

EXPLANATORY MEMORANDUM TO
THE FOOD (AMENDMENT) (EU EXIT) REGULATIONS 2020
2020 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by command of Her Majesty.

2. Purpose of the instrument

2.1 The main purpose of this instrument is to place the Protocol on Ireland / Northern Ireland to the Withdrawal Agreement (“the Protocol”) on a legal footing for food labelling and Natural Mineral Waters (NMW) as required at the end of the Implementation Period. It also makes some minor technical amendments to domestic regulations and retained direct EU legislation to ensure the operability of this legislation at the end of the Implementation Period.

Explanations

2.2 We are laying this legislation now to change Natural Mineral Water provisions and food information to consumers regulations to ensure they are implemented in such a way as to give effect to the Protocol, and in preparation for the end of the Implementation Period.

What did any relevant EU law do before the end of the Implementation Period?

2.3 For Natural Mineral Water treatments: the current legislation does not differentiate between EU retained law as applicable in England and EU regulations as applicable in Northern Ireland. These amendments are being made to reflect the position of Northern Ireland under the Northern Ireland Protocol.

2.4 Also, previous EU Exit legislation was laid to ensure the protection of the internal UK market by providing mutual recognition clauses with Northern Ireland, Wales and Scotland. This SI will amend those mutual recognition clauses to narrow their effect.

2.5 For food labelling: EU Food Information to Consumers Regulations assure a high level of consumer protection in relation to food information, that consumers are not to be misled about their food, can make informed food choices and use food safely. Previous EU Exit legislation made amendments to make retained food information legislation operable in the context of the UK becoming a third country in respect of the EU.

Why is it being changed?

2.6 This instrument is being laid to address deficiencies in retained EU legislation arising from EU Exit and to give effect to the Protocol, amending previous instruments made in preparation for EU Exit, existing domestic legislation and retained direct EU legislation.

- 2.7 For Natural Mineral Water treatments: if we did not amend the existing legislation, the current wording of the English regulations in relation to those treatments concerning the implementation of the Northern Ireland Protocol would be ambiguous.
- 2.8 The mutual recognition clauses with Northern Ireland, Scotland and Wales are being amended in order for England to have full decision-making power in relation to EU/EEA NMWs sold in England at any point in time but particularly in relation to the EU exit provisions that ensure existing EU/EEA NMW can continue to be sold in England for 6 months after which the Secretary of State has the power to remove or continue recognition. As food is devolved Wales and Scotland have responsibility for their own rules. The change will mean if Northern Ireland, Scotland or Wales permit EU/EEA NMWs, England can decide if they are also permitted on the market in England.
- 2.9 In order for England to have full decision-making power in relation to EU/EEA NMWs, the mutual recognition clauses with Northern Ireland, Wales and Scotland are being amended, so that independently of what status they grant EU/EEA NMWs, England can act on its own with respect to the market in England. As food is devolved Wales and Scotland have responsibility for their own rules.
- 2.10 For Food Information to Consumers: retained EU food information to consumers law in force in the UK during the Implementation Period, previously amended to be operable in the UK as a third country will be further amended in order to function correctly in UK law, including provisions that take into account the functioning of the Northern Ireland Protocol. In addition, more recent EU legislation (Commission Implementing Regulation No. 2018/775 on the country of origin of primary ingredients) will be amended to both make it operable in the context of the UK becoming a third country and take into account the functioning of the Northern Ireland Protocol.

What will it now do?

