

Rural Affairs, Islands and Natural Environment Committee

26th Meeting, 2022 (Session 6), Wednesday, 5 October

Subordinate legislation

1. This paper supports the Committee's consideration of the Non-Commercial Movement of Pet Animals (Scotland) Amendment (No. 2) Regulations 2022 (2022/262).
2. The SSI is subject to the negative parliamentary procedure. Further information about this procedure is set out in paragraphs 13 and 14.

The Non-Commercial Movement of Pet Animals (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/262)

3. The SSI was laid on 31 August 2022 and comes into effect on 1 October 2022. The deadline for subject committee consideration is 24 October 2022. The Regulations are made using powers conferred by Articles 38 and 39(6) of Regulation (EU) 576/2013 of the European Parliament and of the Council on the non-commercial movement of pet animals.
4. The Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022 (SSI 2022/131) (considered by the Committee on 18 May 2022) gave Scottish Ministers the power, until 1 October 2022, to administer the ELISA rabies antibody test (a specific form of enzyme-linked immunosorbent assay. The ELISA test has a turnaround time of two to three days and is an alternative to the Fluorescent Antibody Virus Neutralisation (FAVN) which has a turnaround time of two weeks.
5. When the ELISA test was introduced, the Committee was told the regulations were being made as part of a temporary streamlined process for persons displaced by the conflict in Ukraine to enter Great Britain with their pets.
6. Following consideration of SSI 2022/131, [the Committee wrote to the Scottish Government on 23 May](#) to seek further information on the following points—
 - in relation to the efficacy of the ELISA test relative to the FAVN test, whether the Scottish Government is content that use of the ELISA test will result in no greater risk of rabies entering Scotland with pet animals from Ukraine; and
 - if the Scottish Government can confirm which body or individual(s) is responsible for the cost of administering the ELISA test on pet animals entering Scotland.

7. The [Cabinet Secretary's response of 28 June](#) confirms that, in relation to the efficacy of the ELISA test relative to the FAVN test, the ELISA test has been approved by the World Organisation for Animal Health's Biological Standards Commission, meaning it has met an acceptable level of appropriate validation and has acceptable test performance characteristics.
8. With regards to funding, the response clarifies that the UK Government is paying for ELISA tests for pets accompanying Ukrainian refugees (to those animals who enter through the appropriate channels), and is also covering their vaccination, microchipping and quarantine costs. This recognises that many individuals from Ukraine will not have been able to complete the full health preparations required for their pet on arrival.
9. The Non-Commercial Movement of Pet Animals (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/262) will extend the time period permitting the use of the ELISA test by six months (until 1 April 2023). The policy note explains that, although the initial influx of refugees and their pets from Ukraine has diminished, extending the use of the ELISA test will significantly speed up the rabies testing process at a time when the system faces a significant backlog. This, according to the policy note, will continue to reduce the overall burden on quarantine spaces and enable refugees to be reunited with their pets earlier than if the FAVN test were used.
10. Further information is set out in the policy note, provided at **Annexe A**.
11. As the SSI was laid on 31 August 2022 and comes into force on 1 October 2022 the Scottish Government has breached the 28-day rule which requires that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. In these circumstances, the Scottish Government must write to the Presiding Officer setting out the reasons for the breach. The Scottish Government's letter is provided in **Annexe B**. The letter explains that it had not been possible to comply with the 28-day rule "because the need to extend the ability to administer the ELISA test beyond 1 October 2022 had become apparent during the summer recess".

Consideration by the Delegated Powers and Law Reform Committee

12. The DPLRC considered this instrument at its [meeting on 20 September 2022](#). The Committee agreed to draw the instrument to the attention of the Parliament on the basis that it breaches the 28-day rule but concluded it was "content with the explanation provided by the Scottish Government for failure to comply with the laying requirements".

