

Food Standards Agency Northern Ireland Consultation

Title: The proposed approach for the amendment of Northern Ireland domestic legislation relating to food and feed safety and hygiene, food compositional standards and food labelling (including nutrition)

Consultation summary page

Date consultation launched:	Closing date for responses:
Thursday 22 nd November 2018	Thursday 20 th December 2018

Who will this consultation be of most interest to?

Food and animal feed businesses including manufacturers, wholesalers and retailers, and enforcement authorities. The consultation may also be of interest to health professionals, consumer groups and others with an interest in food and feed legislation.

What is the subject of this consultation?

This consultation concerns proposed technical amendments to, food and feed safety and hygiene, food compositional standards, food labelling and nutrition labelling, domestic legislation applying in NI, to ensure that this legislation remains operable after the UK has left the EU.

Where there are options for the more substantive amendments, these are described in detail in this document.

What is the purpose of this consultation?

To seek the views of food and animal feed businesses, enforcement authorities, consumer groups, other stakeholders and the wider public as to the proposed amendments and options to ensure NI domestic legislation can continue to operate once the UK has left the EU.

Is an Impact Assessment included with this consultation?	Yes	No <input checked="" type="checkbox"/>
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Responses to this consultation should be sent to:

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The proposed approach for the amendment of Northern Ireland domestic legislation relating to food and feed safety and hygiene, food compositional standards and food labelling (including nutrition)

Detail of consultation

1. The Food Standards Agency in Northern Ireland (FSA in NI) would welcome your comments on proposals detailed in this letter.

Introduction

2. The FSA in NI is consulting on proposed technical amendments to domestic legislation relating to:
 - a. Food and feed safety and hygiene (including the safety aspects of food standards i.e. food additives);
 - b. Food compositional standards and labelling; and
 - c. Nutrition labelling.

These proposed amendments are required to ensure that a range of provisions in NI domestic legislation can continue to operate after the UK has left the EU.

Background

3. Following the EU exit referendum result to leave the EU on 23rd June 2016, the FSA in NI has been reviewing the operability of all food and feed related legislation applying in NI for which it has policy responsibility. The purpose of the review was to identify the amendments needed to ensure that the legislation remains operable after the UK leaves the EU.
4. The proposed options explained in this consultation would apply only if the EU and the UK were not to agree a partnership arrangement and common approach to food legislation after the UK leaves the European Union (EU).

Proposed Changes

5. Corrections are likely to be required to the following NI domestic legislation: -

Food and feed hygiene and safety

- The General Food Regulations (Northern Ireland) 2004
- The Food Hygiene Regulations (Northern Ireland) 2006
- The Quick-frozen Foodstuffs (No.2) Regulations (Northern Ireland) 2007
- The Official Feed and Food Controls Regulations (Northern Ireland) 2009
- The Meat (Official Controls Charges) Regulations (Northern Ireland) 2009
- The Food Irradiation Regulations (Northern Ireland) 2009
- The Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011

- The Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012
- The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013
- The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013
- The Animal Feed (Composition, Marketing and Use) Regulations (Northern Ireland) 2016
- The Novel Foods Regulations (Northern Ireland) 2018

Food Compositional Standards and Labelling

- The Food (Lot Marking) Regulations (Northern Ireland) 1996
- The Spreadable Fats (Marketing Standards) and Milk and Milk Products (Protection of Designations) Regulations (Northern Ireland) 2008
- The Fish Labelling Regulations (Northern Ireland) 2013
- The Food Information Regulations (Northern Ireland) 2014
- The Honey Regulations (Northern Ireland) 2015
- The Country of Origin of Certain Meats Regulations (Northern Ireland) 2015
- The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015
- The Caseins and Caseinates Regulations (Northern Ireland) 2016

Nutrition Labelling

- The Medical Foods Regulations (Northern Ireland) 2000
 - The Food Supplements Regulations (Northern Ireland) 2003
 - The Kava-kava in Food Regulations (Northern Ireland) 2005
 - The Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007
 - The Nutrition and Health Claims Regulations (Northern Ireland) 2007
 - The Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007
 - The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2009
 - The Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2015
6. The amendments will not result in a material change in the level of protection the NI domestic legislation provides to human health, or to the high standards of food and feed (including the provision of food information labelling and nutrition labelling) which consumers expect.
 7. Most amendments are minor technical fixes which will not equate to a change in policy and will cover a range of issues for example, concerning the correction of references to the EU or Member States which will no longer be appropriate post EU exit and removing references to payments in Euros.

