POLICY NOTE

THE FOOD SAFETY ACT 1990 AMENDMENT (SCOTLAND) REGULATIONS 2026

SSI 2026/3

The above instrument was made in exercise of the powers in section 12(1) of the Retained EU Law (Revocation and Reform) Act 2023 and all other powers enabling them to do so.

The instrument is subject to affirmative procedure.

Summary Box

This Scottish Statutory Instrument (SSI) will amend provisions of the Food Safety Act 1990 (c. 17) using powers found in the Retained EU Law (Revocation and Reform) Act 2023 (REUL Act).

The Regulations will replace references to "EU" obligations and provisions with "assimilated" obligations and provisions, and replace a reference to "directly applicable EU provision" with "provision of assimilated direct legislation".

Policy Objectives

The Food Safety Act 1990 provides the framework for food legislation in Great Britain. Its subject matter is wholly devolved. Its primary purpose is to maintain food safety and wider consumer protections relating to food. Section 17 of the Act provides Ministers across GB with powers to execute and enforce any EU provision or obligation. This section should have been amended on EU exit to reference retained EU law but was not, which was an oversight. Retained EU law was renamed "assimilated law" with effect from 1 January 2024, by virtue of the REUL Act, and so references to EU law should now be to assimilated law.

The amendments put the operability of section 17 beyond doubt and do not change policy or obligations under food law.

The amendments have been subject to a GB wide consultation as we had originally anticipated these amendments to the Food Safety Act 1990 would proceed by GB SI rather than SSI. The Minister had agreed that course of action on 12th December 2024. The Food Standards Agency and UK Government have subsequently reconsidered their priorities and have paused and potentially no longer wish to proceed with this action therefore an SSI is necessary to make the change.

The SSI will amend all references to EU law in section 17 of the Food Safety Act 1990 to accurately refer to assimilated law. Similar changes have already been made in the Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (SSI 2023/374).

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, The Food Safety Act 1990 Amendment (Scotland) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

There will be no divergence from EU food and feed law in Scotland as a result of the changes to the Food Safety Act 1990. As such the changes are not expected to impact any re-alignment obligations that may be agreed as part of any potential future UK-EU Sanitary Phytosanitary/Veterinary Agreement.

Consultation

As required by Article 9 of the Regulation 178/2002 (General Food Law) a consultation (jointly between FSA and FSS) on the draft Statutory Instrument was carried out between 31st January and 6th March 2025. Six responses were received, none were from Scotland. The responses received all agreed with the proposed changes. The responses have been reviewed and did not require any further changes to the proposed amendments within that consultation.

The full summary of responses received by Food Standards Agency (who co-ordinated responses for this GB consultation) is published Summary of stakeholder responses: Correcting references in the Food Safety Act 1990 and Food Standards Act 1999 | Food Standards Agency[1].

Impact Assessments

A Business Regulatory Impact Assessment is not required in relation to the SSI as it is policy neutral and no impact on businesses, stakeholders or regulators is expected.

A Child Rights and Welfare Impact Assessment has been completed on the draft SSI and is published on legislation.gov.uk website.

Financial Effects

The SSI is policy neutral, therefore no costs are involved.

Food Standards Scotland
04 November 2025

[1] https://www.food.gov.uk/our-work/summary-of-stakeholder-responses-correcting-references-in-the-food-safety-act-1990-and-food-standards-act-1999