STATUTORY INSTRUMENTS

2019 No. 701

EXITING THE EUROPEAN UNION
AGRICULTURE
FOOD

The Food and Feed (Maximum Permitted Levels of Radioactive Contamination) (Amendment) (EU Exit) Regulations 2019

Made - - - - 26th March 2019

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018(**1**).

In accordance with paragraph 1(1) of Schedule 7 to that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

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 there has been open and transparent public consultation during the preparation of these Regulations.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Food and Feed (Maximum Permitted Levels of Radioactive Contamination) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

Interpretation

2. In these Regulations, "Regulation 2016/52" means Council Regulation (Euratom) 2016/52 laying down maximum permitted levels of radioactive contamination of food and feed following a

(**1**) 2018 c. 16.

nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No. 3954/87 and Commission Regulations (Euratom) No. 944/89 and (Euratom) No. 770/90.

PART 2

Amendment of retained direct EU legislation

Amendment of Regulation 2016/52

3. Regulation 2016/52 is amended as follows.

4. In Article 1, omit the second paragraph.

5. In Article 2, at the end, insert—

"(6) "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 Northern Ireland devolved authority;

(7) "Food Safety Authority" means—

(i) as regards England, Wales and Northern Ireland, the Food Standards Agency;

(ii) as regards Scotland, Food Standards Scotland;

(8) "prescribe" means prescribe by regulations;

(9) "Northern Ireland devolved authority" means the Department of Health.".

6. For Article 3, substitute—

"**1.** If the appropriate authority receives — in particular under the IAEA Convention on Early Notification of a Nuclear Accident of 26 September 1986 — official information on a nuclear accident or on any other case of radiological emergency which is likely to lead to or has led to significant radioactive contamination of food and feed, the appropriate authority must, subject to paragraph 6, prescribe measures which apply the applicable maximum permitted levels to the potentially contaminated food or feed that could be placed on the market.

2. If the Food Safety Authority receives official information of the kind described in paragraph 1, it must immediately notify the appropriate authority by sharing that official information with the appropriate authority.

3. The maximum permitted levels applied by the measures prescribed under this Article must not exceed those set out in Annexes 1, 2 and 3.

4. The period of validity of measures prescribed under this Article must be as short as possible. The duration of the first measures prescribed under this Article following a nuclear accident or any other case of radiological emergency must not exceed 3 months.

5. The measures prescribed under this Article must be periodically reviewed by the appropriate authority and, if appropriate, amended on the basis of the nature and location of the accident and of the evolution of the level of radioactive contamination effectively measured.

6. When preparing measures to be prescribed, or reviewing measures prescribed, under this Article, the appropriate authority must take into account the basic standards laid down pursuant to Articles 30 and 31 of the Euratom Treaty, including the justification principle and the optimisation principle, with the aim of keeping the magnitude of individual doses, the likelihood of exposure and the number of individuals exposed as low as reasonably achievable, taking into account the current state of technical knowledge and economic and societal factors.

7. When reviewing measures prescribed under this Article, the appropriate authority must consider, among other matters, whether the nuclear accident or any other case of radiological emergency has caused such widespread contamination of food or feed consumed in the United Kingdom that the rationale and assumptions underpinning the maximum permitted levels set out in Annexes 1, 2 and 3 to this Regulation are no longer valid.".

7. Omit Articles 4 and 5.

8. Insert a new Article 5A—

"Article 5A

Regulations and devolved powers

1. Any power to make regulations under Article 3—

(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(**2**) (and not by statutory instrument).

2. For regulations made under Article 3 by the Scottish Ministers, see also section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010(**3**) (Scottish statutory instruments).

3. Any power to make regulations under Article 3 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); and

(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 made under Article 3 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;

(**2**) S.I. 1979/1573, N.I. 12.
(**3**) 2010 asp 10.

(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(**4**).

5. In Article 3, 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;

(d) of the Northern Ireland devolved authority to make regulations is limited to regulations which apply in relation to Northern Ireland only.".

9. Omit Article 6.

10. After Article 8, omit "This Regulation shall be binding in its entirety and directly applicable in all Member States.".

11. In Annex 1, at footnote (1), for "Member States" substitute "The Food Safety Authority".

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

Stephen Hammond
Minister of State,
Department of Health and Social Care

26th March 2019

(**4**) 1954 c. 33.

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 United Kingdom 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 relating to the safety of food and animal feed. Part 2 amends retained direct EU legislation.

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.