

Explanatory Memorandum to the Food Irradiation (Wales) (Amendment) Regulations 2010

This Explanatory Memorandum has been prepared by the 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 24.1.

Member's Declaration

In my view the explanatory memorandum gives a fair and reasonable view of the expected impact of the Food Irradiation (Wales) (Amendment) Regulations 2010.

Gwenda Thomas AM
Deputy Minister for Social Services

15 September 2010

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1. Description

The Food Irradiation (Wales) (Amendment) Regulations 2010 amend the Food Irradiation (Wales) Regulations 2009 to give effect to the provisions of Commission Decision 2010/172/EU as regards the lists of Third Country facilities permitted to irradiate certain foods. The Regulations also give effect to an undated Commission list of approved facilities permitted to irradiate certain foods and food ingredients within Member States.

The Regulations also incorporate an amendment to the Welsh version of the Food Irradiation (Wales) Regulations 2009 and a drafting improvement to Schedule 2.

2. Matters of special interest to the Constitutional Affairs Committee

The Food Irradiation (Wales) Regulations 2009 were reported on for the use of inconsistent terms in the Welsh language version by the then Subordinate Legislation Committee (Ref: SLC309 dated 23 August 2009). This related to two different terms being used in Welsh ('risg o bwys' and 'risg sylweddol') for the same English term ('significant risk'). These Regulations remove that inconsistency

Food Irradiation is controlled by Directive 1992/3/EC which is implemented in Wales by the Food Irradiation (Wales) Regulations 2009 ('the 2009 Regulations'). Article 7(4) of Directive 1999/2/EC (O.J. No. L66, 13.3.1999, p.16) requires the Commission to publish details of member State food irradiation facilities and any changes in their status in the Official Journal (OJ). These details were initially published in the C Series of the OJ, but since 2004 have been replaced by a list published solely on the Commission website. On 4 January 2010, the version of this list on which Schedule 3 to the 2009 Regulations was based was replaced with the current (undated) list, which includes three new member State facilities. Recent correspondence between the Agency and the Commission has confirmed that it was considered by the Commission that it sufficed for "official publication" to be on the website rather than in the OJ but that, following our query, they are now reconsidering this position. In the meantime, as the Commission clearly intends that the website list should be the official list for the purposes of Article 7(4) of Directive 1999/2/EC, we are implementing the new list accordingly. If the new list is not implemented, irradiated food from the three newly listed member State facilities, each approved by the relevant Member State in accordance with Directive 1999/2/EC, would not be reflected in the 2009 Regulations, which would obstruct legitimate free trade within the European Union.

3. Legislative Background

Welsh Ministers have the required powers to make these Regulations under Sections 16(1), 16(3), 17(1) and 18(1)(c), 19(1)(b), 26 and 48(1) of, and paragraphs 1 and 4(b) of Schedules 1 to, the Food Safety Act 1990, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972. These functions were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the Food Standards Act 1999, and are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

This instrument is subject to the negative procedure.

4. Purpose and Intended Effect of the Legislation

The processes of treating food with X-rays, gamma rays or beams of electrons is currently controlled under Directive 1999/2/EC relating to foods and food ingredients treated with ionising radiation. The provisions of that Directive are implemented by The Food Irradiation (Wales) Regulations 2009.

Although food irradiation is not widely utilised in the UK, it is gaining favour in other parts of the world, such as the USA, India and in the Far East. It is therefore important that we ensure our procedures for accepting food irradiated outside the Community meets the legal standards set by the European Commission.

European Directive 1999/2/EC established a harmonised framework of controls on food irradiation. It covers areas including the conditions for treatment, the rules governing the approval and control of irradiation and the trade in irradiated foods, which are implemented in the 2009 Regulations. Irradiation can be used to reduce food-borne disease by destroying pathogenic organisms. It can also delay ripening, prevent sprouting and delay other deterioration. Finally, irradiation can be used as a phytosanitary measure. Directive 1999/2/EC also establishes the rules on labelling of irradiated food and food ingredients, but these are implemented in the UK by the Food Labelling Regulations 1996 (as amended), as regards products ready for the final consumer

The treatment and sale of irradiated food has not been widely adopted in the UK; there is a single licensed facility in the UK, which is licensed to irradiate a variety of herbs and spices and few irradiated foods are on sale on the UK market.

Article 9 of Directive 1999/2/EC states that irradiated food must not be imported from a third-country unless it originates from a facility approved by the European Union. Article 9 also includes the procedures by which new facilities can be approved. In 2008, three facilities in India were inspected under these procedures and have now been added to the list of approved facilities by Commission Decision 2010/172/EU. This Decision amends Decision 2002/840/EC.

These Regulations will amend Schedule 4 (List of facilities outside the European Community) of the Food Irradiation (Wales) Regulations 2009, in order to implement

Commission Decision 2010/172/EU – which adds three facilities in India to the list of approved third country facilities.

These Regulations will also amend Schedule 3 (List of approved facilities in member States) to reflect the undated list published on the Commission's website.

Not making the Regulations would result in the Welsh Ministers being in breach of a Commission's decision and consequently European Union law.

The Regulations also make a minor drafting improvement to Schedule 2 (Licences) to the 2009 Regulations, and address an inconsistency in the Welsh language text of the 2009 Regulations.

5. Consultation

A UK wide consultation was undertaken between the 25 June and 6 August 2010 in order to gather views on the draft Regulations. The consultation was held for six weeks because of the need to implement the Decision as soon as possible after publication. Commission Decision 2010/172/EU was published on 23 March 2010 and came into force on 29 March when it was formally notified to the UK by the Commission. No responses were received in Wales, Scotland or Northern Ireland. Two responses were received in England - one from a local authority and one from a body representing expertise in irradiation processing. The responses were in favour of the policy objective and agreed with the Agency's assessment that there is unlikely to be any impact on businesses, other sectors of the irradiation industry or enforcement authorities

6. Regulatory Impact Assessment (RIA)

The legislation applies to small business. However, there are no small firms operating in the food irradiation market in the UK and the Agency is not aware of any small firms who would be likely to enter the market. As there will be no impact on businesses (or other sectors) from these Regulations, a Regulatory Impact Assessment has not been produced.

The policy will be reviewed in July 2012, three years after implementation of the 2009 Regulations.