

The Food Information (Wales) Amendment Regulations 2016

DETAIL OF CONSULTATION

The Food Standards Agency in Wales would welcome your comments on the proposed changes to the Food Information (Wales) Regulations 2014.

Background

In January 2009, the European Commission published Regulation (EC) No 41/2009 concerning the composition and labelling of foodstuffs suitable for people intolerant to gluten. The Regulation introduced compositional criteria for the claims “gluten-free” (not more than 20 mg/kg of gluten) and “very low gluten” (not more than 100 mg/kg of gluten) for foods which have been specifically manufactured to satisfy the particular nutritional requirements of people who are intolerant to gluten as provided for by Council Directive 2009/39/EC. The Regulation also allows normal foods and other foods for particular nutritional uses (that are not specially prepared for people intolerant to gluten but meet the compositional requirements of the Regulation) to be labelled as “gluten-free”.

Following a revision of the legislation on foodstuffs intended for particular nutritional uses (i.e. PARNUTS); Regulation (EU) No 609/2013 will repeal Regulation (EC) No 41/2009 and Directive 2009/39/EC from 20 July 2016. The introduction of Welsh Regulations to enable the enforcement of Regulation (EU) No 609/2013 will be the subject of a separate Welsh Government consultation.

It is important that information on the absence or reduced presence of gluten in food must be presented clearly and accurately to consumers and the rules for doing so will be retained under Commission Implementing Regulation (EU) No 828/2014.

The gluten levels permitted by Regulation (EU) No 828/2014 for the terms “gluten free” and “very low gluten” are identical to those set previously in Regulation (EC) No 41/2009 (as quoted above). However, Article 3 states that these terms may now be supported by the statements: “suitable for people intolerant to gluten” or “suitable for coeliacs”.

Additionally, the supporting information “specifically formulated for people intolerant to gluten” or “specifically formulated for coeliacs” may be used if the food has been specially produced, prepared and/or processed to:

- (a) reduce the gluten content of one or more gluten-containing ingredients; or
- (b) substitute the gluten-containing ingredients with other ingredients free of gluten.

The phrase “no gluten-containing ingredients” can no longer be applied to “normal” foods.

Foods making gluten claims will in future be treated as normal foods covered by the general food labelling requirements. The Food Information for Consumers Regulation (EU) No 1169/2011 has been amended via Commission Delegated Regulation EU 1155/2013 to include the relevant measures to support the implementation of Regulation EU No.828/2014. This means that the enforcement of all food allergen and intolerance related labelling requirements

will be provided by the Food Information (Wales) Regulations 2014 (FIR) (as amended).

Therefore, the Food Information (Wales) (Amendment) Regulations 2016 are needed to reflect this change in the European legislative framework and to provide for the enforcement of Regulation (EU) No 828/2014 in Wales.

Proposals

The options being considered are:

Option 1 – Do nothing. This means that the directly applicable European Regulation on gluten claims could not be enforced in Wales.

Option 2 – Introduce legislation to provide enforcement provisions in Wales for Regulation (EU) No 828/2014.

Key proposal(s):

- *To provide enforcement provisions for Commission Implementing Regulation (EU) No 828/2014*
- *To introduce improvement notices for the provisions of Regulation EU 828/2014*
- *Revoke the Foodstuffs Suitable for People Intolerant to Gluten (Wales) Regulations 2010*

Enforcement

Failure to introduce enforcement provisions for Regulation (EU) No 828/2014 could result in infraction proceedings against the UK. It is necessary to ensure that EU labelling requirements for gluten claims will continue to be enforced in Wales beyond 20 July 2016. The proposed Food Information (Wales) (Amendment) Regulations 2016 will enable the enforcement authorities in Wales to take action if information on the absence or reduced presence of gluten in food is not provided correctly.

The draft Food Information (Wales) (Amendment) Regulation 2016 intends to follow the same approach to enforcement as is taken in FIR which will be via an improvement notice. This would be used as part of the hierarchy of enforcement when informal measures are no longer appropriate and the labelling contravention or issue should be elevated to formal enforcement action. 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' court.

