SCOTTISH STATUTORY INSTRUMENTS

# 2021 No. 66

# EXITING THE EUROPEAN UNION

# FOOD

# The Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021

*Made - - - - 8th February 2021*

*Laid before the Scottish Parliament 10th February 2021*

*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 1(1) and (3), and 11(M)(1) of schedule 2, and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018(**a**) and all other powers enabling them to do so.

In accordance with paragraph 4(a) of schedule 2 of that Act(**b**), the Scottish Ministers consulted the Secretary of State prior to the making of these Regulations.

There has been consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**c**).

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021 and come into force in accordance with paragraphs (2) to (4).

(2) This regulation, regulation 2(1), (2), (3), and (4)(a)(i) come into force on 22 March 2021.

(3) Regulation 2(4)(a)(ii) to (6) come into force on 1 July 2021.

(4) Regulations 3 and 4 come into force on 15 April 2021.

(**a**) 2018 c.16. There are amendments to paragraph 1 of schedule 2 not relevant to these Regulations. Paragraph 11M of Schedule 2 was inserted by section 22 of the European Union (Withdrawal Agreement) Act 2020 (c.1) ("the 2020 Act") and paragraph 21 of schedule 7 was amended by paragraph 53 of Part 2 of schedule 5 of the 2020 Act.
(**b**) Paragraph 4 of schedule 2 was amended by section 27(7)(a) of the 2020 Act.
(**c**) EUR 178/2002.

**Amendment of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007**

**2.**—(1) The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007(**a**) are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of "authorised activated alumina treatment"—

(aa) after paragraph (a) omit "or", and

(bb) for paragraph (b) substitute—

"(b) in the case of natural mineral water or spring water brought into Scotland from England or Wales, a treatment which complies with Articles 1 to 3 of Regulation 115/2010(**b**);

(c) in the case of natural mineral water or spring water brought into Scotland from Northern Ireland or from an EEA State, a treatment which complies with Articles 1 and 2 of Regulation 115/2010(**c**) as it has effect in EU law;

(d) in the case of natural mineral water or spring water brought into Scotland from a country outside the United Kingdom and the EEA, a treatment which complies with Articles 1 and 2 of Regulation 115/2010;",

(ii) in the definition of "authorised ozone-enriched air oxidation technique", for paragraph (b) substitute—

"(b) in the case of water brought into Scotland from other parts of the United Kingdom, a treatment that complies with the relevant bottled water legislation in force in that part of the United Kingdom;",

(iii) omit the definition of "Directive 2003/40",

(iv) after the definition of "Regulation 1169/2011" insert—

""relevant bottled water legislation" means—

(a) in relation to England, the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007(**d**);

(b) in relation to Northern Ireland, the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015(**e**);

(c) in relation to Wales, the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015(**f**);",

(v) after the definition of "sell" insert—

""third country" means any country, other than the United Kingdom, and includes—

(a) the Bailiwick of Guernsey;

(b) the Bailiwick of Jersey;

(c) the Isle of Man.";

(b) in paragraph (2) omit "2003/40,".

(3) In regulation 3 (exemptions), for paragraph (1)(d) substitute—

"(d) is a natural mineral water intended for—

(i) movement into Northern Ireland;

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(**a**) S.S.I. 2007/483 as relevantly amended by S.S.I. 2010/89, S.I. 2011/1043, and S.S.I. 2014/312.
(**b**) EUR 115/2010.
(**c**) OJ No. L 37, 10.02.2010, p.13-15.
(**d**) S.I. 2007/2785, amended by S.I. 2009/1598, S.I. 2010/433, S.I. 2010/896, S.I. 2011/451, S.I. 2011/1043, S.I. 2014/1855, S.I. 2018/352, S.I. 2019/150, S.I. 2019/778, and S.I. 2020/1501.
(**e**) S.R. 2015/365, amended by S.R. 2017/201, S.R. 2019/353, and S.R. 2019/1342.
(**f**) S.I. 2015/1867, amended by S.I. 2017/935, and S.I. 2019/1046.

(ii) export to a third country.".