8. In addition to these minor technical fixes, more substantial policy options need to be considered for honey and natural mineral water as set out below.
9. The FSA aim to minimise the impact on businesses and enforcement authorities through targeted engagement with these key stakeholders. Ongoing and formal consultation will follow as required.

Honey – Country of Origin Labelling

10. The Honey Regulations (Northern Ireland) 2015 require that honey packaging must indicate the country of origin of the honey. Where the honey is blended from more than one country of origin it can currently be labelled as 'EU', 'non-EU' or 'EU and non-EU' (or else list the individual countries of origin).

Options for change: labelling of honey

Option 1 – no change

11. If current rules for indicating the honey's country of origin were retained, honey would continue to be required to be labelled as 'EU', 'non-EU' or 'EU and non-EU'. It is considered that such EU-focused terminology would not be appropriate in UK legislation and, therefore, that this option would not be suitable once the UK leaves the EU. Only some blends containing UK honey would require label changes in relation to origin labelling.

Option 2 – 'a blend of honey from more than one country'

12. The term 'a blend of honey from more than one country' could be shown on the label where appropriate. This option might increase the labelling burden on producers initially, but it is considered a less burdensome option for UK businesses than option 3. Only one form of words would be required for all blended honey "from more than one country", thus making it easier for relevant food businesses. Business would be free, however, to supplement the label with additional information. Consumers will still be aware that the honey consists of a variety of honey from differing origins. It would not, however enable consumers to identify blends of European honey from non-European blends.

Option 3 – 'UK'/'non-UK'

13. Use of the terms 'blend of UK and non-UK' or 'blend of non-UK' on honey labels would be an alternative solution. However, this may be impractical because UK origin honey is generally sold as a single-origin product and rarely blended. This option would also increase the labelling burden on producers by requiring new labelling on blended honey from more than one country currently using the 'EU'/'non-EU' wording (as opposed to listing individual countries of origin), prove costly to businesses where no UK-blend alternatives are available, and may suggest an inferior product.

Q1: What is your preferred option out of those described?

- a) I agree with policy option 1
- b) I agree with policy option 2
- c) I agree with policy option 3
- d) I disagree with all policy options
- e) I have no preference
- f) I don't know/don't have enough information

Please provide evidence to support your view.

Please note that all options would allow specific countries of origin to be listed instead.

Recognition of Natural Mineral Waters

14. The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015 (“bottled water regulations”) implement EU legislation that requires natural mineral waters (NMWs) to go through a process of recognition to prove that they have the necessary composition and characteristics to be sold and marketed as NMWs in all EU Member States. Recognition is carried out by individual Member States in line with EU rules.

15. Currently 63 NMWs (60 domestic and three from current third countries) are recognised by the UK, having undergone a full recognition process in the UK.

16. There is a need to amend the domestic rules, as they are written, once we leave the EU on 29th March 2019, whether with a future economic partnership agreement or in the context of a no deal scenario. This is because if we were to leave the regulations un-amended, the wording of the current rules in the new context would bring unintended consequences:

- Leaving references to Directive 2009/54 in place, rather than specifying the relevant legislation for each of the four administrations in the UK, could create ambiguity over Northern Ireland’s ability to determine what can be or otherwise traded as NMW in Northern Ireland. There is also a risk that English, Welsh and Scottish NMWs could no longer be traded in Northern Ireland.

To ensure continued operability, the domestic rules must be changed, and the text amended to fit the UK’s new status out-with the EU.

17. The EU Commission has indicated that unless a future trade agreement or economic partnership agreement provide otherwise, the NMWs that had their recognition process undertaken by the UK will no longer be recognised in the EU market after the UK leaves the EU. Please see link to the Commission Notice in the “other relevant documents” section of this consultation letter.

