

The Draft Food Information Amendment Regulations (Northern Ireland) 2016

CONSULTATION SUMMARY PAGE

Date launched:	25 March 2016	Closing date:	13 May 2016
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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 Northern Ireland 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 Northern Ireland Regulations are intended to revoke the Foodstuffs Suitable for People Intolerant to Gluten Regulations (Northern Ireland) 2010.

What is the purpose of this consultation?

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

Responses to this consultation should be sent to:

Danielle Gamble
Executive Support Unit
Food Standards Agency in Northern Ireland

Tel: 028 90417705
Fax: 028 90417726

Postal address:

10A-C Clarendon Road
Belfast
BT1 3BG

Email: Danielle.gamble@foodstandards.gsi.gov.uk

Impact Assessment included?	Yes <input type="checkbox"/>	No <input type="checkbox"/> See Annex A for reason.
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The Food Information (Amendment) Regulations (Northern Ireland) 2016

DETAIL OF CONSULTATION

The Food Standards Agency in Northern Ireland would welcome your comments on the proposed changes to the Food Information Regulations (Northern Ireland) 2014.

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 the Northern Ireland 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 Regulations (Northern Ireland) 2014 (as amended).

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

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 Northern Ireland.

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

Key proposal(s):

- *To provide enforcement provisions for Commission Implementing Regulation (EU) No 828/2014*
- *To introduce improvement notices for the provisions of Regulation EU 828/2014*
- *Revoke the Foodstuffs Suitable for People Intolerant to Gluten Regulations (Northern Ireland) 2010*

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 Northern Ireland beyond 20 July 2016. The proposed Food Information (Amendment) Regulations (Northern Ireland) 2016 will enable district councils in Northern Ireland to take action if information on the absence or reduced presence of gluten in food is not provided correctly.

The draft Food Information (Amendment) Regulation (Northern Ireland) 2016 intends to follow the same approach to enforcement as is taken in FIR which will be via an improvement notice. This would be used as part of the hierarchy of enforcement when informal measures are no longer appropriate and the labelling contravention or issue should be elevated to formal enforcement action. If the conditions set by an improvement notice are not met then the non-compliance with those conditions will be a criminal offence. Businesses will have the opportunity to appeal against an improvement notice; appeals will be heard by Magistrates' court.

Engagement and Consultation Process

A seven-week public consultation is being launched to provide interested parties with an opportunity to comment on the proposals and its associated impacts.

Any comments that interested parties are able to provide in relation to the proposed Regulations would be gratefully received. 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.

Impact Assessment

Costs and benefits from this change are not quantified as this will not have an additional impact on businesses or district councils. These rules are already in place. This is an administrative change to how the European legislation on the gluten provisions sits in domestic law. If however, the consultation should bring to light any impact on enforcement bodies or industry which has not been anticipated, we will reconsider the need for an Impact Assessment.

Questions asked in this consultation:

Q1: Do you have any comments on the proposal to move the rules on gluten into the Food Information (Amendment) Regulations (Northern Ireland) 2016?

Q2: Do you have any information on costs and benefits of the proposed Regulations?

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 13 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).

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

Yours,

Danielle Gamble

Executive Support Unit

Food Standards Agency in Northern Ireland

Enclosed

Annex A: Standard Consultation Information

Annex B: Draft Food Information (Amendment) Regulations (Northern Ireland) 2016

Annex C: List of interested parties

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, which is on the website at <http://www.food.gov.uk/multimedia/worddocs/dataprotection.doc> Return of this form does not mean that we will treat your response to the consultation as confidential, just your personal data.
3. 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.
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 direct.
6. Please contact us if you require this consultation in an alternative format such as Braille or large print.
7. This consultation has been prepared in accordance with HM Government consultation principles¹.

