

EXPLANATORY MEMORANDUM TO

THE FOOD INFORMATION REGULATIONS (NORTHERN IRELAND) 2014

2014 No. 223

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Food Standards Agency in Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 15(1), 16, 17, 25, 26(3), 44 and 47(2) of, and paragraphs 1 and 4(b) of Schedule 1 to, the Food Safety (Northern Ireland) Order 1991, and section 2(2) as read with paragraph 1A of Schedule 2 to the European Communities Act 1972.

2. Purpose of the Rule

- 2.1 The main purpose of the Food Information Regulations (“FIR”) is to put enforcement provisions in place to enable certain provisions of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers (“EU FIC”)¹ to be enforced in Northern Ireland. The new Regulations also consolidate existing general food and nutrition labelling Regulations in Northern Ireland. In addition, the Regulations take advantage of derogations contained in EU FIC and carry forward some (EU permitted) national measures.

3. Matters of special interest to the Health Committee

- 3.1 None.

4. Legislative Context

- 4.1 Until now, the main EU Directive governing general food labelling has been Directive 2000/13/EC. This was implemented by the Food Labelling Regulations (Northern Ireland) 1996, which also implemented other EU food provisions, e.g. relating to nutrition labelling. Directive 2000/13/EC and other EU food legislation, including Directive 90/496/EEC on nutrition labelling of foodstuffs, are being repealed and replaced by EU FIC. This will result in the revocation of the Food Labelling Regulations (Northern Ireland) 1996 and their replacement by these new Regulations. The EU FIC sets common definitions, general principles, requirements and responsibilities to provide a clear framework and a common basis for EU and national measures governing food information, and in particular food labelling.
- 4.2 Most of the Food Labelling Regulations (Northern Ireland) 1996 will be revoked on 13th December 2014. Certain provisions to do with alcohol descriptions and cream and cheese descriptions will be revoked four years later on 13th December 2018. The Food Labelling Regulations (Northern Ireland) 1996 are also amended by the new Regulations. They are amended on 15 August 2014 (the first coming into operation date) to take account of certain transitional provisions that apply under EU FIC before the main provisions of EU FIC apply on 13th December 2014. They are amended on 13th December 2014 to take

¹ The full title is: Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ No L 304, 22.11.2011, p 18).

account of the application of the provisions of EU FIC, and the revocation of most of the provisions of the Food Labelling Regulations (Northern Ireland) 1996, on that date. The amendments made on 13th December 2014 will support the continued application of the provisions in the 1996 Regulations to do with alcohol, cream and cheese descriptions until those provisions are revoked on 13th December 2018.

- 4.3 The Regulations contain provisions that make references to the directly applicable provisions of EU FIC in selected provisions of the Regulations ambulatory, i.e. those references will be references to the relevant EU FIC provisions as amended from time to time. Schedule 1 to the Regulations sets out the provisions of the Regulations that contain the ambulatory references. Some of the EU FIC provisions are in the Annexes to EU FIC and some of them are in the main body of EU FIC but all are technical in nature. This use of ambulatory references will avoid the need to introduce new Regulations every time any of those provisions are amended by EU legislation. However, any proposal to amend EU FIC will be subject to scrutiny before the UK votes on it.

5. Parity or Replicatory Measure

- 5.1 This Rule applies to Northern Ireland only. Parallel legislation is being made in England, Scotland and Wales.

6. European Convention on Human Rights

- 6.1 As this Rule is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

- 7.1 The EU FIC came into force in the EU on 13th December 2011. EU FIC provisions on minced meat composition applied from 1st January 2014 and most pre-packed foods will require nutrition declarations from 13th December 2016. The remainder of the requirements in EU FIC apply from 13th December 2014.

- 7.2 The EU FIC is a wide-ranging piece of EU legislation regulating food information and requires mandatory particulars on food labels such as: name of food, ingredients list, quantitative indication of ingredients (QUID), allergen information, nutrition information, country of origin, date marks, storage conditions.

- 7.3 The overall aims of FIC are: to allow consumers to have the information they need to make informed and healthy food choices, and to ensure they are not being misled; and to protect consumers with food allergies and intolerances by providing them with sufficient and clear information to make safe food choices.

- 7.4 The Regulations are necessary to provide powers to enforce the provisions set out in EU FIC and to remove any overlapping UK food labelling legislation. The Regulations also take advantage of optional derogations and (as in the Food Labelling Regulations (Northern Ireland) 1996) include EU-permitted national measures requiring the name of the food to be given in the case of certain foods that are not pre-packed and foods that are packed on the sales premises at the consumer's request or pre-packed for direct sale ('non-prepacked foods') and a meat quantity indicator to be given for non-prepacked foods containing meat.

