**EXPLANATORY MEMORANDUM TO**

**THE FOOD (AMENDMENT) (ENGLAND) (EU EXIT) REGULATIONS 2019**

**2019 No. 150**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Act.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of the instrument

2.1 The amendments proposed in this secondary legislation would apply in the event that the EU and the UK were not to agree a partnership arrangement and common approach to food legislation after the UK leaves the EU.

2.2 This SI will ensure the operability of certain domestic pieces of food legislation in England following our exit from the EU. It includes mostly minor technical fixes but – for the unlikely eventuality of the UK leaving the EU without a deal – also addresses natural mineral water recognition within the home countries.

2.3 Simple amendments would be sufficient to enable many of the provisions contained in the relevant regulations to work after EU exit. These are:

2.3.1 The Food (Lot Marking) Regulations 1996

2.3.2 The Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007

2.3.3 The Spreadable Fats (Marketing Standards) and Milk and Milk Products (Protection of Designations) (England) Regulations 2008

2.3.4 The Food Information Regulations 2014

2.3.5 The Country of Origin of Certain Meats (England) Regulations 2015

2.3.6 The Honey (England) Regulations 2015

2.3.7 The Caseins and Caseinates (England) Regulations 2017

2.4 However, in the case of natural mineral waters more substantial changes are required in order to reach workable solutions. Those are described in section 7.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

4.3 Scotland, Wales and Northern Ireland will introduce their own separate but parallel Regulations.

## 5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

6.1 The UK is leaving the European Union and the amendments made by The Food (Amendment) (England) (EU Exit) Regulations 2019 are needed to ensure the operability of the domestic legislation in section 2.3 once the UK has left the European Union. Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU.

## 7. Policy background

***What is being done and why?***

7.1 On natural mineral water: EU legislation requires natural mineral waters to go through a process of recognition to prove that they have the necessary composition and characteristics to be sold and marketed as natural mineral waters in all EU Member States. Recognition is carried out by individual Member States in line with EU Directive 2009/54.

7.2 The directive was transposed in England through The Natural Mineral Water, Spring Water and Bottled Drinking Water (England) 2007 (The Regulations)

7.3 The amendments proposed for inclusion in The Food (Amendment) (England) (EU Exit) Regulations 2019 are needed to clarify and ensure the operability of the Regulations dealing with natural mineral waters.

7.4 Without these amendments, the current regulations would be inoperable because the wording of the regulations refers to the EU Directive. As a consequence, natural mineral waters recognised in Scotland, Wales and Northern Ireland could not be recognised and sold in England.

7.5 All other proposed amendments represent minor corrections of references (e.g. to EU member states and institutions) to the regulations listed in section 2.3 above.

## 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it is required to ensure the regulations are operative after exit. However powers exist to allow us to make these amendments under sections 6(4), 16(1), 17, 26(1) and (3) and

48(1) of the Food Safety Act 1990. It is more appropriate to use these powers rather than those under the European Union (Withdrawal) Act 2018 because of the need to adopt a policy position towards the recognition of existing EU natural mineral waters in England irrespective of the position that the EU takes in respect of the existing natural mineral waters recognised in and by the UK.

## 9. Consolidation

9.1 Defra has no plans currently to consolidate the legislation that is amended by this Instrument

## 10. Consultation outcome

10.1 The policy areas covered and the changes within this instrument have been the subject of a 4 week public consultation which closed on November 13th 2018.

10.2 The response rate was low, and Defra considers this is due to the extensive and prolonged consultation activity with key stakeholders that has taken place since the beginning of the year which had already informed the development of proposals which were subject to formal consultation.

## 11. Guidance

11.1 There will be no guidance to accompany the changes in the domestic statutory instruments but along with the information provided in the consultation Defra has been meeting and intends to engage with stakeholders and local government representatives further – in the unlikely event that a common approach is not agreed with the EU and the instrument therefore comes into force – to explain the changes and ensure the operability of the new rule book after EU Exit.

## 12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment was carried out and in accordance with guidance from the Department of Exiting the EU, was not published during the consultation. It was later established that an Impact Assessment was not required in this case, however the details collated in it were used in summary form to inform the consultation. It also included an assessment of additional Natural Mineral Water and Honey regulations provisions (now to be laid via different Statutory Instruments).

## 13. Regulating small business

13.1 This legislation is not expected to disproportionately affect the activities undertaken by small businesses.

## 14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

14.2 The regulation does not include a statutory review clause.

## 15. Contact

15.1 Yvonne Riedel-Brown, at the Food Compositional Standards Team, Agri Food Chain Directorate, Defra Telephone: 020 841 52222 or email: Yvonne.Riedel-Brown@defra.gov.uk

15.2 Karen Lepper at the Agri Food Chain Directorate, Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 David Rutley, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.