Parliamentary procedure – negative instruments

13. The negative parliamentary procedure is set out in Chapter 10 of the Parliament's Standing Orders. Instruments subject to the negative procedure come into force on a specified date and remain in force unless it is annulled by the Parliament. Thus, the Parliament does not need to agree to the instrument in order for it to come into force.
14. The Parliament may, however, and on the recommendation of the lead committee, recommend the instrument be annulled within 40 days of the instrument being laid. Any MSP may by motion propose to the lead committee that the committee recommends "that nothing further is to be done under the instrument". Any motion for annulment would be debated by the lead committee and a report made to Parliament.

For decision

15. **The Committee is invited to note the instrument.**

16. **Members may also wish to write to the Scottish Government to ask—**

- How long it anticipates the rabies testing process to be backlogged despite the introduction of the ELISA test, presuming the influx of refugees and their pets from Ukraine remains at the current, lower level?
- Its view about whether the time period permitting the use of the ELISA test will need to be extended again; and
- What reassurance the Scottish Government can provide that any further extensions of the ELISA test will be anticipated so any future instruments won't breach the 28-day rule?

**Rural Affairs, Islands and Natural Environment Committee clerks
September 2022**

The Non-Commercial Movement of Pet Animals (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/262)

Policy Note

1. The above instrument was made in exercise of the powers conferred by Articles 38 and 39(6) of Regulation (EU) 576/2013 of the European Parliament and of the Council on the non-commercial movement of pet animals. The instrument is subject to negative procedure.

Summary Box

2. To permit until 1 April 2023, an alternative, quicker rabies antibody titration test for the movement of pet animals into Scotland and release from quarantine, given the unprecedented number of pet animals accompanying persons displaced by the conflict in Ukraine.

Policy Objectives

3. These Regulations have been made as part of a temporary streamlined process for persons displaced by the conflict in Ukraine to enter Great Britain with their pets. On 9 April 2022, as part of this process, an amendment was made to Annex 4 of the Pet Travel Regulations (retained Regulation (EU) 576/2013), which sets out the validity requirements for rabies antibody titration tests on pet dogs, cats and ferrets moved into Great Britain. Under normal circumstances, there is only one type of antibody titre test that can be used for entry into Great Britain from Ukraine and to authorise release from quarantine if the animal is non-compliant on entry. This test (*the Fluorescent Antibody Virus Neutralisation (FAVN) test*¹) has a turnaround time of two weeks. The Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022 introduced a provision to give Scottish Ministers the ability, for a time limited period (until 1 October 2022), to administer an alternative rabies antibody test (a specific form of *enzyme-linked immunosorbent assay (ELISA) test*). The ELISA test has a turnaround time of two to three days.
4. As pets must remain in quarantine until there is confirmation of their vaccination status, the ELISA test has been used to reduce time in quarantine by quickly determining those animals that have been vaccinated and have a sufficient level of protection against the rabies virus. This has reduced the overall burden on quarantine spaces and enabled refugees to be reunited with their pets earlier than if the FAVN test were used, whilst still protecting public and animal health.
5. These Regulations will extend the time period permitting the use of the ELISA test by six months (until 1 April 2023). Although the initial influx of refugees and their pets from Ukraine has diminished, extending the use of the ELISA test will significantly speed up the rabies testing process at a time when the system faces a significant backlog. This will continue to reduce the overall burden on quarantine spaces and enable refugees to be reunited with their pets earlier than if the FAVN test were used.

Consultation

6. As required by Article 39(7) of the Pet Travel Regulations Government has undertaken a GB-wide consultation exercise and consulted the Animal and Plant Health Agency (APHA) and members of the GB Exotic Disease Core Group for Rabies, which includes those representing the interests of veterinarians, pet charities and public health bodies. These consultees were in agreement that the use of the ELISA test should be continued to relieve pressure on quarantine facilities.

