Food Standards Agency in Northern Ireland Consultation

Consultation on the proposed Addition of Vitamins, Minerals and Other Substances (Amendment) Regulations (Northern Ireland) 2020.

Date published	7th February 2020	**Responses by**	6th March 2020

Who will this consultation be of most interest to?

- Enforcement Officers
- Food Manufacturers

What is the subject of this consultation?

The subject of this consultation is the proposed Addition of Vitamins, Minerals and Other Substances (Amendment) Regulations (Northern Ireland) 2020. This proposed Statutory Rule will amend The Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007 and make it an offence if a food business operator uses a prohibited substance listed in Part A or is non-compliant with the conditions of use for substances listed in Part B of Annex III within Regulation (EC) No 1925/2006.

What is the purpose of this consultation?

To seek comments from stakeholders on a proposed Statutory Rule that will make it an offence if a food business operator uses a prohibited substance listed in Part A or is non-compliant with the conditions of use for substances listed in Part B of Annex III within Regulation (EC) No 1925/2006. This is a limited technical consultation.

Responses to this consultation should be sent to:

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Division: Executive Support

Tel: 028 9041 7700

Email: executive.support@food.gov.uk

Postal address:

Food Standards Agency

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Belfast

BT1 3BG

Is an Impact Assessment included with this consultation?	**Yes** ☐	**No** ☒ **See Annex A for reason.**

If you would prefer to receive future FSA consultations by e-mail, or if you no longer wish to receive information on this subject, please notify the named person in this consultation.

Consultation on the proposed Addition of Vitamins, Minerals and Other Substances (Amendment) Regulations (Northern Ireland)

Summary

1. The Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007 (the "Northern Ireland Regulations") provide for the enforcement of Regulation (EC) No 1925/2006 on the addition of vitamins and minerals and of certain other substances to foods "the EC Regulation".

2. Article 8 and Annex III of the EC Regulation provide for substances that could represent a potential risk to consumers. Such substances may be:

- Prohibited under Part A of Annex III
- Restricted with certain conditions of use under Part B of Annex III
- Kept under scrutiny subject to evidence of safety under Part C of Annex III.

3. However, there were no prohibited or restricted substances at the time the original Statutory Rule was made in 2007. Therefore, Article 8 and Annex III provisions were not included in the offences and penalties section of the original rule. Since then, two substances, Ephedra herb and Yohimbe bark, have been prohibited under part A); and trans fats have been restricted under part B.

4. The Food Standards Agency is consulting on the proposal to amend the Northern Ireland Regulations to include a provision for Article 8 on the prohibition or restriction of substances listed in Part A or B of Annex III. This will make it a punishable offence if a food business operator uses a prohibited substance listed in Part A or is non-compliant with the conditions of use for substances listed in Part B.

Statutory Rule – Enforcement Amendment

5. European Regulations, such as this one, are directly applicable in UK law and are not required to be translated into UK legislation. However, we must put in place offences linked to the Regulation and enforcement provisions and penalties associated with these offences so that the Regulation can be enforced in the UK. The original Northern Ireland Regulations did not include a provision for Article 8 and Annex III of the EC Regulation. A draft amending Statutory Rule (SR) is included in this consultation and we would welcome your views on it. The amendment will extend the current enforcement regime to include the Article 8 and Annex III Part A and Part B provisions. The current enforcement regime is as follows:

> "any person who contravenes or fails to comply with the provisions of the EC Regulation specified in paragraph (2) is guilty of an offence and liable —
> (a) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;
> (b) on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding the statutory maximum or both."

Options being considered

6. There are two proposals being considered:

(a) Option 1 – Do nothing. This means that the directly applicable European Regulation cannot be fully enforced.

Option 2 – Implement the proposed Statutory Rule to provide enforcement for **Article 8 and Annex III of Regulation (EC) No 1925/2016.**

Key proposal(s):

- Provide enforcement for Article 8 and Annex III of Regulation (EC) No 1925/2016

Engagement and Consultation Process

7. A four-week technical consultation is being launched to provide interested parties with an opportunity to comment on the proposals.

8. This technical consultation will start on 7th February 2020 and end on 6th March 2020. Responses should be submitted to executive.support@food.gov.uk by close on 6th March 2020.

9. Following the closure of the consultation, all responses will be considered in finalising the proposed SR. A summary of consultation responses will be published in due course.

Questions asked in this consultation:

1. Do you agree with the proposal to amend The Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007 to include, under offences and penalties, a provision for Article 8 and Annex III of Regulation (EC) No 1925/2016?
2. Do you agree that the current enforcement regime, outlined above, should be extended to this provision?
3. Do you have an alternative proposal?

Other relevant documents

The Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007

Regulation (EC) No 1925/2006

Responses

Responses are required by close 6th March 2020. 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).

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

Yours

Nuala Meehan

Nuala Meehan
Food Standards Team
Food Standards Agency in Northern Ireland

Annex A: Standard Consultation Information

Publication of personal data and confidentiality of responses

1 In accordance with the FSA principle of openness we shall keep a copy of the completed consultation and responses, to be made available to the public on receipt of a request to the FSA Consultation Coordinator (020 7276 8308). The FSA will publish a summary of responses, which may include your full name. Disclosure of any other personal data would be made only upon request for the full consultation responses. If you do not want this information to be released, please complete and return the Publication of Personal Data form Returning this form does not mean that we will treat your response to the consultation as confidential, just your personal data.

