

Rural Affairs and Islands Committee

25th Meeting, 2023 (Session 6), Wednesday,
4 October

Regulatory alignment with EU law

Background

1. The [Constitution, Europe, External Affairs and Culture \(CEEAC\) Committee wrote on 7 September 2023 to all committees](#) to provide an update on the development and delivery of new scrutiny arrangements which will address how devolution is working now the UK is outside the European Union.
2. As part of that update, the CEEAC Committee provided further information about the [EU law tracker](#). The primary purpose of the tracker is to provide transparency and allow committees, stakeholders, including business, and the public to track relevant developments in EU law. This will allow business and civil society in Scotland to be aware of EU legislative developments which may affect them and also assist the Parliament in scrutinising the Scottish Government's policy commitment to EU alignment.
3. Two reports based on the tracker will be published a year. These reports will include a number of case studies outlining changes to EU law and will be published and made available to the relevant subject committees.
4. The CEEACC stated that "there is an expectation that the subject committees will consider the case studies relevant to their respective remits as part of their role in scrutinising the Scottish Ministers' policy commitment to align with EU law".

EU law tracker first report

5. The [CEEAC Committee wrote again to all committees on 14 September with the first report from the EU law tracker](#).
6. The [first report](#) states that "overall to date, the Scottish Government commitment to align with developments in EU law has largely been upheld; mostly this is the result of an equivalence between the UK/Scottish statute book and the EU legal acquis that is a legacy of the UK's previous EU membership".
7. The report goes on to note that, "over time, as the UK-wide legislation continues to develop separately from EU legislation, the potential for UK-EU divergence will increase and, consequently, any decision for Scotland to align with EU developments may have more visible divergence effects domestically *if* the rest

of the UK, or other parts of the UK, opt not to join Scotland in its choice to align with the EU”.

8. The tracker identifies **two animal health and welfare case studies** and **one chemical case study** as falling in the RAI Committee’s remit. It also details **one plant health case study** for the NZET Committee’s remit which, as plant health falls in the RAI Committee’s remit, the clerks have agreed will be considered by this Committee. The case studies are set out in Annexe A.
9. The tracker breaks down the case studies into categories. The first category details case studies which result from changes being made to EU law via [tertiary EU legislation](#) (i.e. EU subordinate legislation). Three examples relate to the RAI remit in this category: case study 1 – the animal health law – which the report identifies as resulting in partial alignment; case study 2 – the official controls regulation – which the report identifies as resulting in divergence, with the policy impact expected to be minimal at present; and case study 3 – plant pests – which the report identifies as resulting in divergence.
10. The second category details case studies which result from the repeal and replacement of EU law and one example relates to the RAI remit in this category: case study 4 – fertilising products – which the report identifies as resulting in potential divergence.
11. The third category details case studies which result from the adoption of new EU laws. There are no examples which relate to the RAI remit in this category.

For decision

12. The Committee is invited to note the case studies set out in Annexe A and to write to the Scottish Government to ask—
 - In relation to the legislative changes to EU animal health law (case study 1) which has resulted in partial alignment—
 - why it has made some updates to this retained/assimilated EU law since the end of the transition period but has not made all the changes to Scots law to achieve full alignment;
 - which changes remain to achieve full alignment; and
 - what will be the impact of any divergence between Scots law and EU law in this policy area.
 - In relation to legislative changes to the EU official controls regulation (‘OCR’; case study 2) which has resulted in divergence (with the policy impact expected to be minimal at present)—
 - the reasons why the retained EU law has not been updated to reflect changes that continue to be made to the EU law version of the OCR;
 - for further information about how the [UK’s new Border Target Operating Model](#) (BTOM; the UK’s new approach to security, sanitary and phytosanitary checks at the border) will likely impact the retained versions of OCR legislation in Scotland when it is introduced; and

- what will be the impact of divergence between Scots law and EU law in this area.
- In relation to the plant pests regulation (case study 3) which has resulted in divergence—
 - why the retained version of the Plant Health Regulation (PHR) in Scotland is not being updated to reflect technical changes being made to the EU version of the PHR; and
 - what will be the impact of divergence between Scots law and EU law in this policy area.
- In relation to the fertilising products regulation (case study 4) which has resulted in potential divergence—
 - why the changes that have been made at EU level since the end of UK transition period have not been reflected in the Scots Law retained version of the earlier Fertilisers Regulation; and
 - what will be the impact of any potential divergence between Scots law and EU law in this policy area.

