November 2018

Dear Gillian,

EU EXIT LEGISLATION - PROTOCOL WITH SCOTTISH PARLIAMENT
POLICY AREA: ANIMAL HEALTH
- AH/11 - The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018
- AW/01 - The Animal Welfare (Amendment) (EU Exit) Regulations 2018
  (n.b. please note that only the transport section refers to non-agricultural animals and will be of interest to the ECCLR)

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell wrote to the Conveners of the Finance & Constitution and the Delegated Powers & Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach 2 notifications (as detailed in the heading above) which set out the details of the SI’s which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this instrument. These are part of a series of such notifications that myself and Ministerial colleagues will be sending to Parliamentary committees over the coming weeks. Please note, we are yet to have sight of the final SIs and they are 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.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
These particular notifications and Instruments ensure that:

- AH/11: current EU-wide rules that are necessary to govern the system of identification of equidae have been set down into UK statute and

- AW/01: the retained EU Regulations protecting the welfare of animals whilst being transported, kept at control posts or at the time of their killing will continue to be operable and enforceable in the UK, after the UK leaves the EU in a no deal scenario. While slaughter is a matter for the REC Committee, the legislation on transport being amended relates to the transport of any vertebrate animal for commercial purposes, and is therefore applicable beyond the scope of agricultural animals.

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

I look forward to hearing from you within 28 days from the date of this letter.

MAIRI GOUGEON
NOTIFICATION TO THE SCOTTISH PARLIAMENT:
EXITING THE EUROPEAN UNION
ANIMALS
The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018

Brief explanation of law that the proposals amend

- The proposed SI will amend the directly applicable EU Commission Implementing Regulation (EU) 2015/262, which lays down rules pursuant to Council Directives 90/427/EEC and 2009/156/EC as regards the methods for the identification of equidae (Equine Passport Regulation), becoming retained EU law following the UK’s exit from the EU.

- The legislation is particularly important to facilitate the movement of equines from the UK and into the EU because it sets out the necessary standards of identification and exists in particular to ensure that horse meat entering the food chain is safe. The EU established a system to identify equine animals individually and to record whether any horse has been given veterinary medicine that would mean it must be excluded from the food chain.

- The proposed SI will also amend related Commission Decision/s:
  - 92/216/EEC - relating to the collection of data concerning competitions for equidae and the competent authority of each constituent territory of the UK appointing a coordinating authority responsible for collecting the data concerned
  - 92/353/EEC - laying down the criteria for the approval or recognition of organisations and associations which maintain or establish stud-books for registered equidae and
  - 92/354/EEC - laying down certain rules to ensure coordination between organisations and associations which maintain or establish stud-books for registered equidae

- The proposed SI will also amend relevant related provision in Annex 1 (Veterinary and Phytosanitary matters) to the Agreement on the European Economic Area.

Summary of the proposals and how these correct deficiencies

- The amendments in the proposed SI will not change existing policy and will make modifications that will be needed, in the event of a ‘no deal’ UK exit from the EU on 29 March 2019, to generally maintain in the UK the system that is in place that governs equine identification and aspects of the safety of the food chain.

- In particular, the amendments in the proposed SI will amend provision on administrative functions (i.e. functions that do not involve making legislation) that
currently provide for exercise of functions by Member States to instead refer to functions being exercised, post exit, by Scottish Ministers. The proposed SI will not make any amendments to legislative functions (i.e. functions that involve making legislation).

- The proposed SI will make modifications to preserve in the UK the effective application of in particular Commission Implementing Regulation (EU) 2015/262 regarding the identification of equidae. Various amendments to EU references will be made by the proposed SI. These include references to ‘Member States’ and ‘Member State competent authority’. Where necessary these will be replaced or updated with references to the ‘United Kingdom’ or Scotland, England, Wales and Northern Ireland - as ‘constituent territories of the United Kingdom’ - or to ‘appropriate authority’ being, in relation to Scotland, the Scottish Ministers.

- EU related cross-references in the legislation will be amended as appropriate. For example, redundant cross references to EU legislation will be removed, replaced or updated with the correct references to EU or domestic legislation.

**An explanation of why the change is considered necessary**

- The changes that will be made by the proposed SI are necessary to ensure that the current EU-wide rules that govern the system of identification of equidae can continue to operate effectively in the UK context after EU Exit. It is hoped that maintaining in the UK a system which is based on EU wide rules will help to facilitate and maintain trade and travel of equines between the UK and the EU.