Impact Assessments

7. No significant, impact on the private, voluntary or public sector is foreseen

Financial Effects

8. The Cabinet Secretary for Rural Affairs and Islands confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate

24 August 2022

**LETTER FROM THE SCOTTISH GOVERNMENT TO THE PRESIDING OFFICER,
DATED 26 AUGUST 2022**

**THE NON-COMMERCIAL MOVEMENT OF PET ANIMALS (SCOTLAND)
AMENDMENT (NO.2) REGULATIONS 2022**

The Non-Commercial Movement of Pet Animals (Scotland) Amendment (No.2) Regulations 2022, SSI 2022/262 was made by the Scottish Ministers under Articles 38 and 39(6) of Regulation (EU) 576/2013 of the European Parliament and of the Council on the non-commercial movement of pet animals on Wednesday 31 August 2022 and laid before the Scottish Parliament on the same day. It comes into force on Saturday 1 October 2022.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

As a result of the conflict in Ukraine, the Scottish Government, in alignment with the UK Government and Welsh Government, have introduced a temporary streamlined process for Ukrainian Nationals entering Great Britain with their pets. On 9 April 2022, as part of these measures, the [Non-Commercial Movement of Pet Animals \(Scotland\) Amendment Regulations 2022](#) introduced a provision to give Scottish Ministers the ability until 1 October 2022, to administer an alternative rabies antibody test (a specific form of *enzyme-linked immunosorbent assay (ELISA) test*), which has a turnaround time of two to three days. Under normal circumstances, there is only one type of antibody titre test that can be used for entry into GB from Ukraine and to authorise release from quarantine if the animal is non-compliant on entry. This test (*the Fluorescent Antibody Virus Neutralisation (FAVN) test*ⁱ) has a turnaround time of two weeks. As pets must remain in quarantine until there is confirmation of their vaccination status, the ELISA test has been used since 9 April 2022 to reduce time in quarantine. This instrument extends the ability to administer the ELISA test from 1 October 2022 to 1 April 2023.

It has not been possible to comply with the 28 day rule because the need to extend the ability to administer the ELISA test beyond 1 October 2022 has become apparent during the summer recess. Whilst the initial influx of refugees and their pets from Ukraine has diminished, extending this provision will significantly speed up the rabies testing process at a time when the system still faces a significant backlog. Although quarantine facilities are not currently at capacity there are a finite number of spaces available and, at this time, there are approximately 600 outstanding applications for pets from Ukraine waiting to enter Great Britain. In addition, if the situation in Ukraine were to deteriorate then it may be possible that we would see a further influx of persons with pets that are displaced by the conflict. Extending the provision permitting the use of the ELISA test will continue to meet the urgent need to relieve pressure on quarantine facilities and enable refugees to be reunited with their pets earlier than if the normal rabies antibody titration test were used.

The date of the coming into force of this instrument could not be moved until 3 October 2022, without there being a gap in the ability to use the ELISA test and

ⁱ [Fluorescent Antibody Virus Neutralisation \(FAVN\) Tests \(defra.gov.uk\)](https://www.defra.gov.uk)

disruption to the operational delivery of this work. Englandⁱⁱ and Walesⁱⁱⁱ have similar provisions in place permitting the use of the ELISA test (which is carried out on behalf of all administrations by the Animal and Plant Health Agency) and will be extending these provisions to permit use of the test from 1 October 2022. The extension is being brought into force at the same time as England and Wales in order to ensure there is no disruption to the operational delivery of this work and the best use of quarantine facilities throughout Great Britain.

The Scottish Government fully acknowledge the difficulties that breaching the 28 day rule poses in terms of Parliamentary scrutiny, and regret that on this occasion it has not been possible to comply with this requirement.

ⁱⁱ [The Non-Commercial Movement of Pet Animals \(Amendment\) \(England\) Regulations 2022 \(legislation.gov.uk\)](#)

ⁱⁱⁱ [The Non-Commercial Movement of Pet Animals \(Amendment\) \(Wales\) Regulations 2022 \(legislation.gov.uk\)](#)