

Regulation 11(2) - Personal Data

While our aim is to provide information whenever possible, in this instance an exception under Regulation 11(2), personal data, has been applied to some of the information requested.

Information has been redacted under Regulation 11(2) (Personal Data), as it contains personal information and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulations (GDPR) and in Section 34(1) of the Data Protection Act 2018.

This exception is not subject to the 'public interest test'.

Regulation 10(5)(f) - Third Party Interests

A small amount of information has been withheld under regulation 10(5)(f) Third Party Interests. This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception.

We recognise that there is some public interest in releasing the information as part of an open, transparent and accountable government. However, disclosure of this commercially sensitive information would, or would be likely to, prejudice substantially the confidentiality information provided by third parties.

From: [REDACTED: REGULATION 11(2)]
Sent: 06 May 2022 09:25
To: [REDACTED: REGULATION 11(2)]@gov.scot>
Cc: [REDACTED: REGULATION 11(2)]@gov.scot>
Subject: RE: Feedback on Risk Register - legal challenge

Thanks [REDACTED: REGULATION 11(2)].

That approach seems good to me (you'll have seen that's what I have done as default). As you say, hopefully by June we will know about the JR risk, and we may also have some movement on IMA internally given where things are in discussion with the FSR team and CUKR (I think [REDACTED: REGULATION 11(2)] working on a sub?).

I think we've covered off enough of [REDACTED: REGULATION 11(2)] risks to show we're listening to him, and I'm happy to pick anything else up with him afterwards if he comes back to us.

Thanks,
[REDACTED: REGULATION 11(2)]

From: [REDACTED: REGULATION 11(2)]@gov.scot>
Sent: 06 May 2022 09:06
To: [REDACTED: REGULATION 11(2)]@gov.scot>
Cc: [REDACTED: REGULATION 11(2)]@gov.scot>
Subject: RE: Feedback on Risk Register - legal challenge

Hi [REDACTED: REGULATION 11(2)]
Thanks for flagging. I agree difficult to include – particularly any mitigating actions or timings! - with [REDACTED: REGULATION 10(5)(f)] and some other potentially litigious stakeholders in the room, though it's a fair point from [REDACTED: REGULATION 11(2)] irt to IMA. I wonder if we can at least hold off including anything in risk register for this meeting, on basis that we think JR on amending regs would normally need to be raised by end of May (3 months after Feb. passing) so by time of the next meeting we should know whether it's crystallised. Could we say to [REDACTED: REGULATION 11(2)] that we're still considering that risk? The only other option I can see is that we include the risk but without any other information in the table and that just seems odd.
[REDACTED: REGULATION 11(2)]

[REDACTED: REGULATION 11(2)] | Circular Economy Unit | Environmental Quality and Circular Economy Division | Environment and Forestry Directorate| Scottish Government | Tel: [REDACTED: REGULATION 11(2)]

From: [REDACTED: REGULATION 11(2)]@gov.scot>
Sent: 05 May 2022 13:18
To: [REDACTED: REGULATION 11(2)]@gov.scot>
Cc: [REDACTED: REGULATION 11(2)]@gov.scot>
Subject: FW: Feedback on Risk Register - legal challenge

Hi [REDACTED: REGULATION 11(2)],

I've been working through feedback from [REDACTED: REGULATION 11(2)] below. Largely can deal with points, but thoughtful on the one on legal challenge (highlighted). I see where [REDACTED: REGULATION 11(2)] is coming from, but I also see it would need to be a very calculated risk to include in the SWAG risk register at this stage, given [REDACTED: REGULATION 10(5)(f)] in the room.

[REDACTED: REGULATION 11(2)]

From: [REDACTED: REGULATION 11(2)]@[REDACTED: REGULATION 10(5)(f)]>
Sent: 04 April 2022 18:19
To: [REDACTED: REGULATION 11(2)]@gov.scot>
Cc: [REDACTED: REGULATION 11(2)]@[REDACTED: REGULATION 10(5)(f)]>
Subject: Feedback on Risk Register

[REDACTED: REGULATION 11(2)]

Following today's SWAG, can I flag some of the risks that we raised before that haven't made it to the risk register, and I'm not clear why?

One set is around reduction in consumer choice – not just in beer, but also Wines, Spirits and drinks produced by artisan producers across the UK. The risks we flagged in our original document to you were:

- Will the turnaround times and costs for introduction of new SKUs be acceptable, and what will be the consequences if it isn't?
- Is it acceptable if, as seems likely or inevitable, some of the major internet craft beer sellers decline to continue to supply the Scottish Market? Similarly if a significant proportion of independent brewer are unable to modify their website to make DRS work? Impact on consumer choice and also Scottish Brewers?
- What happens if, as seems inevitable, many producers and importers of craft beer decide not to register and therefore sell their products to Scottish retailers, or to greatly reduce the number of products that they decide to register and offer for sale through legitimate channels in Scotland? If this leads to a large reduction in variety to Scottish consumers will that be acceptable?

It seems highly likely to me that from these risks, Scottish Consumers are going to see a really substantial reduction in consumer choice available to them through legitimate sales channels, meaning that much of this business will switch to internet sales from retailers south of the border who won't comply with the regs and who practically can't be prevented – and it will directly affect the viability of a number of independent retailers as well as producers who will have to compete with non-compliant product sold through grey market sites. I would imagine these could be consolidated to a single point, or maybe there is a reason that the risks don't apply?

I also note that you didn't include the issue around the number of SKUs that we raised – namely:

- Have the number of SKUs been properly assessed – and are plans in place to be able to deal with the huge complexity in the long tail that craft beer operates in?



Is there a basis for your confidence that this isn't a risk? From what I have seen, I think there might be a substantial underestimating of the length of the long tail of SKUs, and given the current process requires physical samples to be sent to CSL, presumably they are planning to do something with them. I think [REDACTED: REGULATION 11(2)] mentioned that there are estimated to be 4,500 producers required to register with the scheme, and while some may produce only 10s of SKUs, for sure many importers will import 100s of SKUs, so presumably up to 500,000 SKUs will require to be manually processed by CSL over the course of 6 months, but many in the last 2 months undoubtedly – which seems a huge task. The points on reduction in consumer choice above is possibly the way the risk is being controlled?

Finally we raised:

- What happens if there is a legal challenge to the scheme's validity – for instance, given that the scheme has labelling requirements for even UK Wide SKUs, and the on-going review of the compatibility with the UK Single Market Act?

Is there a reason this wasn't considered a risk to include in the register – especially given the reports suggesting that one trade body was considering a judicial review. I think it would be good for everyone's confidence to know where the off ramps are if there is a legal challenge to understand the financial exposure businesses are being asked to take.

Cheers,

[REDACTED: REGULATION 11(2)]

[REDACTED: REGULATION 11(2)]