

PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

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

Date: February 2020
Stage: Consultation
Source of intervention: EU
Type of measure: Regulation
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1. Title of Proposal

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

2. Purpose and intended effect

Objectives

2.1 The purpose of the draft Scottish Statutory Instrument (SSI) is to:

(a) make provision for the execution and enforcement of, and

(b) provide penalties for non-compliance with:

the requirements of Commission Implementing Regulation (EU) No 2018/775 (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 provision in respect of 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.

2.2 However, the objective in relation to the amendment to the Addition of Vitamins Minerals and Other Substances (Scotland) Regulations 2007 is a minor technical amendment and only likely to have a beneficial effect on businesses. We also understand that industry has been committed to removing artificial trans fat from food and given the significant progress made in the UK this has not been included within this Business and Regulatory Impact Assessment but this will be reviewed in light of consultation responses.

Background

2.3 The Food Information (Scotland) Regulations 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.

2.4 Implementing Regulation (EU) No 2018/775 (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, the effect is where the origin of a food is given and the origin of the primary ingredient is not the same, the FIC

Regulation requires either an indication of the origin of the primary ingredient or that it is different from the food itself.

- 2.5 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.

Rationale for Government intervention

- 2.6 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 the UK retained EU membership throughout the Implementation Period.
- 2.7 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.
- 2.8 The Food Information and Addition of Vitamins, Minerals and Other Substances (Scotland) Amendment Regulations 2020 will provide for these necessary measures.
- 2.9 Failure to introduce enforcement provisions for the EU Regulation would mean Scottish Ministers were not complying with their EU obligations, and that Scottish consumers would not have the additional information brought by the enhanced labelling provisions and consequently would not have the ability to make more informed purchasing decisions. In addition non-compliance could result in infraction proceedings against the UK although that risk seems low given EU exit. Therefore it is necessary to ensure that the EU requirements can be enforced in Scotland.
- 2.10 The proposed amendments to the Food Information (Scotland) Regulations 2014 will enable local authorities in Scotland to take action in the event of non-compliance with the specific labelling standards for the products covered by the EU Regulation.
- 2.11 However, transitional provisions apply to foods placed on the market or labelled prior to the coming into force date of the of the proposed SSI to enable such products to be marketed until stocks are exhausted.

3. Consultation

Within Government

- 3.1 The consultation package has been discussed with Scottish Government (SG) Food and Drink policy officials. FSS (and the former Food Standards Agency Scotland) also liaised with SG officials during the development of the FIC Regulation, the Food Information (Scotland) Regulations 2014 (as amended) and the Country of Origin of Certain Meats (Scotland) Regulations 2016 (as amended).

Public Consultation

- 3.2 A shortened 4 week consultation will be carried out in Scotland on the proposed changes to the law from 02 March 2020 to 27 March 2020.

Business

3.3 The main new EU policy requirements will be contained within the EU Regulation and the proposed SSI amending the Food Information (Scotland) Regulations 2014 which, in effect, allows for the enforcement of the directly applicable requirements in the EU Regulation, therefore we anticipate the impact to be minimal.

3.4 However, Scottish businesses will need to consider the impact of this EU Regulation on their product labelling if the origin of their product is given and they use imported ingredients as they will now have to provide additional details or at least an indication of the origin of a primary ingredient if its origin is different to that of the food itself.

3.5 The following definition and examples are provided to highlight the implications for business:

- “Primary ingredient” is defined within the FIC Regulation as “an ingredient or ingredients of a food that represent more than 50 % of that food or which are usually associated with the name of the food by the consumer and for which in most cases a quantitative indication is required”.
- 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.
- A shortbread is made in Scotland using imported butter and sugar which together amounts to more than 50% of the finished product. As such the butter and sugar falls within the definition of “Primary ingredient”. Therefore the shortbread is made in Scotland and the origins of the primary ingredients are different to that of the shortbread. The manufacturer gives the origin as produced in Scotland and will now be required to provide the origin of the primary ingredient or give an indication that its origin is not the same as the food as a whole. For example, “Produced in Scotland with French butter and flour or alternatively butter and flour which does not originate from Scotland (or any similar wording likely to have the same meaning for the consumer).
- Depending on how products are described, businesses may also need to consider the second part of the definition of primary ingredient if a quantitative indication is necessary. For example a shortbread is made in Scotland and described as “All butter Scottish shortbread Baked in Scotland.” Therefore, because the shortbread is made in Scotland and ‘butter’ is emphasised in the name of the food, a quantitative indication is needed for the butter and the origin of the butter also needs to be considered. If it is imported, the business with responsibility for labelling will now need to provide the origin of the butter or give an indication its origin is not the same as the food as a whole. For example “All butter Scottish shortbread baked in Scotland with Irish butter or butter which does not originate from Scotland.

