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Lewis Macdonald MSP  
Convenor  
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Edinburgh  
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22 March 2019

Dear Lewis

THE FOOD AND FEED HYGIENE AND SAFETY (MISCELLANEOUS AMENDMENTS) (EU EXIT) REGULATIONS 2019

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, Mike Russell, Cabinet Secretary for Government Business and Constitutional Relations, wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the details of the above SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in these SIs. This is the final notification in the series of 16 planned notifications dealing with EU food and feed (hygiene and safety) law that I will be sending to the Health and Sport Committee.
Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is and advise you as to whether it is in keeping with the terms of this notification.

The policy rationale for the proposed changes that the above SI will make is to ensure the continuation of important consumer protection elements of the current EU food and feed regulatory regime. This includes making the necessary corrections to an important area of the current body of EU food law dealing with food and feed hygiene and safety matters to ensure that there is a functioning statute book which will continue to underpin the UK’s regulatory system for food and feed once it becomes retained EU law.

The fixing instrument makes necessary amendments to what will become retained direct EU law in a number of specific areas, in the unfortunate event that the UK leave the EU without a deal. The technical changes to the law are listed in the notification.

The EU food hygiene legislation requires non-EU countries to use country codes recognised by the International Standards Organisation (ISO) for the purposes of marking products of animal origin imported into the EU. The Committee was notified of changes to the health and identification marking requirements as part of an earlier package of food safety and hygiene amendments last year. At that point, it was proposed that EU law be amended to remove ‘EC’ from the hygiene mark, leaving ‘UK’ in place. While the code ‘UK’ may be considered acceptable for the UK and some overseas markets, the UK Government have now been advised by the EU that, the code ‘GB’ or the words United Kingdom in full, will be required for trade with the EU in future. The proposed approach in this instrument is to introduce a fix to allow the option of ‘GB’ (in addition to ‘UK’ or ‘United Kingdom’ written in full) on these marks to give businesses flexibility.

The amendments will help maintain the high standards of food and feed safety and hygiene that we currently benefit from as an EU Member State, and I am pleased to note the assurances provided by the UK Government that these changes will not result in any material changes to existing levels of public and animal health protection with respect to domestic and imported food and feed.

The Food Standards Agency (FSA) is the lead UK department for this SI which is due to be laid in the UK Parliament on 18 March under the affirmative procedure.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.
I look forward to hearing from you in due course.

Joe Fitzpatrick

JOE FITZPATRICK
NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (EU Exit) Regulations 2019

A brief explanation of law that the proposals amend

This UK fixing SI makes amendments to, what will become, retained direct EU law relating to several areas of food hygiene and safety requirements. The SI addresses a range of necessary minor specific technical modifications in this area of food law (mainly adjusting consequential redundant provisions) which were not captured by the more substantial UK fixing SIs in this policy area, which the Committee have already approved. It also addresses the need to modify the format of health and ID marking for products destined for the export market, reflecting representations the UK Government have now received from the EU regarding what would be acceptable to them for such products to be marketed in the EU.

The general EU policy area where the fixes are applied include the implementing and transitional measures for the general and specific food hygiene rules, official controls for the parasitic worm Trichinella in meat and the transitional measures on the accreditation of laboratories carrying out official testing for Trichinella. However, with the exception of official health marks and food business identification marks for products of animal origin, the SI does not introduce any new policy provisions or modify the current EU technical standards in these areas which will apply on exit day as they currently do. The existing EU provisions covered by the instrument are already fully harmonised and directly applicable in all Member States. The purpose of the Regulations is to ensure continuity of these EU provisions as far as possible from exit day.

The relevant EU provisions are:

Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin – Amendment to the
format of the Identification Mark which is required to be applied to certain products of animal origin.


**Commission Implementing Regulation (EU) 2015/1375** laying down specific rules on official controls for Trichinella in meat.

**Commission Implementing Regulation (EU) 2016/759** drawing up lists of third countries and territories from which Member States are to authorise the introduction into the Union of certain products of animal origin intended for human consumption, laying down certificate requirements, amending Regulation (EC) No 2074/2005 and repealing Decision 2003/812/EC.


**Commission Implementing Decision (EU) 2018/2045** renewing the authorisation for the placing on the market of products containing, consisting of or produced from genetically modified maize NK603 x MON 810 (MON-Ø6Ø3-6 x MON-

**Commission Implementing Decision (EU) 2018/2046** authorising the placing on the market of products containing, consisting of or produced from genetically modified maize MON 87427 x MON 89034 x 1507 x MON 88017 x 59122 and genetically modified maize combining two, three or four of the single events MON 87427, MON 89034, 1507, MON 88017 and 59122 and repealing Decision 2011/366/EU.