¹ <http://www.bis.gov.uk/policies/bre/consultation-guidance>

STATUTORY RULES OF NORTHERN IRELAND

2014 No.

FOOD

**Food Information (Amendment) Regulations (Northern Ireland)
2016**

Made - - - - *0th Month 2016*
Coming into operation - *20th July 2016*

The Department of Health, Social Services and Public Safety(a) makes the following Regulations in exercise of the powers conferred by Articles 15(1), 16(2), 25, 26(3), and 47(2) to the Food Safety (Northern Ireland) Order 1991(b) and paragraph 1A of Schedule 2 to the European Communities Act 1972(c).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972, and it appears to the Department of Health, Social Services and Public Safety that it is expedient for references to provisions of Regulation (EU) No 1169/2011(d) of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 specified in Regulation 2(2)(b) to be construed as a reference to those provisions as amended from time to time.

Insofar as these Regulations are made in exercise of powers under the Food Safety (Northern Ireland) Order 1991, the Department of Health, Social Services and Public Safety has had regard to relevant advice given by the Food Standards Agency in accordance with Article 47(3A) of that Order.

As required by Article 9 of Regulation (EC) No. 178/2002(e) 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, there has

(a) Formerly the Department of Health and Social Services; see S.I. 1999/283 (N.I.1) Article 3(6)
(b) 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
(c) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51) and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (2008 c.7)
(d) OJ No L 304, 22.11.2011, p 18, last amended by Commission Delegated Regulation (EU) No 78/2014 100 No L27, 30.1.2014, p 7)
(e) OJ No L 31, 1.2.2002, p 1, last amended by Commission Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p 14)

been open and transparent public consultation during the preparation and evaluation of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Food Information (Amendment) Regulations (Northern Ireland) 2016 and come into operation on XXX

Amendment of the Food Information Regulations (Northern Ireland) 2014

2.—(1) The Food Information Regulations (Northern Ireland) 2014(a) are amended in accordance with paragraphs (2)-(5).

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) at the end of the definition of “prepacked for direct sale” omit “and”;

(ii) at the end of the definition of “ready for consumption” for “Article 2(2)(d).” substitute “Article 2(2)(d); and”

(iii) after the definition of “ready for consumption” insert—

““Regulation 828/2014” means 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.”

(b) for paragraph 3 substitute—

“Any reference to FIC, or a provision of FIC (including a reference to an Article of, or Annex to, FIC to which paragraph (2) applies) or to Regulation 828/2014 or a provision of Regulation 828/2014, in a provision of these Regulations listed in Schedule 1 is a reference to that provision as amended from time to time.”

(3) In regulation 12 (application of provisions of the Order)—

(a) for paragraph (1)(a)(i) substitute—

“a provision of FIC or Regulation 828/2014 specified in Schedule 5, to the extent provided for in Article 9 of the Order as applied by paragraph (1) and modified by Schedule 4 Part 1;”

(b) in paragraph (2)(a) after “provision of FIC” insert “or Regulation 828/2014.”

(4) In Schedule 1—

(a) in the heading after “FIC” insert “or Regulation 828/2014”;and

(b) in the first line after “except for the definition of “FIC”” insert “and Regulation 828/2014”.

(5) In Schedule 4 (application and modification of provisions of the Order)—

(a) in Part 1, paragraph 1—

(i) at the end of paragraph (1A)(c) omit “or”;

(ii) for paragraph (1A)(d)(iv) substitute—

“(iv) regulation 8(1) or (3); or

(e) a provision 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 specified in Part 2 of the table in Schedule 5, Part 2 to the Food Information Regulations (Northern Ireland) 2014 (as read with regulation 2(3) of, and Schedule 1 to, those Regulations).”

(b) in Part 2, paragraph 1—

(a) S.R. 2014 No.223

- (i) for subparagraph (a)(ii) substitute—
 - “(iii) any other provision of Regulation (EU) 1169/2011 of the European Parliament and of the Council or 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 specified in Schedule 5 to the Food Information Regulations (Northern Ireland) 2014 (as read with regulation 2(3) of, and Schedule 1 to, those Regulations); and”

(6) In Schedule 5—

- (a) for the heading substitute “Improvement notices – specified provisions”
- (b) after Part 3 insert—

“PART 4

Regulation 828/2014 provisions in relation to which improvement notices may be served on and from 20th July 2016

<i>Provision of Regulation 828/2014</i>	<i>Provisions to be read with the provision of Regulation 828/2014</i>
Article 3(1)	Article 1(3), 6, 7, 36 (1) and (2) of FIC and Article 2, 3(2) and (3) and the Annex to Regulation 828/2014
Article 4	Article 2 of Regulation 828/2014”