**Rural Affairs and Islands Committee clerks
September 2023**

Case studies – RAIC remit

Examples of the evolution of EU law via tertiary legislation

Case study 1 – animal health and welfare – Regulation (EU) 2016/429 (the ‘Animal Health Law’)

Policy Area: Animal Health and Welfare			
Detailed EU Law Tracker Entry: 45			
EU Law Instrument	Evolution of EU Law	Divergence vs Alignment	Competence
<p>Regulation (EU) 2016/429 on transmissible animal diseases (the ‘Animal Health Law’)</p> <p>The AHL Regulation sets out EU rules on animal health.</p> <p>When adopted in 2016, the AHL provided for the repeal of a series of existing EU acts related to animal health which ceased to apply in EU law in April 2021.</p> <p>Key aspects of the AHL relate to: biosecurity measures (e.g., diagnosis and vaccination); registration and tracing of animals and animal products; entry of animals and animal products into the EU; disease control and eradication (including re restrictions on movements, culling and vaccination).</p>	<p>295 implementing or delegated EU law acts adopted</p> <p>Under the AHL Regulation, the European Commission can adopt legislation to supplement or implement its provisions. These powers are regularly used by the EC primarily in response to biosecurity issues.</p> <p>For example, of the 64 acts adopted in 2023 so far under the AHL, 48 relate to outbreaks of particular diseases (primarily African Swine Fever, sheep, and goat pox, HPAI or ‘Bird Flu’) in certain types of animals in certain EU member states or third countries with a trade agreement (including the UK).</p>	<p>Partial Alignment</p> <p>The Animal Health Act (AHA) 1981 and the Animal Health and Welfare (Scotland) (AHW) Act 2006 set out the main provisions regarding animal health in Scots Law.</p> <p>Prior to UK withdrawal from the EU consequential amendments were made to these primary acts via SSI, including for example The Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/71).</p> <p>Since the end of the UK Transition Period subsequent changes have been made by SSI that are relevant to animal health law in Scotland. One of these – The Animal Health (Notification and Control Measures) (Miscellaneous Amendments) (Scotland) Order 2021 (SSI 2021/130) – made updates to legislation to reflect the introduction of the AHL at EU level.</p> <p>These updates result in partial alignment between Scots Law and EU Law in the area of animal health.</p>	<p>Devolved</p>

Case study 2 – animal health and welfare – Regulation (EU) 2017/625 (the Official Controls Regulation)

Policy Area: Animal Health and Welfare			
Detailed EU Law Tracker Entry: 61			
EU Law Instrument	Evolution of EU Law	Divergence vs Alignment	Competence
<p>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)</p>	<p>105 implementing or delegated EU law acts adopted</p>	<p>Divergence Policy Impact Expected to be Minimal at Present</p>	<p>Devolved</p>
<p>The 'OCR' sets out EU rules on controls that must be performed on all agrifood products entering or circulating in the EU Single Market and on all agrifood producers or traders operating in the EU.</p> <p>The scope of the OCR includes rules on: food and feed safety; use of GMOs; animal health and welfare; organic production and labelling; as well as rules regarding imports of agrifood goods and animals from non-EU countries.</p> <p>Adopted in March 2017 the OCR has applied since December 2019 – it therefore applied in UK law as EU law at that time.</p>	<p>Under the OCR the European Commission can adopt legislation to adjust rules on official controls to meet specific situations – particularly in relation to animal welfare and human health – the EC does this regularly.</p> <p>Although changes are regularly made to the OCR via EU implementing legislation, these tend to be technical, specific, or procedural.</p> <p>Examples from 2020/23 include: Commission Implementing Regulation (EU) 2023/1032 establishing measures to prevent the introduction and spread of Tomato brown rugose fruit virus in the EU; or Commission Implementing Regulation (EU) 2023/514 amending the list of third countries in the OCR with an approved control plan and including Moldova on the list of those authorised to trade consignments of eggs intended to be placed on the EU market as Class A eggs.</p>	<p>A retained EU law version of the OCR is implemented in Scotland through a series of SSIs including: The Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/407); The Official Controls (Agriculture etc.) (Scotland) Regulations 2019 (SSI 2019/412); The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (SSI 2019/421). These REUL versions of the OCR transposed in Scotland are not by default updated to reflect changes that continue to be made to the EU law version of the OCR.</p> <p>It is worth noting that when the UK's new Border Target Operating Model (BTOM) is introduced, it will likely impact the REUL versions of OCR legislation in Scotland – the next edition of the EU Law Tracker will discuss the implications of the BTOM in more detail.</p>	

