EXPLANATORY MEMORANDUM TO

THE FOOD (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 353

1. Introduction

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

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

2. Purpose of the instrument

2.1 This SI makes a number of technical amendments to ensure the operability of certain pieces of domestic food legislation in Northern Ireland following the UK's exit from the EU. The amendments are mostly minor technical fixes but for the eventuality of the UK leaving the EU without a deal, it also addresses a specific policy aspect on natural mineral water recognitions.

2.2 Simple technical amendments are sufficient to enable many of the provisions contained in the relevant regulations to work after EU Exit. Those regulations are:

- The Food (Lot Marking) Regulations (Northern Ireland) 1996
- The Spreadable Fats (Marketing Standards) and Milk and Milk Products (Protection of Designations) Regulations (Northern Ireland) 2008
- The Fish Labelling Regulations (Northern Ireland) 2013
- The Food Information Regulations (Northern Ireland) 2014
- The Honey Regulations (Northern Ireland) 2015
- The Country of Origin of Certain Meats Regulations (Northern Ireland) 2015
- The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015

2.3 However, in the case of the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015, more substantial changes are required to reach workable solutions. These are described in section 7.

Explanations

What did any relevant EU law do before exit day?

2.4 Directive 2011/91/EU makes provision in relation to indications or marks identifying the lot to which a foodstuff belongs and is implemented in Northern Ireland by the Food (Lot Marking) Regulations (Northern Ireland) 1996.

2.5 Regulation (EU) No. 1308/2013 establishes a common organisation of the markets in agricultural products which includes provisions relating to milk and milk products marketed for human consumption and spreadable fats. The Spreadable Fats

(Marketing Standards) and Milk and Milk Products (Protection of Designations) Regulations (Northern Ireland) 2008 make provision for its execution and enforcement in Northern Ireland.

2.6 Regulation (EU) No. 1379/2013 makes provision on the common organisation of the markets in fishery and aquaculture products. The Fish Labelling Regulations (Northern Ireland) 2013 make provision for its execution and enforcement in Northern Ireland.

2.7 Regulation (EU) No. 1169/2011 makes provision in relation to food information to consumers. The Food Information Regulations (Northern Ireland) 2014 make provision for its execution and enforcement in Northern Ireland.

2.8 EU Council Directive 2001/110/EC makes provision relating to honey and is implemented in Northern Ireland by the Honey Regulations (Northern Ireland) 2015.

2.9 Commission Implementing Regulation (EU) No. 1337/2013 lays down rules for the application of Regulation (EU) No. 1169/2011 as regards the indication of the country of origin or place of provenance for fresh, chilled and frozen meat of swine, sheep, goats and poultry. The Country of Origin of Certain Meats Regulations (Northern Ireland) 2015 make provision for its execution and enforcement in Northern Ireland.

2.10 The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015 provide for the implementation and enforcement of a number of European instruments in Northern Ireland:

(a) Council Directive 98/83/EC makes provisions relating to the quality of water intended for human consumption, so far as it applies to water intended to be labelled and sold as "spring water" and bottled drinking water;

(b) Directive 2009/54/EC makes provision on the exploitation and marketing of natural mineral waters (Recast);

(c) Commission Directive 2003/40/EC establishes the list, concentration limits and labelling requirements for the constituents of natural mineral waters and the conditions for using ozone-enriched air for the treatment of natural mineral waters and water bottled and labelled as "spring water";

(d) Commission Regulation (EU) No 115/2010 lays down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and water bottled and labelled "spring water";

(e) In relation to water bottled and labelled as "spring water" and bottled drinking water, Council Directive 2013/51/Euratom laying down the requirements for the protection of the health of the public with regard to radioactive substances in water intended for human consumption.

2.11 Directive (EU) 2015/2203 makes provision relating to caseins and caseinates intended for human consumption and is implemented in Northern Ireland by the Caseins and Caseinates Regulations (Northern Ireland) 2016.

Why is it being changed?

2.12 A review of the Northern Ireland Regulations relating to food composition and labelling identified a number of provisions which would not operate effectively or would be deficient (within the meaning of section 8 of the European Union (Withdrawal) Act 2018) arising from the UK's withdrawal from the EU. More

information on the changes being made is provided at section 7. The instrument makes no substantive changes to the way the existing legislation operates. All changes make technical drafting fixes to maintain continuity of approach after exit.

What will it now do?

2.13 The amended Regulations will operate effectively following the withdrawal of the UK from the EU. More information on the changes being made is provided at section 7.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 30th January 2019. On 12th February 2019 the Sifting Committees agreed with the Government that this instrument does not have to have a debate in parliament, though one may still occur. The instrument will, therefore, remain subject to the negative resolution procedure.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 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 limited to Northern Ireland.

