EXPLANATORY MEMORANDUM TO

THE FOOD AND FEED HYGIENE AND SAFETY (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 652

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the Statutory Instrument (SI) is to ensure Northern Ireland legislation relating to food and feed hygiene and safety listed below continues to operate effectively after the UK leaves the EU.

- The General Food Regulations (Northern Ireland) 2004
- The Food Hygiene Regulations (Northern Ireland) 2006
- The Quick-frozen Foodstuffs (No. 2) Regulations (Northern Ireland) 2007
- The Meat (Official Controls Charges) Regulations (Northern Ireland) 2009
- The Official Feed and Food Controls Regulations (Northern Ireland) 2009
- The Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011
- The Animal Feed (Composition, Marketing and Use) Regulations (Northern Ireland) 2016

2.2 The SI makes a number of minor and technical amendments to these regulations to deal with deficiencies arising from the withdrawal of the UK from the EU.

Explanations

What did any relevant EU law do before exit day?

2.3 Regulation (EC) No 178/2002 makes provision for general principles and requirements of food law, and as read with Commission Implementing Regulation (EU) No 931/2011 on the traceability requirements set by Regulation (EC) No 178/2002 and with Commission Implementing Regulations (EU) No 208/2013 on traceability requirements for sprouts and seeds intended for the production of sprouts. The General Food Regulations (Northern Ireland) 2004 makes provision for its execution and enforcement in Northern Ireland.

2.4 The Food Hygiene Regulations (Northern Ireland) 2006 provide for the execution and enforcement of a number of European instruments in Northern Ireland:

- Regulation (EC) No 852/2004 makes provision for requirements on the hygiene of foodstuffs.
- Regulation (EC) No 853/2004 makes provision for specific hygiene rules for food of animal origin.

- Regulation (EC) No 854/2004 makes provision for specific rules for the organisation of official controls on products of animal origin intended for human consumption.
- Commission Regulation (EC) No 2073/2005 lays down the microbiological criteria for certain micro-organisms and the implementing rules to be complied with by food business operators.
- Commission Implementing Regulation (EC) No 2015/1375 makes provision for specific rules on official controls for Trichinella parasite in meat.

2.5 The Quick-frozen Foodstuff (No. 2) Regulations (Northern Ireland) 2007 provides for the implementation and enforcement of a number of European instruments in Northern Ireland:

- Council Directive 89/108 EEC makes provision on the approximation of the law of member states relating to quick-frozen foodstuffs intended for human consumption.
- Commission Directive 92/2 EEC makes provision for sampling procedure and the Community method of analysis for the official control of the temperatures of the quick-frozen foods intended for human consumption.
- Commission Regulation (EC) 37/2005 makes provision for the monitoring of temperatures during transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption.

2.6 Regulation (EC) No 882/2004 makes provision on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. The Meat (Official Controls Charges) Regulations (Northern Ireland) 2009 provides for the execution and enforcement of Articles 26 and 27 of Regulation (EC) No 882/2004 on the financing of official controls in Northern Ireland.

2.7 The Official Feed and Food Controls Regulations (Northern Ireland) 2009 provides for the execution and enforcement of a number of European instruments in Northern Ireland:

- Regulation (EC) No 882/2004 makes provision for official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.
- Commission Regulation (EC) 669/2009 makes provision for the increased level of official controls on imports of certain feed and food of non-animal origin.

2.8 Commission Regulation (EU) No. 284/2011 makes provision for specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China. The Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011 provides for its execution and enforcement in Northern Ireland.

2.9 The Animal Feed (Composition, Marketing and Use) Regulations (Northern Ireland) 2016 provides for the execution and enforcement of a number of European instruments in Northern Ireland:

- Regulation (EC) No 183/2005 makes provision for requirements for feed hygiene.

- Commission Regulation (EC) No 152/2009 makes provision for the methods of sampling and analysis for the official control of feed.
- Regulation (EC) No 882/2004 makes provision on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

Why is it being changed?

