

POLICY NOTE

THE FOOD AND FEED (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2022

SSI 2022/373

The above Instrument was made in exercise of the powers conferred by Articles 9(1), 13(6) and 18A(3) of Regulation (EC) No. 1831/2003 and conferred by paragraph 1(1) and (3) of Schedule 2 and paragraph 21(b) of Schedule 7 of the European Union (Withdrawal) Act 2018. The Instrument is subject to negative procedure.

Summary Box

The purpose of this Instrument is to amend domestic legislation in relation to food contact materials, extraction solvents, animal feed and food information in order to correct deficiencies in relation to EU Exit.

This Instrument also makes minor miscellaneous amendments to the Feed Additives (Authorisations) (Scotland) Regulations 2022, and related Commission Implementing Regulations (EU) No's 787/2013, 2015/1020 and 2017/2276.

Policy Objectives

The Instrument amends several instruments relating to food and feed. The purpose of the Instrument is to reproduce the content contained in four Commission Directive Annexes into schedules of domestic legislation rather than the domestic legislation continuing to refer to the Annexes of Commission Directives. As the UK is no longer a Member State of the EU the cross references to the EU Directives are no longer suitable. Without this Instrument, references in our domestic law to these Annexes of Directives will remain as they were at the end of the Implementation Period. By including the content of these Commission Directive Annexes within their corresponding domestic regulations this will enable amendments to be made in the future and will provide greater clarity for enforcement authorities and industry.

The amendments do not make any substantial changes – they reproduce the terms of EU law into the domestic statute book and no more – but they ensure continuity in Scots law by:

- amending the Animal Feed (Scotland) Regulations 2010 to reproduce the contents of the Annex to Commission Directive 82/475/EEC laying down the categories of feed materials which may be used for the purposes of labelling compound feeding stuffs for pet animals as a Schedule
- amending the Animal Feed (Scotland) Regulations 2010 to reproduce the contents of Annexes 1 and 2 to Commission Directive 2002/32/EC on undesirable substances in animal feed as Schedules. Annex I sets out the maximum levels of undesirable substances permitted in products intended for animal feed and Annex II contains the action thresholds triggering investigations
- amending the Materials and Articles in Contact with Food (Scotland) Regulations 2012 to reproduce the contents of Annexes 1 and 2 from Commission Directive 2007/42/EC relating to materials and articles made of regenerated cellulose film intended to come into contact with foodstuffs
- amending the Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013 to reproduce the contents of Annex 1 from Directive

- 2009/32/EC on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients
- amending the Food Information (Scotland) Regulations 2014 to remove redundant references to Regulation (EU) No 1169/2011.

Regulation 5 of the instrument makes minor amendments to the Feed Additives (Authorisations) Scotland Regulations 2022. These amendments make various miscellaneous corrections to those 2022 Regulations, and related amendments are made by Regulations 2, 3 and 4 to Commission Implementing Regulations (EU) Nos 787/2013, 2015/1020 and 2017/2276.

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, Women’s Health and Sport, Maree Todd MSP has made the following statement “In my view The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 do no more than is appropriate”. This is the case because it makes only minor and technical amendments to Scottish Secondary Legislation to ensure that food and feed legislation continues to operate effectively following UK exit from 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, Women’s Health and Sport 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 food and feed continues to operate effectively following UK exit from the EU. The amendments are minor and technical in nature to ensure legislative operability only.

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, Women’s Health and Sport has made the following statement “In my view The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 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, Women’s Health and Sport has made the following statement “In my view The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 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, Women’s Health and Sport has made the following statement “In my view The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 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, Women’s Health and Sport has made the following statement “In my view the Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 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 and feed 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 following UK exit from the EU.

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

The Minister for Public Health, Women’s Health and Sport has made the following statement regarding use of legislative powers in the European Withdrawal Act 2018 “In my view the Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 are subject to negative procedure.” This is the case because the regulations comply with the requirement for the negative procedure under paragraph 1(3) of 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. The instrument contains only minor and technical amendments to Scottish secondary legislation.

Consultation

In compliance with the requirements of Article 9 of Regulation (EC) No 178/2002, there has been an open and transparent public consultation during the preparation of this Instrument. The public consultation was open from 12th September 2022 until 10 October 2022. One response was received to the consultation. This response was from an industry trade body and was supportive of the proposed amendments. They highlighted no concerns with the amendments or with regards to costs or burdens for industry. A summary of the consultation and the response can be found on Citizen Space here: [The Food and Feed \(Miscellaneous Amendments\) \(Scotland\) Regulations 2022 - Food Standards Scotland - Citizen Space](#)

Impact Assessments

Given the feedback from stakeholders, FSS consider that a specific Business and Regulatory Impact Assessment (BRIA) is not required in this instance. This Instrument does not introduce any new costs to business or industry. No other impact assessments are required.

Financial Effects

The Minister for Public Health, Women’s Health & Sport confirmed that no BRIA is necessary as the Instrument has no financial effects on the Scottish Government, local government, voluntary bodies or on business.

Food and Feed Safety Policy Branch
Food Standards Scotland
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