Dear Minister

**EU food, feed, materials, sprouts and additives**

Thank you for your letter of 12 November providing the Committee with notification of the following statutory instruments:

- The Food and Feed Imports (Amendment) (EU Exit) Regulations 2018
- The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2018
- The Sprouts and Seeds (EU Exit) Regulations 2018
- The Animal Feed (Amendment) (EU Exit) Regulations 2018
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment) (EU Exit) Regulations 2018

The Committee agreed at its meeting today that it would find it helpful to have a response to the questions set out in the Annex to this letter to inform its consideration of your request to the Committee.

In addition, the Committee would welcome the views of the Scottish Government on their position in relation to the absence of SI's or at the very least drafts. Can you confirm what provides the Scottish Government with the necessary confidence to be satisfied all and only appropriate material is being included. Could you also comment
on the mechanism within the protocol; which allows the Committee also to be so satisfied.

Given the short timescales we are working to we request the response by 12 noon Friday 23 November.

Yours sincerely

Lewis Macdonald
Convener, Health and Sport Committee
c.c. Stephen Hendry, Senior Policy Advisor – Food Labelling & Standards
Food Standards Scotland

ANNEX

General

The SI notifications highlight a number of new schemes and processes being required. It would be helpful if you could provide further information on the costs expected to be incurred and to whom – the FSS, local authorities and/or the Scottish Government.

The Food and Feed Imports (Amendment) (EU Exit) Regulations 2018


- It is not clear who these competent authorities are at the moment in the UK, or who they are proposed to be. We request further information on this point given the financial implications (for the authority and potentially for businesses).

In future the UK will be able to depart from those conditions, if it considers appropriate, based on intelligence on the public health risks posed by certain products. However, the current intention is to maintain the existing import conditions post-Brexit. The notification states that “should the risk profile of certain products from EU countries change in future those products and countries, if listed, would be subject to the requirements outlined in this regulation”.

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• It is unclear who would decide on the “risk profile” or how this might be communicated within the UK, or between the EU and the UK. We request clarifications on these points.
• In addition, some of the instruments covered by these regs. are “time bound” and it would be useful to know how these time restrictions would apply in the UK, or how they could be amended.

The Materials and Articles in Contact with Food (Amendment) (EU Exit) Regulations 2018

We note the notification states that these Regulations will include provisions for the future amendment of the retained EU law and that the power of amendment will be exercisable by Scottish Ministers insofar as they are within devolved competence and exercisable in Scotland. This would appear to create a power to legislate exercisable by Scottish Ministers, which would engage the category B criteria creating a power to legislate (i.e. sub-delegation).

• We seek further clarification on the nature and scope of the proposed powers to legislate conferred on the Scottish Ministers and any limitations on those powers.

The Sprouts and Seeds (EU Exit Regulations) 2018

The notification says, in relation to Commission Reg (EU) No. 210/2013 on the approval of establishments producing sprouts: “[I]he requirements in relation to the approval of [establishments producing sprouts] will continue to apply in the UK after exit.” The body which approves the establishments is the “competent authority”.

• If the competent authority is currently FSS and will continue to be FSS, then no issue arises. However the notification does not say who the current competent authority is. Are you able to provide clarity on this point?

The Animal Feed (Amendment) (EU Exit) Regulations 2018

Regulation (EC) No 1831/2003 on additives for use in animal nutrition. The notification states that this EU Regulation will be amended so that the Scottish Ministers, “or the Secretary of State for the UK as a whole” may authorise new feed additives… and prescribe their conditions of use”. The amendments will give various regulation-making powers to the Scottish Ministers and Secretary of State.
Instruments made by the Secretary of State will not normally come to the Scottish Parliament for scrutiny, whereas instruments made by the Scottish Ministers will.

• We therefore wish to know in which circumstances will these powers be exercised by the Scottish Ministers, and in which circumstances by the Secretary of State?

Regulation (EC) No 183/2005 on requirements for feed hygiene. The notification states that “appropriate authorities (defined as the Scottish Ministers as regards Scotland) may provide for more detailed rules on the application of the requirements
in the regulation, for example for the purposes of facilitating the application of the regulations for small businesses…”.

- We ask for more information on what else these more detailed rules may cover.

Regulation (EC) No 378/2005 re Community Reference Laboratory concerning applications for authorisations of feed additives. This section of the notification concerning this regulation lacks detail. It says “it is proposed that a UK reference laboratory will undertake relevant functions on exit in the event of no deal”. There is no further specification.

- Which UK reference laboratory is referred to, is that an existing laboratory or will one be established? If that is not known, how will the laboratory be determined?

Regulation (EC) No 767/2009 on the placing on the market and use of feed. The notification states that the Scottish Ministers will be given power to make changes to the more detailed technical requirements. The notification itself states, under the categorisation heading, that: “significant additional resource requirements could be placed on UK food safety authorities, particularly in relation to the processing and authorisation of feed additives”.

- Given the points we’ve raised above regarding powers and rules are you able to provide further clarification on why you do not consider this merits the notification falling into Category B?

“The EU Regulation will require that the Food Safety Authority keep a register of authorised additives (which is currently maintained by the Commission)” and handle applications to be on the register.

- We request further information regarding the current status of the UK register i.e. does one exist, or is it under active development?

Food Additives, Flavourings, Enzymes and Extraction Solvents (Amendment) (EU Exit) Regulations 2018

We note the EU Exit Regulations would revoke a European Regulation which set up a programme for the European Food Safety Authority to re-evaluate approved food additives. However, no alternative provision is made in its place. The notification states that this is because the process will be redundant when the UK leaves the EU. The notification indicates that while the European Food Safety Authority re-evaluation work is nearing completion, Food Standards Scotland and the UK Food Standards Authority will keep up to date with future scientific developments in food safety matters.

- We request more clarity on how the FSS will have access to, and be cognisant of, the European Food Safety Authority re-evaluation work.

- Are you able to confirm whether the ongoing discussions between FSS and FSA on “the development of a UK-wide framework for food and feed safety and control of use of food additives, flavourings, enzymes and extraction solvents” will extend to food labelling?

We note you have assigned the notification as category A by the SG. The notification also states that these EU Exit Regs will include provisions for the future amendment of the retained EU law and that the power of amendment will be exercisable by Scottish Ministers insofar as they are within devolved competence and exercisable in Scotland.

- We believe this would appear to create a power to legislate exercisable by Scottish Ministers, which would engage the category B criteria creating a power to legislate (i.e. sub-delegation). Are you able to provide a response to this view.

- We also request further information on what the nature and scope of these powers would be including what limits there would be on the powers? The Committee requests this information to inform its view on whether it is content that the ‘fix’ is made at Westminster, or whether it would be more appropriate that this is done by SSI or under joint procedure SI.