RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

30th Meeting, 2018 (Session 5)

Wednesday 21 November 2018

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.

2. **Transport (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Michael Matheson, Cabinet Secretary for Transport, Infrastructure and Connectivity, Pete Grant, Bus Policy Team Leader, Gordon Hanning, Head of Integrated Ticketing Unit, Stephen Thomson, Head of Air Quality, George Henry, Parking Policy Manager, Kat Quane, Road Works Policy Officer, Joanne Gray, Policy Manager on Regional Transport Partnerships, Brian Spence, Canals Policy Officer, Kevin Gibson, Solicitor, Debbie Blair, Solicitor, Anne Cairns, Solicitor, and Magdalene Boyd, Solicitor, Scottish Government.

3. **European Union (Withdrawal) Act 2018:** The Committee will consider proposals by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals—

   The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019;

   The Pesticides (Maximum Residue Levels) etc. (Amendment) (EU Exit) Regulations 2019;

   The Pesticides (Miscellaneous Amendments) (EU Exit) Regulations 2019;

   The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018;
4. **Transport (Scotland) Bill**: The Committee will review the evidence it has heard on the Transport (Scotland) Bill at Stage 1.

Steve Farrell
Clerk to the Rural Economy and Connectivity Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5211
Email: steve.farrell@parliament.scot
The papers for this meeting are as follows—

**Agenda Item 2**

Cover note

PRIVATE PAPER

**Agenda Item 3**

Note by the Clerk
Background

1. The **Transport (Scotland) Bill** (“the Bill”) was introduced in the Scottish Parliament by the Cabinet Secretary for Finance and Constitution, Derek Mackay MSP, on 8 June 2018. The Rural Economy and Connectivity Committee has been designated as the lead committee for Stage 1 consideration of the Bill.

2. The Committee has already heard from the Scottish Government’s Bill team, local authorities and regional transport partnerships. It has also had separate evidence sessions to look at the sections of the Bill on buses, smart ticketing, Low Emissions Zones, parking and roadworks in two separate evidence panels. At the meeting on 21 November, the Committee will take evidence on the entire Bill from the Scottish Government including the Cabinet Secretary for Transport, Infrastructure and Connectivity.

Purpose and content of the Bill

3. The Bill covers a wide range of different transport topics in six parts:

   - **Low Emissions Zones** - Part 1 of the Bill enables the creation of low emission zones in Scotland which can be enforced, with the aim of improving air quality and reducing greenhouse gas emissions. This would restrict driving in certain areas by road vehicles which fail to meet emission standards.

   - **Bus services** - Part 2 is intended to provide local transport authorities with options to improve bus services in their areas. This could include partnership working with operators, local franchising or running their own buses. Part 2 also aims to improve the information given to passengers.

   - **Smart ticketing** - Part 3 would create a national technological standard for smart ticketing to assist the spread of smart ticketing across public transport in Scotland, and provide local transport authorities with further powers for smart ticketing arrangements and schemes.

   - **Responsible parking** – Part 4 proposes to improve safety for roads users and pedestrians by prohibiting double parking and parking on pavements.

   - **Road works** - Part 5 would strengthen the role of the Scottish Road Works Commissioner (SRWC) and improve the regulation of road works.

   - **Regional Transport Partnerships and Scotland’s canals** - Part 6 gives Regional Transport Partnerships (Transport Partnerships) more
financial flexibility. It also allows Scottish Ministers to vary the membership and structure of the Scottish Canals Board.

4. Further information on the Bill can be found on the Parliament’s website.

Committee’s evidence gathering

5. This is the Committee’s sixth formal evidence session on the Bill. Details of other evidence gathering activities can be found on the Committee’s website.

6. Annex A includes a letter from Strathclyde Partnership for Transport following a recent Committee visit.

Clerking team
Rural Economy and Connectivity Committee
November 2018
Tuesday 13 November 2018

Edward Mountain MSP
Convenor of Rural Economy and Connectivity Committee
Scottish Parliament

(Via email to rec.committee@parliament.scot)

Dear Edward

Transport (Scotland) Bill

Many thanks to you and your Committee for taking the time to visit SPT on Friday 2nd November.

We believe an effective new Transport Act is essential in addressing some of the fundamental challenges currently facing transport in the west of Scotland, particularly the bus market, where patronage has decreased by 61 million (27%) over the last 10 years. As discussed, here are some key points which we believe would improve the Transport Bill:

• Clear access to a range of sufficient funding options for those organisations who wish to make use of the Bill's provisions.
• The role of transport authorities, as the statutory, democratically-elected and publicly accountable bodies responsible for transport, must be better recognised in the Bus Service Improvement Partnership (BSIP) and franchise development process.
• Transport authorities should have the final decision on a franchise, not an unelected ‘panel’.
• Operators and other partners must be required to provide a range of detailed data to assist transport authorities to analyse a network and where appropriate prepare for a BSIP or franchise development and monitoring.
• The Bill's provisions require clear, practical and effective enforcement mechanisms.
• All areas of Scotland should undertake process to formally consider invoking the Bill's provisions.
• Commitment to deliver complementary public transport priority and parking measures, not just vehicle restrictions, when delivering a Low Emission Zone.

Further comments on the above points are attached.

I trust the above is helpful to you and your colleagues as you continue deliberations on the Bill. We would be delighted to meet again to discuss these and any other issues you may have.

I have copied this letter to members of your Committee and SPT's Partnership Board.

Yours sincerely

Councillor Dr Martin Bartos
Chair

Enc

cc Members of the Scottish Parliament's Rural Economy and Connectivity Committee
Members of SPT's Partnership Board.
Strathclyde Partnership for Transport - additional comments

**Funding**

There is no point in the Bill becoming law if there is no clear route to appropriate levels of funding for the authorities who may wish to pursue its provisions. The Financial Memorandum of the Bill does not give a realistic picture of the likely costs of actually implementing elements of the Bill.

To put this in perspective and scale, the current level of subsidy committed per head of population per year for socially necessary bus services\(^1\) in Scotland is around £5; across England as a whole, £16, and in London the equivalent figure is £75.

It is not just necessary to ensure that specific partnership or franchise provisions are appropriately costed, a broader range of funding options are needed to revitalise transport. Given public finances, these options cannot just come from existing central or local government funds. Without question, to make the Bill work effectively in practice and to improve transport generally there must be clear, proportionate, timely and transparent access to a range of sufficient funding options for those organisations responsible for delivering transport improvements.

**Recommendation:**

Amend Bill to:

- Ensure appropriate levels of new funding are made available to the organisations who wish to implement transport improvements as a result of the Bill; and,
- Empower transport authorities to bring forward and implement proposals for new transport funding mechanisms.

**Bus Service Improvement Partnerships (BS/Ps)**

We are concerned that the BSIP process as proposed places too much reliance on operator support, and not the public interest. Whilst the interests of operators and public may generally coincide, in the end, where tensions arise the public's interests must reasonably prevail.

We believe there is too little recognition of the statutorily established, publicly accountable, democratically elected transport authority in the BSIP process.

There also remains a gap in the provisions in relation to operators providing the relevant data which would be essential for developing an effective business case for a BSIP or to monitor it. This latter issue has caused significant difficulties in the rest of the UK arising from the Bus Services Act 2017 and must not be allowed to be replicated in Scotland.

**Recommendation:**

Amend Bill to:

- Remove opportunities for operators to stop or delay BSIP development;
- Give greater power to transport authorities in BSIP development process; and,
- Require operators and partners to provide a range of detailed data to assist transport authorities to analyse a network and where appropriate prepare for a BSIP or franchise development and monitoring.

**Franchising**

Whatever the pros and cons of franchising, it is essential and the duty of the Scottish Parliament to create a legislative framework that is workable in practice; in its current form, we believe the Bill’s provisions for franchising do not. The risks with the proposed provisions are so great that they would likely preclude any authority in Scotland from pursuing an option for franchising.

A fundamental flaw remaining in the proposal is for an unelected, appointed ‘panel’, who would make the final decision on whether a franchise should go ahead. We believe the final decision on whether a franchise should go ahead should rest with the transport authority - a statutory, democratically elected, publicly accountable body obliged to work in the public interest.

Further, like BSIPs, there is no provision in the Bill for the sourcing of the data required from operators to develop an effective business case for a franchise.

