

Food Standards Agency In Wales: Consultation

Proposed regulations to implement Regulation (EU) 2018/775 laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011

Date launched:	22/01/2020	Closing date:	19/02/2020
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Who will this consultation be of most interest to?

Local Authorities and Food Business Operators in Wales selling pre-packed foods in cases where the country of origin or the place of provenance of the primary ingredient is not the same as that of the food.

What is the subject of this consultation?

Draft Welsh Regulations are being prepared to provide for the enforcement of the directly applicable Commission Implementing Regulation (EU) No 2018/775 which lays down detailed rules requiring the country of origin or place of provenance of a primary ingredient to be indicated where it is not the same as the origin of the food as a whole. Implementing Regulation (EU) 2018/775 will have effect from 1 April 2020.

The EU Regulation builds on the general country of origin requirements in the EU Food Information to Consumer Regulation (EU) No 1169/2011.

What is the purpose of this consultation?

To seek comments from industry, enforcement authorities, consumers and other interested stakeholders on a proposed statutory instrument that will provide for implementation and enforcement for Implementing Regulation (EU) 2018/775 on the rules for indicating the country of origin or place of provenance of the primary ingredient of a food.

Responses to this consultation should be sent to:

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Impact Assessment included?

Yes

No See Annex A for reason.

Detail

1. Food Standards Agency in Wales (FSA) would welcome your comments on our proposal to draft a statutory instrument for implementing and enforcing Implementing Regulation (EU) 2018/775 on the rules for indicating the country of origin or place of provenance of the primary ingredient of a food.
2. Implementing Regulation 2018/775 establishes rules and requirements on how to apply the provision laid down in Article 26 (3) 1169/2011 on the country of origin or place of provenance of the primary ingredient of a food and provides for the enforcement of said rules in Wales.

Introduction

Food Standards Agency in Wales are in the process of drafting Welsh Regulations to give provision for the enforcement of Commission Implementing Regulation (EU) No 2018/775 which lays down detailed rules on the provision of Food Information to Consumers, indicating the country of origin or place of provenance of a primary ingredient where it is not the same as the origin of the food as a whole.

The Implementing Regulation is directly applicable which means that food businesses are required to comply with its requirements.

Purpose

The purpose of the proposed Welsh Statutory Instrument is to:

(a) execute and enable the enforcement of and

(b) provide penalties for non-compliance with

the requirements of Commission Implementing Regulation (EU) No 2018/775 which lays down specific labelling requirements where the country of origin or place of provenance of a primary ingredient is not the same as the origin of the food itself.

Background

1. In 2011 the EU brought in new harmonised legislation Regulation (EU) 1169/2011 on food information and labelling. Article 26 of this Regulation establishes general rules regarding the mandatory and voluntary indication of the country of origin or place of provenance of foods. If information presented on the label implied that the product is from a different country than the food's country of origin, mandatory labelling of the food's country of origin would be required as to not mislead the consumer. As an example, a croissant with a picture of the Eiffel tower on its

packaging produced in the UK would have to display the name of the UK as its country of origin.

2. According to Regulation (EU) 1169/2011 the country of origin or place of provenance of a food is given by any means such as statements, pictorial presentation, symbols or terms, referring to places or geographical areas. Geographic terms, included in customary and generic names, where those terms literally indicate origin but are widely known to the consumer as not the country of origin or place of provenance of a food are exempted. Examples include; New York bagels, Black Forest cake, and Thai curry sauce.

3. Article 26(3) also stipulates that where a food's origin is given and that origin is not the same as that of the primary ingredient, the country of origin or the place of provenance of the primary ingredient should be also given or indicated to be different. This does not apply to geographical indications, nor registered trade marks where the latter constitute an origin indication, pending the adoption of specific rules concerning the application of Article 26(3) to such indications.

Implementing Regulation 2018/775

Implementing Regulation 2018/775 establishes rules and requirements on how to apply the provision laid down in Article 26 (3) 1169/2011 and lays down rules on how the origin of the primary ingredient, if different from the origin of the product, should be indicated and presented.

