

# FOOD STANDARDS SCOTLAND

## PUBLIC CONSULTATION



### The Draft Food Information (Scotland) Amendment Regulations 2016

#### CONSULTATION SUMMARY PAGE

<b>Date consultation launched:</b>	<b>Closing date for responses:</b>
23 March 2016	16 May 2016

#### Who will this consultation be of most interest to?

Manufacturers, wholesalers and retailers of foods suitable for people intolerant to gluten. The consultation will also be of interest to enforcement authorities, health professionals, caterers, consumer groups and consumers intolerant to gluten (i.e. people who suffer from coeliac disease).

#### What is the subject of this consultation?

The draft Scottish Regulations are needed to provide for the enforcement of Commission Implementing Regulation (EU) No 828/2014 on the requirements for the provision of information to consumers on the absence or reduced presence of gluten in food. The EU Regulation sets out the requirements, based on internationally accepted safe levels, related to the claims “gluten-free” and “very low gluten” for foods which have been specifically manufactured to satisfy the particular nutritional requirements of people who are intolerant to gluten. The EU Regulation also allows “normal foods” that meet the compositional requirements of the Regulation to be labelled as “gluten-free”. The proposed Scottish Regulations are intended to revoke and replace The Foodstuffs Suitable for People Intolerant to Gluten (Scotland) Regulations 2010.

#### What is the purpose of this consultation?

To seek comments on the draft Scottish Statutory Instrument The Food Information (Scotland) Amendment Regulations 2016 and the supporting Business and Regulatory Impact Assessment. Parallel regulations will be produced in England, Wales and Northern Ireland and consultations on these will be issued in due course.

#### Responses to this consultation should be sent to:

**Mr Russell Napier**  
**Regulatory Policy Branch**  
**FOOD STANDARDS SCOTLAND**  
**Tel: 01224 285155**  
**Email: [Russell.Napier@fss.scot](mailto:Russell.Napier@fss.scot)**

Postal address:  
**Pilgrim House**  
**Old Ford Road**  
**Aberdeen**  
**AB11 5RL**

<b>Is a Business and Regulatory Impact Assessment included with this consultation?</b>	<b>Yes</b>	<b>No</b>
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If you would prefer to receive future FSS consultations by e-mail, or if you no longer wish to receive information on this subject please notify the named person in this consultation.

# The Food Information (Scotland) Amendment Regulations 2016

## DETAIL OF CONSULTATION

Food Standards Scotland (FSS) would welcome your comments on the draft **Food Information (Scotland) Amendment Regulations 2016** (see Annex B).

### Background

In January 2009, the European Commission published Regulation (EC) No 41/2009 concerning the composition and labelling of foodstuffs suitable for people intolerant to gluten. The Regulation introduced compositional criteria for the claims “gluten-free” (not more than 20 mg/kg of gluten) and “very low gluten” (not more than 100 mg/kg of gluten) for foods which have been specifically manufactured to satisfy the particular nutritional requirements of people who are intolerant to gluten as provided for by Council Directive 2009/39/EC. The Regulation also allows normal foods and other foods for particular nutritional uses (that are not specially prepared for people intolerant to gluten but meet the compositional requirements of the Regulation) to be labelled as “gluten-free”.

Following a revision of the legislation on foodstuffs intended for particular nutritional uses (i.e. PARNUTS), Regulation (EU) No 609/2013 of the European Parliament and of the Council on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control will repeal Regulation (EC) No 41/2009 and Directive 2009/39/EC from 20 July 2016. The introduction of Scottish Regulations to enable the enforcement of Regulation (EU) No 609/2013 will be the subject of a separate consultation.

It is important that information on the absence or reduced presence of gluten in food must be presented clearly and accurately to consumers and the rules for doing so will be retained under Commission Implementing Regulation (EU) No 828/2014.

The gluten levels permitted by Regulation (EU) No 828/2014 for the terms “gluten free” and “very low gluten” are identical to those set previously in Regulation (EC) No 41/2009 (as quoted above). However, Article 3 states that these terms may now be supported by the statements: “suitable for people intolerant to gluten” or “suitable for coeliacs”.

Additionally, the supporting information “specifically formulated for people intolerant to gluten” or “specifically formulated for coeliacs” may be used if the food has been specially produced, prepared and/or processed to:

- (a) reduce the gluten content of one or more gluten-containing ingredients; or
- (b) substitute the gluten-containing ingredients with other ingredients free of gluten.