3.6 In meeting the requirements of the FIC Regulation, businesses may choose any of the following geographic areas, as described in the EU Regulation:

- ‘EU’, ‘non-EU’ or ‘EU and non-EU’; or
- Region, or any other geographical area either within several Member States or within third countries, if defined as such under public international law or well understood by normally informed average consumers; or

- FAO Fishing area, or sea or freshwater body if defined as such under international law or well understood by normally informed average consumers; or
- Member State(s) or third country(ies); or
- Region, or any other geographical area within a Member State or within a third country, which is well understood by normally informed average consumers; or
- The country of origin or place of provenance in accordance with specific Union provisions applicable for the primary ingredient(s) as such;
- or by means of a statement as follows:
'(name of the primary ingredient) do/does not originate from (the country of origin or the place of provenance of the food)' or any similar wording likely to have the same meaning for the consumer.

3.7 Our consultation requests details of any businesses impacted by the proposed change to the law and will ask specific questions to ensure businesses are aware of the potential implications. In addition, it will be circulated to a wide group of industry bodies, retailers and enforcement officers whose specific industry knowledge may be able to identify other food manufacturers within Scotland where imported foods are being used as a primary ingredient in a finished food product.

3.8 The consultation questions are as follows –

Questions asked in this consultation:

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?

4. Options

- 4.1 **Option 1** – Do nothing. This means that the directly applicable EU Regulation cannot be fully enforced in Scotland.
- 4.2 **Option 2** – Introduce legislation to provide enforcement provisions in Scotland for the EU Regulation which would designate enforcement by local authority enforcement officers on a risk based approach.

Option 2 is the preferred approach.

Sectors and groups affected

- 4.3 Whilst these proposed changes to the law will apply in Scotland only, separate enforcement Regulations will be introduced in England, Wales and Northern Ireland.
- 4.4 Consumers – Non-monetised benefits to consumers from the enforcement, in due course, of improved country of origin labelling of the primary ingredient in food products. Consequently consumers will have more detailed information on where a product's ingredients come from and this information can be used to make more informed purchasing decisions. In some cases for example consumers may be willing to pay extra for wholly Scottish produced goods.
- 4.5 Enforcement Authorities – enforcement of the rules on food labelling in Scotland is the responsibility of Local Authority Environmental Health Departments.
- 4.6 Businesses – Manufacturers and retailers will be the main groups affected by the proposed amendment regulations. We anticipate that the main impact will be familiarisation costs rather than relabelling and printing costs which stem from the introduction of the EU Regulation itself.

Option Appraisal: Costs and Benefits

- 4.7 **Option 1 – Do nothing.** The EU Regulation is binding in its entirety and directly applicable in all EU Member States and to the UK during the transition period. Doing nothing would mean the EU Regulation will still apply but we would not have the domestic legislation to enforce it. Under EU law, the UK is obliged to provide for the enforcement of EU legislation. Failure to do so would not implement EU law. This may be challenged by individuals entitled to the enhanced consumer information and might lead to the UK being liable to infraction proceedings and consequent fines, although the risk of this seems very low given the UK's EU exit.
- 4.8 Option 1 is therefore disregarded as an option, but it is the baseline against which other options are appraised.
- 4.9 **Option 2** – Make appropriate domestic Regulations to provide for the enforcement of EU Regulation. There will be some familiarisation cost to industry and enforcement costs in ensuring compliance with the EU requirements identified below. The actual cost of relabelling products is due to the EU Regulation and is not assessed here.
- 4.10 Businesses are required to be familiar and comply with the overarching FIC Regulation and the EU Regulation expands the requirements of the FIC Regulation when businesses give country of origin information. The domestic enabling legislation, with which this impact assessment is concerned, does not modify any part of the FIC Regulation and, as such, costs to industry accrue only to EU legislation and are thus out of scope of this assessment.

Option 2

Industry

One off familiarisation cost

4.11 It is estimated that the reading and understanding of the proposed legislation - the Food Information and Addition of Vitamins, Minerals and Other Substances (Scotland) Amendment Regulations 2020 and guidance will take approximately 1 hour with a further 30 minutes for dissemination to key staff within each firm.

Per business the cost of this is estimated to be £42.66. This figure is calculated by firstly taking the 2018 Provisional ASHE (Annual Survey of Hours and Earnings)¹ figure for “Scotland Production managers and directors in manufacturing” of £21.88 (median value) and uprating it by 30% to account for overheads, giving an hourly wage rate of £28.44.

According to Scottish Annual Business Statistics there were 918 businesses in the ‘Manufacture of Food Products’ group in 2017 (the latest figures available)

Whilst it is not anticipated that the new requirements will affect all businesses, it is expected there will be a requirement for all to spend time understanding the bounds of the requirements. It is therefore estimated that the upper bound familiarisation cost to Scottish industry will amount to £39,200.00.²

If you are a manufacturer or retailer of produce made using imported primary ingredients, we encourage you to respond to this consultation.

Benefits

- 4.12 Manufacturers of food products made using largely domestic or ‘home-grown’ primary ingredients stand to benefit from this regulation. It may be that some consumers prefer locally sourced goods and are willing to buy these more often or pay slightly more for them. This regulation ensures that only manufacturers legitimately using mostly home-grown ingredients can benefit from this consumer preference.
- 4.13 This in turn may benefit primary producers if there is increased recognition and therefore demand for domestic products. However this benefit has not been quantified due to lack of appropriate evidence on the value of accurate food origin labelling and the corresponding impact this has on consumer behaviour.

