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Finlay Carson MSP
Convener of the Rural Affairs, Islands and Natural Environment Committee
The Scottish Parliament
EDINBURGH
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12 October 2022

Dear Finlay,

DEFRA APH/024 - THE TRADE IN ANIMALS AND RELATED PRODUCTS (AMENDMENT AND LEGISLATIVE FUNCTIONS) REGULATIONS 2022

I refer to your letter of 29 September 2022 as part of the Committee's consideration of the above instrument where you set out a number of questions. I am now in a position to reply substantively and hope these answers clarify the position further.

Turning to your first point about the notification, you asked two questions which I will now answer in turn.

Q1. The notification states that provisions "which are relevant to imports" are being retained. Please clarify what is meant by this.

The instrument will retain provisions of the Council Directives that contain animal and public health requirements that are relevant to consignments of animals or animal products that are being imported into or transiting through Great Britain. Functions of EU entities contained in these provisions have been conferred on the appropriate authority. The instrument also retains provisions that are to be read alongside a provision conferring a function on the appropriate authority and that are relevant to the exercise of that function.

Q2. Please clarify which provisions from the Council Directives listed in Schedule 1 are not being retained and why. Given the short timescales for consideration, please indicate what these provisions achieve in practice, rather than the just the Article numbers.

The functions of EU entities that will not be retained are as follows.

Functions relating to intra-Community trade

The following articles contain legislative functions that were relevant to intra-Community trade but that are not relevant to imports into Great Britain from third countries following the UK's exit from the EU:

In Council Directive 88/407/EEC (laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species):

- Article 5 regarding the adoption of detailed rules for uniform application of requirements for semen collection or storage centres for purposes of intra-community trade
- Article 16 in so far as relating to the frequency and method by which veterinary experts of the Commission carry out checks on member states

In Council Directive 89/556/EEC (on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species):

- Article 3 relating to the authorisation of trade in embryos of certain specific species for purposes of intra-Community trade
- Article 5 regarding the adoption of detailed rules for approval of embryo collection and embryo production teams for the purposes of intra-Community trade
- Article 15 in so far as relating to requirements regarding the frequency and method by which veterinary experts of the Commission carry out checks on member states

In Council Directive 90/429/EEC (laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the porcine species):

- Article 4 relating to the extension of provisions regarding collection centres and Aujeszky's disease for part of a territory of a member state for the purposes of intra-Community trade
- Article 5 relating to the adoption of rules regarding the approval of semen collection centres for the purposes of intra-Community trade

In Council Directive 91/68/EEC (on animal health conditions governing intra-Community trade in ovine and caprine animals):

- Article 8 relating to the power to extend the one year period during which Sweden may apply its national rules regarding ovine paratuberculosis and ovine contagious agalactia prior to its accession to the EU
- Article 11 regarding arrangements for veterinary experts of the Commission to carry out on the spot inspections of member states

In Council Directive 92/65/EEC (laying down animal health requirements governing trade in and imports into the Community of animals, semen, ova and embryos not subject to animal health requirements laid down in specific Community rules referred to in Annex A(1) to Directive 90/425/EEC):

- Article 10a containing a power to amend rabies requirements to take account of 'the situation in Finland and Sweden' prior to their accession to the EU in order to apply to them the same provisions as applicable to member states in an equivalent situation

In Council Directive 2009/156/EC (on animal health conditions governing the movement and importation from third countries of equidae):

- Article 10 relating to the adoption of arrangements for on the spot inspections of member states by veterinary experts from the Commission
- Article 18 relating to the frequency and procedure of checks by experts of member states and the Commission

In Council Directive 2009/158/EC (on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs):

- Article 3 regarding amendments or additions to a plan describing the national measures which member states intend to implement and that they must submit to the Commission for approval for the purposes of intra-Community trade in poultry and hatching eggs
- Article 7 regarding the adoption of detailed rules regarding the requirement for member states to draw up and keep up to date a list of approved establishments and to make it available to other member states and to the public
- Article 27 regarding the frequency and procedure for inspections carried out by veterinary experts of member states and the Commission

Functions for which alternative legislative provision has already been made

The following articles contain functions that have not been retained because alternative legislative provision for the performance of the function has already been made:

In Council Directive 64/432/EEC (on animal health problems affecting intra-Community trade in bovine animals and swine):

- Article 6A regarding the adoption of rules for the designation of state institutes, national references laboratories or official institutes
- Article 8 regarding criteria for member states to provide information to the Commission regarding diseases listed in Annex E (I) to this Directive.
- Article 11 regarding the adoption of detailed rules regarding approval of assembly centres

