

## FOOD STANDARDS AGENCY CONSULTATION

### THE FOOD (MISCELLANEOUS AMENDMENT AND REVOCATION) (ENGLAND) REGULATIONS 2013

#### CONSULTATION SUMMARY PAGE

<b>Date consultation launched:</b>	<b>Closing date for responses:</b>
Tuesday 4 <sup>th</sup> September 2012	Friday 30 <sup>th</sup> November 2012

#### **Who will this consultation be of most interest to?**

Manufacturers and food businesses involved in the placing on the market of foods, food businesses producing and/or selling eggs; caterers; enforcement authorities and consumer organisations.

#### **What is the subject of this consultation?**

Proposal to revoke The Arsenic in Food England Regulations 1959 and its amendments, The Chloroform in Food Regulations 1980 and The Ungraded Eggs (Hygiene) Regulations 1990 and to make a minor amendment to The Food Labelling Regulations

#### **What is the purpose of this consultation?**

To provide interested parties with the opportunity to comment on, and express their opinion on the proposed revocations: -

- The Arsenic in Food Regulations 1959 as amended lay down the general limit of 1 mg/kg (milligram per kilogram) for arsenic in food. Separate limits apply to certain food categories. The Chloroform in Food Regulations 1980 lay down restrictions regarding food with added chloroform. The Regulations prohibit the sale or importation of food containing added chloroform under any circumstances. The Ungraded Eggs (Hygiene) Regulations 1990 prohibit the retail sale of cracked eggs by producers on their own farms, in local public markets or by door to door selling. It is considered by the Food Standards Agency that an equivalent level of protection of public health is already provided under the General Food Law (Regulation (EC) No. 178/2002) and we are proposing that these Regulations are revoked.
- The proposal will also amend the Food Labelling Regulations 1996 in order to rectify an incorrect cross-reference in the previous amending labelling Regulations, namely, The Food Labelling (Declaration of Allergens) (England) Regulations 2011 concerning the temporary exemptions from allergen labelling for certain wine treatment agents.



**Responses to the consultation in relation to the revocation of the Arsenic and Chloroform Regulations and amendment to the Food Labelling Regulations should be sent to:**

**Name: Nasreen Shah**  
**Division/Branch: Regulation and Business Support, Chemical Safety Division**  
**FOOD STANDARDS AGENCY**  
**Tel: 020 7276 8538**  
**Fax: 020 7276 8446**

**Postal address:**  
**Room 3B, Aviation House**  
**125 Kingsway, London,**  
**WC2B 6NH.**  
**Email:**  
[nasreen.shah@foodstandards.gsi.gov.uk](mailto:nasreen.shah@foodstandards.gsi.gov.uk)

**Responses to the consultation in relation to the revocation of the Ungraded Eggs (Hygiene) Regulations 1990 should be sent to:**

**Name: Freddie Lachhman**  
**Division/Branch: Food Hygiene Policy Branch**  
**Hygiene and Microbiology Division**  
**FOOD STANDARDS AGENCY**  
**Tel: 020 7276 8384**  
**Fax: 020 7276 8910**

**Postal address:**  
**Room: 3rd Floor, Aviation House**  
**125 Kingsway, London,**  
**WC2B 6NH.**  
**Email:**  
[freddie.lachhman@foodstandards.gsi.gov.uk](mailto:freddie.lachhman@foodstandards.gsi.gov.uk)

**Is an Impact Assessment included with this consultation?**

**Yes**

**No**

# THE FOOD (MISCELLANEOUS AMENDMENT AND REVOCATION) (ENGLAND) REGULATIONS 2013

## DETAIL OF CONSULTATION

1. We would welcome your comments on The Food (Miscellaneous Amendment and Revocation) (England) Regulations 2013 (“the proposed Regulations”), attached as Annex B. The proposed Regulations will revoke The Arsenic in Food Regulations 1959 and their amendments<sup>1</sup>; The Chloroform in Food Regulations 1980; and The Ungraded Eggs (Hygiene) Regulations 1990. The Regulations will also amend the Food Labelling Regulations 1996 in order to correct an error in a previous amending Statutory Instrument, namely The Food Labelling (Declaration of Allergens) (England) Regulations 2011

