

**EXPLANATORY MEMORANDUM TO**  
**THE PRODUCTS CONTAINING MEAT ETC. (ENGLAND) REGULATIONS 2014**

**2014 No. 3001**

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

**2. Purpose of the instrument**

2.1 The main purpose of the Products Containing Meat etc. (England) Regulations 2014 (PMR 2014) is to ensure certain traditional quality standards remain in place for English products containing meat and/or other parts of animal carcasses. They replace the Meat Products (England) Regulations 2003 (MPR 2003) and remove those domestic requirements that are now regulated (albeit in a slightly different way) at EU level by the provisions of Regulation (EU) No 1169/2011 on the provision of food information to consumers (EU FIC).

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

3.1 None.

**4. Legislative Context**

4.1 The PMR 2014 will revoke and replace the MPR 2003. They will also revoke the Regulations and provisions of the other pieces of legislation that amended the MPR 2003. Some of the provisions contained in the MPR 2003 are now EU provisions contained in EU FIC and, in order to comply with EU law, will not be carried forward in the PMR 2014; other provisions in the MPR 2003 will be carried forward into the PMR 2014. In accordance with the Government's sunset policy, the PMR 2014 will cease to have effect on 13th December 2021 unless a further Statutory Instrument is made to continue them.

4.2 The PMR 2014 are part of a series of revised food labelling regulations under the Red Tape Challenge that update national regulations (in this case the MPR 2003) following the introduction of EU FIC. The PMR 2014 will use proportionate improvement notices (with a backstop criminal offence for failure to comply) in place of the frontline criminal offences of the MPR 2003.

4.3 The MPR 2003 set certain quality standards for products containing meat and/or other parts of animal carcasses. They outline the 'reserved descriptions' which set minimum meat contents for products using certain names, including 'sausage', 'burger'

and 'pie'; set out when added ingredients such as water or ingredients from other species need to be included in the name of the food; and prohibit certain parts of the carcass from uncooked products for quality reasons. They are mirrored in Scotland, Wales and Northern Ireland.

4.4 EU FIC is the new overarching EU Regulation on the provision of food information for consumers. The majority of its provisions apply on 13 December 2014. Some of these overlap with the provisions of the MPR 2003. To avoid confusion and the potential for infraction proceedings, the MPR 2003 will therefore be replaced with new regulations which take account of, and are compliant with, European law - the PMR 2014.

4.5 The PMR 2014 largely replicate the MPR 2003. The changes as a result of European legislation are as follows:

- a) The term 'Melton Mowbray pie' is omitted from the reserved descriptions in the PMR 2014 as this product now benefits from Protected Geographical Indication status under EU law which sets a meat content minimum of 30%.
- b) The section setting out when added ingredients need to be included in the name of the food has been omitted from the PMR 2014 as EU FIC contains relevant provisions, including provisions relating to added water and proteins from different species.
- c) The prohibition of certain parts of the carcass in uncooked products will be made subject to a mutual recognition clause, meaning that it will not apply to imported products that have been legally marketed in certain countries, including other Member States.
- d) In line with the Government's policy to decriminalise regulatory offences in appropriate cases, the frontline criminal offences for a contravention of the substantive provisions in the MPR 2003 are replaced with an improvement notice regime, enabling an improvement notice to be served for a failure to comply with a substantive provision of MPR 2014. An appeal against such a notice can be made to the First-tier Tribunal. There will be a backstop criminal offence for a failure to comply with an improvement notice.

4.6 The PMR 2014 also make consequential amendments to the Education (Nutritional Standards and Requirements for School Food) (England) Regulation 2007 and the Requirements for School Food Regulations 2014. Those Regulations contained references to the MPR 2003 and provisions of those Regulations have been amended by PMR 2014 so that the references relate to the PMR 2014. The Education (Nutritional Standards and Requirements for School Food) (England) Regulation 2007 will be revoked by the Requirements for School Food Regulations 2014 on 1<sup>st</sup> January 2015 and, for that reason, the consequential amendments made to the 2007 Regulations will cease to have effect on that date.

## **5. Territorial Extent and Application**

5.1 The PMR 2014 will only apply to England, and will revoke the England only MPR 2003.

5.2 Scotland, Wales and Northern Ireland are introducing their own separate but parallel instruments to similar timescales.

