

POLICY NOTE

THE FOOD ADDITIVES, FLAVOURINGS, ENZYMES AND EXTRACTION SOLVENTS (SCOTLAND) REGULATIONS 2013

SSI 2013/266

1. Description

The above instrument was made in exercise of the powers conferred by sections 6(4), 16(1)(a), (c), (e) and (f), 17(1) and (2), 26(1) and (3), and 48(1) of the Food Safety Act 1990, paragraph 1A of Schedule 2 to the European Communities Act 1972 and all other powers enabling them to do so.

2. Policy Objective

2.1 These Regulations revoke the current Scottish statutory instruments on food additives, flavourings, food enzymes, smoke flavourings and extraction solvents and replace them with a single Scottish statutory instrument (SSI).

3. Policy background

What is being done and why?

3.1 Currently, the Food Additives (Scotland) Regulations 2009 (S.S.I No. 436) has a dual function – as well as enforcing the Additives Regulation (EC) No. 1333/2008 it also enables the Annexes and associated Articles of the three previous Directives on sweeteners, colours and miscellaneous additives to continue to apply by way of transitional provisions. From 1 June 2013 the relevant provisions in the three Directives were transferred to Annexes II and III of (EC) Regulation 1333/2008 and no longer apply.

3.2 An amendment is required to the Flavourings in Food (Scotland) Regulations 2010 (S.S.I 2010/439) to reflect the different dates of application of the European Union (positive) list of flavourings and the transitional periods as set out in Commission Regulation (EU) No. 873/2012. The existing SSI simply refers to the transitional measures as set out in Article 30 of Regulation (EC) No. 1334/2008 on food flavourings and therefore does not take into account the different dates of application of the Union list as set out in Regulation 873/2012.

3.3 In these Regulations the extraction solvents provisions have been simplified and will refer directly to Annex I of the European Directive 2009/32 (as amended) with the effect that any changes to the list of permitted extraction solvents or their use will directly apply. This will enable businesses to use newly authorised solvents more quickly without having to wait for national implementing legislation.

3.4 We are also taking this opportunity to consolidate the Smoke Flavourings (Scotland) Regulations 2005 (as amended) and the Food Enzymes (Scotland) Regulations 2009. No changes are required to the current measures.

3.5 These Regulations will therefore revoke and re-enact, with necessary amendments, all existing “food additive” type legislation, within the Food Standard Agency’s remit in one consolidated instrument. Stakeholders will benefit from having all the rules on “food additive” type legislation contained in a single Scottish Statutory Instrument, instead of having five different national Regulations to refer to. The intention is to simplify the way that rules governing food additives, flavourings, enzymes and extraction solvents are presented in Scotland to make them as clear as possible for the end user. This is clearly of benefit to stakeholders, including enforcement authorities and industry; the effect of which will assist in further protecting consumer health.

4. Legislative Context

4.1 Harmonised European legislation controls the use of food additives, flavourings, smoke flavourings, food enzymes and extraction solvents in the European Union. In general, all the above substances are controlled by way of positive lists e.g only authorised substances can be used in food and substances must meet specific conditions of use. For food enzymes and for certain categories of flavourings, work is underway to establish the positive lists.

4.2 The controls on food additives, flavourings (including smoke flavourings) and food enzymes are set out in European Regulations, which are directly applicable in all European Member States. Therefore, the national legislation in these areas only covers enforcement provisions for the relevant European Regulations, as described below:

- Commission Regulation (EU) No. 1332/2008 on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97, originally enforced in Scotland by the Food Enzymes (Scotland) Regulations 2009 (SSI 2009 No.435).
- Commission Regulation (EU) No. 1333/2008 on food additives, originally enforced in Scotland by the Food Additives (Scotland) Regulations 2009 (SSI 2009 No. 436).
- Commission Regulation (EU) No. 1334/2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No. 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC, originally enforced in Scotland by the Flavourings in Food (Scotland) Regulations 2010 (SSI 2010 No. 439).

- Commission Regulation (EC) No. 2065/2003 on smoke flavourings used or intended for use in or on foods, originally enforced by the Smoke Flavourings (Scotland) Regulations 2005 (SSI 2005 No. 215).

4.3 The controls on extraction solvents are specified in European Directive 2009/32 as amended by European Directive 2010/59 and all requirements were originally transposed into national law in the Extraction Solvents in Foods Regulations 1993

4.4 In these Regulations, the references to the underlying EU instruments are ambulatory

5. Consultation

5.1 The FSA in Scotland conducted a formal public consultation from 16th April to 11th June 2013, seeking comments on the draft Regulations. Those stakeholders consulted included food manufacturers, food industry organisations, consumers, enforcement authorities, and the consultation was available on the FSA website. No comments were made on the draft Regulations.

6. Other Administrations

6.1 These Regulations apply in relation to Scotland only. Separate but parallel legislation is being made for England, Wales and Northern Ireland.

7. Guidance

7.1 No specific guidance has been prepared to accompany these Regulations, however separate guidance has been prepared by the FSA covering the specific rules of the European food additives legislation – Commission Regulation 1333/2008.

8. Impact

8.1 A Business and Regulatory Impact Assessment has not been prepared for these Regulations, as there are no new requirements on businesses/enforcement authorities or the private or voluntary sector, as existing legislation is being revoked and remade into a single SSI. Therefore there is no additional impact on the private or voluntary sector.

9. Regulating small business

9.1 These Regulations will apply to all businesses, small and large.

10. Monitoring

10.1 The FSA will work with enforcement authorities where problems or suspected infringements of these Regulations arise. The effectiveness of these Regulations will be monitored via general feedback from industry and enforcement authorities.

FSA in Scotland

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