

POLICY NOTE

THE FOOD (MISCELLANEOUS AMENDMENT AND REVOCATION) (SCOTLAND) REGULATIONS 2013

SSI 2013/83

1. The above instrument was made in exercise of the powers conferred by sections 16(1)(a), (b), (c) and (f), (2) and (3), 17(1) and (2), 26(1), (2)(a) and (3) and 48(1)(a) of the Food Safety Act 1990¹ and paragraph 1A of Schedule 2 to the European Communities Act 1972. In accordance with section 48(4A) of the 1990 Act, the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency. The instrument is subject to negative procedure.

2. Policy Objectives

2.1. This instrument will revoke the Arsenic in Food (Scotland) Regulations 1959² and its amendments and the Chloroform in Food (Scotland) Regulations 1980³; and amend the Materials and Articles in Contact with Food (Scotland) Regulations 2012⁴.

2.2. The Arsenic Regulations are based on science which is now out of date and set a statutory level for total arsenic. Total arsenic is the sum of all different chemical forms of arsenic whereas the toxicity of arsenic is dependent on its chemical form. The organic forms of arsenic are less harmful but the inorganic forms can cause cancer; as such, inorganic arsenic present in food at the statutory level set out in the regulations would be considered 'unsafe' under more recent food Regulation (EC) No. 178/2002. If a food incident occurs in relation to arsenic in food, a risk assessment is carried out and any necessary action is taken under Article 14 of Regulation 178/2002. The Arsenic Regulations are no longer required to ensure consumer protection.

2.3. The Chloroform Regulations lay down restrictions regarding chloroform added to food. The regulations prohibit the sale or importation of food containing added chloroform under any circumstances. There is now very limited use of chloroform in the food industry, which means that even an isolated contamination incident is highly unlikely. When the Regulations were made an absolute prohibition on the presence of chloroform was required because detection was not possible at the very low levels achievable now. A limit set at the limit of detection is now inappropriate, as modern analytical techniques can detect chloroform down to levels which have no relevance to food safety. The Food Standards Agency considers that an equivalent level of consumer protection is achieved under Article 14 of Regulation 178/2002, and the Chloroform Regulations are no longer required to ensure consumer protection.

2.4. The amendment of the Materials and Articles in Contact with Food (Scotland) Regulations fulfils the undertaking that the Scottish Government made to the Subordinate Legislation Committee (60th Report, 2012 (Session 4)) to amend regulation 20 on execution and enforcement at the next appropriate opportunity to improve the drafting and make its meaning clearer.

3. Consultation

3.1. The FSA in Scotland conducted a formal public consultation from 26 Sept 2012 to 19 Dec 2012, seeking comments on the draft instrument. All Local Authorities and 168 stakeholders in

¹ 1990 c.16

² S.I. 1959 No. 928

³ S.I. 1980 No. 289

⁴ S.S.I. 2012 No. 318

Scotland including industry, consumer groups & non-government organisations were consulted. No comments were made on the draft instrument.

4. Impact Assessments

- 4.1. It is anticipated that no impact on industry will arise from these Regulations; therefore the FSAS obtained exemption from producing a Business and Regulatory Impact Assessment (BRIA) on this occasion.
- 4.2. There is no particular impact on charities or voluntary bodies, rural areas or on members of the ethnic communities of any particular racial group that can be identified. No comments were received from such bodies on the effects of the proposal on them. There is no impact on the public sector as there are no identifiable costs.

5. Financial Effects

- 5.1. The draft instrument has no financial effects on the Scottish Government, local government or on business.

6. Other Administrations

- 6.1. Equivalent regulations will apply in England, Wales and Northern Ireland.

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