12th December 2018

Dear Edward,

EU EXIT LEGISLATION - PROTOCOL WITH SCOTTISH PARLIAMENT POLICY AREA: ANIMAL HEALTH

The Animals and Food (Transfer of Functions) (EU Exit) Regulations 2018

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 one notification (as detailed in the heading above) which sets out the details of the SI 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. This is 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 SI and it is 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 it is in keeping with the terms of this notification.

This particular notification and Instrument (The Animals and Food (Transfer of Functions) (EU Exit) Regulations 2018) is being made using powers under the European Union (Withdrawal) Act 2018 in order to correct deficiencies in what will become retained EU law. The effect of the proposed amendments will be, in most cases, to transfer particular

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legislative functions currently exercisable at an EU level so that these are instead exercisable by the ‘appropriate authority’, in most cases by regulations. The ‘appropriate authority’ is defined in the case of Scotland as the Scottish Ministers or the Secretary of State with consent from Scottish Ministers.

The legislation that will be amended by the Proposed SI is listed in Annex 1, Part A of the notification.

The Environment, Climate Change and Land Reform Committee, has been sent a copy of this notification for their interests. I am copying this letter to Graham Simpson MSP, Convener of the Delegated Powers and Law Reform Committee.

On this occasion the Scottish Parliament does not have the full 28 days to consider this proposal to consent. The reason for this is that agreement on a number of policy areas has only been achieved very recently due to the complexity of the instrument. The Scottish Parliament is respectfully asked to consider and respond to this notification by no later than 14 January 2019.

MAIRI GOUGEON

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

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

The Animals and Food (Transfer of Functions) (EU Exit) Regulations 2018

A brief explanation of the law that the proposals amend

The Animals and Food (Transfer of Functions) (EU Exit) Regulations 2018 ("the Proposed SI") is being made using powers under the European Union (Withdrawal) Act 2018 in order to correct deficiencies in what will become retained EU law relating to animals and food.

The law amended by the Proposed SI comprises a number of directly applicable EU instruments related to devolved matters, and one related to a reserved matter (trade in seal products). This notification only addresses the amendments to instruments related to devolved matters.

The legislation that will be amended by the Proposed SI is listed in Annex 1, Part A. These instruments will also be subject to amendments by other proposed UK Statutory Instruments which have been subject to notification to the Scottish Parliament. The proposals in this notification should be read alongside the notifications already sent to the Scottish Parliament listed in Annex 1, Part B.

Summary of the proposals and how these correct deficiencies

The amendments contained in the Proposed SI do not significantly change existing policy, but will be necessary in the event of a ‘no deal’ exit from the EU on 29 March 2019 to ensure the operability and continued implementation of the statutory measures detailed above.

In particular the amendments include provision for exercise of legislative functions by Ministers in place of existing EU legislative functions. As noted above, the amendments in the Proposed SI fall to be considered alongside / complement amendments made to the same instruments in the other proposed UK Statutory Instruments already notified to the Scottish Parliament (listed in Annex 1, Part B).

An explanation of why the change is considered necessary

These changes are necessary to allow the continuation of the effective functioning of retained EU law. In each policy area, legislative functions are conferred so as to be exercisable at a domestic – rather than EU – level after the UK’s exit from the EU. This is considered necessary and appropriate to ensure that the regimes continue to function smoothly, without the need for primary legislation every time a change in the technical details is required. In some areas, there is provision to introduce new legislation in future which adds detail to the existing rules and, if necessary specific requirements in new areas.
Scottish Government categorisation of significance of proposals

Category B. The Proposed SI is principally concerned with the transfer of legislative functions that previously rested with EU entities so that these are instead exercisable at a domestic level in the UK following EU exit.

Impact on devolved areas

The Proposed SI makes amendments to what will become retained EU law in devolved areas (with the exception of the amendment of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products).

The effect of the proposed amendments will be, in most cases, to transfer in particular legislative functions currently exercisable at an EU level so that these are instead exercisable by the ‘appropriate authority’, in most cases by regulations. The ‘appropriate authority’ is defined in the case of Scotland as the Scottish Ministers or the Secretary of State with consent from Scottish Ministers. Below are some examples of functions that post-exit will be exercised by the ‘appropriate authority’:

- making provision for laying down safeguard measures to prevent the introduction of animals or products from Third Countries for the protection of animals and consumers against Transmissible Spongiform Encephalopathies;
- prescribing the age of bovine animals when the vertebral column is to be treated as specified risk material; and
- making changes required to the technical rules about welfare of animals in transport, particularly in light of technological and scientific progress.

