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Convener of the Rural Affairs, Islands and Natural
Environment Committee
The Scottish Parliament
EDINBURGH
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Copied to UKSIs@parliament.scot

23 September 2022

Dear Finlay,

DEFRA APH/009 - THE ANIMALS AND ANIMAL HEALTH, FEED AND FOOD, PLANTS AND PLANT HEALTH (AMENDMENT) REGULATIONS 2022 – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

The UK Government plans to lay the instrument on 18 October 2022.

As matters stand, a response from the Committee is requested by 7 October 2022. Such a timescale would not allow the Scottish Parliament 28 days to scrutinise the instrument prior to the laying of the instrument in the UK Parliament. The intention had been to provide notification on Friday 9 September 2022 but this did not prove possible as a result of the national mourning period. We have since sought an agreement from UK Government officials that the instrument

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will not be debated at Westminster until after a period of 28 days (not including the period of recess from 8 October to 23 October) has elapsed from the date of the notification or until such earlier date on which the Scottish Ministers have given their consent to the instrument. An update will be provided to the Convener of the Rural Affairs, Islands and Natural Environment Committee (including notification of the revised date by which a response is sought from the Committee) should such an agreement be reached.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Yours sincerely,



MAIRI GOUGEON

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022 (“the Instrument”)

Is the notification Type 1 or Type 2

Type 1.

A brief overview of the SI (including reserved provision)

The Instrument is to be made under section 8(1) and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018. It amends retained direct EU legislation and domestic legislation to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union. The legislation to be amended relates to official controls (including on imports to Great Britain, of animals and animal products, plants and plant products (including food), organic products and other goods relevant to the agri-food chain), rules on animal health and welfare, and rules on the marketing of planting and propagating material following the UK’s withdrawal from the European Union.

This SI is subject to affirmative procedure and will be laid in draft in the UK Parliament on 18 October 2022.

Details of the provisions that Scottish Ministers are being asked to consent to

The Scottish Ministers are being asked to consent to the amendments set out below.

[Regulation \(EU\) 2016/2031](#) of the European Parliament and of the Council on protective measures against pests of plants (“the Plant Health Regulation”)

Article 18 of the Plant Health Regulation is amended to ensure that demarcated areas can be established across borders between GB nations. Paragraph 5 of Article 18 which made this provision was removed in error by regulation 27(17)(b) of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1482). This instrument inserts an equivalent provision, with appropriate modifications, to ensure that demarcated areas can be established across borders within Great Britain.

This instrument also amends the Plant Health Regulation to allow for provision to be made relating to penalties for failure to comply with duties imposed by or under the Regulation. Article 108 of the Plant Health Regulation placed a duty on member states to make provision for penalties in respect of non-compliance with the Plant Health Regulation. Provision was made to comply with this duty in the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (S.S.I. 2019/421). Similar equivalent provision was made for England and Wales. Following the UK’s withdrawal from the European Union, Article 108 of the Plant Health Regulation was omitted by the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1482), as it was

considered to be redundant. However, this assessment was made in error and provision is in fact still required to ensure that an effective penalty regime can be maintained in Great Britain. Accordingly, this instrument amends the Plant Health Regulation to insert a new provision which ensures the appropriate authority has the power to, by regulations, create (or amend) rules on penalties for non-compliance with the requirements under the Plant Health Regulation and relevant supporting legislation.

[Regulation \(EU\) 2017/625 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 \(“the Official Controls Regulation”\)](#)

The Instrument amends Article 3(3) of the Official Controls Regulation to make clear that, where no authority has been designated as a competent authority by the appropriate authority, the appropriate authority will by default be the competent authority. The appropriate authority in relation to Scotland is the Scottish Ministers except in the circumstances in which it is the Secretary of State (where in the context of functions exercisable in relation to matters outside devolved competence or otherwise where the Scottish Ministers consent to it being the Secretary of State). The competent authority has responsibility for the operation and performance of official controls and other official activities.

The Instrument also amends Article 4 to make clearer the process by which the appropriate authority may designate competent authorities, to avoid unintended revocation of existing designations, to ensure that designations can be modified, and to provide that a designation by an authority of the competent authority does not prevent the appropriate authority from exercising the functions of the competent authority. Other amendments arising from the above amendments are made to technical and procedural provisions within Article 4.

Article 48(g) of the Official Controls Regulation is amended to replace a reference to “delegated acts” (which is no longer relevant) with a reference to regulations made by the appropriate authority.

Article 115 of the Official Controls Regulation is amended in consequence of the repeal of Article 55 of Regulation (EC) No 178/2002 by the General Food Law (Amendment etc.) (EU Exit) Regulations 2019.

Article 128 of the Official Controls Regulation is amended so that the appropriate authority has the discretion to make regulations to protect the biosecurity of Great Britain if there is a disease outbreak in a third country. This clarifies that there is not an obligation to make such regulations. This amendment is made in recognition of the availability of powers in other legislation to make similar provision by administrative means. In relation to Scotland, such other powers are conferred on the Scottish Ministers by regulation 25 of the Trade in Animals and Related Products (Scotland) Regulations 2012.

