

Consultation Summary Page

The Food Information and Addition of Vitamins, Minerals and Other Substances (Scotland) Amendment Regulations 2020

Date consultation launched:	Closing date for responses:
02 March 2020	27 March 2020

Who will this consultation be of most interest to?

Enforcement authorities, manufacturers, and retailers in the supply chain handling food produce where the country of origin or place of provenance of a primary ingredient, is not the same as the origin of the food itself. The consultation may also be of interest to health professionals, consumer groups and others with an interest in food labelling legislation.

What is the subject of this consultation?

Scottish Regulations are being prepared to provide for the enforcement of the directly applicable Commission Implementing Regulation (EU) No 2018/775 (the EU Regulation) which lays down detailed rules on the provision of Food Information to Consumers, indicating the country of origin or place of provenance of a primary ingredient where it is not the same as the origin of the food as a whole.

The EU Regulation builds on the general country of origin requirements in the EU Food Information to Consumer Regulation (EU) No 1169/2011 and the specific country of rearing and slaughter requirements for fresh and frozen meat from pigs, sheep, goats and poultry in Regulation (EU) No 1337/2013. Enforcement provisions in Scotland for these pieces of EU legislation are contained within the Food Information (Scotland) Regulations 2014 (as amended) and the Country of Origin of Certain Meats (Scotland) Regulations 2016 respectively.

The Scottish regulations will also provide a transitional provision in the Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007 which would mean foods non-compliant with the trans fat limit specified in Annex III of Regulation (EU) No 1925/2006 can still be placed on the market until 1st April 2021

Commission Regulation (EU) 2019/649 amends Annex III to Regulation (EU) No 1925/2006 which restricts the content of trans fat, other than trans fat naturally occurring in fat of animal origin, in food intended for the final consumer and food intended for supply to retail, to no more than 2 grams per 100 grams of fat.

If you would prefer to receive future FSS consultations by e-mail, or if you no longer wish to receive information on this subject please notify the named person in this consultation.

What is the purpose of this consultation?

To provide stakeholders with an opportunity to comment on the proposed approach on execution and enforcement in Scotland of the new EU Regulation and also the associated Business and Regulatory Impact Assessment.

We also wish to seek views on the proposal to include a transitional period in domestic legislation to clarify that businesses may continue to place food on the market which does not comply with the EU limits for trans fat added to food until 1 April 2021.

Responses to this consultation should be sent to:

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Branch: Regulatory Policy
Food Standards Scotland
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Food Standards Scotland
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Pilgrim House
Old Ford Road
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Is a Business & Regulatory Impact Assessment (BRIA) included with this consultation?

Yes

No See Annex A for reason.

DETAIL OF CONSULTATION

Food Standards Scotland (FSS) welcomes your comments on the Food Information and Addition of Vitamins, Minerals and Other Substances (Scotland) Amendment Regulations 2020 and the partial Business and Regulatory Impact Assessment (BRIA – see Annex B).

INTRODUCTION

Food Standards Scotland (FSS) intend to bring forward a Scottish Statutory Instrument (SSI) to make provision for the enforcement and execution of Commission Implementing Regulation (EU) No 2018/775 (the EU Regulation) which lays down detailed rules on the provision of food information to consumers, indicating the country of origin or place of provenance of a primary ingredient where it is not the same as the origin of the food as a whole.

The EU Regulation is directly applicable which means that food businesses are legally required to comply with its requirements.

In addition the SSI inserts a transitional provision in the Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007 which would mean foods non-compliant with the trans fat limit specified in Annex III of Regulation (EU) No 1925/2006 can still be placed on the market until 1st April 2021.

PURPOSE

The purpose of the proposed Scottish Statutory Instrument is to:

- (a) make provision for the execution and enforcement of, and
- (b) provide penalties for non-compliance with the requirements of the EU Regulation which lays down specific labelling requirements where the country of origin or place of provenance of a primary ingredient is not the same as the origin of the food itself.
- (c) provide a transitional period during which foods placed on the market or labelled prior to the coming into force of the proposed SSI, may be marketed until such stocks are exhausted.
- (d) provide a transitional period in the Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007 which would mean foods non-compliant with the trans fat limit specified in Annex III of 1925/2006 can still be placed on the market until 1st April 2021.

