

Draft Regulations laid before Parliament under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

**EXITING THE EUROPEAN UNION
AGRICULTURE
FOOD**

**The Food and Feed (Chernobyl and Fukushima
Restrictions) (Amendment) (EU Exit) Regulations 2019**

Made - - - - 2019

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018⁽¹⁾.

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

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 there has been open and transparent public consultation during the preparation of these Regulations.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Food and Feed (Chernobyl and Fukushima Restrictions) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

Interpretation

2. In these Regulations—

(1) 2018 c. 16.

“Regulation 1635/2006” means [Commission Regulation \(EC\) No. 1635/2006](#) laying down detailed rules for the application of [Council Regulation \(EEC\) No. 737/90](#) on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station;

“Regulation 733/2008” means [Council Regulation \(EC\) No. 733/2008](#) on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station;

“Regulation 2016/6” means [Commission Implementing Regulation \(EU\) 2016/6](#) imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station and repealing [Implementing Regulation \(EU\) No. 322/2014](#).

PART 2

Amendment of retained direct EU legislation

Amendment of Regulation 1635/2006

3. Regulation 1635/2006 is amended as follows.

4. For Article 1, substitute—

“1. Checks on the radiocaesium content referred to in Article 3 of Regulation ([EEC](#)) [No. 737/90](#) of products referred to in Article 1 of the same Regulation, to ensure that the maximum permitted levels laid down by the said Regulation are observed, must be carried out on import into the United Kingdom.

2. Checks must be carried out by sampling in accordance with the following minimum standards—

(a) without prejudice to paragraph 3(b), the choice of the appropriate authority as to the intensity of controls to be carried out must be made taking account in particular of the degree of contamination of the country of origin, the characteristics of the products in question, the results of the previous checks and the export certificates referred to in Article 3;

(b) without prejudice to the further measures provided for in Articles 5 and 6 of Regulation ([EEC](#)) [No. 737/90](#), where a product originating in a third country is recorded as exceeding the maximum permitted levels, checks must be intensified for all products of the same type originating in the third country in question.

3. Checks on specific products must be carried out in accordance with the following rules—

(a) for animals for slaughter, the checks must be carried out without prejudice to the customs rules laid down in [Council Regulation \(EEC\) No. 2913/92](#) and [Commission Regulation \(EEC\) No. 2454/93](#) and to animal health requirements. Clearance of release for free circulation is subject to the presentation of a certificate issued by the competent authorities responsible for controls to the effect that the meat in question has undergone the system of checks and that those checks have shown that the maximum permitted levels have not been exceeded;

(b) for products listed in Annex 1, originating in third countries listed in Annex 2, documentary checks must be performed on the basis of the duly completed export certificates referred to in Article 3 accompanying each consignment. Each consignment exceeding 10 kg of fresh product or the equivalent thereof must

be subject to systematic sampling and analysis, taking appropriate account of the information contained in the export certificate. These products may only be declared for free circulation in the United Kingdom in such customs offices as may be identified by the appropriate authority from time to time. A list of these customs offices must be published by the appropriate authority.

4. Where failure to comply with the maximum permitted levels is observed in respect of a given product, the appropriate authority may require the imported product to be destroyed or returned to the country of origin. In the latter case, written evidence that the product has left the territory of the United Kingdom must be forwarded to the customs authority which refused the release for free circulation.

5. For the products referred to in paragraph 1 of this Article, the appropriate authority may levy charges on the importer for the sampling and analysis of products for compliance with Regulation (EEC) No. 737/90. For consignments which exceed the maximum permitted levels, the appropriate authority may also recover from their intended importer costs associated with either the destruction of the consignment or its return to the country of origin.”.

5. Omit Article 2.

6. Insert a new Article 2A—

“Article 2A

Definitions

In this Regulation—

(a) “appropriate authority” means—

- (i) in relation to England, the Secretary of State;
- (ii) in relation to Wales, the Welsh Ministers;
- (iii) in relation to Scotland, the Scottish Ministers; or
- (iv) in relation to Northern Ireland, the Northern Ireland devolved authority.

(b) “third country” means a country or state other than the United Kingdom;

(c) “Northern Ireland devolved authority” means the Department of Health or the Department of Agriculture, Environment and Rural Affairs.”.

7. For Article 3, substitute—

“The appropriate authority must ensure that the export certificates issued by the competent authorities of third countries listed in Annex 2 attest that the products that they accompany comply with the maximum permitted levels laid down in Article 3 of Regulation (EEC) No. 737/90. The export certificates must be compiled using a form printed on white paper in accordance with the specimen in Annex 3.”.

8. After Article 5, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

Amendment of Regulation 733/2008

9. Regulation 733/2008 is amended as follows.

10. For Article 3, substitute—

“1. The food authority must check compliance with the maximum permitted levels laid down in Article 2(2) in respect of the products referred to in Article 1, taking into account

contamination levels in the country of origin. Checking may also include the presentation of export certificates. Depending on the results of the checks carried out, the food authority must take the measures required for Article 2(1) to apply, including the prohibition of release for free circulation, taking each case individually or generally for a given product.