**SG categorisation of significance of proposals**

- **Category A**: the deficiencies that will be corrected in the proposed SI are of a technical nature and do not include any policy changes. The Scottish Government agrees with DEFRA on the appropriate approach. So far as the proposed SI will make provision for exercise of functions it will do so in a manner consistent with the devolution settlement.

**Impact on devolved areas**

- The proposed SI will make provision in a devolved area and, in making provision to address deficiencies in Commission Implementing Regulation (EU) 2015/262 in particular as it becomes retained EU law, will respect the devolution settlement. For example, amendments will be made to reflect that certain functions of Member States in terms of the Regulation as it stands will instead be exercisable by the ‘appropriate authority’ defined as, in relation to Scotland, the Scottish Ministers. Similarly, where the Regulation refers to functions of member State competent authorities, amendments will be made to the effect that the competent authority in the UK will be the ‘appropriate authority’ and so, in relation to Scotland, the Scottish Ministers.
Summary of stakeholder engagement/consultation

- The Scottish Government has not undertaken any specific stakeholder engagement as the proposed SI will not effect any changes to existing policy and will instead make technical amendments to legislation. The SG will however continue to meet frequently with equine stakeholders where any related matters may be highlighted.

A note of other impact assessments (if available)

- An impact assessment has not been carried out in relation to the proposed SI as it is aimed at generally preserving the effect of the current regimes.

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

- The Scottish Ministers believe that the changes in the proposed SI will be necessary to ensure that the identification requirements of equine animals can be dealt with in the same way as they are now after the UK’s withdrawal from the European Union.

- In current circumstances where there is existing directly applicable EU law having effect throughout the UK and which requires to be amended in order to prepare for a ‘no-deal’ exit from the EU, the Scottish Ministers consider that it is appropriate for the fixing legislation to be made on a UK-wide basis by the UK Government. This is particularly the case in circumstances where the instrument protects Scottish Ministers’ interests under the devolution settlement.

Where relevant – detail how Scottish Ministers have had regard to the guiding principles on animal welfare and the environment

- As highlighted earlier, the amendments that will be made by the proposed SI will not change existing policy and will make modifications needed to generally preserve the application of existing EU arrangements, in particular Commission Implementing Regulation (EU) 2015/262 regarding the identification of equidae, as retained EU law within the UK after EU exit. The relevant EU law has been made with the guiding principles on animal welfare and the environment in mind. In these circumstances, what will become retained EU law will continue to give sufficient regard to the guiding principles (in particular that regard must be had to the welfare requirements of animals as sentient beings).

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

- This instrument is subject to the negative procedure and will be laid for sifting at Westminster on 20th November. We are working with DEFRA on the basis that no
EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

If the Scottish Parliament does not have 28 days to scrutinise detail why not?

- N/A – The Scottish Parliament will have 28 days to scrutinise.

Information about any time dependency associated with the proposal

- N/A.

Any significant financial implications?

- None – the proposed SI is not expected to have any financial implications, including for stakeholders, in Scotland.

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

- There are no anticipated broader governance issues anticipated with the proposed SI and the SG will continue its good working relationships with UK Government and the other Devolved Administrations. The proposed SI makes technical amendments to ensure the continued operation of the current regime for equine identification in the UK.

Lead Official:    JESUS GALLEGOR
Animal Health and Welfare Division
Ext. 49796

01 November 2018
NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area

The Animal Welfare (Amendment) (EU Exit) Regulations 2018

A brief explanation of law that the proposals amend

The proposed SI is being made using powers in the European Union (Withdrawal) Act 2018 in order to correct deficiencies in what will become retained EU law relating to animal welfare, to allow that to continue to operate effectively in the event of a ‘no deal’ UK withdrawal from the European Union.

The proposed SI amends the following EU legislative instruments:

- Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing
- Council Regulation (EC) 1255/97 concerning Community criteria for control posts and amending the route plan in Directive 91/628/EEC

These EU Council Regulations put in place EU-wide standards and regimes to protect the welfare of animals during slaughter, during transport, and at control posts that they may stop at during a journey. They are directly applicable to the UK, including Scotland and will become part of retained EU law following the withdrawal of the UK from the European Union.