**Recommendation:**

Amend Bill to:

- Remove the proposal for a ‘panel’ from the Bill’s provisions;
- Give final decision on the merits of a franchise to the relevant transport authority; and,
- Require operators and partners to provide a range of detailed data to assist transport authorities to analyse a network and where appropriate prepare for a BSIP or franchise development and monitoring.

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\(^1\) Funding from the National Concessionary Travel Scheme and Bus Service Operators Grant is not included.
Enforcement

We believe it is essential that the Bill recognises the importance of enforcement across the breadth of its provisions - from LEZs through to franchising.

There is no point in bringing in new traffic regulations or other legislation which are not enforceable, and all partners - including the Scottish Government - should commit to ensuring effective enforcement is in place when a provision of the Bill is exercised in any area.

Recommendation:
Amend Bill to:
- Introduce section specifically dealing with enforcement, committing all partners - Scottish Government, transport authority, operators, and others - to ensuring effective enforcement is in place for the delivery of provisions of the Bill.

Best for all regions of Scotland

'One size does not fit all' when it comes to the regions of Scotland, and there is merit in creating a framework for improvement in transport which would allow each area of Scotland to benchmark itself against a similar area elsewhere to identify potential opportunities for growth or partnership.

Further, we believe that consideration of the bus service provisions of the Bill should be made mandatory for all authorities across Scotland - in order to ensure a level playing field. This would provide an opportunity for intelligent, progressive, evidenced debate and challenge on what 'model' for improvement is best applied (or not) in each area.

Recommendation:
Amend Bill to:
- Make it mandatory for a transport authority to undertake assessment of the Bill’s provisions with final decision on next steps to be taken by the authority’s board or council.

Low Emission Zones (LEZ)

In addition to vehicle type restrictions, essential to an LEZ’s success is the implementation of a range of additional complementary measures. These include improved traffic management, bus priority, progressive parking policies, and measures to encourage modal shift and travel behaviour change.

Ensuring the commitment of partners to deliver these complementary measures is vitally important. While SPT has been assured that supplementary guidance or regulations arising from the Bill will deal with this, we believe that there must be a form of wording within the Bill to facilitate commitment from partners to ensure effective outcomes.

Recommendation:
Amend LEZ elements of Bill to:
- Add additional section on Complementary Measures, requiring commitment from relevant organisations to deliver; and,
- Enable the Traffic Commissioner for Scotland to hold to account partners who fail to deliver on commitments, with appropriate range of sanctions.
Introduction

1. This paper supports the Committee’s consideration of a consent notification sent by the Scottish Government relating to the following UK statutory instruments—

*Pesticides and fertilisers*

- The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019;
- The Pesticides (Maximum Residue Levels) etc. (Amendment) (EU Exit) Regulations 2019;
- The Pesticides (Miscellaneous Amendments) (EU Exit) Regulations 2019; and

*Animal health*

- 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; and

*Organic products*


*Intelligent transport*

- Intelligent Transport Systems (EU) Exit Regulations 2018

Background

2. In anticipation of the UK leaving the EU, changes are required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, and where the Scottish Government considers a UK-wide approach to the legislative changes would be appropriate (for example, to
avoid duplication of effort, or where only technical or minor amendments are required), the UK Parliament can legislate on behalf of the Scottish Parliament.

3. For each UK statutory instrument which relates to a devolved matter, Scottish Ministers have undertaken to write to the Scottish Parliament setting out its proposed consent in a consent notification.

4. A protocol has been agreed which sets out the shared understanding between the Scottish Government and the Scottish Parliament on the process for obtaining the approval of the Scottish Parliament to the Scottish Ministers’ consent to the UK Parliament legislating on these devolved matters. The protocol states that the Scottish Parliament will normally have 28 days to consider a consent notification.

5. The protocol also categorises UK statutory instruments as category A (minor or technical amendments), category B (more significant policy decisions) or category C (matters which should be subject to the existing joint procedure (an SI laid in both the UK and Scottish Parliaments)).

6. Under the protocol, following its consideration of a consent notification, a committee can—

   • Write to the Scottish Government confirming its agreement with the consent notification; or

   • Report to Parliament and recommend that—

      i. it is content for consent to be given for a UK SI to be made in the UK Parliament only.

      ii. It is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or

      iii. It is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI made under the joint procedure.

7. Where a different way of dealing with EU withdrawal, or a different policy outcome, is required in Scotland, the Scottish Government will pursue Scottish statutory instruments in the Scottish Parliament.

FERTILISERS AND PESTICIDES

8. The Minister for Rural Affairs and the Natural Environment wrote to the Committee with this notification on 1 November 2018. The 28-day deadline is 28 November. The consent notification, attached at Annexe A, includes detailed Information on the legislative changes the four SIs it covers seek to make. The Scottish Government considers that, “in general”, these are category A SIs but, as two of the proposed SIs contain provision creating or amending powers for Ministers to make regulations, including transferring current EU legislative powers to Ministers, to that extent the proposed SIs contain provision considered to fall within category B.
9. The first three SIs make corrections to the EU plant protection product (PPPs)/pesticides regulatory regime and the fourth SI makes corrections to the law around fertilisers to ensure they become retained EU law.

10. There may be a wider policy issue about the lack of information available about the replacement regulatory regime which would need to be introduced post-EU exit.

11. These wider policy issues are not directly related to the consent notification. In line with the approach taken by the Committee previously, it is recommended the Convener write to the Scottish Government, asking to be kept up to date on its thinking relating to these wider policy issues.

ANIMAL HEALTH

12. The Minister for Rural Affairs and the Natural Environment wrote to the Committee about these consent notifications on 8 November 2018. The 28-day deadline is 5 December. Information about the legislative changes the SI seeks to make are set out in the consent notifications.

The Animal By-Products and Control and Eradication of Transmissible Spongiform Encephalopathies (UK) (EU Exit) (Miscellaneous Amendments) 2018

13. The consent notification is set out in annexe B and is a category A notification. This SI would amend references to the EU. There are currently no broader policy issues identified by SPICe or OSSP in relation to this instrument.

The Livestock (Records, Identification and Movement) (EU Exit) (Miscellaneous Amendments) Regulations 2018

14. The consent notification is set out in annexe C and is a category A notification. Again, this SI would amend references to the EU; the existing system for records, identification and movement of farm animals would remain in place. There are currently no broader policy issues identified by SPICe or OSSP in relation to this instrument.

The Animal Welfare (Amendment) (EU Exit) Regulations 2018

15. The consent notification is set out in annexe D. This SI makes technical changes to ensure the existing standards and regimes to protect the welfare of animals during slaughter, transport and at control posts that they may stop at during a journey, are continued post-EU exit. The Scottish Government states the changes are principally minor and technical in nature and involved in ensuring continuity of law.

16. There may be a broader policy issue relating to the recognition of transporter authorisations for UK transports of live animals in the EU. The UK has decided to continue to recognise transporter authorisations
from EU countries but the EU has not said it will recognise transporters authorisations from the UK.

17. This issue is not directly linked to the consent notification but the Committee may wish to write to the Scottish Government for clarification.

ORGANIC PRODUCTS

18. The Cabinet Secretary wrote to the Committee on 9 November 2018. The 28-day deadline is 6 December. Information about the legislative changes the SI seeks to make are set out in the consent notification, attached at annexe E. This is a category A notification.

19. Again, this SI would amend references and various requirements relating to the EU.

20. There may be a broader policy issue about the lack of information about whether organic products certified by UK organic control bodies, will be accepted in the EU and other countries and what will replace the EU TRACES system to ensure the traceability of organic food and feed.

21. These wider policy issues are not directly related to the consent notification. In line with what the Committee has done previously, it is recommended the Convener write to the Scottish Government, asking to be kept up to date on its thinking relating to these wider policy issues.

INTELLIGENT TRANSPORT

22. The Minister wrote to the Committee on 1 November 2018. The 28-day deadline is 28 November. Information about the legislative changes the SI seeks to make are set out in the consent notification, attached in the Annexe F. This is a category A notification.

23. Clarification was sought on two points within the notification. The Scottish Government was asked to provide detail on the relevant regulation and decisions to which the notification applies. These are included below.

