

Health, Social Care and Sport Committee

2nd Meeting, 2022 (Session 6), Tuesday 11 January 2022

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - [The Food \(Withdrawal of Recognition\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021](#)

Procedure for negative instruments

2. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
3. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
4. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
5. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
6. Each negative instrument appears on the Health, Social Care and Sport Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling

reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

Recommendation

9. The Committee is invited to consider any issues which it wishes to raise on this instrument.

Clerks to the Committee
13 January 2022

SSI 2021/302

Title of Instrument: The Food (Withdrawal of Recognition) (Miscellaneous Amendments) (Scotland) Regulations 2021

Type of Instrument: Negative

Laid Date: 17 December 2021

Meeting Date: 18 January 2022

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No.

10. The Delegated Powers and Law Reform Committee considered the instrument at its meeting 11 January 2022 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Reporting deadline: 7 February 2022

Purpose

11. The purpose of this instrument is to remove exemptions for certain products in the under noted Regulations as a result of the United Kingdom's exit from the European Union (EU):

- The Bread and Flour Regulations 1998 (S.I. 1998/141)
- The Jam and Similar Products (Scotland) Regulations 2004 (S.S.I. 2004/133)
- The Spreadable Fats, Milk and Milk Products (Scotland) Regulations 2008 (S.S.I. 2008/216)
- The Products Containing Meat etc. (Scotland) Regulations 2014 (S.S.I. 2014/289)

12. The policy note states the amendments will help ensure that imported products meet compositional rules for food in Scotland and ensures Scottish business can maintain access to unfortified flour.

13. A copy of the Scottish Government's Policy Note is included in **Annexe A**.

POLICY NOTE

ANNEXE A

THE FOOD (WITHDRAWAL OF RECOGNITION) (MISCELLANEOUS AMENDMENTS)(SCOTLAND) REGULATIONS 2021**SSI 2021/477**

The above instrument was made in exercise of the powers conferred on them by sections 16(1)(e), 26(1) and 48(1) of the Food Safety Act 1990(1), and all other powers enabling them to do so. The instrument is subject to the negative procedure.

Purpose of the instrument.

The purpose of this instrument is to remove exemptions for certain products in the under noted Regulations as a result of the United Kingdom's exit from the European Union (EU).

The Bread and Flour Regulations 1998 (S.I. 1998/141)

The Jam and Similar Products (Scotland) Regulations 2004 (S.S.I. 2004/133)

The Spreadable Fats, Milk and Milk Products (Scotland) Regulations 2008 (S.S.I. 2008/216) The Products Containing Meat etc. (Scotland) Regulations 2014 (S.S.I. 2014/289)

Policy Objectives

It is the policy of the Scottish Government to align policy and law as far as possible with the EU. The UK has left the EU and changes to our domestic law are needed to reflect the UK's new status outside the EU. The UK is a member of the World Trade Organisation (WTO) in its own right and accordingly continued compliance with WTO rules which requires that imports from WTO memberstates must not be treated more favourably than imports from others unless this is otherwise established in a free trade agreement (Most Favoured Nation).

Prior to leaving the EU, under the Treaty of the Functioning of the European Union (TFEU) the UK was required to allow the import of certain lawfully produced food products from EU Member States, EEA States and in some instances Turkey even if they did not meet the compositional requirements of Scottish domestic legislation. The terms of the TFEU also allowed the UK to export to the EU and EEA on the same basis.

These requirements are commonly referred to as mutual recognition provisions and are provided for within domestic food law in Scotland as detailed above and in analogous food legislation across the UK.

Following the UK's withdrawal from the EU, continued recognition of the relevant foodstuffs from EU Member States, the EEA and in some instances Turkey could be viewed as affording these countries favourable treatment and as such may breach

WTO rules. International trade is reserved to the UK Government and the Scottish Ministers are obligated to implement international law, including WTO rules. This instrument concerns the amendment of Scottish domestic legislation to address the removal of the mutual recognition provisions from domestic regulations, and providing a period of adjustment for businesses. The amendments will also help ensure that imported products meet compositional rules for food in Scotland.

- (1) 1990 c. 16; section 16(1) was amended by the Food Standards Act 1999 (c. 28) (“the 1999 Act”), schedule 5, paragraph 8. Section 26(3) was partially repealed by the 1999 Act, schedule 6. Section 48(1) was amended by paragraph 8 of schedule 5 to the 1999 Act.

The proposed legislative amendments will in effect deny Scottish business access to unfortified flour. To minimise the impact of this, the instrument also makes the associated amendment necessary to enable unfortified flour to be imported into Scotland only for the production of food products intended for the export market and allow for the production of unfortified flour in Scotland for the export market or for the purposes of the manufacture of food intended for the export market.

Explanation of the law being amended by the regulation

This instrument makes amendments to the following regulations:

The Bread and Flour Regulations 1998 (S.I. 1998/141)

The Jam and Similar Products (Scotland) Regulations 2004 (S.S.I. 2004/133)

The Spreadable Fats, Milk and Milk Products (Scotland) Regulations 2008

(S.S.I. 2008/216) The Products Containing Meat etc. (Scotland) Regulations 2014 (S.S.I. 2014/289)

The proposed amendments will remove existing EU and EEA recognition provisions from the regulations, and provide a period of adjustment for businesses.

In addition an additional exemption in relation to flour will allow the production and sale of unfortified wheat flour in Scotland for export or for use in products for export and to allow the import of unfortified wheat flour for use in products for export.

Reasons for and effect of the proposed change or changes on retained EU law

Without these amendments the current legislation could be in breach international law.

Further information

Consultation

To comply with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council a six week consultation was carried out in Scotland on the policy proposals underpinning these regulations from 1st September 2021 and 12th October 2021.

The feedback received in relation to the removal of the mutual recognition provisions was favourable with the majority of respondents being in favour of the removal of these provisions and the periods of adjustment for businesses placing food on the market in Scotland. The majority of respondents also agreed with these proposals relating to the provisions of unfortified flour. A summary of the consultation responses from those who agreed for the release of this information will soon be published on the Food Standards Scotland Citizen Space website.

Impact Assessments

Full impact assessments have not been prepared because the purpose of this instrument is to amend Scottish domestic legislation in order to maintain the operability of existing regimes as a consequence of EU exit and not from this instrument. Any other costs identified are expected to be minimal and a period of adjustment is proposed until 1 Oct 2022 to enable businesses time to prepare for the relevant changes. This will also help to mitigate any associated costs and minimise market disruption.

The amendments do not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. The costs identified in the consultation and responses arise from the UK leaving the EU and not from this instrument which mitigates those costs as far as possible. Any other costs identified are expected to be minimal and a period of adjustment is proposed until 1 Oct 2022 to enable businesses time to prepare for the relevant changes.

The Minister for Public Health and Sport, Maree Todd confirms that no BRIA is necessary as the instrument has no significant financial effects on the Scottish Government, local government or on business.