

POLICY NOTE

The Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021

SSI 2021/66

The above instrument was made in exercise of the powers conferred by paragraph 1(1), (3) and 11(M1) of Schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 (the “2018 Act”). The instrument is subject to the negative procedure.

Purpose of the instrument.

The purpose of this instrument is to make minor technical amendments to three Scottish Statutory Instruments (SSIs) in relation to natural mineral water, spring water, bottled drinking water and food composition, labelling and standards to ensure that they continue to operate effectively now that the UK has withdrawn from the EU. This instrument also makes amendments arising from the implementation of the Northern Ireland Protocol (NIP).

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 fields of food and feed safety and hygiene and composition, labelling and standards, Food Standards Scotland, in line with the Scottish Government and other devolved administrations, plans to retain the current standards set out in EU legislation and EU-derived domestic legislation. This will ensure the continued regulation of food and feed safety and hygiene, and composition, labelling and standards within Scotland now that the UK has withdrawn from the EU. This will also protect human health, maintain consumer protection and provide continuity as far as possible for businesses and consumers. This instrument concerns the relevant fixes to the EU-derived domestic legislation on Natural Mineral Water and Spring Water. It also makes associated amendments to domestic food composition and labelling legislation to address matters arising from the withdrawal of the UK from the European Union and the implementation of the Northern Ireland Protocol to allow trade to continue between Great Britain and Northern Ireland.

Explanation of the law being amended by the regulations

This instrument makes amendments to the following SSIs:

- The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007
- The Food Information (Scotland) Regulations 2014
- The Country of Origin of Certain Meats (Scotland) Regulations 2016

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

The amendments do not make any changes to retained EU law, but will ensure continuity in Scots law now the UK has withdrawn from the EU. Without technical amendment the current legislation would not continue to operate effectively.

Statements required by the European Union Withdrawal Act 2018 and Additional Information required by the Protocol between the Scottish Government and the Scottish Parliament

The Regulations are made in exercise of the powers in the 2018 Act both to deal with deficiencies in retained EU law and the Northern Ireland Protocol (paragraphs 1(1), (3) and 11(M1) of Part 1 of schedule 2). The Regulations also exercise the powers in paragraph 21(b) of schedule 7 in relation to transitional and savings provisions.

A negative procedure was chosen as this instrument is considered to be of low significance as the amendments that are made are technical in nature as they do not fall within scope of the European Union (Withdrawal) Act 2018 Schedule 7 Part 1 paragraph 1 (2) (a) to (d) which requires the affirmative procedure.

Regulation 2 is made in exercise of the deficiencies powers

Regulations 2(2)(c), and 2(3)(d)(i) make provision in implementation of the NIP.

Regulations 3 and 4 are made in exercise of the deficiencies powers (as expanded by paragraph 21(b) of schedule 7).

The Statements set out below relate to the exercise of the deficiencies powers.

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 and Sport, Mairi Gougeon has made the following statement “In my view the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021 does no more than is appropriate. This is the case because the instrument makes amendments to domestic food composition, bottled water and labelling legislation to address matters arising from the withdrawal of the UK from the European Union and the implementation of the Northern Ireland Protocol.”

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 and Sport, Mairi Gougeon 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 the case because the instrument makes minor and technical amendments to Scottish secondary legislation to ensure the law is clear and remains operable now that the UK has withdrawn from 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 and Sport, Mairi Gougeon has made the following statement “In my view the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021 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.”

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 and Sport, Mairi Gougeon has made the following statement “In my view 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.”

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 and Sport, Mairi Gougeon has made the following statement “In my view Scottish Ministers have, in preparing the regulations, had due regard to the guidance 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 and Sport, Mairi Gougeon has made the following statement “In my view the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021 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 and technical amendments do not make any policy changes and ensure the current high level of public health and consumer protection, with regard to food law, is maintained now that the UK has withdrawn from the EU.”

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

Medium – this instrument is predominantly concerned with minor and technical amendments which include provisions in relation to the continued recognition of natural mineral water from other parts of the UK and the removal of the recognition of natural mineral water from the EU/EEA from 1 July 2021.

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

The Minister for Public Health and Sport, Mairi Gougeon has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018. “In my view it is appropriate that the Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021 are subject to the negative procedure as the instrument contains only minor and technical amendments to Scottish secondary legislation and do not fall within scope of the European Union (Withdrawal) Act 2018 Schedule 7 Part 1 paragraph 1 (2) (a) to (d) which requires the affirmative procedure.”

Further information

Consultation

Paragraph 4 of schedule 2 of European Union Withdrawal Act 2018 requires the Secretary of State to be consulted where fixing deficiencies in retained EU law pertains to reciprocal arrangements between the UK (or a constituent part of the UK) and the EU which no longer exist, or are no longer appropriate, as a result of the UK ceasing to be a party to any of the EU Treaties. As part of the instrument removes reciprocal arrangements between Scotland and the EU in relation to Natural Mineral Water such consultation was carried out with George Eustice MP, Secretary of State for Environment, Food and Rural Affairs before the Regulations were made.

To comply with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council a two week consultation was carried out in Scotland on the policy underpinning these regulations from 26th July and 9th August 2019.

The feedback received raised no concerns and was generally in favour of the proposals regarding periods of adjustment for businesses placing food on the market in Scotland. In the case of the recognition of Natural Mineral Water, there were eight responses and feedback was mixed. Scottish producers did not support the continued recognition of waters from EU and EEA countries after the UK left the EU. This was due to concerns that they would no longer be operating on a level playing field with EU competitors, given the stated EU position to remove recognition of UK natural mineral waters immediately on IP Completion of a no deal scenario which puts UK producers at a competitive disadvantage. However, retailers and distributors of EU and EEA produced Natural Mineral Waters wished for recognition to continue as long as possible as they saw this would be the least disruptive to the UK market and provide business and market continuity. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Food Standards Scotland Citizen Space website.

Impact Assessments

Full impact assessments have not been prepared because the purpose of this instrument is to maintain the operability of existing regimes as a consequence of EU exit. Only minor technical amendments are being made and the impact of this policy is considered to be minimal. The costs identified in the consultation and responses arise from the UK leaving the EU and not from this instrument which mitigates those costs as far as possible.

The amendments do not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

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