2.10 A review of the Northern Ireland Regulations relating to food and feed hygiene and safety 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?

2.11 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 This instrument was laid for sifting by the Sifting Committees on the UK's exit from the EU, in accordance with the European Union (Withdrawal) Act 2018, on 11 February 2019. The Committees considered this instrument and recommended that the appropriate procedure is for it to be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative 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.

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 and Feed Hygiene and Safety (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 and feed hygiene and safety 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 the UK's exit from the EU. 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 'Community', 'European Union' and 'member states' to reflect the UK's new status outside of the EU;
- Removing redundant provisions to EU instruments; and
- Fixing references.

7.3 The General Food Regulations (Northern Ireland) 2004 are amended to substitute the reference to "European Union" to "United Kingdom".

7.4 The Food Hygiene Regulations (Northern Ireland) 2006; Schedule 2 is amended to remove and replace references to "Community legislation" or "national law" to "United Kingdom" law. Reference to "manufactured in the Community" is omitted from Schedule 2. Reference to "one or more Community languages" is replaced with "English, or in English and in Welsh" within Schedule 3.

7.5 The Quick-frozen Foodstuffs (No. 2) Regulations (Northern Ireland) 2007 are amended to remove and replace descriptions of the term 'quick-frozen' in other languages referenced in Article 8.1(a) of Council Directive 89/108. Reference to "European Union" is substituted with "United Kingdom".

7.6 The Meat (Official Controls Charges) Regulations (Northern Ireland) 2009 are amended to remove an ambulatory reference to EU instruments.

7.7 The Official Feed and Food Controls Regulations (Northern Ireland) 2009 are amended to insert a definition of "third country" which means a country or state other than the United Kingdom.

The provisions and references relating to the following are also removed:

- Staff of competent authority of another member state;
- Commission experts
- Prohibition on disclosure of trade secrets
- Relevant territories

- Expenses arising in respect to co-ordinated assistance and follow-up by the Commission.
- Member state languages

7.8 The Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011 are amended to substitute references to "European Union" to "United Kingdom".

7.9 The Animal Feed (Composition, Marketing and Use) Regulations (Northern Ireland) 2016 are amended to remove references to Commission requirements and a provision on the collaboration of competent authorities of member states. References to "Commission" are substituted to "appropriate authority"

7.10 These drafting fixes as outlined above, are the extent of this instrument's purpose; the intention is to ensure the operability of the Northern Ireland Regulations once the UK has left the EU. As a result, there are not expected to be any significant impacts arising from this SI.

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

8.1 The SI 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. 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 SI 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 SI, were the subject of a four-week public consultation conducted in Northern Ireland, which closed on 20 December 2018. The consultation was published at the following link:

10.2 https://www.food.gov.uk/news-alerts/consultations/proposed-approach-for-the-amendment-of-domestic-legislation-in-northern-ireland .

10.3 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.

10.4 Two responses were received in relation to food labelling and they did not concern the proposed changes being made in this SI.

11. Guidance

11.1 There will be no guidance to accompany the changes in the Northern Ireland domestic legislation. There will be continued engagement with stakeholders and enforcement officers, in the 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 can be contacted with any queries regarding the instrument: Telephone: 02890417737; or email: esther.chartres@food.gov.uk .

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 Steve Brine MP, Parliamentary Under Secretary of State for Public Health and Primary Care 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 Public Health and Primary Care Steve Brine has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Food and Feed Hygiene and Safety (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 Public Health and Primary Care Steve Brine has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the Food and Feed Hygiene and Safety (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 Public Health and Primary Care Steve Brine 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 and feed hygiene and safety 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 Public Health and Primary Care Steve Brine 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 Public Health and Primary Care Steve Brine has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the draft instrument, I, Steve Brine, 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 and Feed Hygiene and Safety (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."

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.