

Explanatory Memorandum to THE FOOD ADDITIVES, FLAVOURINGS, ENZYMES AND EXTRACTION SOLVENTS (WALES) REGULATIONS 2013

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 Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Mark Drakeford, AM

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

7 October 2013

THE FOOD ADDITIVES, FLAVOURINGS, ENZYMES AND EXTRACTION SOLVENTS (WALES) REGULATIONS 2013

1. Description

The proposed Regulation revokes existing regulations on food additives, flavorings, food enzymes, smoke flavorings and extraction solvents and replaces them with a single consolidated statutory instrument.

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 conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1)(a) and (3), and 48(1) of the Food Safety Act 1990. These powers, so far as exercisable in relation to Wales, were transferred to the former National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 and are now vested in the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. There are no issues of regularity or propriety for the Welsh Government arising from the making of these Regulations.

4. Purpose and Intended Effect of the Legislation

Harmonised European legislation controls the use of food additives, flavourings, smoke flavourings, food enzymes and extraction solvents in the European Union. In general, all the above substances are controlled by way of positive lists e.g. only authorised substances can be used in food and substances must meet specific conditions of use. For food enzymes and for certain categories of flavourings, work is underway to establish the positive list.

For the food enzymes, smoke flavourings and extraction solvent provisions no changes are required to the current measures. However, in the proposed regulations the extraction solvents provisions have been simplified and will refer directly to Annex I of the European Directive (as amended) with the effect that any changes to the list of permitted extraction solvents or their conditions of use will directly apply. Therefore enabling businesses to use newly authorised solvents more quickly without having to wait for UK implementing legislation.

Currently the Food Additives (Wales) Regulations 2009 (SI 2009/3378 (W.93)) have a dual function – as well as enforcing Regulations (EC) No.1333/2008 on

food additives, they also enable the Annexes and associated Articles of the three previous additives Directives on sweeteners, colours and miscellaneous additives to continue to apply by way of transitional provisions. This dual function was required until 1 June 2013 when the relevant provisions in the three Directives were transferred to Annexes II and III of Regulations (EC) No. 1333/2008 and will cease to apply.

An amendment is required to the Flavourings in Food (Wales) Regulations 2010 (SI 2010/922 (W.243)) to reflect the different dates of application of the Union (positive) list of flavourings and the transitional periods as set out in Commission Regulation (EU) No.873/2012. The existing SI simply refers to the transitional measures as set out in Article 30 of Regulation (EC) No.1334/2008 on food flavourings and therefore does not take into account the different dates of application of the Union list as set out in Regulations (EU) 873/2012.

5. Consultation

A 6 week consultation was conducted which ended on the 12th September 2013. A wide range of enforcement authorities and businesses were consulted and the consultation was available on the Food Standards Agency (FSA) website. No responses were received to the consultation in Wales. There were 11 responses to the consultation in England, from Trading Standards Groups, Industry Trade Associations, professional bodies and member of the public. Generally the respondents supported the consolidation as this reduces the amount of legislation needed to be referred to and the majority supported the use of compliance notices for non-food safety related offences. A summary of the consultation responses and the FSAs view on the issues raised will be available on the FSAs website during September 2013.

6. Impact Assessment

A Regulatory Impact assessment has not been prepared for the Instrument, as there are no identifiable costs to consumers, businesses or enforcement authorities associated with the implementation of the new Regulations.

The Regulations will not impose any new burden on Government or enforcement officers. The FSA believes that the proposal will have no impact on race, gender or disability equality.