

Executive Note

The Food Labelling Amendment (No.3) (Scotland) Regulations 2005 SSI/2005/542

The above instrument was made in exercise of the powers conferred by sections 6(4), 16(1)(e) and (f), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990. The instrument is subject to negative resolution procedure.

Policy objectives

The purpose of the instrument is to implement, in Scotland, Commission Directive 2005/26/EC establishing a list of food ingredients or substances provisionally excluded from Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council. This instrument also implements Commission Directive 2005/63/EC correcting Directive 2005/26/EC concerning the list of food ingredients provisionally excluded – until 25 November 2007 - from Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council.

Directive 2005/26/EC provides provisional exemptions from the requirement to be listed as allergens on food labels, for ingredients derived from allergens that are no longer allergenic, providing there is sufficient scientific justification in support of this. Applications on 32 derived ingredients were submitted to the European Food Safety Authority and all but 4 have been granted provisional exemption from allergen labelling. Included in these provisional exemptions is fish gelatine, which, when used as a carrier for vitamin and carotenoid preparations and 'flavours', is not likely to cause an allergic reaction.

Directive 2005/26/EC was implemented in Scotland through the Food Labelling Amendment (No.2) (Scotland) Regulations 2005 (S.S.I 2005/456). These Regulations were due to come into force on 25 November 2005.

However, carotenoids was wrongly omitted from the list of ingredients or substances set out in the Annex to Directive 2005/26/EC, which are provisionally excluded from Annex IIIa of Directive 2000/13/EC. The Commission has now corrected this error by publishing a further Directive on 4 October 2005 (Directive 2005/63/EC).

The Food Labelling Amendment (No.3) (Scotland) Regulations 2005 revoke the Food Labelling Amendment (No.2) (Scotland) Regulations 2005 (on 24 November 2005) and remake the provisions contained in those Regulations together with the correction necessary to implement Directive 2005/63/EC (to come into force on 25 November 2005). The entry in new Schedule 2A (listing the exempt allergenic ingredients) for 'Fish': 'Fish gelatine used as a carrier for vitamins and 'flavours'' has been replaced with 'Fish gelatine used as a carrier **for vitamin or carotenoid preparations** and 'flavours''.

Directive 2000/13/EC on the approximation of the laws of Member States relating to the labelling, presentation and advertising of foodstuffs, has been implemented into national law by the Food Labelling Regulations 1996 (SI No.1499) as amended. The Food Labelling Amendment (No.3) (Scotland) Regulations 2005 further amends the Food Labelling Regulations 1996 in Scotland.

Consultation

Article 9 of EC Regulation 178/2002, laying down the general principles and requirements of food law, requires open and transparent public consultation on the revision of food law, save in respect of measures made in circumstances of urgency. These regulations are not made in circumstances of urgency and therefore full public consultation was undertaken by the Agency as follows:

A circulation list of the interested parties that have been consulted during the preparation of the instrument is attached to the Regulatory Impact Assessment. Under the terms of agreement of Directive 2005/26/EC, manufacturers were to have a 12-month transition period in which to make any labelling changes necessary in order to comply with the requirements of the Directive. However, publication of the Directive was delayed by 5 months. To avoid further loss of transposition time in facilitating label changes and because stakeholders were already aware of the provisions of the Directive (through the consultation on Directive 2003/89/EC), a shortened consultation period for the Food Labelling Amendment (No.2) (Scotland) Regulations 2005 was agreed. The Food Standards Agency Scotland received seven responses during the four-week consultation period. Five of the responses made no comment and two were largely in favour of the proposed draft instrument. The Food Labelling Amendment (No.2) (Scotland) Regulations 2005 were made by the Minister on 15 September 2005 and were due to come into force on 25 November 2005.

The Food Labelling Amendment (No.3) (Scotland) Regulations 2005, (which revoke the Food Labelling Amendment (No.2) (Scotland) Regulations 2005 and remake the provisions contained in those Regulations - amended to reflect Directive 2005/63/EC), and the updated guidance note were both issued in draft for a 1 week consultation on 12 October 2005. This shortened consultation period was necessary in order to comply with the 25 November 2005 deadline set by the Commission for the application of the measures contained in Directive 2005/23/EC, as corrected by 2005/63/EC. There was one response from industry and no comment was made.

The Regulatory Impact Assessment that was produced for the implementation of the Food Labelling Amendment (Scotland) (No.2) Regulations 2005 has now been amended to include reference to the correcting Commission Directive 2005/63/EC. This is being reissued for signing by the Minister.

Legislation to implement the correcting Directive 2005/63/EC will be introduced in England, Wales and Northern Ireland.

Financial Effects

The instrument will exempt ingredients that would have to be labelled from the requirement to be labelled, therefore there are no identifiable costs to the public.

Foods Standards Agency Scotland
1 November 2005