EXECUTIVE NOTE

THE FOOD LABELLING (DECLARATION OF ALLERGENS) (SCOTLAND) REGULATIONS 2011

SSI 2011/152

1. The above instrument was made by the Scottish Ministers in exercise of the powers conferred by sections 16(1) (e), 17(1), 26(1) (a) and 48(1) of the Food Safety Act 1990 and all other powers enabling them to do so. This instrument is subject to the negative resolution procedure.

Policy Objectives

2. The purpose of the instrument is to implement, in Scotland, Commission Regulation (EU) No.1266/2010 amending Directive 2007/68/EC. This Directive amends Annex IIIa to Directive 2000/13/EC of the European Parliament and of the Council as regards certain food ingredients. The food ingredients in question are likely to cause allergic reactions in some susceptible consumers.

3. Directive 2000/13/EC has been implemented into the law of Great Britain by the Food Labelling Regulations 1996 (as amended). The Food Labelling (Declaration of Allergens) (Scotland) Regulations 2011 further amends the Food Labelling Regulations 1996 in Scotland to extend a temporary exemption from allergen labelling requirements for wine. The amending Regulation provides an extension until the 30th June 2012 (in respect of foods that are sold or marked or labelled before that date) for the declaration on the label of lysozyme used in wine, and albumin (produced from egg) and milk products (in the form of casein) used as fining agents in wine.

Policy Background

4. The Food Labelling Regulations 1996 aim to ensure that consumers are properly informed about the nature and substance of the foods they buy and are protected from false or misleading descriptions. These Regulations contain a list of 14 food allergens that have to be indicated on the label whenever those allergens, or their derivatives, are used as deliberate ingredients in pre-packed food, including alcoholic drinks. The list also includes certain derivatives that do not have to be indicated on the label because their allergenic component has been removed.

5. The 1996 Regulations have been amended a number of times to implement changes to EC legislation as regards allergenic ingredients. Legislation has added certain foods and/or their derivatives to the list of ingredients that must be declared on the label, and has also removed derivatives, notably where it has been established that, due to processing, the derived ingredient no longer contains the allergenic component. An amendment was made by the Food Labelling (Declaration of Allergens) (Scotland) Regulations 2008 (which implement Directive 2007/68/EC) which, amongst other

measures, set out the ingredients referred to in paragraph 3 above that were required to be declared on wine labels, with a phase in period for compliance of 31 May 2009. The wine industry encountered technical difficulties in meeting this deadline and the European Commission amended Directive 2007/68/EC to extend the transitional period to 31 December 2010. The Food Labelling (Declaration of Allergens) (Scotland) Regulations 2009 amended the Food Labelling Regulations 1996 to implement the amending European Regulation (EC) No. 415/2009 in Scotland.

6. The wine industry has now carried out new scientific studies on the allergenicity of these wine fining ingredients in support of their permanent exemption from allergen labelling. The European Commission has agreed a Regulation (Commission Regulation (EU) No 1266/2010), which will further extend the allergen labelling exemption until 30 June 2012. This extension will allow time for the European Food Safety Authority to assess the studies and provide their scientific opinion.

Consultation

7. Article 9 of EC Regulation178/2002, laying down the principles and requirements of food law, requires open and transparent public consultation on the revision of food law, save in respect of measures made in circumstances of urgency. This instrument was not made in circumstances of urgency and therefore public consultation was undertaken as follows.

8. The Food Standards Agency in Scotland consulted publicly with a total of 183 stakeholders (industry, consumer groups and enforcement authorities during the period of the first extension to the transitional period in 2009. No responses were received from stakeholders in Scotland. In July 2010 Scottish stakeholders were informed of the Commission's intention to draft a proposal to extend the labelling derogation and advised that comments received would inform discussion at the October Standing Committee. No comments were received. Stakeholders were further updated on the text of the draft Regulation in September and December 2010 and were asked to comment on the impact of the extension. No comments were received.

9. Within Government, the Food Standards Agency in Scotland has liaised with Scottish Government officials in the Public Health Directorate during the development of Commission Regulation (EU) No 1266/2010 and with officials from the Better Regulation and Industry Unit on the financial implications of the extension.