Regulations

- 2017/1962 - The provision of EU-wide multi-modal travel information services
- 2013/885 - The provision of information services for safe and secure parking places for trucks and commercial vehicles;
- 2013/886 - The provision, where possible, of road safety-related minimum universal traffic information free of charge to users;
- 2015/962 - The provision of EU-wide real-time traffic information services.

Decisions

• 2016/209 on a standardisation request to the European standardisation organisations as regards Intelligent Transport Systems (ITS) in urban areas under Directive 2010/40/EU

• 2017/2380 - Amending Directive 2010/40/EU as regards the period for adopting delegated acts.

24. Clarification was also requested on the administrative measures which are in place to meet the requirements of the EU ITS Regulations. The Scottish Government stated—

“The references to ‘Administrative Measures’ is intended to denote that there are no plans to replace the ITS Regulations with new UK legislation, i.e. it would be managed on a non-statutory basis. The administrative measures are still in development and being led by Department for Transport.”

DECISION

25. The Committee is asked to consider the consent notifications referred to in this paper and determine whether to:

a. write to the Scottish Government to confirm it is content for consent for the UK SIs referred to in the notifications to be given;

b. to note and request a response from the Scottish Government on the related policy matters identified which will require to be addressed in future;

or

c. consider the matter further, take evidence if appropriate and make a report to parliament.

Committee clerks
November 2018
Dear Edward

REGULATING PESTICIDES
MANUFACTURING AND MARKETING FERTILISERS
EU EXIT – PROTOCOL WITH SCOTTISH PARLIAMENT

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 Convenors of the Finance & Constitution and Delegated Powers and 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 a Notification of Intention to Consent which sets out the details of four UK SIs which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in these UK SIs. Please note, we are yet to have sight of the final SIs and they are not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SIs are laid and advise you as to whether the final SI is in keeping with the terms of this notification.

I am copying this letter to the Convenor of the Environment, Climate Change & Land reform Committee and the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

MAIRI GOUGEON

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot
Consent notification – fertilisers and pesticides

Name of the SIs

- The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 [subject to affirmative procedure]
- The Pesticides (Maximum Residue Levels) etc. (Amendment) (EU Exit) Regulations 2019 [subject to affirmative procedure]
- The Pesticides (Miscellaneous Amendments) (EU Exit) Regulations 2019 [subject to negative procedure]
- The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018 [subject to negative procedure]

A brief explanation of law that the proposals amend

The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019

This instrument is one of a set of three statutory instruments that will make corrections to the EU plant protection product (PPPs) (“pesticides”) regulatory regime becoming retained EU law so that it can continue to operate effectively in the UK following a ‘no deal’ UK exit from the EU on 29 March 2019.

It makes the necessary amendments to the directly applicable Regulation (EC) No 1107/2009, concerning the placing of plant protection products (PPPs) on the market, and other associated EU legislation to ensure that effective arrangements and robust controls currently in place which govern the authorisation of, marketing and use of plant protection products continue to operate in the UK after EU Exit.

It also amends the following EU legislation becoming retained EU law—
Commission Regulation (EU) No 1141/2010
Commission Regulation (EU) No 545/2011
Commission Regulation (EU) No 547/2011
Commission Implementing Regulation (EU) No 844/2012
Commission Regulation (EU) No 283/2013
Commission Regulation (EU) No 284/2013

It also transfers legislating powers from Directive 2009/128/EC, on sustainable use of pesticides, allowing the future amendment of the annexes to that Directive as they have been transposed into domestic law.
The Pesticides (Maximum Residue Levels) etc. (Amendment) (EU Exit) Regulations 2019

This instrument is another in the set of three amending the EU PPP regulatory regime. It makes appropriate corrections to directly application Regulation (EC) No 396/2005, on maximum residue levels (MRLs) of pesticides in or on food and feed of plant and animal origin, to ensure that after EU Exit effective arrangements and robust controls governing the level of residues permitted in food will continue to operate in the UK.

The instrument also makes certain corrections (which relate to functions to make secondary legislation) to the following domestic and EU legislation regarding fertilisers:
- Agriculture Act 1970
- Regulation (EC) No 2003/2003 which lays down rules on the designation, definition, composition, identification and packaging of 'EC fertilisers' which can be freely traded throughout Europe

The Pesticides (Miscellaneous Amendments) (EU Exit) Regulations 2019

This instrument is the last in the set amending the EU PPP regulatory regime. It will make the necessary consequential amendments to related domestic enforcement legislation, that already extend to include Scotland, specifically the Plant Protection Products Regulations 2011 and the Plant Protection Products (Sustainable Use) Regulations 2012 (the last of which transposes Directive 2009/128/EC, establishing a framework for Community action to achieve sustainable use of pesticides, into UK law). This will ensure that these domestic regulations link correctly to the underlying retained EU law regimes.

This UK SI also amends the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008, which currently enforce the Regulation (EC) No 396/2005, on MRLs for England and Wales. There is an equivalent Scottish SI, the Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008, which will be amended separately by a SSI to be made and laid prior to 29 March 2019.

The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018

This instrument makes appropriate corrections to legislation relating to fertilisers becoming retained EU law. It addresses failures of retained EU law to operate effectively and other deficiencies arising from EU Exit, primarily Regulation EC No 2003/2003 which lays down rules on the designation, definition, composition, identification and packaging of 'EC fertilisers' which can be freely traded throughout Europe.

It also amends the Fertilisers Regulations 1991 and the Ammonium Nitrate (High Nitrogen Content) Safety Regulations 2003 to correct out of date references before EU Exit (in exercise of powers including section 2(2) of the European Communities Act 1972) and to correct deficiencies relying as in all
cases where deficiencies are being corrected for EU Exit on powers in the European Union (Withdrawal) Act 2018.

The UK SI also amends The EC Fertilisers (England and Wales) Regulations 2006, which currently enforce Regulation (EC) 2003/2003 for England and Wales. There is an equivalent Scottish SI, The EC Fertilisers (Scotland) Regulations 2006, which will be amended separately by a SSI, to be made and laid prior to 29 March 2019.

Summary of the proposals and how these correct deficiencies

Pesticide and fertiliser products play a fundamental role in UK farming and the provision of food however they can have the potential to have negative impacts on human health and the environment, therefore it is necessary to ensure that effective arrangements remain in place to regulate these products after the UK leaves the EU. The above amending SIs are necessary to ensure that retained EU law is practically workable in a UK context as the terms of the European Union (Withdrawal) Act 2018 alone are not sufficient to adapt the EU regime to make it work.

The policy objective is to stay as closely aligned to the EU regimes as possible to provide continuity and stability for businesses and users of the products, however some changes are required to ensure a national regime is practicable and realistic, particularly in areas where current EU arrangements means workload is shared across all Member States. Where amendments are proposed, it is considered that they are the minimum possible and do not pose significant policy changes.

We have long experience of working collaboratively with the UK Government in these areas. Maintaining the longstanding UK wide approach is preferable for stakeholders and beneficial for all four governments as there is little policy divergence.

Pesticides

In relation to the placing of PPPs on the market:—
At present, the marketing and use of PPPs is subject to EU regulations in particular Regulation (EC) No 1107/2009, however the EU regime is designed to work in the context of EU membership with a reliance on EU decision making processes; the sharing of workloads among member states; performance of functions by EU institutions, and EU regulatory powers that give effect to decisions.

Using the European Union (Withdrawal) Act 2018 powers, the UK SIs correct retained EU law, to ensure a working national regulatory regime after exit from the EU. They create a UK stand-alone regime with minimal modifications and no significant policy changes. Transitional arrangements in relation to active substance approvals, product authorisations and the marketing and use of seeds treated with PPPs have been established to enable continuity and ensure a smooth changeover to a UK regime.
The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 enables the UK to be able to take decisions on the approval and renewal of active substances (which are currently taken at EU-level) and authorisation of plant protection products that are considered justified on the basis of scientific assessment and evidence using the same criteria that are currently applied throughout the EU. This will ensure that the UK is able to properly safeguard human health and the environment, whilst permitting appropriate use of PPPs.

Currently, decisions on active substances are given effect through EU tertiary legislation. There is an ongoing flow of regulatory decisions which need to be put into effect. To achieve this, the EU currently produces in the order of 50 additional Regulations per year. EU mechanisms to give effect to decisions will no longer be operable after exit. The amending instrument replaces the EU arrangements by establishing an administrative mechanism to give effect to national decisions on active substances in an efficient and timely way, by means of a new statutory register which will be published online. It will be established and maintained jointly by UK competent authorities.