BACKGROUND

Country of origin information

The Food Information (Scotland) Regulation 2014 (as amended) and the Country of Origin of Certain Meats (Scotland) Regulations 2016 (as amended) enable the enforcement of the general country of origin provisions in the EU Food Information to Consumers Regulation (1169/2011) (FIC Regulation) and the EU Regulation 1337/2013 on country of origin information for meat (not beef or game meat) respectively.

The EU Regulation gives effect to Article 26(3) of the FIC Regulation, which introduces additional specific requirements and expands on the current country of origin and place of provenance requirements in respect of multi-ingredient foods. Essentially, where the origin of a food is given and the origin of the primary ingredient is not the same, the EU Regulation requires either an indication of the origin of the primary ingredient or that it is different from the food itself. For example a cheese labelled as being British needs to make clear on the label if the milk used to make the cheese is not from the UK.

Transitional provisions apply to foods placed on the market or labelled prior to the coming into force date of the proposed SSI to enable such products to be marketed until stocks are exhausted.

Trans fat in food

Commission Regulation (EU) 2019/649 amends Annex III to Regulation (EU) No 1925/2006 which restricts the content of trans fat, other than trans fat naturally occurring in fat of animal origin, in food intended for the final consumer and food intended for supply to retail, to no more than 2 grams per 100 grams of fat.

We understand that British retailers made a commitment to remove artificial trans fat from foods in 2007 and delivered the commitment at the end of 2008. In 2011, the UK Government introduced a voluntary 'Responsibility Deal' pledge on industrially produced trans fat which many companies signed up to. The pledge had two parts which reflected the fact that some organisations took the decision not to use artificial trans fat, and a small number of others were working to remove them.

EU EXIT

The EU Regulation is directly applicable in EU Member States. Scottish Ministers are obliged by the terms of the EU (Withdrawal Agreement) Act 2020 to implement directly applicable EU legislation as though we retained EU membership throughout the Transition Period (1 Feb 2020 to 31 Dec 2020).

To ensure Scottish Ministers meet their EU obligations we need domestic legislation to enable the enforcement of and to provide penalties in the event of non-compliance with the new European requirements.

PROPOSALS

The options being considered are in relation to Regulation (EU) No 2018/775:

Option 1 – Do nothing. This means that the directly applicable European Regulation cannot be fully enforced in Scotland.

Option 2 – Introduce legislation to provide enforcement provisions in Scotland for Commission Implementing Regulation (EU) 2018/775 which would designate enforcement by local authority enforcement officers on a risk based approach.

Key proposal(s):

- *Provide enforcement provisions for Commission Implementing Regulation (EU) No 2018/775*

The options being considered are in relation to Regulation (EU) No 2019/649:

Option 1 – Do nothing. This means there will be no transitional period in Scottish Law

Option 2 – Insert a transitional provision in the Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007 which would mean foods non-compliant with the trans fat limit specified in Annex III of Regulation (EU)1925/2006 can still be placed on the market until 1st April 2021.

Key proposal(s):

Insert a transitional provision in the Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007 which would mean foods non-compliant with the trans fat limit specified in Annex III of 1925/2006 can still be placed on the market until 1st April 2021.

Consultation Process

A 4-week public consultation is being used to provide stakeholders and interested parties with the opportunity to comment on the proposed legislation and its associated impacts. Responses to the following questions are requested:

Questions asked in this consultation in relation to Regulation (EU) No 2018/775:

To help complete the BRIA, we would like to request data on the number of individuals or businesses likely to be affected by the labelling requirements as regards indicating the origin of the primary ingredient, or where it is different to the origin of the food as a whole.

1. Do you currently provide origin information for your products?
2. Do you manufacture multi-ingredient food using imported ingredients? e.g. Meat for curing or other meat products but not those covered by a protected food name or Geographic Indication
3. We invite stakeholders, including businesses to comment on whether the figures in the section on familiarisation costs are a realistic estimate?
4. We invite enforcement authorities to comment on whether the assumptions regarding enforcement costs are reasonable?
5. We invite stakeholders to comment and provide evidence on any additional costs or benefits associated with the key proposals?

Questions asked in this consultation in relation to Regulation (EU) No 2019/649 :

1. FSS propose including a transitional period in domestic legislation to clarify that businesses may continue to place food on the market which does not comply with the EU limits for trans fat added to food until 1 April 2021. Do you agree that this would be helpful? Please give further information if you feel that this would not be useful.

