

## POLICY NOTE

### THE ANIMALS, FOOD AND FEED (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2020

SSI 2020/455

The above instrument was made in exercise of the powers conferred by section 2(2) and paragraph 1A of schedule 2 of the European Communities Act 1972, paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

#### **Purpose of the instrument.**

The purpose of this instrument is to make changes to the following legislation to ensure retained EU law relating to official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products continue to operate effectively after IP completion day.

- The Official Feed and Food Controls (Scotland) Regulations 2009 (SSI 2009/446)
- The Trade in Animals and Related Products (Scotland) Regulations 2012 (SSI 2012/177)
- The Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/372)
- The Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/398)
- Commission Decision 2000/572/EC laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the Community from third countries

#### **Policy Objectives**

Where practical and appropriate, European Union legislation is being retained in relevant domestic law applicable within the UK on the UK's exit from the EU. In the fields of food and feed safety and hygiene and composition, labelling and standards, Food Standards Scotland (FSS), in line with the Scottish Government (SG) and other devolved administrations, plan to retain the current standards set out in EU legislation and EU-derived domestic legislation. This will ensure the continued and proper regulation of food and feed safety and hygiene and composition, labelling and standards within Scotland after IP completion day. This will also protect human health, maintain consumer protection and provide continuity for businesses and consumers. This instrument concerns the relevant fixes to EU-derived domestic legislation such as EU references which are no longer appropriate. Furthermore, this SSI is implementing provisions in Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products ("the Official Controls Regulation"), under section 2(2) of the European Communities Act 1972.

## **Explanation of the law being amended by the regulations**

This instrument is making amendments to:

- The Official Feed and Food Controls (Scotland) Regulations 2009 (SSI 2009/446)
- The Trade in Animals and Related Products (Scotland) Regulations 2012 (SSI 2012/177)
- The Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/372)
- The Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/398)
- Commission Decision 2000/572/EC laying down the animal and public health and veterinary certification conditions for imports of meat preparations into the Community from third countries

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

An amendment is made to the Trade in Animals and Related Products (Scotland) Regulations 2012 to ensure that certain provisions in schedule 2 (additional requirements in specific cases) have effect.

Amendments are made to Commission Decision 2000/572 which lays down the animal and public health and veterinary certification conditions for imports of meat preparations. The amendment provides that the conditions apply to imports from a country or territory other than the British Islands. Transitional provision is made for territories subject to special transitional import arrangements. Territories subject to special transitional import arrangements will not have to freeze meat preparations at the production plant or plants of origin, and a health certificate need not accompany consignments from these territories, as a condition of import from 1<sup>st</sup> January to 31<sup>st</sup> March 2021. This aligns with the amendments made to the Trade in Animals and Related Products (Scotland) Regulations 2012 by the Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2020 regarding the import of products of animal origin. The transitional provision in Commission Decision 2000/572 means that fresh meat preparations will continue to be able to be imported from territories subject to transitional import arrangements until 1 April when export health certification requirements come into force.

An amendment is made to the Official Feed and Food Controls (Scotland) Regulations 2009 (SSI 2009/446) to reinstate a provision (removed by an earlier implementing SSI (SSI 2019/407) but on reflection considered necessary) for expenses incurred by a competent authority from additional controls to be recovered from the food or feed business operator as required by Article 79(2)(c) of Regulation (EU) 2017/625 (“the Official Controls Regulation”).

Amendments are made to the Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/398) where that SSI makes amendments to SSI 2009/446. The first amendment has the effect of omitting four specified import provisions from a new schedule 6 to be inserted into SSI 2009/446. This omission in relation to three of the entries fulfils an undertaking to do so given in response to the Delegated Powers and Law Reform Committee (DPLRC) as part of their consideration of SSI 2020/398. All four entries omitted are not considered to impose obligations that can be enforced by criminal penalty. Minor amendments are also made to other amendments being made by SSI 2020/398 to SSI 2009/446 that have the effect of: reinstating into SSI 2009/446 the definition for Directive

2004/41/EC of the European Parliament and of the Council repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption which was omitted in error by SSI 2020/398; and correcting the definition of “Regulation 2017/625” in schedule 1 to omit reference to Regulation 2015/1375. These amendments also respond to the DPLRC raising them.