4.2 The territorial application of this instrument is limited to Northern Ireland.

4.3 England, Scotland and Wales 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) (Northern Ireland) (EU Exit) Regulations 2019 are needed to ensure the operability of the domestic legislation as referenced in section 2.2 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 UK from the EU. The instrument is made in exercise of these powers.

7. Policy background

What is being done and why?

7.1 This instrument applies to the Northern Ireland Regulations dealing with food composition and labelling which is a transferred matter for Northern Ireland under the Northern Ireland Act 1998. Although the UK Government remains committed to restoring devolution in Northern Ireland, a functioning statute book is required across the UK, including in Northern Ireland, for exit day. UK Government Ministers have therefore decided that, in the interest of legal certainty in Northern Ireland, the UK Government will take through the necessary secondary legislation at Westminster for Northern Ireland, in close consultation with the Northern Ireland departments. This is one such instrument.

7.2 The amendments made by this instrument are being made to ensure the operability of the Northern Ireland Regulations once the UK has left the EU and can be broadly categorised as:

- Removing references to 'another EEA State' and 'a non-EEA state' to reflect the UK's new status outside of the EU;
- Removing references to payments in Euros;
- Removing definitions of "EEA State" and "first seller established within the European Union"; and
- Fixing references to EU directives where necessary.

7.3 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 ("the Directive").

7.4 The Directive was transposed in Northern Ireland through The Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015.

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

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

7.7 All other proposed amendments represent minor corrections of references (e.g. to EU member states and institutions) to the regulations listed in section 2.2 above.

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

8.1 The instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 to prevent, remedy or mitigate any failure of retained EU law to operate effectively, or other deficiency in retained EU law, arising from the withdrawal of the UK from the EU.

8.2 In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this explanatory memorandum.

9. Consolidation

9.1 The Statutory Instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 The policy areas covered and the changes within this instrument were the subject of a four-week public consultation conducted in Northern Ireland, which closed on 20 December 2018. The consultation sought comments on the proposed approach to the amendment of Northern Ireland domestic legislation relating to food and feed safety and hygiene, food compositional standards and food labelling.

10.2 Two responses were received to the consultation. However, the responses did not relate to the proposed changes being made in this SI.

11. Guidance

11.1 There will be no guidance to accompany the changes in the domestic statutory instruments. There will be continued engagement with stakeholders and enforcement officers, 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 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private or voluntary sector is foreseen.

13. Regulating small business

13.1 The legislation is not expected to disproportionately affect the activities undertaken by small businesses, so no specific action is proposed.

14. Monitoring & review

14.1 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

15.1 Esther Chartres at the Food Standards Agency, telephone: 02890417737; or email: esther.chartres@food.gov.uk can be contacted with any queries regarding the instrument.

15.2 Kirsten Dunbar, Head of EU Exit, Legal and Operations, at the Food Standards Agency can confirm that this explanatory memorandum meets the required standard.

15.3 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

1.1 The Parliamentary Under Secretary of State for Food and Animal Welfare David Rutley has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because this statutory instrument does not make provision falling within paragraph 1(2) of Schedule 7 to the European Union (Withdrawal) Act 2018, addresses only technical deficiencies in the relevant Northern Ireland legislation that will arise from withdrawal of the UK from the EU and will not introduce any new policy.

2. Appropriateness statement

2.1 The Parliamentary Under Secretary of State for Food and Animal Welfare David Rutley has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 does no more than is appropriate."

2.2 This is the case because this statutory instrument addresses only technical deficiencies in the relevant Northern Ireland legislation that will arise from withdrawal of the UK from the EU and will not introduce any new policy. Further details, including examples of all the changes included in the instrument, are detailed in Section 7 of the main body of this explanatory memorandum.

3. Good reasons

3.1 The Parliamentary Under Secretary of State for Food and Animal Welfare David Rutley has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 These are that failure to progress this legislation would result in Northern Ireland legislation relating to food legislation and natural mineral recognition failing to operate effectively after the UK leaves the EU. Further details, including examples of all the changes included in the instrument, are detailed in Section 7 of the main body of this explanatory memorandum.

4. Equalities

4.1 The Parliamentary Under Secretary of State for Food and Animal Welfare David Rutley has made the following statement(s):

"The draft instrument does 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".

4.2 The Parliamentary Under Secretary of State for Food and Animal Welfare David Rutley has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, David Rutley 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. This Act does not extend to Northern Ireland. The Food (Amendment) (Northern Ireland) (EU Exit) Regulations 2019 extend only to Northern Ireland, I have given equivalent due regard to the implications for equality of opportunity in Northern Ireland."