

PART 2

Amendment of retained direct EU legislation

Amendment of Regulation (EC) 852/2004

2. Regulation (EC) 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs is amended as follows.

3. In Article 1—

- (a) in paragraph 1(g), for “Community”, substitute “United Kingdom”;
- (b) omit paragraph 3.

4. In Article 2, in paragraph 1—

- (a) in point (d), omit “of a Member State”;
- (b) for point (g), substitute—
 - “(g) “potable water” means—
 - (i) as regards England, water meeting the requirements laid down in the Private Water Supplies (England) Regulations 2016(a);
 - (ii) as regards Wales, water meeting the requirements laid down in the Private Water Supplies (Wales) Regulations 2017(b);
 - (iii) as regards Scotland, water meeting the requirements laid down in the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017(c);
 - (iv) as regards Northern Ireland, water meeting the requirements laid down in the Private Water Supplies (Northern Ireland) Regulations 2017(d);”;
- (c) after point (o), insert—
 - “(p) “Food Safety Authority” means—
 - (i) as regards England, Wales and Northern Ireland, the Food Standards Agency;
 - (ii) as regards Scotland, Food Standards Scotland;
 - (q) “prescribed” means prescribed by regulations;
 - (r) “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;
 - (iv) in relation to Northern Ireland, the Northern Ireland devolved authority;
 - (s) “Northern Ireland devolved authority” means the Department of Health.”.

5. In Article 4—

- (a) for paragraph 4, substitute—

“4. The criteria, requirements and targets referred to in paragraph 3, and associated sampling and analysis methods shall be prescribed by the appropriate authority.”;
- (b) in paragraph 5, for “Community or national” substitute “United Kingdom”.

6. In Article 5, omit paragraph 5.

(a) S.I. 2016/618, amended by S.I. 2017/506, S.I. 2018/707.
(b) S.I. 2017/1041, amended by S.I. 2018/647.
(c) S.S.I. 2017/282.
(d) S.I. 2017/211.

7. In Article 6—

- (a) for paragraph 1, substitute—

“**1.** Food business operators shall cooperate with the competent authorities in accordance with United Kingdom law.”;

- (b) for paragraph 3, substitute—

“**3.** However, food business operators shall ensure that establishments are approved by the competent authority, following at least one on-site visit, when approval is required under Regulation (EC) No. 853/2004.”.

8. For Article 7, substitute—

“The Food Safety Authority shall encourage the development of guides to good practice for hygiene and for the application of the HACCP principles in accordance with Article 8. The dissemination and use of guides shall be encouraged. Nevertheless, food business operators may use these guides on a voluntary basis.”.

9. In Article 8—

- (a) in the heading, omit “National”;

- (b) in paragraph 1, omit “national”;

- (c) for paragraph 2, substitute—

“**2.** Guides may be developed under the aegis of a standards institute”.

- (d) in paragraph 3, for the first line, substitute—

“The Food Safety Authority shall assess guides in order to ensure that—”;

- (e) omit paragraph 4;

- (f) omit paragraph 5.

10. Article 9 is omitted.

11. Article 12 is omitted.

12. In Article 13—

- (a) for paragraph 1, substitute—

“**1.** Annexes 1 and 2 may be adapted or updated by the appropriate authority taking into account—

- (a) the need to revise the recommendations set out in Annex 1. Part B, paragraph 2;
- (b) the experience gained from the implementation of HACCP-based systems pursuant to Article 5;
- (c) technological developments and their practical consequences and consumer expectations with regard to food composition;
- (d) scientific advice, particularly new risk assessments;
- (e) microbiological and temperature criteria for foodstuffs.”;

- (b) for paragraph 2, substitute—

“**2.** Derogations from Annexes 1 and 2 may be prescribed by the appropriate authority, in particular in order to facilitate the implementation of Article 5 for small businesses, taking into account the relevant risk factors, provided that such derogations do not affect the achievement of the objectives of this Regulation.”;

- (c) for paragraph 3, substitute—

“**3.** Nothing in this Regulation prevents the appropriate authority from using any power which the appropriate authority has to make subordinate legislation adapting the

requirements set down in Annex 2 where that legislation does not compromise the achievement of the objectives of this Regulation and—

- (a) the adaptations have the aim of—
 - (i) enabling the continued use of traditional methods, at any of the stages of production, processing or distribution of food; or
 - (ii) accommodating the needs of food businesses situated in regions that are subject to special geographical constraints;
- (b) in cases not involving the matters at (a), the adaptations apply only to the construction, layout and equipment of establishments.”;
- (d) omit paragraphs 4, 5, 6 and 7.

