

## **EXECUTIVE NOTE**

### **THE FOOD FOR PARTICULAR NUTRITIONAL USES (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2010 SSI 2010/48**

1. The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 17(1), 26(1)(a) and 48(1) of the Food Safety Act 1990, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972, and all other powers enabling them to do so. This instrument is subject to the negative resolution procedure.

#### **Policy Objectives**

2. The Food for Particular Nutritional Uses (Miscellaneous Amendments) (Scotland) Regulations 2010 ('the Regulations') introduce provisions, in Scotland, so that the references to Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses in existing Scottish legislation are replaced by references to Directive 2009/39/EC on foodstuffs intended for particular nutritional purposes. The main purpose of the Regulations is to align Scottish law with EC law. Separate but parallel legislation is being enacted in England, Wales & Northern Ireland.
3. Directive 2009/39/EC is a recast of Directive 89/398/EEC incorporating its subsequent amendments. There is no significant difference between the text of these Directives other than those which introduce a regulatory procedure with scrutiny; these new provisions do not need to be transposed. This EC Regulation repeals Directive 89/398/EEC and its amendments.

#### **Policy Background**

4. Council Directive 89/398/EEC on foodstuffs intended for particular nutritional uses (the Parnuts Framework Directive) has been amended by Directives 96/84/EC, 1999/41/EC and Regulation (EC) 1882/2003. In 1987, the European Commission decided that legislative measures should be codified after no more than ten amendments, and preferably at shorter intervals, to ensure that they are clear and readily understandable; therefore, in 2004 the Commission began the process of codifying Directive 89/398/EEC.
5. In 2006, Council Decision 1999/468/EC laying down procedures for the exercise of implementing powers conferred on the Commission was amended by Decision 2006/512/EC which introduced a regulatory procedure with scrutiny for measures of general scope designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty. In accordance with a joint statement of the European Parliament, the Council and the Commission (OJ C 255, 21.10.2006, p1), for this new procedure to be applicable to

such instruments already in force, they must be amended. Directive 2009/39/EC incorporates those new procedures.

6. In order to reflect the repeal and replacement of Directive 89/398/EEC by Directive 2009/39/EC, references to Directive 89/398/EEC need to be replaced with references to Directive 2009/39/EC in domestic law. To avoid the need for future statutory instruments to implement amendments to Directive 2009/39/EC, an ambulatory reference has been inserted.
7. The effect of the ambulatory reference should be restricted. The reference to Directive 2009/39/EC in the Food Labelling Regulations 1996 operates in relation to a paragraph which provides that the Food Labelling Regulations 1996 do not apply to certain products provided specified conditions are met and provided the requirements of certain Directives are met (Directive 2009/39/EC is one of those Directives). The references to Directive 2009/39/EC in the Notification of Marketing of Food for Particular Nutritional Uses (Scotland) Regulations 2007 relate to specified provisions of that Directive and so any future amendments to the Directive would only have effect in relation to that restricted area.
8. It is anticipated that the use of this power in the Regulations will reduce the need for minor amending SSIs and is not regarded as likely to give rise to unintended consequences due to future amendments of the Directive. If, however, the operation of this ambulatory reference appears likely to give rise to unintended consequences as a result of a forthcoming amendment to Directive 2009/39/EC, the matter would be consulted upon and, if necessary, the ambulatory provisions would be removed.

### **Consultation**

9. The Food Standards Agency in Scotland conducted a 12-week consultation, which ran from 10 August to 2 November 2009 with parallel consultations undertaken in England, Wales and Northern Ireland.
10. The Agency consulted 135 interested parties (industry, consumer groups and enforcement authorities) in Scotland on the proposed Regulations. The Scottish Government Health Directorate was included in the consultation and the consultation documents were also available on the Food Standards Agency website. One response was received from a Scottish stakeholder but no substantive comments were made.
11. A list of the interested parties consulted is attached.

### **Financial Implications**

12. The primary business sector that will be affected by the regulatory proposals will be manufacturers of foods for particular nutritional uses. The consultation in Scotland did not generate any substantive replies therefore it is assumed that the measures proposed impose no new financial burdens.
13. The Regulations would not impose any significant new burden on Government or enforcement officers. Rural areas, members of the ethnic communities, or of any

particular racial group, charities and voluntary organisations are unaffected by these proposals.

