EXPLANATORY MEMORANDUM TO

THE QUICK-FROZEN FOODSTUFFS (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Food Standards Agency (FSA) and is laid before Parliament by Act.

1.2 This memorandum contains information for the Sifting Committees.

2. Purpose of the instrument

2.1 *The Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019* (the instrument) are being made to fix the inoperability of retained EU law (Regulation (EC) No. 37/2005) arising as a consequence of the UK's withdrawal from the European Union.

2.2 The instrument also amends *The Quick-frozen Foodstuffs (England) Regulations 2007* ("2007 Regulations").

2.3 As a responsible government, we will continue to proportionately prepare to ensure readiness on exit day in all scenarios. The purpose of this instrument therefore, is to ensure that there will continue to be a functioning statute book on exit day which maintains continuity in relation to the Quick-frozen Foodstuffs legislation.

Explanation

Quick-freezing

2.4 Quick-frozen foods ("QFF") are food products which have undergone a freezing process known as "quick-freezing" whereby crystallisation takes place as rapidly as possible, and which are continuously maintained at a level of −18 ºC or lower and which are labelled to indicate they have undergone that process (more detail about the legislative requirements is found in paragraphs 2.5 to 2.9).

What did any relevant EU law do before exit day?

2.5 Regulation (EC) No. 37/2005 was directly applicable EU legislation and concerned the quality, not safety, of food through the monitoring of temperatures in the means of transport, warehousing and storage used for QFF.

2.6 Regulation (EC) No. 37/2005 laid down that:

- the means of transport, warehousing and storage of quick-frozen foodstuffs shall be fitted with suitable recording instruments to monitor, at frequent and regular intervals, the air temperature to which the quick-frozen foodstuffs are subjected

- that the temperature recording shall be dated and stored by the food operator for a period of at least one year, or for a longer period taking into account the nature and the shelf life of the quick-frozen foodstuffs.

2.7 There were also two European Directives concerning QFF:

- *Council Directive 89/108/EEC* concerning the approximation of the laws for QFF which, among other things, provides a definition of 'quick-frozen food' and describes the process, and,
- *Commission Directive 92/2/EEC* concerning the sampling procedure and analysis for official controls of the temperatures of QFF.

2.8 European Directives must be implemented by EU Member State domestic legislation as they do not apply directly in Member States. In England the Directives set out in paragraph 2.7 were implemented by *The Quick-frozen Foodstuffs (England) Regulations 2007 ('the 2007 Regulations')*.

2.9 Compliance with these QFF requirements was optional and a decision for food business operators (FBOs). By complying with the requirements, food businesses could label their foods 'quick-frozen' potentially gaining commercial advantage from the supply of a product generally perceived by consumers to be 'fresher'. The QFF regulations largely concern the quality of food and not its safety; requirements for food to be held at temperatures which keep it safe are found in other legislation.

Why is it being changed?

2.10 Unless the instrument comes into force both the existing EU legislation and related national legislation cannot be retained in an operable form post-EU exit.

What will it do?

2.11 The instrument will ensure that where businesses choose to describe their product as 'quick-frozen', this is governed by appropriate legal provisions. The changes introduced by this instrument will enable retained EU law and related national legislation to operate effectively within the UK post-EU Exit, providing continuity for businesses, enforcers and consumers.

3. Matters of special interest to Parliament

Matter of special interest to the Sifting Committees.

3.1 This instrument is being laid for sifting by the Sifting Committees on the UK's exit from the EU, in accordance with the European Union (Withdrawal) Act 2018.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

3.3 This instrument is being enacted under powers afforded by section 8 of *The European Union (Withdrawal) Act 2018* to correct deficiencies in retained EU law and the territorial application of this instrument is, as regards the 2007 Regulations limited to England. The instrument otherwise extends to the whole UK.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument covers the entire United Kingdom.

4.2 The territorial application of this instrument, in so far as it makes amendments to the 2007 Regulations, is limited to England.

5. European Convention on Human Rights

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The European Union (Withdrawal) Act 2018 extinguishes all powers under the European Communities Act 1972. It maintains all domestic law and retains previously directly applicable European Union legislation provided it is in the English language. Section 8.1 and 8.2 of the Act enable UK Ministers to fix deficiencies in retained EU law enabling retained legislation and the safeguards it provides to operate effectively following the UK's exit from the EU.

