

## **EXPLANATORY MEMORANDUM TO**

### **The Food Hygiene (Wales) (Amendment) (No. 2) Regulations 2014**

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

#### **Member's Declaration**

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food Hygiene (Wales) (Amendment) (No. 2) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Mark Drakeford AM

Minister for Health and Social Services, one of the Welsh Ministers

19 November 2014

## **EXPLANATORY MEMORANDUM TO**

### **The Food Hygiene (Wales) (Amendment) (No. 2) Regulations 2014**

#### **1. Description**

The Food Hygiene (Wales) (Amendment) (No. 2) Regulations 2014 will continue important labelling regulations in respect of Raw Drinking Milk (“RDM”) in Wales.

#### **2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee**

None.

#### **3. Legislative Background**

The Regulations are made in exercise of the powers conferred on the Welsh Ministers by section 2(2) of the European Communities Act 1972 (“the 1972 Act”) and section 16(1)(e) and 48(1) of the Food Safety Act 1990 (“the 1990 Act”).

The Welsh Ministers are designated for the purposes of section 2(2) of the 1972 Act in relation to measures relating to food (including drink) including the primary production of food and measures in relation to the veterinary and phytosanitary fields for the protection of public health. The relevant designation orders are the European Communities (Designation) (No. 2) Order 2005 and the European Communities (Designation) (No. 2) Order 2008.

Functions under the 1990 Act, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 and subsequently transferred to the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

This instrument is subject to the negative procedure.

#### **4. Purpose and Intended Effect of the Legislation**

The objective of the Regulations is to amend the Food Hygiene (Wales) Regulations 2006 (as amended) in order that they include the RDM labelling requirements currently provided for by regulation 31 of the Food Labelling Regulations 1996 (“FLR”). The requirements of regulation 31 of the FLR will be revoked by the coming

into force on 13 December 2014 of the Food Information (Wales) Regulations 2014 (“FIR”).

## **Background**

Regulation 31 of FLR (as amended) provides that the container in which any RDM is sold shall be marked or labelled with a health warning. Regulation 31, as amended by the Food Hygiene (Wales) Regulations 2006, provides that the label must set out that ‘This milk has not been heat-treated and may therefore contain organisms harmful to health. The Food Standards Agency strongly advises that it should not be consumed by children, pregnant women, older people or those who are unwell or have chronic illness’.

This labelling requirement is one of the controls used to manage the food safety risk associated with RDM. The labelling provisions ensure that those who choose to consume RDM are made aware of the risks associated with the product.

The FIR, which bring into force in Wales certain provisions of EU Regulation 1169/2011, revoke the FLR. Regulation 31 of the FLR will be revoked on 13 December 2014.

The RDM labelling requirements were not included as a provision in the new FIR as it was intended to make an amendment so as to include the RDM provisions in Regulation 32 of, and Schedule 6 to, the Food Hygiene (Wales) Regulations 2006 (where other requirements for RDM are set out). It was intended to make this amendment alongside other amendments to Schedule 6 resulting from the ongoing review of the controls on RDM.

The FSA Board at its open meeting on 23 July 2014 concluded that a final decision on RDM controls should not be made until the European Food Safety Authority has delivered the findings of its own review of the risks from raw drinking milk, which is expected in December 2014. Therefore the outcome of the national review will not now be delivered in time to ensure the continuation of the health warning requirement currently provided for by regulation 31 of the FLR; the revocation of regulation 31 would result in no legal requirements for the RDM health warning. A mechanism to ensure continuation of the current national RDM labelling provisions is therefore required.

After considering all the possible options it was concluded that an amending SI would therefore need to be introduced to include the provision on RDM labelling in Regulation 32 of the Food Hygiene (Wales) Regulations 2006 in order to ensure that this important health protection measure is maintained.

The health warning must be given in English. However, nothing in the Regulations prevents the warning being given in languages other than English. This point is made explicitly within the regulations. The regulations also provide the Welsh language version of the health warning which may be used in Wales.

## **5. Consultation**

A recommendation was made in submission LF/MD/0977/14 that no separate and specific public consultation should be carried out with respect to this technical amendment to the Food Hygiene (Wales) Regulations 2006. This was because of the extensive consultation already undertaken on the wider review of official controls on raw milk production and sales. The Minister agreed with this recommendation.

## **6. Regulatory Impact Assessment**

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. In accordance with the Code of Practice, as there are no costs associated with these Regulations, no Impact Assessment has been prepared.