Article 139 is amended to provide the appropriate authority with the power, by regulations, to make provision for the enforcement of the Official Controls Regulation and also EU tertiary legislation and regulations made under it. The

appropriate authority is given the power to create offences when making regulations under Article 139.

Article 150 is amended to extend the transitional measures provided for in that paragraphs (1) and (2) of that Article until dates specified by the appropriate authority in regulations. The power to make such regulations is accordingly conferred on the appropriate authority.

Annex 6 of the Official Controls Regulation (which was added to the Official Controls Regulation through The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481)) is amended so that the appropriate authority may, by regulations, amend the conditions of the transitional staging period found in Part 2 of Annex 6.

Annex 6 is also amended to expand the definition of “relevant goods” to include the category of goods specified in Article 47(1)(d) of the Official Controls Regulation (namely, goods from certain third countries for which the appropriate authority has decided, by making regulations under Article 47(2)(b) of the Official Controls Regulation that a measure requiring a temporary increase of official controls at their entry into Great Britain is necessary due to known or emerging risk or because there is evidence that widespread serious non-compliance might be taking place). This will bring goods sometimes referred to as high risk food and feed on non-animal origin within the definition of “relevant goods”. The effect of this is to bring such goods within the transitional staging period when they originate from relevant third countries and have been the subject of any requisite notification prior to their entry into Great Britain from a third country. The fact that the category of goods specified in Article 47(1)(d) previously fell outwith the scope of the transitional staging period was an error.

The conditions of the transitional staging period found in Part 2 of Annex 6 are amended so that, as part of the modification of the Official Controls Regulation provided for by paragraph 13 of Annex 6, operators will be required to give pre-notification of the arrival of any goods falling within the category specified in Article 47(1)(d). Such goods imported from EEA states, the Faroe Islands, Greenland and Switzerland to Great Britain will therefore not be subject to full import checks but will be subject to pre-notification.

[Regulation \(EC\) No 999/2001](#) laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies

The Instrument makes a limited number of operability amendments to annexes of Regulation 999/2001 to correct deficiencies that were not accounted for in earlier amending instruments by amending uncorrected references to the European Union and member state(s).

[Council Regulation \(EC\) No 1/2005](#) on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97

The Instrument amends Articles 5(4) and 8(2) of Regulation 1/2005 to undo changes erroneously made by the Animal Welfare (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/802). The effect will be to require transporters, organisers and keepers to comply with the provisions of the journey log set out in

Annex 2 to Regulation 1/2005 rather than a journey log in a form published by the “Appropriate Minister” (which term is defined in Article 2 of the Regulation 1/2005).

[Commission Decision 2007/777/EC](#) laying down the animal and public health conditions and model certificates for imports of certain meat products and treated stomachs, bladders and intestines for human consumption from third countries and repealing Decision 2005/432/EC

The Instrument makes an operability amendment to Annex 2 of Decision 2007/777/EC that was missed when making the Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022 (S.I. 2022/735), and which is required given that those Regulations removed information in third country lists from legislation. The amendment clarifies that the import conditions relating to the import of poultry meat from the territories, zones or compartments listed in Annex 2 of Decision 2007/777/EC are specified in a document published for that purpose rather than in legislation.

[Commission Regulation \(EC\) No 798/2008](#) laying down a list of third countries, territories, zones or compartments from which poultry and poultry products may be imported into and transit through the Community and the veterinary certification requirements

Part 1 of Annex I of Regulation 798/2008 is amended to remove Belarus from the list of approved trading partners for poultry and poultry products. Belarus was previously only approved for the transit of goods bound for the Russian territory of Kaliningrad through Lithuania, an approval which was retained in legislation upon EU Exit but which is not applicable to GB trade.

[Commission Regulation \(EC\) No 119/2009](#) laying down a list of third countries or parts thereof, for imports into, or transit through, the Community of meat of wild leporidae, of certain wild land mammals and of farmed rabbits and the veterinary certification requirements

The instrument makes an operability amendment to Annex 1 of Regulation 119/2009 in order to refer to country-specific import conditions for fresh meat of ungulates which are found in a document published for that purpose under Article 14 of Regulation (EU) No 206/2010, rather than to conditions found in legislation. This amendment was mistakenly omitted when making the Import of Animals and Animal Products and Approved Countries (Amendment) Regulations 2022 but is necessary given that those Regulations removed information in third country lists from legislation.

[Commission Implementing Regulation \(EU\) 2020/625 amending Commission Implementing Regulation \(EU\) 2019/1793](#)

The instrument omits Article 3 of the Regulation 1020/625, which contains transitional measures in relation to consignments of Sesamum from Sudan and Uganda and of peppers of the Capsicum species (other than sweet) from India and Pakistan and which are no longer relevant.

