POLICY NOTE

THE FOOD AND FEED (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2020

SSI 2020/372

The above instrument was made in exercise of the powers conferred by paragraphs 1(1), (3), and 11M(1) of Schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument.

The purpose of this instrument is to make minor technical amendments to five Scottish Statutory Instruments (SSI)s in relation to food and feed safety and hygiene and composition, labelling and standards to ensure that they continue to operate effectively following Implementation Period (IP) completion day and allows for the proper implementation of the Northern Ireland Protocol (NIP).

Policy Objectives

Where practical and appropriate, European Union legislation is being retained in relevant domestic law applicable within the UK on the UK's exit from the EU. In the fields of food and feed safety and hygiene and composition, labelling and standards, Food Standards Scotland, in line with the Scottish Government and other devolved administrations, plans to retain the current standards set out in EU legislation and EU-derived domestic legislation. This will ensure the continued and proper regulation of food and feed safety and hygiene and composition, labelling and standards within Scotland after IP completion day. This will also protect human health, maintain consumer protection and provide continuity for businesses and consumers. This instrument concerns the relevant fixes to the EU-derived domestic legislation such as EU references which are no longer appropriate and also implements the NIP to still allow businesses in Northern Ireland unfettered access to the GB market.

Explanation of the law being amended by the regulations

This instrument is making amendments to the following EU Exit SSIs:

- The Nutrition (EU Exit) (Scotland) (Amendment) Regulations 2019
- The Food Composition, labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019
- The Food and Feed Safety and Hygiene (EU Exit) (Scotland) (Amendment) Regulations 2019
- The Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019
- The Food Information, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019

This instrument is also making amendments to the following, non EU Exit SSIs:

- The Meat (Official Controls Charges) (Scotland) Regulations 2009
- The Official Feed and Food Controls (Scotland) Regulations 2009
- The Foods for Specific Groups (Scotland) Regulations 2016

On IP completion day a number of minor technical corrections are required in the above instruments which do not equate to a change in policy and these amendments cover a range of issues for example:

- Correcting the references to the 'EU' or 'Member States' which will no longer be appropriate
- Amending references from "exit day" to "IP completion day"
- Correcting references to EU terminology like "Specified EU requirement" which will no longer be appropriate.
- Implementing the Northern Ireland Protocol by removing references to "United Kingdom" and replacing them with "Great Britain" where appropriate to still allow businesses in Northern Ireland unfettered access to the GB market
- Amending definition of "third country" where necessary

Due to an outstanding commitment to the DPLRC, regulation 10(5) of this instrument makes an amendment to the Honey (Scotland) Regulations 2015 which replaces "insert name of non-specified countries" by "other countries".

Reasons for and effect of the proposed change or changes on retained EU law
The amendments do not make any substantial changes to retained EU law, but will ensure continuity in Scots law after IP completion day. Without technical amendment the current legislation would not continue to operate effectively.

Statements required by the European Union Withdrawal Act 2018 and Additional Information required by the Protocol between the Scottish Government and the Scottish Parliament

The Regulations are made in exercise of powers in the 2018 Act to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of Part 1 of schedule 2). The Regulations also exercise the powers in paragraph 21(b) of schedule 7 in relation to transitional and savings provisions.

Regulations 2(2), 3(2), (3), (5), (6) and (7), 4(2), (3) and (4)(a), 5(2), (3), (4) and 7(2), (3) and 9(2), (3), (4) and (6) are made in exercise of the deficiencies powers. A negative procedure was chosen as this instrument is considered to be of low significance as the amendments that are made are technical in nature as they do not fall within scope of the European Union (Withdrawal) Act 2018 Schedule 7 Part 1 paragraph 1 (2)(a) to (d) which requires the affirmative procedure.

Regulations 4(4)(b), 5(5), 6(2) and 8(2) make provision in implementation of the NIP.

Regulations 3(4) and 9(3) are made in exercise of the deficiencies powers (as expanded by paragraph 21(b) of schedule 7).

The Statements set out below relate to the exercise of the deficiencies powers.

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 has made the following statement, "In my view the Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 does no more than is appropriate". This is the case because the instrument makes only minor and technical amendments to Scottish secondary legislation to ensure that legislation on food and feed safety and hygiene and composition, labelling and standards continues to operate effectively after IP completion day and allows for the proper implementation of the Northern Ireland Protocol.

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 has made the following statement, "In my view there are good reasons for the provisions in this instrument, and I have concluded that they are a reasonable course of action. This is the case because the instrument makes only minor and technical amendments to Scottish secondary legislation to ensure the law is clear following IP completion day and implements the Northern Ireland Protocol.

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 has made the following statement, "In my view the Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 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."

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 has made the following statement, "In my view the Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 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 has made the following statement "In my view the Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 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 Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 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 and consumer 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
Low – this instrument is only making minor technical amendments with no change in policy, to allow for domestic regulations to function effectively after IP completion day

Statement setting out the Scottish Ministers' reasons for their choice of procedure
The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018 "In my view it is appropriate that the Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 are subject to negative procedure as the instrument contains only minor and technical amendments to Scottish secondary legislation".

<u>Further information</u>

Consultation
Part 2 of this instrument is due to come into force on IP completion day and Part 3 is due to come into force immediately before IP completion day. The instrument has used the deficiencies power in paragraph 1 of schedule 2 of the European Union (Withdrawal) Act 2018. When using these powers of the 2018 Act, paragraph 4(a) of schedule 2 to the European Union (Withdrawal) Act 2018 states that consultation with the Secretary of State is required and such consultation was carried out with George Eustice, Secretary of State for Environment, Food and Rural Affairs and Matt Hancock, Secretary of State for Health and Social Care before the Regulations were made.

To comply with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council a two week consultation was carried out in Scotland on the policy underpinning these from 28th September to 13th October 2019. Around 41 interested parties and 32 local authorities were consulted and one response was received from an interested party. They raised no concerns and were happy with our proposals. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Food Standards Scotland Citizen Space website.

Impact Assessments

Full impact assessments have not been prepared for this instrument because only minor technical amendments are being made and the impact of this policy is considered to be negligible. The amendments do not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment . The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

The Minister for Public Health, Sport and confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Food Standards Scotland

November 2020