POLICY NOTE

THE FOOD INFORMATION, LABELLING AND STANDARDS (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

SSI 2019/285

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) 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 amendments proposed in this instrument 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.

This instrument will ensure the operability of domestic food legislation in Scotland following the UK's exit from the EU. It includes minor technical fixes and addresses blended honey country of origin labelling and transitional provisions for food labelling.

Policy Objectives

Where practical and appropriate, European Union legislation is being retained in relevant domestic law applicable in Scotland on the UK's exit from the EU. In the fields of food information, 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 that ensure, following a "no deal" UK exit from the European Union, continued regulation of food information, labelling and standards within Scotland. This will protect human health and the environment and provide continuity for businesses and consumers. This instrument concerns the relevant fixes to the EU–derived domestic legislation in this policy area.

Upon exit day a number of technical and some more substantial corrections are required. The objective of this instrument is to ensure the operability of Scotland's food information, labelling and standards framework.

Explanation of the law being amended by the Regulations

The Food Information, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 inserts transitional provisions into the following domestic legislation to allow businesses to use up stocks of labels whilst working to meet the new labelling requirements:

- The Quick-frozen Foodstuffs Regulations 1990
- Food Hygiene (Scotland) Regulations 2006
- The Food Additives, Flavouring, Enzymes and Extraction Solvents (Scotland) Regulations 2013
- Caseins and Caseinates (Scotland) (No. 2) Regulations 2016

The new requirements are as a result of technical changes to retained EU law which maintain the operability of the relevant legislation in the context of the UK having left the EU e.g. new health and identification marks for products of animal origin and changes to the labelling requirements for EU businesses and products intended to be placed on the UK market in future.

This instrument also makes changes to the origin labelling information required for blended honey in the Honey (Scotland) Regulations 2015. However these changes are minor, removing EU-focused terminology and replacing it with flexible options for the origin labelling of blended honey.

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

The amendments do not make any substantial changes but 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, has made the following statement "In my view the Food Information, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate.". This is the case because they make only those changes necessary to fix deficiencies in domestic law and insert transitional provisions in order to minimise re labelling costs to Scottish businesses.

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 they are a reasonable course of action. This is because, in order to ensure that food information, labelling and standards legislation continues to operate effectively at the point that the UK leaves the EU, they make only those changes necessary to fix deficiencies in domestic law and insert transitional provisions in order to minimise relabelling costs to Scottish businesses.".

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 Information, Labelling and Standards (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, has made the following statement "In my view the Food Information, Labelling and Standards (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, has made the following statement "In my view the Food Information, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard 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 Composition, Labelling and Standards (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.

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

Low – this instrument makes mainly technical amendments in order to fix deficiencies in domestic law.

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 Withdrawal Act 2018 "In my view the Food Composition, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 are subject to negative procedure". This is the case because it complies with the requirement for the negative procedure schedule 7 of the European Union (Withdrawal) Act 2018 and, in particular, do not contain provisions of the type listed in paragraph 1(2) of that schedule.

Further information

Consultation

In line with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council, a consultation was launched on 26th July and closed on 9th August 2019. Local authorities, consumer groups, trade associations, food and feed businesses including manufacturers, wholesalers and retailers were contacted.

There were 13 responses to the consultation in total however not all respondents answered all the questions.

On country of origin labelling of blended honey only 1 additional impact was identified if it were the case that the Scottish market had different requirements to the rest of the UK. The amendments which are being made to Scottish legislation in this area allows for businesses to use the same terms as have been legislated for in the rest of the UK.

On transitional provisions, all respondents in this area agree that they are necessary in order to use up stocks of existing labels with the majority agreeing that this should be provided consistently across the UK.

Impact Assessments

Full impact assessments have not been prepared for this instrument because the amendments do not alter the 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 Wellbeing, Joe FitzPatrick, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business. Indeed its intention in part is to mitigate against the effects of UK Government changes to retained EU law.

Food Standards Scotland
10 September 2019