

EXPLANATORY MEMORANDUM TO

The Products Containing Meat etc. (Wales) Regulations 2014

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 Products Containing Meat etc. (Wales) Regulations 2014. I am satisfied that the benefits outweigh any costs.

Mark Drakeford AM

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

19 November 2014

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1. Description

The Products Containing Meat etc. (Wales) Regulations 2014 (“PCM 2014”) will carry on national compositional requirements contained within the Meat Product (Wales) Regulations 2004 (“MPR 2004”), removing instances where the requirements would not be compliant with EU Regulation 1169/2011 on the provision of food information to consumers (“EU FIC”).

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

It has been suggested by legal advisers for the National Assembly for Wales that a Merit Report may be raised regarding the absence of the terms “hot dog” or “hot dogs” from the reserved descriptions in Schedule 2.

The terms “hot dog” or “hot dogs” can refer to a number of different products, referring either to the entire product including a bread bun and any condiments, or just to the filling.

Mechanically separated meat (MSM), defined in EU Regulation (EU) 853/2004 as “the product obtained by removing meat from flesh-bearing bones after boning or from poultry carcasses, using mechanical means resulting in the loss or modification of the muscle fibre structure”, may not be counted in the calculation of meat content for any product. A “hot dog”, for which there is no reserved description, may contain MSM and meat in a proportion that would not meet the compositional requirements for a “sausage”.

There has been no indication in any response from the food industry or food law enforcement that there is any requirement to extend the reserved descriptions beyond those already contained in the Meat Products Regulations 2004.

Other parts of the UK are not seeking to extend the range of reserved descriptions to include any additional terms (including “hot dog”). Were compositional requirements to be introduced only in Wales, this has the potential to disproportionately impact on businesses in Wales, and create trade barriers within the UK

National compositional requirements are required to be notified to the European Commission under Directive 98/34/EC. A three or six month “standstill” period is then required for other Member States to raise any queries or objections. This has already been carried out for the reserved descriptions in PCM 2014. If we were to seek

additional reserved descriptions for Wales only, these would be the subject of additional notification, which would require an additional three to six month “standstill” and would mean that all of the current reserved descriptions would cease to apply on 13 December, when the Meat Products (Wales) Regulations 2004 are revoked. Such a technical notification would have to be submitted through the UK competent authority, which for compositional labelling is the UK Government Department for the Environment Food and Rural Affairs (Defra).

3. Legislative Background

The Regulations are made in exercise of the powers conferred on the Welsh Ministers by sections 4(1), (2), (3), (4), and 8 and 10 of the Healthy Eating in Schools (Wales) Measure 2009 and sections 16(1)(e) and (f), 17, 26(1) and (3) and 48(1) of the Food Safety Act 1990. The functions in the Food Safety Act 1990 so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 and subsequently transferred to the Welsh Ministers by virtue of section 162 and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32)

This instrument is subject to the negative procedure.

4. Purpose and Intended Effect of the Legislation

The objective of the Regulations is to replace the existing MPR 2004 with the PCM 2014 and to carry over the provisions of two of the existing regulations.

Reserved descriptions

These set minimum meat contents for meat products made and sold in Wales using specific names (i.e. burgers, chopped meat, corned meat, luncheon meat, pies, puddings, pasties, bridies, sausage rolls and sausages).

Parts of the carcass that cannot be used in uncooked meat products

This regulation ensures that the following are not used in uncooked meat products: brains, feet, large intestine and small intestine (with the exception for sausage skin), lungs, oesophagus, rectum, spinal cord, spleen, stomach, testicles and udder. This regulation serves to maintain certain quality levels for products that will be ‘handcooked’ to varying standards.

Added ingredients in the name of the food

The regulation on added ingredients in MPR2004 is not being taken forward in the PCM 2014 as the most important aspects of it are covered by the EU FIC.

5. Consultation

FSA Wales held a public consultation exercise, which ran from 23 January to 16 April 2014.

Three responses were received, from Which?, British Meat Processors Association (BMPA) and Hybu Cig Cymru.

All three responses supported the retention of the reserved descriptions.

The BMPA response questioned the need for regulation on the prohibited parts of carcass, suggesting that the measure would generally be implemented by industry in any case. The other two responses recognised that this measure helped maintain the standards that consumers expect from products containing meat.

The Regulations will make use of civil as opposed to criminal sanctions through the use of Improvement Notices. All three responses recognised the value of this graduated enforcement approach, although one questioned the perception that might be drawn from removing the criminal offence of breaching the regulations, rather than making the offence a breach of an Improvement Notice under the regulations.

There was concern in the Which? response about the loss of the requirement to include any added ingredient from another species in the name of a food containing meat. The FSA recognises this concern, but this area is now a matter falling within Regulation (EU) 1169/2011 on the provision of food information to consumers, which is implemented in Wales by The Food Information (Wales) Regulations 2014, and is the subject of ongoing discussion in the EU.

