Food Standards Scotland (FSS)
Public Consultation

www.foodstandards.gov.scot

Title: The Food Standards and Food Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019

Consultation Summary Page

Date consultation launched:	Closing date for responses:
19 November 2018	17 December 2018

Who will this consultation be of most interest to?

Enforcement authorities, manufacturers, wholesalers and retailers of food products. This consultation may also be of interest to consumer groups and others with an interest in food labelling legislation.

What is the subject of this consultation?

The drafting of the Food Standards and Food Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 is to:

a) Amend the Fruit Juices and Fruit Nectars (Scotland) Regulations 2013 to draw businesses' attention to Commission Delegated Regulation (EU) No 1040/2014 amending Directive 2001/112/EC relating to fruit juices and similar products intended for human consumption to adapt its Annex I to reflect technical progress;

b) Amend the Food Hygiene (Scotland) Regulations 2006 to draw businesses' attention to Regulation (EU) No 2017/2158 establishing mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food;

c) Provide for Commission Regulation (EU) No 2017/1973 amending Regulation (EC) No 2074/2005 as regards official controls on fishery products caught by vessels flying the flag of a Member State and introduced into Union after being transferred in third countries and establish a model health certificate for those products;

d) Amend the Country of Origin of Certain Meats (Scotland) Regulations 2016 to remove superfluous definitions as requested by the Developing Policy and Law Reform Committee during Parliamentary scrutiny when the Regulations were laid;

e) Make other miscellaneous amendments to various Scottish Statutory Instruments to ensure the accuracy and currency of the statute book in Scotland in relation to food and feed before the UK exits the EU.

What is the purpose of this consultation? To provide stakeholders with an opportunity to comment on the draft Scottish Statutory Instrument for the Food Standards and Food Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 and associated partial Business and Regulatory Impact Assessment in relation to mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food. This is based on the preferred option to make all the proposed changes described above in a single instrument.

Responses to this consultation should be sent to:	
Kate Forsyth Regulatory Policy Branch Food Standards Scotland Tel: 01224 288380 E-mail address: Kate.Forsyth@fss.scot	Postal address: Food Standards Scotland Fourth Floor Pilgrim House Old Ford Road Aberdeen AB11 5RL

Is a Business & Regulatory Impact Assessment (BRIA) included with this consultation?	Yes ☒	No ☐ See Annex A for reason.

The Food Standards and Food Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019

DETAIL OF CONSULTATION

Food Standards Scotland (FSS) would welcome your comments on the draft Food Standards and Food Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 (see Annex B) and the partial Business and Regulatory Impact Assessment (BRIA) in relation to mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food (see Annex C).

Introduction

1. The purpose of the draft SSI is to:

a) Amend the Fruit Juices and Fruit Nectars (Scotland) Regulations 2013 to draw businesses' attention to Commission Delegated Regulation (EU) No 1040/2014 amending Directive 2001/112/EC relating to fruit juices and similar products intended for human consumption to adapt its Annex I to reflect technical progress;
b) Amend the Food Hygiene (Scotland) Regulations 2006 to draw businesses' attention to Regulation (EU) No 2017/2158 establishing mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food;
c) Provide for Commission Regulation (EU) No 2017/1973 amending Regulation (EC) No 2074/2005 as regards official controls on fishery products caught by vessels flying the flag of a Member State and introduced into Union after being transferred in third countries and establish a model health certificate for those products;
d) Amend the Country of Origin of Certain Meats (Scotland) Regulations 2016 to remove superfluous definitions as requested by the Developing Policy and Law Reform Committee during Parliamentary scrutiny when the Regulations were laid;
e) Make other miscellaneous amendments to various Scottish Statutory Instruments to ensure the accuracy and currency of the statute book in Scotland in relation to food and feed before the UK exits the EU.

Proposals

2. The options being considered are:

Option 1 – Do nothing. This would mean not making any of the proposed miscellaneous amendments, including Fruit Juices and Fruit Nectars (Scotland) Regulations 2013 to provide for the enforcement of Commission Delegated Regulation (EU) No 1040/2014 and those to the Food Hygiene (Scotland) Regulations 2006 in respect of the new EU Regulation on acrylamide and official controls on fishery products. If the updates were not made then the statute book in Scotland in relation to food and feed would continue to refer to outdated EU and domestic legislation.

Option 2 – Make the Food Standards and Food Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 to cover all proposed changes in a single SSI. This is the preferred option.

