

EXPLANATORY MEMORANDUM TO
THE ENVIRONMENTAL NOISE, SITE WASTE MANAGEMENT PLANS AND
SPREADABLE FATS ETC. (REVOCATIONS AND AMENDMENTS) REGULATIONS
2013

2013 No. 2854

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument revokes three instruments, and amends a fourth, as part of the Government's 'Red Tape Challenge' process. The Environmental Noise (Identification of Noise Sources) (England) Regulations 2007 (S.I. 2007/415), the Environmental Noise (Identification of Noise Sources) (England) (Amendment) Regulations 2007 (S.I. 2007/2458) and the Site Waste Management Plans Regulations 2008 (S.I. 2008/314) are revoked; the Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008 (S.I. 2008/1287) are amended.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

Environmental Noise

4.1 The Environmental Noise Directive (Directive 2002/49/EC) requires Member States to undertake strategic noise mapping every five years for noise from certain road, rail, aviation and industrial sources. The first round of noise mapping took place in 2007.

4.2 Regulation 3(1) of the Environmental Noise (England) Regulations 2006 (S.I. 2006/2238) (which transposed the Environmental Noise Directive) required the Secretary of State to identify, in the form of regulations, the noise sources that needed to be mapped for the first round of strategic noise mapping.

4.3 The Environmental Noise (Identification of Noise Sources) (England) Regulations 2007, as amended by the Environmental Noise (Identification of Noise Sources) (England) (Amendment) Regulations 2007, identified the noise sources that needed to be mapped for the first round of strategic noise mapping. The Environmental Noise (England) Regulations 2006 have been amended so that the identification of noise sources that need to be mapped in further rounds of strategic noise mapping no longer has to occur in the form of regulations.

Site Waste Management Plans

4.4 The Site Waste Management Plans Regulations 2008 were made under the Clean Neighbourhoods and Environment Act 2005 to introduce a requirement for the preparation of plans for the management and disposal of waste created in the course of construction or demolition works, and for compliance with them.

Spreadable fats (marketing standards) – Fortification of margarine

4.5 The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) (England) Regulations 2008 provide for the execution and enforcement of certain provisions of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ No L299, 16.11.2007, p 1). Regulation 4 made provision for the vitamin content of margarine, prohibiting the sale by retail of margarine unless it contained a specified proportion of vitamins A and D (this was subject to an exemption in regulation 3 for suitably-labelled margarine brought into England from elsewhere in the EEA, EU or UK in which it was lawfully sold). Breach of regulation 4 was an offence subject to a maximum £5000 fine.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Environmental Noise

7.1 The Environmental Noise Directive (Directive 2002/49/EC) seeks to manage the impact of environmental noise through strategic noise mapping and the preparation and implementation of noise action plans. The Directive requires Member States to undertake strategic noise mapping every five years for noise from certain road, rail, aviation and industrial sources.

7.2 The Environmental Noise (Identification of Noise Sources) (England) Regulations 2007 (as amended) identified the noise sources that needed to be mapped for the first round of strategic noise mapping as required by the Environmental Noise (England) Regulations 2006 which transposed the Environmental Noise Directive. This mapping was undertaken during 2007 and noise action plans were subsequently prepared and adopted.

7.3 Since these regulations applied to the first round of noise mapping only, the Department considers that they have served their purpose and are no longer required. Following the amendment of the Environmental Noise (England) Regulations 2006, the identification of noise sources that need to be mapped in the further rounds of mapping no longer has to occur in the form of regulations.

Site Waste Management Plans

7.4 In 2004 the DTI introduced a voluntary code for Site Waste Management Plans ('SWMPs'), and this is already included as a mandatory component of the Department for Communities and Local Government's *Code for Sustainable Homes* (<https://www.gov.uk/government/policies/improving-the-energy-efficiency-of-buildings-and-using-planning-to-protect-the-environment/supporting-pages/code-for-sustainable-homes>).