## Background

### *The Arsenic in Food Regulations 1959*

2. The Arsenic in Food Regulations 1959<sup>2</sup> (“the Arsenic Regulations”) have been amended at various times in relation to offences and penalties and to bring them under the scope of current enabling legislation as food law has been amended. The Arsenic Regulations lay down that it is an offence to sell, consign or deliver, or import into England or Wales, any food which contains more than 1 part per million of arsenic by weight.
3. The Arsenic Regulations are based on science which is now out of date; they set a statutory level for total arsenic that has not been amended to take into account later science. Total arsenic is the sum of all different chemical forms in which arsenic can exist within the environment. The toxicity of arsenic is dependent on the chemical forms in which it is present. Since the Regulations were introduced, it has been shown that the organic forms of arsenic are less harmful but the inorganic forms can cause cancer<sup>3</sup>. As such, Inorganic arsenic present in food at the statutory level set out in the Arsenic Regulations would be considered ‘unsafe’ under more recent General Food Law (Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 (“General Food Law”))<sup>4</sup>. Currently, if a food incident occurs in relation to arsenic in food, a risk assessment is carried out and any necessary action is taken under the General Food Law - the Arsenic Regulations are no longer required to ensure consumer protection.

### *The Chloroform in Food Regulations 1980*

4. The Chloroform in Food Regulations 1980<sup>5</sup> lay down restrictions regarding chloroform added to food. The Regulations prohibit the sale or importation of food containing added chloroform under any circumstances. It is

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<sup>1</sup> SI 1960 No. 2261 and SI 1973 No. 1052

<sup>2</sup> SI 1959 No. 831

<sup>3</sup> Scientific Opinion of the European Food Safety Authority on Arsenic in Food (EFSA Journal 2009; 7(10):1351 doi:10.2903/j.efsa.1351) which can be accessed at:

<http://www.efsa.europa.eu/en/efsajournal/pub/1351.htm>

<sup>4</sup> OJ Ref, L 31, 1.2.2002, p 1 – 24, 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.

<sup>5</sup> SI 1980 No. 36

considered by the Food Standards Agency (FSA) that an equivalent level of protection of public health is achieved under General Food Law, and these Regulations are no longer necessary.

5. There is now very limited use of chloroform in the food industry, which means that even an isolated contamination incident is highly unlikely. At the time these Regulations were made an absolute prohibition on the presence of chloroform was required because detection was not possible at the very low levels achievable now. Having a limit set at the limit of detection is now inappropriate, as detection with powerful modern analytical techniques can be achieved at levels that are of no relevance for safety.

### ***The Ungraded Eggs (Hygiene) Regulations 1990***

6. The Ungraded Eggs (Hygiene) Regulations 1990<sup>6</sup> were introduced to prohibit the retail sale of cracked eggs by producers on their own farms, in local public markets or by door to door selling because of the potential food safety risk from such products.
7. It is considered by the FSA that an equivalent level of public health protection is achieved under the General Food Law, which prohibits the sale or supply of unsafe food. In consequence, these Regulations are considered to be no longer necessary and can be revoked. The equivalent legislation in Scotland was revoked on 1<sup>st</sup> January 2006 by The Food Hygiene (Scotland) Regulations 2005 and the revocation of that legislation has had no detrimental effect on consumer protection.

