

2019 No. 529

EXITING THE EUROPEAN UNION

FOOD

WEIGHTS AND MEASURES

The Food (Amendment) (EU Exit) Regulations 2019

<i>Sift requirements satisfied</i>	<i>26th February 2019</i>
<i>Made - - - -</i>	<i>7th March 2019</i>
<i>Laid before Parliament</i>	<i>12th March 2019</i>
<i>Coming into force in accordance with regulation 1</i>	

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

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

There has been consultation 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(b).

PART 1

Introduction

Citation and commencement

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

PART 2

Amendment of primary legislation

The Weights and Measures (Northern Ireland) Order 1981

2.—(1) The Weights and Measures (Northern Ireland) Order 1981(c) is amended as follows.

(2) In Article 22A(2)—

(a) for sub-paragraph (b) substitute—

“(b) a measure adopted by the United Kingdom before exit day under Article 40 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers(d) as it had effect in EU law (milk and milk products: national measures derogating from Articles 9(1) and 10(1));

(ba) regulations made under Article 40 of the FIC Regulation (milk and milk products: regulations derogating from Articles 9(1) and 10(1));”;

(b) for paragraph (c) substitute—

“(c) a measure permitted to be maintained by Article 42 of the FIC Regulation (authority to maintain measures in specified legislation about the expression of net quantity in relation to food in the absence of regulations under Article 23(2));”.

(a) 2018 c. 16.

(b) OJ No L 31, 1.2.2002, p 1, to which there are amendments not relevant to these Regulations.

(c) S.I.1981/231 (N.I. 10), Article 22A was inserted by S.R. 2016/187. See also the definition of “the FIC Regulation” in Article 2(2); inserted by S.R. 2016/187 and substituted by S.I. 2019/5. See also regulation 2 of S.I. 2019/5.

(d) OJ No L 304, 22.11.2011 p. 18, to which there are amendments not relevant to these Regulations.

The Weights and Measures Act 1985

3.—(1) The Weights and Measures Act 1985(a) is amended as follows.

(2) In section 31A(2)—

(a) for paragraph (b) substitute—

“(b) a measure adopted by the United Kingdom before exit day under Article 40 of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers(b) as it had effect in EU law (milk and milk products: national measures derogating from Articles 9(1) and 10(1));

(ba) regulations made under Article 40 of the FIC Regulation (milk and milk products: regulations derogating from Articles 9(1) and 10(1));”;

(b) for paragraph (c) substitute—

“(c) a measure permitted to be maintained by Article 42 of the FIC Regulation (authority to maintain measures in specified legislation about the expression of net quantity in relation to food in the absence of regulations under Article 23(2));”.

PART 3

Amendment of retained direct EU legislation

Commission Regulation (EU) No 115/2010

4.—(1) Commission Regulation (EU) No 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters is amended as follows.

(2) After Article 5 omit the words from “This Regulation” to “Member States.”.

(3) In the Annex, in point 4, for “in accordance with the Council Directive” substitute the words in Schedule 1.

Regulation (EU) No 1169/2011 of the European Parliament and of the Council

5.—(1) Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers is amended as follows.

(2) In Article 1—

(a) in paragraph 1 omit the words from “whilst” to the end;

(b) in paragraph 3, in the second subparagraph, for the words from “on the territories” to the end substitute “from the United Kingdom”;

(c) in paragraph 4, for “Union provisions” substitute “provisions in EU-derived domestic legislation and retained direct EU legislation”.

(3) In Article 2(2)—

(a) in point (b), for “the Union provisions” substitute “EU-derived domestic legislation or retained direct EU legislation”;

(b) in point (c), for “Union provisions” substitute “EU-derived domestic legislation or retained direct EU legislation”;

(c) for point (n) substitute—

(a) 1985 c. 72; section 31A was inserted by S.I. 2014/2975. See also the definition of “the FIC Regulation” in section 94(1); inserted by S.I. 2014/2975 and substituted by S.I. 2019/5. See also regulation 2 of S.I. 2019/

(b) OJ No L 304, 22.11.2011 p. 18, to which there are amendments not relevant to these Regulations.

