

Ministear airson Slàinte Phoblach is Slàinte
Bhoireannach
Jenni Minto BPA

 Scottish Government
Riaghaltas na h-Alba
gov.scot

Minister for Public Health and Women's Health
Jenni Minto MSP

T: 0300 244 4000
E: scottish.ministers@gov.scot

Clare Haughey MSP
Convener
Health, Social Care and Sport Committee
Scottish Parliament
Edinburgh
EH99 1SP

hscs.committee@parliament.scot

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

21 May 2024

Dear

The Scottish Parliament agreed that it was content for Scottish Ministers to give their consent to five UK Government EU exit related Regulations, which included Scottish devolved matters.

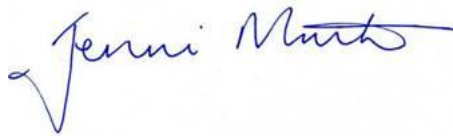
The titles of these regulations along with the date of each notification, the date of consent by the Scottish Parliament and the final detail of each Statutory Instrument (GB SI), including where there have been minor changes or the SI has been renamed or replaced, are given in the table attached at Annex A.

This correspondence is being sent to you now as the Scottish Government is taking steps, as part of a review of the operation of the SI Protocol, to ensure a comprehensive audit trail is in place for each SI notification.

Links to the final SIs are also attached in the table for the attention of the Committee.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Yours sincerely



Jenni Minto MSP

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Taigh Naomh Anndrais, Rathad Regent, Dùn Èideann EH1 3DG
St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



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Annex A

SI Name	Directorate	Lead Committee	Date of notification to SP	Date of Consent by SP	Date SI Made	Date SI Came into force.
Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) (No. 2) Regulations 2019 draft Affirmative	Food Standards Scotland	Health and Sport	05/11/2019	03/12/2019	N/A	N/A
<p>This SI was notified to the Scottish Parliament and consent was received as detailed above. The 2019 SI included food and feed hygiene and safety amendments along with nutrition related amendments. However, due to the General Election it was not actually laid at Westminster. When the notification was sent to the Committee a covering letter for the Convenor explained that the laying date had been postponed until after the General Election.</p> <p>However, the instrument itself was never laid and instead the contents of 2019 SI were revised and included in the following two SIs:</p> <ul style="list-style-type: none"> •The Nutrition related amendments were included in the notification for the Nutrition (Amendment etc.) (EU Exit) Regulations 2020. •The Food and Feed (Hygiene and Safety) (EU Exit) Regulations 2020 covered the food and feed hygiene and safety matters. 						
SI Name	Directorate	Lead Committee	Date of notification to SP	Date of Consent by SP	Date SI Made	Date SI Came into force.
Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020) Draft Affirmative	Food Standards Scotland	Health and Sport	23/09/2020	03/11/2020	07/12/2020	31/12/2020
<p>At the time of notification to the Scottish Parliament the title of the SI was Food and Feed Safety and Hygiene (Miscellaneous Amendments) (EU Exit) Regulations 2020. The title of the SI was subsequently revised and The Food and Feed Hygiene and Safety (Miscellaneous Amendments etc.) (EU Exit) Regulations 2020 (legislation.gov.uk) was made in the UK Parliament on 07 December 2020 under the powers conferred by sections 8(1) and 8C(1) of, and paragraph 7 of Schedule 4 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018, and came into force on 31 December 2020 (Implementation Period completion day).</p> <p>This SI applied the Northern Ireland Protocol (NIP) and made necessary amendments to the existing</p>						

EU law on Food and Feed Safety and Hygiene to make the legislation operate effectively in GB after EU exit day. This SI did not modify the key policy elements and technical standards associated with EU Food and Feed Safety and Hygiene law.

With the exception of a slight amendment to the title of the instrument this SI is consistent with the consent granted.

SI Name	Directorate	Lead Committee	Date of notification to SP	Date of Consent by SP	Date SI Made	Date SI Came into force.
Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021 (AG/16) Draft Affirmative	Food Standards Scotland	Health and Sport	23/12/2020	03/02/2021	26/05/2021	27/05/2021

[The Food and Drink \(Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling\) Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

At the time of notification to the Scottish Parliament the title of the SI was **The Food and Drink (Amendment) (EU Exit) Regulations 2021** and it was due to be laid on 04 January 2021 but was delayed until 11 January 2021 and with the revised title of **The Food and Drink (Miscellaneous Amendments Relating to Food and Wine Composition, Information and Labelling) Regulations 2021**. However, this was delayed further and was not made until 26 May 2021 due to the SI procedure changing from negative to affirmative and the SI was also withdrawn in March 2021 for minor technical corrections to be made relating to wine.

In the main, the amendments made in this statutory instrument relate to food information and country of origin information which fall under the remit of the Health and Sport Committee. However, it also contained amendments relating to wine which fall under the remit of the Rural Economy and Connectivity Committee. As a result, the SI was considered by both Committees on the 02 and 03 February 2021 respectively.