7.5 The introduction of a mandatory requirement had the aim of embedding the use of SWMPs across the industry. The wider policy objectives of the Site Waste Management Plans Regulations 2008 were to help prevent the illegal disposal of waste by ensuring that those responsible for construction projects knew the intended destination of waste removed from the site, that their waste was being managed by legitimate registered waste carriers and, as far as possible, that their waste was managed responsibly and in line with appropriate waste management controls. The plans also aimed to improve materials resource efficiency within the construction sector by reducing the amount of waste produced and encouraging recovery of as much as possible of the remainder.

7.6 The intended policy objective of this revocation is de-regulation as part of the Government's Red Tape Challenge process. The intended effect of this de-regulation is to free up businesses from some of the more onerous parts of the 2008 Regulations, where they are unnecessary. This will allow businesses to use Site Waste Management Plans as a flexible resource efficiency tool, rather than an inflexible piece of legislation. The landfill tax escalator is a more effective tool to minimise waste to landfill across all waste streams, and SWMPs should be used as a tool to help business manage resource to reduce waste and thereby save money. SWMPs are still recommended when appropriate, and it is likely that they will be retained for larger construction projects, but as a tool rather than an administrative and regulatory burden. SWMPs are embedded within the construction sector, and removing the mandatory requirement will enable a more flexible system for businesses to use.

Spreadable fats (marketing standards) – Fortification of margarine

7.7 As identified by the Red Tape Challenge Hospitality, Food and Drink theme, the Spreadable Fats (Marketing Standards) and Milk and Milk Products (Protection of Designations) (England) Regulations 2008 gold plate EU requirements by requiring the fortification of margarine with vitamins A and D (regulation 4). This places an unnecessary burden on business and Government is committed to removing this gold plating.

7.8 Margarine was originally developed as a substitute for butter and is used both by consumers as a finished product as well as in industrial baking and processed food manufacture. Margarine contains a minimum of 16% water and a minimum fat content of 80%, low-fat spreads have lower fat content and higher water content.

7.9 Many member States currently require the mandatory addition of vitamins A and D to margarine and fat spreads for reasons of public health. Voluntary fortification of margarine with vitamins had been practiced by manufacturers since 1925, but in 1940 with the advent of the war, certain governments took action to safeguard the nutritional status of their nations by making the addition of vitamin A and D compulsory. This mandatory fortification was justified in the view that margarine was being used to replace butter in the diet.

7.10 More recently there has been an increase in the production of spreads which would not legally be classed as 'margarine'. Therefore, almost all fat spreads made in England do not need to meet this fortification requirement, but do so on a voluntary basis. Restoration/replacement of vitamins A and D has become the industry standard. Following analysis and informal discussion with industry Defra proposed the revocation of regulation 4 subject to industry consultation.

8. Consultation outcome

8.1 In relation to the Site Waste Management Plans Regulations 2008, consultation took place as part of the Government's Red Tape Challenge project. The Red Tape Challenge was a coalition initiative that sought to remove unnecessary legislation considered to be stifling economic growth. In 2012 the Government launched the Red Tape Challenge website which sought the views of the public and business regarding how well legislation is working and what could be done to improve it in a bid to maximise growth.

8.2 The Environment Theme of the Red Tape Challenge has been open for comment on the Cabinet Office website since April 2011, with a 'spotlight' period in September 2011. The Site Waste Management Plan Regulations 2008 were considered as part of this process, which included discussions with the construction industry and other Government Departments to consider the effectiveness of the Regulations.

