

FSS SUMMARY OF SUBSTANTIVE COMMENTS TO THE FOOD STANDARDS AND HYGIENE (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2019

March 1, 2019

Question	Respondent	Comment	Response
<p>1. Regulation (EU) No 2017/2158 sets out the sampling and analysis requirements for manufacturers and franchises. The estimated cost of sampling and analysis for acrylamide levels is £230 per sample. We would welcome further information from industry on costs associated with these obligations.</p>	Local Authority	1. Based in a Local Authority so unable to detail what the cost implications would be for industry. However the cost does not appear excessive.	Noted, thank you.
	Institute of Food Science and Technology (IFST)	2. The view of IFST is that there is no cost differential between 'Option 1' (do nothing) and 'Option 2' (to write 2017/2158 into Scottish legislation). Most of those involved in the Scottish food manufacturing industry, for whom acrylamide is an concern, are already following Regulation 2017/2158, irrespective of whether it is enacted into national legislation or not. On the other hand, most small and micro businesses, in the food service sector, are unaware of acrylamide and the 2017/2158 requirements, however IFST expect their awareness to grow. This would be driven by: educational campaigns, coverage of acrylamide in literature and training (eg HACCP Level 3), as well as the cascade of best practice within the larger food service operators. Hence, the same cost is therefore incurred	Agree small and micro businesses in the food service sector are more likely to be unaware of acrylamide. Food Standards Scotland has prepared guidelines for Local Authorities on the implementation of Commission Regulation (EU) 2017/2158. This guidance will form the basis for discussions with these businesses.

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		<p>under both Options. The £230 estimated cost of sampling and analysis is based upon a quantitative chemical test for acrylamide. Sampling and analysis plans must be risk-based, and there are other methods that meet the 2017/2158 requirement for sampling and analysis, other than chemical testing. Scaling up the £230 unit cost, to assume a chemical test is carried out on each occasion, is likely therefore to over estimate the cost to industry. For example, a risk-based plan for a pie manufacturer might involve chemical testing of all of their products, in order to determine the worst case scenario (in terms of acrylamide concentration), along with initial testing to calibrate acrylamide concentration against cooking times and temperatures, and against pastry colour. Then pastry colour measurements could be made as the routine 'sampling and analysis' tool, cross-checked against a quantitative chemical analysis, once every few months. Lower risk products may then</p>	

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		<p>have a less frequent chemical analysis schedule. For each business the risk based plan will be different making it very difficult to estimate a total cost. It is likely that the Pareto Principle will apply, with the bulk of the industry cost being incurred by large food manufacturing businesses, or large chains of food service outlets. The FSS could estimate the industry-wide cost, based upon the consultation responses from a small number of these larger businesses.</p>	
	UKHospitality	<p>3. This question is a bit misleading as it says requirements for "manufacturers and franchises " whilst in fact the definition in 2(3) includes franchises and many other larger businesses. The heading on Page 9 of the BRIA should probably not read "Franchises." Having worked on comprehensive guidance for the hospitality industry which is freely available to all, UKH has determined practical ways in which all businesses can comply with the Regulation through mitigation within their HACCP</p>	<p>Thank you for these comments. More detail within the main body of the text has now been provided.</p>

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		<p>plans, whilst additional measures for 2(3) businesses are also considered. We have a flow diagram to determine which businesses need to follow the more burdensome obligations of the Regulation, and have considered ways to minimise that burden, for example if businesses follow manufacturers' instructions they may not need to carry out sampling themselves. A cost analysis exercise carried out by BHA in 2016 identified that if all businesses had to carry out sampling of high risk (in terms of Acrylamide) items on their menus the industry would experience a high financial cost of between £103m - £52m. This was based on sampling costs of £100 per check, much below the actual cost quoted above, so real costs would be much higher based on £230 per sample. We do not have consolidated data for the actual costs of sampling for larger 2(3) businesses to date as we are still in early days of determination of which businesses fit into the 2(3)</p>	

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		category and what sampling is needed.	
2. We invite stakeholders to comment on whether the figures regarding familiarisation costs to businesses and enforcement authorities outlined in the partial BRIA are realistic estimates?	Local Authority	1. The familiarisation cost to enforcement authorities would appear accurate. However it is more difficult to quantify the on-going cost to enforcers. There may be some cases where it may take longer than detailed and also the inclusion of investigation to possible adverse sample results would need to be considered.	Thank you.
	Institute of Food Science and Technology (IFST)	2. A discussion, lasting about 20 minutes, between an EHO and a micro-business seems to be a realistic estimate, but the total familiarisation cost should also include follow-up activities undertaken by the businesses. A significant proportion of impacted businesses (e.g. fish and chip shops) should carry out further research and may choose to undertake some basic managerial training, the cost of which would probably be modelled. Larger businesses may introduce policies or codes of practice, backed up by internal audits or inspections, and the cost of these could also be modelled.	Noted, thank you. As mitigation measures are proportionate to the size of the business follow up activities such as research or training will vary. However further discussion on this matter will take place involving FSS, local authorities and food businesses.

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	UKHospitality	<p>3. In the English consultation, having discussed this with our members, we estimated that familiarisation would take at least 2 hours per business to learn, amend HACCP or FSMS documentation and disseminate information, so 15-10 minutes seems an underestimation. In addition they would need to speak with the EHO about this issue during an inspection. I would have thought that the EHO discussions with the larger companies could in fact take much longer than 10 minutes because there may be discussions about whether the business fell into the 2(3) category. In my experience this can be quite protracted. If we said on average the time spent for familiarisation and EHO visit would be 2 hours per business @ £27.81 per hour for 10,950 businesses, then the cost to industry would be £609,039. The BRIA document has errors on p12 - the decimal point is in the wrong place on the second calculation "£27.81 EHO hourly rate / 15 minutes = 6.95 x 105,175.5</p>	Noted, thank you, figures have now been revised.

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		businesses = £73,122.92" and the first calculation refers to 15 minutes, then 20 minutes and then the sum is for 15 minutes. The figure for 20 minutes would be £101,506.50 not £76,102.50.	
3. We invite stakeholders who feel they may be impacted by the Food Standards and Food Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 to comment on the associated key proposals.	Local Authority	1. I would agree that proposal 2 making the above regulation would be the preferred option. The changes proposed would have a beneficial impact upon the industry, I do not foresee these having any major resource impact on Local Authorities.	Thank you for your response.
	Institute of Food Science and Technology (IFST)	2. No comment	Noted
	UKHospitality	3. No comment	Noted

Respondents

1 local authority, 1 trade association, 1 food science and technology professional body responded to this consultation.