**Summary of the proposals and how these correct deficiencies**

The UK SI makes the necessary amendments to the above EU legislation to ensure it continues to function effectively in the event of a No Deal exit from the EU. These amendments include, removing redundant, and where necessary, replacing EU references and terminology such as ‘Community’, ‘Member States’ and European Food Safety Authority’ that will not be appropriate when the UK is no longer an EU Member State. It also includes the provision of the additional option to use the International Standards Organisation (ISO) recognised mark ‘GB’ within health and ID marks required to be placed on products of animal origin exported to the EU after EU exit.

**An explanation of why the change is considered necessary**

The change modifies the above EU provisions by limiting their scope to the UK. They make the required textual modifications to remove or replace redundant references to EU institutions and Member States. The two Genetically Modified products decisions, are updated in line with the general fixing SI on Genetically Modified Feed and Food. These Decisions were made after that fixing SI was finalised so this fixing SI picks up those EU Decisions which were made recently.

The health and ID marks applied to products of animal origin attest to certain standards being met. With respect to the marks being applied for export purposes, they must meet the requirements of any third country trading partners. The EU
requires that only the ISO country codes be used on such products, and the fix ensures that the UK’s 2-digit ISO code (which is GB) is made available. This is in addition to the UK and United Kingdom code marks which were already specified in the previous fixing SI and might be required for other purposes. Separate guidance is being produced to indicate the circumstances when businesses should select a specific mark for a particular third country. For example, it is known that only the GB code or the words United Kingdom in full will be acceptable for products destined for EU Member States. Making available the code GB will therefore increase flexibility for businesses who intend to supply the EU.

Scottish Government categorisation of significance of proposals

The Regulations have been categorised as Category A. The main purpose of the Regulations is to ensure continuity of law in this area with, in the main, no policy divergence or modification to the principles to be applied to food and feed hygiene and safety requirements. There are no proposals to transfer powers or alter the functions such as were included in the previous fixing SIs which were notified to the Scottish Parliament and are now undergoing scrutiny at Westminster. There are no proposals to sub delegate new powers to legislate to public bodies in this instrument, no new fees being provided for, or new financial implications for businesses or the creation of new fines or penalties. On that basis FSS considers that these changes are principally involved in ensuring continuity of law and are consistent with the devolution settlement.

Impact on devolved areas

The subject matter is a fully devolved area. The proposed SI relates to technical changes to retained direct EU law relating to food and feed hygiene and safety matters.

The Regulations maintain the basis of the existing EU legislative provisions which are designed to ensure that a high level of public health protection is maintained, and those food businesses in Scotland and the rest of the UK continue to operate safely. It is therefore important that the necessary functioning legislation covering this policy area is in place before exit day.
Summary of stakeholder engagement/consultation

FSA carried out a full public consultation across the UK from 4 September until 14 October 2018 on the proposed approach to retained EU law for food and feed safety and hygiene, The consultation received 47 responses (including 5 from Scottish stakeholders) of which 81% supported or did not disagree with the proposed approach being outlined, with 17% of replies containing mixed comments. The main concerns raised related to the communication of change and ensuring sufficient lead in time is given. One respondent raised concerns about the timeframe for delivering the legislation needed for day one readiness. None of the stakeholder comments received impacted on the proposed legislation. FSS highlighted the UK consultation to its stakeholders in Scotland but has not directly engaged with them on the UK Government’s approach.

A note of other impact assessments, (if available)

N/A

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

The Scottish Ministers believe that the changes proposed in the Regulations are necessary so far as falling within devolved competence to secure continuation of an effective regulatory regime for food and feed hygiene and safety and to provide continuity for food businesses as the UK leaves the EU in a No-Deal situation.

Intended laying date (if known) of instruments likely to arise

The SI is subject to affirmative procedure and will be laid on 18 March 2019 in draft. The Chancellor of the Duchy of Lancaster Minister for the Cabinet Office has given an undertaking that the UK Government will not schedule debates for affirmative SIs until the Scottish Parliament has given a view on the SI notification under the protocol. We would welcome a view from the committee as soon as possible, however the Scottish Parliament will have 28 days for consideration if
needed under the agreed protocol to consider the proposal to consent to the SI SIs.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

N/A

Information about any time dependency associated with the proposal

N/A

Are there any broader governance issues in relation to this proposal and how will these be regulated and monitored post-withdrawal?

N/A

Any significant financial implications?

The Regulations are not expected to have any significant financial implications for food business stakeholders in Scotland. There are likely to be financial implications for food safety authorities and for bodies providing them with scientific advice, but it is not possible at this stage to assess how significant they may be.