Failure to make these corrections would see the EU regulatory regime for PPPs retained in UK law as it stands, but large parts of it would be completely inoperable, for example, the UK would be unable to take action to address environmental or human health impacts on the basis of new evidence. If provision was not made to correct deficiencies in retained EU law there would be risk of adverse economic impacts on the domestic market with UK farmers being put at a competitive disadvantage if they lost access to existing plant protection products (when they expire and cannot be renewed) or were unable to access new plant protection products entering the market.

In relation to Maximum Residue Levels:
A key part of the process by which PPPs are approved/authorised is an assessment of the risks to consumers. There are robust controls which govern the level of residues that are permitted in food. MRLs reflect the highest amount of residues expected in food when PPPs are applied correctly and in accordance with authorised conditions of use. It is important to note that MRLs are not safety limits and are always set below, often far below, levels that would present a risk to consumers.

MRLs apply to all foods placed on the EU market, irrespective of whether they have been produced inside or outside of the EU. They facilitate trade in treated produce by providing assurance to the regulator that PPPs have been used properly. As there is a high level of public interest in food safety, annual control and monitoring programmes provide additional reassurance to consumers to enable them to buy food stuffs with confidence. Official monitoring is important to enable the regulator to check that food meets the required standards, that unauthorised pesticides have not been used and that consumer safety is assured.
As with the assessment of active substances used in the formulation of PPPs, decisions on setting MRLs are currently taken at EU level following Member State assessments. A rigorous assessment is made of the risks, which includes a full assessment of data on the level of residues resulting from their use and on the toxicology of the pesticide.

The Pesticides (Maximum Residue Levels) etc. (Amendment) (EU Exit) Regulations 2019 makes the existing provision, including in particular existing EU Regulation (EC) No 396/2005 becoming retained EU law, operable in the UK national context including: measures applying to the evaluation and setting of MRLs; rules governing the marketing of goods to ensure compliance of MRLs; measures governing the review of MRLs; and measures governing national programmes for monitoring residues in foods placed on the market.

Similarly to decisions on active substances, decisions on MRLs are given effect through EU tertiary legislation. The amending instrument replaces the EU arrangements by establishing an administrative mechanism to give effect to national decisions on MRLs in an efficient and timely way, by means of a new statutory register which will be published online. It will be established and maintained jointly by UK competent authorities.

Combined these measures ensure that MRLs set for foods take account of the residues expected to arise from appropriate pesticides use practices ensuring the protection of the consumer, whilst also ensuring the control regime provides for consistency of control, continuity and stability in food production and supply. Transitional arrangements ensure that all MRLs in place at the time of the UK’s exit from the EU will remain valid after exit to enable continuity and ensure a smooth changeover to a UK regime.

In converting the EU provisions into national requirements, it is necessary to ensure it is practicable and realistic for the UK, acting alone, to deliver. In order to make the overall timeline for this work more realistic in a UK context and aligned to actual EU practice, the deadline for MRL reviews following an active substance approval has been set at 36 months. Reviews will be prioritised to maintain effective consumer protection; reducing timelines where public health concerns exist.

In relation to the Sustainable Use Directive (Directive 2009/128/EC):–

The transfer (by the Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019) of legislation making powers from the Directive 2009/128/EC on sustainable use of pesticides is required to allow amendment of the annexes to that Directive as they have been transposed into domestic legislation.

In relation to existing domestic enforcement regulations:–

Minor corrections are needed to the existing domestic legislation. For example, there are a number of references within the current regulations which assume EU membership and/or assume elements that are reliant on EU processes or institutions. Some provisions have therefore been corrected or omitted because they are no longer relevant outside of the EU context, or have been
incorporated within the replacement instruments for EU Regulations. Some obsolete references to other EU legislation have also been updated.

The Pesticides (Miscellaneous Amendments) (EU Exit) Regulations 2019 also ensures that the enforcement regulations – including the Plant Protection Products Regulations 2011 and the Plant Protection Products (Sustainable Use) Regulations 2012, which already extend to Scotland – continue to operate sensibly in a national context. This UK SI also amends the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008, which currently enforce the Regulation (EC) No 396/2005, on MRLs for England and Wales. There is an equivalent Scottish SI, the Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008, which will be amended separately by a SSI to be made and laid prior to 29 March 2019. These amendments are very minor in nature.

In summary:
A summary of the most significant modifications made by the various amendments to the EU pesticides regime to ensure that the retained EU law UK regime is practicably workable are noted below.

- Repatriation of decision-making functions and powers under the EU regime (e.g. active substances) from the EU to UK level.
- Establish a new national mechanism to give effect to UK national decisions in an efficient and timely way by the listing of approved active substances on a statutory register, which will be published online. It will be established and maintained jointly by UK competent authorities.
- Repatriate other EU tertiary legislative powers to UK level to convert them in to a power to make regulations by Statutory Instrument, therefore keeping them on a statutory footing, with minor exceptions.
- Replace the EU components of the decision-making processes which remain relevant in a UK context with new UK processes.
- Replace the EU regime’s existing power to establish a rolling EU active substance renewals programme (which is done through EU tertiary legislation) with a UK power to establish a UK wide renewals programme. Convert the provisions for the renewals programme in a way which maintains effective protection but enables the UK to ensure it has a manageable and proportionate workload for one country alone.
- Extend the deadline for MRL reviews following active substance approval from 12 to 36 months in order to make the overall timeline for this work more realistic, proportionate and feasible for the UK operating alone.
- Replace the arrangements for EU shared decision making and mutual recognition provisions with provision for UK competent authorities to be able to recognise decisions made in other parts of the UK, and to take account of relevant assessments by other regulators in their national assessments.
Remove provision for parallel trade permits as they will be inoperable in a UK context after exit from the EU and so are not proposed to be retained in the UK regime. Parallel trade permits in force at the point of exit would remain valid. In future, UK authorisations for plant protection products will be required.

Minor corrections will be made to text to address any references which assume EU membership and remove any elements which are reliant on EU membership.

Put in place transitional measures needed to ensure that the changeover from the EU regime to the UK regime is smooth, e.g. retaining the current approvals, authorisations (including for treated seeds), MRLs, data formats and technical requirements over the period spanning the UK’s exit from the EU.

**Fertilisers**

Rules and requirements around the manufacturing and marketing of fertilisers in the UK are currently partially harmonised with the EU in that it is permissible for member States to have domestic regimes in addition to EU rules.

The UK SIs make amendments to the relevant pieces of domestic and EU law to allow them to operate properly after exit, for example references to Member States and the European Commission are amended to refer instead to UK bodies, and a requirement as to the language to be used on labels is amended.

The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2018 replaces the ‘EC fertilisers’ regime in EU law with a new domestic regime, providing for a ‘UK fertiliser’ label which will function in the same way. It will allow a two year transitional period during which EC fertilisers can still be sold in the UK without a requirement to be relabelled. This will ensure business continuity and predictability for manufacturers and distributors and continued supply for farmers.

The instrument also amends the Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003. These regulate fertilisers with high nitrogen content since they can be adapted for use as an improvised explosive and are potentially fatal if mishandled in manufacture, transport or storage. The instrument ensures that all ammonium nitrate fertilisers are subject to these rules, in particular, all imports will require production run detonation resistance tests.

**An explanation of why the change is considered necessary**

**Pesticides**

The UK SIs are necessary to ensure that there is an operable pesticides regime in UK context after EU Exit, to ensure that plant protection products continue to pose no unacceptable risks to humans or the environment, whilst facilitating
production of affordable food and trade in food produce to operate effectively after the UK has left the EU.

**Fertilisers**

The UK SIs are necessary to ensure that the legislation governing the manufacturing and marketing of fertilisers is operable after EU Exit and to ensure there is no disruption to trade of fertilisers currently authorised under EU law. Changes must be made to maintain fertilisers standards in UK law and provide continuity to the sector and security of supply for farmers.

**Scottish Government categorisation of significance of proposals**

The Scottish Government considers that, in general, the provision in the proposed SIs falls within Category A, for the reasons given below. As noted elsewhere, two of the proposed SIs contain provision creating or amending powers for Ministers to make regulations, including transferring current EU legislative powers to Ministers and, to that extent, the proposed SIs contain provision considered to fall within category B.

