

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) 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