



Welsh Government
Consultation – summary of response

Implementation of EU delegated regulations on food for specific groups

**Consultation on a draft statutory instrument to implement two EU
delegated regulations on foods for special medical purposes and infant
formula and follow-on formula in Wales.**

January 2021

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This document provides a summary of the responses to the consultation held between 8 November and 6 December 2019.

Action required

This document is for information only.

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Additional copies

This summary report and copies of all the consultation responses are published in electronic form only and can be accessed from the Welsh Government's website.

Related Documents

Link to the consultation document:

<https://gov.wales/foods-special-medical-purposes-and-infant-formula>

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Introduction

The Welsh Government sought views on plans to introduce domestic legislation, in the form of an amending Statutory Instrument (SI), so that elements of EU Delegated Regulation [2016/128](#) on food for special medical purposes and EU Delegated Regulation 2016/127 on infant formula and follow on formula, can be enforced in Wales. Stakeholders were asked their views on the appropriateness of the proposed approach to enforcement, which was based on Improvement Notices.

Stakeholder were asked to submit their comments via an online form or via email or post.

Summary of Responses

5 responses were received to this consultation, 2 from members of the public (wished to remain anonymous), one from an NHS employee (wished to remain anonymous), one from Caerphilly County Borough Council and one from the Breast Feeding Law Group which also responded to equivalent consultation conducted in England, Scotland and Northern Ireland.

A summary of the responses provided to each question are below;

Consultation Questions

- 1. Do you agree that the first formal action for breaches of the provisions of Delegated Regulation (EU) 2016/128 on food for special medical purposes for infants would be an Improvement Notice consistent with the enforcement provisions for the Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016 (enforcing EU Regulation 609/2013) and the Food for Specific Groups (Information and Compositional Requirements) (Amendment) (Wales) Regulations 2019 (which includes enforcement of the provisions for FSMP other than FSMP for infants)?**

Of those who responded to this question all were in agreement that the first formal action for breaches should be an Improvement Notice. Concern however was raised by some that the informal first step could be perceived as too light touch and the lack of record keeping of such step would make monitoring of breaches difficult to monitor.

- 2. Do you agree that the first formal action for breaches of the provisions of Delegated Regulation (EU) 2016/127 for infant formula and follow-on formula would be an Improvement Notice consistent with the enforcement provisions for the Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016 and the Food for Specific Groups (Information and Compositional Requirements) (Amendment) (Wales) Regulations 2019?**

[Note that the proposed enforcement regime would not prevent criminal prosecution as a first step if the breach amounted to an offence under the Food Safety Act 1990 (e.g. if the food was rendered injurious to health contrary to section 7). In those circumstances, the authorised officer would not be prosecuting for a breach of the FSMP or IFFOF regulations but for a breach of the Food Safety Act 1990. In addition, failure to comply with an improvement notice served under the Regulations would attract criminal sanctions.]

As with responses to the first question those respondents who commented on this question were in agreement of the first formal action for breaches be Improvement Notice. Concern however was raised by some that the informal first step could be perceived as too light touch and the lack of record keeping of such step would make monitoring of breaches difficult to monitor.

3. We would like to know your views on the effects that these regulations will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

[What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?]

Of those who commented on this question none felt these regulations would impact on Welsh language provision.

4. Please also explain how you believe the proposed regulations could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comments were received to this question.

5. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Three respondents commented that big brand infant formula products should not be provided to new mothers in maternity wards.

Next Steps

Officials across the UK considered the responses received and agreed that due to the niche market, small supplier base and well-defined governing compositional/labelling legislation for the products concerned improvement notice regime remained the most appropriate. Furthermore where enforcement officers identify potential health harm or deliberate food crime they have and will continue to have the enforcement tools set out under the Food Safety Act 1990 and the Fraud Act 2006. In addition failure to comply with an improvement notice in itself is a crime. This is in line with the Food Law (Wales) Code of Practice.

No amendments to these SIs (or the equivalent UK domestic SIs) were made as a consequence of the consultation.