2 In accordance with the provisions of Freedom of Information Act 2000/Environmental Information 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 the FSA. However, we will take into account your views when making this decision.

3 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

4. 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.
5. Please contact us if you require this consultation in an alternative format such as Braille or large print.
6. This consultation has been prepared in accordance with HM Government consultation principles.
7. No impact assessment has been undertaken for this consultation as we do not foresee any additional costs to industry or enforcement as a result of it. If you believe this is not the case, please explain what additional costs you believe there might be and why you think they might occur in your response to the consultation.

Annex B: Draft Statutory Rule

STATUTORY RULES OF NORTHERN IRELAND

2020 No. 000

FOOD

The Addition of Vitamins, Minerals and Other Substances (Amendment) Regulations (Northern Ireland) 2020

Made - - - -	0th Month 2020
Coming into operation-	0th Month 2020

The Department of Health[1] makes the following Regulations in exercise of the powers conferred by Articles 15(1)(a) and (f), 16(2), 25(1)(a) and (3) and 47(2) of the Food Safety (Northern Ireland) Order 1991[2].

In accordance with Article 47(3A) of the Food Safety (Northern Ireland) Order 1991, the Department of Health has had regard to relevant advice given by the Food Standards Agency.

As required by Article 9 of Regulation (EC) No. 178/2002[3] of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety[4] there has been open and transparent public consultation during the preparation of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Addition of Vitamins, Minerals and Other Substances (Amendment) Regulations (Northern Ireland) 2019 and come into operation on 0th Month 2020.

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[1] Formerly the Department of Health, Social Services and Public Safety; see 2016 c.5 (N.I.), section 1(5)

[2] S.I. 1991/762 (N.I.7) as amended by S.I. 1996/1663 (N.I.12), paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c.28 and S.R.2004 Nos.482 and 505

[3] OJ No. L31, 1.2.2002, p.1, as last amended by Commission Regulation (EU) 2019/1243 (OJ No. L198, 25.7.2019, p.241)

[4] O.J. No. L 31, 1.2.2002, p. 1, as last amended by Regulation (EU) 2019/1243 of the European Parliament and of the Council (O.J. No. L 198, 25.7.2019, p. 241)

Amendment of the Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007

2.—(1) The Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007[5] are amended as follows.

(2) In regulation 2(1)[6] (Interpretation), in the definition of ""the EC Regulation"" for "I or II" substitute "I, II or III".

(3) In regulation 4(2)[7] (Offences and penalties)—

(a) at the end of sub-paragraph (d) omit "and";

(b) after sub-paragraph (e) insert—

"(f) Article 8(2)(a)(i) (prohibition of the addition of a substance listed in Annex III Part A to foods or its use in the manufacture of foods);

(g) Article 8(2)(a)(ii) (prohibition of the addition of a substance listed in Annex III Part B to foods or its use in the manufacture of foods unless that substance is added or used in accordance with the conditions specified in that Part).".

(4) After regulation 4 insert—

"**Transitional provision in relation to food containing substance listed in Annex III, Part B**

4A. An offence is not committed under regulation 4(1) by virtue of paragraph (2)(g) of that regulation in respect of the addition of a substance to, or its use in the manufacture of, any food if—

(a) the food is placed on the market before 1st April 2021; and

(b) the substance concerned falls within the entry in Annex III, Part B relating to trans fat other than trans fat naturally occurring in fat of animal origin.".

Sealed with the official seal of the Department of Health on 0th Month 2020.

L.S.

A Name
A senior officer of the Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007 (S.R. 2007 No.301) ("the 2007 Regulations").

Regulation 2(1) of the 2007 Regulations is amended so that the definition of "the EC Regulation" includes a reference to Annex III as it may be amended from time to time of Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other

[5] S.R. 2007 No.301 amended by S.R. 2010 No.292 and S.R. 2014 No.223
[6] Regulation 2 was amended by S.R. 2019 No.5 pt. 2 reg. 15
[7] Regulation 4 was amended by S.R. 2014 No.223 Sch. 7(2) para. 14

substances to foods (O.J. No. L 404, 30.12.2006, p. 26), as last amended by Commission Regulation (EU) 2019/650 of 24 April 2019 amending Annex III to Regulation (EC) No 1925/2006 of the European Parliament and of the Council as regards Yohimbe (Pausinystalia yohimbe (K. Schum) Pierre ex Beille) (O.J. No. L 110, 25.4.2019, p. 21).

Regulation 4(2) of the 2007 Regulations is amended so that it is an offence to add a substance listed in Annex III Part A to the EC Regulation to foods, or to use such a substance in the manufacture of foods.

Regulation 4(2) of the 2007 Regulations is further amended so that it is an offence to add a substance listed in Annex III Part B to the EC Regulation to foods, or to use such a substance in the manufacture of foods unless that substance is added or used in accordance with the conditions specified in that Part.

A new transitional provision (regulation 4A) is inserted into the 2007 Regulations to provide that an offence is not committed in respect of any food that does not comply with the provisions of Annex III, Part B relating to trans fat other than trans fat naturally occurring in fat of animal origin and which is placed on the market before 1st April 2021.

A full impact assessment has not been produced for this rule as no, or no significant, impact on the private, voluntary or public sector is foreseen.