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EXPLANATORY MEMORANDUM TO

The Food Information (Amendment No. 2) Regulations (Northern Ireland) 2020

SR 2020 No. 80

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule (SR) is made under Articles 15, 25(3) and 47 of the Food Safety (Northern Ireland) Order 1991, and in relation to regulation 3(3), (5) and (8), by paragraph 1A of Schedule 2 to the European Communities Act 1972. It is subject to the negative resolution procedure.

2. Purpose

2.1. The objective of this SR is to amend the Food Information Regulations (Northern Ireland) 2014 ('the 2014 regulations') to improve the provision of information to consumers for food that is pre-packed for direct sale (PPDS).

2.2. The intended effect of the policy is to reduce the number of allergen-related incidents where the provision of allergen information for PPDS foods is relevant.

2.3. Currently, food businesses can provide allergen information for PPDS foods by any means they choose, including orally by a member of staff.

2.4. This SR places a duty on food businesses to label PPDS foods with the name of the food, full list of ingredients and with allergens emphasised, on the packaging, bringing the provision of allergen information in line with labelling for prepacked food.

3. Background

<u>General background on food hypersensitivity</u>

3.1. Food hypersensitivity is where people adversely react when eating certain foods. It is divided into food allergy and non-allergic food hypersensitivity (food intolerance). In the UK, it is estimated that 1-2% of adults and 5-8% of children have a food allergy. This equates to around 2 million people living in the UK with a food allergy, but this figure does not include those with food intolerances. In addition, it is estimated that 1 in 100 people have coeliac disease, an auto-immune condition which causes damage to the gut lining when gluten is present in food and around ten people in the UK die from allergic reactions to food every year.

3.2. There is no cure for food allergies and intolerances. The only way to manage the condition is to avoid food that makes the person ill. Therefore, it is very important that consumers are provided with accurate information about ingredients in food products and which could cause food allergies or intolerances.

Legislative Background

3.3. The legislative framework around the provision of food allergen information is largely contained in the Food Information to Consumers Regulation (EU) No 1169/2011 (EU FIC). The 2014 Regulations and equivalent regulations in England, Scotland and Wales establish the enforcement measures for the EU FIC in the UK. The EU FIC imposes a duty on food businesses to ensure that all mandatory food allergen information (relating to 14 substances listed in EU FIC that are known to cause allergies) is accurate, available and easily accessible to the consumer. The EU FIC allows member States to make a distinction between prepacked foods and non-prepacked foods in how mandatory allergen information should be provided to consumers.

3.4. Under EU FIC, food which is prepacked, for example a ready meal sold in a supermarket, must be labelled with full ingredients and any of the 14 specified food allergens present must be emphasised. For non-prepacked food the allergen labelling requirements differ. Currently, there are three categories of food where, although allergen information must be available, it is not currently required via labelling with full ingredients and emphasising any of the 14 specified food allergens present. These include, food not packed such as loose items, food packed on the sales premises at the consumer's request and food prepacked for direct sale (PPDS). Which category of non-prepacked food a food falls into depends on whether, where and when it is packed in relation to the point at which it is offered for sale.

3.5. This SR is being made to place a duty on food businesses in Northern Ireland to label PPDS foods with the name of the food and a full list of ingredients, with allergens emphasised, on the packaging. The EU FIC does not provide a specific definition of PPDS, but the FSA has provided guidance which is available to business and local authorities.

Why are the 2014 Regulations being changed?

3.6. A number of fatalities and effects on public health raised the issue of whether the current regulatory framework for the provision of allergen information for PPDS foods was sufficient to give consumers necessary information. It is important that consumers are provided with accurate information about allergenic ingredients in products to allow them to make safe choices.

3.7. In 2018, the conclusion of the Coroner's inquest into the death of a 15-year-old, who died after eating a PPDS sandwich was that allergens on PPDS products were not labelled adequately or clearly on the packaging, and subsequent campaigning by consumers raised the issue of whether the current regulatory framework for the provision of allergen information for PPDS is sufficient to give consumers the information they need to choose the right product for them

3.8. The UK Government: the FSA in Wales, England and Northern Ireland, the Department for Environment, Food and Rural Affairs (Defra); and Food Standards Scotland (FSS) reviewed the current legal framework for allergen information for PPDS foods and agreed change was necessary.

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Consultation

3.9. In January 2019 Defra; FSA in England, Wales and Northern Ireland, and FSS launched a UK-wide consultation seeking views on non-regulatory and regulatory policy options to improve the provision of allergen information to consumers for PPDS foods.

3.10. Four policy options were developed, with the aim to improve the provision of allergen information and were consulted on from 25 January 2019 to 29 March 2019. The options were: promote best practice (no change in law); "ask the staff" labelling on packaging; name of the food and allergens labelling; or name of food, full ingredients list and allergens emphasised.

3.11. The option preferred by most respondents was the last, name of food, full ingredients list and allergens emphasised.

3.12. There were more than 1800 responses to the consultation. The views expressed by respondents in Northern Ireland were generally consistent with overall responses. For more information regarding summary of responses and government response to the consultation, please access the following link: https://www.gov.uk/government/consultations/food-labelling-changing-food-allergen-information-laws/outcome/summary-of-responses-and-government-response.