- “(n) ‘legal name’, in relation to a food, means the name prescribed for it in EU-derived domestic legislation or retained direct EU legislation or, in the absence of such legislation, any other enactment;”;
- (d) in point (o), for “Member State in which that food is sold” substitute “United Kingdom”;
- (e) after point (u) insert the points in Part 1 of Schedule 2.
- (4) In Article 3(4), after “consultation” insert “(so far as not already required by Article 9 of Regulation (EC) No 178/2002)”.
- (5) Omit Article 5.
- (6) In Article 7(3), for “Union law” substitute “EU-derived domestic law or retained direct EU legislation”.
- (7) In Article 8, in each of paragraphs 2, 3 and 5, for “relevant national provisions” substitute “any other relevant enactment”.
- (8) In Article 11, for “Union provisions” substitute “provisions in EU-derived domestic legislation or retained direct EU legislation”.
- (9) In Article 13—
- (a) in paragraph 1, for “the national measures adopted under Article 44(2)” substitute “enactments referred to in Article 44(2) relating to the presentation of mandatory particulars for food to which that Article applies”;
- (b) in paragraph 2, for “Union provisions” substitute “provisions in EU-derived domestic legislation or retained direct EU legislation”.
- (10) In Article 15—
- (a) in paragraph 1, for the words from “a language” to the end substitute “English”;
- (b) omit paragraph 2;
- (c) in paragraph 3, for “Paragraphs 1 and 2” substitute “Paragraph 1”.
- (11) In Article 16—
- (a) in paragraph 3, for “Union provisions” substitute “provisions in EU-derived domestic legislation or retained direct EU legislation”;
- (b) in paragraph 4—
- (i) in the first subparagraph, for “Union provisions” substitute “provisions in EU-derived domestic legislation or retained direct EU legislation”;
- (ii) omit the second and third subparagraphs.
- (12) Omit Article 17(2) and (3).
- (13) In Article 21(1), for “the rules adopted under Article 44(2)” substitute “enactments referred to in Article 44(2) relating to the presentation of mandatory particulars for food to which Article 44 applies”.
- (14) In Article 26—
- (a) in paragraph 1, for the words from “Union provisions” to the end substitute “provisions in EU-derived domestic legislation or retained direct EU legislation, in particular Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs”;
- (b) omit paragraphs 4 to 7 and 9.
- (15) In Article 28(1), for “Union provisions” substitute “provisions in EU-derived domestic legislation or retained direct EU legislation”.
- (16) In Article 29—
- (a) in paragraph 1, for points (a) and (b) substitute the points in Part 2 of Schedule 2;
- (b) omit paragraph 2.
- (17) Omit Article 30(7).

- (18) In Article 35—
- (a) in paragraph 2—
 - (i) in the first sentence, for “Member States” substitute “The appropriate authority”;
 - (ii) omit the second sentence;
 - (b) in paragraph 3—
 - (i) in the first subparagraph, for “Member States shall ensure an appropriate monitoring” substitute “The appropriate authority may monitor the use”;
 - (ii) in the second subparagraph—
 - (aa) at the beginning insert “Nothing in this Regulation prevents the appropriate authority from making type A regulations, so as”;
 - (bb) for “Member States may require” substitute “requiring”;
 - (cc) omit “in their territory”;
 - (dd) after “competent authority” insert “specified in those regulations”;
 - (c) omit paragraphs 4 and 5.
- (19) For Article 38 substitute—

“Article 38

Subordinate legislation

Any provision in this Regulation that relates to any specific matter has the effect on and after exit day of preventing the making of any enactment in subordinate legislation (within the meaning of section 20(1) of the European Union (Withdrawal) Act 2018) relating to the same matter unless the making of such an enactment is authorised by this Regulation or by other retained direct EU legislation.”.

- (20) In Article 39—
- (a) in paragraph 1—
 - (i) in the words before point (a), for the words from “Member States” to “measures” substitute “nothing in this Regulation prevents the appropriate authority from making type A or B regulations”;
 - (ii) in point (a), at the beginning insert “in the case of type A regulations,”;
 - (iii) in point (b), at the beginning insert “in the case of type A or B regulations,”;
 - (iv) in point (c), at the beginning insert “in the case of type A or B regulations,”;
 - (v) in point (d), at the beginning insert “in the case of type A regulations,”;
 - (b) in paragraph 2—
 - (i) for “paragraph 1, Member States” substitute “type A regulations referred to in paragraph 1, the appropriate authority”;
 - (ii) for the second sentence substitute—

“It is a condition of making such regulations that the appropriate authority considers that the majority of consumers in the territory to which the measures would apply attach significant value to the provision of that information.”.

