

Consultation Information Note

Topic: Amending national law to exempt some retailers (butcher, retail caterer and fish retailer) who supply food of animal origin to other food retailers from the requirements of Regulation (EC) No. 853/2004

Start date of consultation: Monday 16th November 2020

Closing date of consultation: Monday 14th December 2020

Background

European legislation requires that food business operators processing food of animal origin and supplying other retail establishments are approved under Regulation (EC) No. 853/2004 laying down specific hygiene rules for food of animal origin. This legislation allows for Member States to provide for certain exemptions from approval in national law.

An exemption in Article 1(5)(b)(ii) of Regulation (EC) No. 853/2004 provides that: *“this Regulation shall apply to retail when operations are carried out with a view to the supply of food of animal origin to another establishment, unless: the supply of food of animal origin from the retail establishment is to other retail establishments only and, in accordance with national law, is a marginal, localised and restricted activity.”*

The FSAI hosted a previous [consultation](#) in 2018 on the definition of marginal and restricted activity for retail caterers and the extension of ‘marginal, localised and restricted activity’ to fish retailers. This consultation now seeks views on further revised criteria and considers the possibility of food business operators applying for more than one exemption.

The purpose of this consultation is to seek views on:

1. Revising the current exemption criteria for ‘restricted activity’ established under national law (S.I. No. 340 of 2010) for butcher shops which process food of animal origin for supply to other retailers.
2. Revising the current exemption criteria for ‘marginal and restricted activity’ established under national law (S.I. No. 168 of 2012) for retail caterers who process food of animal origin for supply to other retailers.
3. Establishing the exemption criteria for ‘marginal, localised and restricted activity’ for fish retailers who process fish for supply to other retail establishments, as there is currently no exemption.
4. Whether a food business operator can apply for an exemption under more than one category (butcher, retail caterer and fish retailer).

Appendix I – Provides additional background information in relation to this consultation.

Appendix II - Summarises the current and proposed criteria for ‘marginal, localised and restricted’ (MLR) activity.

This consultation invites views on:

Part 1. Consultation on the revision of the current exemption criteria for ‘restricted activity’ established under national law (S.I. No. 340 of 2010) for butcher shops.

Proposal for revised criteria for ‘restricted’ activity for butchers

An activity may be regarded as ‘restricted’ only where the supply of food of animal origin by the food business operator to other retail establishments is limited to raw meat, raw mince, raw meat products or raw meat preparations of which on average no more than 250kg per week in total is made from minced meat prepared or processed in his or her establishment.

Rationale for the proposal

The proposed criteria for restricted activity for butcher shops is being recommended to make it clear that ready-to-eat food of animal origin, prepared or processed in the food business cannot be supplied to other retail establishments.

Note: ‘Box-in, box-out’ food of animal origin is not subject to Regulation (EC) No. 853/2004 and butcher shops can carry on this trade in addition to any potential exemption.

Note: The criteria for ‘localised’ are not part of this consultation as no change is proposed to the existing definition in both the Health (Definition of Marginal, Localised and Restricted Activity) (Butcher Shop) Regulations, 2010 (S.I. No. 340 of 2010) and in the Health (Definition of Marginal, Localised and Restricted Activity) (Retail Catering Establishments) Regulations, 2012 (S.I. No. 168 of 2012): *“An activity may be regarded as “localised” if the food business operator supplies food of animal origin which is produced in his or her establishment to other retail establishments only within 100km of the supplying establishment.”*

Part 2: Consultation on the revision of the current exemption criteria for ‘marginal and restricted activity’ for retail caterers established under national law (S.I. No. 168 of 2012).

Proposal for revised criteria for ‘marginal and restricted’ activity for retail caterers

An activity may be regarded as ‘marginal and restricted’ only if either:

a) The total amount of food of animal origin bought in for production in the establishment for supply to other retail establishments is on average less than 500kgs per week, or 1,000kgs per week if the retail establishment supplied is under the same ownership;

Or

b) Less than 25%, by weight, of the food of animal origin bought in is used to produce foods of animal origin in the retail catering establishment for supply to other retail establishments.

Note: The definition for localised remains unchanged (see note in Part 1).

Rationale for the proposal

To apply for an exemption under the new criteria, there is a limit of 25% set on how much food of animal origin bought in by a food business operator can be used to produce foods of animal origin for supply to other retail establishments. This ensures that retail to retail supply is not a major part of the food business operator's business.