Amendments are made to the Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/372) which is making deficiency fixing amendments to SSI 2009/446. The effect of these amendments are to omit the designation to local authorities of functions regarding border control posts as these are national competent authority functions and should be for Food Standards Scotland (FSS) only. Further deficiency fixes are made as a consequence of the amendments described above to the new schedule 6 of SSI 2009/446. Minor corrective amendments are made to amendments SSI 2020/372 is making to the Food and Feed Safety and Hygiene (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019.

### **Statements required by European Union (Withdrawal) Act 2018**

The Regulations are made in exercise of powers in the 2018 Act to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of Part 1 of schedule 2). The Regulations also exercise the powers in paragraph 21(b) of schedule 7 in relation to transitional and savings provisions. The Statements set out below relate to the exercise of the deficiencies powers.

#### **Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate**

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick has made the following statement, “In my view the Animals, Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 does no more than is appropriate”. This is the case because the instrument makes only minor necessary amendments to Scottish secondary legislation to ensure that legislation on official controls and other official activities performed to ensure the application of food and feed law continues to operate effectively after IP completion day.

#### **Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action**

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick has made the following statement, “In my view there are good reasons for the provisions in this instrument, and I have concluded that they are a reasonable course of action. This is the case because the instrument makes only minor necessary amendments to Scottish secondary legislation to ensure the law is clear following IP completion day.

#### **Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation**

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick has made the following statement, “In my view the Animals, Food and Feed (EU Exit) (Scotland) (Amendment)

Regulations 2020 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.”

**Statement that Scottish Ministers have, in preparing the regulations, 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**

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick has made the following statement, “In my view the Animals, Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 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.”

**Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament**

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare**

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick has made the following statement “In my view the Animals, Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”

**Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)**

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick has made the following statement “In my view the Animals, Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 have no effect on the rights and duties relating to employment, health and safety and matters relating to consumer protection. This is because the minor amendments do not make any policy changes and ensure the current high level of public health and consumer protection, with regard to food and feed law, is maintained after the UK exits the EU.

**An indication of how the regulations should be categorised in relation to the significance of the change proposed**

Low – this instrument is only making minor technical amendments with no change in policy, to allow for domestic regulations to function effectively after IP completion day.

**Statement setting out the Scottish Ministers’ reasons for their choice of procedure**

The Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018 “In my view it is appropriate that the Animals, Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 are subject to negative procedure as the instrument contains only minor and technical amendments to Scottish secondary legislation”

## **Further information**

### **Consultation**

Part 4 of this instrument is due to come into force on IP completion day and Part 3 is due to come into force immediately before IP completion day. The instrument has used the deficiencies power in paragraph 1 of schedule 2 of the European Union (Withdrawal) Act 2018. When using these powers of the 2018 Act, paragraph 4(a) of schedule 2 to the European Union (Withdrawal) Act 2018 states that consultation with the Secretary of State is required and such consultation was carried out with Matt Hancock, Secretary of State for Health and Social Care and George Eustice, Secretary of State for Environment, Food and Rural Affairs before the Regulations were made.

To comply with the requirements of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council, FSS has consulted with key Scottish stakeholders, such as the Scottish Association of Meat Wholesalers (SAMW) and the Scottish Federation of Meat Traders Association (SFMTA) on these amendments. Consultation has also taken place with local authority food and feed officers and Quality Meat Scotland (QMS).

### **Impact Assessments**

Full impact assessments have not been prepared for this instrument because only minor technical amendments are being made and the impact of this policy is considered to be negligible. 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**

Any financial impacts on competent and enforcement authorities arising from the required amendments to the existing domestic legislation are low.

Food Standards Scotland

17 December 2020