Scottish Ministers agree that the changes constitute a pragmatic approach to addressing deficiencies in the pesticides and fertilisers regulatory regimes arising from EU Exit, and ensure continued effective operation of those regimes, including continued high levels of protection for human health and the environment.

Where the UK SIs make provision for exercise of functions – including functions of making regulations - they do so in a manner consistent with the devolution settlement as discussed below, in particular conferring functions either on the Secretary of State acting with the consent of the Scottish Ministers or on the Scottish Ministers directly.

**Impact on devolved areas**

**Pesticides**

Pesticides are a devolved matter in Scotland. So far as the UK SIs make provision for exercise of regulation making and other functions they allow for all Governments in the UK to make regulations or exercise functions for their own territories (and so the Scottish Ministers for Scotland) and also allows the Secretary of State to make regulations for the whole of the UK (or any combination of territories in the UK) with the consent of the devolved administrations (DAs).

This option allows for divergence however, in this area, there is broad agreement that continuation of a common UK approach and a single UK-wide evidence based decision-making process would be beneficial, where possible and appropriate in each individual case. In terms of active substance and MRL decisions, it is considered likely that in the vast majority of cases it will be relatively straightforward to reach agreement, based on past experience and
also because decisions are taken on the advice of a single expert regulatory body; the Health and Safety Executive. It is considered this will bring benefits. For example a single regulatory decision around MRLs will be of benefit for the operation of the UK market for food.

The default approach is to convert repatriated legislative powers into national powers to make regulations by statutory instruments. One exception is giving effect to decision making on active substances which will take effect through a new statutory register to be established and maintained jointly by UK competent authorities (ie UK, Scottish and other devolved administration Ministers). There are also some other exceptions where existing legislative powers are very minor in scope and it is considered disproportionately inefficient to use statutory instruments to implement or revise these non-essential elements due to time and administrative effort involved (for example setting the format of documents) and instead provision is made for these functions to be exercised administratively.

All functions which already allow for decisions to be made independently of other territories, such as authorisation of pesticide products and emergency authorisations, are not affected.

New governance arrangements are needed to underpin the effective operation of UK-wide decision making. It is anticipated that at a minimum this would require an MoU setting out agreed working practices and updated Agency Agreements between DEFRA, the devolved administrations and HSE (as the regulator).

Fertilisers

Fertilisers are a devolved matter in Scotland, however functions regarding ammonium nitrate fertilisers of high nitrogen content (which can be adapted for use as an improvised explosive and are potentially fatal if mishandled in manufacture, transport or storage) may relate to reserved matters, for example, health and safety.

The corrections being made by the UK SI to fertilisers legislation provide for a common UK approach. This ensures a consistent and clear policy. In particular it has been agreed that the Secretary of State will be empowered to make regulations and exercise other functions with regard to fertilisers for the UK with the consent of the Devolved Administrations. Further, DA Ministers can request that the Secretary of State exercise a regulation making function in a given case and the Secretary of State must give due consideration to that request. The exception is the exercise of regulation making functions by the Secretary of State in relation to ammonium nitrate fertilisers of high nitrogen content where the regulations are outside devolved competence, in which case the Secretary of State does not require the consent of the DAs/is not required to have regard to that request.

In other cases the UK SI makes provision for functions to be exercised by the “appropriate authority”. The “appropriate authority” in relation to a decision in
respect of ammonium nitrate fertilisers of high nitrogen content where the decision is outside devolved competence is the Secretary of State. In relation to a decision in respect of other fertilisers, the appropriate authority is, in relation to Scotland, the Scottish Ministers (and in relation to England, the Secretary of State; in relation to Wales, the Welsh Ministers; and in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs). An MoU could be used to set out details of the working arrangements between the four Governments.

This option in particular allows the Secretary of State to make regulations for the UK with the consent of the other authorities. The regulations must apply to the whole of the UK, otherwise they cannot be made. There can be no divergence in recognition of benefits in this context of having a uniform approach, for example in relation to the UK mark ('UK fertiliser') to be put on product labels confirming that the product complies with the Regulation for the purposes of marketing in the UK.

Summary of stakeholder engagement/consultation

As these instruments are being made to avoid deficiencies arising as a result of the UK’s withdrawal from the EU, no formal public consultation is required.

On pesticides, informal stakeholder engagement is achieved through the regular UK-wide Pesticides Forum meetings. DEFRA also undertook a series of stakeholder workshops on the no deal legislative proposals in July 2018, which Scottish Government Officials attended. Representatives from a number of UK bodies from all sectors with an interest in the PPP regime attended. A number of questions were posed, but there were no strong objections to the proposals, with an acceptance that the approach would be necessary in the overall context of a no deal scenario. There is general acceptance that the proposed approach is sensible and proportionate.

On fertilisers, an industry meeting was hosted by DEFRA for the UK which informally sought stakeholders’ views in the area of manufacturing and marketing of fertilisers. Stakeholders’ views focused on the longer term arrangements rather than no-deal scenario arrangements. Main concerns were that there should be uninterrupted fertiliser supply and no added cost burdens to manufacturers and importers. This has been addressed through allowing for a time limited adjustment period for labelling.

The UK Government have published a series of technical notices which provide detail on how UK businesses and individuals should prepare in the event of a no deal Brexit scenario, including notices on regulating pesticides and manufacturing & marketing fertilisers. The Scottish Government has not received any enquiries from stakeholders on these to date.

A note of other impact assessments

An impact assessment has not been carried out in relation to these regulations as they are aimed at preserving the effect of the current regulatory regimes.
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 and EU legislation. The approach set out in the UK SIs is realistic, achievable and minimises immediate disruption. It ensures continuity of current arrangements for stakeholders, Governments and regulators and ensures continued protection of human health and the environment.

We have long experience of working collaboratively with the UK Government in these areas. Maintaining the longstanding UK wide approach is preferable for stakeholders and beneficial for all four governments as there is little policy divergence.

The Scottish Ministers believe that the changes proposed in these regulations are necessary insofar as falling within devolved competence to secure continuation of effective regulatory regimes. The approach respects the devolution settlement and in the current circumstances where there is existing UK-wide legislation and there is a need to prepare for a no deal exit from the EU, the Scottish Ministers consider that it is appropriate for the fixing legislation to be made on a UK-wide basis by the UK Government.

Detail how Scottish Ministers’ have had regard to the guiding principles on animal welfare and the environment.

The directly applicable legislation which will be rolled over post-exit and the related implementation/enforcement legislation have already been made with the guiding principles on animal welfare and the environment in mind. The proposed fixes in the UK SIs adhere to the spirit of the underlying EU regime – no significant policy changes are proposed.

Intended laying date of instruments

The Plant Protection Products (Miscellaneous Amendments) (EU Exit) Regulations 2019 and the Pesticides (Maximum Residue Levels) etc. (Amendment) (EU Exit) Regulations 2019 are both affirmative instruments and it is understood will be laid in draft on 11 December 2018.

The Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) 2018 will it is understood be laid for sifting on 1 November 2018. The Pesticides (Miscellaneous Amendments) (EU Exit) 2019 will it is understood be laid for sifting on 11 December 2018. These SIs are negative and sifting is a Westminster process which negative SIs go through to determine whether it is appropriate for the negative procedure to apply.

DEFRA have undertaken that all UK Exit SIs which require the consent of Scottish Ministers will not be made until after the consent of the Scottish Parliament is obtained.
Does the Scottish Parliament have 28 days to scrutinise?

Yes.

Information about any time dependency associated with the proposal

It is essential that the Regulations are in force on the day we exit the EU in the event of a no deal scenario to ensure that legislation is operable to allow continued high levels of protection for human health and the environment, continued facilitation of trade and continued supply of pesticides and fertilisers for farmers.

It is worth noting that there is likely also a need for amendments to fix deficiencies in the Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008 and the EC Fertilisers (Scotland) Regulations 2006. These will likely be combined in a single EU Exit Scottish SI.

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

Following finalisation of the draft SIs, the Scottish Government will work with UK Government and other devolved administrations to put in place sound governance arrangements to ensure transparency and accountability for decision making. This work will be designed within the context of the principles, agreed by the UK Government, the Scottish Government and the Welsh Government on 16 October 2017, to apply to common frameworks. In the areas of pesticides and fertilisers discussions with DEFRA and the other devolved administrations are already underway.