Council Regulation (EC) 1099/2009 lays down minimum welfare standards for the killing of animals bred or kept for the production of food and other products and for depopulation purposes. It requires that animals shall be spared any avoidable pain, distress and suffering during their killing and related operations. It sets out requirements for the protection of animals being killed in slaughterhouses and elsewhere including provisions for standard operating procedures to be in place; for the installation and use of equipment for restraining and stunning animals to protect their welfare; and the accepted methods of stunning and killing for animals. It also requires slaughterers and animal handlers to be trained and competent in the tasks they undertake. Certificates of competence are required by slaughterhouses in the EU to demonstrate that an individual has been trained and assessed as reaching a sufficient level of competence to undertake the animal handling, stunning and killing and related operations required of them.

Council Regulation (EC) 1/2005 lays down minimum standards for the transport of live vertebrate animals within the EU in connection with economic activity, including checks carried out on animals entering and leaving the EU, and requirements as to how commercial animals must be transported. The Regulation requires that all transporters are authorised and drivers and attendants must have training to protect animal welfare. If animals are transported long distances, the vehicles must be approved and the transporter must have a different, more stringent authorisation.
animals are transported to a different country, then they are required to be accompanied by a journey log.

Related to this, Council Regulation (EC) 1255/97 sets criteria for control posts where animal are unloaded, fed, watered and rested during long journeys under the requirements of 1/2005. This includes process and requirements for the listing of control posts and conditions under which they operate. It also amends the route plan referred to in the Annex to Directive 91/628/EEC, which indicates times and places where the animals will be rested. It sets out the requirements for approval of control posts, health and hygiene requirements, how they should be constructed and operated.

Summary of the proposals and how these correct deficiencies

The UK Government intends to bring forward the proposed SI under section 8 the European Union (Withdrawal) Act 2018. The purpose is to address deficiencies in retained EU law to operate effectively arising from the withdrawal of Scotland as part of the United Kingdom from the European Union. The proposed SI will ensure that the retained EU Regulations protecting the welfare of animals whilst being transported, kept at control posts or at the time of their killing will continue to be operable and enforceable in the UK, after the UK leaves the EU, in a no deal scenario. It also introduces a policy change in relation to certificates of competence for slaughterers as a consequence of leaving the EU. It should be noted that this SI deals only with the transfer of non-regulatory functions. The transfer of regulatory functions will be made in a separate SI, further information is provided later in this document.

Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing

The Council Regulation currently contains various EU references, terminology, definitions and processes that will not be appropriate once the UK is no longer an EU member state. The proposed SI will address these deficiencies by making appropriate deletions or replacements, including a new definition of “Appropriate Authority” (Scottish Ministers for Scotland) and an amended definition of “competent authority”, referring to the Appropriate Authority. Various non-legislative functions of Member States or Competent Authority as previously defined, such as issuing guidelines and certificates of competence, will be conferred on the Appropriate Authority or the new competent authority.

As well as these technical changes to ensure operability of the Regulation after exit, the instrument also introduces a policy change to Council Regulation (EC) 1099/2009. Currently, certificates of competence issued to slaughterers and animal handlers by other Member States must be recognised in the UK. Earlier this year the EU Commission publicly stated that UK certificates of competence for slaughter will no longer be recognised in the EU after the UK exits the EU. The amendments made to Article 21(4) of Council Regulation (EC) 1099/2009 therefore removes this mutual recognition requirement. This decision is based on our inability to suspend or revoke certificates of competence issued in other EU Members States in instances of welfare breaches after we exit the EU. Anyone working with live animals in
slaughterhouses in the UK will need to hold a UK issued certificate of competence in order to continue to work. We understand from Food Standard Scotland that there are few workers in Scotland that will be affected; any that are will be encouraged to apply for a UK Certificate of Competence before exit day to ensure continuity of employment.

**Council Regulation (EC) 1/2005 on the protection of animals during transport and related operations**

This Regulation currently contains various EU references, terminology, definitions and processes that will not be appropriate once the UK is no longer an EU member state. This includes numerous references to community, Member States, intra-community movement, and entry into and exit from the EU. The SI will address these deficiencies by making appropriate deletions or replacements, so that the Regulation operates effectively for transport within the UK and for animals entering or leaving the UK. There are new definitions of “competent authority” and “Appropriate Authority” similarly to Regulation 1099/2009. The standard forms that are contained in the Regulation will be replaced by forms made available by the Appropriate Authority.