18. The Northern Ireland legislation provides for non-EU producers of NMWs to submit individual applications to trade in Northern Ireland to the Food Standards Agency. The process involves providing a large and complex amount of data, which in most cases needs to be gathered for up to two years prior to application. For successful applications, recognition lasts for five years, after which the producer must renew their recognition under a simplified process based on information supplied by the relevant authorities in the source country. In a scenario where the EU and the UK were not to agree a partnership arrangement and common approach to NMW recognition, the Northern Ireland rules in the field of exploitation and marketing of NMWs would apply to producers in the EU Member States.

19. In 2016, the UK imported £116.3m worth of NMWs from the EU. French brands such as Evian and Volvic are respectively the top selling and third bestselling NMW brands in the UK.

Options for change – Recognition of natural mineral waters:

Option 1 – Rolling over of recognition of existing EU natural mineral waters

20. In this context, for the overall UK treatment of NMWs currently recognised in other EU countries, it is possible to take a unilateral approach and roll over existing recognitions of NMWs sources in the EU. This would provide continuity and stability for businesses and consumers.
21. Rolling over the recognition of existing EU NMWs, allows maintenance of the status quo for existing NMWs, wherever in the EU the recognition process took place. This reflects the position that recognised NMWs were safe at the time of EU Exit and therefore there is no reason to assume they are not after EU Exit.
22. However, the continuation of that arrangement would only be guaranteed for the first six months after EU Exit and not be guaranteed in perpetuity. Further amendments to the Bottled Water Regulations may be made to withdraw the rolled-over recognitions at a later date, depending on discussions with the EU and considerations at the time, always after a given period of notice.
23. If a decision were indeed to be made for recognition of EU NMWs to be withdrawn, after the initial six months plus the notice period, it would then be necessary for the water to be formally recognised in Northern Ireland by making an application under the Bottled Water Regulations.
24. This option will remove (or delay) the need for NMWs that had their recognition process undertaken elsewhere in the EU to undergo an immediate UK recognition process, ensuring continued stability in the market, which could otherwise affect market prices and consumer choice and confidence immediately after exit.
25. At the same time, this option would give Northern Ireland, working with the other administrations in the UK more time for consideration and an added period of flexibility to decide if, and when, to require the producers of NMWs, that had their sources recognised elsewhere in the EU, to make representations of their safety and quality conditions to administrations in the UK. This would enable Northern Ireland and the other administrations in the UK to maintain full control of the recognition, quality and safety of NMWs that had their source's recognition procedure undertaken elsewhere in the EU.

Option 2 – Removing the recognition for EU recognised natural mineral waters from day 1 after the UK's exit from the EU

26. In the case that NMWs, that had their recognition process undertaken elsewhere in the EU, this option would mean that EU NMWs would no longer be recognised in Northern Ireland and the rest of the UK immediately after a no-deal exit from the EU. These NMWs would need to submit a full application to one of the UK administrations to secure recognition before they could be legally sold as NMW in the UK.

27. This option would not maintain continuity for businesses, and give rise to the following effects:

- Impact on consumer choice of NMW (as many as one in every three bottles of NMW sold in the UK are imported from the EU).
- Fluctuation in prices for the consumer, due to market forces.
- Market changes which could also move the consumer to choose a different category of water, i.e. spring or bottled drinking water, or tap water, or to a different beverage, such as flavoured waters and other soft drinks, affecting therefore all NMW producers, domestic and imported.

Option 3 – Rolling over of recognition of existing EU natural mineral waters for five years

28. For NMWs, that had their recognition process undertaken elsewhere in the EU, this option proposes continued recognition in Northern Ireland and the rest of the UK for a period of five years after the UK leaves the EU. They would be required to undergo a full recognition process in order to continue to be sold in Northern Ireland and the rest of the UK at the end of the five-year period. Currently non-EU country producers are required to renew their recognition after five years.

29. This option would delay the need to process applications for five years ensuring stability in the market and market prices, and consumer choice and confidence in the interim.