- 2.11 This instrument will ensure that necessary amendments are made to retained EU law so that it applies in Northern Ireland only as required by the Protocol. For Natural Mineral Water treatments: it amends the provisions relating to Natural Mineral Water treatments to differentiate between retained EU law as it applies in England and the EU regulations as they apply in Northern Ireland.
- 2.12 This SI also amends the wording of the current mutual recognition clauses with Northern Ireland, Scotland and Wales to enable the possibility of the Secretary of State to make decisions in relation to what 3rd country NMWs can be sold on the market in England. The new wording means that automatic recognition in England of 3rd country natural mineral waters on the basis that they are legally sold in Northern Ireland, Scotland or Wales is only extended to those natural mineral waters which have been granted recognition directly by the competent authorities in those administrations.
- 2.13 For Food Information to Consumers: some of the amendments required to retained EU law are provided for in already made secondary legislation which comes into force at the end of the Implementation Period. This instrument will ensure that necessary further amendments are made to food information to consumers provisions to amend deficiencies in that secondary legislation which would otherwise occur by the coming into force of the Northern Ireland Protocol at the end of the Implementation Period. In

addition, some additional technical requirements are also required for operability purposes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

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 The territorial application of this instrument includes Scotland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see powers conferred by sections 8(1) and 8C of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018) and the instrument includes provisions which apply to Scotland.

4. Extent and Territorial Application

4.1 The territorial extent and application of this instrument matches the extent and application of the domestic regulations and retained law being amended.

4.2 As regards the retained law amended by this instrument, and the retained law amended by the domestic regulations amended by this instrument, this is incorporated into domestic law under section 3 of the European Union (Withdrawal) Act 2018 save insofar as it applies to Northern Ireland for the purposes of the Protocol. Accordingly, this instrument will be of no practical application in Northern Ireland as the Protocol instead applies the EU law provisions in Northern Ireland.

5. European Convention on Human Rights

5.1 The Minister for Rural Affairs and Biosecurity Lord Gardiner has made the following statement regarding Human Rights:

“In my view the provisions of The Food (Amendment) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 This SI will include small technical changes for Natural Mineral Waters in relation to activated alumina treatments and to update mutual recognition clauses in respect of Northern Ireland, Wales and Scotland to protect the UK internal market. The instrument will ensure the operability of new legislation on the country of origin labelling of primary ingredients by removing references to ‘EU’ and ‘EU Member States’ in designating origin of ingredients. Other minor operability amendments include changing references on labels from UK to GB to ensure these reflect NI Protocol commitments.

6.2 The regulations to be amended by this SI are:

- a) The Food (Lot Marking) Regulations 1996
- b) The Food (Amendment) (EU Exit) (England) Regulations 2019
- c) The Food (Amendment) (EU Exit) Regulations 2019

- d) The Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019
- e) Regulation (EU) No 1169/2011 of the European Parliament and of the Council
- f) Commission Implementing Regulation (EU) 2018/775

7. Policy background

What is being done and why?

- 7.1 Preparations to ensure continued operability of food legislation were previously made for the possibility that no agreement would be reached between the UK and EU about their new relationship following the UK's exit from the EU. Since then agreement has been reached on the UK's withdrawal from the EU, and it has become necessary to amend this preparatory legislation to take account of the commitments made in the Northern Ireland Protocol.
- 7.2 Regulations previously made which amended provisions removing references to EU Directives for Natural Mineral Waters are now being amended adjusting mutual recognition provisions for England vis-à-vis Northern Ireland, Wales and Scotland.
- 7.3 Operability amendments previously made to replace EU with UK-focused language in food labelling legislation for the UK as a whole will now be amended so as to ensure the amendments apply in a way that meets the conditions of the NI Protocol, such that the EU law continuing to apply in the UK to and in respect of Northern Ireland under the NI Protocol will remain coherent and operate correctly with that in the rest of the UK.
- 7.4 Amendments to EU retained legislation on the country of origin labelling of primary ingredients are being made to ensure continued operability. The amendments are being made for England, Wales and Scotland as the EU legislation to be transposed is directly applicable EU legislation and as such is being retained by the UK government as UK law which will apply in Great Britain.
- 7.5 The Food (Lot Marking) Regulation 1996 is domestic UK legislation. It is amended by this instrument to allow food with a lot marking that has been determined and/or affixed in the EU and which is a qualifying Northern Ireland good (as defined in regulations made under section 8C(6) of the European Union (Withdrawal) Act 2018) to be sold in GB).

