

Explanatory Memorandum to the Infant Formula and Follow-on Formula (Wales) (Amendment) Regulations 2008

This Explanatory Memorandum has been prepared by the Food Standards Agency Wales and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

Description

These Regulations amend the Infant Formula and Follow-on Formula (Wales) Regulations 2007 to create transitional arrangements that apply in relation to:

- the enforcement of the labelling requirements for infant formula and follow-on formula;
- the enforcement of the requirements that apply in relation to the shape, appearance and packaging of infant formula and follow-on formula;
- and make related consequential amendments.

These Regulations also amend the Medical Food (Wales) Regulations 2000 to provide transitional arrangements.

Matters of special interest to the Subordinate Legislation Committee

None.

Legislative Background

The Welsh Ministers make the Regulations in exercise of their powers conferred by sections 16(1)(e), 17 (1), 26(1) (a) and (3) and 48 (1) of the Food Safety Act 1990. Functions conferred on the National Assembly for Wales are now exercisable by the Welsh Ministers by virtue of paragraphs 28 and 30 of Schedule 11 to the Government of Wales Act 2006.

Purpose and Intended effect of the legislation

This instrument makes, in Wales, the legislative provisions considered necessary to give effect to the judgement of the High Court of Justice in the case called R v. The Secretary of State for Health and the Welsh Ministers on the application of the Infant and Dietetic Foods Association Limited (action number CO/230/2008). Following the judgement delivered on 29 February 2008, the High Court granted a declaration that the Infant Formula and Follow-on Formula (Wales) Regulations 2007 (S.I. 2007/No.3573 (W. 316) – and equivalent England Regulations - fail to comply with Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC to the extent that they prohibit as from 11 January 2008 (instead of as from 31 December 2009) trade in infant formula and follow-on formula whose labelling satisfies the labelling requirements of the Infant Formula and Follow-on Formula Regulations 1995 (S.I. 1995/77)

but does not satisfy the labelling requirements of the Infant Formula and Follow-on Formula (Wales) Regulations 2007.

Policy background

In summary, the legislation seeks to ensure that:

- the essential composition of infant formulae and follow-on formulae satisfy the nutritional requirements of infants in good health as established by generally accepted scientific data;
- the labelling of infant formulae and follow-on formulae allows the proper use of such products whilst promoting and protecting breastfeeding;
- the rules on composition, labelling and advertising are in line with the principles and aims of the International Code of Marketing of Breast-Milk Substitutes ("the Code");
- information provided to carers about infant feeding does not counter the promotion of breastfeeding.

Therefore, these Regulations amend the Infant Formula and Follow-on Formula (Wales) Regulations 2007 to:

- Provide a transitional period until 1st January 2010 as regards labelling of infant formula and follow-on formula;
- Provide a transitional period until 1st January 2010 as regards presentation in so far as it relates to the shape, appearance and packaging of infant formula and follow-on formula;
- Make related consequential amendments.

The 2008 Regulations also provide transitional arrangement with regard to the Medical Food (Wales) Regulations 2000.

The advertising provisions within the 2007 Regulations applied from 29 February this year and are unaffected by the 2008 Regulations. The existing transitional period (until 1st January 2010) for compositional requirements is retained.

Implementation

It is intended that these Regulations will come into force no later than 29 October 2008. Separate but parallel instruments will also come into force on or around that date in England, Scotland and Northern Ireland.

Consultation

No formal consultation was conducted on these amending Regulations as they do not impose any new legal requirements. A draft of the Regulations however was shared with the Infant and Dietetic Foods Association (IDFA) and Baby Milk Action (also party to the judicial review) and with LACORS UK (representing the views of enforcement officers). Their comments were taken into account in drafting the Regulations. The Agency intends notifying all interested parties when the Regulations have been made. A full 12 week public consultation was conducted for the Infant Formula and Follow-on Formula (Wales) Regulations 2007.

Regulatory Impact Assessment

It has not been deemed necessary to complete a Regulatory Impact Assessment in this instance because no impact is foreseen on the private or voluntary sectors. A full Regulatory Impact Assessment accompanied the Infant Formula and Follow-on Formula (Wales) Regulations 2007.