## **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**

7.1 The coming into force of EU FIC and Defra's commitments under the Red Tape Challenge resulted in a review of the provisions of MPR 2003. The latter Regulations contained domestic provisions (relating to added water and added proteins of an animal species different from the main meat ingredient) that have now been incorporated as EU legal requirements in EU FIC, thus necessitating their removal, as domestic provisions, from the MPR 2003.

7.2 It is clear that new legislation is the most appropriate way to do this. The MPR 2003 have already been amended on three occasions, so replacing them rather than amending them again makes it easier for those using the Regulations to understand what is required without the need to look at a number of different pieces of legislation.

7.3 Taking into account the Government's deregulation policy, the provisions of the MPR 2003 were also reviewed to determine whether the remaining national requirements were still necessary or could be revoked in order to deregulate. Following consultation, it was decided that the remaining regulatory provisions in the MPR 2003 were still valuable in terms of ensuring that quality standards were maintained and should be carried forward in the PMR 2014.

### *Reserved descriptions (regulation 4 of the MPR 2003 and regulation 4 of the PMR 2014)*

7.4 Reserved descriptions like 'burger', 'luncheon meat', 'pasty' and 'sausage' have been in place for a number of meat products in the UK since 1984 with some provisions going back to 1967. They serve to maintain traditional standards for consumers by requiring products using one of the reserved descriptions to contain a minimum amount of meat. Though the benefits have not proved easily quantifiable, they enjoy widespread support across industry, consumer groups and enforcement bodies. They also give

producers a legal justification to rebut pressures to reduce meat content in the search for greater profits or lower prices. As a result, they have a positive reputational impact for the English meat industry.

7.5 We have considered what the impact would be if the reserved description provisions were not carried forward in the PMR 2014. It would result in deregulation but the benefits of having the provisions would have been lost and, after consultation, it was decided that those benefits outweighed the regulatory burden that the provisions impose on food business operators (FBOs).

7.6 If the reserved descriptions were not maintained in legislation, it is possible that the industry would create some form of voluntary code to maintain the reserved descriptions. However, it is unlikely this would be able to achieve total compliance<sup>1</sup>. The result would likely be a reduction in the meat content of many common products, leading consumers who are used to the products containing a minimum amount of meat being confronted with an array of products on the market that do not contain that meat minimum but that are marketed using reserved description names, as well as FBOs who might want to maintain such minimum meat content for such products finding themselves put at a competitive disadvantage for doing so.

*Prohibited parts of the carcass (regulation 6 of the MPR 2003 and regulation 5 of the PMR 2014)*

7.7 Certain parts of the carcass that are commonly considered as offal (including brains, feet, and intestine) are not normally used in products containing meat in this country, and if included in a product that is cooked imperfectly can result in a lower-quality product. To maintain traditional standards, these parts of the carcass are prohibited, in both the MPR 2003 and PMR 2014, from uncooked products containing meat (that is, those that need further cooking from the point of sale in order to be eaten). Whilst quantitative evidence of the impact of these prohibitions is not available, the retention of this provision has the overall support of industry, as well as that of consumers and enforcement authorities.

7.8 If these prohibitions were not maintained in legislation, it is likely that the majority of FBOs would continue to exclude these parts of the carcass from uncooked products containing meat (especially if they were to be prohibited in a voluntary code). However, some might start to include them, resulting in a reduction in quality standards and the potential for consumers to feel misled where they have come not to expect these carcass parts to be included. Having these parts of the carcass excluded by law from uncooked food products will maintain consumer confidence and allow meat producers to resist commercial pressure to use cheaper but lower quality ingredients.

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<sup>1</sup> In 2010, 224,780 businesses were operating in the food and drink manufacturing, wholesaling, retailing or catering sectors in the UK of which over 99 per cent were identified as having SME status.

*Labelling of added ingredients in the name of the food (regulation 5 of the MPR 2003, not carried over into the PMR 2014)*

7.9 The excessive addition of water to meat is a controversial practice that can mislead consumers. It has been covered widely in the press over a number of years in relation to chicken<sup>2</sup>. The MPR 2003 contains a provision so that, where a product has the appearance of a cut, joint, slice, portion or carcase of meat or of cured meat, the addition of any water beyond 5% of the weight of the product (or 10% for uncooked cured meats) has to be noted in the name of the food.