The phrase “no gluten-containing ingredients” can no longer be applied to “normal” foods.

Regulation (EU) No 609/2013 has a more restricted scope than the previous Parnuts Directive 2009/39/EC and foods making gluten claims will in future be

treated as normal foods covered by the general food labelling requirements of the Food Information for Consumers Regulation (EU) No 1169/2011 (FIC). This means that the enforcement of all food allergen and intolerance related labelling requirements will be provided by the Food Information (Scotland) Regulations 2014 (as amended).

Therefore, the Food Information (Scotland) Amendment Regulations 2016 are needed to reflect this change in the European legislative framework and to provide for the enforcement of Regulation (EU) No 828/2014 in Scotland.

## Proposals

The options being considered are:

**Option 1** – Do nothing. This means that the directly applicable European Regulation on gluten claims could not be enforced in Scotland.

**Option 2** – Introduce legislation to provide enforcement provisions in Scotland for Regulation (EU) No 828/2014.

### **Key proposal:**

*To provide enforcement provisions for Commission Implementing Regulation (EU) No 828/2014*

## Enforcement

Failure to introduce enforcement provisions for Regulation (EU) No 828/2014 could result in infraction proceedings against the UK. It is necessary to ensure that EU labelling requirements for gluten claims will continue to be enforced in Scotland beyond 20 July 2016. The proposed Food Information (Scotland) Amendment Regulations 2016 will enable the enforcement authorities in Scotland to take action if information on the absence or reduced presence of gluten in food is not provided correctly.

## Consultation Process

A shortened 7-week public consultation is being used to provide stakeholders and interested parties with the opportunity to comment on the proposed legislation and its associated impacts.

Does the Partial Business and Regulatory Impact Assessment (see Annex C) provide a reasonable estimate of the costs and benefits likely to arise from introduction of the amending legislation?

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 this proposal.

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

## **Other relevant documents**

Commission Implementing Regulation (EU) No 828/2014 is available from the EUR-Lex website at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0828&rid=1>

## **Responses**

Responses are required by close **16 May 2016** .

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 Food Standard Scotland website within 3 months following the end of the consultation period.

Thank you on behalf of Food Standards Scotland for taking the time to participate in this public consultation.

Yours faithfully,

## **Russell Napier**

Regulatory Policy Branch  
Food Standards Scotland

## Attached

Annex A: Standard Consultation Information

Annex B: Draft Scottish Statutory Instrument – The Food Information (Scotland) Amendment Regulations 2016

Annex C: Partial Business and Regulatory Impact Assessment

Annex D: List of interested parties

Annex E: Data Protection Form

Annex F: Consultation Feedback Questionnaire

## 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.

## Publication of personal data and confidentiality of responses

2. In accordance with the principle of openness, our office in Pilgrim House in Aberdeen will hold a copy of the completed consultation. Food Standards Scotland (FSS) will publish a summary of responses, which may include full name. Disclosure of any other personal data would be made only upon request for the full consultation response. If you do not want this information to be released please email [openness@fss.scot](mailto:openness@fss.scot) or return by post to the address given on page 1.
3. 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.
4. 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

5. A list of interested parties to whom this letter is being sent appears in Annex C. 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 directly.
6. Please contact us for alternative versions of the consultation documents in Braille, other languages or audiocassette.
7. Please let us know if you need paper copies of the consultation documents or of anything specified under '**Other relevant documents**'.
8. This consultation has been prepared in accordance with HM Government Code of Practice on Consultation, available at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/100807/file47158.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/100807/file47158.pdf)
9. The consultation criteria from that code should be included in each consultation and are listed overleaf:

## 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.*

10. The Code of Practice states that an Impact Assessment should normally be published alongside a formal consultation. A Business and Regulatory Impact Assessment has not been prepared in this case since the change only applies to the legislative framework and not the actual information provided to consumers. Thus, there are no anticipated costs for businesses to comply with the Regulation. Similarly, there are no costs to be incurred by enforcement authorities.

## **Comments on the consultation process itself**

11. 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 by sending an email to [openness@fss.scot](mailto:openness@fss.scot) or return by post to the address given on page 1.