NOTIFICATION TO THE SCOTTISH PARLIAMENT

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

The Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019

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 and animal health.

The proposed SI amends the following UK legislative instruments:

- The Farriers (Registration) Act 1975
- The Animal Health Act 1981
- Three Orders made under the Veterinary Surgeons Act 1966 (“the 1966 Act”)

The provision to be made in the proposed SI amending the three Orders under the 1966 Act the Veterinary Surgery (Rectal Ultrasound Scanning of Bovines) Order 2010; the Veterinary Surgery (Epidural Anaesthesia of Bovines) Order 2010; and the Veterinary Surgery (Artificial Insemination) Order 2010) does not fall within devolved competence. In terms of section G2 of Part 2 of schedule 5 of the Scotland Act 1998 the regulation of the health professions – which includes in particular the veterinary surgeon profession regulated by the 1966 Act - is a reserved matter. Section 19 (restriction of practice of veterinary surgery by unqualified persons) of the 1966 Act provides that no individual shall practise, or hold himself out as practising or as being prepared to practise, veterinary surgery (defined in section 27 of the 1966 Act) unless registered in accordance with the Act. Section 19(4)(e) provides that this prohibition does not apply to the carrying out or performance of any minor treatment, test or operation specified by Order so long as any conditions so specified are complied with. These Orders (UK SIs) were made under section 19(4)(e) of the 1966 Act. They are not covered further in this notification.

Those parts of the proposed SI amending legislation in areas of devolved competence triggering this notification to the Scottish Parliament relate to amendments in relation to the mutual recognition of professional qualifications for farriers in the Farriers (Registration) Act 1975 and amendments to section 64A of the Animal Health Act 1981.

The Farriers (Registration) Act 1975 is an Act of the UK Parliament that is GB-wide in extent. It makes provision to regulate the farriery profession and protects the welfare of horses by ensuring that farriers may only conduct their business if they are appropriately trained and registered. It establishes the Register of Farriers (“the Register”) in which persons must be registered in order to carry out farriery, and the profession’s regulatory body; the Farriers Registration Council (“the Council”).

The Animal Health Act 1981 is also an Act of the UK Parliament that is in general GB wide in extent and forms the main domestic source of powers for legislation on
preventing and eradicating animal disease in GB. It covers a wide range of factors involved in the control of disease, including cleansing and disinfectant, animal movements/transport (including imports and exports), preventative treatment, and action required in a disease outbreak.

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 of the proposed SI is to address deficiencies in retained EU law to ensure that it operates effectively: the proposed SI will ensure that certain provisions regulating farriers in the Farriers (Registration) Act 1975 and certain retained EU law provision in the Animal Health Act 1981 will continue to be operable in the UK in the event of a ‘no deal’ UK exit from the EU on 29 March 2019.

The Farriers (Registration) Act 1975

This Act currently contains provisions that relate to the European Recognition of Professional Qualifications Regulations 2015 (“the 2015 Regulations”), which establish rules for the recognition of professional qualifications to enable persons from the EU, EEA and Switzerland to access the professions in which they are qualified under the same conditions as professionals in the UK. The Act provides that those entitled to be recognised as a farrier under the 2015 Regulations, are automatically entitled to entry in the Register. This gave EEA and Swiss nationals more favourable access to the Register than those from the rest of the world, whose qualifications have to be assessed by the Council to ensure that they comply with their required standards – and failing that pass an examination.

On EU exit, the 2015 Regulations will no longer make provision for mutual recognition of farriers’ qualifications. In line with this, the proposed SI amends these provisions to remove automatic mutual recognition of EU, EEA and Swiss Farrier qualifications and the right of holders of those qualifications to provide temporary and occasional farriery services in the UK. Farriers from these countries will continue to be able to apply to register and work in the UK on the same basis as farriers from third countries if they have a qualification comparable to that of those recognised by the Council.

The proposed changes do not affect holders of EU, EEA or Swiss qualifications who are already on the Register or who have applied to the Register in advance of exit day.

The Animal Health Act 1981

Section 64A of the Animal Health Act 1981 currently makes provision providing powers of entry and inspection for inspectors for the purpose of ascertaining whether the provisions of any order made under the Act in implementation of any EU obligation have been or are being complied with. Where SIs have been made under the Animal Health Act 1981 “in implementation of an EU obligation”, section 64A means an inspector has the power to enter certain premises in order to check compliance with that SI. The proposed changes to the Animal Health Act 1981 will
ensure that Inspectors will continue to have the right to exercise their powers as they do now. In future section 64A will provide for powers of entry and inspection for the purposes of ensuring compliance with any order under the Animal Health Act 1981 which is retained EU law.

