

EXPLANATORY MEMORANDUM TO
THE FOOD (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (“Defra”) and is laid before Parliament by Act.

2. Purpose of the instrument

2.1 This instrument amends relevant primary and retained direct EU legislation to address deficiencies in retained EU law arising from the UK’s departure from the EU.

2.2 Amendments are made to the following retained legislation:

- Commission Regulation (EU) No 115/2010 of 9 February 2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters
- Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers
- The Weights and Measures (Northern Ireland) Order 1981
- The Weights and Measures Act 1985

2.3 This instrument will ensure that the food labelling rules framework that existed before exit day will still function immediately after exit day. It consists of mostly technical changes to maintain the operability of the relevant legislation in the context of the UK having left the European Union (“EU”) and thus being a ‘third country’ in respect of the EU.

2.4 Simple amendments are sufficient for the majority of the necessary changes. These include substitutions of appropriate terminology to reflect the fact that the UK will no longer be an EU Member State.

Explanations

What did any relevant EU law do before exit day?

2.5 The EU regulations on the provision of food information to consumers, its related implementing regulations and delegated acts, set out clearly the food information that is mandatory as well as the modalities with which both mandatory and voluntary information is presented to consumers.

Why is it being changed?

2.6 Retained EU law is being amended in order to ensure operability of the rules.

What will it now do?

2.7 The instrument will, as far as possible, provide that retained EU law has the same effect as current legislation, ensuring that consumers and businesses are able, after exit day, to provide and make use of the same information, presented in the same way as before.

3. Matters of special interest to Parliament

Matters of special interest

3.1 None.

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.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is United Kingdom.

4.2 The territorial application of this instrument is United Kingdom.

5. European Convention on Human Rights

5.1 The Minister for Food and Animal Welfare, David Rutley MP has made the following statement regarding Human Rights:

“In my view the provisions of the Food (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights.”

6. Legislative Context

6.1 The UK is leaving the EU and the amendments made by this instrument ensure the operability of the retained EU Regulations in section 2 once the UK has left the EU. Section 8(1) of the European Union (Withdrawal) Act 2018 provides that a Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate any failure of retained EU law to operate effectively or any other deficiency in retained EU law arising from the withdrawal of the United Kingdom from the EU.

6.2 A number of other regulations include provisions that require food information to consumers to be provided in accordance with Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011. This instrument will provide the legal basis for this.

6.3 Amendments to the EEA protocol remove obsolete references to the translation of terms into EEA languages where the equivalent translations to non-English EU languages have been removed by this instrument.

7. Policy background

What is being done and why?

7.1 The Government has signalled its intention to ensure, in the event that no economic partnership arrangement is agreed by the date of the UK's exit from the EU, that there is as smooth a transition as possible for UK businesses and consumers. To this end, this instrument does what is necessary to make retained EU law operable but avoids making unnecessary modifications or creating additional burdens.

7.2 The provisions do not require food labelling to change in practice.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. This instrument is also made under the power in paragraph 21 of Schedule 7 to that Act. 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 This instrument is not consolidating any other provisions.

10. Consultation outcome

10.1 A public consultation was carried out in the 4 weeks up to the 4th December 2018. In addition, an extensive period of stakeholder engagement covering the main elements of this instrument has been conducted.

10.2 The total number of responses to the consultation was 69. Of those who provided information there were 14 consumers/individuals, 15 food businesses and 20 food and farming organisations/associations. Of those identifying a geographical location, 4 were from Northern Ireland, 27 from England, 10 from Scotland and 19 that identified as UK-wide. 2 respondents stated their location as ‘outside the UK’.

11. Guidance

11.1 A Technical Notice detailing what labelling changes need to be made in the event of a “no Brexit deal” was published in September 2018. None of those changes is covered by this instrument.

12. Impact

12.1 There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it gives effect to the maintenance of existing regulatory provisions and impacts, compared to any other available option, are considered to be minimal.

13. Regulating small business

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

13.2 The underlying EU legislation already includes measures to mitigate impacts on small businesses and these measures continue to have effect. There are no additional disproportionate impacts on small businesses arising from this instrument.

14. Monitoring & review

14.1 No specific monitoring arrangements are needed.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Robert Wells, at the Food Labelling Team, Agri Food Chain Directorate, Defra
Telephone: 020 8026 3970 or email: robert.wells@defra.gov.uk
- 15.2 Karen Lepper at the Agri-Food Chain Directorate, Defra can confirm that this
Explanatory Memorandum meets the required standard.
- 15.3 David Rutley MP, Parliamentary Under Secretary of State for Food and Animal
Welfare at the Department for Environment, Food and Rural Affairs 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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
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(s)

- 1.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, David Rutley MP, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food (Amendment) (EU Exit) Regulation 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because: the instrument does not make any significant new changes or impose new burdens on EU businesses, nor does it make changes to the information provided to UK consumers.

2. Appropriateness statement

- 2.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, David Rutley MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the Food (Amendment) (EU Exit) Regulation 2019 does no more than is appropriate”.

- 2.2 This is the case because: the instrument does not make any significant new changes or impose new burdens on EU businesses, nor does it make changes to the information provided to UK consumers.

3. Good reasons

- 3.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, David Rutley MP 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 These are: without this instrument, the retained EU legislation that it amends would not make sense in the context of the UK no longer being a member of the EU. UK law would reference EU territorial scope, institutions and even languages.

4. Equalities

- 4.1 The Parliamentary Under Secretary of State for Food and Animal Welfare, David Rutley MP 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 Food and Animal Welfare, David Rutley MP has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, David Rutley MP 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.