

POLICY NOTE

THE FOOD INFORMATION (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2015

SSI 2015/410

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 6(4), 15A(b), 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. The instrument is subject to the negative procedure.

Policy Objectives

2. These Regulations make provisions that affect two sets of existing legislation on food information.

Defining “food information law”

3. The first change provides a definition of “food information law” for Part 2 the Food (Scotland) Act 2015 (“the 2015 Act”). “Food information law” for the relevant legislation will now be the Food Information (Scotland) Regulations 2014 (“the 2014 Regulations”).

4. Section 33 of the 2015 Act modified section 15 of the Food Safety Act 1990 to introduce new powers and a new duty to help tackle food fraud and other food crime. The new powers allow the seizure and detention of foods which do not comply with “food information law”. The new duty is an obligation on food business operators to inform FSS where they suspect any “food information law” has been broken. These new provisions were endorsed by the Scudamore Expert Advisory Group report on lessons learned from the horsemeat food fraud incident in 2013. The new provisions bring equity and consistency to how Enforcement Authorities and food businesses treat breaches both of food safety law and food information law. These enforcement powers over, and duty to report, suspected food fraud are not available elsewhere in the UK.

5. The policy intention in the 2015 Act was to specify “food information law” to mean the 2014 Regulations which implement the relevant Community Provisions¹. However, the 2014 Regulations had not been made before the 2015 Act passed Stage 3. So the 2015 Act could only define “food information” in terms of the Community Provisions but it was not possible to refer to the 2014 Regulations in the 2015 Act itself. Instead, the 2015 Act could only give the Scottish Ministers power to later define, by regulations, which enactments relating to food information would be considered as “food information law”.

6. This change is necessary as without a statutory definition it will not be possible to implement the new seizure and detention powers and duty to inform FSS of suspected food fraud - as created by the Scottish Parliament in the 2015 Act.

Minor changes to the 2014 Regulations recommended by the Scottish Parliament

7. Secondly, a number of recommendations for minor corrections to the drafting in the 2014 Regulations were made by the Scottish Parliament during its scrutiny of the 2014 Regulations. The Scottish Ministers undertook to make the recommended changes at the first available opportunity. The

¹ Regulation (EU) No. 1169/2011

need to define “food information law” by regulation provides this opportunity. These are minor changes to clarify the reading of the text and address the points identified during scrutiny. The changes correct technical drafting points, printing errors and expand on descriptions of definitions.

Consultation

8. The new seizure and detention powers and duty to report breaches of food information law were the subject of full, formal consultations in 2013. The consultation findings led to the provisions in the 2015 Act. The provisions of the 2014 Regulations were also subject to formal consultation. There is therefore no need to consult again on the relevant amendment made in these Regulations which merely links the 2015 Act with the 2014 Regulations, as envisaged at the time the 2015 Act was passed.

9. With regard to the technical drafting amendments picked up during Parliamentary scrutiny, these do not alter the policy intent and serve only to help clarify the reading of the text of the original instrument. There was extensive consultation with the food production and retail sectors, enforcement officers and consumers during the development of the 2014 Regulations and no substantive changes to the scope or the meaning of any provisions are being introduced.

Guidance

10. Guidance on the new seizure and detention notices has been developed by FSS and training for authorised officers is underway and guidance on the new duty to report breaches of food information law will be finalised before the Regulations come into force. General guidance along with online training on the 2014 Regulations is available from the FSS website.

Impact Assessment

11. No additional impact on business is anticipated as a result of the amendments being introduced in this instrument. A full Business and Regulatory Impact Assessment was produced for both the Food (Scotland) Act 2015 and the Food Information (Scotland) Regulations 2014. Therefore, a Business and Regulatory Impact Assessment has not been prepared for these Regulations.

Regulating small businesses

12. These Regulations apply to all food businesses.

Monitoring

13. FSS will work with Enforcement Authorities to introduce the new seizure and detention provisions. The effectiveness of the 2014 Regulations, as amended, will also continue to be monitored via general feedback from industry and Enforcement Authorities.

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