

POLICY NOTE

THE FOOD INFORMATION (SCOTLAND) REGULATIONS 2014

SSI 2014/312

1. Description

The above instrument was made by Scottish Ministers in exercise of the powers conferred by sections 6(4), 16(1), 17, 18, 26, 45 and 48(1) of, and paragraphs 1 and 4(b) of Schedule 1 to, the Food Safety Act 1990, section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972 and all other powers enabling them to do so.

2. Policy Objective

2.1 These Regulations are necessary to meet the following policy objectives:

To introduce legislation to provide for the execution and enforcement in Scotland of **Regulation (EU) No 1169/2011 on the provision of food information to consumers (FIC)**¹ and to implement certain national flexibilities from 13 December 2014.

The new provisions are to:

- Enable Local Authorities in Scotland to enforce the provisions of the FIC;
- Revoke the majority of the provisions of the Food Labelling Regulations 1996, as amended for Scotland;
- Take up certain derogations and national flexibilities permitted by the FIC; and
- Make consequential amendments to other food labelling and standards legislation.

3. Policy background

3.1 In March 2008, the European Commission introduced a proposal to cover food information at all stages of the food chain. Following discussion in both the European Parliament and the Council, the FIC was published in the Official Journal of the EU on 22 November 2011. The FIC brings together European rules on general and nutrition labelling into a single directly applicable regulation to simplify and consolidate existing food labelling legislation.

3.2 Transitional arrangements in the FIC mean that subject to exemptions, the general labelling requirements e.g. name of the food, information on ingredients causing food allergies or intolerances, ingredients lists etc. apply to most prepacked foods from 13 December 2014. From the same date, the allergen information requirements will be extended to include non-prepacked foods and catering situations. From 13 December 2016, most prepacked foods will require nutrition information i.e. energy content, amounts of fat, sugar, salt etc. However, from 13 December 2014, any nutrition declaration must follow the format required by the FIC whether it is provided voluntarily or is mandatory due to nutrition/health claims being made for the food or because vitamins/minerals have been added to the food.

¹ Regulation (EU) No 1169/2011 of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004

3.3 Although the FIC is directly applicable in all EU Member States, legislation to provide for its execution and enforcement is needed in Scotland and the other countries of the UK and also to give effect to the national flexibilities available within the EU Regulation.

3.4 Key areas of the FIC include:

- Country of origin/place of provenance information is tightened for fresh and frozen meat from pigs, sheep, goats and poultry from 1 April 2015² with further EU discussion intended on meat when used as an ingredient and also for milk and milk products.
- Back of pack nutrition information for most prepacked foods will become mandatory from December 2016. It is also possible to provide Front of Pack nutrition information on a voluntary basis, provided this follows a set format.
- Alcoholic drinks remain exempt from mandatory nutrition and ingredient information pending a Commission report which is due in December 2014.
- 'Best before' or 'Use by' dates as appropriate will be required for most prepacked food as before, but with more focus on use by dates being about food safety and best before being about food quality.
- A minimum font size will be introduced for the mandatory information on food labels.
- Allergen information requirements will be extended to non-prepacked food and there is some flexibility in how this can be provided to consumers.
- On prepacked food, there will be a consistent approach to allergen labelling throughout Europe. The allergen information will need to be emphasised in the ingredients list.

3.5 The introduction of the directly applicable FIC is intended to harmonise general food labelling and nutrition information rules for prepacked foods across the EU. This means that the domestic legislation needs to be updated to avoid conflict with the EU requirements and provide Local Authorities with the ability to enforce the EU food information rules. The Food Information (Scotland) Regulations 2014 (the 2014 Scottish Statutory Instrument) Regulations) maintain the current approach of having direct offences available in the event of breaches of the requirements.

3.6 The Food Labelling Regulations 1996, as amended for Scotland, implement the current EU Directives on general food labelling³ and nutrition information⁴. They also contain a number of long standing UK national measures. Given the intention of the FIC to repeal the current EU Directives and standardise food information as far as possible across the EU, this impacts on the 1996 Regulations and there is only limited scope to retain national measures.

