

POLICY NOTE

THE FOOD INFORMATION (SCOTLAND) AMENDMENT REGULATIONS 2016

SSI 2016/191

1. Description

The Scottish Ministers make the following Regulations 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

The main purpose of The Food Information (Scotland) Amendment Regulations 2016 is to provide enforcement powers to underpin the directly applicable European Commission Implementing Regulation (EU) No 828/2014 on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food.

3. Policy Background

Following a revision of the legislation on foodstuffs intended for particular nutritional uses (PARNUTS), on 20 July 2016 Regulation (EU) No 609/2013 will repeal Directive 2009/39/EC (the PARNUTS Directive) and Regulation (EC) No 41/2009 concerning the composition and labelling of foodstuffs suitable for people intolerant to gluten.

After that date, the conditions for the provision of information on the absence or reduced presence of gluten in food will be contained in Commission Implementing Regulation (EU) No 828/2014. This Regulation does not substantially change the rules for gluten labelling; it will clarify how food businesses can inform consumers of differences between foods that are naturally free of gluten and products that are specifically formulated for people who suffer from coeliac disease.

The amending Scottish Statutory Instrument (SSI) is necessary to provide enforcement powers to underpin the European Regulation and to revoke the Foodstuffs Suitable for People Intolerant to Gluten (Scotland) Regulations 2010 which will no longer have any purpose. The enforcement powers will ensure the continued protection of consumers who are intolerant to gluten.

4. Consultation

A shortened 7 week public consultation was carried out in Scotland on the draft SSI from 23 March to 16 May 2016. A total of 7 responses were received from over 330 stakeholders on the consultee list.

Businesses were in general content with the introduction of the amending legislation. They can continue to use the term 'gluten free' which some already support with the statement

‘suitable for coeliacs’. The new Regulation is not expected to require any re-labelling of prepacked food products. The inability to use the phrase ‘no gluten containing ingredients’ under the new EU Regulation was not expected to incur costs for prepacked foods. The phrase has mostly been applied to non-prepacked foods in catering environments to inform consumers that although no gluten containing cereals have been used as ingredients in the food, the risk of cross contamination in the preparation area cannot be eliminated.

Three consultation responses made reference to the loss of the ability to use this phrase, two of which suggested that it may reduce choice for people who suffer from coeliac disease when eating in out of home situations. One business was also concerned that it would limit sales to consumers who were avoiding gluten for a lifestyle choice rather than medical reasons, which has been a growing market in recent years.

5. Other Administrations

These Regulations apply to Scotland only and corresponding Regulations will be introduced in the other UK countries.

6. Guidance

Guidance notes for businesses regarding the new Regulations will be updated in due course.

7. Impact Assessment

A final Business and Regulatory Impact Assessment has been prepared following the public consultation and discussions with various Scottish businesses and it accompanies this note.

8. Regulating small businesses

This legislation applies to small business in the same manner as to larger businesses. The vast majority of firms in the Scottish food industry are small businesses, so to exclude them would undermine the policy aims of the Regulations.

9. Monitoring

Food Standards Scotland (FSS) will work with Enforcement Authorities where problems or suspected infringements of the legislation arise. The effectiveness of this instrument will be monitored by FSS via general feedback from industry and Enforcement Authorities.

Contact:

Russell Napier
Food Standards Scotland
Pilgrim House
Old Ford Road
Aberdeen
AB11 5RL
Tel: 01224 285155
e-mail: Russell.Napier@fss.scot