This Regulation requires transporters to hold transporters authorisations. It also provides for certificates of competence, in this case for drivers and attendants of road vehicles, along with certificates of approval for the means of transport. On EU exit, non-recognition of such documents issued in EU countries (or in other EEA countries, to which this Regulation also applies) would, in this case, lead to unacceptable friction at the border with the EU. The decision has therefore been taken to continue to recognise certificates issued in these countries post-exit. UK competent authorities will retain the ability to notify the Member State of issue of any infringements of the Regulation. There will be no mechanism to compel that Member State to take action in respect of infringements of the Regulation as applicable in the UK, including suspending or withdrawing the authorisation. However, UK competent authorities will retain the ability to take other enforcement measures under the Regulation, and under other domestic legislation.

**Council Regulation (EC) 1255/97 concerning Community criteria for control posts and amending the route plan in Directive 91/628**

This Council Regulation currently contains various EU references, terminology, definitions and processes that will no longer be appropriate when the UK is not an EU member state. The SI will address these deficiencies by making appropriate deletions or replacements. The definition of “competent authority” is amended to refer to the “Appropriate Authority”, defined in relation to Scotland as the Scottish Ministers.

**An explanation of why the change is considered necessary**

Although there is Scottish legislation on animal welfare during transport and at slaughter, the SSIs flow from and implement the directly applicable EU legislation and could not function in isolation. Both slaughter and transport are situations that can pose significant challenges to animal welfare, and it is important that the current EU rules, standards and the mechanisms to enforce them, are upheld post exit.
The amendments to these EU instruments in the proposed SI are required to ensure their on-going operability and therefore business continuity and the continued protection of animal welfare in these situations. Maintaining a UK system that meets EU wide rules should also help to facilitate and maintain trade between the UK and the EU.

It is possible that these amendments may be reviewed post exit, particularly with respect to transport. For example, in the event of a deal being struck, it is possible that mutual recognition of certificates of competence may be re-instated. The UK Government is also currently consulting on whether to ban the export of live animals from the UK for slaughter; Scottish Ministers will consider the results of that consultation and what changes, if any, should be made to export arrangements from Scotland. However, the proposals for the SI will protect business continuity and welfare in the event of a no-deal exit.

Scottish Government categorisation of significance of proposals

This instrument has been categorised as category A. The instrument covers technical fixes to animal welfare requirements with which businesses/operators must comply currently, tailored to a UK context on EU exit. It does not significantly change current rules and will allow Scottish Ministers the ability to make decisions for Scotland. The changes are principally minor and technical in nature and involved in ensuring continuity of law. Where it makes provision for the exercise of functions, it does so in a manner consistent with the devolution settlement.

The proposed SI does introduce a policy change on animal welfare during slaughter, removing mutual recognition of EU certificates of competence for slaughter. As noted previously, the EU Commission have publicly stated that UK certificates of competence for slaughter will no longer be recognised in the EU after the UK exits the EU and we will not be able to compel the suspension or withdrawal of certificates of competence issued in Member States in instances of welfare breaches after we exit the EU. Food Standards Scotland advise that this change will affect very few workers in Scotland (precise figures are unavailable) and therefore will have limited implications. Accordingly, this is considered a case where there is an obvious policy answer.

Impact on devolved areas

Animal welfare is devolved; all the EU Regulations to be amended by this instrument fall within this area of devolved competence. The proposed SI will ensure that functions within the EU Regulations it amends are, as regards Scotland, transferred to Scottish Ministers. For example, amendments will be made to reflect that certain functions of Member States under the EU Regulations as they stand will instead be exercised by the “Appropriate Authority”, which in relation to Scotland is defined as the Scottish Ministers. Similarly, certain functions of competent authorities of Member States will be amended to the effect that the competent authority in the UK is the “Appropriate Authority” and so, in relation to Scotland, the Scottish Ministers.
This proposed SI deals only with non-legislative functions. Those functions in the EU Regulations that relate to making legislation are intended to be transferred in a separate UK SI, which will be notified to the Scottish Parliament at a later date. It is intended that this later SI will respect and protect the Scottish Ministers powers to make subordinate legislation instead of the EU institutions in those areas specified and that those functions will be transferred to the Scottish Ministers in relation to Scotland, but retaining the option that the Secretary of State could also exercise functions for the whole of the UK (or any combination of territories within the UK), with consent.

The change in terms of powers and competence highlights that additional capacity may be required in Scotland and the rest of the UK to support the repatriation of powers in this area to UK authorities.

**Summary of stakeholder engagement/consultation**

We are in regular contact with stakeholders, including regarding the move towards leaving the EU. There has been no focussed engagement on this proposed SI as the amendments proposed do not generally make changes to existing policy; they are mostly of a technical nature to ensure operability of legislation post-exit and to transfer functions to Scottish Ministers where appropriate.