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

- 8.1 This instrument is being made using the powers in sections 8 and 8C 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. The instrument is also made under the power in paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018. 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 Public consultation on the policy issues addressed in this SI took place in 2018 to inform decisions on making amendments to relevant food composition, food labelling and natural mineral water legislation in preparation for the UK's exit from the EU.
- 10.2 Defra held a consultation to request comments from industry, consumers and other stakeholders about amendments to food legislation required to ensure that a range of provisions could continue to operate after the UK had left the EU. The relevant amendments were to apply to certain England-only regulations because food policy is a devolved matter and Scotland, Wales and Northern Ireland have their own similar regulations in place and were considering similar changes. The consultation was carried out through the online survey platform Citizen Space and ran for four weeks from 16th October 2018. This was a shorter duration than is normal due to the limited time available before EU exit. We received 25 responses including from trade associations and food and farming businesses. Over the course of developing each policy option the government had also met frequently with industry over the previous couple of years enabling key stakeholders to feed back their views. The consultation summary was published and is available at this link:
<https://www.gov.uk/government/consultations/food-and-natural-mineral-water-amending-laws-in-england>
- 10.3 Another public consultation related to food labelling 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. 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'. The consultation summary was published and is available at this link:
<https://www.gov.uk/government/consultations/food-labelling-amending-laws/outcome/government-response>

11. Guidance

- 11.1 There will be guidance in the form of GOV.UK notices.

12. Impact

- 12.1 There is no, or no significant, impact on business, 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 the expected impacts on businesses of the provisions being made fall below the threshold above which an impact assessment is required, with most of the amendments representing technical changes which are necessitated by the need to comply with the Northern Ireland Protocol.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

- 14.1 No specific monitoring arrangements are proposed.
- 14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

- 15.1 Yvonne Riedel-Brown at the Department for Environment, Food and Rural Affairs Telephone: 020 841 52222 or email Yvonne.Riedel-Brown@defra.gov.uk can be contacted with any queries regarding the instrument. (Alternatively: Brian Longman at the Department for Environment, Food and Rural Affairs; email: Brian.Longman@defra.gov.uk or Telephone: 020 802 68301)
- 15.2 Gill Laishley, Deputy Director for Consumers and Sustainability, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner 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. Appropriateness statement

- 1.1 The Minister for Rural Affairs and Biosecurity Lord Gardiner has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the instrument The Food (Amendment) (EU Exit) Regulations 2020 does no more than is appropriate”.

- 1.2 This is the case because: various provisions previously made in other instruments in preparation for the UK’s exit from the EU now require amendment in preparation for the end of the Implementation Period to ensure food legislation remains operable and is in accordance with the Northern Ireland Protocol commitments. Additional explanation is included in section 2.3 in the main body of this explanatory memorandum.

2. Good reasons

- 2.1 The Minister for Rural Affairs and Biosecurity Lord Gardiner 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”.

- 2.2 These are: Food labelling measures and Natural Mineral Water treatment provisions which were amended in other instruments in preparation for the UK’s exit from the EU included references to Northern Ireland or to the UK including Northern Ireland now require amendment to ensure they reflect Northern Ireland Protocol commitments. Amendments to the retained origin of primary ingredients Implementing Regulation are necessary to remove inappropriate references to the EU and to EU Member States in UK legislation. Additional explanation is included in section 2.3 of the main body of this explanatory memorandum.

3. Equalities

- 3.1 The Minister for Rural Affairs and Biosecurity Lord Gardiner has made the following statement:

“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.”

- 3.2 The Minister for Rural Affairs and Biosecurity Lord Gardiner has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Minister for Rural Affairs and Biosecurity 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.”

4. Explanations

- 4.1 The explanations statement has been made in section 2 of the main body of this Explanatory Memorandum.