7.10 Similarly, under the MPR 2003 it is mandatory for the name of any added ingredients from a different species to the main product to be included in the name of the food, where the product has the appearance of a cut, joint, slice, etc. This is to ensure that consumers avoiding certain species for religious or other reasons are informed upfront in the product name of their presence.

7.11 Provisions on added water and proteins from other species are now contained in EU FIC. There are also general provisions in EU FIC requiring a descriptive name to be ‘sufficiently clear to enable consumers to know its true nature and distinguish it from other products with which it might be confused’. For this reason, the domestic provisions contained in regulation 5 of the MPR 2003 have not been carried forward in the PMR 2014.

7.12 EU FIC and the MPR 2003 achieve these policy aims in different ways. EU FIC lists two ingredients (water when above the 5% threshold and protein from different species) that must be included in the name of an applicable food that they are added to. The MPR 2003, on the other hand, state that the name of any added ingredient must be included in the name of the food except in cases listed in a schedule.

*Other matters*

7.13 The PMR 2014 contain a mutual recognition clause. Basically, this will allow products legally marketed in some other countries, including other EU countries, to be imported into and sold in England even where they do not meet the standards in the PMR 2014. Without such a clause, these provisions would constitute a barrier to the free movement of goods contrary to the Treaty on the Functioning of the European Union, and could put the UK at risk of infraction proceedings.

7.14 The responses to the consultation also highlighted the potential for confusion between the use of term ‘meat products’ as used in the MPR 2003 and the definition of ‘meat products’ in Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin. The terms used in the MPR 2003 and Regulation (EC) No 853/2004 do not cover the same range of products. To make it clear that the PMR 2014

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<sup>2</sup> e.g. <http://www.theguardian.com/world/2013/dec/06/supermarket-frozen-chicken-breasts-water>;  
<http://news.bbc.co.uk/1/hi/programmes/panorama/3035139.stm>

apply to all relevant products, not just those meeting the EU definition of ‘meat products’, the revised name has been used and the term ‘regulated product’ used in the body of the text. The ‘etc.’ in the name refers to other parts of the animal carcass that do not comply with the European definition of ‘meat’<sup>3</sup>.

7.15 The PMR 2014 is not the only piece of legislation regulating the meat industry. Of particular note, the Food Hygiene Regulations (EC) Nos 852/2004 and 853/2004 and the Transmissible Spongiform Encephalopathies (England) Regulations 2010 (SI 2010/801) (as amended) still apply and prevent the use of unsafe carcass parts.

## **8. Consultation outcome**

8.1 A six-week consultation was held from 23 January to 6 March 2014 which sought the views of stakeholders on a draft of the new Regulations, consultation stage Impact Assessment and draft guidance. We discussed the content with industry, enforcement and consumer groups in advance of the launch and an extensive consultee list of 161 stakeholders was developed and used. Reminder e-mails were sent before the consultation ended and particular hard-to-target groups such as faith representatives were contacted by telephone.

8.2 A total of 12 organisations responded. Six of these were representative organisations for the food industry, one a large FBO (Bernard Matthews), one a food R&D company (Campden BRI), one a Halal group (Universal Halal Agency Ltd.), two from within the Trading Standards Institute, and one a large consumer organisation (Which?).

8.3 Of the 12 consultation responses, 9 responded to the questions posed. Of the other three, Bernard Matthews’ response was to clarify the scope of the proposed Regulations, Campden BRI’s response was to note an inaccurate reference in the draft guidance to the revoked Specified Risk Material Regulation 1997 and the Universal Halal Agency’s contained diverse views on the meat trade but made no comment on the specific proposals.

8.4 All nine of the respondents to the questions gave unqualified support to the retention of the reserved descriptions.

8.5 Five of the nine supported the retention of the prohibitions on certain carcass parts in uncooked meat products (including Which?, the Trading Standards Institute and the National Federation of Meat and Food Traders). Two did not commit to a position on this matter (the Provision Trade Federation, and the East of England Trading Standards, the latter of which felt more research was needed to clarify the need for the prohibition). Of the two who questioned the appropriateness of the prohibitions, the British Meat Processors Association noted that ‘Most large manufacturers would not include prohibited

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<sup>3</sup> ‘Skeletal muscles of mammalian and bird species recognised as fit for human consumption with naturally included or adherent tissue, where the total fat and connective tissue content does not exceed the values indicated’ in the accompanying table. From Directive 2000/13/EC of the European Parliament and the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (a), as amended by Commission Directive 2001/101/EC(b), and now contained in EU FIC.

carcase parts [...] so perhaps it is not necessary to be regulating in such an area that does not pose a major food safety risk.’ Eblex (an organisation for beef and sheep industry) considered that the ‘draft Regulation would introduce the potential for a distortion in the market by allowing the importation of raw meat products containing these ingredients from other parts of the EEA/EU.’