- 7.5 The Regulations also implement in Northern Ireland:

- (a) certain provisions of Article 6 of Directive 1999/2/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation (OJ No L 66, 13.3.1999, p.16); and
- (b) the second paragraph of subparagraph 1 of Article 3 of Directive 2000/36/EC of the European Parliament and of the Council relating to cocoa and chocolate products intended for human consumption (OJ No L 197, 3.8.2000, p.19).

- 7.6 Most of the implementing provisions relating to Directive 1999/2/EC are contained in the Food Irradiation Regulations (Northern Ireland) 2009 (S.R. 2009 No. 258). Most of the implementing provisions relating to Directive 2000/36/EC are contained in the Cocoa and Chocolate Products Regulations (Northern Ireland) 2003 (S.R. 2003 No. 313). However, the Food Labelling Regulations (Northern Ireland) 1996 (which the new Regulations will replace) contain some food labelling provisions relating to irradiated food and cocoa and chocolate products. It is these provisions that the new Regulations carry forward with some changes. In the case of the irradiated food provisions, the relevant provision is in regulation 8 in the main body of the Regulations. As regulation 8 is concerned with implementing provisions in Directive 1999/2/EC, the wording used in regulation 8 is based on the wording used in that Directive and not EU FIC. In the case of cocoa and chocolate products, this is done by amending the Cocoa and Chocolate Products Regulations (Northern Ireland) 2003 (paragraph 32 of Schedule 6, the new regulation 5(d)).
- 7.7 The Regulations also amend the Food (Lot Marking) Regulations (Northern Ireland) 1996 to take account of the repeal and replacement of Council Directive 89/396/EEC (OJ No L 186, 30.6.1989, p.12) by Directive 2011/91/EC of the European Parliament and of the Council on indications or marks identifying the lot to which a foodstuff belongs (OJ No L 334, 16.12.2011, p.1). The Regulations also revoke relevant statutory rules and make consequential amendments to take into account the repeal and replacement of Directive 2000/13/EC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs by EU FIC, as well as the revocation and replacement of the Food Labelling Regulations (Northern Ireland) 1996 by the new Regulations.
- 7.8 A change to the existing enforcement regime has also been taken forward with a move away from the across-the-board use of frontline criminal offences to a more proportionate and targeted regime using improvement notices. A backstop criminal offence will be in place where there is failure to comply with an improvement notice, with an offender being liable, on summary conviction, to a fine not exceeding level 5 (currently £5,000). Criminal offences will continue for the contravention of certain provisions, namely mislabelling of foods containing allergens because a failure to comply with the allergen provisions may result in a risk to consumer health and safety. Businesses will have the opportunity to appeal against an improvement notice to a Court of Summary Jurisdiction.
- 7.9 Schedule 5 to the Regulations lists all the FIC provisions in relation to which it will be possible to serve an improvement notice in cases of non-compliance. However, the improvement notice provisions in the Regulations will not apply where there is a contravention of one of the provisions listed in Schedule 5 and that contravention relates to the mandatory particular relating to net quantity. Enforcement of Article 9(1)(e) and Article 23 of FIC (which are not listed in Schedule 5), and, to the extent that they apply to the mandatory particular relating to net quantity, the other provisions of FIC listed in Schedule 5, e.g. the requirement for a minimum font size to be used under Article 13 of FIC for the mandatory particular relating to net quantity, will be provided for in weights and measures legislation being made by the Department of Enterprise, Trade and Investment.

7.10 Some of the main aspects included in the rule of particular interest are:

(a) Derogations

- Inclusion of a derogation of not requiring all the mandatory particulars for milk and milk products presented in glass bottles intended for re-use. This is because it avoids unnecessary additional burdens and enables an effective re-use of materials.
- Inclusion of a derogation for minced meat that does not comply with the fat and/or collagen compositional requirements of EU FIC. Such products will have to be labelled with a national mark indicating that they are for the UK market only.

