Dear Minister,

Thank you for your letter of 5 December providing the Committee with notification of the following statutory instrument:

- **The Nutrition (Amendment) (EU Exit) Regulations 2019**

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

Given the short timescales we are working to we request the response by 12 noon Monday, 17 December.

Yours sincerely

Lewis Macdonald

Convener, Health and Sport Committee
Annexe A

1. The notification indicates on pages 2 and 3 that EU law pertaining to foods for specific groups is currently in a transitional phase. Any new provisions that do not come into force before exit day will not become retained EU law. As a result, different regulatory regimes will apply to different specific groups of foods.

   a. What practical differences would arise as a result of the distinct regulatory regimes that would apply, on the one hand, to foods for special medical purposes (other than that designed to meet the nutritional needs of infants) and, on the other hand, the other specific food groups? Will the Scottish Ministers (or, where relevant, the Secretary of State) have a different suite of regulatory powers in relation to these distinct regimes?

   b. When is it envisaged the SSI will be made fixing the domestic legislation in relation to food for specific groups?

2. Page 3 of the notification indicates that EU law requires the relevant competent authority within the market to be notified when a food for a specific nutritional use is first placed on the market. How will the Scottish Ministers / Foods Standards Scotland become aware of such new foods first being placed on the market in a no-deal scenario?

3. Page 4 of the notification indicates that a new committee would be established to conduct the scientific advisory functions currently undertaken by the European Food Standards Agency. It appears that the instrument will confer power to designate the new committee on the Scottish Ministers and, alternatively, on the Secretary of State with the consent of the Scottish Ministers.

   a. How is this new committee to be established, given that the power to deal with deficiencies arising from withdrawal in section 8 of the European Union (Withdrawal) Act 2018 does not permit regulations made under that section to establish a public authority?

   b. In what circumstances would the Scottish Ministers decide to designate the new committee rather than the Secretary of State? Would this be done by SSI and what Parliamentary scrutiny procedure would apply?

   c. Will an instrument through which the designation is made by the Secretary of State with the consent of the Scottish Ministers be laid before the Scottish Parliament? What Parliamentary scrutiny procedure would apply?

   d. How would this new committee be supported, and how would it be paid for?

   e. Would this new arrangement have any financial implications for businesses in the UK?

   f. The notification states that “the nature of the UK’s future relationship to EU agencies and bodies such as the European Food Safety Authority (EFSA) is subject to ongoing UK-EU negotiations”. How have these conversations moved on since the committee previously heard that this was the case during previous SI notifications?
4. More generally, the notification indicates on page 4 onwards that there are various powers conferred on the Scottish Ministers so far as they are within devolved competence and exercisable in Scotland. There is also provision for the Secretary of State to legislate “where it is expedient to do so” but only with the consent of the devolved administrations.

For example, under the heading “Food supplements” on page 5, it is envisaged that one list will be held for the UK but that each of the devolved administrations will be able to make amendments for their own areas and the Secretary of State will be able to make amendments for the whole of the UK with the consent of each of the devolved administrations.

a. Would the powers exercisable by the Scottish Ministers be made by regulations? What Parliamentary scrutiny procedure would apply?

b. In the cases where the current instrument would confer legislative powers on the Secretary of State with the consent of the Scottish Ministers in devolved areas, how will the use of the powers be scrutinised by the Scottish Parliament? Has it been considered whether joint procedure at Westminster and the Scottish Parliament would apply to those powers?

c. Is the test that would apply in all cases where the Secretary of State would make such provision with the consent of the Scottish Ministers be “where it is expedient to do so”, as the notification appears to indicate?

d. How is it to be defined when “it is expedient to do so”?

e. Would there be benefit to making the current instrument under joint procedure in terms of paragraph 2 of schedule 7 of the European Union (Withdrawal) Act 2018 to allow the Scottish Parliament to consider the scrutiny procedure that would be proposed for any regulations (or other form of instrument) to be made by the Scottish Ministers under the current instrument?

5. The notification states on page 7 that Food Standards Scotland will provide further information on responses to the UK-wide public consultation on the instrument to the Health and Sport Committee if it wishes. The Committee would be grateful to receive this further information as part of its consideration of the notification.

6. The notification states “there are likely to be financial implications for nutrition related authorities and for bodies providing them with scientific advice, but it is not possible at this stage to assess how significant they may be”. What is meant by “nutrition related authorities” and when will such a financial assessment be able to be made?