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. If
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.

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