30. On the other hand, this option – while enabling administrations in Northern Ireland and the rest of the UK to maintain full control of the recognition, quality and safety of the EU natural mineral waters – it is a lengthy period to commit to no change.

Q2: What is your preferred option out of those described? Please comment to support your view.

- a) I agree with policy option 1
- b) I agree with policy option 2
- c) I agree with policy option 3
- d) I disagree with all policy options
- e) I have no preference
- f) I don't know/don't have enough information

Please provide evidence to support your view

Impact

Costs - One-off Familiarisation Costs

Industry

31. We assume that as all registered food establishments in Northern Ireland are affected by, at least some, of this legislation they will therefore have to invest in understanding the new legislation. According to the ONS Inter-Departmental Business Register (IDBR) there were 292,860 businesses active in the agri-food sector in 2017. We envisage minimal one-off familiarisation costs to business; where we estimate that it will take each business up to 2 hours to read and understand the proposed regulations and then disseminate the information to key staff within their firm. It is unlikely that the envisaged changes will present any other impact on businesses' day to day operations as the rules are not changing because of these proposals.

Enforcement

32. There are 11 district councils in Northern Ireland which undertake official controls in relation to food safety and hygiene, food compositional standards, labelling and nutrition labelling. DAERA also undertake official controls for animal feed, primary production and in certain dairy, meat and egg establishments. We envisage one-off familiarisation costs to these enforcement authorities of up to 2 hours to read and familiarise themselves and then disseminate to staff and key stakeholders. It is estimated that one officer in each of these enforcement authorities will need to undertake this task.

33. Compared with the current system, there would be no additional or new burden on enforcement authorities, other than those identified in the costs above.

Benefits

34. There are no incremental benefits associated with the proposal as it does not impose additional or new burdens on business and enforcement bodies.

Impact of changes to the Honey Regulations

35. We anticipate that the key non-monetised costs would be those related to relabelling and familiarisation costs. This would affect all businesses producing blended honeys from more than one country currently using the EU / non-EU terminology.

We wish to use this consultation to gather evidence and would welcome comments on any costs or benefits which you think we may not have considered or alternative views about the assumptions made in this section.

Impact of changes to the NMW Regulations

36. For natural mineral waters, the key non-monetised costs by 'main affected groups' are not significant for Policy Option 1 and Option 3 since these options represent the status quo immediately after EU Exit. As such no economic impact has been foreseen, since there would be no difference to what is occurring right now. In terms of the key non-monetised benefits by 'main affected groups', it maintains the current level of consumer choice, market stability, both in terms of prices and market share.

37. On Policy Option 2, the key non-monetised costs by 'main affected groups' when comparing to Option 1 (the baseline), the economic cost to UK businesses of this option is not considered to be significant: the absolute value of the economic impact of EU businesses losing UK recognition will not have a negative economic impact on Northern Ireland businesses.

38. In terms of wider impacts on NI businesses, Option 2 may potentially bring costs to NI based companies depending on EU NMW and small business which traditionally store and sell only EU brands. For the latter, finding new products/distribution networks, which may be more expensive, could be an issue.

We wish to also use this consultation to gather evidence and would welcome comments on any costs or benefits which you think we may not have considered or alternative views about the assumptions made in this section.

39. We do not propose producing an Impact Assessment at present but will revisit, depending on stakeholder feedback to this consultation.

Engagement and Consultation Process

Consultation Process

40. This consultation will last for a four-week period, to provide interested parties in Northern Ireland with the opportunity to comment on the proposals. Any responses received as part of this consultation will be given careful consideration and a summary of the responses received will be published on the FSA website within 3 months following the end of the consultation period.

41. England, Scotland and Wales will be having similar considerations regarding their own domestic regulations.

Groups affected

42. The proposal to make technical amendments to domestic law relating to food and animal feed, food compositional standards, labelling and nutrition labelling will be relevant to all NI food (including feed) businesses, district council and DAERA food (and feed) law enforcement officers as well as consumers and other stakeholders with an interest in UK food and animal feed law.