2. Where cases of repeated non-compliance with the maximum permitted levels have been recorded, the appropriate authority may prescribe measures which address such non-compliance including the prohibition of the import into the United Kingdom of products originating in the third country concerned.”.

11. For Article 4, substitute—

“The arrangements for applying this Regulation, any amendments to be made to the products in Annex 1, and the list of products excluded from this Regulation may be prescribed by the appropriate authority.”.

12. Omit Article 5.

13. Insert a new Article 5A

“Article 5A

Regulations and devolved powers, etc.

1. In this Regulation—

- (a) “prescribe” means prescribe by regulations;
- (b) “appropriate authority” means—
 - (i) in relation to England, the Secretary of State;
 - (ii) in relation to Wales, the Welsh Ministers;
 - (iii) in relation to Scotland, the Scottish Ministers; or
 - (iv) in relation to Northern Ireland, the Northern Ireland devolved authority;
- (c) “third country means a country or state other than the United Kingdom;
- (d) “food authority” has the meaning it bears in the Food Safety Act 1990⁽²⁾ or, in the case of Northern Ireland, means the authority which was, immediately prior to exit day, competent to enforce this Regulation;
- (e) “Food Safety Authority” means—
 - (i) as regards England, Wales and Northern Ireland, the Food Standards Agency;
 - (ii) as regards Scotland, Food Standards Scotland.

2. Any power to make regulations under Article 4—

- (a) so far as exercisable by a Minister of the Crown, is exercisable by statutory instrument;
- (b) so far as exercisable by the Welsh Ministers, is exercisable by statutory instrument;
- (c) so far as exercisable by the Northern Ireland devolved authority is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (NI 12)) (and not by statutory instrument).

(2) 1990 c. 16.

3. For regulations made under Article 4 by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010(3) (Scottish statutory instruments).

4. Any power to make regulations under Article 4 includes power—

- (a) to make different provision in relation to different cases or classes of case (including different provision for different areas or different classes of business); and
- (b) to provide for such exceptions, limitations and conditions, and to make such supplementary, incidental, consequential or transitional provisions, as the appropriate authority considers necessary or expedient.

5. Any statutory instrument, Scottish statutory instrument or statutory rule containing regulations made under Article 4 is subject to annulment in pursuance of a resolution—

- (a) in the case of England, of either House of Parliament;
- (b) in the case of Wales, of the National Assembly for Wales;
- (c) in the case of Scotland, of the Scottish Parliament;
- (d) in the case of Northern Ireland, being a negative resolution within the meaning given by section 41(6) of the Interpretation Act (Northern Ireland) 1954(4).

6. In Article 4, any power—

- (a) of the Secretary of State to make regulations is limited to regulations which apply in relation to England only;
- (b) of the Welsh Ministers to make regulations is limited to regulations which apply in relation to Wales only;
- (c) of the Scottish Ministers to make regulations is limited to regulations which apply in relation to Scotland only;
- (d) of the Northern Ireland devolved authority to make regulations is limited to regulations which apply in relation to Northern Ireland only.”.

14. In Article 7—

- (a) in the subparagraph numbered 1, for “Council”, substitute “appropriate authority, having taken advice from the Food Safety Authority,”;
- (b) in the subparagraph numbered 2, for “Commission Regulation referred to in Article 2(1) of Regulation (Euratom) No. 3954/87”, substitute “measures referred to in Article 3(1) of Council Regulation (Euratom) No. 2016/52, if those measures are in force before 31 March 2020”.

15. After Article 7, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

16. In Annex 4, for the entry in the second column of the correlation table which relates to the entry in the first column concerning the first and second sentence of Article 5 of Regulation (EEC) No. 737/90, substitute “Article 3(2)”.

Amendment of Regulation 2016/6

17. Regulation 2016/6 is amended as follows.

18. In Article 2, at the end, insert—

(3) 2010 asp 10.

(4) 1954 c. 33.

“For the purposes of this Regulation, “Food Safety Authority” means—

- (a) as regards England, Wales and Northern Ireland, the Food Standards Agency;
- (b) as regards Scotland, Food Standards Scotland.”.

19. In Article 3, in both places in which it occurs (including the heading), for “Union”, substitute “United Kingdom”.

20. In Article 8, in both places in which it occurs, for “Union”, substitute “United Kingdom”.

21. For Article 14, substitute—

“Review

This Regulation must be reviewed by the Food Safety Authority before 30 June 2019.”.

22. After Article 17, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

23. In Annex 2, in the heading, for “Union”, substitute “United Kingdom”.

24. In Annex 3, in the heading to the Declaration, for “Union”, substitute “United Kingdom”.

Signed by authority of the Secretary of State for Health and Social Care.

Name
Parliamentary Under-Secretary of State,
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 (c.16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In particular, the Regulations address the deficiency specified in section 8(2)(b) of that Act, namely the conferral of functions by retained EU law on, or in relation to, EU entities which no longer have functions in that respect under EU law in relation to the United Kingdom.

These Regulations make amendments to legislation relating to the safety of food and animal feed affected by the nuclear accidents at Chernobyl and Fukushima. Part 2 amends retained direct EU legislation for the whole of the United Kingdom.

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