- (21) In Article 40—
- (a) renumber the unnumbered paragraph as paragraph 1;
 - (b) in paragraph 1, as renumbered, for the words from the beginning to “Article 10(1)” substitute “Nothing in this Regulation prevents the appropriate authority from making type A regulations derogating from any of the provisions specified in paragraph 2”;
 - (c) for the second unnumbered paragraph substitute—

“2. The specified provisions are:

 - (a) Article 9(1), except for Article 9(1)(e), and

- (b) Article 10(1).
3. Nothing in this Regulation prevents the appropriate authority from making type B regulations derogating from Article 9(1)(e) in the case of milk and milk products presented in glass bottles intended for reuse.”
- (22) Omit Article 41.
- (23) In Article 42—
- (a) in the first paragraph—
 - (i) for “Union provisions referred to in” substitute “any regulations made under”;
 - (ii) for the words from “Member States” to the end substitute “the measures in the legislation specified in the second paragraph concerning the expression of net quantity for specified foods in a different manner to that provided for in Article 23(1) may be maintained”;
 - (b) after the first paragraph insert the paragraph in Part 3 of Schedule 2;
 - (c) omit the last paragraph.
- (24) In Article 43—
- (a) in the first paragraph, for the words from “adoption” to “measures” substitute “making of regulations under Article 36(3)(c), nothing in this Regulation prevents the appropriate authority from making type A regulations”;
 - (b) omit the second paragraph.
- (25) In Article 44—
- (a) in paragraph 1, for point (b) substitute—
 - “(b) the provision of the particulars specified in Articles 9(1)(e) is not mandatory but nothing in this Regulation prevents type B regulations from being made to make the provision of those particulars mandatory;
 - (c) the provision of the other particulars specified in Articles 9(1) and 10 is not mandatory but nothing in this Regulation prevents type A regulations from being made to make the provision of those particulars, or some of those particulars, mandatory.”;
 - (b) in paragraph 2, for “Member States may adopt national measures” substitute “Nothing in this Regulation prevents the appropriate authority from making type A or B regulations”;
 - (c) omit paragraph 3.
- (26) Omit Articles 45, 47, 48 and 52.
- (27) After Article 55 omit the words from “This Regulation” to “Member States.”.
- (28) In Annex 6—
- (a) in Part A—
 - (i) in point 3, for the words from “one of the” to the end substitute “the indication ‘irradiated’ or ‘treated with ionising radiation’”;
 - (ii) in point 7, for the words from “in Bulgarian” to the end substitute “‘formed meat’ and ‘formed fish’”;
 - (b) in Part B, for point 3 substitute the point in Part 4 of Schedule 2.
- (29) In Annex 7—
- (a) in Part B, in the table, in entry 16, for “Annex XIb to Regulation (EC) No 1234/2007” substitute “Part 2 of Annex 7 to Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products”;
 - (b) in Part E, in point 2—
 - (i) in point (a), for “current Union provisions” substitute “EU-derived domestic legislation in force or retained direct EU legislation in force”;

- (ii) in point (c), for “Union provisions” substitute “EU-derived domestic legislation in force or retained direct EU legislation in force”.

(30) In Annex 8, in point 1—

- (a) in point (a)—
 - (i) in point (ii), for “Union provisions” substitute “EU-derived domestic legislation or retained direct EU legislation”;
 - (ii) in point (iv), omit “in the country of marketing”;
- (b) in point (b), for “Union provisions stipulate” substitute “EU-derived domestic legislation or retained direct EU legislation stipulates”.

(31) In Annex 9, in point 2, for the words from “Union” to “national provisions” substitute “EU-derived domestic legislation or retained direct EU legislation or, where there is none, another enactment”.

(32) In Annex 10, in point 1(d), in the words before the first indent, for “Union provisions” substitute “provisions in EU-derived domestic legislation or retained direct EU legislation”.