10. The Food Standards Agency in Scotland made Local Authorities in Scotland aware of the likelihood that the exemption from the allergen labelling requirements would be further extended at a late stage. They were subsequently informed of the final text of the draft Commission Regulation and then of the delay in the publication in the EU Official Journal. Local Authorities are therefore able to take this into account when considering the accuracy of the labelling of the wines carried out in the period

between the Commission Regulation taking effect and the Statutory Instrument coming into force.

Financial Implications

11. The instrument will not impact upon wine producers and manufacturers as they will not now be required to change the labels on wine until 30th June 2012. As there is no incremental impact on this instrument the Food Standards Agency in Scotland has not prepared a Business Regulatory Impact Assessment.

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List of Organisations (132). Total Consultees - 184

Aberdeenshire Council
Adam Smith College
AG BARR (Finlays NMW)
Angus Council
Aquascot Ltd
Argyll & Bute Council
Berits & Brown Ltd
BMA Scotland
British Egg Industry Council
British Goat Society
British Hospitality Association
British Soft Drinks Association
Brooks-Carter Clinic
Brown Brothers Ltd.
C J Lang & Son Ltd
Children In Scotland
City of Edinburgh Council
Clackmannanshire Council
Coca Cola Enterprises Ltd
Comhairle Nan Eilean Siar
Consumer Focus Scotland
Co-operative Group (CWS) Ltd
COSLA
Dairy UK - Scotland
Diageo
Direct & Care Services
Dumfries & Galloway Council
Dundee City Council
East Ayrshire Council
East Ayrshire Council
East Dunbartonshire Council
East Lothian Council
East Renfrewshire Council
Edinburgh Smoked Salmon Company (1992) Ltd.
Falkirk Council
Federation of Small Businesses
Fife Council
Food Additives & Ingredients Association
Food And Drink Federation
Food Industry (North) Development Services
Food Innovation Institute (F2i)
Food Training & Consultants Company
Framgord Ltd
Glasgow Caledonian University
Glasgow City Council

Glasgow Metropolitan College
Glasgow Scientific Services
Gordon & MacPhail
Grampian Oat Products
H.R. Bradford (Bakers) Ltd
Hallmark Meat Hygiene Ltd/ AA Duncan & Son
Health & Sport Committee
Health Protection Scotland
Heineken UK
Highland Council
Highland Spring Ltd
Hilton International
Hutchison Associates Ltd
Hutchison's Flour
Inverclyde Council
John Hogarth Ltd.
Kettle Produce Ltd.
Lactalis McLelland Limited
M&D Catering
Mackies Of Scotland
MacPhie of Glenbervie Ltd
Marine Harvest (Scotland) Ltd
McIntosh Donald
Midlothian Council
Moray Seafood Ltd
Munlochy GM Vigil
Neogen Europe Ltd.
Neville Craddock Association
NHS Borders
NHS Fife
NHS Fife - Nutrition & Dietic Dept.
NHS Grampian
NHS Greater Glasgow & Clyde
NHS Highlands
NHS Tayside
North Ayrshire Council
North Lanarkshire Council
Orkney Islands Council
Perth & Kinross Council
Puremalt Products Ltd.
Renfrewshire Council
Royal Environmental Health Institute for Scotland
Royal Highland Agricultural Society of Scotland
Royal Highland Education Trust
Scotch Whisky Association
Scotch Whisky Research Institute
Scotch Whisky Research Institute
Scottish Association of Master Bakers
Scottish Borders council
Scottish Chambers of Commerce
Scottish Environmental Research Centre
Scottish Federation of Meat Traders
Scottish Food Enforcement Liaison Committee

Scottish Food Enforcement Officers Association
Scottish Government Criminal Justice Directorate
Scottish Grocers Federation
Scottish Midland Co-op Society
Sea Fish Industry Authority
Seafish Industry Authority
Shetland Islands Council
Soil Association Scotland
South Ayrshire Council
South Lanarkshire Council
Stirling Council (Catering & Cleaning)
SUSTAIN
Tan International Scotland
Tayside Scientific Services
TESCO Stores Ltd
The British Dietetic Association
The Drambuie Liqueur Co.Ltd
The Glenside Group Ltd.
The Halal Food Authority
The Highland Council
The Moray Council
The Royal Society of Edinburgh
University of Aberdeen
University of Dundee
University of Glasgow
University Of Paisley
University of St Andrews
Verner Wheelock Associates
Vion
Voluntary Health Scotland
Walkers Shortbread Ltd
West Dunbartonshire Council
West Lothian Council
Women's Food & Farming Union