13. In Article 14—

- (a) for the heading, substitute “Regulations and devolved powers”;
- (b) for the Article, substitute—

“1. Any power to make regulations under this Regulation—

- (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 (SI 1979/1573 (NI 12)) (and not by statutory instrument).

2. For regulations made under this Regulation by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010^(a) (Scottish statutory instruments).

3. Any power to make regulations under this Regulation 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);
- (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.

4. Any statutory instrument, Scottish statutory instrument or statutory rule containing regulations under this Regulation 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^(b).

5. In this Regulation, 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;

^(a) 2010 asp 10.
^(b) 1945 c.33.

(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 15—

- (a) in the heading, omit “European”;
- (b) in the Article—
 - (i) for “Commission”, substitute “appropriate authority”;
 - (ii) omit “European”.

15. Omit Article 16.

16. In Article 17, omit paragraph 4.

17. After Article 18, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

18. In Annex 1—

- (a) in Part A, 2 (hygiene provisions), in paragraph 3, for “Community and national” substitute “United Kingdom”.
- (b) in Part B—
 - (i) for paragraph 1, substitute—

“1. Guides referred to in Article 7 of this Regulation should contain guidance on good hygiene practice for the control of hazards in primary production and associated operations.”;
 - (ii) in paragraph 2, at the beginning, for “Community and national legislation or national and Community”, substitute “United Kingdom legislation”.

19. In Annex 2 —

- (a) in Chapter 4, in paragraph 4, for “in one or more Community languages”, substitute, “in English, or, in English and Welsh”;
- (b) in Chapter 6, in paragraph 4, omit “Community”;
- (c) in Chapter 12, in paragraph 3, for “national” substitute “United Kingdom”.

Amendment of Regulation (EC) 2073/2005

20. Regulation (EC) 2073/2005 on microbiological criteria for foodstuffs is amended as follows.

21. In Article 1, in the second paragraph, omit “Community”.

22. In Article 2—

- (a) in paragraph (g), after “means food”, insert “, including sprouts,”;
- (b) in paragraph (h), for “Commission Directive 91/321/EEC”, substitute “Regulation (EU) No 609/2013”;
- (c) in paragraph (i), for “Commission Directive 1999/21/EC”, substitute “Regulation (EU) No 609/2013”.

23. Omit Article 8.

24. After Article 12, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

Amendment of Regulation (EU) 579/2014

25. Regulation (EU) 579/2014 granting derogation from certain provisions of Annex 2 to Regulation (EC) 852/2004 of the European Parliament and of the Council as regards the transport of liquid oils and fats by sea is amended as follows.

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

Amendment of Regulation (EU) 2017/2158

27. Regulation (EU) 2017/2158 establishing mitigation measures and benchmark levels for the reduction of the presence of acrylamide in food is amended as follows.

28. In Article 1, in paragraph 1, for “the Union”, substitute “United Kingdom”.

29. In Article 3, after paragraph (2), insert—

“(3) “competent authority” means the central authority competent to ensure compliance with the requirements of this Regulation or any other authority to which that central authority has delegated competence;

(4) “appropriate authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers;
- (d) in relation to Northern Ireland, the Department of Health.”.

30. In Article 5—

- (a) in the first paragraph, for “Commission”, substitute “appropriate authority”;
- (b) in the second paragraph, omit “from the Authority’s database related to the review period and provided to the Authority’s database by competent authorities and food business operators”.

31. After Article 6, omit “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

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

Address
Date

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 UK 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 in the field of food and, in particular, amend legislation relating to general hygiene rules for food of animal origin. Part 2 amends retained direct EU legislation for the whole 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.

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