POLICY NOTE

THE BREAD AND FLOUR AMENDMENT (SCOTLAND) REGULATIONS 2024

SSI 2024/387

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by sections 16(1)(a) and (e), 18(1)(c), 26(1)(a) and 48(1) of the Food Safety Act 1990, and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

The purpose of the instrument is to amend the Bread and Flour Regulations 1998 ("the 1998 Regulations") in Scotland:

- to introduce the mandatory requirement for non-wholemeal wheat flour to be fortified with folic acid,
- to amend the required quantities of fortificants which are currently added to flour,
- to introduce an exemption from these fortification requirements for small mills, and
- to make some other technical amendments.

Policy Objectives

The purpose of the Bread and Flour Amendment (Scotland) Regulations 2024 is to amend the 1998 Regulations to:

- Introduce the mandatory fortification of non-wholemeal wheat flour with folic acid as a public health intervention to work alongside other public health measures to help to reduce the incidence of foetal neural tube defects in Scotland by increasing the dietary intake of folic acid, and therefore blood folate levels in women of child-bearing age. The amendments specify that mandatory flour fortification will take place by requiring that non-wholemeal wheat flour be fortified with folic acid in the specified quantities.
- Update and improve the Regulations by aligning the existing fortification requirements with overlapping assimilated Regulation (EC) No 1925/2016 on the addition of vitamins and minerals and of certain other substances to foods which can be accessed at https://www.legislation.gov.uk/eur/2006/1925 and assimilated Regulation (EU) No 1169/2011 on the provision of food information to consumers which can be accessed at https://www.legislation.gov.uk/eur/2011/1169.
- to provide consistency and understanding across industry and enforcement authorities. This in turn will help improve public health outcomes, support UK Industry, assist enforcement authorities, protect consumer interests and support trade with the EU.

A transitional period from December 2024 to December 2026 is provided by these regulations. This is in relation to the new fortification requirements and will allow businesses a period of time to act to phase the changes in, and coordinate changes as far as possible with their own labelling and packaging update cycles. This will be of most benefit to those businesses with multiple product lines which are affected by the new legal requirements.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights:

- In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the Bread and Flour Amendment (Scotland) Regulations 2024 are compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

Across the EU there is variation in the requirements concerning the fortification of food and more generally across a range of domestic legislation. The Regulations provide for longstanding domestic measures in Scotland on the fortification of flour and as such will not have an impact on the Scottish Government's policy to maintain alignment with the EU. However, revising the levels of calcium carbonate, iron, and niacin to align with the requirements set out in both EU and assimilated EU law supports the Scottish Government's policy to maintain alignment with the EU.

Consultation

A full UK wide public consultation was held from 1 September 2022 to 23 November 2022 on the proposed amendments to the Regulations, including the fortification of non-wholemeal wheat flour with folic acid. The full summary of responses received from the UK wide consultation is available in the publication at https://www.gov.uk/government/consultations/amending-the-bread-and-flour-regulations-1998-and-the-bread-and-flour-northern-ireland-regulations-1998/outcome/summary-of-responses-and-government-response#executive-summary.

A separate Scotland only consultation was also carried out from 19 August 2024 to 27 September 2024 on the implementation of the agreed amendments in order to seek additional information on costs and any potential issues specific to Scottish stakeholders. Although no Scottish specific issues were identified, some industry stakeholders raised a general concern about the implementation of the introduction of folic acid to flour. This concern centred on the implementation of the changes due to the volume of products affected by the policy proposals, and due to the fact both the composition and labelling for the products require to change simultaneously. In response, and to support implementation, a transitional period from December 2024 to December 2026 has been provided to enable businesses to act to phase in the changes and minimise cost as far as possible. The timescale also offers scope for businesses to coordinate changes as far as possible with their own labelling and packaging update cycles.

Impact Assessments

An Impact Assessment was provided alongside the UK wide consultation when it was carried out. Subsequently a further Scottish specific Partial Business and Regulatory Impact Assessment was provided alongside the Scotland only consultation. Subsequent to that a full Business and Regulatory Impact Assessment (BRIA) has been carried out and accompanies this policy note.

The BRIA has been placed in the Scottish Parliament Information Centre.

A Child Rights and Wellbeing Impact Assessment (CRWIA) has been undertaken to consider the impact of the policy delivered by these Regulations on children's rights, summarising the potential for positive impact. The CRWIA for these Regulations concluded that the provisions of the Regulations would be compatible with the UNCRC requirements. A copy of the completed CRWIA accompanies this policy note.

A copy of the BRIA and the CRWIA may be obtained from Food Standards Scotland, Pilgrim House, Old Ford Road, Aberdeen, AB11 5RL and online at https://www.legislation.gov.uk.

Financial Effects

The impact of this policy on business is anticipated to be mainly an associated financial cost for updating packaging and labelling due to the introduction of folic acid to the fortification requirements for flour. This includes potential packaging waste due to businesses having to discard any labelling/packaging which does not reflect the composition of the food product once folic acid is added. There will also be some familiarisation costs due to businesses and local authorities having to take time to properly understand the legislative requirements.

Food Standards Scotland
12 December 2024