



Eich cyf/Your ref CLA235

David Melding, AM
Chair, Constitutional and Legislative Affairs Committee

24 May 2013

Dear David

CLA235 – The Food (Miscellaneous Amendment and Revocation (Wales) Regulations 2013

Thank you for your letter of 12 May 2013, drawing my attention to the concerns of the Constitutional and Legislative Affairs Committee (CALM) in respect of the Explanatory Memorandum associated with the above Regulations. Specifically, the Committee felt the Explanatory Memorandum lacked the level of clarity within it to explain how the General Food Law Regulations 2004 would provide adequate alternative public health protection once the Ungraded Eggs (Hygiene) Regulations 1990, the Chloroform in Food Regulations 1980 and the Arsenic in Food Regulations 1959 were revoked.

The General Food Regulations 2004

The General Food Regulations 2004 provide for the enforcement in Great Britain of General Food Law (Regulation (EC)) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 ("General Food Law").

Article 14 of the EU Regulation states that

1. Food shall not be placed on the market if it is unsafe.
2. Food shall be deemed to be unsafe if it is considered to be:
 - (a) injurious to health;
 - (b) unfit for human consumption.

Regulation 10 of the General Food Regulations 2004 amends section 8 of the Food Safety Act 1990 to state at section 8(2) that –

"(2) For the purposes of this Part Food fails to comply with food safety requirements if it is unsafe within the meaning of article 14 of Regulation (EC) No 178/2002 and references to food safety requirements or to food complying with such requirements shall be construed accordingly."

Therefore, comprehensive protection for consumers is provided by the provisions of General Food Law (Regulation (EC) No 178/2002. As an EC Regulation it has direct applicability in UK law subject to the need for amendments to UK legislation to provide for enforcement etc of the EC Regulation.

The Arsenic in Food Regulations 1959

The Arsenic Regulations were based on science which is now out of date; they set a statutory level for total arsenic that had not been amended to take into account later science.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 cancer¹. As such, inorganic arsenic present in food at the statutory level that was set out in the Arsenic Regulations would be considered 'unsafe' under General Food Law as above. 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 Regulations. The Arsenic Regulations were therefore no longer required to ensure public health protection.

The Chloroform in Food Regulations 1980

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.

I am advised by the Food Standards Agency that an equivalent level of public protection is achieved by the General Food Law Regulation (EC) No 178/2002 and the General Food Regulations 2004. These Regulations prevent the sale of food that contains chloroform at a level that is injurious to health.

The Ungraded Eggs (Hygiene) Regulations 1990

The Ungraded Eggs (Hygiene) Regulations 1990 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.

I am advised by the Food Standards Agency that an equivalent level of public health protection is achieved under the General Food Law Regulations as above, which prohibits the sale or supply of unsafe food.

The equivalent legislation in Scotland was revoked on 1 January 2006 by The Food Hygiene (Scotland) Regulations 2005 and the revocation of that legislation has had no detrimental effect on consumer protection.

England, Scotland and N Ireland have also revoked the Arsenic in Food Regulations 1959, the Chloroform in Food Regulations 1980 and the Ungraded Eggs (Hygiene) Regulations

¹ 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>

1990 as they were no longer considered necessary for the protection of consumers given the wide ranging provisions in the General Food Law (Regulation (EC)) No. 178/2002 and the General Food Law Regulations 2004.

I trust that this further information appropriately meets the concerns of the Committee

Best wishes

Mark.

Mark Drakeford AC / AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services