To note for completeness that the proposed SI will also amend provision in paragraph 2A of schedule 3 of the Animal Health Act 1981 being a provision which does not extend to Scotland and so is not relevant for the purposes of this notification.

An explanation of why the change is considered necessary

The Farriers (Registration) Act 1975
The amendments to the Farriers (Registration) Act 1975 in the proposed SI are required to ensure operability of provisions for qualification for entry into the register and therefore business continuity and the continued protection of animal welfare. In particular, the UK is one of the few countries in the EU to place significant importance on farriers being properly qualified, and the amendment will help uphold standards within the UK, while continuing to allow suitably qualified and experienced farriers from elsewhere to practice in the UK.

Animal Health Act 1981
The amendments to the Animal Health Act 1981 are necessary to ensure that powers of entry and inspection currently available to inspectors by virtue of section 64A of that Act remain valid post exit.

Scottish Government categorisation of significance of proposals

This instrument has been categorised as category A. The instrument covers technical fixes to animal health and welfare provisions. It does not significantly change current rules. The changes are principally minor and technical in nature to ensure continuity of law.

The withdrawal of mutual recognition of EU qualifications will have minimal impact on farriers. The Council have advised Defra that only 17-20 farriers out of 2900 in the UK are affected by the mutual recognition provisions and in any event registrations that have already been granted and applications in progress will not be affected by the changes. Going forward, farriers from the EU may apply to be registered through the same route as those from non-EU countries.

Impact on devolved areas

Regulation of the farriery profession/ Animal Welfare
These are devolved matters. The Act falls within these areas of devolved competence. No transfer of functions or powers are required; the Governing body for the farrier industry across GB remains the Council.
Animal Health
Animal Health is also a devolved matter. The proposed changes to the Animal Health Act 1981 relate to ensuring powers available to inspectors are retained post exit.

Summary of stakeholder engagement/consultation
We are in regular contact with stakeholders, however, there has been no focussed engagement on this proposed SI as the amendments proposed do not make changes to existing policy; they are mostly of a technical nature to ensure operability of legislation post-EU exit.

We understand that Defra have been consulting the Council throughout the development of this SI.

A note of other impact assessments, (if available)
Defra has not produced an impact assessment for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. The Scottish Government agrees with this assessment and has not completed any impact assessments.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation
The Scottish Ministers propose to consent to UK SIs to fix deficiencies in the related domestic legislation. The changes proposed in this SI amending the Farriers (Registration) Act 1975 and section 64A of the Animal Health Act 1981 fall within devolved competence and are necessary to make appropriate arrangements for registration of farriers in the UK, to continue to secure the protection of horse welfare, and to preserve existing powers of entry and inspection of inspectors under section 64A of the Animal Health Act 1981 to aid in the control of animal disease. The provisions to be amended in the Farriers (Registration) Act 1975 and in section 64A of the Animal Health Act 1981 are provisions in Acts of the UK Parliament extending to England, Wales and Scotland and there is agreement on the appropriate fix.

The Scottish Ministers consider that it is appropriate for the fixing legislation be made on a UK-wide basis by the UK Government as the changes required are technical in nature and they will ensure consistency and certainty in law.

Where relevant – Detail how Scottish Ministers’ have had regard to the guiding principles on animal welfare and the environment
The amendments made by the proposed SI to the Farriers (Registration) Act 1975 relate only to the removal of mutual recognition provisions and do not otherwise change existing policy. The Farriers (Registration) Act 1975 is concerned with safeguarding the welfare of horses being tended to by farriers, by ensuring adequate regulation of that profession.
The amendments made by the proposed SI to section 64A of the Animal Health Act 1981 will not significantly change existing policy and will make modifications needed to generally preserve powers of entry and inspection for the purposes of ensuring compliance with any order under the Animal Health Act 1981 which is retained EU law instead of, as currently provided, for the purpose of ensuring compliance with any EU obligation.

In these circumstances it is considered that the Farriers (Registration) Act 1975 as amended, and section 64A of the Animal Health Act 1981 as amended, 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 proposed SI amends a power to legislate (by removing a redundant reference prohibiting the prescription of fees for applicants applying under the mutual recognition route) and is therefore subject to the affirmative procedure. It is proposed that the SI will be laid before the Sifting Committee on 12th December 2018 and is expected to be laid before the UK Parliament in February 2019. However, 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?**

No

**Any significant financial implications?**

No.

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