EXPLANATORY MEMORANDUM TO

THE NUTRITION (AMENDMENT) (NORTHERN IRELAND) (EU EXIT) REGULATIONS 2019

2019 No. 650

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 this instrument is to ensure that the Northern Ireland legislation relating to nutrition, composition and labelling listed below continues to operate effectively after the United Kingdom ("UK") leaves the European Union ("EU").

- The Medical Food Regulations (Northern Ireland) 2000.
- The Food Supplements Regulations (Northern Ireland) 2003.
- The Kava-kava in Food Regulations (Northern Ireland) 2005.
- The Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007.
- The Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007.
- The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2009.

2.2 This instrument makes a number of minor, technical amendments to these regulations ("the Northern Ireland 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 Commission Directive 1999/21/EC makes provision in relation to dietary foods for special medical purposes and is implemented in Northern Ireland by the Medical Food Regulations (Northern Ireland) 2000.

2.4 Directive 2002/46/EC makes provision in relation to food supplements and is implemented in Northern Ireland by the Food Supplements Regulations (Northern Ireland) 2003.

2.5 Regulation (EC) No 1925/2006 makes provision in relation to the addition of vitamins and minerals and of certain other substances to foods. The Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007 make provision for its execution and enforcement in Northern Ireland.

2.6 Commission Directive 2006/141/EC makes provision in relation to infant formulae and follow-on formulae, amending Commission Directive 1999/21/EC and Council Directive 92/52/EEC on infant formulae and follow-on formulae intended for export

to third countries. The Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007 give effect in Northern Ireland to Commission Directive 2006/141/EC.

2.7 Commission Regulation (EC) No. 953/2009 makes provision in relation to substances that may be added for specific nutritional purposes in foods for particular nutritional uses. The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2009 make provision for the execution and enforcement of the Regulation in Northern Ireland.

Why is it being changed?

2.8 A review of the Northern Ireland Regulations (in the context of changes being made by the UK Nutrition (Amendment) (EU Exit) Regulations 2019) 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 only the technical drafting fixes required to maintain continuity of approach after exit.

What will it now do?

2.9 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 16 January 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 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.

6.2 This instrument will amend the Northern Ireland Regulations to ensure they will operate effectively after the UK has left the EU.

6.3 This instrument should be read in conjunction with the UK Nutrition (Amendment) (EU Exit) Regulations 2019, which will make a number of changes to the nutrition related EU law that will become part of retained EU law on exit day.

7. Policy background

What is being done and why?

7.1 This instrument applies to the Northern Ireland Regulations dealing with nutrition, composition and labelling which are transferred matters 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 EU law/obligations, and instead referring to retained EU law/obligations;
- Removing definitions of “EEA Agreement”, “EEA State” and “free circulation in member States”; and
- Fixing references to EU directives where necessary.

7.3 The Medical Food Regulations (Northern Ireland) 2000 are amended to remove reference to "member State", provide that any reference to compliance with a provision of Commission Directive 1999/21/EC is to be read as if that provision formed part of domestic law, and to provide for references to the Directive to be read subject to certain modifications consistent with the UK's exit from the EU.

7.4 The Food Supplements Regulations (Northern Ireland) 2003 are amended to replace references to provisions of EU law with references to corresponding provisions in domestic regulations, including the Schedules to the UK Nutrition (Amendment) (EU Exit) Regulations 2019.

7.5 The Kava-kava in Food Regulations (Northern Ireland) 2005 prohibits the sale, possession or import from outside the UK of any food consisting of or containing Kava-kava. This was subject to an exception for imports from an “EEA State” if ultimately for export to an “EEA State other than the United Kingdom”. The Regulations are amended to remove reference to “EEA State” but maintain the exception where the product is destined for export to “a third country”.

7.6 The Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007 are amended to remove references to transitional provisions in

Regulation (EC) 1925/2006 as the UK Nutrition (Amendment) (EU Exit) Regulations 2019 will remove these transitional provisions.

7.7 The Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007 are amended by the insertion of provision that any reference to compliance with a provision of Commission Directive 2006/141/EC is to be read as if that provision formed part of domestic law. A reference to "retained EU law" is substituted for "Community law".

7.8 The Schedule to the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2009 provides a description of certain provisions of Commission Regulation (EC) No. 953/2009 which must be complied with. The Schedule is amended to replace a cross reference to Directive 2009/39 describing "foodstuffs for particular nutritional uses" by inserting the text of the description provided in Article 1 of the Directive. The names of competent UK authorities are inserted in place of bodies referred to in Article 11 of the Directive. Finally, references to "retained EU law" are substituted for EU/Community law where appropriate.

7.9 These drafting fixes 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 instrument.

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

8.1 This instrument is being made using the power in section 8(1) of the European Union (Withdrawal) Act 2018 in order 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 This Statutory Instrument does not involve consolidation and there are no plans to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 A four-week consultation was conducted in Northern Ireland between 22nd November and 20th December 2018 seeking comments on the proposed approach for the amendment of Northern Ireland domestic legislation relating to food and feed safety and hygiene, food compositional standards and food labelling (including nutrition). Two responses were received to the consultation. However, the responses did not relate to the proposed changes being made to domestic nutrition legislation.

11. Guidance

11.1 No guidance is issued.

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 applies to activities that are undertaken by small businesses.

13.2 The legislation does not have any disproportionate impact on small business 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, telephone: 02890417737; or email: esther.chartres@food.gov.uk can be contacted with any queries regarding the instrument.

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, 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/ESIC.
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 77	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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence.	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to	State why it is appropriate to create such a sub-delegated power.

		create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	
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 (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 Nutrition (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 (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 Nutrition (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 (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 nutrition, composition and labelling 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 (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 (Public Health and Primary Care) Steve Brine has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.3 "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 Nutrition (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.