Note: A retail caterer is defined in S.I. No. 168 of 2012 as: *“any retail establishment involved in catering including hotels, restaurants, bakeries, public houses providing food, healthcare establishments, catering service providers, takeaway food service outlets, shops and central production units in such establishments.”*

If the food business operator is not a retail caterer, then they will not be able to apply for this exemption. However, a food business operator who does not qualify for the exemption will still be able to continue operating once they have approval under Regulation 853/2004.

Part 3. Consultation on the proposed criteria for ‘marginal, localised and restricted activity’ for fish retailers who process fish for supply to other retail establishments as there is currently no exemption.

(i) Proposal for criteria for marginal activity for fish retailers

An activity may be regarded as ‘marginal’ only if either:

a) the food business operator's total supply (to all customers including retail establishments) of fish, fishery products and live bivalve molluscs is on average less than 2,000kg per week;

Or

b) the food business operator's supply of fish and fishery products to other retail establishments represents, on average, no more than 25%, by weight, of the total supply of food of animal origin to all customers.

(ii) Proposal for criteria for restricted activity for fish retailers

An activity may be regarded as ‘restricted’ only where the supply of food of animal origin does not include:

live bivalve molluscs,

Or

ready-to-eat fish or fishery products prepared or processed in their retail establishment.

(iii) Proposal for criteria for localised activity for fish retailers

An activity may be regarded as “localised” if the food business operator supplies food of animal origin which is produced in his or her establishment to other retail establishments only within 100km of the supplying establishment.

Note: The proposed criteria for localised activity for fish retailers is consistent with the criteria for butchers and retail caterers.

Rationale for the proposal

There is currently no exemption from approval for fish retailers that process fish for supply to other retail establishments. This gives rise to inconsistency which could be addressed through the introduction of a marginal, localised and restricted exemption for these retailers. It is, therefore, considered appropriate that it should be possible for fish retailers to supply other retailers with fresh fish and fishery products within the marginal, localised and restricted criteria. This consultation is to determine the criteria for 'marginal, localised and restricted activity' for fish retailers to avail of an exemption from approval.

Note: A fish retailer who does not qualify for the exemption will still be able to continue operating once they have approval under Regulation 853/2004 for their supply to other retailers.

Part 4. Consultation on the proposal for applying for an exemption under more than one category (butcher, retail caterer and fish retailer).

Proposal

The proposal is to combine the three marginalised, local and restricted criteria (butcher, retail caterer and fish retailer) into one statutory instrument (S.I.) and stipulate that only one exemption from approval can be availed of by a food business operator in the case of a retail caterer. A butcher shop and fish retailer can apply for exemptions under both the butcher shop and fish retailer categories, once the total combined amount of food of animal origin is raw and does not exceed 2,000kg per week. It will not be possible to apply for the retail catering exemption in conjunction with another exemption.

Rationale for proposal

To provide clarity on the scope of the legislation and the circumstances for when an exemption can be applied for.

Submissions to the consultation

If you are making a submission, please state whether the views expressed are personal or are being made on behalf of an organisation. If the views of an organisation are being submitted, it should be made clear what organisation is being represented.

Submissions may be e-mailed to: consultation@fsai.ie or may be posted to:

Consultations
Food Safety Authority of Ireland
The Exchange, George's Dock
IFSC
Dublin 1
D01 P2V6

by close of business on the 14th of December 2020.

Feedback:

A report on the responses will be prepared by the FSAI and it will be shared with the Department of Health.

Personal Data

Any personal data, within the meaning of the Data Protection Acts, 1988 and 2003, submitted as part of the consultation process, will be treated in line with the requirements of these Acts.

Personal identifying information contained in submissions will not be published in accordance with the Data Protection Acts, 1988 and 2003 and the Freedom of Information Act, 2014.

Appendix I - Background information

Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin broadly applies to food businesses that supply foods of animal origin to other food businesses. It applies in addition to the more general requirements of Regulation (EC) No 852/2004 on the hygiene of foodstuffs, which applies to all food businesses. Regulation (EC) No 853/2004 allows Member States some discretion to extend or to limit the requirements of the Regulation to retail under national law. Member States may limit their application only if they consider that the requirements of Regulation (EC) No 852/2004 are sufficient to achieve food hygiene objectives and when the supply of food of animal origin from a retail establishment to another retail establishment is a 'marginal, localised and restricted' activity. Such supply should, therefore, be only a small part of the establishment's business; the establishments supplied should be situated in its immediate vicinity; and the supply should concern only certain types of products or establishments.

Article 1(5)(c) of Regulation (EC) No. 853/2004 provides for national measures to be introduced by Member States to exempt 'retailers' who also process and supply food of animal origin to other retailers from having to comply with the requirements of Regulation (EC) No. 853/2004. The definition of a retailer is a broad one and includes any food business supplying directly to the final consumer.