Revocation

3. The Foodstuffs Suitable for People Intolerant to Gluten Regulations (Northern Ireland) 2010(a) are revoked.

Sealed with the Official Seal of the Department of Health and Social Services and Public Safety on ***



Name
A senior officer of the Department of Health, Social Services and Public Safety

EXPLANATORY NOTE

(This note is not part of the Regulations)

To be inserted after consultation

Interested Parties List

Organisation Name
Andrews Holdings Ltd
Annie's Traditional Food Ltd.
Artisan Bakers of Northern Ireland
Asia Supermarket
Avondale Foods
Bakers Food & Allied Workers Union
Beechwood Laboratories
Belfast Trust
Brakes Trading as O'Kane Food Service
Brands2Life
British Frozen Food Federation
British Poultry Council
Chartered Institute of Environmental Health
Coleraine Hospital
College of Agriculture, Food and Rural Enterprise
Consumer Council for Northern Ireland
Cottage Catering Ltd
Curleys Supermarkets Ltd
Daily Bake Ltd
Dairy Council for Northern Ireland
Dairy Produce Packers Ltd
Dairy UK Northern Ireland
Dale Farm
Department of Agriculture and Rural Development
Department of Enterprise, Trade and Investment Northern Ireland
Department of Health, Social Services and Public Safety
Devenish Foods
Diabetes UK Northern Ireland
District Councils in Northern Ireland
Drumgold Quality Foods
Duncrue Food Processors Ltd.
Dunnes Stores
Europa Foods
Evron Foods Ltd
Fane Valley Co-Operative
Fastpak Frozen Foods Ltd
Federation of the Retail Licensed
Federation of Women's Institutes of NI
Fivemiletown Creamery
Food Safety Authority of Ireland
Food Safety Promotion Board
Foster Green Hospital
General Consumer Council for Northern Ireland
Genesis Breads of the World
Glanbia cheese ltd
Glanbia Foods (NI) Ltd

Glens of Antrim Foods
Golden Cow Dairies
Good Little Food Company
Gracehill Fine Foods
Henderson Food Service
Henderson Group
Hungry House Foods Ltd
Invest Northern Ireland
Island Salads Limited
Kerry Foods Ltd
Kettyle Irish Foods
Knotts Bakery
Linden Foods Ltd
Linwoods Limited
Livestock and Meat Commission for Northern Ireland
Loughry College
Lynas Foodservice Ltd.
Lynn's Country Foods Ltd (T/A Finnebrogue)
M R Foods
Macs Quality Foods
Mash Direct
Maud's Ice Cream
McColgan's Quality Food
McKee's
McKeown Fine Foods Ltd
Mid Ulster Hospital
Millar Savoury Foods Ltd
Morrow Foods
Mothers Pride Bakery
Moy Park Limited
Musgrave Supervalu Centra
Musgrave Wholesale Partners
NI Cooks & Chefs Association
NI Egg Producers Association
NI Good Food
NI Poultry Processors Association
NI Produce Processors Association
NI Soft Drinks Association
North Eastern Education and Library Board
Northern Ireland Agricultural Producers' Association
Northern Ireland Food and Drink Association
Northern Ireland Independent Retail Trade Association
Northern Ireland Master Butchers Association
Northern Ireland Meat Exporters Association
Northern Ireland Poultry Federation
P K Wholesalers
Pritchitts
Public Health Agency NI
Punjana Ltd
Queen's University Belfast
Restaurateurs Association
Southern Health and Social Care Trust

Stevenson & Co Ltd
Strathroy Dairy Ltd
Suki-Tea
T S Foods Ltd
Tasty Foods Cuisine Ltd
Tayto NI Ltd
Treanor Traditional Foods Ltd
Triple Eight Proteins Ltd.
U-Bake Ltd
Ulster Curers Association
Ulster Farmers Union
Ulster Pork and Bacon Forum
United Dairy Farmers Ltd
University of Ulster
Vion Food UK Limited Cookstown
Western Health and Social Care Trust
Willowbrook Foods
Woodwin Catering T/A Holmes Deli