

Explanatory Memorandum to The Food (Suspension of the Use of E 128 Red 2G as Food Colour) (Wales) Regulations 2007

This Explanatory Memorandum has been prepared by the Food Standards Agency Wales and is laid before the National Assembly for Wales.

(i) Description

This Statutory Instrument provides enforcement measures in Wales for Commission Regulation (EC) No. 884/2007 of 26 July 2007 on emergency measures suspending the use of E 128 Red 2G as a food colour, following an unfavourable opinion by the European Food Safety Authority (EFSA).

(ii) Matters of special interest to the Subordinate Legislation Committee

These Regulations breach the 21 day rule. The Food Standards Agency considers this necessary under the circumstances, because the Commission Regulation associated with these Regulations (as to which see further below) contains emergency controls and came into effect on 28 July - the day following its publication in the Official Journal of the European Communities. Parallel regulations have, or are being made in England, Scotland and Northern Ireland coming into force on 2 and 3 August respectively. The Minister for Assembly Business and Communications has written to the Presiding Officer alerting him to the breach.

(iii) Legislative Background

The powers enabling this instrument to be made are contained in section 2(2) of the European Communities Act 1972. They have been designated by virtue of the European Communities (Designation) (No 2) Order 2003 (SI 2003/1246) to Welsh Ministers in respect of measures in veterinary fields for the protection of public health. This Instrument is subject to the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

The Food (Suspension of the Use of E 128 Red 2G as Food Colour) Wales) Regulations 2007 are being made to provide enforcement measures in respect of Commission Regulation (EC) No. 884/2007 (OJ of the EU L195/8). Commission Regulation calls for emergency measures suspending the use of E 128 Red 2G as a food colour.

Until now, under Directive 94/36/EC, Red 2G has been permitted for use in breakfast sausages with a minimum cereal content of 6% and burger meat with a minimum vegetable and/or cereal content of 4%. The Commission Regulation suspends: the use of the colour E128 Red 2G in food; the placing on the market of food containing the colour E128 Red 2G; and the import of food containing the colour E128 red 2G.

The decision to suspend Red 2G was taken as a result of EFSA's recent opinion, which showed that E128 Red 2G may have the potential to damage the genetic material in cells and cause cancer in animals. The opinion by EFSA is the first one in a re-evaluation process of all food additives, which gives priority to food colours as they were among the first food additives to be evaluated under European legislation.

At a meeting of the Standing Committee on the Food Chain and Animal Health on 20 July 2007 Member States agreed the Commission Regulation. A derogation has been included which permits breakfast sausages and burger meat containing Red 2G placed on the market before the date of entry into force of the Regulation in compliance with Directive 94/36/EC to be marketed until their "use by" date or date of minimum durability. A derogation will also apply to consignments of breakfast sausages and burger meat dispatched from third countries and en route to the Community before the date of entry into force of the Regulation.

(v) Implementation

These Regulations were made on 1 August 2007 and are intended to come into force on 3 August 2007. If Wales did not implement this Regulation it would be in breach of a Community requirement. In addition, the risk of not implementing the legislation with immediate effect in Wales could result in accusations that the consumer in Wales is not afforded the same level of public protection to consumers elsewhere in the UK. Parallel legislation is being introduced in England and is due to come into force on 2 August. Parallel legislation is also being made in Scotland and Northern Ireland and is due to come into force on 3 August 2007 .

(vi) Consultation

Whilst no formal public consultation has taken place because of the need to act quickly to protect public health, the Food Standards Agency met with key stakeholders to determine current use of Red 2G in the UK and also gave them the opportunity to comment on key aspects of the draft Commission Regulation. Additionally interested parties, in Wales, have been informed of the impact of Commission Regulation (EC) No. 884/2007.

(vii) Regulatory Impact Assessment

A Regulatory Impact Assessment is included in this Explanatory Memorandum.

(viii) Contact details

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Regulatory Impact Assessment

(ix) Options

Option 1: Do nothing.

Option 2: Put in place the domestic regulations which provide for the execution and enforcement of the Commission Regulation.

(x) Costs and benefits

Sectors and groups affected

Food producers manufacturing or importing those specific categories of sausages and burgers are affected. Also companies manufacturing or importing seasonings containing Red 2G to be used for the manufacture of these products (as seasonings with Red 2G have no alternative use). Companies which manufacture or import Red 2G, though there are alternative industrial uses for this colour. We consider the proposal will have no impact on racial equality, social or environmental issues.

(xi) Benefits

Option 1 provides no incremental benefit; doing nothing provides no consumer protection because the requirements of the Commission Regulation cannot be enforced.

Option 2 provides consumer protection by allowing for enforcement and sanctions if Red 2G is used in food.

(xii) Costs

Option 1

Doing nothing would mean the UK would be unable to fulfil its Community obligation to enforce the Commission Regulation. This will leave the UK open to infraction proceedings by the Commission for failing to comply with these requirements.

Option 2

There will be costs to producers of the affected types of sausages and burgers who continue to hold stock of seasoning containing Red 2G, as well as to seasoning manufacturers. The producers will not be able to use any remaining stock of seasonings containing Red 2G, or any stock of packaging/labelling referring to Red 2G. There may be a short period of disruption to production as a company arranges a replacement seasoning mix which does not contain Red 2G. Seasoning manufacturers will lose the value of any seasoning stock held, along with any stock of packaging/labelling referring to Red 2G. There may also be a short disruption to their

supply of seasonings to customers as they arrange for an alternative food colour to be used.

Irrespective of which regulatory option is chosen there may still be costs because many consumers will wish to avoid food products containing Red 2G, so there will be no market for the products. Retailers may wish to return products already supplied and request alternatives. Off-setting some of these costs, some companies may be able to make an insurance claim.

(xiii) **Competition Assessment**

The Regulation will apply uniformly across all food producers, so we do not envisage any impact on competition. The Agency understands that alternative red food colouring agents exist for those food producers to whom this colour is important.

(xiii) **Consultation**

Within Government

The Food Standards Agency (FSA) has sole policy responsibility for ensuring food safety.

Public

consultation

FSA consulted key stakeholders concerning the Commission Regulation. FSA officials met with key stakeholders on 10 July, the day after the EFSA announcement. Ahead of a meeting of SCOFCAH on 20 July, FSA informed stakeholders of the significant points proposed for inclusion in a Commission Regulation, giving them the opportunity to provide feedback. The Agency has also received information in the course of phone conversations with affected stakeholders. Industry confirmed that Red 2G is used in a small percentage of burgers and sausages on sale in the UK. They also noted that some companies manufacture seasonings to be sold to producers of sausages and burgers who then use this as one of their ingredients; Red 2G is included in the seasoning mixture.

(xiv) **Summary and recommendation**

For the reasons set out above, the Welsh Assembly Government considers that the right option is Option 2, as reflected in the Food (suspension of the Use of E 128 red 2G as a Food Colour) (Wales) Regulations 2007.