The proposed policy change to end automatic mutual recognition of EU Certificates of Competence for slaughter has been discussed with Foods Standards Scotland, who advise that there are very few workers affected. Business operators will shortly be notified and administrative mechanisms will be put in place for any EU nationals to obtain UK authorisation prior to exit day so that they can continue working seamlessly.

**A note of other impact assessments, (if available)**

An impact assessment has not been produced by the UK Government for this proposed instrument as there are limited impacts on business and no significant impacts on the public sector. We agree with this assessment. No impact assessments have been completed by the Scottish Government as the proposals are in general for technical amendments to ensure operability of legislation post-exit, therefore none are considered necessary. There will be no change to monitoring and enforcement requirements. The impact on charities or voluntary bodies is minimal. Administrative mechanisms will be put in place to deal with changes to mutual recognition of qualifications/authorisations. Applying and being assessed for a certificate of competence in the UK carries a cost (of around £225); however, we have been advised by Food Standard Scotland that that there will be very few workers in Scotland affected and the cost to businesses should be minimal.

**Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation**

The Scottish Ministers believe that the changes in the proposed SI are necessary to secure continuation of an effective regime for animal welfare in transport and slaughter, and to provide continuity for business in these areas on EU exit. The policy areas covered are such that there is existing harmonised EU legislation in
place and good agreement across the UK on appropriate fixes to this. The Scottish Ministers consider that it is appropriate therefore for the fixing legislation be made on a UK-wide basis by the UK Government. This is on the basis that there will be in the proposed SI an appropriate transfer of powers to the Scottish Ministers. Allowing the UK Government to deal with these fixes on our behalf is the most efficient use of resources.

Where relevant – Detail how Scottish Ministers’ have had regard to the guiding principles on animal welfare and the environment

This proposed SI and the legislation that it amends are expressly concerned with safe-guarding the welfare of animals during transport and slaughter. The legislation to be amended was made having regard to the welfare requirements of animals as sentient beings. This proposed SI is limited to fixing deficiencies in that legislation arising from EU exit and it continues to uphold that principle

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

This instrument is subject to the negative procedure and will be laid for sifting at Westminster on 13th November. A decision from the Sifting Committee is expected around 29 November. We are working with Defra on the basis no EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

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

It is expected that the Scottish Parliament will have 28 days to scrutinise the SI.

Information about any time dependency associated with the proposal

None

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

We consider it relevant to the provisions to be amended in this proposed SI to include information on governance and how it will be required and monitored post-EU Exit.

Council Regulation (EC) 1255/97 concerning Community criteria for control posts and amending the route plan in Directive 91/628

Currently there is a requirement for the Competent Authority of the place of departure to notify the movement of animals passing through control posts via the information exchange system. This requirement will be removed by the proposed SI as the UK will no longer have access to the EU information exchange system in the event of a no deal exit. Informal notification may still be made to the competent
authorities of EU Member States as a matter of courtesy. If a deal is struck and the
UK retains access to the information exchange system, this requirement may be re-
instated in future.

Council Regulation (EC) 1/2005 on the protection of animals during transport and
related operations

Currently Competent Authorities of Member States are required to conduct
inspections of animals, means of transport and documents to check compliance with
these regulations, and to submit annual reports of those inspections to the
Commission. The amendments in the proposed SI retain the checks, but remove the
requirement for an annual report to the Commission as it will no longer be
appropriate once we are not part of the EU. Appropriate Authorities may consider
publishing information from such inspections where in the public interest and in line
with data protection requirements

As noted previously, the effect of the proposed SI is to continue to recognise
transporter authorisations, Certificates of Competence for drivers and attendants and
Certificates of Approval for means of transport issued in EU Member States after
exit. The proposed SI will retain appropriate enforcement powers in relation to
workers and vehicles authorised in the EU insofar as they operate in the UK post exit
However, it removes current requirements for information exchange on any such
action taken as the UK will no longer have access to the information exchange
system after exit. It is recommended that informal, administrative information
exchange mechanisms are developed in the interests of continuing co-operation and
courtesy across our borders with the EU.

Any significant financial implications?

Administrative mechanisms will be put in place to deal with the end of mutual
recognition of EU Certificates of Competence for slaughter. It is unlikely that there
will be a significant number of workers affected and any cost is anticipated to be
minimal. No other financial implications are anticipated.

Lead Official: Jesus Gallego
Animal Health and Welfare Division
Ext 49796

01/11/2018