Case study 3 – plant health – Regulation (EU) 2016/2031 on protective measures against pests of plants

Policy Area: Plant Health			
Detailed EU Law Tracker Entry: 69			
EU Law Instrument	Divergence vs Alignment	Divergence vs Alignment	Competence
Regulation (EU) 2016/2031 on protective measures against pests of plants	61 implementing or delegated EU law acts adopted	Divergence	Devolved
<p>The Plant Health Regulation (PHR) lays down measures to protect plants in the EU territory and circulating in its market from pests and diseases while also promoting environmentally sustainable practices in the plant sector.</p> <p>Key provisions of the PHR include: tracking 'priority pests' that are the most potentially harmful to EU plant sector; requiring national plans to manage or contain pest outbreaks; enabling traceability of plants through the plant passport scheme; requirements for a pre-export certificate for plants moving between EU countries or outside the EU; providing for risk-based, preventive measures on plant imports as need to prevent against the introduction or spread of pests.</p>	<p>Adopted in October 2016, the PHR became applicable in December 2019 so before UK withdrawal from the EU.</p> <p>Since the end of the Transition Period 61 implementing or delegated EU acts have been adopted under the PHR – the majority of these make technical provisions relating to specific plants from specific regions. Some related to imports of certain plants from the UK to the EU.</p> <p>Examples include: Commission Implementing Regulation (EU) 2023/1511 regarding certain <i>malus sylvestris</i> (crab apple) plants originating in the UK; or Commission Implementing Regulation (EU) 2023/1174 regarding certain <i>crataegus monogyna</i> (common hawthorn) plants originating in the UK.</p>	<p>A REUL version of the PHR was amended by The Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1482) which made changes to, in effect, replicate the EU PHR and create a 'single market' in plant health covering Great Britain and UK Crown Dependencies.</p> <p>Additional technical changes were made in Scotland to the REUL version of the PHR by The Plant Health (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/159) and The Plant Health (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2021 (SSI 2021/490) – the REUL version of the PHR in Scotland is not being updated to reflect technical changes being made to the EU version of the PHR.</p>	

Examples of the repeal and replacement of EU laws

Case study 4 – chemicals – Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products

Policy Area: Chemicals			
Detailed EU Law Tracker Entry: 126			
EU Law Instrument	Evolution of EU Law	Divergence vs Alignment	Competence
<p>Regulation (EU) 2019/1009 laying down rules on the making available on the market of EU fertilising products</p>	<p>1 EU law act repealed / replaced, and 8 delegated EU law acts adopted under the new Regulation</p>	<p>Potential Divergence</p>	<p>Devolved</p>
<p>This Fertiliser Regulation lays down EU rules on safety, quality, and labelling requirements for EU fertiliser products (CE marked). It sets maximum levels of contaminants and pathogens, minimum content of nutrients as well as standards for labelling and testing.</p> <p>The FR was adopted in June 2019 but became applicable in EU law in July 2022 at which time an earlier Fertiliser Regulation (EC No 2003/2003) was repealed.</p>	<p>Since the end of the UK Transition Period, the FR has taken legal effect, replacing the earlier version and 8 delegated acts have been adopted under the new FR.</p> <p>Of the latter, six amend FR Annexes to reflect changes in the development of products or components of them. Examples include: Delegated Regulations (EU 2021/2086 and EU 2021/2087 which respectively add precipitated phosphate salts and thermal oxidation materials as a component category in EU fertilisers.</p> <p>Other changes adopted have set out requirements for EU fertiliser products containing inhibiting compounds (DR EU 2022/1519) and criteria on agronomic efficiency and safety for the use of by-products in EU fertilising products (DR EU 2022/973).</p>	<p>In Scotland, The EC Fertilisers (Scotland) Regulations 2006 (SSI/2006/543) implemented the earlier Fertiliser Regulation (EC) No 2003/2003 which has now been repealed in EU law.</p> <p>Prior to UK withdrawal from the EU consequential technical amendments were made to EC Fertilisers Scotland Regulation by The Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 (SSI 2019/25) these did not reflect a change in policy.</p> <p>Changes that have been made at EU level since the end of UK Transition Period have not been reflected in the Scots Law retained version of the earlier FR.</p>	