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Rural Affairs and Islands Committee
c/o Clerk to the Committee
The Scottish Parliament
Edinburgh EH99 1SP

30 October 2023

EU Law Tracker Report

Dear Finlay,

EU law tracker report

Thank you for your letter of 4 October, which raised questions about the four case studies in the EU law tracker report.

1. EU Animal Health Law

Committee questions to the Scottish Government:

In relation to the legislative changes to EU animal health law 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 in this policy area.

Answers:

The EU Animal Health Law (Regulation 2016/429 on “transmissible animal diseases and amending and repealing certain acts in the area of animal health”), which came into force after Implementation Period (IP) completion day, covers a number of topics that were previously dealt with under EU law in discrete regulations and directives. Hundreds of delegated and implementing regulations and decisions have been made by the EU under the EU Animal Health Law, covering a variety of topics. The EU Animal Health Law (including

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the regulations made under it) consolidates, and makes changes to, the previous law that applied at the time of IP completion day. Accordingly, some aspects of the EU Animal Health Law, but not others, were reflected in Scots law when it came into force on 21 April 2021.

Scottish Ministers have considered alignment with the EU Animal Health Law on specific policy areas on a case-by-case basis to ensure that decisions are appropriate and in Scottish interests. Given the volume of legislation and the breadth of subject-matter, it has not been practicable to identify all aspects of Scots law that would need to be amended to achieve alignment with the EU Animal Health Law. However, Scottish Ministers have sought to remain aligned with EU policy and law when considering individual proposals for change in relevant subject areas. Examples of alignment through legislative, as well as non-legislative, means are provided below.

Legislative changes have been made in order to meet third country requirements under EU law and thereby ensure that trade with NI and the EU is not disrupted. Doing so has in some cases resulted in alignment with rules of the Animal Health Law that are applicable to EU Member States.

An example exists in [the Animal Health \(Notification and Control Measures\) \(Miscellaneous Amendments\) \(Scotland\) Order 2021](#), which amended our rules regarding reporting and notifying diseases in animals primarily in order to meet the requirements of Article 6 of Commission Delegated Regulation (EU) 2020/692 “supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin”. Doing so resulted in alignment with the requirement in Article 18(1)(b) of the EU Animal Health Law that member states ensure that operators and other relevant persons in member states notify, as soon as practicable, the competent authority where there are any reasons to suspect the presence in animals of any certain listed diseases or where the presence of such a disease is detected in animals. For example, one of the listed diseases for the purposes of Article 18(1)(b) was Ebola virus disease in primates. Alignment was achieved with this rule by virtue of insertion of new article 4B (notification of Ebola virus) into the Specified Diseases (Notification) Order 1996.

In cases where non-legislative routes have presented a more efficient, flexible and proportionate option to comply with EU requirements for third countries and to align with EU law, these have been implemented.

For example, Article 8(e) of Commission Delegated Regulation (EU) 2020/692 (which was made under the EU Animal Health Law) provides that consignments of animals and certain products may only enter the EU from a third country if the establishment of origin receives regular animal health visits from a veterinarian for the purpose of the detection of signs indicative of the occurrence of diseases. Further, under Article 25(1) of the EU Animal Health Law, operators must ensure that establishments under their responsibility receive animal health visits (for the purpose of disease prevention) from a veterinarian when appropriate due to the risks posed to the establishment in question.

The Scottish Government is developing a digital solution for use by operators to assist in evidencing visits by veterinarians to establishments for the purpose of exporting of animals and products to the EU. This also means that operators can conduct their business in a way that aligns with Article 25(1) of the EU Animal Health Law.

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Divergence, when it arises, will be managed through use of the Animal Health and Welfare Common Framework, including if a proposal is England-only, as this may still introduce divergence across the UK as a whole because of the effect of the UK Internal Market Act.

2. EU Official Control Regulations

Committee Questions:

In relation to legislative changes to the EU Official Controls Regulation (OCR) 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;
- What will be the impact of divergence between Scots law and EU law in this area?

Answers:

Since EU Exit, the UK has managed its own regime for imports of sanitary and phytosanitary ("SPS") goods to GB. Whilst border management is a reserved matter, biosecurity is a devolved area. Decisions on SPS measures are based on scientific evidence, assessment of risk and in line with the UK's international obligations. These efforts are undertaken in conjunction with other UK administrations in order to avoid diversion of trade routes, given, in particular, the operation of the UK Internal Market Act 2020. As part of our commitment to ensuring imports are safe, we continue to actively monitor emerging food safety risks and the appropriateness of all existing import approvals. As the island of Great Britain is a single epidemiological zone there is inherent logic in having a single regime for biosecurity. It would be considerably challenging and disadvantageous to businesses for the Scottish Government to establish a differing regime from those in England and Wales.

Following EU exit it was expected that that a regime of import controls on EU goods would be established. However, UKG work to introduce this was unilaterally delayed multiple times, finally culminating in the publication of the BTOM in late August 2023. A range of biosecurity risks currently exist from EU Member States (MSs) due to a lack of GB import controls. It is important to reduce these risks through the introduction of proportionate import controls.

