

Explanatory Memorandum to the Nutrition and Health Claims (Wales) (Amendment) Regulations 2010

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 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Nutrition and Health Claims (Wales) (Amendment) Regulations 2010. I am satisfied that the benefits outweigh any costs.

Gwenda Thomas

Deputy Minister for Social Services, under authority of the Minister for Health and Social Services.

19 July 2010

Description

1. The instrument amends national Regulations, which provide for the execution and enforcement of a European Union (EU) Regulation on nutrition and health claims made on foods, to make an ambulatory reference to the Annex to the EU Regulation which lists permitted nutrition claims and conditions relating to their use. An ambulatory reference will allow the 2007 Regulations (as then amended) to be read as if therein to the Annex to be EU Regulation are references to the Annex as amended from time to time.

Matters of special interest to the Constitutional Affairs Committee

2. None.

Legislative Background

3. Nutrition claims that can be made for foods (e.g. “low fat”, “high fibre” etc.) are regulated in the EU under Regulation (EC) No. 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (‘Regulation 1924/2006’) which is directly applicable in EU Member States. Permitted nutrition claims and conditions for their use are set out in the Annex to Regulation 1924/2006.
4. The Nutrition and Health Claims (Wales) Regulations 2007 (SI 2007/2611 (W.222)) (‘the national Regulations’) provide for the execution and enforcement of Regulation 1924/2006 in Wales.
5. The instrument amends the national Regulations to provide for the execution and enforcement, in Wales, of the revised Annex to Regulation 1924/2006 (to which a further five claims have been added) and for any future amendments to the Annex.

Purpose and Intended effect of the legislation

6. A draft European Commission Regulation intended to add five nutrition claims (“source of omega-3 fatty acids”; “high omega-3 fatty acids”; “high monounsaturated fat”; “high polyunsaturated fat” and “high unsaturated fat”) to the list of permitted nutrition claims set out in the Annex to Regulation 1924/2006 was considered by the General Food Law Section of the European Standing Committee on the Food Chain and Animal Health (SCoFCAH) at its meeting on 1 October 2009.
7. Member States voted in favour of the draft Commission Regulation which then went forward, under the European ‘regulatory procedure

with scrutiny', for consideration by the European Parliament and the Council. The draft Commission Regulation completed the scrutiny process, was published on 10 February 2010 as Regulation (EU) No. 116/2010 amending Regulation (EC) No. 1924/2006 of the European Parliament and of the Council with regard to the list of nutrition claims (OJ No. L37, 10.02.2010, p.16) ('Regulation 116/2010') and came into force on 1 March 2010.

8. An amendment to the national Regulations is necessary to provide for the execution and enforcement of Regulation 1924/2006 as amended by Regulation 116/2010. However, in the interests of simplification and better regulation, it is desirable to avoid the need to make national legislation each time further amendments are made to the list of nutrition claims in the Annex to Regulation 1924/2006, simply to provide for the execution and enforcement of the Regulation in its amended form.
9. The instrument therefore amends the national Regulations to make an ambulatory reference to the Annex to Regulation 1924/2006, in exercise of the power to make ambulatory references provided by paragraph 1A of Schedule 2 to the European Communities Act 1972. This provides for the execution and enforcement of Regulation 1924/2006 as amended by Regulation 116/2010 and any future amendments to the list of nutrition claims in the Annex to Regulation 1924/2006, without the need for further national legislation.
10. Parallel legislation will be made in England, Scotland, and Northern Ireland.

Consultation

11. The Food Standards Agency in Wales carried out a 12 week public consultation on the draft Regulations which ran from 4 January to 29 March 2010. A list of those consulted can be found at Annex 1. Parallel consultations were conducted in England, Scotland and Northern Ireland.
12. Stakeholders including consumer and health professional groups, manufacturers and food industry bodies, enforcement bodies, individuals and government departments were consulted. The consultation package was also posted on the Agency's website.
13. A total of 14 responses to the consultation were received UK wide. One response was received in Wales from Hybu Cig Cymru. All 14 responses broadly supported the proposed amendment to national regulations.
14. The preferred option set out in the consultation was to make an ambulatory reference to the nutrition claims in the Annex to Regulation 1924/2006 via an amendment to the national Regulations that referred to Regulation 1924/2006 in its entirety. Although no consultee

commented adversely on this proposal, it was considered on further reflection that a more precise reference to the Annex to Regulation 1924/2006 would be preferable as this would achieve the desired policy objective whilst providing greater legal certainty. A summary of consultation responses, which includes a description of the modification made to the instrument detailed above, has been published on the Food Standards Agency's website.

Regulatory Impact Assessment

15. **The impact on business, charities or voluntary bodies and the public sector is neutral.** The instrument makes a technical amendment to the national Regulations which will not place any additional burdens on stakeholders, other than the one-off impact associated with being aware of, and becoming familiar with, the amendment, and its effect on the national Regulations. A Regulatory Impact Assessment has therefore not been prepared.