

Explanatory Memorandum to the Food Hygiene (Wales) (Amendment) Regulations 2016

This Explanatory Memorandum has been prepared by the Food Standards Agency 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, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food Hygiene (Wales) (Amendment) Regulations 2016

Rebecca Evans
Minister for Social Services and Public Health

19 August 2016

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1. Description

These Regulations replace references in the Food Hygiene (Wales) Regulations 2006 to the now-repealed Regulation (EC) No. 2075/2005 with references to Commission Implementing Regulation (EU) No. 2015/1375 laying down specific rules on official controls for *Trichinella* in meat (“the new Commission Regulation”). The Regulations also remove the references in the Food Hygiene (Wales) Regulations 2006 to Regulation (EU) No. 1109/2011, which had amended the Annex to Regulation (EC) No. 2075/2005. The new Commission Regulation came into force in August 2015, consolidated the *Trichinella*-related EU law provisions in one Regulation, and repealed Regulation (EC) No. 2075/2005 as amended. The new Commission Regulation also re-enacts two flexibilities in relation to *Trichinella* testing which had originally been included in Commission Implementing Regulation (EU) No. 1114/2014; the first allows horse carcasses to be cut into a maximum of six parts in slaughterhouses or in a cutting plant on the same premises pending results from *Trichinella* testing. The second is the introduction of an additional testing method for *Trichinella* in domestic swine.

2. Matters of Special Interest to the Constitutional Affairs Committee

Paragraph 2 of Schedule 2 of the 1972 Act provides a choice whether to use the affirmative or negative procedure. Minister for Social Services and Public Health is of the view that the Regulations should follow the negative procedure as the Welsh Ministers are only providing for the effective enforcement of the EU Regulation, and have no discretion as to the substantive rights and obligations imposed by the new Commission Regulation, which is directly applicable.

3. Legislative Background

In June 2015 the Commission put forward a proposal that Regulation (EC) 2075/2005 and all of its amendments go through a codification process in order to create a new Regulation that consolidates the previous version and all of its amendments. The new Commission Regulation, which repealed Regulation (EC) No. 2075/2005 as amended, came into force in August 2015.

The powers enabling this instrument to be made by the Welsh Ministers are those in section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 (“the 1972 Act”).

The Welsh Ministers are designated for purposes of section 2(2) of the 1972 Act in relation to measures relating to food (including drink) including the primary production of food. The relevant designation order is the European Communities (Designation No.2) Order 2005/1971, which conferred functions on the National Assembly for Wales. Those functions were transferred to the Welsh Ministers by paragraphs 28 and 30 of Schedule 11 to GOWA 2006.

These Regulations are made using the negative resolution procedure.

4. Purpose and Intended Effect of the Legislation

These Regulations replace references in the Food Hygiene (Wales) Regulations 2006 to the now-repealed Regulation (EC) No. 2075/2005 with references to the new Commission Regulation. The Regulations also remove references in the Food Hygiene (Wales) Regulations 2006 to Regulation (EU) No. 1109/2011, which had amended the Annex to repealed Regulation (EC) No. 2075/2005.

The new Commission Regulation repealed Regulation (EC) No. 2075/2005 as amended and consolidated the provisions at EU level that have applied since 2005 remaking them in the new codified Commission Regulation.

This codification includes minor changes to the specific rules on the controls for *Trichinella* that were initially made in Commission Implementing Regulation (EU) 1114/2014. These changes introduced two new flexibilities; the first allows horse carcasses to be cut into a maximum of six parts in slaughterhouses or in a cutting plant on the same premises pending results from *Trichinella* testing. The second is the introduction of additional testing method for *Trichinella* in domestic swine.

5. Consultation

The Food Standards Agency carried out a shortened six-week consultation that ran from the 25 January to 7 March 2016. There were no responses to the consultation in Wales.

6. Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared to accompany these Regulations as it consolidates existing legislation, the latest of which was the subject of a full assessment in 2014, and does not change the requirements. As the interpretation of the Regulation remains the same and the flexibilities have no negative impact on UK practices, a further Regulatory Impact Assessment is therefore not required.