Any significant financial implications

These Regulations are not expected to have any financial implications for stakeholders in Scotland.

In the area of pesticides, there will be additional costs incurred by the UK Government and HSE, as the regulator, in building national capacity to run decision making bodies, review legislation, create guidance and manage the process around the increased applications for approval of active substances and their maximum residue levels since these costs are currently shared between Member States. This is currently a function centrally funded by the UK on behalf of all of its constituent parts.
November 2018

Dear Edward,

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

- AH/09 - Animal By-Products and Control and Eradication of Transmissible Spongiform Encephalopathies (UK) (EU Exit) (Miscellaneous Amendments) 2018
- AH/12 - The Livestock (Records, Identification and Movement (EU Exit) (Miscellaneous Amendments) Regulations 2018
- AW/01 - The Animal Welfare (Amendment) (EU Exit) Regulations 2018

(n.b. the transport section of this SI will be forwarded to the ECCLR Committee for consideration)

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 3 notifications (as detailed in the heading above) which set out the details of the SI’s 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. These are 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 SIs and they are 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 the final SI is in keeping with the terms of this notification.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
These particular notifications and Instruments ensure that:

- AH/09: UK legislation covering animal by-products (ABPs) and transmissible spongiform encephalopathies (TSEs) will continue to be fully operable if the UK leaves the EU with a withdrawal agreement;
- AH/12: UK legislation which enforces the Identification, Registration and Movement (IRM) in relation to disease prevention, control, eradication and the protection of public health will continue to be fully operable if the UK leaves the EU without a withdrawal agreement; and
- AW/01: 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.

I should highlight that a policy change is introduced by AW01. Under Council Regulation 1099/2009 on the protection of animals at the time of Killing, certificates of competence issued to slaughterers and animal handlers by other Member States must currently 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 introduces a policy change to remove the mutual recognition requirement. This decision is based on our inability to suspend or revoke certificates of competence issued in other EU Member 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 very few workers in Scotland that will be affected (precise figures are unavailable); any that are will be encouraged to apply for a UK Certificate of Competence before exit day to ensure continuity of employment.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

MAIRI GOUGEON

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
Consent notification – The Animal By-Products and Control and Eradication of Transmissible Spongiform Encephalopathies (UK) (EU Exit) (Miscellaneous Amendments) 2018

Brief explanation of law that the proposals amend

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 animal by-products (ABPs) and transmissible spongiform encephalopathies (TSEs). The legislation amended is as follows:

- Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down the rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies. Related Decisions subject to minor technical operability amendments are:
  - Commission Decision 2007/453 establishing the BSE status of Member States or third countries or regions thereof according to their BSE risk, and
  - Commission Decision 2009/719 authorising certain member States to recuse their annual BSE monitoring programmes

The legislation was first put in place as a result of the BSE epidemic in the late 1980s and early 1990s and have been updated frequently over the years to reflect the development and decline of the epidemic. ABP legislation is relevant to TSE controls because scientific evidence has demonstrated that infectivity is concentrated in certain organs which are classified as Specified Risk Material (SRM) and are destroyed to prevent their entry into the food chain. In addition, the legislation controls the use and disposal of ABPs to protect public and animal health against other diseases as well.

Summary of the proposals and how these correct deficiencies

The amendments made by the proposed SI will not make any significant changes to existing policy or the system that is in place that governs ABPs and TSEs procedures for disease control, prevention, eradication and the protection of public health and animal health (i.e. to control and eradicate TSEs and to the use, disposal and placing on the market and import of ABPs). The proposed SI will ensure existing directly applicable EU law laying down rules for ABPs and TSEs will continue to be operable as retained EU law in the event of a ‘no deal’ UK exit from the EU on 29 March 2019.

As the UK will no longer be a Member State of the EU, there are various amendments that will be made by the proposed SI to EU references in the Decisions and Regulations. These include references to ‘Member States’, ‘Member State competent authority’, the ‘Commission’ and ‘Community’.
Where necessary, these will be replaced or updated with references to the UK or the territories of Scotland, England, Wales and Northern Ireland or to Ministers.

Amendments will be made to reflect the exercise of administrative functions (i.e. functions that do not involve making legislation) by, in relation to Scotland, the Scottish Ministers and/or the Secretary of State with consent of the Scottish Ministers (with similar provision for the other devolved administrations).

Certain obligations and decision-making functions under EU law that will no longer have effect after the withdrawal of the UK from the EU will also be amended or removed.

Some of the EU legislation which will be amended by the proposed SI contains provision conferring EU legislative powers. Such provision will be amended in a separate transfer of functions SI which will be brought forward by Defra. The Scottish Government remains in discussions with Defra and the other devolved administrations about this. The Scottish Parliament will be separately notified in relation to the transfer of functions SI in due course.

**An explanation of why the change is considered necessary**

EU rules for the control of TSEs and ABPs are at least equivalent to, and in some cases higher than, the international standards set by the World Organisation for Animal Health (Office International des Epizooties - OIE). Whilst the UK will be under no legal obligation to adhere to EU rules for TSE and ABP controls following EU Exit, due to the history of the BSE epidemic in Europe (particularly within the UK in the 1980/90s), third countries will expect UK to at least mirror the key EU controls, even though these exceed OIE safeguard standards.

The changes that will be made by the proposed SI are necessary to ensure that rules for ABPs and TSEs will continue to be fully operable following the UK exit from the EU.

**SG categorisation of significance of proposals**

**Category A:** the deficiencies that will be corrected in the proposed SI are of a technical nature and do not include policy changes. The Scottish Government agrees with Defra on the appropriate approach. So far as the proposed SI will make provision for the exercise of administrative (ie non-legislative) functions it will do so in a manner consistent with the devolution settlement.

**Impact on devolved areas**

The proposed SI makes provision in a devolved area. The proposed changes will not affect the operation of current ABP and TSE policies in Scotland. In making provision to address deficiencies the proposed SI will respect the devolution settlement. So for example, the ABP and TSE legislation as amended by the proposed SI will provide for administrative functions to be
exercised by, in relation to Scotland, the Scottish Ministers and/or by the Secretary of State with, in relation to Scotland, consent of the Scottish Ministers (with similar provision for the other devolved administrations).

Those functions in the EU legislation to be amended by the proposed SI that involve making legislation are intended to be addressed in a separate UK transfer of functions SI which will be separately notified to the Scottish Parliament at a later date.

**Summary of stakeholder engagement/consultation**

The Scottish Government has not undertaken any stakeholder engagement as the proposed SI is not effecting any significant changes to existing policy and is instead making technical amendments to legislation.

**A note of other impact assessments (if available)**

An impact assessment has not been carried out in relation to the proposed SI as it is aimed at generally preserving the effect of the current regime.

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

The Scottish Ministers believe that the changes contained in the proposed SI will be necessary to ensure that Scottish Ministers can deal with ABPs and TSEs in the same way after the UK’s withdrawal from the European Union as they can now.

In the current circumstances where there is existing directly applicable EU law having effect throughout the UK, which 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. This is particularly the case in circumstances where the proposed SI will protect Scottish Ministers interests under the devolution settlement.

**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 will not significantly change existing policy and will make modifications needed to generally preserve the application of existing EU arrangements as retained EU law within the UK after EU exit. The relevant EU law has been made with the guiding principles on animal welfare and the environment in mind. In these circumstances, what will become retained EU law 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

The proposed SI is subject to the negative procedure and will be laid for sifting at Westminster on 20 November. We are working with Defra on the basis no EU Exit SIs will proceed to be made 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 detail why not?

N/A – The Scottish Parliament will have 28 days to scrutinise.

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 stakeholders in Scotland.

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

There are no anticipated broader governance issues anticipated with this instrument and the SG will continue their good working relationships between UK Administrations. These are technical amendments to ensure the continued operation of the current regime for exotic disease control in the event of a ‘no deal’ UK exit from the EU on 29 March 2019.
Consent notification - The Livestock (Records, Identification and Movement) (EU Exit) (Miscellaneous Amendments) Regulations 2018

Brief explanation of law that the proposals amend

The proposed Statutory Instrument (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 the records, identification and movement of bovine, caprine and ovine animals.

