

**Explanatory Memorandum to The Food Information (Wales) (Amendment) Regulations 2020**

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

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Food Information (Wales) (Amendment) Regulations 2020.

Vaughan Gething  
Minister for Health and Social Services  
3 March 2020

## **PART 1**

### **1. Description**

1. The Food Information (Wales) (Amendment) Regulations 2020 amend the Food Information (Wales) Regulation 2014 (“the 2014 Regulations”) to enable the enforcement in Wales of the requirements of Article 26 of Regulation (EU) 1169/2011 as read with Implementing Regulation (EU) 2018/775 (“the Implementing Regulation”).
2. The Implementing Regulation sets out the requirements Food Business Operators must follow to ensure compliance with Article 26(3) of the Food Information to Consumers Regulations (FIC).
3. Article 26(3) of the FIC stipulates that where a food’s origin is indicated, and that country of origin or place of provenance is not the same as that of the primary ingredient, the country of origin or the place of provenance of the primary ingredient should be also given and indicated to be different. Article 26(3) applies from the point at which implementing regulations are made under Article 26(8).

### **2. Matters of special interest to the Legislative, Justice and Constitution Committee**

4. None

### **3. Legislative background**

5. The Food Information (Wales) (Amendment) Regulations 2020 are made in exercise of the Welsh Ministers powers under sections 16(1)(e), 17(1) and (2), 26(3) and 48(1) of the Food Safety Act 1990(1) and by paragraph 1A of Schedule 2 to the European Communities Act 1972. Pursuant to section 48(3) of that Act as read with paragraph 33 of Schedule 11 to the Government of Wales Act 2006 these regulations are subject to annulment in pursuance of a resolution of the National Assembly for Wales.
6. Notwithstanding the UK having left the EU at 11pm on 31st January 2020. FIC continues to apply to the UK during the transition period, pursuant to Part 4 of the Withdrawal Agreement between the UK and the EU, as implemented by sections 1A and 1B of the European Union (Withdrawal) Act 2018 (“the 2018 Act”) (as inserted by the European (Withdrawal Agreement) Act 2020 (“the

2020 Act”). The transition period ends on “IP completion day” (currently 11pm on 31 December 2020 as defined by section 39 of the 2020 Act). At that point the FIC will, so far as it is operative immediately before IP completion day, form part of UK domestic law pursuant to section 3 of the 2018 Act (as amended by the 2020 Act). FIC and the 2014 Regulations will, from IP completion day, be amended by EU Exit SIs in order to correct any deficiencies arising from the withdrawal of the UK from the EU. The provision made by these Regulations will not be affected substantively by any such correction.

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

7. One of the purposes of the FIC is to provide the legislative framework around the provision of information relating to country of origin and place of provenance. Separate but parallel enforcement regulations in respect of the FIC exist in each of the four countries of the UK. In Wales this is the 2014 Regulations.
8. Enforcement of the 2014 Regulations is undertaken by the local authorities. The principle enforcement powers are contained in section 10 (improvement notices) and 32 (powers of entry and investigation) of the Food Safety Act 1990, for which there are associated offences. Regulation 12 of the 2014 Regulations makes provision on the application (with modifications) of the 1990 Act to specified provisions of the 2014 Regulations.
9. Article 26(3) of the FIC provides that where the country of origin or place of provenance of the food is indicated and it differs from that of the primary ingredient, this must be indicated on the food labelling.
10. Currently, Food Business Operators are not required to indicate country of origin or place of provenance unless by virtue of Article 26(2)(a) of the FIC. In accordance with Article 26(2)(a) Food Business Operators must indicate the country of origin or place of provenance of their food in cases where its omission could mislead the consumer as to the true country of origin or place of provenance of the final food in question, in particular if the information 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.
11. These regulations will require that if a Food Business Operator indicates the country of origin or place of provenance of the food and this differs from the country of origin or place of provenance of the primary ingredient of the food, they must also note the country of origin or place of provenance of the primary ingredient. In such cases, the country of origin or place of provenance of the primary ingredient must be indicated in line with the requirements of

Implementing Regulation where the Food Business Operator has indicated a country of origin or place of provenance of the food.

12. The Implementing Regulation provides the format in which the Food Business Operator must provide the information if they have indicated the country of origin or place of provenance of the food and the country of origin or place of provenance differs from the primary ingredient of the food.
13. The Food Information (Wales) (Amendment) Regulations 2020 amend the 2014 Regulations to enable the requirements of Article 26(3) of Regulation (EU) 1169/2011 and Implementing Regulation 2018 to be captured within the existing enforcement regime of the 2014 Regulations.
14. The intended effect of Article 26(3) is to enable consumers to make more informed choices in Wales and to ensure the information with which they are provided is precise and meaningful. These Regulations will provide for enforcement of that Article.
15. The Implementing Regulation is a directly applicable EU Regulation with no national measures.
16. Implementing Regulation 2018 does not apply to geographical indications protected under Regulation (EU) No 1151/2012, Regulation (EU) No 1308/2013, Regulation (EC) No 110/2008 or Regulation (EU) No 251/2014 or protected pursuant to international agreements, nor registered trade marks where the latter constitute an origin indication, pending the adoption of specific rules concerning the application of Article 26(3) to such indications.
17. The method of enforcement used in the Food Information (Wales) (Amendment) Regulations 2020 will be via an improvement notice. If a Food Business Operator fails to comply with the conditions set by an improvement notice the non-compliance with those conditions will be a criminal offence.
18. Similar legislation is being made in England, Scotland and Northern Ireland.

## **Consultation**

19. A four-week consultation ran from 22 January 2020 to 19 February 2020 on the proposal to draft domestic legislation to provide for the enforcement of Article 26(3) of the FIC as read with the Implementing Regulation in Wales. The consultation was drawn to the attention of a wide audience of key stakeholders per email including food business operators, local authorities, universities, and the National Farmers Union Cymru.

20. Five responses were received for the consultation, none of which opposed the plan to draft domestic legislation enforcing Article 26(3) of FI(C) as read with the Implementing Regulation or highlighted any issues for which it was deemed necessary to undertake an impact assessment.

21. A summary of the consultation responses will be published on the Food Standards Agency's website within three months of the Regulations being laid.

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

22. The Welsh Government's Code of Practice on Impact Assessments states that an Impact Assessment should normally be published alongside a formal consultation.

23. The FSA considers the impact on both businesses and enforcement authorities of the proposed Regulations will be negligible. This is largely as the changes result from the overarching principles of EU Regulation 1169/2011, to which the UK has already aligned, as well as the directly applicable Implementing Regulation 2018/775.

24. The Food Information (Wales) (Amendment) Regulations 2020 only provide specific enforcement powers, which already exist for non-compliance with related requirements.

25. The FSA envisages minimal one-off familiarisation costs for Local Authorities in Wales to read and familiarise themselves with the EU Regulations and then disseminate to enforcement officers. A guidance document is being provided by the FSA to Local Authorities explaining the new requirements upon making of the Statutory Instrument.

26. It was noted in the consultation that an impact assessment would not be conducted, but that if responses would bring to light any impact on enforcement bodies or industry which has not been anticipated, the need for an Impact Assessment would be reconsidered. No responses from the consultation were deemed to require the need for an impact assessment.

27. As such, an impact assessment will not be produced.

28. The Food Information (Wales) (Amendment) Regulations have no impact on the statutory duties or statutory partners of the Government of Wales Act 2006.