3.7 The FIC allows Member States to take up specific derogations and flexibilities. With the intention of maintaining the status quo as far as possible, a draft of the 2014 Scottish Statutory Instrument accompanied the UK's notification to the European Commission which included:

² Commission Implementing Regulation (EU) No 1337/2013 sets mandatory requirements for the place of rearing and place of slaughter for fresh and frozen meat from pigs, sheep, goats and poultry.

³ Directive 2000/13/EC of the European Parliament and of the Council

⁴ Council Directive 90/496/EEC

- Derogation from the need to give mandatory information for milk and milk products in glass bottles intended for reuse. Taking up this derogation maintains the current exemption.
- Derogation from minced meat composition standards on fat and collagen to meat protein ratios in the FIC. Taking up this derogation allows businesses to continue to supply the UK market with traditional minced meat provided it is sold under a national mark.

National measures-

- To retain the requirement for the name of the food to be given for foods sold non-prepacked.
- To retain the requirement for a quantitative indication of the meat content for meat products sold non-prepacked.
- To introduce the specific means by which allergen information provided on a mandatory basis for non-prepacked food has to be given.

Consultation

4.1 Over 400 interested parties were consulted between December 2012 to March 2013 on the draft Scottish Statutory Instrument and the Business and Regulatory Impact Assessment (BRIA). This included food manufacturers, trade organisations, consumer organisations, dieticians, public health authorities, enforcement authorities and nutritional charities. The consultation was also available on the FSA website. In addition, the FSA used an independent facilitator to hold specific workshops to seek views from consumers.

4.2 The consultation contained 3 options:

Option 1A

Provide enforcement provisions in the form of an SSI, revoking 14 existing SI/SSIs and minimising the additional burdens to business by taking advantage of available derogations (for milk or milk products presented in glass bottles and on compositional requirements for minced meat) and a national measure (on the provision of allergen information verbally for non-prepacked foods).

Option 1B

This option is in essence Option 1A plus an additional two national measures permitted in the FIC: **Note that these retain existing practices.**

- requiring the provision of additional mandatory particulars in relation to the name of non-prepacked food and
- to provide quantitative indications on the meat content of meat products sold non-prepacked).

Option 2

Provide enforcement provisions, taking advantage of derogations and full uptake of Member State flexibility to introduce national measures where permitted to increase mandatory information to the consumer. This option is in essence Option 1A plus an additional five national measures permitted in the FIC: **Note that the first two of these retain existing practice.**

- requiring the provision of additional mandatory particulars in relation to the name of non-prepacked food;

- to provide quantitative indications on the meat content of meat products sold non-prepacked;
- requiring some or all of the mandatory particulars detailed in Articles 9(1) and 10(1) to be provided in relation to non-prepacked food;
- the provision of reference intakes (RIs) for children, in addition to the current requirement to provide RIs for an average adult;
- to require FBOs to notify any Additional Forms of Expression (AFE's) used for front of pack nutrition labelling and to provide justification regarding fulfilment of the AFE criteria.

4.2 The FSA in Scotland received 23 responses from stakeholders including organisations representing consumers, food producers and enforcers. The majority of the responses supported the status quo approach favouring Option 1B, although there were some concerns on minced meat and the provision of information for non-prepacked foods. The 2014 Scottish Statutory Instrument implements that preferred option.

Minced meat

- Enforcers were concerned about the national mark allowing high fat minced meat on the market.
- Minced meat producers feel that flexibility to deal with variable collagen levels in the meat used for making minced meat is the key issue rather than fat content.
- Consumers would like to see as much simple, factual information as possible and for minced meats this is the % fat content. They would also like descriptors to be applied consistently so that accurate comparisons can be made e.g. 'lean' is only helpful if it has a standard meaning.
- The derogation for minced meat would allow the Scottish meat trade to continue to sell their traditional mince, albeit with a National Mark.