The Which? and BMPA response were also sent to Defra, which leads on food labelling matters in England, as part of the England consultation. In addition, all respondents that expressed a preference supported retention of the reserved descriptions; there was support for the BMPA position on prohibited parts of carcass from one response, provided by an industry body, EBLEX (the organisation for beef and lamb levy payers in England), but four others from the industry and enforcement sectors supported retention of this provision.

No responses sought to extend the list of reserved descriptions beyond those included in the Meat Products (Wales) Regulations 2004.

6. Regulatory Impact Assessment

Costs:

To industry:

Industry would incur the costs of familiarisation with the new PCM 2014 Regulations. We assume this takes one production manager in each Food Business Operator (FBO) one hour. The following table captures the summary of the familiarisation costs that result from carrying out this option.

The FBO's that will need to become familiar with the new regulations are assumed to be:

- Processing and preserving of meat and production of meat
- Processing and preserving of poultry meat
- Processing of Meat and Poultry Meat products
- Manufacturers of Prepared Meals and Dishes
- Wholesalers of Meat and Meat Products
- Retailers of meat and meat products in specialised stores

The estimates for the number of FBO's are taken from Annual Business Survey data, provided by the Office of National Statistics (ONS). The estimated costs to businesses (and enforcers) are set out below, in Table 1.

Table 1: Familiarisation costs.

	Number	Wage Rate (including OH)	Familiarisation Cost
Affected Businesses	510	£25.8	£13,158
LAs in Wales	22	£18.6	£409
Total			£13,567

The retaining of reserved descriptions would entail no change and therefore there are no additional costs from retaining Regulation 4 of MPR 2004.

The introduction of FIC means that certain products will need to be re-labelled. For example, products that had previously included between 5% and 10% added water will now have to include a 'with added water' description in the product name unless they choose to reformulate their product. Such changes are not assessed here as they are the result of the introduction of the directly applicable EU FIC rather than retaining Regulation 5 of MPR 2004.

The retaining of the ban on the inclusion of certain parts of the carcass in uncooked meat products would entail no change to the existing Regulations; therefore there are no additional costs from retaining Regulation 6 of MPR 2004.

To Government:

Local authorities will need to become familiar with the updated Regulations for enforcement purposes. It is estimated that it would take one Trading Standards officer, one hour to read and become familiar with the revised Regulations and disseminate them to the staff. The average hourly wage rate for *Inspectors of standards and regulations* is assumed to be £18.6 per hour¹ (including being uprated by 30% to account for non-wage labour costs and overheads, in accordance with the standard cost model²). The total cost to Welsh local authorities is estimated at approximately £409.

To consumers:

There are no costs to consumers in this option (relative to the baseline).

Benefits:

To industry:

Relative to the current Regulations, the only regulatory change to be assessed is the move to a different enforcement regime. The broad benefit to the industry in moving from the current frontline criminal sanctions regime to a new regime is that in the proposed regime, enforcement will be carried out by way of an Improvement Notice, followed up by a criminal offence in cases where businesses continue to ignore the notice. This may give FBOs a better chance to put things right before the matter comes before a criminal court.

The industry will benefit from reduced costs resulting from fewer prosecutions in a system where Improvement Notices will precede any legal prosecution. In an ordinary case, criminal prosecution will result only if the business in receipt of the Improvement Notice does not comply with the notice either from the outset or if, following an unsuccessful appeal against the notice to the Magistrate's Court, they continue to fail to comply with the notice.

To Government:

There is a potential benefit to Government in terms of moving from the current frontline criminal sanctions regime to the new Improvement Notice regime. It is anticipated that the gains will originate from reduced court costs as the number of hearings will be reduced as issues will be resolved through issuing Improvement Notices, and the time saved to enforcement officers in resolving the issues more quickly instead of preparing for a court case. However, this benefit is likely to be relatively small given that very few criminal prosecutions are believed to have been taken in connection with the contravention of the MPR 2004. The current statutory

¹ 2012 Annual survey of Hours and Earnings

² www.berr.gov.uk/files/file44503.pdf, www.statistics.gov.uk/downloads/theme_labour/ASHE-2009/2009_occ4.pdf

maximum penalty for breach of an Improvement Notice is £5,000 but this is subject to change.

To consumers:

There are no benefits to consumer in this option (relative to the current Regulations).

Assumptions:

Regulation 6 of the MPR 2004 is not currently subject to a mutual recognition clause and therefore should have applied to uncooked meat products imported into Wales, as well as those produced here. This is inconsistent with European regulations on free movement of goods. PCM 2014 will apply a mutual recognition clause.

There are no costs related to this change, as prohibitions on carcass parts for imported meat products are not thought to have required enforcement action.