28th November 2018

Dear Gillian,

The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018

Thank you for your letter of the 20 November 2018 seeking clarification on the implementation of Council Regulation (EU) 2015/262 ("the Regulation") in Scotland.

The Regulation is directly applicable EU law, generally applying from 1 January 2016 (per article 44 of the Regulation). As you note provision for further implementation of the Regulation has been made in relation to England, the UK Government having recently made the Equine Identification (England) Regulations 2018 (SI 2018/761). However, at this time, similar further implementing provision has not been made in relation to Scotland, Wales or Northern Ireland.

The Scottish Government has been unable to make relevant implementing provision to date as a result of ongoing consideration of some technical issues around the further implementation of the legislation.

The Scottish Government hopes to have resolved these technical issues very soon and, subject to that resolution, intends to make relevant further implementing regulations. The Scottish Government aims to do so as soon as possible and in any event before the UK’s anticipated exit from the EU on 29 March 2019. The Scottish Government plans to make the relevant SSI using in particular the power in section 2(2) of the European Communities Act 1972.

In relation to the derogations options and costs, and by way of example in relation to some of the matters specifically covered in the consultation ("Consultation on the implementation of revised EU rules on Equine Identification in Scotland", August 2016), there was support in Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

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the consultation around the option of requiring retrospective ‘tagging’ i.e. by implantation of a transponder in older horses (born or identified before 1 July 2009), providing by way of derogation for the movement or transport of horses in Scotland without their ID document (horse passport) provided they were accompanied by a smart card and, in relation to costs, around the use of Fixed Penalty Notices (FPNs).

As part of our implementation of the Regulation in Scotland we are considering making provision in the SSI requiring the phasing in of retrospective microchipping of older horses over a 2 year period, from when the SSI comes into force. We are also considering the introduction of smart cards which most organisations and individuals who responded believe will improve compliance as it is more user friendly and easier to carry than their horse passport. We are also minded to introduce FPNs which most respondents believed would act as a deterrent and increase compliance with the legislation. Further details will of course be set out in the planned SSI in due course as well as accompanying Policy Note. A full Business and Regulatory Impact Assessment will accompany the SSI when it is laid in Parliament.

MAIRI GOUGEON