The proposed SI will make no changes to existing policies on the day-to-day operation of the regimes that control the traceability for animal disease prevention, control, eradication and the protection of public health in the UK (i.e. how keepers of cattle, sheep and goats must identify their animals, what records they must keep, and how they must report movements of their animals) and will therefore not reduce the effectiveness of current procedures.

The legislation amended is as follows:

**Council Regulation (EC) 1760/2000**
(in relation to establishing a system for the identification and registration of bovine animals – see below for additional information)

- Commission Regulation (EC) 911/2004
- (in relation to rules on eartags, passports and holding registers)
- (with regards the minimum level of controls to be carried out in the framework of the system for the identification and registration of bovine animals)
- Commission Regulation (EC) 494/98
- (as regards the application of minimum administrative sanctions in the framework of the system for the identification and registration of bovine animals)
- Commission Implementing Regulation (EU) 2017/949
- (with regards to the configuration of the identification code for bovine animals)
- Commission Regulation (EC) 644/2005
- (with regards to a special identification system for bovine animals kept for cultural / historical purposes on approved premises)
- Commission Regulation (EC) 509/1999
  (with regards the extension of the maximum period for the application to ear-tags to bison)

**Council Regulation (EC) 21/2004**
(with regards to establishing a system for the identification and registration of ovine and caprine animals – see below for additional information)

  (with regards the minimum level of checks to be carried out in relation to the identification and registration of ovine and caprine animals)
- Commission Decision (EC) 2006/968
(with regards the guidelines and procedures for the electronic identification of ovine and caprine animals)

The EU Council Regulations and Decision put in place EU-wide standards and a regime for the identification and traceability of livestock in relation to animal, human health and food safety.

In particular:

- Council Regulation (EC) 1760/2000 establishes a system for the identification and registration of bovine animals including the labelling of beef and beef products. It imposes general rules for the labelling of beef and beef products and it also applies a framework for clear, transparent information being made available to consumers through the use of labelling. It establishes an effective system for identification and registration of bovine animals at production stage and creates a specific labelling system in the beef sector. By virtue of this Regulation certain public requirements have been attained and in particular the protection of human and animal health.

- Council Regulation (EC) 21/2004 establishes a system for the identification, registration and movement of ovine and caprine animals. It has improved traceability by introducing individual electronic animal identification and real-time electronic movement reporting through 3rd party reporting which is key for animal disease prevention, control, eradication and the protection of public health.

**Summary of the proposals and how these correct deficiencies**

The proposed amendments made by this instrument do not make any changes to existing policy or to the system that governs Identification, Records and Movement (IRM) procedures for livestock in the UK for disease control, prevention, eradication and the protection of public health (i.e. how keepers of cattle, sheep and goats must identify their animals, what records they must keep and how they must report movement of their animals). The instrument ensures existing directly applicable EU law in this area will continue to be operable as retained EU law in the event of a ‘no deal’ UK exit from the EU on 29 March 2019.

**Council Regulation (EC) 1760/2000 in relation to establishing a system for the identification and registration of bovine animals**

**Council Regulation (EC) 21/2004 with regards to establishing a system for the identification and registration of ovine and caprine animals**

These Council Regulations currently contain references, terminology and definitions that will not be appropriate or operable as they stand once the UK is no longer an EU Member State. The proposed SI will address the deficiencies by making appropriate deletions and/or amendments. This includes a new definition of “appropriate Minister” which for Scotland is defined as the Scottish...
Ministers. Various administrative (ie non-legislative) functions resting with the Member State under the Regulations will be conferred upon the appropriate Minister e.g. extending the period of time for identification. There will also be an amended definition of “competent authority” referring to the appropriate Minister.


These Regulations and the Decision which further implement Council Regulation (EC) 1760/2000 and Council Regulation (EC) 21/2004 also contain various EU references, terminology and definitions that will no longer be appropriate when the UK is not an EU Member State. Again the proposed SI will address these deficiencies by making appropriate deletions and or amendments.

Amendments in relation to legislative functions
Both Council Regulation (EC) 1760/2000 and Council Regulation (EC) 21/2004 contain provisions conferring EU legislative powers. Such provision will be amended in a separate Transfer of Functions SI which will be brought forward by DEFRA. The Scottish Government remains in discussions with DEFRA and the other devolved administrations about this. The Scottish Parliament will be separately notified in relation to the Transfer of Functions SI in due course.

An explanation of why the change is considered necessary

The changes are considered necessary to ensure that post EU Withdrawal, an effective record, identification and movement system for animals remains in place in the UK. It is important that the current EU rules, standards and the mechanisms to enforce them are upheld post EU 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 and human health.

It is expected that maintaining the system in the UK which is based on the EU wide rules will help to facilitate and maintain trade between the UK and the EU.

SG categorisation of significance of proposals

Category A: The deficiencies corrected in this proposed SI are of a technical nature and do not include any policy changes. The Scottish Government agrees with DEFRA on the appropriate approach. So far as the proposed SI makes provision for exercise of administrative (non-legislative) functions it does so in a manner consistent with the devolution settlement.

Impact on devolved areas

The proposed SI makes provision in a devolved area and in making provision to address deficiencies in Regulation (EC) 1760/2000 and Regulation (EC)
21/2004 in particular as they become retained EU law, the SI respects the devolution settlement. For example, amendments are made to reflect that certain administrative functions of Member States in terms of the Regulation as it stands will instead be exercisable by the ‘appropriate Minister’ defined as, in relation to Scotland, the Scottish Ministers. Similarly, where the Regulations refers to administrative functions of Member State competent authorities, amendments are made to the effect that the competent authority in the UK is the ‘appropriate authority’ and so, in relation to Scotland, the Scottish Ministers.

Those functions in the EU legislation to be amended by the proposed SI that involve making legislation are intended to be addressed in a separate UK Transfer of Functions SI which will be separately notified to the Scottish Parliament at a later date.

**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 make changes to existing policy; they are of a technical nature to ensure operability of legislation post-exit allowing the UK to manage an effective system for identification, registration and movement of livestock.

**A note of other impact assessments (if available)**

An impact assessment has not been carried out in relation to the proposed SI as it is aimed at generally preserving the effect of the current regime.

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

The Scottish Ministers believe that the changes proposed in this Regulation are necessary to secure continuation of an effective regime for livestock IRM and to provide continuity for business in these areas on EU exit. This will ensure that Scottish Ministers can deal with the identification requirements of livestock in the same way after the UK’s withdrawal from the European Union as they do now.

The policy areas covered are such that there is existing directly applicable EU law 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 in particular on the basis that so far as provision is made for the exercise of administrative functions this is approached in a way which protects Scottish Ministers interests under the devolution settlement.
Where relevant – detail how Scottish Ministers’ have had regard to the guiding principles on animal welfare and the environment

The amendments made by this proposed SI do not change existing policy. It will make the required modifications to generally preserve the application of existing EU arrangements as retained EU law within the UK after EU exit. The relevant EU law has been made with the guiding principles on animal welfare and the environment in mind. In these circumstances what will become retained EU law 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 instrument is subject to the negative procedure and will be laid for sifting at Westminster on 14 November 2018. 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 detail why not?

The Scottish Parliament will have 28 days to scrutinise.

Information about any time dependency associated with the proposal

N/A

Any significant financial implications?

It is not expected that these Regulations will have any financial implications, including for stakeholders in Scotland.

