Dear Minister

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

Thank you for your letter dated 22 March regarding the above regulations.

Whilst the letter was dated the 22 March the Committee did not receive the actual SI notification until 25 March. The notification says that the Parliament is being given 28 days to consider and does not request that the committee expedites this. We are therefore working to finalise our response by 7 May (in accordance with the protocol this takes into account the Easter recess).

Your letter of 22 March states that the Scottish Government had not had sight of the final SI and that it was not available in the public domain. In fact the SI was laid in draft in the UK Parliament, on 18 March. Therefore are you able to confirm whether the SI reflects the proposals that you are seeking consent to?

You letter also states that this is the final notification in the series of 16 planned notifications dealing with EU food and feed (hygiene and safety) law. Are any further SI notifications relating to any other issues within the Committee’s remit expected to be referred to the Committee for consideration? If this is the case it would be helpful to receive further information on their subject matter and timing.

28 March 2019
The Committee also has a series of questions relating to the specifics of the SI. In advance of the Committee’s first formal consideration of the notification it would be helpful to have a response to the questions set out in the Annex to this letter. It would be helpful to receive a response to this request by 12 noon Monday 1 April.

Yours sincerely

Lewis Macdonald

Annexe

1. We note the notification details—

“[…] the UK Government have now been advised by the EU that, the code of ‘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 flexibility.”

The committee would be grateful for further information on: the reasoning behind this policy change; what its effect will be in practice; and whether it is connected with the possibility of different arrangements in Northern Ireland after EU withdrawal.

If this is a policy change is it appropriate that the SI notification has been categorised as A?

2. The notification states that the SI will make a minor technical amendment to the microbiological criteria for foodstuffs in Commission Regulation (EC) No. 2073/2005. No further detail is provided on what the amendment will do. Looking at the draft SI itself, the relevant amendment appears to be regulation 59 of the draft SI. It amends article 2(g), which concerns the definition of “ready-to-eat food”. The amendment is to omit the words “including sprouts” from the definition. This appears to be undoing the insertion of these words, which were not originally in the Commission Regulation but are being introduced by the General Food Hygiene (Amendment) (EU Exit) Regulations 2019 (reg. 22(a)) on exit day. Both these sets of regulations are made under the deficiency-correcting power, s. 8(1) of the European Union (Withdrawal) Act 2018.

As noted above, this notification is one of 16 which have been sent to the committee at various times dealing with this subject area. Could you assist the committee by identifying the SI notification which covered the original insertion of these words?

Are you able to advise why these words were inserted and are now being omitted?
3. The notification states that amendments will be made to Commission Decisions 2018/2045 and 2018/2046. These Decisions authorise a Monsanto company to place on the market products containing, consisting of or produced from certain types of genetically modified maize. Looking at regulations 127 and 131 of the draft SI, it appears that the defect being corrected is as follows. At present the Monsanto company must submit an annual report to the European Commission on its monitoring of environmental effects. The question is to which body these reports should be given after EU withdrawal. The draft SI substitutes “Food Safety Authority” for “Commission” in each case, but “Food Safety Authority” is not defined in the amendments made by this draft SI.

Who will be the Food Safety Authority for this purpose for Scotland?

4. The same point arises in relation to Commission Regulation (EC) No. 2074/2005. The notification refers to this Regulation but no further detail is provided on what the amendments to it will be. Regulation 67(a) of the draft SI provides that the Commission Regulation will be amended in Annex 3, Chapter 3, Part A(2) and (3) by substituting “the Food Safety Authority” for “ESFA”. This relates to the chemical methodology to be used when detecting marine toxins, specifically that the toxicity equivalent factors to be used must be those recommended by the Food Safety Authority rather than by the European Food Safety Authority. The “Food Safety Authority” is not defined in the amendments made by this draft SI.

If the policy behind this amendment has been covered in a previous SI notification, please could you assist the committee by identifying it?

Who will be the Food Safety Authority for this purpose for Scotland?