14. A Regulatory Impact Assessment has not been prepared to accompany these Regulations as they do not introduce any new regulatory measures and no impact on the private sector, public sector or voluntary sector has been identified during consultation with stakeholders

**Contact**

15. Tracey Thomas at the Food Standards Agency (Tel: 01224 285111 or e-mail: [Tracey.Thomas@foodstandards.gsi.gov.uk](mailto:Tracey.Thomas@foodstandards.gsi.gov.uk)) can answer any queries regarding this instrument.

## **Consultation List**

Aberdeen City Council  
Aberdeen University  
Aberdeenshire Council  
Adam Smith College  
AG BARR (Finlays NMW)  
Angus Council  
Aquascot Ltd  
Argyll & Bute Council  
Bell Bakers Limited  
British Hospitality Association  
British Soft Drinks Association  
C OS LA  
Cairnton House  
Caledonian Cheese Co  
Cardowan Creameries Ltd  
Care Commission  
Centre for Public Health Nutrition Research  
City of Edinburgh Council  
Clackmannanshire Council  
Comhairle Nan Eilean Siar  
Consumer Focus Scotland  
Co-operative Group (CWS) Ltd  
Dairy UK - Scotland  
Direct & Care Services  
Dumfries & Galloway Council  
Dundee City Council  
East Ayrshire Council  
East Dunbartonshire Council  
East Lothian Council  
East Renfrewshire Council  
Edinburgh Community Food Initiative  
Falkirk Council  
Federation of Small Businesses  
Fife Council  
Food Additives & Ingredients Association  
Food Industry (North) Development Services  
Food Innovation Institute (F2i)  
Food Microbiology, Fish Handling and Processing  
Food Partners Ltd.  
Food Safety Authority of Ireland  
Food Training & Consultants Company  
G McWilliam (Aberdeen) Ltd  
Glasgow Caledonian University

Glasgow City Council  
Glasgow Metropolitan College  
Glasgow Scientific Services  
Grampian Country Pork Halls Ltd  
H.R. Bradford (Bakers) Ltd  
Hallmark Meat Hygiene Ltd/ AA Duncan & Son  
Health & Sport Committee  
Health Promotion Service  
Health Protection Scotland  
Highland Council  
HUSH  
Ingram Brothers Ltd.  
J G Ross (Bakers) Ltd  
Kettle Produce Ltd.  
Klinge Foods Ltd.  
Inverclyde Council  
Mac kies Of Scotland  
MacPhie of Glenbervie Ltd  
Meat and Livestock Commission  
Midlothian Council  
Moray Seafood Ltd  
Napier University  
Neville Craddock Association  
NHS Ayrshire & Arran  
NHS Borders  
NHS Fife  
NHS Fife - Nutrition & Dietetic Dept.  
NHS Grampian  
NHS Greater Glasgow & Clyde  
NHS Tayside  
North Ayrshire Council  
North Lanarkshire Council  
Oatmeal of Alford  
Orkney Herring Co Ltd  
Orkney Islands Council  
Paterson Arran Limited  
Perth & Kinross Council  
Quality Meat Scotland  
Queen Margeret University College  
Regulatory Solutions  
Renfrewshire Council  
Robert Gordon University  
Rowett Research Institute  
Royal Environmental Health Institute for Scotland  
Scotch Whisky Association  
Scotland Excel

Scottish Association of Master Bakers  
Scottish Borders council  
Scottish Chambers of Commerce  
Scottish Federation of Meat Traders  
Scottish Food & Drink Federation  
Scottish Food Enforcement Liaison Committee  
Scottish Food Enforcement liaison Committee FSSC  
Scottish Government  
Scottish Government Criminal Justice Directorate  
Scottish Grocers Federation  
Scottish Health Food Retailers Association  
Scottish Newcastle UK  
Scottish Qualifications Authority  
Shetland Islands Council  
SNDRT  
Soil Association Scotland  
South Ayrshire Council  
South Lanarkshire Council  
Stirling Council  
SUSTAIN  
T & L Food Services Ltd  
Tayside Scientific Services  
The British Dietetic Association  
The Glenside Group Ltd.  
The Halal Food Authority  
The Highland Council  
The Infant & Dietetic Foods Association Ltd  
The Moray Council  
Tilquhillie Fine Foods  
University of Aberdeen  
University of Dundee  
Vegetarian Economy & Green Agriculture (VEGA)  
Verner Wheelock Associates  
Walkers Shortbread Ltd  
West Dunbartonshire Council  
West Lothian Council