Key proposal(s):

- **Amend the Fruit Juices and Fruit Nectars (Scotland) Regulations 2013 to draw businesses' attention to Commission Delegated Regulation (EU) No 1040/2014;**
- **Amend the Food Hygiene (Scotland) Regulations 2006 to draw attention to Regulation (EU) No 2017/2158 on acrylamide;**
- **Provide for Commission Regulation (EU) No 2017/1973 as regards official controls on fishery products;**
- **Amend the Country of Origin of Certain Meats (Scotland) Regulations 2016 to remove superfluous definitions;**
- **Make other miscellaneous amendments to various Scottish Statutory Instruments (SSIs) to ensure the accuracy and currency of the statute book in Scotland in relation to food and feed before the UK exits the EU.**

Background

The proposed amendments would make the legislative changes set out below.

Fruit Juice

The Fruit Juices and Fruit Nectars (Scotland) Regulations 2013 transpose in Scotland 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 which may be applied to fruit juices and nectars. They also set conditions for juice manufacturers 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. 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. It is directly applicable therefore has automatically become part of the law in force in Scotland. However, FSS consider it preferable to amend the 2013 Regulations to make clear to manufacturers what substances may be applied to fruit juices.

Acrylamide

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 food.

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. It highlighted that further work is needed to reduce the occurrence of acrylamide in food.

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 food business operators (FBOs) along the food chain.

Fishery Products Certification

Commission Regulation (EC) No 2017/1973, amends Regulation (EC) No 2074/2005, as regards official controls on fishery products caught by Union flagged vessels introduced into Union territory after being transferred in third countries, establishes a model of the health certificate for those products.

The measure is supported by the UK as it introduces a health certificate for fishery products caught by a Member State's vessel, but unloaded in a 3rd country, before arriving at the EU.

The measure ensures that the unloading takes place hygienically in respect of the legal requirements and any storage undertaken within the 3rd country is carried out at an approved coldstore(s).

Impact on Businesses and Enforcement Authorities

The consultation will be circulated to a wide group of industry bodies, manufacturers, retailers and enforcement officers. As the updates to legislation are technical and drafting rather than policy changes, we expect that the impact on businesses and enforcement authorities to be minimal.

Other than the familiarisation costs associated with changes to the acrylamide regulation mentioned in the Impact Assessment, additional burden on enforcement authorities is likely to be minimal.

Consultation Process

3. A 4 week consultation is being launched to provide interested parties with the opportunity to comment on these proposals. Due to anticipated high demands for parliamentary time and our intention to have these technical and drafting changes in place prior to Friday 29 March, 2019, a shortened consultation period is deemed necessary.

Questions asked in this consultation:

We are conducting an Impact Assessment on the introduction of the requirements of Regulation (EU) No 2017/2158 only as we do not believe there will be an impact on businesses or local authorities regarding the other proposed amendments. We would like to request that any businesses or local authorities who feel they may be impacted by the change in regulations respond to the consultation.

Q1. 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.

Q2. 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?

Q3. 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.

4. We are particularly keen to hear from Small and Medium Enterprises (SMEs) on any likely impact and would encourage them to comment on all aspects of the proposal.

Business and Regulatory Impact Assessment

The purpose of a BRIA is to assess and record the likely costs and benefits of the mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food for manufacturers, retailers, consumers and enforcement bodies.

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

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

Other relevant documents

5. Commission Regulation (EU) 2017/2158 establishing mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food

Responses

This is a shortened 4 week consultation and therefore responses are required by close **17 December 2018**. If this timescale is likely to cause a difficulty in making your comments please let us know. 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 FSS website within 3 months following the end of the consultation period.

Thank you on behalf of Food Standards Scotland for participating in this public consultation.

Yours sincerely,

Kate Forsyth
Regulatory Policy Branch
Food Standards Scotland

Enclosed

Annex A: Standard Consultation Information

Annex B: Draft Scottish Statutory Instrument

Annex C: Partial Business & Regulatory Impact Assessment on acrylamide

Annex D: List of interested parties

Annex E: Consultation Feedback Questionnaire

Annex F: Data Protection Form

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. 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.

Further information

8. 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.

9. Please contact us for alternative versions of the consultation documents in Braille or other languages.

10. Please let us know if you need paper copies of the consultation documents or of anything specified under 'Other relevant documents'.

11. This consultation has been prepared taking account of the Consultation Criteria.

12. 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.

13. Criterion 2 states that *Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible*.

Due to anticipated high demands for parliamentary time and our intention to have the changes in place prior to Friday 29 March, 2019, the consultation period will last for 4 weeks.

14. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation.

Please see the partial BRIA on Regulation (EU) No 2017/2158 at Annex C.

Comments on the consultation process itself

15. 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.