Dear Lewis

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

Thank you for your letter of 28th March 2019 regarding the notification of the above Regulations. I am grateful that you have confirmed the receipt of this as it was intended to accompany the covering letter. 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. Therefore, your Committee does have the full 28-period available in which to scrutinise the notification if needed. Given that the draft SI has been laid at Westminster, I can also confirm that it is consistent with the proposals described in the notification.

I would now like to turn to the specific questions raised in your letter about the SI and respond as follows:

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?

The proposed change is required to meet an explicit EU requirement for products imported into the EU to bear the International Standards Organisation (ISO) country specific code. The UK has registered ‘GB’ as the UK code, whereas currently for intracommunity trade purposes, ‘UK’ is recognised. Failure to rectify this would put exports of products of animal origin from the UK to the EU at risk. There is no explicit link to arrangements for Northern Ireland, it is simply an amendment to ensure that the mark complies with the requirement for third country imports into the EU to bear the ISO code for the country concerned as set out in Regulation 853/204, Annex II, Section I.6. Since the change is to allow businesses to meet an EU policy requirement for imported third country goods destined for their market this is not considered to be a UK policy change.

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?

The words were inserted by Regulation 22 of the General Food Hygiene (Amendment) (EU Exit) Regulations 2019, as notified on 8 October 2018. The intended purpose of the earlier amendment was to ensure that the definition of “ready to eat food” was clearly understood as intended to cover sprouts further to the explicit direction given in recital 13 of Regulation (EC) 209/2013. In other words it was intended to provide policy neutral clarification on this point. However on further reflection it was considered that this addition was unnecessary, superfluous and not linked to any necessary consequential fix associated with the UK leaving the EU and therefore it is proposed that it be removed.

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?

The authorisation requirements for Genetically Modified food and feed are set out in Regulation (EC) No 1829/2003. In line with Article 9 of Regulation (EC) No 1829/2003, the authorisation holder must comply with any conditions or restrictions imposed in the authorisation including submitting monitoring reports. It is considered that the definition of ‘Food Safety Authority’ in this ‘parent’ regulation which has been amended by The Genetically Modified Food and Feed (Amendment etc.) (EU Exit) Regulations 2019 applies for the purposes of the individual authorisations. As such Food Standards Scotland would undertake the relevant functions in Scotland. The notification for this measure was sent to the Committee on 30 October 2018.

4. Re: 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?

Commission regulation 2074/2005 lays down implementing measures for certain products under Regulation (EC) No 853/2004 and for the organisation of official controls under Regulation (EC) No 854/2004. It is considered that the definition of Food Safety Authority as read in those ‘parent’ regulations, which have been amended by The Specific Food Hygiene (Amendment etc.) (EU Exit) Regulations 2019, apply for the purposes outlined here. As such Food Standards Scotland would undertake the relevant functions in Scotland. The notification for that measure was sent to the Committee on 8 October 2018.

You also asked about further notifications of UK fixing SIs expected to be referred to the Committee. At the moment, I am aware of one SI, which will include amendments to general food labelling and country of origin requirements and this is due to be notified in early April. While it is possible that other amendments covering
the legislation on food safety and hygiene, food information and nutrition matters will be considered necessary, the work needed in advance of a possible no deal situation is almost complete.

I hope this is helpful.

JOE FITZPATRICK