Annex 2 to the EEA Agreement

6. In Annex 2 to the EEA Agreement, in Chapter 12, omit points 54zzzzx, 86 and 86a.

7th March 2019

David Rutley
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 4(3)

Commission Regulation (EU) No 115/2010, point 4 of the Annex: substituted wording

“in accordance with:

- (a) in relation to the use of activated alumina to remove fluoride from natural mineral water or spring water in England, regulation 16(3) of the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007(a);
- (b) in relation to the use of activated alumina to remove fluoride from natural mineral water or spring water in Northern Ireland, regulation 27(1) of the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015(b);
- (c) in relation to the use of activated alumina to remove fluoride from natural mineral water or spring water in Scotland, regulation 16(1)(b) of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007(c);

(a) S.I. 2007/2785; relevant amending instruments are S.I. 2010/433, 2011/451.

(b) S.R. 2015 No. 365, to which there are amendments not relevant to this provision.

(c) S.S.I. 2007/483, amended by S.S.I. 2010/89; there are other amending instruments but none is relevant.

- (d) in relation to the use of activated alumina to remove fluoride from natural mineral water or spring water in Wales, regulation 27(1) of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015^(a).”

SCHEDULE 2

Regulation 5(3)(e), (16)(a),
(23)(b) and (28)(b)

Regulation (EU) No 1169/2011 of the European Parliament and of the Council: amendments

PART 1

Article 2(2), new points: points (v) to (z)

“(v) ‘the appropriate authority’ means:

(i) as regards type B regulations:

(aa) in relation to Great Britain, the Secretary of State;

(bb) in relation to Northern Ireland, the Department for the Economy;

(ii) in all other cases:

(aa) in relation to England, the Secretary of State;

(bb) in relation to Northern Ireland, the Department of Health;

(cc) in relation to Scotland, the Scottish Ministers;

(dd) in relation to Wales, the Welsh Ministers;

(w) ‘enactment’ includes enactments of the type specified in subparagraphs (a) to (f) of the definition of ‘enactment’ in section 20(1) of the European Union (Withdrawal) Act 2018 but not enactments of the type specified in subparagraphs (g) and (h);

(x) ‘EU-derived domestic legislation’ has the meaning given in section 2(2) of the European Union (Withdrawal) Act 2018;

(y) ‘type A regulations’, in any provision of this Regulation, means:

(i) in relation to England, any regulations made by the Secretary of State under the Food Safety Act 1990^(b) using a power in that Act that enables the Secretary of State to make regulations relating to the matter specified in the provision in question;

(ii) in relation to Northern Ireland, any regulations made by the Department of Health under the Food Safety (Northern Ireland) Order 1991^(c) using a power in that Order that enables the Department to make regulations relating to the matter specified in the provision in question;

(iii) in relation to Scotland, any regulations made by the Scottish Ministers under the Food Safety Act 1990 using a power in that Act that enables them to make regulations relating to the matter specified in the provision in question;

(iv) in relation to Wales, any regulations made by the Welsh Ministers under the Food Safety Act 1990 using a power in that Act that enables them to make regulations relating to the matter specified in the provision in question;

(z) ‘type B regulations’, in any provision of this Regulation, means:

(a) S.I. 2015/1867 (W. 274), to which there are amendments not relevant to this provision.

(b) 1990 c.16.

(c) S.I. 1991/762 (N.I. 7), as amended by S.I. 1996/1663 (N.I. 12), paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 (c. 28) and S.R. 2004 Nos. 482 and 505.

- (i) in relation to Great Britain, regulations made by the Secretary of State under the Weights and Measures Act 1985 using a power in that Act that enables the Secretary of State to make regulations relating to the matter specified in the provision in question;
- (ii) in relation to Northern Ireland, regulations made by the Department for the Economy under the Weights and Measures (Northern Ireland) Order 1981 using a power in that Order that enables the Department to make regulations relating to the matter specified in the provision in question.”

PART 2

Article 29(1), points (a) and (b): substituted points

- “(a) the following legislation relating to food supplements:
- (i) in relation to food supplied in England, the Food Supplements (England) Regulations 2003**(a)**;
 - (ii) in relation to food supplied in Northern Ireland, the Food Supplements Regulations (Northern Ireland) 2003**(b)**;
 - (iii) in relation to food supplied in Scotland, the Food Supplements (Scotland) Regulations 2003**(c)**;
 - (iv) in relation to food supplied in Wales, the Food Supplements (Wales) Regulations 2003**(d)**;
- (b) the following provisions relating to the exploitation and marketing of natural mineral waters and spring waters:
- (i) in relation to water supplied in England, Parts 2 and 3 of the Natural Mineral Water, Spring Water and Bottled Drinking Water (England) Regulations 2007**(e)**;
 - (ii) in relation to water supplied in Northern Ireland, Parts 2 and 3 of the Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2015**(f)**;
 - (iii) in relation to water supplied in Scotland, Parts 2 and 3 of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007**(g)**;
 - (iv) in relation to water supplied in Wales, Parts 2 and 3 of the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2015**(h)**.”