43. Businesses and food law enforcement stakeholders will want to familiarise themselves with the main corrections which are being proposed, and which will require action from them to ensure they continue to operate effectively after the UK leaves the EU.

Other Consultations

44. The FSA is making amendments under the European Union (Withdrawal) Act 2018 to retained EU law relating to food and feed safety and hygiene (including the safety aspects of food standards i.e. food additives) on a UK-wide basis and a UK-wide consultation was launched on 4th September 2018 and closed on 14th October 2018.

45. Similarly, Defra has also launched a consultation around amending retained EU law relating to food compositional standards and labelling. You can access this consultation here: <https://consult.defra.gov.uk/food/food-labelling-amending-laws/> The Department of Health and Social Care will propose fixing the retained EU law relating to nutrition policy and labelling and will consult in due course. These

proposals to fix what will become retained EU law are out of scope of this consultation.

Summary of questions asked in this consultation.

Honey – Country of Origin Labelling

Q1: What is your preferred option out of those described?

- a) I agree with policy option 1
- b) I agree with policy option 2
- c) I agree with policy option 3
- d) I disagree with all policy options
- e) I have no preference
- f) I don't know/don't have enough information

Please provide evidence to support your view.

Please note that all options would allow specific countries of origin to be listed instead.

Recognition of natural mineral waters

Q2: What is your preferred option out of those described?

- a) I agree with policy option 1
- b) I agree with policy option 2
- c) I agree with policy option 3
- d) I disagree with all policy options
- e) I have no preference
- f) I don't know/don't have enough information

Please comment to support your view.

Q3: Are there any additional points you would like to make regarding proposed minor changes to legislation relating to food and feed safety and hygiene, food compositional standards, labelling and nutrition labelling?

Q4: Do you agree with the impacts that have been identified within this consultation?

Other relevant documents

List of natural mineral waters recognised in the UK

<https://www.gov.uk/guidance/food-standards-labelling-durability-and-composition#bottled-water>

Commission Notice

https://ec.europa.eu/food/sites/food/files/safety/docs/notice_brexit_mineral_waters.pdf

Responses

46. Responses are required by close of business on **Thursday 20th December 2018**. 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).
47. A list of interested parties is attached at Annex B. Should you be aware of anyone else not included on this list who would be interested in or affected by this consultation please do forward it to them or let us know and we can forward it to them.
48. Thank you on behalf of the Food Standards Agency in Northern Ireland for participating in this public consultation.

Louise Beggs
Executive Support Unit
FSA in Northern Ireland

Enclosed

Annex A: Standard Consultation Information

Annex B: List of interested parties – attached separately

Annex A: Standard Consultation Information

Disclosure of the information you provide

Information provided in response to this consultation may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

Any automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

The Food Standards Agency will be what is known as the 'Controller' of the personal data provided to us.

Why we are collecting your personal data and what we do with it

Your personal data is being collected as an essential part of the consultation process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

The Data Protection Act 2018 states that, as a government department, the Food Standards Agency may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a consultation.

We retain personal information only for as long as necessary to carry out these functions, and in line with our retention policy. This means that this information will be retained for a minimum of 7 years from receipt.

All the personal data we process is located on servers within the European Union. Our cloud-based services have been procured through the government framework agreements and these services have been assessed against the national cyber security centre cloud security principles.

No third parties have access to your personal data unless the law allows them to do so. The Food Standards Agency will sometimes share data with other government departments, public bodies, and organisations which perform public functions to assist them in the performance of their statutory duties or when it is in the public interest.

What are your rights?

You have a right to see the information we hold on you by making a request in writing to the email address below. If at any point you believe the information we process on you is incorrect you can request to have it corrected. If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter.

If you are not satisfied with our response or believe we are processing your personal data not in accordance with the law you can complain to the Information Commissioner's Office (ICO) at <https://ico.org.uk/>, or telephone 0303 123 1113.

Our Data Protection Officer in the FSA is the Information Management and Security Team Leader who can be contacted at the following email address:
informationmanagement@food.gov.uk

Further information

If you require a more accessible format of this document, please send details to the named contact for responses to this consultation and your request will be considered.