Allergen information

- Enforcers were concerned about the flexibility on providing allergen information verbally for non-prepacked foods including catering situations.
- Consumers would like information on allergens as well as ingredients. This is particularly important for coeliacs and those with multiple allergies as well as for children and those catering for others.
- For allergens in packaged foods phrases like 'suitable for...' as well as simple visual marks or symbols to be considered in place of the 'contains' box.
- For loose foods, clear descriptions and contents information.
- For allergens, written information is preferred/more trusted than verbal information.
- FSA produced best practice advice for the provision of allergen information for non-prepacked foods some years ago which should help caterers deal with their new responsibilities.

Date marking

- A simple guide to date marks and their derivation, purpose and meaning would be helpful to counteract 'personal risk' assessment and cynicism about the nature of these marks

Publicity

- Wide publicity and consumer education is needed prior to the introduction of the new regulations, particularly in relation to allergen information and minced meat ingredients.

The Food Standards Agency in Scotland (FSAS) has attended and supported various meetings with food businesses and stakeholders to inform them of the changes to labelling requirements which will be introduced by the new legislation. This work includes:

- In February 2013, FSAS met a group of SMEs in Dumfries at a South of Scotland Food & Drink Forum Labelling Workshop organised by Scottish Enterprise.
- In February 2013, FSAS held a stakeholder meeting in Edinburgh to support the consultation on the draft Food Information (Scotland) Regulations.
- In February 2013, FSAS covered the consultation on the Regulations at a Food Labelling & Standards event for Local Authorities.
- In May 2013, FSAS gave a presentation at the Food & Health Innovation Service (FHIS) seminar for small businesses in Dundee.
- In September 2013, FSAS gave a presentation to members of the Royal Environmental Health Institute of Scotland (REHIS) at a Food Safety Day in Falkirk.
- FSAS met with SMEs in Dumfries again in April 2014 at a food labelling and packaging workshop organised jointly by Scottish Agricultural College Food & Drink Section and Dumfries & Galloway Council.
- In May 2014 and again in June 2014, FSAS engaged with representatives from the baking industry at well attended workshops arranged in conjunction with the Scottish Bakers at Halbeath, Dunfermline.
- In June 2014, the FSA supported a Scottish Food and Drink Federation food labelling event in Edinburgh. This was very well attended by a wide range of food businesses based in Scotland, including smaller enterprises.
- In June 2014, the FSA supported a Seafish event in Boddam, Peterhead covering food labelling with an emphasis on fishery products and the specific fish labelling requirements.
- In July 2014, the FSA worked with Scotland Food and Drink and Access 6 to hold a webinar on food labelling aimed at reaching the operators of smaller enterprises for whom taking time to attend meetings is difficult. Feedback was very positive and the material is available using the following link:
<http://www.access6.ie/news/food-labelling-webinar>
- The FSA also worked with the Scottish Federation of Meat Traders Association to organise a food labelling event for butchers in August 2014.
- FSAS is also handling a significant number of enquiries from Scottish based food businesses.

5. Other Administrations

5.1 These Regulations apply in relation to Scotland only and will come into force on 13 December 2014. Separate legislation will apply in England, Wales and Northern Ireland.

6. Guidance

6.1 The FSA has produced guidance for food business operators and enforcement officers which will be available on the FSA website.

7. Financial Implications

7.1 A final Business and Regulatory Impact Assessment has been prepared following public consultation and no concerns were raised or comments received on the financial estimates set out in the BRIA. However, we will keep this under review. The most common concerns

expressed by businesses have been around relabelling, particularly about the amount of additional information that will have to be included on the label and how to satisfy the allergen labelling requirements. Another concern reported in recent months relates to stocks of pre-printed labels which will not comply with the new Regulations after 13 December 2014.

7.2 Costs to local authorities should be minor, relating only to familiarisation with the new legislation.

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