Plant Varieties and Seeds Act 1964 (“the 1964 Act”)

The Instrument amends section 29 of the 1964 Act as it applies to Scotland (equivalent provision is made in respect of England and Wales in regulation 22) to add “vegetative planting material” to the types of seed, propagating and planting material in respect of which regulations can be made under Part II of the 1964 Act. This ensures the retention of functions in various EU Directives (particularly Directive 2008/72/EC and Directive 2008/90/EC) which were in force before IP completion day relating to the marketing of plant propagating material and planting material. This will enable the Scottish Ministers to legislate across the full range of seeds, propagating and planting material types which are used by Scottish growers and breeders.

The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1463)

The Instrument revokes provisions of these Regulations which transferred specific powers in this area and which are no longer required given the scope of the powers conferred by section 29 of the 1964 Act (as amended by the Instrument as detailed above).

Summary of the proposals

The EU (Withdrawal) Act 2018 converted and preserved EU law at the end of the transition period into domestic law (retained EU law). It also provided for amendments to be made to address deficiencies arising from EU exit.

This instrument makes necessary changes to retained EU law and domestic primary and secondary legislation to ensure they are fully operable following the UK’s exit from the EU. At the moment a number of provisions in retained EU legislation are not fully operational as they include uncorrected references to the EU or Member States, and some powers and duties which have been deficiency-fixed require to be amended for operability. The instrument confers on the appropriate authority certain powers to make regulations under the Plant Health Regulation and the Official Controls Regulation, as detailed above.

In addition to the amendments detailed above, the Instrument will amend the Trade in Animals and Related Products Regulations 2011 (S.I. 2011/1197) and the Animal Health (Miscellaneous Fees) (England) Regulations 2018 (S.I. 2018/664) but such amendments do not relate to Scotland.

The instrument also revokes provisions in

- the Aquatic Animal Health, Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020 (2020/1463).

Does the SI relate to a common framework or other scheme?

Provisional Animal Health and Welfare Framework

Provisional Plant Health Framework

Provisional Common Framework for Plant Varieties and Seeds

Provisional Organic Production Framework

Summary of stakeholder engagement/consultation

As the amendments are technical in nature, and there has been no policy changes, a public consultation was not undertaken.

A note of other impact assessments, (if available)

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

A full impact assessment has not been produced for this instrument as Defra's assessment is that there is no, or no significant, impact on the private, voluntary or public sectors is foreseen.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The Instrument is being made using the power in section 8(1) and paragraph 21 of schedule 7 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 makes provision to ensure a functioning system of official controls and rules on animal welfare during transport as well as the rules on the marketing of planting material and plant propagating material, and legislation relating to plants and planting material is retained in UK law.

Powers that are conferred by the Instrument, and any amendments to existing powers, fully respect devolution.

Given the reasons outlined above, the Scottish Ministers consider that it is appropriate to consent to the Instrument to give effect to the proposed changes.

Intended laying date (if known) of instruments likely to arise

The Instrument will be laid in draft by Parliamentary Committee on 18 October 2022.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

This notification has been delayed by the national mourning period. We have since sought an agreement from UK Government officials that the instrument will not be debated at Westminster until after a period of 28 days (which shall not include the period of recess from 8 October to 23 October) has elapsed from the date of this notification or until such earlier date on which the Scottish Ministers have given their consent to the instrument. An update will be provided to the Convenor of the Rural Affairs, Islands and Natural Environment Committee (including notification of the revised date by which a response is sought from the Committee) should such an agreement be reached.

Information about any time dependency associated with the proposal

Not applicable.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

None.

Any significant financial implications?

None.

SI NOTIFICATION: SUMMARY

Title of Instrument The Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment) Regulations 2022
Proposed laying date at Westminster 18 October 2022
Date by which Committee has been asked to respond 7 October 2022 (please see “other information” section below)
Power(s) under which SI is to be made Section 8(1) and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018.
Categorisation under SI Protocol Type 1
Purpose This instrument makes various operability amendments to retained direct EU legislation and domestic legislation relating to official controls (including on imports to Great Britain, of animals and animal products, plants and plant products (including food) and other goods relevant to agri-food chain) rules on animal health and welfare, and rules on the marketing of planting and propagating material following the UK’s withdrawal from the European Union. This instrument also addresses various deficiencies in retained EU legislation and corrects errors in earlier instruments made under the European Union (Withdrawal) Act 2018.
Other information <p>The notification was delayed by the national mourning period. The date by which the Committee has been asked to respond, 7 October, is the last sitting day of the Scottish Parliament before the proposed date for laying the instrument at Westminster. Less than 28 days for scrutiny by the Scottish Parliament is therefore proposed.</p> <p>We have since sought an agreement from UK Government officials that the instrument will not be debated at Westminster until after a period of 28 days (which shall not include the period of recess from 8 October to 23 October) has elapsed from the date of this notification or until such earlier date on which the Scottish Ministers have given their consent to the instrument. An update will be provided to the Convenor of the Rural Affairs, Islands and Natural Environment Committee (including notification of the revised date by which a response is sought from the Committee) should such an agreement be reached.</p>
SG Policy contact: Ian Cox Agriculture and Rural Economy Directorate Animal Health and Welfare Division: International Trade