(b) National Measures (permitted by EU FIC)

- A national provision that the ‘name of food’ should be provided for non-prepacked foods (excluding non-prepacked foods sold by mass caterers to a final consumer). This is similar to the national measure that already exists in the Food Labelling Regulations (Northern Ireland) 1996.
- A national provision requiring a ‘quantitative indication of ingredients’ (QUID) of the meat content of non-prepacked meat products (excluding non-prepacked meat products sold by mass caterers to a final consumer). This is similar to the national measures that already exist in the Food Labelling Regulations (Northern Ireland) 1996.
- A national provision allowing information on allergens for non-prepacked foods to be provided in any manner including orally. Where oral communication is used, there must be clear indication via a label attached to the food, or on a notice/menu/ticket/label that the allergen information can be obtained from a member of staff. Unlike the national provisions relating to the name of the food and the quantity indicator for products containing meat, this national provision applies in the case of non-prepacked foods sold by mass caterers to a final consumer and provision is therefore made allowing for the necessary information to be given on a menu.

(c) Other National Measures

- National composition rules on ice cream will be revoked on 13th December 2014.
- National composition and labelling rules on cheese, cream and alcohol-related descriptions will be revoked on 13th December 2018. During the four years from the coming into force date of the EU FIC, work will be done with consumers, industry and enforcement authorities to consider what, if anything, might be appropriate in terms of the future control and protection of these products.

(d) Other Labelling Requirements

- There is a requirement that the words “irradiated” or “treated with ionising radiation” must be provided when irradiated food products or food products containing an irradiated ingredient are sold in bulk and when irradiated

ingredients are used in certain pre-packed foods. This implements certain provisions of Article 6 of Directive 1999/2/EC which go beyond the general requirement in the EU FIC for providing this indication for irradiated food and replaces a similar provision in the Food Labelling Regulations (Northern Ireland) 1996.

(e) Enforcement

- Sanctions are proportionate to any contravention of the relevant EU and national provisions, therefore, the enforcement regime will be primarily an improvement notice system backed up with criminal offences where there is a failure to comply with an improvement notice. However, frontline criminal offences will continue for contravention of allergen provisions because of the potential harm to human health. In the case of such contraventions, the enforcement authority will still be able to use improvement notices but will also have the option of a frontline criminal offence.
 - The Regulations apply and modify Article 9 of the Food Safety (Northern Ireland) Order 1991. The application and modifications of Article 9(1) enable an improvement notice to be served requiring compliance with specified requirements of EU FIC and the specified national measures. Article 9(2) of the Food Safety (Northern Ireland) 1991, as applied, will make the failure to comply with an improvement notice an offence.
- Consolidation

7.11 The new Regulations consolidate existing rules on food and nutrition labelling into one new set of regulations. Once the Food Labelling Regulations (Northern Ireland) 1996 are revoked in their entirety (this will happen on 13th December 2018), the number of regulations regulating food labelling in relation to food in general will decrease from 17 to one, making it easier for industry and enforcement authorities by having all the general food labelling rules together in one set of domestic Regulations. Fourteen regulations are revoked on 13th December 2014 with the remaining three regulations (concerning alcohol descriptions, cream and cheese), including what is left of the Food Labelling Regulations (Northern Ireland) 1996, being revoked on 13th December 2018.

8. Consultation outcome

8.1 A 12 week consultation was conducted in Northern Ireland from 17th December to 11th March 2013. A wide range of enforcement authorities and businesses were consulted and the consultation was available on the Food Standards Agency (FSA) website. There were 10 responses to the consultation in Northern Ireland. A summary of the consultation responses and the FSA's view on the issues raised will be available on the FSAs website after publication of the SR.

9. Equality Impact

9.1 These regulations will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differentially across any of the section 75 groups.

10. Guidance

10.1 Draft food labelling guidance notes to reflect the new Regulations were prepared as part of the consultation. Guidance is currently being finalised.

11. Impact

11.1 An Impact Assessment accompanied the consultation which identified sectors affected, benefits and costs of the options.

12. Regulating small business

12.1 In accordance with EU FIC, the legislation applies to small business.

12.2 The vast majority of firms in the food industry are small businesses, though both the retail and food manufacturing sectors are dominated by a few very large businesses. Consolidation and simplification of much of the existing regulatory environment will, following a period of adjustment, benefit all businesses including small businesses.

13. Monitoring & review

Monitoring

13.1 The basic purpose of the Regulations is to enable the directly applicable provisions of EU FIC to be enforced in a proportionate and effective way.

14. Contact

Esther Chartres at the Food Standards Agency NI, Tel: 028 9041 7737,

Email: esther.chartres@foodstandards.gsi.gov.uk or

Hayley Atcheson, Tel: 028 9041 7763

Email: hayley.atcheson@foodstandards.gsi.gov.uk