6.2 This instrument amends both EU and domestic legislation (listed below) to remedy deficiencies arising from the withdrawal of the United Kingdom from the EU and ensure that businesses may continue to benefit from the provision of the 'quick-frozen' label. The legislation concerned is:

- *Regulation (EC) No. 37/2005*
- *Council Directive 89/108/EEC*
- *Commission Directive 92/2/EEC*
- *The Quick-frozen Foodstuffs (England) Regulations 2007*

6.3 Article 9 of Regulation (EC) No. 178/2002 states that there will be open and transparent public consultation during the preparation, evaluation and revision of food law, except in urgent circumstances. Following EU Exit, this will continue to be the case with all future revisions of food law. Public consultation has been completed, as shown in Paragraphs 10.1 to 10.4, in accordance with this.

7. Policy background

What is being done and why?

7.1 To maintain the option for FBOs to label foods as 'quick frozen' after EU exit thus retaining the commercial potential of supplying a perceived fresher product, it is necessary that the relevant existing EU Regulations are retained in an operable form in UK law. *The Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019* deliver this for Regulation (EC) No 37/2005.

7.2 The FSA does not keep records of FBOs which choose to use QFF labelling as there is no requirement for this information to be registered centrally and, seeing as the QFF legislation is fundamentally concerned with food quality and not food safety, there is no obvious public health benefit in keeping such records.

7.3 An estimate provided by the British Frozen Food Federation, a key stakeholder organisation, suggests trade of frozen food using QFF labelling in the UK would be under 10% of frozen food.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 The SI is being made using the powers in section 8 of the European Union (Withdrawal) Act 2018 which allows Ministers to regulate to prevent, remedy or mitigate deficiencies in retained EU law that arise as a consequence of the UK's withdrawal from the European Union. This instrument is being enacted on a UK wide basis. Amendments made through this instrument will enable retained EU law to operate effectively across the UK and, as regards the 2007 Regulations, in England specifically. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 The instrument does not consolidate existing law, EU or UK.

10. Consultation outcome

10.1 A full public consultation was carried out from 4 September until 14 October 2018 on the FSA's proposed approach to retained EU law for food and feed safety and hygiene. This approach proposed making a number of corrections to the retained EU law which includes the Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019, using powers under the European Union Withdrawal Act. It was proposed in our approach that the corrections would be made by way of statutory instruments of which 15 had been prepared. Key corrections would provide a suitable replacement for the risk management function currently undertaken by the European Commission and for the risk assessment function currently undertaken by the European Food Safety Authority (EFSA), amongst other minor, non-controversial amendments. The corrections would not result in any material change in the level of protection to human or animal health, or to the high standard of domestic or imported food and feed which consumers expect. The statutory instruments which would make the corrections will be subject to review and approval by Parliament.

10.2 The consultation covered the proposed approach used for all of the FSA's Statutory Instruments in relation to EU Exit. It received 50 responses of which 82% supported or did not disagree with the proposed approach being outlined by the Food Standards Agency. 16% of replies contain mixed comments. The main concerns regarding the FSA approach in general were related to the communication of change and ensuring sufficient lead time is given. A more detailed analysis of the responses can be seen at the published link below.

10.3 One respondent raised concerns around the timeframe for delivering the legislation needed for day one readiness.

10.4 The consultation and its responses can be viewed at:

https://www.food.gov.uk/news-alerts/consultations/proposed-approach-to-retained-eu-law-for-food-and-feed-safety-and-hygiene

11. Guidance

11.1 It is considered that guidance is not required for this instrument as it maintains existing requirements and does not introduce new requirements.

12. Impact

12.1 According to the ONS Inter Departmental Business Register (IDBR) there were 214,175 businesses active in the agri-food sector in 2017. The FSA envisages minimal one-off familiarisation costs to business; where we estimate that it will take each business less than 60 minutes[1] to read and understand the proposed regulations and then disseminate the information to key staff within their firms. However, it is unlikely that the envisaged changes will present any other impact on businesses' day to day operations as the rules are not changing as a result of this instrument. The associated direct cost for businesses has been calculated by applying the 2017 median annual wage for "production managers and directors" of £22.05 and uprating it by 20% to account for overheads[2]. Multiplying this wage rate with the expected familiarisation time gives an estimated total one-off cost to businesses of £5.7m. After adjusting for inflation and applying a discount rate of 3.5% as per HMT Green Book guidance, this translates to an Equivalent Annual Net Direct Cost to Business (EANDCB) of approximately £600,000.

