POLICY NOTE

THE FISHERY PRODUCTS (OFFICIAL CONTROLS CHARGES) (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

SSI 2019/XXX

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018. The instrument is subject to affirmative procedure.

The purpose of these Regulations is to make minor, technical amendments to the Fishery Products (Official Controls Charges) (Scotland) Regulations 2007 to ensure that they continue to function as required after the UK exits the European Union.

Policy Objectives

Where practical and appropriate, European legislation is being retained in UK law on the UK's exit from the EU. In the field of official controls charges, the current requirements in relation to mandatory official control charges set out in EU legislation and EU-derived domestic legislation will be corrected to ensure, in the event of the United Kingdom exit from the European Union, with 'no deal' the continued and proper regulation of official controls charges legislation within Scotland.

The instrument is required to make the necessary corrections in relation to official control charges applicable at the point of first placing on the market, and first sale in a fish market, of fishery and aquaculture products to provide continuity for businesses and enforcement authorities.

Upon exit day a number of technical corrections are required. The objective of the instrument is to ensure the continued operability of Scotland's legislative framework. The current policy position remains unchanged by these corrections.

Explanation of the law being amended by the regulations

The Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 make minor technical amendments to the Fishery Products (Official Controls Charges) (Scotland) Regulations 2007 to allow them to function after the UK leaves the European Union

The amendments are minor technical fixes, do not equate to a change in policy, and have only very minor impacts on businesses and local authorities. In detail, they:

- Amend the definition of "third country" to align with corrections being made to, what will become, the retained version of the framework official controls Regulation 882/2004 (which has been updated for EU Exit).
- Deal with references to a specified number of Euros by requiring the reader to convert into pounds sterling using the exchange rate of GBP 1 = EUR 1.1413. This exchange rate is specified in Article 26 of the retained version of Regulation 882/2004.

Reasons for and effect of the proposed change or changes on retained EU law

The amendments make minor changes to retained EU law and will ensure continuity in Scots law after the UK exits the European Union.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick MSP, has made the following statement "In my view The Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate". This is the case because they make only essential minor and technical amendments to Scottish secondary legislation to ensure that official controls charges applicable at first placing on the market and sale of fishery and aquaculture products continue to operate effectively at the point at which the UK leaves the EU.

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick MSP, has made the following statement "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". This is because the instrument makes only those amendments to Scottish secondary legislation which are essential to ensure these official controls charges continue to operate effectively at the point that the UK leaves the EU.

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick MSP, has made the following statement "In my view The Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts."

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick MSP, has made the following statement "In my view Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.".

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick MSP, has made the following statement "In my view The Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.".

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick has made the following statement "In my view the Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 have no effect on the rights and duties relating to employment, health and safety and matters relating to consumer protection. This is because the minor technical amendments do not make any policy changes and ensure the current high level of public health protection, with regard to food and feed law, is maintained after the UK exits the EU.

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Categorisation may be Low as this instrument is only making minor technical amendments with no changes in policy, to allow for Domestic regulations to function effectively when the UK leaves the EU.

Statement setting out the Scottish Ministers' reasons for their choice of procedure

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick MSP, has made the following statement regarding use of legislative powers in the European Withdrawal Act 2018 "In my view the Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 are subject to affirmative procedure". This is because this SSI is subject to mandatory affirmative procedure under paragraph 1(6) of schedule 7 of the European Union (Withdrawal) Act 2018. Therefore, the sifting procedure in the SSI protocol is not relevant to this SSI.

Further information

Consultation

To comply with the requirements of Article 9 of Regulation (EC) 178/2002 of the European Parliament and the council, a consultation was launched on the 17th December and closed on the 20th January. Local authorities, consumer groups, food and feed businesses including manufacturers, wholesalers and retailers were contacted.

There were 5 responses to the consultation in total however not all respondents answered all the questions. 3 respondents agreed with the impacts identified in the consultation and had no other points to raise, whilst the other 2 raised issues which were not within scope of the consultation i.e. issues with Republic of Ireland and Northern Ireland border, and concerns with UK fixing instruments. They did not indicate which, if any, impacts, they disagreed with.

Impact Assessments

A full impact assessment has not been prepared for this instrument because the amendments are minor technical fixes which do not equate to a change in policy. Impacts on affected businesses and Local Authorities as a result of applying the euro / sterling exchange rate in Article 26 of the retained version of Regulation 882/2004 are very minor, and are preferential for industry. The amendments do not alter Scottish Government's current public health and protection policies and priorities and, therefore, do not have a significant impact on the environment.

Financial Effects

The Minister for Public Health, Sport and Wellbeing confirms that no BRIA is necessary as the instrument has only very minor financial effects on local government and industry, which are preferential for affected businesses.

Food Standards Scotland
7 February 2019