8.6 Overall, the balance of the argument supports the retention of these prohibitions. Having these parts of the carcase excluded by law from uncooked food products will maintain consumer confidence and allow reputable meat producers to resist commercial pressure to use cheaper but lower quality ingredients. The impact of this regulation will be monitored and considered when the PMR 2014 are reviewed.

8.7 Four consultees broadly supported the new proposed enforcement regime for England. The British Retail Consortium opposed it, and the BFFF expressed concern about the potential overuse of Improvement Notices. Which? wanted to see improvement notices as a parallel option to criminal proceedings.

8.8 Ultimately, the arguments against the proposals repeated those already considered for the Food Information Regulations 2014 (FIR 2014). There would need to be very strong reasons unique to the PMR 2014 to use a different enforcement regime to that agreed for most of the provisions contained in the FIR 2014, given all the advantages of consistency and the Government policy to minimise the use of criminal offences for regulatory contraventions unless there is a strong case for doing so, and these were not presented.

8.9 A summary of responses to the consultation is expected to be online by the time the PMR 2014 are laid before Parliament.

8.10 Scotland, Wales and Northern Ireland have run 12-week consultations on their respective PMR regulations, and have not received responses that vary in any significance from those to the England consultation.

## **9. Guidance**

9.1 Guidance (written for industry but equally relevant to enforcement authorities) will be published on [www.gov.uk](http://www.gov.uk) before the PMR 2014 SI comes into force. A draft was published with the consultation.

## **10. Impact**

10.1 The impact of the PMR 2014 will be very low, as the Regulations, combined with the EU FIC, mean there should be no quantifiable costs or savings for industry or consumers.

10.2 The move towards greater use of improvement notices as opposed to frontline criminal sanctions has a beneficial impact on the public sector. This is viewed as a more proportionate approach for less serious regulatory infringements such as non-food safety labelling infringements. The change will also benefit the court system by reducing the

potential number of cases that would be heard in a magistrates' court. Nevertheless, local authorities will need to familiarise themselves with the new enforcement regime. This will cost them around £6,000 in total transition costs.

10.3 The Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The PMR 2014 applies to small business. The vast majority of firms in the food industry are small businesses (see footnote 2), so to exclude them would undermine the policy aims of the Regulations.

11.2 Small businesses will already be familiar with provisions of the PRM 2014 as they have been carried over from the MPR 2003. Our consultation responses, including those from representative industry bodies, did not raise any concerns relating to small businesses.

## **12. Monitoring & review**

12.1 These Regulations will be successful if they are effective in maintaining quality standards for consumers.

12.2 In accordance with the Government's sunset policy, the Regulations will cease to have effect on 13th December 2021 unless a further SI is made to continue them. A review must be carried out and a report published before 13<sup>th</sup> December 2019.

12.3 The review will, in particular, consider the impact of the prohibition of certain carcass parts from uncooked products. We shall be considering the national impact of products that have been imported from other countries that do not have to comply with these prohibitions; whether the prohibitions prevent the production of products that would be acceptable to consumers and thus inhibit innovation; and whether the prohibitions negatively impact on exports.

12.4 The review will also consider whether the reserved descriptions remain necessary.

## **13. Contact**

13.1 Christopher Conder at the Department for Environment, Food and Rural Affairs can answer any queries regarding the instrument.

Contact: [christopher.conder@defra.gsi.gov.uk](mailto:christopher.conder@defra.gsi.gov.uk), 0207 238 4851

13.2 In Christopher's absence (he does not usually work on Fridays), please contact Pendi Najran. Contact: [pendi.najran@defra.gsi.gov.uk](mailto:pendi.najran@defra.gsi.gov.uk), 020 7238 4348