### ***The Food Labelling Regulations 1996***

8. The proposed Regulations will also amend the Food Labelling Regulations 1996<sup>7</sup> (“the 1996 Regulations”) in order to rectify an incorrect cross-reference in the previous amending labelling Regulations, namely, The Food Labelling (Declaration of Allergens) (England) Regulations 2011<sup>8</sup> concerning the temporary exemptions from allergen labelling for certain wine treatment agents. The 1996 Regulations are amended, so far as they apply in relation to England, at paragraph (15)(b) of regulation 50. The effect of the correction is to ensure that any food benefiting from the transitional arrangements for new allergen labelling requirements introduced on 31<sup>st</sup> May 2008<sup>9</sup> must be compliant in all other respects with the 1996 Regulations as they stood immediately before that date. The transitional arrangements were time limited and that limit has now expired, but products which have a long shelf-life may still be lawfully on sale

#### ***Consultation question 1***

***Stakeholders are invited to comment on whether they consider the amended regulation 50(15)(b) of the 1996 Regulations has the intended effect.***

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<sup>6</sup> SI 1990 No. 1323

<sup>7</sup> SI 1996 No 1499

<sup>8</sup> SI 2011 No. 402

<sup>9</sup> SI 2008 No. 1188

## Red Tape Challenge

9. In April 2011 the Government launched in England the Red Tape Challenge (RTC) initiative<sup>10</sup> with the purpose of getting comments from business and the public on how the burden of legislation can be reduced. On 6<sup>th</sup> May 2011 most of the FSA's legislation was published on the RTC website under the Hospitality Theme and remained on the site until 2 June 2011. The FSA has a number of initiatives being delivered under the RTC<sup>11</sup>, including developing a simplified system of food safety legislation. This involves the consolidation and revocation of a number of domestic Statutory Instruments, which are no longer required for consumer protection. This includes the proposed revocation of The Arsenic in Food Regulations 1959, The Chloroform in Food Regulations 1980 and the Ungraded Eggs (Hygiene) Regulations 1990, which are the subject of this consultation. The RTC applies to England only.

### **Impact on Businesses and Enforcement Authorities as a Result of Revocation**

10. The FSA considers that the impact on both enforcement authorities and industry of the proposed changes will be negligible.
11. For enforcement purposes, once the chloroform, arsenic and ungraded eggs national Regulations are revoked, Article 14 of General Food Law would apply, if there were any concerns to consumer health. There is thus, unlikely to be a risk to consumer safety from revoking these Regulations.
12. A 12 week consultation is being launched to provide consultees with the opportunity to comment on these proposals. The revocation of the Arsenic in Food Regulations, the Chloroform in Food Regulations and The Ungraded Eggs (Hygiene) Regulations 1990 is considered by the FSA to be beneficial in terms of removal of redundant and out-of-date legislation and non-controversial in terms of food safety.
13. We have not produced an Impact Assessment for these proposals, as we expect the impact to be negligible. If however, the consultation should bring to light any impact on enforcement bodies, industry and concerns to consumer health, which has not been anticipated, we will reconsider the need for an Impact Assessment.

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<sup>10</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

<sup>11</sup> <http://www.food.gov.uk/enforcement/regulation/betregs/red-tape-challenge/>

## Purpose of Consultation

14. To provide stakeholders with an opportunity to comment on the proposal to revoke the Regulations mentioned in the Key proposal box below and to make the necessary amendments to the food labelling Regulations.
15. Separate consultation will be carried out in Wales, Scotland and Northern Ireland on the revocation of the Regulations in that part of the UK.

## Proposals

### ***Key proposal:***

#### ***To revoke the following redundant and out of date legislation:***

- ***The Arsenic in Food England Regulations 1959 and its amendments;***
- ***The Chloroform in Food Regulations 1980;***
- ***The Ungraded Eggs (Hygiene) Regulations 1990; and***

### ***Consultation question 2***

***Stakeholders are asked to comment on the FSA's proposals above and whether you agree with the FSA's view of the impact. If you agree or disagree with the proposals contained here, please provide evidence to support your views.***

## Other relevant documents

16. The national Regulations mentioned above are available on the 'legislation.gov.uk' website at:

<http://www.legislation.gov.uk/uksi/1990/1323/contents/made>

17. The General Food Law (Regulation 178/2002) mentioned in this document is available on the EURlex website at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:031:0001:0024:EN:PDF>

18. Responses are requested by close of business on **Friday 30<sup>th</sup> November 2012**. 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).