8.3 Following analysis and stakeholder meetings, Defra proposed the revocation of the Site Waste Management Plan Regulations 2008, subject to further consultation. A four-week written consultation on the proposals to revoke and the potential impacts took place from 18 June to 16 July 2007. 169 responses were received. The outcome of this consultation demonstrated that there were mixed views from across the range of stakeholder types with 48% of all respondents in favour of revocation and 48% in favour retaining the Regulations. However, the majority of respondents indicated that they would still use SWMP or a similar system to manage and reduce waste. Some key themes were the role of designers in the process and the effectiveness of enforcement in the Regulations, and the effect on fly-tipping. Respondents did not provide significant information to contradict the impact assessment but provide useful information in terms of the behaviour changes likely to occur as a result of the repeal. The impact assessment was revised to reflect the information received from the consultation proving a better picture of the annual cost savings for business, based on how many businesses were likely to continue to use SWMPs. A fuller explanation of the consultation process and responses

received is provided in the *Summary of Responses and Government Response to the Consultation* which is available on the Government website at:

<https://www.gov.uk/government/consultations/site-waste-management-plans>.

8.4 The Environmental Noise (Identification of Noise Sources) (England) Regulations 2007 and the Environmental Noise (Identification of Noise Sources) (England) (Amendment) Regulations 2007 were also identified under the Red Tape Challenge as being obsolete. However, no further consultation was considered necessary because these regulations are obsolete and their revocation will not impose any burdens on business, charities or voluntary bodies.

8.5 A 4 week written consultation on the revocation of regulation 4 of the Spreadable Fats (Marketing Standards) and Milk and Milk Products (Protection of Designations) (England) Regulations 2008 ran from 10 July to 7 August 2013. One response was received. This response noted that fortified margarines can help to contribute to the daily intake of Vitamin A and D and that of margarines were to stop being fortified with vitamin D that it would potentially decrease vitamin D in the population or increase the consumption of butter as margarine users switched to butter to obtain vitamins D & A.

8.6 The most recent published data from the National Diet and Nutrition Survey (NDNS) years 1-3 combined (2008/09 - 2010/11) shows that consumption of fat spreads in total (excluding butter) in adults is 7g/day. The majority of consumption is of reduced fat spreads with a fat content of 41-75%. It is not possible to estimate margarine consumption from NDNS as we know from market intelligence that there are very few, if any, brands of margarine now on the market.

8.7 Analysis of NDNS shows that fat spreads in total (excluding butter) contribute about a fifth of vitamin D intake and 5-10% of vitamin A intake. However the vast majority of this is from voluntarily fortified reduced and low fat spreads rather than margarine. As the cost of fortification is so low we believe manufacturers will continue to fortify voluntarily when mandatory fortification is removed.

9. Guidance

9.1 None.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument so far as it relates to the revocation of the Environmental Noise (Identification of Noise Sources) (England) Regulations 2007 and the Environmental Noise (Identification of Noise Sources) (England) (Amendment) Regulations 2007. An Impact Assessment on the effect of this instrument on business, charities or voluntary bodies has been prepared so far as it relates to the revocation of the Site Waste Management Plans Regulations 2008. The impact is one of deregulation. The Equivalent Annual Net Cost to Business (EANCB) of minus £3.9m equates to a reduction in regulatory burden to business of £3.9 million per year. An impact assessment on the effect of this instrument on business, charities or voluntary

bodies has not been prepared so far as it relates to the revocation of regulation 4 of the Spreadable Fats (Marketing Standards) and Milk and Milk Products (Protection of Designations) (England) Regulations 2008. The impact is one of deregulation.

10.2 The impact on the public sector (in respect of local authorities and the Environment Agency) of repealing the 2008 Regulations is not expected to be significant and, accordingly, it has not been monetised.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation does not apply to small business so far as it relates to Environmental Noise (Identification of Noise Sources) (England) Regulations 2007 and the Environmental Noise (Identification of Noise Sources) (England) (Amendment) Regulations 2007. The legislation applies to small business so far as it relates to the Site Waste Management Plans Regulations 2008.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that the 2008 Regulations only applied to construction projects with a value of £300,000. As this Instrument revokes those Regulations then any small business to which they would apply would see a reduction in mandatory burden.

11.3 Revoking regulation 4 of the Spreadable Fats (Marketing Standards) and Milk and Milk Products (Protection of Designations) (England) Regulations 2008 will reduce unnecessary burden on business. This applies to small business.

12. Monitoring & review

12.1 Not applicable.

13. Contact

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