PART 3

Article 42: new second paragraph

“The specified legislation is:

- (a) in relation to food supplied in England, Scotland and Wales:
 - (i) the Weights and Measures (Miscellaneous Foods) Order 1988**(i)**;

(a) S.I. 2003/1387, amended by S.I. 2005/2626, 2009/3251, 2011/1043, 2014/1855.
 (b) S.R. 2003 No. 273, amended by S.R. 2005/574, 2009/407, 2014/223.
 (c) S.S.I. 2003/278, amended by S.S.I. 2005/616, 2009/438, S.I. 2011/1043, S.S.I. 2014/312.
 (d) S.I. 2003/1719 (W. 186), amended by S.I. 2005/3254 (W. 247), 2009/3252 (W. 282), 2011/1043, 2014/2303 (W. 227).
 (e) S.I. 2007/2785; relevant amending instruments are S.I. 2009/1598, 2010/433, 2011/451, 1043.
 (f) S.R. 2015 No. 365, amended by S.R. 2017/201.
 (g) S.S.I. 2007/483; relevant amending instruments are S.S.I. 2009/273, 2010/89, S.I. 2011/1043.
 (h) S.I. 2015/1867 (W. 274), amended by S.I. 2017/935 (W. 229); there are other amending instruments but none is relevant.
 (i) S.I. 1988/2040, amended by S.I. 1990/1550, 1994/2868, 2006/659, 2009/663, 2014/2975.

- (ii) the Weights and Measures (Packaged Goods) Regulations 2006(a);
- (b) in relation to food supplied in Northern Ireland:
 - (i) the Weights and Measures (Miscellaneous Foods) Order (Northern Ireland) 1989(b);
 - (ii) the Weights and Measures (Packaged Goods) Regulations (Northern Ireland) 2011(c).”

PART 4

Annex 6, Part B, point 3: substituted point

“3. Minced meat that does not comply with the criteria laid down in point 1 of this Part may be placed on the market:

- (a) in England, if the mark in Part 1 of Schedule 2 to the Food Information Regulations 2014(d) is used to identify the minced meat in accordance with regulation 4 of those Regulations;
- (b) in Northern Ireland, if the mark in Part 1 of Schedule 2 to the Food Information Regulations (Northern Ireland) 2014(e) is used to identify the minced meat in accordance with regulation 4 of those Regulations;
- (c) in Scotland, if the mark in Part 1 of Schedule 1 to the Food Information (Scotland) Regulations 2014(f) is used to identify the minced meat in accordance with regulation 4 of those Regulations;
- (d) in Wales, if the mark in Part 1 of Schedule 2 to the Food Information (Wales) Regulations 2014(g) is used to identify the minced meat in accordance with regulation 4 of those Regulations.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) (in particular under section 8(a), (b) and (d)) in order to address failures of retained direct EU legislation to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to legislation in the field of food composition and labelling.

Part 2 amends primary legislation and Part 3 amends retained direct EU legislation.

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

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- (a) S.I. 2006/659, amended by the Consumer Rights Act 2015 (2015 c. 15), section 78, and by SI 2013/1478, 2014/2975, 2015/1630, 2019/5.
 - (b) S.R. 1989 No. 69, amended by S.R. 1990 No. 395, 1995 No. 230, 2010 No. 203, 2011 No. 331, 2016 No. 187.
 - (c) S.R. 2011 No. 331, amended by the Consumer Rights Act 2015 (2015 c. 15), section 78, by SI 2013/1478, 2015/1630 and by S.R. 2016 No. 187.
 - (d) S.I. 2014/1855, to which there are amendments not relevant to these Regulations.
 - (e) S.R. 2014 No. 223, to which there are amendments not relevant to these Regulations.
 - (f) S.S.I. 2014/312, to which there are amendments not relevant to these Regulations.
 - (g) S.I. 2014/2303 (W. 227), to which there are amendments not relevant to these Regulations.

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