

EXPLANATORY MEMORANDUM TO
THE FOOD INFORMATION (AMENDMENT) (ENGLAND) REGULATIONS 2020
2020 No. 541

1. Introduction

- 1.1 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 This instrument makes provision to enforce Commission Implementing Regulation (EU) No 2018/775 by introducing offences and penalties relating to food information provided to consumers in England. Specifically, it enforces Article 26.3 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council (“the EU Regulation”). Article 26.3 requires either the indication of the country of origin of the primary ingredient, or the indication that the country of origin is different, when it is different from the given origin of the food.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments]

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The EU Regulation sets out the main requirements of information to be given to consumers on food and is enabled in England, by the Food Information Regulations 2014 (S.I. 2014 No. 1855) (the “FIR”), which sets out offences, penalties and designation of enforcement bodies.
6.2 Article 26.3 of the EU Regulations requires that where the country of origin of a food is given and where it is not the same as that of its primary ingredient, the country of

origin of the primary ingredient in question must also be given or, at least, indicated as being different to that of the food itself.

- 6.3 Commission Implementing Regulation (EU) 2018/775 (the “Implementing Regulation”) sets out new rules bringing into effect Article 26.3 of the EU Regulations, detailing the modalities of providing the required information, as well as the scope of the requirements. The Implementing Regulation was made on 28th May 2018 and applies across the EU from 1st April 2020.
- 6.4 While the United Kingdom (UK) is in the EU Withdrawal Implementation Period until 31st December 2020, the Withdrawal Agreement requires the UK to implement directly applicable EU legislation. Therefore, this Implementing Regulation must be enabled. The appropriate way to do this is to add Article 26.3 of the EU Regulations, as read with the Implementing Regulation, to the list of provisions of the EU Regulation to which the FIR applies. This list is found in Schedule 5 of the FIR.

7. Policy background

What is being done and why?

- 7.1 The instrument adds enforcement of the rules on origin of primary ingredients to the list of articles within the FIR, for which an enforcement authority has the duty to enforce, thereby meeting the UK's obligations.
- 7.2 The purpose of the specific article in the EU Regulation is to strengthen consumer confidence and prevent consumers being potentially misled about the origin of the primary ingredient of a food when, for legitimate reasons, a food business makes an origin claim about the food and this is a different origin to the primary ingredient.

8. European Union (Withdrawal) Act 2018/ Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 A 4-week public consultation on enforcement was carried out from February 21st 2020 to 20th March 2020. The proposed approach was to match the enforcement provisions already in place for most non-safety food labelling offences, using an escalation hierarchy for unsatisfactory compliance. The consultation was aimed at food enforcement officials, food manufacturers, food retailers, food producers, importers and consumers. Participants were invited to complete an online survey via Citizen Space or alternatively responses could be by post or email.
- 10.2 There were 30 responses in total and an overall majority agreement to the proposed enforcement measures. A full outcome will be published on GOV.UK by 20th June 2020, in line with consultation guidelines.
- 10.3 The Regulatory Triage Assessment examines whether costs to businesses are considered in a proportionate way in low impact regulations. It was published with the Consultation Document and has been amended following the consultation to take

account of comments from the Trading Standards Officers, relating to the costs of familiarisation with the new rules.

11. Guidance

- 11.1 Guidance to businesses and to Trading Standards Officers will be made available before the instrument is laid. The European Commission has issued technical guidance, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0131\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XC0131(01))

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is minimal and limited to the task of familiarisation for Trading Standards Officers who are responsible for the enforcement of this instrument.
- 12.3 A full Impact Assessment has not been prepared for this instrument because there will be a low level of impact for businesses and the public sector. Any significant impact for businesses stems from the EU Regulations rather than from this England enabling instrument.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to maintain the voluntary nature of the requirement, meaning that the origin of the primary ingredient is only required both when the origin of the food itself is provided on a voluntary basis, and when that origin is different. A number of EU Member States have, by contrast, required the origin of some primary ingredients on a mandatory basis.

14. Monitoring & review

- 14.1 The approach to monitoring of this instrument is that reviews will be conducted at least every 5 years. The date of the first review will be the same as the review date set out in the FIR.
- 14.2 A statutory review clause is included in the FIR.

15. Contact

- 15.1 Jennifer Roll at the Department for Environment Food and Rural Affairs Telephone: 02085654477 or email: Jennifer.roll@defra.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Karen Lepper, Deputy Director for Consumers and Sustainability, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Lord Gardiner of Kimble, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.