

## **EXPLANATORY MEMORANDUM TO**

### **The Food (Miscellaneous Amendments) (Wales) Regulations 2013**

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 (Miscellaneous Amendments) (Wales) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Mark Drakeford AM

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

3 December 2013

## **EXPLANATORY MEMORANDUM TO**

### **The Food (Miscellaneous Amendments) (Wales) Regulations 2013**

#### **1. Description**

The Food (Miscellaneous Amendments) (Wales) Regulations extend certain transitional measures under EU law and to capture minor technical amendments related to other regulations in one Statutory Instrument.

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

None

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

The Regulations (except for the regulation amending the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013 are made in exercise of the powers conferred on the Welsh Ministers by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972. For the purposes of that section:

(a) the National Assembly for Wales was designated in relation to measures relating to food (including drink) including the primary production of food by the European Communities (Designation)(No.2) Order 2005 (functions of the National Assembly for Wales were transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006); and

(b) the Welsh Ministers were designated in relation to the veterinary and phytosanitary fields by the European Communities (Designation)(No.2) Order 2008.

The Welsh Ministers' powers to amend the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013 are conferred by sections 27(2) and (5), 30(9) and 31(1) of the Food Safety Act 1990. Those powers were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, as read with section 40(3) of the Food Standards Act 1999, and subsequently transferred to the Welsh Ministers by 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**

##### **Regulation (EU) 702/2013 and Regulation (EU) 1079/2013**

Regulation (EU) 702/2013 and Regulation (EU) 1079/2013, continue transitional measures for the application of Regulations (EC) 852/2004, 853/2004 and 854/2004 which lay down the rules for food hygiene and official controls for products of animal origin.

Regulation (EU) 702/2013 refers to a derogation (or exemption from a rule or law) related to the accreditation conditions for laboratories that carry out testing for *Trichinella* (a parasite found in pigs, wild boar, horses or game) on samples taken as part of Official Controls.

Regulation (EU) 1079/2013 refers to derogations concerned with specific conditions related to:

- Direct supply of small quantities of meat from poultry and lagomorphs (rabbits and hares)
- Health conditions for imports of products of animal origin
- Procedures concerning imports of products of animal origin

The Regulations replace certain provisions of EU Regulation 1162/2009, in which the transitional measures were made until 31 December 2013.

Regulation (EU) 702/2013 and Regulation (EU) 1079/2013 extend the transitional measures until 31 December 2016.

##### **Amendment to section 9(5)(a) of the Food Safety Act 1990**

In drafting the Food (Safety and Hygiene) Regulations (England) 2013, lawyers identified an inconsistency in a 2006 amendment to the General Food Regulations 2004 (as amended) in which the reference to “regulation **4(a)** of the General Food Regulations 2004” in section 9 of the Food Safety Act should have been changed to refer to regulation **4(b)**.

This defect is minor and technical in nature. It has only recently come to light and does not appear to have caused any practical enforcement problems.

## **Amendment to Food Safety (Sampling and Qualifications) (Wales) Regulations 2013**

Regulation 5 of the Food Safety (Sampling and Qualifications) (Wales) Regulations 2013 provides that a person shall be qualified as a food examiner if that person “possesses a qualification listed in Part 1 of Schedule 2” (of the regulations)

Item 5 of part 1 of schedule 2 is “Fellowship or Membership of the Institute of Food Science and Technology together with membership of its Professional Food Microbiology Group”.

The Professional Food Microbiology Group no longer exists and the schedule needs to be amended to reflect this.

Fellowship or Membership of the Institute of Food Science and Technology is sufficient to qualify a person as a food examiner.

### **5. Consultation**

Article 9 of Regulation 178/2002 states

“There shall be open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it.”

Regulation (EU) 1079/2013 was published on October 31 2013. It requires that the transitional measures be continued from 1 January 2014. It is considered that this fulfils the criteria of “urgent” contained in Regulation 178/2002.

For the above reasons a formal consultation has not been held on these measures.

### **6. Regulatory Impact Assessment**

There are no costs or other impacts associated with any of these measures, and none requires any familiarisation by food businesses or enforcers and, therefore, an Impact Assessment will not be prepared.