

Explanatory Memorandum to The Food (Suspension of the Use of E 128 Red 2G as Food Colour) (Wales) (No 2) Regulations 2007

This Explanatory Memorandum has been prepared by the Food Standards Agency Wales and is laid before the National Assembly for Wales.

(i) Description

This Statutory Instrument revokes and replaces The Food (Suspension of the Use of E 128 Red 2G as Food Colour) (Wales) Regulations 2007 (SI. 2007/2288 (W.178), which came into force on 3 August 2007. It corrects drafting errors in the text of the Regulations, which unfortunately had not previously been identified. In particular, the reference to the Commission Regulation suspending the use of the colour E128 Red 2G in food was incorrect. Additionally, two minor points of clarification amendments are considered necessary. These errors necessitate the urgent revocation and replacement of The Food (Suspension of the use of The Food (Suspension of the Use of E128 Red 2G as Food Colour) (Wales) Regulations 2007. I

(ii) Matters of special interest to the Subordinate Legislation Committee

These Regulations breach the 21 day rule. The Food Standards Agency considers this necessary under the circumstances, because the Commission Regulation associated with these Regulations (as to which see further below) contains emergency controls and came into effect on 28 July - the day following its publication in the Official Journal of the European Communities. Parallel regulations have, been made in England, Scotland and Northern Ireland coming into force on 2 and 3 August respectively. The Minister for Assembly Business and Communications has written to the Presiding Officer alerting him to the breach.

(iii) Legislative Background

The powers enabling this instrument to be made are contained in section 2(2) of the European Communities Act 1972. They have been designated by virtue of the European Communities (Designation) (No 2) Order 2003 (SI 2003/1246) to Welsh Ministers in respect of measures in veterinary fields for the protection of public health. This Instrument is subject to the negative resolution procedure.

(iv) Purpose and intended effect of the legislation

The Food (Suspension of the Use of E 128 Red 2G as Food Colour) Wales) Regulations 2007 are being made to provide enforcement measures in respect of Commission Regulation (EC) No. 884/2007 (OJ of the EU L195/8). Commission Regulation calls for emergency measures suspending the use of E 128 Red 2G as a food colour.

Until now, under Directive 94/36/EC, Red 2G has been permitted for use in breakfast sausages with a minimum cereal content of 6% and burger meat with a minimum vegetable and/or cereal content of 4%. The Commission Regulation suspends: the use of the colour E128 Red 2G in food; the placing

on the market of food containing the colour E128 Red 2G; and the import of food containing the colour E128 red 2G.

The decision to suspend Red 2G was taken as a result of EFSA's recent opinion, which showed that E128 Red 2G may have the potential to damage the genetic material in cells and cause cancer in animals. The opinion by EFSA is the first one in a re-evaluation process of all food additives, which gives priority to food colours as they were among the first food additives to be evaluated under European legislation.

The domestic legislation is now being amended to correct the following errors:-

Section 2 and elsewhere- delete reference to Commission Regulation (EC) No. 844 and replace with Commission Regulation (EC) No. 884

Section 2 (1) Insert section 5 (1A) when referring to the definition of food authority as defined in the Food Safety act 1990

Section 2 (2) delete the reference to section 7 of the Public Health (Control of Disease) Act 1984

(iv) Implementation

It is intended that these Regulations be made on 6 August 2007 and should come into force on 7 August 2007. If Wales did not implement this Regulation it would be in breach of a Community requirement. In addition, the risk of not implementing the legislation with immediate effect in Wales could result in accusations that the consumer in Wales is not afforded the same level of public protection to consumers elsewhere in the UK. Parallel legislation has been introduced in England and came into force on 2 August. Parallel legislation has also been made in Scotland and Northern Ireland and came into force on 3 August 2007.

(v) Consultation

Whilst no formal public consultation has taken place because of the need to act quickly to protect public health, the Food Standards Agency met with key stakeholders to determine current use of Red 2G in the UK and also gave them the opportunity to comment on key aspects of the draft Commission Regulation. Additionally interested parties, in Wales, have been informed of the impact of Commission Regulation (EC) No. 884/2007.

(vi) Regulatory Impact Assessment

A Regulatory Impact Assessment is included in this Explanatory Memorandum.

(vii) **Contact details**

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Regulatory Impact Assessment

(ix) **Options**

Option 1: Do nothing.

Option 2: Put in place the domestic regulations which provide for the execution and enforcement of the Commission Regulation.

(x) **Costs and benefits**

Sectors and groups affected

Food producers manufacturing or importing those specific categories of sausages and burgers are affected. Also companies manufacturing or importing seasonings containing Red 2G to be used for the manufacture of these products (as seasonings with Red 2G have no alternative use). Companies which manufacture or import Red 2G, though there are alternative industrial uses for this colour. We consider the proposal will have no impact on racial equality, social or environmental issues.

(xi) **Benefits**

Option 1 provides no incremental benefit; doing nothing provides no consumer protection because the requirements of the Commission Regulation cannot be enforced.

Option 2 provides consumer protection by allowing for enforcement and sanctions if Red 2G is used in food.

(xii) **Costs**

Option 1

Doing nothing would mean the UK would be unable to fulfil its Community obligation to enforce the Commission Regulation. This will leave the UK open to infraction proceedings by the Commission for failing to comply with these requirements.

Option 2

There will be costs to producers of the affected types of sausages and burgers who continue to hold stock of seasoning containing Red 2G, as well as to seasoning manufacturers. The producers will not be able to use any remaining stock of seasonings containing Red 2G, or any stock of packaging/labelling referring to Red 2G. There may be a short period of disruption to production as a company arranges a replacement seasoning mix which does not contain Red 2G. Seasoning manufacturers will lose the value of any seasoning stock held, along with any stock of packaging/labelling referring to Red 2G. There may also be a short disruption to their supply of seasonings to customers as they arrange for an alternative food colour to be used.

Irrespective of which regulatory option is chosen there may still be costs because many consumers will wish to avoid food products containing Red 2G, so there will be no market for the products. Retailers may wish to return products already supplied and request alternatives. Off-setting some of these costs, some companies may be able to make an insurance claim.

(xiii) Competition Assessment

The Regulation will apply uniformly across all food producers, so we do not envisage any impact on competition. The Agency understands that alternative red food colouring agents exist for those food producers to whom this colour is important.

(xiii) Consultation

Within Government

The Food Standards Agency (FSA) has sole policy responsibility for ensuring food safety.

Public consultation

FSA consulted key stakeholders concerning the Commission Regulation. FSA officials met with key stakeholders on 10 July, the day after the EFSA announcement. Ahead of a meeting of SCOFCAH on 20 July, FSA informed stakeholders of the significant points proposed for inclusion in a Commission Regulation, giving them the opportunity to provide feedback. The Agency has also received information in the course of phone conversations with affected stakeholders. Industry confirmed that Red 2G is used in a small percentage of burgers and sausages on sale in the UK. They also noted that some companies manufacture seasonings to be sold to producers of sausages and burgers who then use this as one of their ingredients; Red 2G is included in the seasoning mixture.

(xiv) Summary and recommendation

For the reasons set out above, the Welsh Assembly Government considers that the right option is Option 2, as reflected in the Food (Suspension of the Use of E 128 red 2G as a Food Colour) (Wales) (No 2) Regulations 2007.