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

**Yours faithfully,**

**Nasreen Shah  
Team Leader  
Regulation and Business Support Unit  
Chemical Safety Division**

**Enclosed**

**Annex A: Standard Consultation Information**

**Annex B: The draft Food (Miscellaneous Amendment and Revocation) (England) Regulations 2012**

**Annex C: Interested Parties list**

## Queries

1. If you have any queries relating to this consultation please contact the person named on page 1, who will be able to respond to your questions.

## Publication of personal data and confidentiality of responses

2. 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 or a request to the FSA Consultation Coordinator (Tel: 020 7276 8140). 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 let us know if you need paper copies of the consultation documents or of anything specified under '**Other relevant documents**'.
7. This consultation has been prepared in accordance with HM Government Code of Practice on Consultation, available at: <http://www.berr.gov.uk/files/file47158.pdf>. The Consultation Criteria from that Code should be included in each consultation and they are listed below:

### The Seven Consultation Criteria

#### Criterion 1 - When to consult

*Formal consultation should take place at a stage when there is scope to influence the policy outcome.*

#### Criterion 2 - Duration of consultation exercises

*Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*

**Criterion 3 - Clarity of scope and impact**

*Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.*

**Criterion 4 - Accessibility of consultation exercises**

*Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.*

**Criterion 5 - The burden of consultation**

*Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.*

**Criterion 6 - Responsiveness of consultation exercises**

*Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.*

**Criterion 7 - Capacity to consult**

*Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.*

8. Criterion 2 states that *Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*
9. The Code of Practice states that *an Impact Assessment should normally be published alongside a formal consultation.* We have not produced an Impact Assessment for this proposal because we believe that revocation of The Chloroform in Food Regulations 1980, The Arsenic in Food Regulations 1959 and The Ungraded Eggs (Hygiene) Regulations 1990 will be beneficial because the legislation is redundant and out-of-date. We expect, therefore, that there will be no impact on either industry or the enforcement community. However, if responses to this consultation indicate possible impacts we have not predicted, we will produce an Impact Assessment.
10. For details about the consultation process (not about the content of this consultation) please contact: [Food Standards Agency Consultation Co-ordinator](#), Room 2B, Aviation House, 125 Kingsway, London, WC2B 6NH. Tel: 020 7276 8140.

**Comments on the consultation process itself**

11. We are interested in what you thought of this consultation and would therefore welcome your general feedback on both the consultation package and overall consultation process. If you would like to help us improve the quality of future consultations, please feel free to share your thoughts with us by using the Consultation Feedback Questionnaire at:  
<http://www.food.gov.uk/multimedia/worddocs/consultfeedback.doc>.
12. If you would like to be included on future Food Standards Agency consultations on other topics, please advise us of those subject areas that you might be specifically interested in by using the Consultation Feedback Questionnaire at:  
<http://www.food.gov.uk/multimedia/worddocs/consultfeedback.doc>. The questionnaire can also be used to update us about your existing contact details.

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STATUTORY INSTRUMENTS

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**2013 No.**

**FOOD, ENGLAND**

**The Food (Miscellaneous Amendment and Revocation)  
(England) Regulations 2013**

<i>Made</i>	- - - -	2013
<i>Laid before Parliament</i>		2013
<i>Coming into force</i>	- -	2013

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1)(a),(b),(c),(d) and (f) and (3), 26(1)(b) and (3)(b) and 48(1)[(a) and (4)] of the Food Safety Act 1990(a) and now vested in him(b).

In accordance with section 48(4A) of that Act, he has had regard to relevant advice given by the Food Standards Agency.