Consumers

- 4.14 The legislation is expected to benefit consumers’ knowledge and facilitate more informed purchasing decisions. We expect some consumers to value the additional information on labels which will now include the country of origin of the primary ingredient, or an indication that it is different, where it is not the same as the origin of the food itself. This will also provide clear information to consumers in circumstances where a product has multiple components and has been manufactured in stages and in different countries.

¹

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashtable15>

² <https://www2.gov.scot/Topics/Statistics/Browse/Business/SABS/ScotDiv>

4.15 For example, a pie is made in Scotland using imported pastry and pie filling. Although the making of the pie takes place in Scotland, if the origin information is given, the label will now have to either give the country of origin of the primary ingredient or, at least an indication that its origin is different to that of the food as a whole. Consumers will therefore benefit from having additional country of origin information and have the ability to make more informed purchasing decisions.

Government

4.16 The effectiveness and impact of the proposed changes to the law will be monitored via feedback from stakeholders, including Enforcement Authorities, as part of the ongoing policy process. FSS' mechanisms for monitoring and review include; open fora, stakeholder meetings, surveys and general enquiries.

4.17 The proposed changes to the law will enable the enforcement of the new requirements and Local Authorities will need to become familiar with the new provisions. There are 350 enforcement officers throughout the 32 local authorities in Scotland and we estimate that it would take one Environmental Health Officer one hour to read and become familiar with the SSI and guidance material. The hourly pay rate for Qualified Environmental Health Officers is £15.36³ – averaging approximately £19.87 per hour once uprated to account for non wage labour costs and overheads, taken as 30%. The total one-off cost is therefore estimated at approximately £7,000.

4.18 These enforcement cost estimates may be overstated as enforcement officers are already familiar with the over-arching FIC Regulation and EU Regulation expands the FIC Regulation in a limited way regarding the provision of origin information. As such the costs incurred by local authorities are expected to be minimal.

5. Scottish Firms Impact Test

5.1 The labelling requirements themselves are not expected to be onerous on businesses. Those in scope of the EU Regulation are therefore not expected to face significant costs to comply.

- 5.2 Scottish firms could however be positively affected if it is easier to distinguish between locally sourced primary ingredients and imported ingredients in products. For example, there are a number of popular traditional food products such as shortbread which benefit from 'brand Scotland' but which may contain mostly imported ingredients. Importantly, while some consumers may or may not be concerned about the origin of the ingredients, by ensuring they have the information to act if they are, means that retailers, manufacturers and producers then have a tangible benefit to supply to this market. In the absence of this change to the law, retailers and manufacturers will be driven by cost and quality rather than origin, potentially leading to missed opportunities to primary producers.
- 5.3 Although we have been unable to source precise data to identify all businesses using imported primary ingredients in their produce, the consultation will be circulated to local authority enforcement officers and trade bodies whose local knowledge may be able to identify manufacturers the additional labelling requirements will affect within Scotland. We encourage manufacturers and retailers to respond to this consultation in order to update the data we currently have.

Competition Assessment

- 5.4 The proposed legislation will apply to all businesses using imported food as a primary ingredient in their produce allowing manufacturers in Scotland to trade equally across EU Member States until at least 31 December 2020, if appropriate. It should not limit the number or range of suppliers in Scotland either directly or indirectly or reduce the ability of, or incentives to, suppliers to compete. Therefore, it is not expected to have a significant impact on competition.

Test run of business forms

- 5.5 No new or additional forms will be introduced by this proposal therefore no test run need be completed.

Legal Aid Impact Test

- 5.6 During the consultation period we will ascertain with the Scottish Government Justice Directorate whether the new Regulations will have any legal aid implications.

6. Enforcement, sanctions and monitoring

Enforcement

- 6.1 Enforcement of the Regulations will be the responsibility of Local Authority Environmental Health Departments. Enforcement should be risk based and proportionate, in line with the approach taken with the current Scottish legislation on labelling. Enforcement officers would not be expected to initiate separate inspections in relation to the enforcement of these new provisions, but instead to include these as part of their existing regimes.

Sanctions

- 6.2 The Food Information (Scotland) Regulations 2014 provide the offence for breaches of the general country of origin requirements in the EU FIC Regulation. The Food Information and Addition of Vitamins, Minerals and Other Substances (Scotland) Amendment Regulations 2020, amend the 2014 Regulations to broaden the scope of the existing offence to include the new requirements on the origin of primary ingredients. The penalty available in the 2014 Regulations on summary conviction is a fine not exceeding level 5 on the standard scale.
- 6.3 However no penalty will apply to foods placed on the market or labelled prior to the coming into force date of the of the proposed SSI to enable such products to be marketed until stocks are exhausted.
- 6.4 No changes are being proposed to the criminal sanctions or civil penalties contained in existing legislation.

Monitoring

- 6.5 The effectiveness and impact of the Regulations will be monitored via feedback from stakeholders, including Enforcement Authorities, as part of the ongoing policy process. FSS' mechanisms for monitoring and review include; open fora, stakeholder meetings, surveys and general enquiries.

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