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EXPLANATORY MEMORANDUM TO

The Food Information (Amendment) Regulations (Northern Ireland) 2020

SR 2020 No. 24

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Food Standards Agency to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 15(1)(e), 16(1) and (2), 25(3), 26(3) and 47(2) of the Food Safety (Northern Ireland) Order 1991, and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Food Information (Amendment) Regulations (Northern Ireland) 2020 (the 2020 Regulations) amend the Food Information Regulations (Northern Ireland) 2014 to provide for the enforcement of Implementing Regulation (EU) 2018/775 (the Implementing Regulation) in Northern Ireland.
- 2.2. The Implementing Regulation is a directly applicable EU regulation with no national measures.
- 2.3. Under the Withdrawal Agreement, EU law continues to be directly applicable in the UK throughout the duration of the transition period. As such, the Implementing Regulation is directly applicable in the UK and requires domestic legislation to enforce it.
- 2.4. The Implementing Regulation requires Food Business Operators (FBOs), who are providing the country of origin or place of provenance of a food, to note the country of origin or place of provenance of their primary ingredient, if this differs from the given origin of the food itself.

3. Background

- 3.1. The purpose of the 2020 Regulations is to provide for the enforcement of the EU Implementing regulation, which is itself directly applicable as mentioned above. It also enables officers to use improvement notices to deal with non-compliance.
- 3.2. The EU Implementing Regulation enables consumers to make more informed choices about the food they eat, and the 2020 Regulations provide for the enforcement of the Implementing Regulation in Northern Ireland.
- 3.3. FBOs are not currently required to note the country of origin or place of provenance of the primary ingredient.
- 3.4. FBOs selling foods in cases where, whether mandatorily or voluntarily, the country of origin or place of provenance of the food is noted *and* where this is

different to the country or origin or place or provenance of the primary ingredient of the food will be affected by this legislation. In such cases, the country of origin or place of provenance of the primary ingredient must also be noted.

- 3.5. Currently, FBOs must note the country of origin or place of provenance of their food in cases where its omission could mislead the consumer as to the true country of origin or place of provenance of the final food in question, in particular if the information accompanying the food or the label as a whole would otherwise imply that the food has a different country of origin or place of provenance. For example, croissants made in the UK with a picture of the Eiffel Tower on the packaging may imply that the food's country is France. The country of origin or place of provenance of a food can be given either mandatorily in accordance with Article 26 (2) (a) of EU Regulation (EU) 1169/2011 or voluntarily.
- 3.6. The Implementing Regulation requires FBOs who currently, whether mandatorily or voluntarily, note the country of origin or place of provenance of their food to also note the country of origin or place of provenance of the primary ingredient, where this differs to that of the food itself.
- 3.7. The 2020 Regulations enforce this requirement.
- 3.8. The Implementing Regulation does not apply to geographical indications protected under Regulation (EU) No 1151/2012, Regulation (EU) No 1308/2013, Regulation (EC) No 110/2008 or Regulation (EU) No 251/2014 or protected pursuant to international agreements, nor registered trademarks where the latter constitutes an origin indication, pending the adoption of specific rules concerning the application of Article 26(3) to such indications.
- 3.9. The 2020 Regulations follow the same approach to enforcement as is taken in the Food Information Regulations (Northern Ireland) 2014 which is via an improvement notice. This will 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 the improvement notice will be a criminal offence.
- 3.10. The 2020 Regulations are critical for providing for the enforcement of the Implementing Regulation in Northern Ireland. If the 2020 Regulations are not laid, it leaves Northern Ireland without a legal framework to enforce the requirements of the Implementing Regulation.
- 3.11. Not providing for the enforcement of the enforcement of the Implementing Regulation may lead to infraction proceedings against the UK.

4. Consultation

- 4.1. A four-week consultation ran from 22 January 2020 to 19 February 2020 on the proposal to draft domestic legislation to provide for the enforcement of the Implementing Regulation in Northern Ireland. The consultation was drawn to the attention of key stakeholders including FBOs, district councils, universities, and the Ulster Farmers Union.

- 4.2. Five responses were received to the consultation, none of which opposed the plan to draft domestic enforcing legislation nor highlighted any issues for which it was deemed necessary to undertake an impact assessment.
- 4.3. A summary of the consultation responses will be available on our website within three months of the closing date of the consultation.

5. Equality Impact

- 5.1. This rule applies equally across society and therefore has no implications under section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

- 6.1. The FSA considers the impact on both businesses and enforcement authorities of the proposed Regulations will be negligible. This is largely as the changes result from the overarching principles of EU Regulation 1169/2011, to which the UK has already aligned, as well as the directly applicable the Implementing Regulation.
- 6.2. The 2020 Regulations provide specific enforcement powers, which already exist for non-compliance with related requirements.
- 6.3. The FSA envisages minimal one-off familiarisation costs for district councils in Northern Ireland to read and familiarise themselves with the EU Regulations.
- 6.4. It was noted in the consultation that an impact assessment would not be conducted, but that if responses brought to light any impact on enforcement bodies or industry which had not been anticipated, the need for an Impact Assessment would be reconsidered. No responses from the consultation were deemed to require the need for an impact assessment.

7. Financial Implications

None

8. Section 24 of the Northern Ireland Act 1998

- 8.1. This rule provides for the enforcement of EU law. There is nothing within it which could be construed as being discriminatory.

9. EU Implications

Not applicable.

10. Parity or Replicatory Measure

- 10.1. Similar legislation is being made in England, Scotland and Wales.

11. Additional Information

Not applicable.