(4) In regulation 4 (recognition as natural mineral water)—

(a) in paragraph (1)—

(i) in sub-paragraph (b), for "Directive 2009/54;" substitute "relevant bottled water legislation; and",

(ii) omit sub-paragraph (c),

(iii) for sub-paragraph (d) substitute—

"(d) in the case of water extracted from the ground in a third country—

(i) by the Agency, in accordance with Part 2 of schedule 3;

(ii) in accordance with equivalent recognition in Northern Ireland granted by the relevant Agency in accordance with regulation 4(2)(d)(i) of, and Part 2 of schedule 1 of the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015;

(iii) in accordance with equivalent recognition in England granted by the Secretary of State in accordance with regulation 4(1)(d)(i) of, and Part 2 of schedule 3 of the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007; or

(iv) in accordance with equivalent recognition in Wales granted by the relevant Agency in accordance with regulation 4(2)(d)(i) of, and Part 2 of schedule 1 of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015.",

(b) in paragraph (7)(b), for "country other than an EEA State" substitute "third country",

(c) omit paragraph (8).

(5) In regulation 21 (defences)—

(a) in paragraph 21(2)(a) for "an EEA State" substitute "a third country",

(b) in paragraph 21(2)(b) for "EEA State" substitute "third country".

(6) In schedule 3 (recognition of natural mineral waters), in Part 2—

(a) in the heading, for "country other than an EEA State" substitute "third country",

(b) in paragraph 1, for "country other than an EEA State" substitute "third country".

**Amendment of the Food Information (Scotland) Regulations 2014**

**3.**—(1) The Food Information (Scotland) Regulations 2014(**a**) are amended as follows.

(2) After regulation 10A(**b**) (transitional provision) insert—

"**Transitional provision: withdrawal from the EU**

**10B.**—(1) A person is not considered to have failed to comply with Articles 7(1), 8(1), 9(1)(h) or 36(2)(a) or (b) of FIC if—

(a) the alleged failure relates to a product that was placed on the market before the last day of the period beginning on 15 April 2021 and ending on 30 September 2022, and

(b) the matter constituting the alleged failure to comply would not have constituted a failure to comply with FIC as that Regulation had effect immediately before this regulation comes into force.

(**a**) S.S.I. 2014/312, to which there are amendments not relevant to these Regulations.
(**b**) Regulation 10A was inserted by S.S.I. 2020/156.

(2) Products to which paragraph (1) applies may continue to be marketed until stocks are exhausted.".

**Amendment of the Country of Origin of Certain Meats (Scotland) Regulations 2016**

**4.**—(1) The Country of Origin of Certain Meats (Scotland) Regulations 2016(**a**) are amended as follows.

(2) After regulation 7 (application of provisions of the Act) insert—

"**Transitional provision: withdrawal from the EU**

**8.**—(1) A person is not considered to have failed to comply with the second sub-paragraph of Article 5(1), Article 6 or Article 7 of the Commission Regulation if—

(a) the alleged failure relates to a product that was placed on the market before the last day of the period beginning on 15 April 2021 and ending on 30 September 2022, and

(b) the matter constituting the alleged failure to comply would not have constituted a failure to comply with the Commission Regulation as that Regulation had effect immediately before this regulation comes into force.

(2) Products to which paragraph (1) applies may continue to be marketed until stocks are exhausted.".

*MS GOUGEON*
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
8th February 2021

(**a**) S.S.I. 2016/84, to which there are amendments not relevant to these Regulations.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to domestic food and labelling legislation to address matters arising from the withdrawal of the UK from the European Union.

Regulation 2 amends the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007 to address the recognition of EEA natural mineral water, spring water and bottled drinking water following the end of the Implementation Period.

Regulation 3 amends the Food Information (Scotland) Regulations 2014 and introduces a transitional period from the commencement of these Regulations and ending on 30 September 2022. During this transitional period food business operators will be permitted to continue to place food products on the UK market that still comply with and reflect the labelling requirements applicable before this regulation comes into force.

Regulation 4 amends the Country of Origin of Certain Meats (Scotland) Regulations 2016 and introduces a transitional provision from the commencement of these Regulations and ending on 30 September 2022. During this transitional period food business operators may continue to place on the UK market fresh, chilled and frozen meat of swine, sheep, goats and poultry products still reflecting the indication of the country of origin or place of provenance requirements applicable before this regulation comes into force.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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