What is changing?

3.13. In this context, displaying mandatory allergen information means indicating if any of the 14 allergenic substances listed in Annex 2 to Regulation (EU) No 1169/2011 on the provision of food information to consumers are present in a food. The 14 substances listed in the EU FIC are those that are recognised across Europe as the most common ingredients or processing aids causing food allergies and intolerances.

3.14. Once this SR comes into operation, Food Business Operators (FBOs) will no longer be able to choose how to provide mandatory allergen information for PPDS foods. FBOs will be required to provide a full list of ingredients for PPDS foods. From 1 October 2021, all PPDS foods, whether supplied to a final consumer or to a mass caterer, must have the name of the food and a list of ingredients, including allergen information, provided directly on the package or on a label attached to the package.

3.15. The provisions in the 2014 Regulations regarding allergen information in respect of the other two forms of non-prepacked food, namely foods which are loose and those which are packed at the consumer's request, remain unchanged. This SR brings consistency of allergen information between PPDS and prepacked food.

4. Equality Impact

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

5. Regulatory Impact

5.1. Defra completed a UK-wide analysis of the impacts on businesses and local authorities for all the options set out in the consultation. These costs include the cost to businesses and local authorities in familiarising themselves with

the regulations. For those businesses that do not currently label their PPDS products, there will be an initial transitional cost of labelling and then an additional on-going cost for each year. The costs also include the additional enforcement cost for local authorities to account for additional time spent on inspections.

5.2. We have considered a wide range of policy options with stakeholders and can confirm that no potentially viable option has been ruled out of detailed appraisal without substantive reasoning. The policy options for strengthening the UK allergen information provision framework are referred to at point 3.10. Note, that each option was not considered as exclusive; options could be combined, for example, the non-regulatory option could build upon regulatory options in an escalating hierarchy, or different options could be applied to different sizes of businesses in a two-tiered approach.

5.3. Each option considered various measures that could be put in place to alleviate consumer concerns related to allergen information provision on PPDS foods. Options 1 to 4 represented a sliding scale moving from non-regulatory measures to increasingly prescriptive regulatory measures. Option 1 was aimed at raising consumer confidence without regulatory intervention, through encouraging changes to business practices around allergens through guidance and training, and campaigns to raise awareness for allergic consumers. Options 2 to 4 considered leveraging regulatory measures in order to achieve the same objective of improving the provision of information to consumers.

5.4. Option 4 was considered the most appropriate option for improving the provision of information to consumers about food allergens present in PPDS foods, so they have greater confidence in the safety of these foods.

6. Financial Implications

Costs to Government:

6.1. The main costs to Government centre on the development of best practice materials (including new guidance and training materials). There will be costs for district councils in familiarising staff with new technical guidance.

6.2. Costs to district councils:.

We assume that for Option 4, each Environmental Health Officer (EHO) will take five working days[1] (37 hours) to read and familiarise themselves with the new regulations. In addition to this, there will be an additional working day (7.4 hours) per local authority for EHO to reach a consensus on how to proceed with the new legislation.

1 Familiarisation time is based on discussions during our workshops with Local Authorities. They felt that the time stated in the previous impact assessment did not reflect the true nature of their work. All times used in this impact assessment aim to reflect the collective thoughts and views of not only those who attended the workshops but those who responded to our consultation also.

Costs to Business:

6.3. Businesses will also have to familiarise themselves with any new technical guidance, this familiarisation cost will be significantly larger than that on Government.

For option 4 we assume[2] that for small and micro businesses it would take one member of staff one working day (7.4 hours) to read and familiarise themselves with new legislation. For medium and large businesses, we assume that it will take one member of staff 1.5 working days (11.1 hours) to read and familiarise themselves with new legislation. In addition, we have assumed that there will be an additional hour of familiarisation cost (per outlet) to reflect the need to disseminate any new understanding/knowledge to other members of staff.

6.4. No specific action has been taken to minimise regulatory burdens on small businesses (employing up to 50 people).

6.5. Based on consultation responses and stakeholder workshops, we considered options and impacts for specifically supporting small businesses, such as having a two-tiered approach allowing SMEs to label their food to a lower level of detail than medium and large businesses or a phased implementation. On balance consistency of policy across all business sizes was seen to outweigh other issues. Stakeholders said they wanted to be held to the same standards as large business to reduce the risk of consumer confusion, otherwise consumers might interpret no, or different, allergen information on PPDS labels as meaning food does not contain allergens. Consumer confusion is what we are aiming to address and creating another set of exemptions would reduce the impact of this SR. SMEs do not want to appear to have lower standards than medium and large businesses and any exemption could be perceived this way by consumers. Businesses will be supported by district councils and the FSA throughout the implementation period, with specific advice for SMEs.

7. Section 24 of the Northern Ireland Act 1998

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

8. EU Implications

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

9. Parity or Replicatory Measure

9.1. Similar regulations have been made in England and Wales and will be made in Scotland in due course.

10. Additional Information

10.1. Not applicable

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2 Our assumptions for time spent for familiarisation are based on discussions with businesses during our stakeholder workshops, as well as consultation responses received. The additional time required compared to Option 3, is due to the addition of different requirements in terms of information that businesses will need to provide and that they will need to assess.