In order for a retail food business to be exempt from approval under Regulation (EC) No 853/2004:

- (i) it must supply food of animal origin only to the final consumer and other retail outlets and
- (ii) the trade to other retail outlets must be considered a 'marginal, localised and restricted activity' as set out in national law.

There are currently criteria for marginal, localised and restricted (MLR) activity for Butcher shops (S.I. No. 340 of 2010) and Retail caterers (S.I. No. 168 of 2012). These allow butchers and retail caterers to supply other retailers within the MLR criteria without having to seek approval under Regulation (EC) No 853/2004. However, there are no MLR criteria and, therefore, no exemption from approval for fish retailers.

In recent years, the Food Safety Authority of Ireland (FSAI) and the Health Service Executive, Environmental Health Service (HSE/EHS) have reported implementation issues with the current MLR criteria in S.I. No. 168 of 2012, and S.I. No. 340 of 2010, and problems with the absence of MLR exemptions for fish retailers. There is also some ambiguity about whether a FBO can avail of exemptions under both S.I. No. 340 of 2010 and S.I. No. 168 of 2012. To resolve these issues and to provide legal clarity, the Department of Health has agreed to arrange a consultation on the proposed criteria.

Appendix II – Summary of the current and proposed criteria for MLR activity

Criteria	Butcher Shops	Retail caterers ¹	Fish retailers ¹
Localised (current)	An activity may be regarded as “localised” if the food business operator supplies food of animal origin to other retail establishments only within 100km of the supplying establishment.	An activity may be regarded as “localised” if the food business operator supplies food of animal origin to other retail establishments only within 100km of the supplying establishment.	No criteria at present.
Localised (proposed)	No change proposed.	No change proposed.	An activity may be regarded as “localised” if the food business operator supplies food of animal origin to other retail establishments only within 100km of the supplying establishment.
Marginal (current)	An activity may be regarded as “marginal” only if either— (a) the food business operator’s total supply of food of animal origin (to all customers including retail establishments) is on average less than 2,000kg per week, or (b) the food business operator’s supply of food of animal origin to other retail establishments represents, on average, no more than 25%, by weight, of the total supply of food of animal origin.	An activity may be regarded as “marginal, and restricted” only if the food business operator’s total supply of food of animal origin (to all customers, including retail establishments) which is produced in his or her establishment is on average— (a) less than 500kg per week, or (b) where the retail establishments supplied are under the same ownership as the food business operator, less than 1,000kg per week	No criteria at present.

¹ Was subject to an FSAI public consultation inviting views on the definition of marginal and restricted activity for retail caterers and the extension of ‘marginal, localised and restricted activity’ to fish retailers in September 2018.

Marginal (proposed)	No change proposed.	<p>An activity may be regarded as ‘marginal and restricted’ only if:</p> <p>a) The total amount of food of animal origin bought in for production in the establishment for supply to other retail establishments is on average less than 500kg per week, or 1,000 kg per week if the retail establishment supplied is under the same ownership;</p> <p><u>Or</u></p> <p>b) Less than 25%, by weight, of the food of animal origin bought in is used to produce foods of animal origin in the retail catering establishment for supply to other retail establishments.</p>	<p>An activity may be regarded as ‘marginal’ only if either:</p> <p>a) the food business operator’s total supply (to all customers including retail establishments) of fish, fishery products and live bivalve molluscs is on average less than 2,000kg per week;</p> <p><u>Or</u></p> <p>b) the food business operator’s supply of fish and fishery products to other retail establishments represents, on average, no more than 25%, by weight, of the total supply of food of animal origin to all customers.</p>
Restricted (current)	<p>An activity may be regarded as “restricted” only if the food business operator does not supply other retail establishments with either—</p> <p>(a) ready-to-eat food of animal origin, or</p> <p>(b) on average, more than 250kg per week in total of minced meat, meat preparations made from minced meat or meat products made from minced meat, prepared or processed in his or her establishment.</p>	See criteria under marginal.	No criteria at present.
Restricted (proposed)	<p>“An activity may be regarded as ‘restricted’ only where the supply of food of animal origin by the food business operator to other retail establishments is limited to raw meat, raw mince, raw meat products or raw meat preparations of which on average no more than 250kg per week in total is made from minced meat prepared or processed in his or her establishment.”</p>	See proposed criteria under marginal.	<p>An activity may be regarded as ‘restricted’ only where the supply of food of animal origin does not include live bivalve molluscs,</p> <p><u>Or</u></p> <p>ready to eat fish or fishery products prepared or processed in their retail establishment.</p>