

EXPLANATORY MEMORANDUM TO
The Food (Miscellaneous Amendments and Revocations) Regulations
(Northern Ireland) 2019

SR 2019 No. 5

1. Introduction

- 1.1. This explanatory memorandum has been prepared by the Food Standards Agency in Northern Ireland (FSA in NI) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 15(1), 16(2) and 47(2) of the Food Safety (Northern Ireland) Order 1991 and section 2(2) of, and paragraph 1A of Schedule 2 to the European Communities Act 1972.
- 1.3 The rule is due to come into operation on 11th February 2019

2. Purpose of the Rule

- 2.1. The purpose of the Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 is to:
 - Amend the Fruit Juices and Fruit Nectars Regulations (Northern Ireland) 2013 to draw attention to an amendment made to Directive 2001/112/EC relating to fruit juices and similar products by Commission Delegated Regulation (EU) No. 1040/2014;
 - Amend the Food Hygiene Regulations (Northern Ireland) 2006 to draw attention to Regulation (EU) No. 2017/2158 on acrylamide; and
 - Make other miscellaneous amendments and revocations to several (SRs) to ensure the accuracy and currency of the statute book in Northern Ireland in relation to food and feed before the UK exits the EU.

3. Policy Background

Fruit Juice

- 3.1. The Fruit Juices and Fruit Nectars Regulations (Northern Ireland) 2013 (2013 Regulations) transpose in Northern Ireland Directive 2001/112/EC relating to fruit juices and certain similar products intended for human consumption. The 2013 Regulations lay down product definitions and reserved names by which juices and nectars can be called. They also set conditions for juice manufacture by laying down specific permitted raw materials and treatments that may be used and limit the amounts that may be used of certain ingredients and additives.
- 3.2. Commission Delegated Regulation (EU) No 1040/2014 was published and came into force in October 2014. It amends Annex I to Directive 2001/112/EC by adding to the list of authorised treatments and substances that may be applied to fruit juices and

fruit nectars. Following this amendment, plant proteins from wheat, peas or potatoes may be used to clarify fruit juices.

- 3.3. Delegated Regulation 1040/2014 is directly applicable, which means that the change that it made to Directive 2001/112 has automatically become part of the law in operation in Northern Ireland. However, the FSA in NI considers it preferable to amend the 2013 Regulations to make clear to food business operators (FBOs) what substances may be applied to fruit juices.

Acrylamide

- 3.4. Acrylamide is a chemical substance formed by a reaction between amino acids and sugars. It typically occurs when foods with high starch content such as potatoes, root vegetables and bread, are cooked at high temperatures (over 120°C) in a process of frying, roasting or baking. Acrylamide is not deliberately added to foods; it is a natural by-product of the cooking process and has always been present in our food.
- 3.5. In June 2015, the European Food Safety Authority (EFSA) produced its full Scientific Opinion on the risks related to the presence of acrylamide in food and concluded that the current level of acrylamide is a concern for public health. EFSA highlighted that further work is needed to reduce the occurrence of acrylamide in food.
- 3.6. Following the EFSA opinion, the European Commission and Member States agreed that further risk management measures were needed to ensure that acrylamide levels in food are consistently as low as reasonably achievable through the application of appropriate mitigation measures by all FBOs along the food chain.
- 3.7. As a result, Commission Regulation (EU) 2017/2158 was published in November 2017, promoting and supporting best practice in managing acrylamide as a food safety hazard throughout the food chain. The Regulation has applied since 11 April 2018 and will supplement Regulation EC No 852/2004 on food hygiene by prescribing additional factors to which FBOs must have regard in carrying on their business.
- 3.8. Commission Regulation (EU) 2017/2158 is directly applicable and will automatically become part of the law in operation in Northern Ireland. It will be enforced in Northern Ireland by the Food Hygiene Regulations (Northern Ireland) 2006 (2006 Regulations). However, although this enforcement measure is already in place, the FSA in NI recommends making a small amendment to the 2006 Regulations to draw attention to the additional factors FBOs must have regard to in order to comply with Regulation 852/2004.

General Amendments

- 3.9. The FSA is also taking the opportunity to make further miscellaneous amendments and revocations to various SRs to:
 - i. fix or remove out of date references to domestic and EU legislation;
 - ii. update references to EU legislation that has been amended since the domestic legislation was made and where no ambulatory references are in place;

- iii. insert ambulatory references where necessary and appropriate;
- iv. revoke expired or redundant transitional measures;
- v. revoke redundant provisions and whole SRs where necessary; and
- vi. correct any other minor errors.

The purpose of these amendments is to ensure the accuracy and currency of the statute book in Northern Ireland in relation to food and feed before the UK exits the EU.

3.10. In relation to point iii. (ambulatory references), we propose to amend:

- Footnote 7 in Schedule 1 to the Specified Sugar Products Regulations (Northern Ireland) 2003 to insert an ambulatory reference to Annex I to Directive 2009/32;
- The Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011 to insert an ambulatory reference to Annex I to Regulation (EU) 10/2011.

The purpose of these amendments is to ensure that the domestic regulations provide for the enforcement of any changes that are made to the specified provisions of EU law between now and EU exit without having to amend the domestic regulations.

3.11. In relation to point iv. (revoking expired or redundant transitional measures) the proposed Regulations revoke transitional periods contained in:

- The Coffee Extracts and Chicory Extracts Regulations (Northern Ireland) 2001;
- The Cocoa and Chocolate Products Regulations (Northern Ireland) 2003;
- The Specified Sugar Products Regulations (Northern Ireland) 2003, and
- The Fruit Juices and Fruit Nectars Regulations (Northern Ireland) 2013.

These provisions related to products labelled before various dates between 2001 and 2016 and permitted these products to be marketed until the transitional periods ended or stocks run out.

4. Matters of Special Interest to the Health Committee

4.1. N/A

5. Consultation

5.1. A shortened four-week consultation was conducted in Northern Ireland between 15th November and 13th December 2018 to provide stakeholders with the opportunity to comment on the draft Statutory Rule. One response was received to the consultation which was in support of maintaining the effect of Commission Regulation (EU) 2017/2158 with regards to acrylamide.

6. Position in Great Britain

6.1. The purpose of this Statutory Rule is to tidy up the FSA statute book in Northern Ireland. In the rest of the United Kingdom, similar provisions will be made as appropriate.

7. Equality Impact

7.1. These regulations will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differentially across any of the section 75 groups.

8. Regulatory Impact

8.1. A Regulatory Impact Assessment has not been prepared to accompany these Regulations as there are no changes to the current controls and therefore no identified costs to consumers, businesses or enforcement authorities associated with implementation of the Regulations.

9. Financial Implications

9.1. N/A

10. Section 24 of the Northern Ireland Act 1998

10.1. These regulations will apply in equal measure to all groups. It is not expected that any of these changes will impact differentially across any as determined by Section 24.

11. EU Implications

11.1. N/A