There are a number of areas where the approach to date has been based on a consistent and coherent UK-wide approach, which we see value in continuing post-EU Exit. In these areas the proposed amendments will result in functions being exercisable by the Secretary of State for the UK as a whole, but only with the consent of Scottish Ministers and the other devolved administrations. Below are some examples of functions that post-exit will be exercised by the Secretary of State with the consent of Scottish Ministers and the other devolved administrations:

- changing the BSE classification of a country, or of one of its regions;
- setting, modifying or omitting a national target for the reduction of the prevalence of the zoonoses and zoonotic agents (such as Salmonella);
- making or amending detailed rules on scientific criteria for zoonotic agents;
- approving third countries’ control programmes on zoonotic agents in connection with imports;
Also to note that in relation to approval of third countries’ control programmes on zoonotic agents, in the notification for Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2018 (“the proposed Zoonotic Disease SI”) an exception to the general rule that administrative functions were in that context exercisable, in relation to Scotland, by the Scottish Ministers and/or the Secretary of State with the consent of the Scottish Ministers was noted. That exception related to the function of receiving third country programmes detailing that country’s inspection and controls for zoonoses and zoonotic agents which must, at least, be equivalent to the controls required by 2160/2003, which was transferred to the Secretary of State alone. However, it was further noted in the notification for that proposed Zoonotic Disease SI that the final approvals process that follows receipt of such programmes would be amended in a separate, forthcoming transfer of functions UK SI and that the Scottish Government was continuing to work with DEFRA to ensure that any amendments to the approvals process fully respect the devolution settlement. The further amendments to the approvals process are to be made in the Proposed SI and while the Secretary of State alone will have the function of receiving third country programmes and certain other associated procedural functions, the function of approving third countries’ programmes is one exercisable by the Secretary of State only with the consent of the Scottish Ministers.

Summary of stakeholder engagement/consultation

Other than engagement with DEFRA and other devolved administrations there has been no formal stakeholder engagement or consultation in relation to the Proposed SI as there will be no measureable change to policy and no operational or financial impact is anticipated. There have, however, been informal discussions with the industry in a number of forums about the legislative steps necessary to comply with the European Union (Withdrawal) Act 2018.

A note of other impact assessments, (if available)

An impact assessment has not been carried out in relation to the Proposed SI as its main aim is to allow the continuation of the effective functioning of the regimes.

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

It is the view of the Scottish Government that the amendments in the Proposed SI are necessary and appropriate. In the current circumstances, where there is existing directly applicable EU law having effect throughout the UK that requires to be amended to prepare for a no-deal exit from the EU, the Scottish Ministers consider that it is appropriate for fixing legislation to be made on a UK-wide basis by the UK Government. Officials have worked with UKG to ensure the drafting delivers for our interests and respects devolved competence in Scotland.
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 are technical and therefore do not measurably change existing policy, however they are necessary to ensure that existing provision can continue to operate in the UK should the UK leave the EU under a 'no deal' scenario. The directly applicable EU law to be amended by the Proposed SI was made with these principles in mind and in those circumstances the retained EU law will continue to give sufficient regard to the guiding principles on animal welfare (in particular that regard must be given to the welfare requirements of animals as sentient beings).

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

There are no broader governance issues anticipated with the Proposed SI and the Scottish Government will continue its good working relationships with UK Government and the other Devolved Administrations.

We have been engaged in framework discussions in many of the policy areas covered by the Proposed SI with all the administrations of the UK and the relevant regulators. These framework discussions are progressing. The Scottish Government’s position is that these arrangements should be based on staying closely aligned with the existing EU regimes and maintaining existing standards of protection for animal and human health and animal welfare and also consumer protection.

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

The Proposed SI is subject to the affirmative procedure and will be laid in draft at Westminster on 17 January 2019. 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 Scottish Minister’s proposal to consent, why not?

On this occasion the Scottish Parliament does not have the full 28 days to consider this proposal to consent. The reason for this is that agreement on a number of policy areas has only been achieved very recently due to the complexity of the instrument. The Scottish Parliament is respectfully asked to consider and respond to this notification by no later than 14 January 2019.

Information about any time dependency associated with the proposal

N/A.
Any significant financial implications?

These Proposed SI is not expected to have any financial implications, including for the Scottish Government and for stakeholders in Scotland.

Lead Official:

Jesus Gallego
Animal Health and Welfare Division
Ext: 49796
06 December 2018
Annex 1

Part A

Instruments amended by The Animals and Food (Transfer of Functions) (EU Exit) Regulations 2018

Devolved matters

- Council Regulation (EC) No 1255/97 concerning Community criteria for control posts and amending the route plan referred to in the Annex to Directive 91/628/EEC

- Regulation (EC) No 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products


- Council Regulation (EC) No 21/2004 establishing a system for the identification and registration of ovine and caprine animals


- Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing


- Regulation (EU) 2016/1012 of the European Parliament and of the Council on zootechnical and genealogical conditions for the breeding, trade in and entry into the Union of purebred breeding animals, hybrid breeding pigs and the germinal products thereof

- Council Regulation (EC) 2160/2003 on the control of salmonella and other specified food-bourne zoonotic agents

**Reserved matters**


**Part B**

Other Statutory Instruments relevant to The Animals and Food (Transfer of Functions) (EU Exit) Regulations 2018 and subject to separate notification to the Scottish Parliament:

- The Animal Welfare (Amendment) (EU Exit) Regulations 2018
- The Animal By-Products and Control and Eradication of Transmissible Spongiform Encephalopathies (UK) (EU Exit) (Miscellaneous Amendments) 2018
- The Livestock (Records, Identification and Movement) (EU Exit) (Miscellaneous Amendments) Regulations 2018
- The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2018
- The Zootechnical Standards (Scotland) Regulation 2018