

Explanatory Memorandum to the Food for Particular Nutritional Uses (Miscellaneous Amendments) (Wales) Regulations 2010

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

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Food for Particular Nutritional Uses Miscellaneous Amendments) (Wales) Regulations 2010. I am satisfied that the benefits outweigh any costs.

Gwenda Thomas

Deputy Minister for Health and Social Services

17 February 2010

1. Description

These regulations implement in Wales Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses ('Parnuts Recast Directive').

2. Matters of special interest to the Constitutional Affairs Committee

None

3. Legislative Background

Directive 2009/39/EC is a recast of Directive 89/398/EEC incorporating its subsequent amendments. There is no significant difference between the text of these Directives other than those which introduce a regulatory procedure with scrutiny; these new provision do not need to be transposed. This EC measure repeals Directive 89/398/EEC and its amendments.

4. Purpose and Intended effect of the legislation

The Food for Particular Nutritional Uses (Miscellaneous Amendments) (Wales) Regulations 2010 ('the Regulations'), which apply in relation to Wales, provide that the references to Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses in domestic legislation are replaced with references to Directive 2009/39/EC on foodstuffs intended for particular nutritional uses. The main purpose of the Regulations is therefore to align domestic law with EC law.

Background

Council Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (the Parnuts Framework Directive) has been amended by Directives 96/84/EC, 1999/41/EC and Regulation (EC) 1882/2003. In 1987, the European Commission decided that legislative measures should be codified after no more than ten amendments, and preferably at shorter intervals, to ensure that they are clear and readily understandable; therefore, in 2004 the Commission began the process of codifying Directive 89/398/EEC.

In 2006, Council Decision 1999/468/EC laying down procedures for the exercise of implementing powers conferred on the Commission was amended by Decision 2006/512/EC which introduced a regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty. In accordance with a joint statement of the European Parliament, the Council and the Commission (OJ C 255, 21.10.2006, p1), for this new procedure to be applicable to such instruments already in force, they must be amended. Directive 2009/39/EC incorporates those new procedures.

In order to reflect the repeal and replacement of Directive 89/398/EEC by Directive 2009/39/EC, references to Directive 89/398/EEC need to be

replaced with references to Directive 2009/39/EC in domestic law. To avoid the need for future statutory instruments to implement amendments to Directive 2009/39/EC, an ambulatory clause has been inserted in the Regulations.

It is anticipated that the insertion of the ambulatory clause in the Regulations will reduce the need for minor amending SIs. It is not regarded as likely to give rise to unintended consequences due to future amendments of the Directive. If however the operation of this ambulatory reference appears likely to give rise to unintended consequences as a result of a forthcoming amendment to Directive 2009/39/EC, the matter would be consulted upon and, if necessary, the ambulatory provision would be removed.

5. Consultation

The Food Standards Agency Wales carried out 12 week public consultation on the draft Regulations which ran from 10 August to 2 November 2009. Parallel consultations were conducted in England, Scotland and Northern Ireland, and the consultation package was also posted on the Agency's website. Over 100 interested parties in Wales, including consumer and health professional groups, manufacturers and industry bodies, enforcement bodies, individuals and other government departments, have been consulted on these draft Regulations. No responses were received.

6. Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared to accompany these Regulations as there are no identified costs to consumers, businesses or enforcement authorities associated with implementation of these new Regulations.

The Regulations would not impose any significant new burden on Government or enforcement officers. Rural areas and members of the ethnic communities, or of any particular racial group are unaffected by these proposals. Charities and voluntary organisations are unaffected by these proposals.

Stakeholders consulted:

3M Health Care Ltd
All Wales Dietetic Advisory Committee
Allison's Celebration Cakes
Avana Bakeries limited
B A Jenkins & Sons
Be Safe Not Sorry
Berwyn Bakery
Briwsion
Cae Groes bakery Limited
Carolyn's Real Bread Co
Chartered Institute of Environmental Health
Children's Commissioner for Wales
Civic Catering Association
Clam's Hand-Made Cakes
Clark's Original Pies
Consumer Focus Wales
Countryside Council for Wales
Ethnic Cuisine
Federation of Small Businesses, Wales
fedwen Bakerys (Cardigan) Ltd
Food Centre Wales
Food Consultancy
Friends of the Earth
Friends of the Earth Cymru
Funny Honey Foods
Garth Bakeries
Graig Farm Organics
Greggs Wales
Halo Foods
HAT Events
Henllan Bread
Iceland Foods Limited
Institute of Food Science and Technology
JM & A Hughes (Station Bakery)
KK Finefoods
Lewis' Pies Ltd
Media Wales
Megan's Bakery
Memory Lane Cakes Ltd
Meridian Foods Ltd
Minton Treharne Davies Ltd
National Federation Of Women's Institutes
National Public Health Service Wales
Noble Foods - Desserts
Ogmore Vale Bakery Limited
Organic Centre Wales
Pembrokeshire Mind
Peters Food Service Ltd
RCGP Wales

Rowan Foods Ltd
SIMPLY ORGANIC - Serious Food Company
Slaters Bakery
Snowdrop Bakery
Tan y Castell
The Co-operative Group
The Nutrition Society
The Unusual food Co (Cymru) Ltd
The Village Bakery (Coedpoeth) Limited
Tillery Valley Foods Ltd
Tovali Limited
Tregroes Waffles
University of Wales Institute Cardiff
UWIC
Wales Council for Voluntary Action
Welsh Assembly Government
Welsh Food Alliance
Welsh Hills Bakery
Welsh Organic Scheme
White's Golden Crust Bakery
Williams Bakery Limited
Zorba Foods