Business and Regulatory Impact Assessment

The purpose of a Business and Regulatory Impact Assessment (BRIA) is to assess and record the likely costs and benefits of the forthcoming provisions for individuals involved.

Any comments that interested parties are able to provide in relation to the proposed Regulations would be gratefully received.

We are particularly keen to hear from businesses and food manufactures on any likely impact and would encourage them to comment on all aspects of this proposal.

Following the consultation, we will review the responses received and consider whether any changes are required to the proposed national legislation.

No formal Business and Regulatory Impact Assessment has been done for a transition period for trans fat as this is a minor technical amendment and only likely to have a beneficial effect on businesses.

Responses

Responses are required by 27 March 2020.

Please state, in your response, whether you are responding as a private individual or on behalf of an organisation/company (including details of any stakeholders your organisation represents).

We will summarise all comments received and the official response to each will be published on the Food Standard Scotland website within 3 months following the end of the consultation period.

Thank you on behalf of Food Standards Scotland for taking the time to participate in this public consultation.

Yours faithfully,

Lynn Robertson
Policy Advisor
Regulatory Policy
Food Standards Scotland

Attached

Annex A: Standard Consultation Information

Annex B: Business & Regulatory Impact Assessment

Annex C: List of interested parties

Queries

1. If you have any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

GDPR, Publication of personal data and confidentiality of responses

2. The European General Data Protection Regulation (GDPR) replaces the Data Protection Directive 95/46/EC and was developed to harmonize data privacy laws across Europe. The Data Protection Act (the DPA) 2018 applies GDPR standards and transposes the EU Data Protection Directive 2016/680 (Law Enforcement Directive) into domestic UK law. In accordance with the GDPR, we are required to provide a privacy notice in relation to this public consultation. Food Standards Scotland will be known as the "Controller" of the personal data provided to us. We need to collect this information to allow us to effectively carry out our official duties of policy development and for the purposes of record keeping. In responding to this consultation, you have consented to provide this information to us but are able to withdraw your consent at any time by getting in touch with us.
3. Personal information is stored on servers within the European Union and cloud based services have been procured and assessed against the national cyber security centre cloud security principles. Personal information will not be used for any purpose other than in relation to consultations. Personal information will be stored for as long as necessary to carry out the above functions and for five years from receipt in accordance with our retention policy. No third parties have access to your personal data unless the law allows them to do so.
4. You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter. If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the Information Commissioner's Office (ICO). Our Data Protection Officer in the FSS is the Head of Corporate Services who can be contacted at the following email address: dataprotection@fss.scot
5. In accordance with the principle of openness, our office in Pilgrim House in Aberdeen will hold a copy of the completed consultation as per our retention policy. FSS will not publish anything without your consent. If you have any queries please email: dataprotection@fss.scot or return by post to the address given on page 1.
6. In accordance with the provisions of Freedom of Information Act (Scotland) 2002/Environmental Information (Scotland) Regulations 2004, all information contained in your response may be subject to publication or disclosure. If you consider that some of the information provided in your response should not be disclosed, you should indicate the information concerned, request that it is not disclosed and explain what harm you consider would result from disclosure. The final decision on whether the information should be withheld rests with FSS. However, we will take into account your views when making this decision.
7. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

8. A detailed Privacy Policy is available on our [website](#), that explains how FSS will safeguard and process any personal identifiable information that we collect from you in relation to this consultation.

Further information

9. A list of interested parties to whom this letter is being sent appears in Annex D. Please feel free to pass this document to any other interested parties, or send us their full contact details and we will arrange for a copy to be sent to them direct.
10. Please contact us for alternative versions of the consultation documents in Braille or other languages.
11. Please let us know if you need paper copies of the consultation documents or of anything specified under 'Other relevant documents'.
12. This consultation has been prepared taking account of the Consultation Criteria.
13. The Consultation Criteria from that Code should be included in each consultation and they are listed below:

The Seven Consultation Criteria

Criterion 1 — When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 — Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 — Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 — Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 — The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 — Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 — Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

14. Criterion 2 states that *Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible*. This consultation is not being held for a full 12 weeks in order to implement the EU Regulation as soon as possible.

15. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation. Please see the Business & Regulatory Impact Assessment at Annex B.

Comments on the consultation process itself

16. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by sending an email to openness@fss.scot or return by post to the address given on page 1.