In Council Directive 88/407/EEC (laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species):

- Article 16 in so far as relating to the frequency and method by which veterinary experts of the Commission carry out checks on third countries

In Council Directive 89/556/EEC (on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species):

- Article 15 in so far as relating to the frequency and method by which veterinary experts of the Commission carry out checks on third countries

In Council Directive 91/68/EEC (on animal health conditions governing intra-Community trade in ovine and caprine animals):

- Article 8a regarding the adoption of detailed rules relating to assembly centres
- Article 8b regarding the adoption of detailed rules relating to dealers

In Council Directive 2002/99/EC (laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption):

- Article 5 regarding the drawing up of detailed implementing rules and models for veterinary certificates for products of animal origin intended for human consumption
- Article 6 regarding measures to safeguard animal health following the identification of a serious animal health risk identified during a Commission audit or inspection and the adoption of detailed rules governing the procedure for cooperation with national authorities
- Article 10 relating to the procedure for carrying out inspections and/or audits of third countries by experts from the Commission

In Council Directive 2004/68/EC (laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals):

- Article 12 relating to inspections/audits in third countries by Commission experts

In Council Directive 2009/158/EC (on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs):

- Article 4 regarding the adoption of rules for the designation of a national reference laboratory

Other functions not being retained

Council Directive 64/432/EEC (on animal health problems affecting intra-Community trade in bovine animals and swine) is being retained only for the purposes of references to it in the animal health requirements of other Council Directives and relevant retained EU legislation that are listed in the instrument. The scope of this Directive will be changed to reflect this. The following articles are therefore not being retained because they fall outside the revised scope of the Directive:

- Article 4 relating to rules for approval of sites where cleansing and disinfection may be carried out
- Article 6 regarding the conditions for conducting an intradermal tuberculin test
- Article 13 regarding the adoption of detailed rules regarding lists of approved dealers and registered premises
- Article 14 in so far as relating to appropriate rules of application for national computer databases concerning porcine animals.

On your second point you had flagged that "*The notification explains that "the appropriate authority for the exercise of [the specified legislative] functions in relation to Scotland will be the Scottish Ministers, or where consent is given by the Scottish Ministers, the Secretary of State".*

Q3. Please indicate whether all of the legislative functions in the Council Directive articles specified in the notification (pages 3-7) are being conferred in this way, i.e. concurrently on the Scottish Ministers and the Secretary of State, with a statutory requirement for consent where exercised by the Secretary of State.

All of the legislative functions in the Council Directive articles specified in the notification are being conferred on the appropriate authority, as defined in Article 3 of Regulation (EU) 2017/625. Articles 3(2A)(c) and 3(2B)(b)(ii) of Regulation (EU) 2017/625 provide that the Scottish Ministers will be the appropriate authority in relation to Scotland, unless consent is given by the Scottish Ministers to the exercise of powers in relation to Scotland by the Secretary of State. Article 3(2B)(a) of Regulation (EU) 2017/625 provides that the Secretary of State will be the appropriate authority in relation to any functions exercisable in relation to a matter which is outside devolved competence.

The Scottish Government's position is that all of the functions conferred by the instrument relate to the prohibition and regulation of movement into and out of Scotland of animals and animal products for the purposes of protecting human and animal health, and would be exercisable by the Scottish Ministers within devolved competence. We have therefore asked for amendments to be made so that the definition of appropriate authority under the instrument does not make reference to matters outside of devolved competence on the basis that it is otiose.

Q4. Please explain why the Scottish Government considers it appropriate for these further legislative powers to be conferred on the Secretary of State, given that they are exercisable within the Parliament's legislative competence.

With regard to the exercise of functions by the Secretary of State with the consent of the Scottish Ministers, the Scottish Government's position is that Scottish Ministers will normally wish to give such consent where the policy objectives of UK and Scottish Ministers are aligned and there are no good reasons for having separate Scottish subordinate legislation.

As noted above, the UK Government's position at present is that the instrument should refer to the definition of the appropriate authority as set out in Article 3 of Regulation (EU) 2017/625, which includes a provision to the effect that the Secretary of State will be the appropriate authority in relation to any functions exercisable in relation to a matter which is outside devolved competence. We do not believe that any of the functions conferred by the instrument would be exercisable outside of devolved competence, and accordingly we do not believe that such a provision is appropriate or necessary. However it will not confer on the Secretary of State any power to make provision without the consent of the Scottish Ministers that would be within the Parliament's legislative competence.

On this basis I look forward to the outcome of the Committee's consideration of the instrument in due course.

Yours sincerely,

MAIRI GOUGEON

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