Engagement and Consultation Process

A six-week public consultation is being launched to provide interested parties with an opportunity to comment on the proposals and its associated impacts. Any comments that interested parties are able to provide in relation to the proposed Regulations would be gratefully received. We are particularly keen to

hear from Small and Medium Enterprises (SMEs) on any likely impact and would encourage them to comment on all aspects of this proposal.

Impact Assessment

Costs and benefits from this change are not quantified as this will not have an additional impact on businesses or local authorities. These rules are already in place, this is an administrative change to how the European legislation on the gluten provisions sit in domestic law. 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.

Questions asked in this consultation:

Q1: Do you have any comments on the proposal to move the rules on gluten into the Food Information (Wales) (Amendment) Regulations 2016.

Q2: Do you have any comments on our proposal to use Improvement Notices as the method for enforcement.

Q3: Do you have any information on costs and benefits of the proposed Regulations.

Other relevant documents

Commission Implementing Regulation (EU) No 828/2014 is available from the EUR-Lex website at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0828&rid=1>

Responses

1. **Responses are required by close 12 May 2016.** 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,

Kerys James-Palmer
Food Policy Team
Food Standards Agency

Enclosed

Annex A: Standard Consultation Information

Annex B: List of interested parties

Publication of personal data and confidentiality of responses

1. In accordance with the FSA principle of openness we shall keep a copy of the completed consultation and responses, to be made available to the public on receipt of a request to the [FSA Consultation Coordinator](#) (020 7276 8308). The FSA will publish a summary of responses, which may include your full name. Disclosure of any other personal data would be made only upon request for the full consultation responses. If you do not want this information to be released, please complete and return the Publication of Personal Data form, which is on the website at <http://www.food.gov.uk/multimedia/worddocs/dataprotection.doc> Return of this form does not mean that we will treat your response to the consultation as confidential, just your personal data.
3. In accordance with the provisions of Freedom of Information Act 2000/Environmental Information Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with the FSA. However, we will take into account your views when making this decision.
4. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

5. A list of interested parties to whom this letter is being sent appears in Annex B. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
6. Please contact us if you require this consultation in an alternative format such as Braille or large print.
7. This consultation has been prepared in accordance with HM Government consultation principles¹.

¹ <http://www.bis.gov.uk/policies/bre/consultation-guidance>

Annex B

Interested Parties

Abergavenny Fine Foods Ltd
Avana Bakeries limited
B Sidoli & Sons Ltd
Baraka Foods Ltd
Braces Bakery Limited
Brands2Life
Bridgend College
Burger Manufacturing Company Limited
Capital Roasters Ltd
Cardiff Metropolitan University
Castell Howell Foods Ltd
Castle Leisure Ltd
Celtic Oriental Ltd
Coeliac UK
Chocolate Brownie Company
Clark's Original Pies
Cranberry Foods Limited
Dailycer Ltd
Drink Pac UK Ltd
EuroCaps Ltd
EUROFOODS UK LIMITED
Everything Gluten Free
Farmers Union of Wales
Federation of Small Businesses - Wales
Food Centre Wales
Food Technology Centre
Four Seasons Pantry
Goch & Company Ltd
GRH Food Company Ltd
Gwaun Valley Meats
Halo Foods
Harlech Food Service Ltd
Iceland Foods Limited
Jersey Bakery Ltd
Just Love Food Company Ltd
LACA Wales
Lewis Fine Foods Ltd
Mario's Luxury Welsh Ice Cream
Menter a Busnes
Minton, Treharne & Davies Limited
Mirandas Preserves
Mrs Cupcakes
National Farmers Union Cymru
Ogmore Vale Bakery Limited
One Stop Stores Limited
OP Chocolate Ltd

Otley Brewing Company Ltd
Patchwork Traditional Food Company
Pembertons Victorian Chocolates Ltd
Peters Food Service Ltd
Rhydwen Bakery
Rowan Foods
S.A. Brain & Company Ltd
Selectfood
Shoda Sauces Europe Company Limited
Sodexo UK & Ireland
Sweet Delights
Tate and Lyle Food Systems
Tillery Valley Foods Ltd
Tregoes Waffles
Truly Free Foods
Ty Nant Spring Water Limited
Uren Food Group Ltd
Welsh Hills Bakery
Welsh Local Government Association
Welsh Government
White's Golden Crust Bakery
Wholebake Ltd