

Proposed Domestic Regulations to Implement Regulation (EU) 2018/775 on the rules for indicating the country of origin or place of provenance of the primary ingredient of a food

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Who will this consultation be of most interest to?

- Food Businesses, where the food business operator provides the country of origin or the place of provenance of a food, and where this differs from the origin/provenance of the food's primary ingredient;
- Food industry representative bodies;
- Enforcement authorities;
- Any other organisation or person wanting to know more about the forthcoming Statutory Rule.

What is the subject of this consultation?

The FSA in Northern Ireland is planning to introduce a Statutory Rule to provide for the enforcement of the directly applicable EU Implementing Regulation 2018/775 (the IR), laying down rules for the application of Article 26(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as regards the rules for indicating the country of origin or place of provenance of the primary ingredient of a food.

The IR applies across the EU from 1st April 2020.

What is the purpose of this consultation?

To seek comments from industry, enforcement authorities, consumers and other interested stakeholders on a proposed Statutory Rule that will provide for enforcement for Implementing Regulation (EU) 2018/775 on the rules for indicating the country of origin or place of provenance of the primary ingredient of a food.

If you would prefer to receive future FSA consultations by e-mail, or if you no longer wish to receive information on this subject, please notify the named person in this consultation.

Responses to this consultation should be sent to:

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Is an Impact Assessment included with this consultation?

Yes

No See section on Impacts for reason.

Proposed Domestic Regulations to implement Regulation (EU) 2018/775 on the rules for indicating the country of origin or place of provenance of the primary ingredient of a food.

Introduction

1. Implementing Regulation (EU) No 2018/775 EU Regulation builds on the general country of origin requirements in the EU Food Information to Consumer Regulation (EU) No 1169/2011. Article 26 (3) of Regulation (EU) 1169/2011 foresees the adoption of implementing acts in cases where the country of origin or the place of provenance of a food is given and where it is not the same as the primary ingredient. Implementing Regulation 2018/775 sets out rules on how to apply the provision laid down in Article 26 (3) 1169/2011.
2. The Food Standards Agency in Northern Ireland is in the process of drafting a Statutory Rule to give provision for the enforcement of Commission Implementing Regulation (EU) No 2018/775, which lays down detailed rules on the provision of Food Information to Consumers, indicating the country of origin or place of provenance of a primary ingredient when it is different than the given origin of the food itself.
3. The proposed enforcement approach will provide for the use of 'Improvement Notices' backed up, where necessary and in the case of failure to comply, by criminal offences. This approach is aligned with existing Statutory Rules in Northern Ireland, which also provide enforcement for Regulations under Article 26 (3) of the (EU) 1169/2011 Regulation on the Provision of Food Information to Consumers (FIC).

Detail of Consultation

4. We would welcome your comments on our proposal to draft a Statutory Rule for enabling and enforcing Implementing Regulation (EU) 2018/775 in Northern Ireland.

5. We would welcome comments on our proposal that these new rules should be enforced by means of 'Improvement Notices' backed up, where necessary and in the case of failure to comply, by criminal offences.

Background

6. Implementing Regulation (EU) 2018/775 on the labelling of origin of primary ingredients where this is not the same as that of the food itself was introduced in September 2018 and applies in the EU from 1st April 2020. Due to uncertainty around the UK's exit over the last year, particularly the terms under which we would exit the EU, the necessary legislation to bring effect to Implementing Regulation (EU) 2018/775 has not been yet introduced in any of the four UK nations.
7. EU Implementing Regulations remain directly applicable across the UK, during the transition period, to 31 December 2020. This means that food businesses are legally required to comply with the requirements laid down by Implementing Regulation (EU) No 2018/775. Therefore, we will need to adopt domestic legislation to enforce Implementing Regulation (EU) No 2018/775 from the 1st April 2020.
8. In 2011 the EU brought in new harmonised legislation Regulation (EU) 1169/2011 on food information and labelling. Article 26 of this Regulation establishes general rules regarding the mandatory and voluntary indication of the country of origin or place of provenance of foods. If information presented on the label implied that the product is from a different country than the food's country of origin, mandatory labelling of the food's country of origin would be required as to not mislead the consumer. As an example, a croissant with a picture of the Eiffel tower on its packaging produced in the UK would have to display the name of the UK as its country of origin.
9. According to Regulation (EU) 1169/2011 the country of origin or place of provenance of a food is given by any means such as statements, pictorial presentation, symbols or terms, referring to places or geographical areas. Geographic terms, included in customary and generic names, where those terms literally indicate origin but are widely known to the consumer as not the country of origin or place of provenance of a food are exempted. Examples include: New York Bagels, Black Forest Cake and Thai Curry Sauce.
10. Article 26 (3) also stipulates that where a food's origin is given and that origin is not the same as that of a primary ingredient, the origin of the primary ingredient should be also given or indicated to be different. This does not apply to geographical indications, nor registered trademarks where the latter constitute an origin indication, pending the adoption of specific rules concerning the application of Article 26 (3) to such indications.
11. Article 2(2)(q) of Regulation (EU) 1169/2011 states that a 'primary ingredient' means an ingredient or ingredients of a food that represent more than 50 % of that food or which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required.
12. Implementing Regulation 2018/775 sets out rules on how to apply the provision laid down in Article 26 (3) 1169/2011 and lays down rules on how the origin of the

primary ingredient, if different from the given origin of the product, should be indicated and presented.