1. According to Article 2, the country of origin or place of provenance of a primary ingredient, which is different from the food product it is part of, must be given:

(a) With reference to one of the following geographical areas:

- 'EU', 'non-EU' or 'EU and non-EU'; or
- Region, or any other geographical area with several Member States or within third countries; or
- Food and Agriculture Organization of the United Nations fishing area, sea or freshwater body; or
- Member State(s) or third country(ies); or
- Region, or any other geographical area within a Member State or within a third country; or
- The country of origin or place of provenance in accordance with specific European Union provisions applicable for the primary ingredients;

(b) Or by means of a statement as follows:

- '(name of the primary ingredients) do/does not originate from (the country of origin or the place of provenance of the food)' or any similar wording likely to have the same meaning to the consumer.

2. Article 3 lays down rules on how the origin of the primary ingredient, if different from the origin of the product, should be indicated and presented.

- Information noting the country of origin or place of provenance of the primary ingredient shall be provided in a font size which is not smaller than the minimum font size as required in accordance with Article 13(2) of Regulation (EU) No 1169/2011 (equal to, or greater than 1.2mm).
- where the country of origin or place of provenance of a food is given with words, the country of origin or place of provenance of the primary ingredient shall appear in the same field of vision as the indication of the country of origin or place of provenance of the food and by using a font size which has an x-height of at least 75 % of the x-height of the indication of the country of origin or place of provenance of the food.
- where the country of origin or place of provenance of a food is given by means of non-scriptural form, the country of origin or place of provenance of the primary ingredient shall appear in the same field of vision as the indication of the country of origin or place of provenance of the food.

3. These requirements are to apply from 1 April 2020. Foods placed on the market or labelled prior to the date of application of this Regulation may be marketed until the stocks are exhausted.

EU Exit

The UK is due to leave the EU on 31 January 2020. However, in the event of a negotiated EU exit with an agreed Implementation Period or a further extension to Article 50, EU Law will continue to be directly applicable in the UK. In either of these scenarios, secondary legislation in Wales is required to provide for the execution and enforcement of the Implementing Regulation.

Proposals

There are two proposals being considered.

Option 1 – To not provide for the enforcement of Regulation (EU) 2018/775 in relation to the rules for indicating the country or origin or place of provenance of the primary ingredient of a food.

Not providing for the enforcement of Regulation (EU) 2018/775 would mean that there would be no enforcement mechanism in Wales in relation to the directly applicable European Regulation.

Option 2 – Provide for the enforcement of Regulation (EU) 2018/775 in relation to the rules for indicating the country of origin or place of provenance of the primary ingredient of a food.

The proposed draft regulations for implementing regulation (EU) 2018/775 intends to follow the same approach to enforcement as is taken in the Food Information (Wales) Regulation 2014, which will be by means of 'Improvement Notices' backed up, where necessary and in the case of failure to comply, by criminal offences.

Key proposal(s):

Provide enforcement provisions for Implementing Regulation (EU) 2018/775

Enforcement

The proposed regulations to implement regulation (EU) 2018/775 will enable the enforcement authorities in Wales to take action if the country of origin or place of provenance of the primary ingredient of a food is not provided when required.

The proposed draft regulations for implementing regulation (EU) 2018/775 intends to follow the same approach to enforcement as is taken in the Food Information (Wales) Regulation 2014 which will be via an improvement notice, backed up, where necessary and in the case of failure to comply, by criminal offences. This should be used as part of the hierarchy of enforcement when informal measures are considered to no longer be appropriate. If the conditions set by an improvement notice are not met then the non-compliance with those conditions will be a criminal offence. Businesses will have the opportunity to appeal against an improvement notice; appeals will be heard by Magistrates' courts.

Engagement and Consultation Process

Consultation process

1. A four-week public consultation is being launched to provide interested parties with an opportunity to comment on the proposed domestic legislation for implementing regulation 2018/775 and its associated impacts. The FSA anticipate that the impact on both businesses and enforcement authorities in familiarising themselves with these enforcement regulations will be negligible.
2. It is considered that a four-week consultation period is appropriate in these circumstances as these regulations provide enforcement for a directly applicable European Regulation with no national measures.
3. Any responses received as part of this consultation will be given careful consideration and a summary of the responses received will be published on our website within three months of the consultation closing.

Questions asked in this consultation:

Q1: Will implementation of these Regulations affect your business? If you believe your business or business in your area would be affected by the regulations, please provide us with information on the number of food businesses potentially affected, their location and ideally size in terms of the number of employees.

