

## **POLICY NOTE**

### **THE FOOD (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2013**

#### **SSI 2013/336**

#### **1. Description**

- 1.1 The above instrument was made by the Scottish Ministers in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and all other powers enabling them to do so. The instrument is subject to negative resolution procedure.

#### **2. Policy Objectives**

- 2.1 This instrument amends the Food Hygiene (Scotland) Regulations 2006 (“the 2006 Regulations”) (regulation 2), the Official Feed and Food Controls (Scotland) Regulations 2009 (“the 2009 Regulations”) (regulation 3) and makes a minor amendment to the Food Safety Act 1990 (“the 1990 Act”) (regulation 4).

It implements and provides for the enforcement in Scotland of the provisions of:

- Commission Regulation (EU) 1079/2013 laying down transitional measures for the application of Regulations (EC) 853/2004 and (EC) 854/2004 (“the Commission Regulation”); and
  - Commission Implementing Regulation (EU) 702/2013 on transitional measures for the application of Regulation 882/2004 as regards the accreditation of official laboratories carrying out official testing for *Trichinella* (“the Commission Implementing Regulation”).
- 2.2 These Regulations provide for a further transitional period during which the transitional measures currently laid down in Regulation 1162/2009 should apply. They provide a possible derogation on accreditation of official laboratories whose sole activity is the detection of *Trichinella* in meat. They extend, until December 2016, the transitional

period for transitional measures for Regulations (EC) 853/2004, (EC) 854/2004 and (EC) 882/2004 in order to permit a smooth transition to the full implementation of the rules and procedures laid down in these three Regulations.

- 2.3 In addition they make a minor amendment to section 9(5) of the 1990 Food Safety Act (the 1990 Act), to correct an identified referencing error with respect to paragraph numbering which occurred following an amendment to the General Food Regulations 2004.

### **3. Matters of special interest to the Delegated Powers and Law Reform Committee**

- 3.1 The Commission Regulation was published in the Official Journal on 31 October 2013 and the Commission Implementing Regulation was published on 22 July 2013. The Regulations extend the transitional period for the application of certain provisions of Regulation 853/2004, 854/2004 and Regulation 882/2004, for an additional transitional period from 1 January 2014 to 31 December 2016.
- 3.2 The EU Regulations are binding and directly applicable from the dates they come into force. However, in order to provide for the transitional arrangements within the Commission Regulation and the Commission Implementing Regulation, it is necessary to provide for the enforcement by amending the domestic legislation to remove references to Regulation 1162/2009 and replace them with references to the Commission Regulation and the Commission Implementing Regulation, where appropriate.
- 3.3 The FSA plans a common coming into force date throughout the UK of 1 January 2014 for these Regulations, subject to differences in scrutiny procedure and parliamentary timetables, which is to ensure consistency of enforcement provisions across the internal UK market.

### **4. Legislative Context**

- 4.1 The instrument amends regulation 2(1) of, and Schedule 1 to, the 2006 Regulations to

include the amendments introduced by the Commission Implementing Regulation and the Commission Regulation and:

- Extends the transitional measures for the application of EC Regulation 853/2004 and EC 854/2004 for a transitional period from 1 January 2014 to 31 December 2016.
- Extends the derogation from Article 1 (3) (d) of Regulation 853/2004 which lays down that that this Regulation shall not apply to the direct supply, by the producer, of small quantities of meat from poultry and lagomorphs slaughtered on the farm to the final consumer or to local retail establishments directly supplying to the final consumer.
- Extends the derogation in Article 6(4) of (EC) 853/2004 for food businesses importing food containing both plant origin and processed products of animal origin other than the composite products.
- Extends the transitional measures for the application of Regulation EC 882/2004 for a transitional period from 1 January 2014 to 31 December 2016. By way of a derogation from Article 12 (2) of Regulation 882/2004, the competent authority may designate a laboratory carrying out official testing for Trichinella.

4.2 This instrument also amends regulation 2(10) of, and Schedule 1 to, the 2009 Regulations to include the amendments made by the Commission Implementing Regulation and:

- Extends the transitional measures for the application of Regulation (EC) 882/2004 for a transitional period from 1 January 2014 to 31 December 2016.
- Extends the derogation from Article 12 (2) of Regulation (EC) 882/2004 by which the competent authority may designate a laboratory carrying out official testing for Trichinella, even though not accredited under European standards referred to in point (a) in that Article. This is conditional on the laboratory initiating & pursuing accreditation procedures in line with Article 12 (2) (a) of Regulation (EC) 882/2004 and providing the competent authority with satisfactory guarantees that quality control schemes are in place.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Scotland only. Separate but parallel legislation is being made in Wales and Northern Ireland. England is including provisions with similar effect in a

consolidation instrument.

## **6. European Convention on Human Rights**

6.1 This instrument does not raise any issues regarding the European Convention.

## **7. Consultation**

7.1 The FSA have written to stakeholders and enforcement authorities in Scotland to inform them of the publication of the Commission Implementing Regulation and the Commission Regulation and of the further transitional period. The letter also refers to the proposed amendment to section 9(5) of the 1990 Act.

7.2 A formal 12 week consultation and a full business and regulatory impact assessment was not required for these Regulations as they are simply extending the current transitional arrangements within current EU provisions, and making a minor amendment to the 1990 Act.

## **8. Financial Effects**

8.1 A Business and Regulatory Impact Assessment was not required as these measures maintain existing flexibility for businesses and do not impose any additional burdens.

## **9. Regulating small business**

9.1 This instrument will apply to food businesses producing poultry and lagomorphs and to those importing food containing both plant origin and processed products of animal origin other than the composite products and laboratories carrying out official testing for Trichinella.

## **10. Monitoring and Review**

10.1 The FSA is expected to review these Regulations in three years, following the end of the transitional period in 31 December 2016. The FSA will work with enforcement authorities where problems or infringements of these Regulations arise. The effectiveness of these Regulations will be monitored via general feedback from industry and enforcement authorities.

**Food Standards Agency in Scotland**

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