

Proposals in the consultation on draft Caseins and Caseinates Regulations (Northern Ireland) 2016

The Food Standards Agency in Northern Ireland (FSA in NI) would welcome your comments on the draft Caseins and Caseinates Regulations (Northern Ireland) 2016.

Introduction

The purpose of the draft Northern Ireland Statutory Rule is to:

- (a) Transpose Directive (EU) 2015/2203 (hereafter referred to as the CC Directive) which repeals and replaces Council Directive 83/417/EEC, which provides for the approximation of the laws of the Member States relating to certain lactoproteins (caseins and caseinates) intended for human consumption.; and
- (b) Introduce improvement notices under Article 9 as applied and notified of the Food Safety (Northern Ireland) Order 1991 to enforce the CC Directive.

This is in order to:

- Take account of other legislation adopted in the meantime, notably with regard to food law;
- Align the compositional requirements of the products concerned to the relevant international standard issued by the Codex Alimentarius; and
- Update the approach used in Directive 83/417/EEC which conferred powers on the European Commission in order to implement some of its provisions.

Proposals

The options being considered are:

Option 1 – Do nothing. This involves the risk of infraction proceedings. As an EU Member State, the UK is obliged to provide for the enforcement of EU legislation. It is also expected that Member States transpose the provisions of the CC Directive into their domestic law. Failure to do so may lead to the UK being liable to infraction proceedings and consequent fines. Northern Ireland would be required to pay a percentage of any UK fine where the infraction relates to a devolved matter.

Option 2 – Transpose the CC Directive into domestic law. This would update requirements for relevant food businesses and maintain the status quo regarding the enforcement of European legislation in this area.

Key proposals(s):

- **Transpose Directive (EU) 2015/2203 into domestic law**
- **Introduce improvement notices for non-compliance**

Background

The CC Directive makes very minor adjustment to the substance of Directive 83/417/EEC (which it revokes).

This was necessary to take into account developments in food law, remove unnecessary provisions, and update various terms and references to take into account those used in other EU legislation. It also aligns composition requirements with the international standard set by the Codex Alimentarius for the sake of consistency and to avoid trade distortions.

The Directive gives the Commission the power to make a delegated act in respect of the technical elements in the Annexes, in order to take account of developments in relevant international standards or technical progress. This is in line with the usual approach on changes to technical details.

Taking account of the Lisbon Treaty and the Treaty on the Functioning of the European Union regarding the delegation of power by the European Parliament and the Council to the Commission, the Directive gives the Commission the power to make a delegated act in respect of the technical elements in the Annexes. For example, updates to reflect developments in relevant international standards or technical progress. This is in line with the usual approach on changes to technical details.

To fulfil our obligations to the EU, we require domestic legislation to transpose the CC Directive and to introduce improvement notices to enforce non-compliances of the new European requirements.

Given the age of the current domestic legislation preference is to revoke the Caseins and Caseinates Regulations (Northern Ireland) 1986 (as amended) and replace it with a new Statutory Rule.

Enforcement

Failure to transpose the CC Directive could result in infraction proceedings against the UK; therefore it is necessary to ensure that the EU requirements are implemented and can be enforced in Northern Ireland. The proposed Caseins and Caseinates Regulations (Northern Ireland) 2016 will address the implementation obligation and enable district councils in Northern Ireland to take action in the event of non-compliance with the specific labelling and / or composition standards for the products covered by the Regulations.

To ensure that sanctions are proportionate to the offence committed the enforcement regime for the Caseins and Caseinates Regulations (Northern Ireland) 2016 will include an improvement notice approach for dealing with breaches of the Regulations and a criminal offence for failure to comply with an improvement notice. The change will require the introduction of an appeals mechanism by application and modification of Article 37 and 38 of the Food Safety (NI) Order 1991 to provide a means of recourse if someone believes they have been issued with an improvement notice in error.

Consultation Process

A four week consultation is being launched to provide interested parties with the opportunity to comment on these proposals. Where the subject of the consultation is very specialised (i.e. the technical requirements for caseins) and relates only to the updating of technical EU requirements, it is considered reasonable to undertake a consultation that is shorter than the usual 12 weeks.

Questions asked in this consultation:

- Q1: We are not conducting an Impact Assessment as we believe there are no businesses in Northern Ireland likely to be caught by the composition and labelling requirements for Caseins and Caseinates. We would like to request that any businesses who feel they may be impacted by the change in regulations contact Food Standards Agency.**
- Q2: Do you have any comments on our proposal to use Improvement Notices as the method for enforcement.**

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 the proposal.

Impact Assessment

An Impact assessment has not been prepared for the Caseins and Caseinates Regulations because we have not identified any business in Northern Ireland who manufactures caseins and caseinates. However, we will review this following any responses received during the consultation period.

Other relevant documents

The CC Directive - Directive (EU) No. 2015/2203 is available from the EUR-Lex website at: EUR-Lex - 32015L2203 - EN - EUR-Lex

Responses

This is a shortened 4 week consultation and therefore responses are required by close **7th November 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). We will summarise all comments received and the official response to each will be published on the FSA in NI website within 3 months following the end of the consultation period.

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

Yours faithfully

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