POLICY NOTE

THE ANIMAL HEALTH AND WELFARE AND OFFICIAL CONTROLS (ANIMALS, FEED AND FOOD) (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019

S.S.I. 2019/288

The above instrument ("the Instrument") was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and paragraphs 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018 ("the Withdrawal Act"). The Instrument is subject to negative procedure.

The Instrument will make minor and technical changes to ensure that domestic legislation which implements EU official controls (for animals, feed and food), animal health and animal welfare legislation continues to function effectively in Scotland after the UK leaves the EU.

Policy Objectives

The purpose of the Instrument is primarily to ensure that in the event of a 'no deal' exit from the European Union ("EU") by the United Kingdom, secondary legislation in relation to official controls (for animals, feed and food) and animal health and welfare, having its basis currently in EU law, continues to function effectively. To achieve that aim European legislation is being retained in UK law where practical and appropriate.

In relation to the matters covered by the Instrument, the Scottish Government and other devolved administrations plan to retain the current standards set out in EU legislation and EU-derived domestic legislation. Most of the amendments required to address deficiencies in secondary legislation in relation to official controls, animal health and animal welfare will be made by other instruments. However, some further amendments are required and these are made by Part 3 of the Instrument as follows:

- minor amendments are made to the Official Controls (Animals, Feed and Food) (Scotland) Regulations 2007 ("the Official Controls Regulations"),

- minor amendments are made to the Trade in Animals and Related Products (Scotland) Regulations 2012 ("the TARP Regulations") and a provision of the Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019 is revoked,

- an amendment is made to the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 ("the WATOK Regulations").

In addition, Part 2 of the Instrument relies on powers in the European Communities Act 1972 to update, before exit day, some references in the Official Controls Regulations and to revoke an obsolete provision in the WATOK Regulations.

Explanation of the law being amended

The Official Controls Regulations, the TARP Regulations, and the WATOK Regulations are being amended. Regulation 19(2)(b) (amending the Avian Influenza (H5N1 in Poultry) (Scotland) Order 2007) of the Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019 is also being revoked.

Reasons for and effect of the proposed change

The Official Controls Regulations provide, in relation to animal health and welfare legislation and some areas of feed and food law, for the application and enforcement of Regulation (EC) No. 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules. As with the above, amendments being made are minor to ensure operability in a no deal scenario and do not reflect a change in policy.

The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019 ("the Equivalent SI") is a related UK Statutory Instrument. Amongst other provisions relating to Scotland, that instrument also makes amendments to the Trade in Animals and Related Products Regulations 2011 (for England) and the Trade in Animals and Related Products Regulations (Northern Ireland) 2011. Following discussions with Defra colleagues, our approaches to correcting deficiencies have been similar in this case. The Minister for Rural Affairs and the Natural Environment issued the notification relating to the Equivalent SI for committee review on 18 June 2019 and consent was given by the Rural Economy and Connectivity Committee and the Environment, Climate Change and Land Reform Committee on 3 and 4 September 2019 respectively. Neither the Equivalent SI nor the Instrument reflect a change in policy.

Regulation 4(8) of the Animal Welfare (Amendment) (EU Exit) Regulations 2019 addresses (in part) a deficiency arising from the withdrawal of the UK from the EU by removing an obligation on the UK (under Article 21(4) of Council Regulation (EC) No 1099/2009) to recognise slaughterer Certificates of Competence ("CoCs") issued by EU member States. The reasons for this were set out in the notification to Parliament regarding this SI in November 2018. In combination with this, the Instrument amends the WATOK Regulations to allow for the passing of a relevant final examination in Republic of Ireland to be accepted as a route to obtaining a CoC in Scotland. It also allows for CoCs issued in the Republic of Ireland before December 2015 in reliance on article 29(2) of Council Regulation (EC) No 1099/2009 to be accepted in Scotland as equivalent to the passing of a final examination. The amendments to the WATOK Regulations (and equivalent provision planned for the rest of the UK) will help to ensure that the UK meets its obligations under the Common Travel Area post EU exit.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement, "In my view the Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made only to prevent, remedy or mitigate deficiencies in retained EU law, following a 'no deal' United Kingdom exit from the European Union".

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement, "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are to ensure, following a 'no deal' exit from the European Union by the United Kingdom, animal health and welfare and official controls legislation continues to function effectively in Scotland. This is essential to facilitate trade, to ensure effective disease prevention, eradication and control as well as for the continued protection of public health, and to protect animal welfare. The amendments made by the instrument are technical in nature and prevent, remedy or mitigate deficiencies in retained EU law".

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement, "In my view the Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement, "In my view the Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement, "In my view, the Scottish Ministers have, in preparing the Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019, had due regard to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union".

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement, "In my view the Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019 do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)".

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Low – The amendments are technical in nature to allow continuity of law and do not involve any significant change in policy.

Statement setting out the Scottish Ministers' reasons for their choice of procedure

Negative procedure is considered appropriate as these minor and technical amendments do no more than is appropriate to ensure that the legislation continues to operate effectively following the UK's exit from the EU. The regulations do not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

Consultation

The Scottish Government has worked with Defra, as well as the Welsh and Northern Irish devolved administrations, on the content of the Instrument, and related UK Statutory Instruments, as appropriate, to ensure legislative operability in Scotland on day one of the UK's exit from the EU.

Given that the Instrument only makes minor and technical changes, consultation with industry or other stakeholders has not been undertaken. The Scottish Government continues to consult stakeholders regularly.

The Instrument contains provision coming into force before exit day. Therefore, in accordance with schedule 2, paragraph 4(a) of the Withdrawal Act, the Scottish Ministers have consulted the Secretary of State in relation to the making of the Instrument.

Impact Assessments

An Impact Assessment has not been prepared for the Instrument because it is aimed at preserving the effect of current official controls, animal health and animal welfare legislation in Scotland. The impact on stakeholders is expected to be minimal.

Financial Effects

The Minister for Rural Affairs and the Natural Environment confirms that no BRIA is necessary as the Instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Agriculture and Rural Economy Directorate
10 September 2019