessary.

### ***Commencement provisions***

21. I have considered carefully the commencement provision in the Bill, and make the following observations:

- a. Firstly, it is proposed a commencement order containing solely commencement and transitional, transitory or saving provisions would be subject to Assembly procedure. This is unusual. The Assembly has already approved the subject matter of the Act by passing it, such that further scrutiny would not, I believe, be appropriate. The standard approach is that commencement orders are not subject to any procedure, on the basis they are giving effect to provisions already approved by the Assembly. The same reasoning applies to, in particular, transitional, transitory or saving provisions, which are included in a commencement order to ensure the proper operation of the Act being brought into force, and ensure it is clear when the old law and new law apply. Therefore my first concern relates to the *principle* of whether a commencement order should be subject to Assembly procedure.
- b. My second concern is in relation to its practical application; it is not clear what the procedure would be if the Assembly passed a motion for annulment, by virtue of the order being subject to the negative procedure, once any commencement order had been made and had come into force. The Welsh Ministers would have to lay an order revoking the commencement order; this would not affect the validity of anything done whilst the provision was in force, and would not have the effect of 'undoing' the commencement, but would remove the effect of any transitional provisions which would leave the position of those persons affected by the law very unclear.
- c. Thirdly, section 14(3) refers to an order under section 14(2)(b), however, the power to create the order is contained in section 14(1)(a).
- d. Finally, section 14(4) of the Bill provides that provisions will come into force in January 2018 if not in force at that time. This is a restriction on the Welsh Ministers' powers to decide when the circumstances are right to commence the provisions of the Bill. I do not support this provision.

22. I do not consider this commencement provision as drafted is appropriate.

### **Matters of legislative competence**

23. The provisions of the Bill, particularly as drafted, do need careful consideration to determine whether they might potentially fall with the following express exception in Schedule 7 to the Government of Wales Act 2006, namely "Financial services, including investment business, banking and deposit-taking, collective insurance schemes and insurance". I note simply at this point that the Explanatory Memorandum contains no such analysis.

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# Agenda Item 6.1

By virtue of paragraph(s) vi of Standing Order 17.42

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