

POLICY NOTE

THE NUTRITION (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

SSI 2019/54

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018. The instrument is subject to the negative procedure.

The purpose of these regulations is to make minor technical amendments to six nutrition focused SSIs to ensure that they continue to operate effectively following the UK's exit from the European Union in a no deal scenario.

Policy Objectives

Where practical and appropriate, European Union legislation is being retained in relevant domestic law applicable within the UK on the UK's exit from the EU. In the field of nutrition legislation, Food Standards Scotland, in line with the Scottish Government and other devolved administrations, plan 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 EU, the continued and proper regulation of Nutrition legislation 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 corrections are required. The objective of the instrument is to ensure the operability of Scotland's nutrition legislation framework.

Explanation of the law being amended by the regulations

The Nutrition (EU Exit) (Scotland) (Amendment) Regulations 2019 make minor technical amendments to the following domestic regulations to allow them to continue to function effectively after the UK leaves the EU:

- The Foods for Special Medical Purposes (Scotland) Regulations 2000
- The Kava-kava in Food (Scotland) Regulations 2002
- The Food Supplements (Scotland) Regulations 2003
- The Nutrition and Health Claims (Scotland) Regulations 2007
- The Infant Formula and Follow-on Formula (Scotland) Regulations 2007
- The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2009

The amendments are minor technical fixes, do not equate to a change in policy, and will have little to no effect on businesses or local authorities. They cover a range of issues, for example:

- Bringing into Scots law certain provisions of EU Directives which will be needed on a 'no deal' exit

- Adding definition of “third country” where necessary
- Dealing with consequential amendments required as a result of UK fixes to EU Regulations, e.g. change in numbering of articles

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

The amendments do not make any substantial changes to retained EU law and 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 MSP, has made the following statement “In my view The Nutrition (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate”. This is the case because they make only minor and technical amendments to Scottish secondary legislation to ensure that legislation on nutrition continues to operate effectively at the point at which the UK leaves the EU.

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 MSP, 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 the instrument makes only those amendments to Scottish secondary legislation which are needed to ensure that legislation on nutrition continues to operate effectively at the point that the UK leaves the EU.

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 MSP, has made the following statement “In my view The Nutrition (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 MSP, has made the following statement “In my view The Nutrition (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 MSP, has made the following statement “In my view The Nutrition (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need 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 MSP, has made the following statement regarding use of legislative powers in the European Withdrawal Act 2018 “In my view the Nutrition (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. This is because the minor technical amendments do not make any policy changes and ensure the current high level of public health protection, with regard to food law, is maintained after the UK exits the EU.”

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

Low - this instrument is only making minor technical amendments with no changes in policy, to allow for domestic regulations to function effectively when the UK leaves the EU.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick MSP, has made the following statement regarding use of legislative powers in the European Withdrawal Act 2018 “In my view the Nutrition (EU Exit) (Scotland) (Amendment) Regulations 2019 are subject to negative procedure”. This is because they comply with the requirement for the negative procedure under 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 17 December 2018 and closed on 20 January 2019. Local authorities, consumer groups, food and feed businesses including manufacturers, wholesalers and retailers were contacted.

There were 5 responses to the consultation in total; however, not all respondents answered all the questions. 3 respondents agreed with the impacts identified in the consultation and had no other points to raise, whilst the other 2 raised issues which were not within scope of the consultation i.e. issues with Republic of Ireland and Northern Ireland border, and concerns with UK fixing instruments, which are not the subject of this instrument. They did not indicate which, if any, impacts, they disagreed with.

Impact Assessments

Full impact assessments have not been prepared for this instrument because the amendments are minor technical fixes, aimed at preserving the effect of the current regulatory regimes once the UK leaves the EU, which will not equate to a change in policy. The amendments do not alter the Scottish Government's current public health and protection policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business and other stakeholders is expected to be minimal.

Financial Effects

The Minister for Public Health, Sport and Wellbeing confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Food Standards Scotland

19 February 2019