In order to implement the BTOM, changes will be required to retained OCR legislation and we are working closely with the UK and Welsh Governments to review the required amendments and our legislative options for implementation. Administrations have been working towards the following milestones:

- 31 January 2024 - The introduction of health certification on imports of medium risk animal products, plants, plant products and high risk food and feed of non-animal origin from the EU. The removal of pre-notification requirements for low risk plant and plant products from the EU.

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- 30 April 2024 - The introduction of documentary and risk-based identity and physical checks on medium risk animal products, plants, plant products and high risk food and feed of non-animal origin from the EU. Existing inspections of high risk plants/plant products from the EU will move from destination to Border Control Posts. We will also begin to simplify imports from non-EU countries. This will include the removal of health certification and routine checks on low risk animal products, plants, and plant products from non-EU countries, as well as reductions in physical and identity check levels on medium-risk animal products from non-EU countries.

The BTOM has been discussed with the EU during the most recent SPS Specialised Committee meeting under the Trade and Cooperation Agreement; it remains to be seen what impact it will have on trade with the EU, other than somewhat levelling the playing field between exporters and importers, which has put our exporters at a disadvantage since EU Exit.

Officials have been reviewing legislative changes, and therefore EU alignment on a case-by-case basis. Where there is divergence in relation to a proposal this will be highlighted to Ministers; when and if it occurs, it will be managed through use of the Animal Health and Welfare Common Framework,. This approach will include cases where there may be an England-only proposal, as this may still introduce divergence across the UK as a whole, because of the effect of the UK Internal Market Act.

3. Plant Pests Regulation

Committee questions:

In relation to the plant pests regulation 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;
- what will be the impact of divergence between Scots law and EU law in this policy area.

Answers:

The technical changes to the EU version of the PHR and its implementing legislation largely refer to specific measures taken in response to pest threats. The relevance of such measures to the UK will depend on specific factors such as the prevalence of a pest, the climatic conditions for growing a particular species and the threat a pest poses within GB. Whilst we track these developments at EU level, not all are appropriate or relevant to the particular conditions within the UK.

The two implementing regulations specifically mentioned in the EU law tracker report, Commission Implementing Regulation (EU) 2023/1511 regarding certain *malus sylvestris* (crab apple) plants originating in the UK and Commission Implementing Regulation (EU) 2023/1174 regarding certain *crataegus monogyna* (common hawthorn) plants originating in the UK refer to import conditions imposed on plants originating in the UK being moved to the EU and would therefore not be relevant to the domestic UK plant health regime. Since leaving the EU, the GB Plant Health Service (Defra, Scottish Government and Welsh Government) has developed domestic plant health risks based on the threat that these commodities pose to GB/Scotland. This involves a new risk-based target inspection regime that will apply to certain plants, plant products and other objects from both the EU and Rest

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of World. The introduction of this approach was necessary as a consequence of the UK's exit from the EU, including to address movements of goods between the UK and EU that are no longer moving within the single EU internal market.

The newly devised risk targeted approach to plant health import inspections follows the same principles which were implemented when we were part of the EU, and we consider this approach to be in line with the Scottish Government's policy of EU alignment. However, the method has been adapted to take account of the particular risk that certain commodities pose to GB. While that will mean that on the face of it EU legislation regulating those pests may differ over time from that which will apply in GB, the EU plant health regime by its nature requires to cater for a range of different growing conditions and pest threats throughout the EU which do not apply in the same way in the GB context, and changes to the regulatory status of pests and new legislation over time will need to reflect the risks posed in the specific GB context.

The GB Plant Health Service (Defra, Scottish Government and Welsh Government) is governed by the overarching plant health framework within retained EU law and which is consistent with the EU principles and approach.

4. Fertilising products Regulation

Committee questions:

In relation to the fertilising products regulation 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;
- what will be the impact of any potential divergence between Scots law and EU law in this policy area.

Answers:

It remains Scottish Government policy to remain aligned with the EU Fertilising Product Regulations (FPR) where appropriate. The Scottish Government broadly welcomes the approach taken in the FPR having participated, as part of the UK, in robust negotiations with EU Member States over a number of years while the UK was a Member State. We are considering how best to reflect the EU FPR in domestic law now that the UK is no longer a Member State. Global fertiliser shortages and price increases have contributed to the delay in a public consultation on new domestic Fertilising Regulations, however a UK-wide consultation is planned for early 2024. A joint UK approach is preferable as it would enable clearer legislative powers (for end users, policy makers and legal advisors) and it would reduce the risk of a divergent regulatory framework which is a desirable policy outcome and in line with the Fertilisers Common Framework. The Scottish Government continues to work with the other UK nations on progressing a UK fertilisers regulatory review and development of a public consultation.

Fertilisers is an area of partial harmonisation in the EU meaning they can be regulated at both Member State and EU level through separate regimes. Potential divergence in this policy area is therefore considered to have a limited impact. Current domestic frameworks

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for GB and NI are in place allowing fertilisers to be sold in the UK and manufacturers can trade with the EU and EEA as long as they meet EU standards.

Yours sincerely,



MAIRI GOUGEON

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