The instrument was required to ensure the continuation of important elements of the EU regime for food information, country of origin information and wine marketing standards and labelling requirements. This included necessary technical corrections to what was to become retained EU law to ensure that there was a functioning statute book to underpin the UK's regulatory system for these areas.

The SI made the necessary technical amendments in several specific areas including law relating to the name and address of the food business responsible for food information on labels, the provision of country-of-origin information for pork, lamb, goat and poultry meat; country of origin for ingredients in food and the transfer of functions with regard to wine standards.

The amendments in the SI were necessary to make legally workable arrangements and to set out devolved responsibilities in future. There was no change to the overall policy intent of the EU law nor

was there any modification of the key rules on what constitutes mandatory food information and the circumstances in which it applies. However, the SI did make the necessary outstanding modifications to the existing EU law to delete obsolete references to EU institutions and contained some transfer of powers in the area of wine standards to allow future amendment to parts of the EU law where such modifications were currently permitted. The amendments were necessary to finalise preparations for the UK statute book shortly after the end of the Implementation Period.

Most of these amendments were minor and technical in nature, for example correcting references to the “Member State” or “Union” that would not be relevant when the UK left the EU, and removing provisions that would become redundant.

This instrument was laid on the 26 May 2021 under the powers conferred by section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 and came into force on 27 May 2021. Whilst the SI varies in some respects from the original proposal, due to the change in the name of the instrument, the move from the negative to the affirmative process, the corrections made in respect of wine which were minor and of a technical nature and the delay in laying, the variation was not so significant as to need any further process and the SI is consistent with the consent granted.

SI Name	Directorate	Lead Committee	Date of notification to SP	Date of Consent by SP	Date SI Made	Date SI Came into force.
Nutrition (Amendment) and Food for Specific Groups (Food for Special Medical Purposes for Infants, Infant Formula and Follow-on Formula) (Information and Compositional Requirements) (Amendment) Regulations 2021	Food Standards Scotland	Health and Sport	19/02/2021	11/03/2021	19/02/2021	21/02/2021

[The Nutrition \(Amendment\) and Food for Specific Groups \(Food for Special Medical Purposes for Infants, Infant Formula and Follow-on Formula\) \(Information and Compositional Requirements\) \(Amendment\) Regulations 2021 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

This SI was notified to the Scottish Parliament and consent was received as detailed above. It was due to be made at Westminster on 18 February 2021 and unfortunately, due to the urgent need for the amendment, it was not possible to ask the Scottish Parliament to consider the notification and provide a view prior to the SI being made.

The purpose of the SI was to amend retained EU law to postpone the application of new compositional standards for infant formula and follow-on formula manufactured from protein hydrolysates for one year. The need for this amendment was due to the European Commission's

decision to postpone the application of new compositional standards for infant formula and follow-on formula until 22 February 2022. As a result, Northern Ireland remained under the existing requirements. However, without a similar amendment to retained EU law, the new compositional standards would have applied in GB creating an imbalance across the UK. This postponement, did not alter the technical requirements or represent a change in policy.

The SI was then made and laid on the 19th February 2021 under the powers conferred by sections 16(1)(a) and (e) and (2)(b), 26(1) and (3) and 48(1) of the Food Safety Act 1990, and sections 8C(1)(c) and 23 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(c) (“the 2018 Act”). It then came into force on 21 February 2021 and is consistent with the consent granted.

SI Name	Directorate	Lead Committee	Date of notification to SP	Date of Consent by SP	Date SI Made	Date SI Came into force.
The Food and Feed Safety (Miscellaneous and Transitional Provisions) (EU Exit) Regulations 2021	Food Standards Scotland	Health and Sport	22/02/2021	17/03/2021	28/03/2022	These Regulations, apart from Part 2, come into force 21 days after the day on which these Regulations are made. (3) Part 2 of these Regulations comes into force on the day after the day on which these Regulations are made.

[The Food and Feed Safety \(Miscellaneous Amendments and Transitional Provisions\) Regulations 2022 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

This SI was notified to the Scottish Parliament and consent was received as detailed above.

At the time of notification to the Scottish Parliament the title of the SI was **The Food and Feed Hygiene and Safety (Miscellaneous and Transitional Provisions) (EU Exit) Regulations 2021** and it was due to be made on 22 March 2021. However, this was delayed and was not made until 28th March 2022 using the powers conferred by section 8C of the European Union (Withdrawal) Act 2018(c) and section 8(1)(b) of and paragraph 21 of Schedule 7 to that Act. with the revised title of **The Food and Feed Safety (Miscellaneous Amendments and Transitional Provisions) Regulations 2022**.

The purpose of the SI was to amend retained EU law in respect of the authorisation provisions for GM food and feed and feed additives, to clarify that Ministerial authorisation decisions are prescribed in the form of legislation. It also addressed the need to amend the retained general food law legislation to ensure Ministers can suspend the placing on the market of and/or laying down special conditions for food and feed from a third country coming into Great Britain directly and via Northern

Ireland, when taking emergency measures and applying the food and feed safety.

Except for the amendment to the title of the instrument this SI is consistent with the consent granted.