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

There are no anticipated broader governance issues anticipated with this instrument and the Scottish Government will continue their good working relationships between UK Administrations. These are technical amendments to ensure the continued operation of the current regime for equine identification in the event of a ‘no deal’ UK exit from the EU on 29 March 2019.
Consent notification – The Animal Welfare (Amendment) (EU Exit) Regulations 2018

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


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 reinstated. 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-inated 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.
November 2018

THE ORGANIC PRODUCTS (EU EXIT) (MISCELLANEOUS AMENDMENTS) REGULATIONS

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

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, Mike Russell wrote to the Conveners of the Finance & Constitution and Delegated Powers and 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 a notification 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 the SI. We have had sight of the final SI although 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 the final SI is in keeping with the terms of this notification.
In addition to the Organic Products (Amendment) (EU Exit) Regulations 2018, two further sets of amendments on organics are being prepared to address deficiencies in directly applicable EU regulations. These amendments are being prepared to a different timetable. The first set of amendments will be combined with deficiencies corrections in respect of other policy areas into a single affirmative SI dealing with the transfers of functions. The other set of amendments are to be included in a negative SI solely relating to organics EU directly applicable regulations, which is intended to be finalised at a later date due to a forthcoming amendment to the EU regulations by the European Commission, which will apply prior to exit day and thus will need to be taken into account in order to ensure that the deficiencies corrections amend the most up-to-date version of the EU regulation on exit. Separate notifications will be submitted to the Committee in due course for the affirmative and negative instruments.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

FERGUS EWING
Consent notification – The Organic Products (Amendment) (EU Exit) Regulations 2018

Name of the SI
The Organic Products (Amendment) (EU Exit) Regulations 2018 ("the proposed regulations") address minor and technical deficiencies arising from withdrawal from the European Union, based on a presumed "no deal" scenario. The regulations do not affect the scope of powers exercisable by UK and Scottish Ministers and respect the devolution settlement.

Brief explanation of law that the proposals amend

Summary of the proposals and how these correct deficiencies
This notification covers proposals to fix deficiencies in the Organic Products Regulations 2009. Deficiencies in the Organic Products Regulations 2009 relate to references to, for example, the “European Union” or “EU” that will not be relevant when the UK leaves the EU. References to the requirement to use the EU organic logo will also not be relevant to the enforcement provisions. The proposed policy solution is to omit references that will no longer be appropriate and replace with, for example “United Kingdom” where it is considered appropriate.

Additionally, it is proposed that representatives of the European Commission will no longer be able to accompany authorised officers when those officers are exercising their powers of entry, as that is not appropriate after exit and accordingly it is proposed that the provision for that is omitted. References in the schedule of the 2009 Regulations to the requirement to use the EU logo are also proposed to be removed.

The proposal is to amend the legislation only to the extent necessary to enable it to work in the UK after EU exit. The proposed amendments are minor, technical amendments and do not contain substantive policy changes.

Explanation of why the change is considered necessary
Although many of the deficiencies are minor and/or technical in nature, there are sufficient deficiencies identified within the regulations regarding the production and labelling of organic products to raise concerns that the sale of organic products, the administration of the enforcement regime for organic products, and the trade of organic...
products post EU exit would be negatively impacted upon if the deficiencies were not corrected. The changes are necessary to ensure continuity of the administration and enforcement of the organics legislation post EU exit.

Scottish Government categorisation of significance of proposals
Category A. The proposed regulations are minor and technical in their detail, for example amending references to “EU” and “European Union”. The aim of the proposed regulations is to ensure continuity of law on exit day. There are no significant policy decisions for Ministers to make. The deficiencies do require to be corrected but there is an obvious policy answer in all cases, particularly given the “no deal” scenario. The SI updates references which are no longer appropriate once the UK has left the EU.

Impact on devolved areas
While policy on organics is within devolved competence, the development of that policy on organics has been aligned to date between Defra and the devolved administrations. There is economic and practical benefit to continue, particularly should we leave the EU without a deal in place. This SI allows for one organics regime on a UK wide basis to address that scenario. The Scottish Government and UK Government have normally worked together to create a pan UK approach and it is proposed that this approach continues, where it is in Scotland’s interests and in the interests of our organic sector for that to continue. The proposed regulations amend domestic legislation, i.e. the Organic Products Regulations 2009 which apply UK wide. The Organic Products Regulations 2009 were made on a UK wide basis following deliberate policy decisions at the time those Regulations were made. The impact of the proposed regulations will apply consistently across the UK and is not specific to Scotland. This does not prevent a different approach being taken in the future should Scotland’s interests require it.

Summary of stakeholder engagement/consultation
Scottish Government policy officials will engage with the Scottish Organic Forum to confirm that there are no significant concerns about the planned legislation. Scottish Government policy officials have already raised the matter with the Forum and they are content with our aim of ensuring, as far as possible, that the future organics regime operates as closely as possible to the current rules and understand that the proposed changes are appropriate in a “no deal” scenario. Additionally, Defra, in liaison with Scottish Government, are consulting with the UK Organic Certification Group (the overarching organisation for the organics control bodies).

Other impact assessments
No other impact assessments have been carried out and the UK Government do not intend to produce an impact assessment for the proposed regulations.
Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

The UK wide approach to the administration and enforcement of the organics legislation has worked well to date and since the aim is to ensure, as far as possible, continuity for the organics sector post EU exit, it makes sense to address the deficiencies that exist through UK SIs. Scotland does not have distinct issues that need handling separately from the rest of the UK and the majority of trade is within the UK. There could be risks of opting for SSIs, for example unintended inconsistencies in approach across the UK which could affect the industry.

Detail how Scottish Ministers’ have had regard to the guiding principles on animal welfare and the environment
The proposed changes are minor technical changes and adhere fully to the existing environmental and animal welfare principles.

Intended laying date of instrument
20 November 2018

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?
Not applicable. Scottish Government 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.

Information about any time dependency associated with the proposal
Not applicable.

Significant financial implications
There may be some financial implications for industry and businesses of the “no deal” arrangements in relation to changes to packaging and labelling, although we are working with Defra to minimise these costs through transitional arrangements. Costs are as yet unknown. There are not, however, significant financial implications attached to this SI.
THE INTELLIGENT TRANSPORT SYSTEMS (EU EXIT) REGULATIONS 2018

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

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, Mike Russell wrote to the Conveners of the Finance & Constitution and Delegated Powers and 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 a notification which sets out the details of the Statutory Instrument (SI) which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in these SIs. 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 the final SI is in keeping with the terms of this notification.

The proposals aim to revoke EU laws that would become inoperable following the UK’s exit from the European Union. These laws relate to guidance on the reporting and provision of information on parking for trucks and commercial vehicles; provision of traffic information; standardising technology and the period for adopting delegated acts.
I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

Michael Matheson

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
Consent notification – Intelligent Transport Systems (EU Exit) Regulations 2018

Brief explanation of law that the proposals amend
The proposals revoke EU laws which aim to facilitate the safe and efficient operation of the road network by the use of intelligent transport systems and the provision of information (which involves the sharing of data).

Summary of the proposals and how these correct deficiencies
The UK Government has undertaken an exercise to identify the possible legislative changes that may be required in relation to Intelligent Transport Systems EU Regulations and Decisions in order to ensure that UK domestic law works properly after EU exit. This exercise concluded that four EU Regulations relating to Intelligent Transport Systems, and three Decisions, should be revoked as they would become inoperable following EU Exit.

An explanation of why the change is considered necessary
The Intelligent Transport Systems EU Regulations:
(i) have not been transposed into UK law. Without this legislation, the ITS direct EU legislation would remain in force but there would be no powers of enforcement
(ii) include technical deficiencies which need to be addressed;
(iii) can continue to be met by administrative measures; and
(iv) will have limited application because three out of the four Regulations only relate to the European designated TEN-T road network and cross EU-border interoperability.

Scottish Government categorisation of significance of proposals
Category A – lowest level of scrutiny as there is no policy change being made but a simple revocation.

Impact on devolved areas
There is expected to be little impact for Scotland of the proposed changes.

Summary of stakeholder engagement/consultation
The devolved administrations of Scotland and Wales have been engaged and the UK Government has begun consultation on administrative measures to take the place of the revoked regulations.

A note of other impact assessments, (if available)
Not Applicable.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation
The proposed changes are largely procedural and the extent to which those aspects touch on devolved interests is very limited. As such our view is that it would be disproportionately burdensome for Scotland to legislate separately on the areas Scotland has legislative competence.
Intended laying date (if known) of SI/Sis
29 November 2018

If the Scottish Parliament will not have 28 days to scrutinise Scottish Minister’s proposal to consent, why not?
Not Applicable

Information about any time dependency associated with the proposal
The deficiencies need to be fixed before EU exit day.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?
The SI does not introduce further governance.

DfT have made assurances that administrative measures are in place to meet the requirements of the EU ITS Regulations. These include the current feasibility study regarding the national access point for data exchange, as required by the Regulations, to which the devolved administrations have contributed. DfT is preparing a terms of reference for the development of a sub-group of the STREETWISE, attended by Highways England and the other national road authorities, to ensure coordination and their compliance with the EU ITS Regulations.

Any significant financial implications
None