

## EXPLANATORY MEMORANDUM TO

### THE FOOD (MISCELLANEOUS AMENDMENT AND REVOCATION) REGULATIONS (NORTHERN IRELAND) 2013

#### 2013 No. 39

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Food Standards Agency in Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under Articles 15(1) and (3), 16(1), 25(1) and (3) and 47(2)(c) and (3) of the Food Safety (Northern Ireland) Order 1991.

#### 2. Purpose of the Rule

- 2.1 This rule will revoke the Arsenic in Food Regulations (Northern Ireland) 1961<sup>(1)</sup> and its amendment, the Chloroform in Food Regulations (Northern Ireland) 1980<sup>(2)</sup> and the Ungraded Eggs (Hygiene) Regulations (Northern Ireland) 1990<sup>(3)</sup> and also make an amendment to the Food Labelling Regulations (Northern Ireland) 1996<sup>(4)</sup>.

#### 3. Legislative Context

- 3.1 The Arsenic in Food Regulations are based on science which is now out of date; they set a statutory level for total arsenic that has been amended to take account of more recent scientific studies. Total arsenic is the sum of all different chemical forms in which arsenic can exist in the environment. The toxicity of arsenic is dependent on the chemical forms, and it has been shown that the organic forms of arsenic are less harmful whereas the inorganic forms can cause cancer. As such, inorganic arsenic present in food at the statutory level set out in the Arsenic in Food Regulations may be considered ‘unsafe’ under more recent General Food Law (Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 (“General Food Law”). Currently, if a food incident occurs in relation to arsenic in food, a risk assessment is carried out and any necessary action is taken under the General Food Law – the Arsenic in Food Regulations are no longer required to ensure consumer protection.
- 3.2 The Chloroform in Food Regulations lay down restrictions regarding chloroform added to food. The Regulations prohibit the sale or importation of food containing added chloroform under any circumstances. It is considered by the FSA that an equivalent level of protection of public health is achieved under General Food Law, and these Regulations are no longer necessary.
- 3.3 There is now very limited use of chloroform in the food industry, which means that even an isolated contamination incident is highly unlikely. At the time the Chloroform in Food Regulations were made an absolute prohibition on the presence of chloroform was required because detection was not possible at the very low levels achievable now. Having a limit set at the limit of detection is now inappropriate, as detection with powerful modern analytical techniques can be achieved at levels that are of no relevance for safety.

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<sup>1</sup> S.R. 1961 No. 98, S.R. 1973 No. 197

<sup>2</sup> S.R. 1980 No. 75

<sup>3</sup> S.R. 1990 No. 250

<sup>4</sup> S.R. 1996 No. 383

3.4 The Ungraded Eggs (Hygiene) Regulations (Northern Ireland) 1990 were introduced to prohibit the retail sale of cracked eggs by producers on their own farms, in local public markets or by door to door selling because of the potential food safety risk from such products.

#### **4. Parity or Replicatory Measure**

4.1 This Rule applies to Northern Ireland only. Parallel legislation is being made in England, Scotland and Wales.

#### **5. European Convention on Human Rights**

5.1 As this Rule is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Policy background**

- What is being done and why

6.1 In April 2011 the Government launched in England the Red Tape Challenge (RTC) initiative<sup>(5)</sup> with the purpose of getting comments from business, enforcement authorities and the public on how the burden of legislation may be reduced. On 6<sup>th</sup> May 2011 most of the FSA's legislation was published on the RTC website under the Hospitality Theme and remained on the site until 2<sup>nd</sup> June 2011. The FSA has a number of initiatives being delivered under the RTC<sup>(6)</sup>, including developing a simplified system of food safety legislation. One initiative is the revocation of the Arsenic in Food Regulations as amended, the Chloroform in Food Regulations and the Ungraded Eggs (Hygiene) Regulations – (the equivalent legislation on Ungraded Eggs in Scotland was revoked on 1<sup>st</sup> January 2006 and the revocation of that legislation has had no detrimental effect on consumer health). The RTC applies to England only.

6.2 Having reviewed these Regulations, the FSA considers that an equivalent level of protection of public health is provided under General Food Law, which prohibits the sale or supply of unsafe food. This renders superfluous the specific controls on arsenic, chloroform which are out-of-date and on cracked ungraded eggs.

#### **7. Consultation outcome**

##### ***Formal Public Consultation***

7.1 The FSA in NI carried out a formal public consultation from 5<sup>th</sup> September to 30<sup>th</sup> November 2012, seeking comments on the draft rule. One response was received to the consultation in NI. Similar consultations were conducted in England, Scotland and Wales.

#### **8. Equality Impact**

8.1 These regulations will apply in equal measure to all Section 75 groups. It is not expected that any of these changes will impact differentially across any of the section 75 groups.

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<sup>5</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

<sup>6</sup> <http://www.food.gov.uk/enforcement/regulation/betregs/red-tape-challenge/>

## **9. Guidance**

- 9.1 In relation to regulation 2 of the rule, there is guidance to compliance with existing allergen labelling guidance that can be found at <http://www.food.gov.uk/business-industry/guidancenotes/labelregsguidance/allergenlabelguide2009>

## **10. Impact**

- 10.1 It is anticipated that only negligible incremental impact on industry will arise from these Regulations; accordingly, the FSA has not produced an Impact Assessment on this occasion.
- 10.2 There is no particular impact on charities or voluntary bodies, rural areas or on members of the ethnic communities of any particular racial group that can be identified. No comments were received from such bodies on the effects of the proposal on them.
- 10.3 Stakeholders were asked to comment on the FSA's view that there was no impact on industry or enforcement bodies and did not identify any such costs of the proposal. However comments received from EETSA indicated that the costs for enforcement may increase and the cost of analysis is likely to double for total and inorganic arsenic. The FSA acknowledges EETSA's comments but have also noted that industry or other enforcement/analytical bodies did not comment on the issue of costs associated with the proposal. For the reasons given above the FSA considers that in most cases, if not all, it will only be necessary to analyse for inorganic arsenic and not for total arsenic as well.

## **10. Regulating small business**

- 10.1 The rule will apply to all businesses, small and large.

## **11. Monitoring & review**

### *Monitoring*

- 11.1 The Agency will work with district councils where problems arise or suspected infringements of the rule. The effectiveness of the rule will be also be monitored via general feedback from industry and Enforcement Authorities.

## **12. Contact**

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