12.2 In terms of the impact on the public sector, there are approximately 419 Local Authorities (LAs) and 35 Port Health Authorities (PHAs) in the UK, which enforce existing food law and will continue to enforce the retained EU law after the UK's EU Exit.

12.3 Although the QFF legislation is optional for FBOs, those choosing to use it must still ensure legislation is complied with or else products bearing the QFF labelling will not meet the product description (this is a potential non-compliance). The FSA envisages minimal one-off familiarisation costs to LAs and PHAs; where we estimated that it will take authorities less than 60 minutes to read and familiarise themselves with the EU Regulations and then disseminate to staff and key stakeholders. It is estimated that one officer in each of these authorities (one Food Officer from each local authority; and one 'Port Health Officer' from each PHA) will need to undertake this task.

12.4 The instrument is not considered to add additional or new burdens on enforcement bodies, other than those identified above. The FSA is engaging with LAs and PHAs through the Food Standards and Labelling Focus Group and the Food Hygiene Focus Group to explain the corrections and amendments being made through this instrument. Both groups are made up of trading standards and environmental health officers responsible for enforcing food legislation.

12.5 An impact assessment has not been produced for these regulations which the FSA has certified as being below the *de minimis* threshold of +/- £5m equivalent annual net direct cost to business. The regulations are designed only to fix the inoperability of retained EU food legislation and ensure the continued safety of food after the UK leaves the EU. The regulations provide continuity for stakeholders and the FSA has not identified any significant impact on stakeholders other than in relation to a negligible one-off familiarisation cost from the legislative change.

[1] Please note the familiarisation time has been amended from less than 30 to less than 60 minutes following consultation feedback.

[2] Wage rate taken from the ONS' 2017 Annual Survey of Hours and Earnings (ASHE), table 14.6a.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 Over 90% of the UK food industry sector comprises small and micro businesses and EU legislation generally applies to food and feed businesses regardless of size, as requirements are intended to be risk based to reflect the activities undertaken by business. Due to the high ratio of small and micro food businesses in the UK, it is often not feasible to exempt smaller businesses from new food measures, as this would fail to achieve the intended effect of reducing risks to public health. The FSA makes every effort to identify the impacts and minimise burdens on small and micro businesses where possible.

13.3 The changes made to the legislation will provide continuity for business and should not impact on the day-to-day workload of small and micro businesses as all food and feed safety standards and legal definitions are maintained.

14. Monitoring & review

14.1 The approach to monitoring of this legislation will depend on what deal is reached between the United Kingdom and the European Union.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Fiona MacConnacher at the Food Standards Agency can be contacted with any queries regarding the instrument. Telephone: 0207 276 8362 or email: fiona.macconnacher@food.gov.uk. If not available contact David Gray at the Food Standards Agency. Telephone 0207 276 8940 or email: david.gray@food.gov.uk.

15.2 Michael Wight, Director for Food Policy at the Food Standards Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Steve Brine, Parliamentary Under Secretary of State for Public Health and Social Care at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement

1.1 ***The Parliamentary Under Secretary of State for Public Health and Primary Care, Steve Brine has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:***

"In my view the Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the "negative procedure"). This is the case because the instrument does not contain provision falling within paragraph 1(2) of Part 1 of Schedule 7 to the Act."

2. Appropriateness statement

2.1 ***The Parliamentary Under Secretary of State for Public Health and Primary Care, Steve Brine has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:***

"In my view the Quick-frozen Foodstuffs (Amendment) (EU Exit) Regulations 2019 does no more than is appropriate".

2.2 This is the case because the instrument only fixes the inoperabilities detailed in Section 2 of this Explanatory Memorandum and adds no additional legislative measures.

3. Good reasons

3.1 ***The Parliamentary Under Secretary of State for Public Health and Primary Care, Steve Brine has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:***

"In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action".

3.2 This is the case because the instrument makes only minor and technical amendments to the retained EU legislation to ensure that it remains operable following the United Kingdom's withdrawal from the European Union.

4. Equalities

4.1 ***The Parliamentary Under Secretary of State for Public Health and Primary Care, Steve Brine has made the following statement(s):***

"The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.

4.2 ***The Parliamentary Under Secretary of State for Public Health and Primary Care, Steve Brine has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:***

"In relation to the draft instrument, I, Steve Brine, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010."

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.