As required by Article 9 of Regulation (EC) No. 178/2002 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(c) there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

**Title application and commencement**

1. These Regulations may be cited as the Food (Miscellaneous Amendment and Revocation) (England) Regulations 2013, apply in relation to England only and come into force on [.....] 2013.

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- (a) 1990 c.16.
- (b) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the Food Standards Act 1999 (1999 c.28). Functions of “the Ministers” so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act, and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32). Those functions so far as exercisable in relation to Scotland were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c.46) as read with section 40(2) of the 1999 Act.
- (c) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L 188, 18.7.2009, p.14).

## **Amendment of the Food Labelling Regulations 1996**

2.—(1) The Food Labelling Regulations 1996(a) are amended in accordance with paragraph (2).

(2) In regulation 50 (transitional provision), for subparagraph (b) of paragraph (15) substitute the following —

“(b) the matters constituting the alleged offence would not have constituted an offence under these Regulations if the amendments made by paragraphs (1) to (5) and (7) of regulation 2 of the Food Labelling (Declaration of Allergens) (England) Regulations 2008(b) had not been in operation when the food was sold.”.

## **Revocations**

3. The following Regulations are revoked —

- (a) The Arsenic In Food Regulations 1959(c);
- (b) The Arsenic In Food (Amendment) Regulations 1960(d);
- (c) The Arsenic In Food (Amendment) Regulations 1973(e);
- (d) The Chloroform in Food Regulations 1980(f); and
- (e) The Ungraded Eggs (Hygiene) Regulations 1990(g).

Signed by authority of the Secretary of State for Health

*Name*  
Parliamentary Under-Secretary of State  
Department of Health

Date

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

1. These Regulations make a further amendment to regulation 50(15) of the Food Labelling Regulations 1996 (S.I. 1996/1499) in order to correct an error in a previous amending instrument (S.I. 2011/402).

2. In addition these Regulations revoke —

- (a) the Arsenic In Food Regulations 1959 (S.I. 1959/831) and their amending instruments;
- (b) the Chloroform in Food Regulations 1980 (S.I. 1980/36); and
- (c) the Ungraded Eggs (Hygiene) Regulations 1990 (S.I. 1990/1323).

3. A full impact assessment has not been produced for this instrument as no impact on business or the public or voluntary sectors is foreseen.

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(a) S.I. 1996/1499, to which the relevant amending instruments are S.I. 2008/1188, S.I. 2009/2801 and S.I. 2011/402.  
(b) S.I. 2008/1188.  
(c) S.I. 1959/831.  
(d) S.I. 1960/2261.  
(e) S.I. 1973/1052.  
(f) S.I. 1980/36.  
(g) S.I. 1990/1323.

**The Food (Miscellaneous Amendment and Revocation) (England) Regulations 2013****Interested Parties List**

Association of Convenience Stores  
Association of Public Analysts  
Association of Port Health Authorities  
Birchgrove Free Range Eggs  
British Chambers of Commerce  
British Egg Industry Council  
British Egg Information Service  
British Retail Consortium  
Campden and Chorleywood Food RA  
Chartered Institute of Environmental Health  
Chemical Industries Association  
Chilled Food Association  
Consumer Focus  
Dairycrest  
Dairy UK  
DEFRA  
DEFRA – AHVLA  
Department for Business, Innovation and Skills  
Department of Health  
FARMA  
Food Commission  
Food and Drink Federation  
Food Commission  
Food Ethics Council  
Food Storage and Distribution Federation  
Forum of Private Business  
Freedom Foods  
Jim Blakemore's Farm  
Laid in Britain  
Leatherhead Food International  
Local Authority in England  
Local Government Association  
London Port Health Authority  
National Farmers' Union  
Oaklands Farm Eggs Ltd  
Office of Fair Trading  
Provision Trade Federation  
Rural Payments Agency  
Sustain  
The Wine & Spirits Trade Association  
Veterinary Public Health Association  
Villa Farm Eggs  
Which