13. These requirements are to apply from 1 April 2020. Foods placed on the market or labelled prior to the date of application of this Regulation may be marketed until the stocks are exhausted.

Enforcement

14. Failure to introduce enforcement provisions for Implementing Regulation (EU) No 2018/775 could result in infraction proceedings against the UK. The proposed Statutory Rule to implement Implementing Regulation (EU) 2018/775 will enable the enforcement authorities in Northern Ireland to take action if the country of origin or place of provenance of the primary ingredient of a food is not provided when required.
15. The proposed Statutory Rule for Implementing Regulation (EU) 2018/775 intends to follow the same approach to enforcement as is taken in FIR and the Country of Origin of Certain Meats Regulations (Northern Ireland) 2015 which will be via an 'Improvement Notice'. This would be used as part of the hierarchy of enforcement when informal measures are no longer appropriate, and the labelling contravention or issue should be elevated to formal enforcement action. If the conditions set by an improvement notice are not met, then the non-compliance with those conditions will be a criminal offence.

Impacts

16. This consultation focuses on the development of a Regulation to provide provision for enforcement of Implementing Regulation 2018/775, which is a directly applicable European Regulation, with no national measures.
17. The FSA assessment identified few direct impacts on businesses from the implementation of the proposed Statutory Rule in Northern Ireland, and those impacts are not considered to be significant. This is largely as the changes result from the overarching principles of EU Regulation 1169/2011, to which the UK has already aligned, as well as the directly applicable Implementing Regulation 2018/775.
18. In terms of the impact of this proposed Statutory Rule for Implementing Regulation (EU) 2018/775, there are 11 District Councils in Northern Ireland who will enforce this legislation. The FSA envisages minimal one-off familiarisation costs to read and familiarise themselves with the EU Regulations and then disseminate to enforcement officers.
19. An impact assessment has not been produced for this SI, providing the execution of powers and enforcement, as no significant impacts other than familiarisation costs were identified.

Options being considered

20. There are two proposals being considered:
 - (a) Option 1 – Do nothing. This means that the directly applicable European Regulation cannot be fully enforced.

- (b) Option 2 – Provide for the enforcement of Implementing Regulation (EU) 2018/775 in relation to the rules by way of ‘Improvement Notices’ backed up, where necessary and in the case of failure to comply, by criminal offences.
- (c) Option 3 – Provide for the enforcement on Implementing Regulation (EU) 2018/775 by way of an alternative enforcement approach (if this option is taken please provide details and rationale).

Key proposal(s):

- Provide enforcement provisions for Implementing Regulation (EU) No 2018/775

Engagement and Consultation Process

- 21. A four-week public consultation is being launched to provide interested parties with an opportunity to comment on the proposed introduction of a Statutory Rule for enforcing Implementing Regulation (EU) 2018/775. The FSA anticipates that the impact on both businesses and enforcement authorities in familiarising themselves with this enforcement Statutory Rule will be negligible.
- 22. It is considered that a shortened four-week consultation period is appropriate in these circumstances as this Statutory Rule will provide enforcement for a directly applicable European Regulation with no national measures.
- 23. Any responses received as part of this consultation will be given careful consideration and a summary of the responses received will be published on our website within three months of publication of the Statutory Rule.

Questions asked in this consultation:

- 1. Do you agree with the introduction of the proposed Statutory Rule to provide enforcement provisions for Implementing Regulation (EU) No 2018/775?
- 2. Do you agree that the new rules should be enforced by means of ‘Improvement Notices’ backed up, where necessary and in the case of failure to comply, by criminal offences? If not, what alternative enforcement options would you suggest, and why.
- 3. Do you agree that the enforcement approach, given that the IR itself is directly applicable in the UK, is the least burdensome approach necessary to properly implement the IR? If not, how would your suggested approach result in reduced burdens, while remaining effective in implementing the EU Regulation?

Other relevant documents

[Regulation \(EU\) 1169/2011 on the provision of food information](#) to consumers is available to download free of charge from the legislation.gov.uk

[Commission Implementing Regulation \(EU\) 2018/775](#) is available to download free of charge from the EURlex website.

Responses

Responses are required by close 23rd February 2020. Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

Thank you on behalf of the Food Standards Agency for participating in this public consultation.

Yours



Nuala Meehan
Food Standards Team
Food Standards Agency in Northern Ireland

Annex A: Standard Consultation Information

Publication of personal data and confidentiality of responses

- 1 In accordance with the FSA principle of openness we shall keep a copy of the completed consultation and responses, to be made available to the public on receipt of a request to the [FSA Consultation Coordinator](#) (020 7276 8308). The FSA will publish a summary of responses, which may include your full name. Disclosure of any other personal data would be made only upon request for the full consultation responses. If you do not want this information to be released, please complete and return the [Publication of Personal Data form](#) Returning this form does not mean that we will treat your response to the consultation as confidential, just your personal data.
- 2 In accordance with the provisions of Freedom of Information Act 2000/Environmental Information Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with the FSA. However, we will take into account your views when making this decision.
- 3 Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

Further information

- 4 Please feel free to pass this document to any other interested parties or send us their full contact details and we will arrange for a copy to be sent to them direct.
- 5 Please contact us if you require this consultation in an alternative format such as Braille or large print.
- 6 This consultation has been prepared in accordance with HM Government consultation principles¹.

¹ www.bis.gov.uk/policies/bre/consultation-guidance