Q2: Do you consider that the policy/proposed Regulations will have an effect on opportunities for use of the Welsh language?

Q3: We would like to know your views on the effects that Implementing Regulation (EU) 2018/775 on the rules for indicating the country of origin or place of provenance of the primary ingredient of a food would have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh and**
- ii) on treating the Welsh language no less favourably than English.**

Q4: What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Other relevant documents

Regulation (EU) 1169/2011 on the provision of food information to consumers is available to download free of charge from the [legislation.gov.uk website](http://legislation.gov.uk).

[Commission Implementing Regulation \(EU\) 2018/775](#) is available to download free of charge from the EURlex website.

Responses

Responses are required by close 19/02/2020. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/ company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours,

Adam McDowell
Regulatory Policy Team
Food Standards Agency in Wales

Enclosed

Annex A: Standard Consultation Information

Annex B: List of interested parties

Annex A: Standard Consultation Information

Disclosure of the information you provide

Information provided in response to this consultation may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004).

If you want information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

Any automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

The Food Standards Agency will be what is known as the 'Controller' of the personal data provided to us.

Why we are collecting your personal data

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

The Data Protection Act 2018 states that, as a government department, the Food Standards Agency may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

What we do with it

All the personal data we process is located on servers within the European Union. Our cloud based services have been procured through the government framework agreements and these services have been assessed against the national cyber security centre cloud security principles.

No third parties have access to your personal data unless the law allows them to do so. The Food Standards Agency will sometimes share data with other government departments, public bodies, and organisations which perform public functions to assist them in the performance of their statutory duties or when it is in the public interest.

What are your rights?

You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter.

If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the Information Commissioner's Office (ICO) at <https://ico.org.uk/>, or telephone 0303 123 1113.

Our Data Protection Officer in the FSA is the Information Management and Security Team Leader who can be contacted at the following email address:
informationmanagement@foodstandards.gsi.gov.uk

Further information

If you require a more accessible format of this document, please send details to the named contact for responses to this consultation and your request will be considered.

This consultation has been prepared in accordance with [HM Government consultation principles](#)¹.

The proposed regulations will make provision for the enforcement of Regulation (EU)2018/775 in relation to Wales. Parallel regulations are being prepared by Defra in relation to England, and by the FSA in Northern Ireland and Food Standards Scotland.

It is considered that a shortened consultation period is appropriate in these circumstances as these regulations provide direct enforcement for a European Regulation with no national measures.

Impact Assessment

The Welsh Government's Code of Practice on Impact Assessments states that an Impact Assessment should normally be published alongside a formal consultation. We consider that the impact on both businesses and enforcement authorities of the proposed Regulations will be negligible. They will only provide enforcement for a directly applicable European Regulation with no national measures.

If, however, the consultation should bring to light any impact on enforcement bodies or industry which has not been anticipated, we will reconsider the need for an Impact Assessment.

¹ www.gov.uk/government/publications/consultation-principles-guidance

Annex B: List of interested parties

Abergavenny Fine Foods Ltd
Baraka Foods Ltd
Cardiff Metropolitan University
Castell Howell Foods Ltd
Clark's Original Pies
Dailycer Ltd
Drink Pac UK Ltd
Farmers' Union of Wales
Goch & Company Ltd
Gwaun Valley Meats
Hybu Cig Cymru – Meat Promotion Wales
Jersey Bakery Ltd
Lewis Fine Foods Ltd
Mark Hunter Ltd
Minton, Treharne & Davies Limited
Mirandas Preserves
Mrs Cupcakes
National Farmers Union Cymru
National Sheep Association Cymru/Wales
Ocean
One Stop Stores Ltd
OP Chocolate Ltd
Pembertons Victorian Chocolates Ltd
Prince's Gate Spring Water
Rhydwen Bakery
Royal Welsh Agriculture Society
Rowan Foods
S.A. Brain & Company Ltd
Selectfood
Sweet Delights
Tate and Lyle Food Systems
Teifi Farmhouse Cheese
The Patchwork Traditional Food
Tillery Valley Foods Ltd
Ty Nant Spring Water Limited
Welsh Hills Bakery