

POLICY NOTE

The Animal Welfare (Amendment) (EU Exit) (Scotland) Regulations 2019

SSI 2019/34

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 to the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument.

This instrument is correcting deficiencies created by the UK withdrawal from the EU in Scottish legislation on Animal welfare. The amendments proposed to Scottish legislation are technical in nature and do not reflect any change in animal welfare policy.

Policy Objectives

The Animal Welfare (Amendment) (EU Exit) (Scotland) Regulations 2019 are being made using powers in the European Union (Withdrawal) Act 2018 in order to correct deficiencies in Scottish legislation on animal welfare to allow it to continue to operate effectively post-exit, including in the event of a ‘no deal’ UK withdrawal from the European Union.

Explanation of the law being amended by the regulations

The proposed SSI affects the following enactments:

- Animal Health and Welfare (Scotland) Act 2006
- Welfare of Farmed Animals (Scotland) Regulations 2010
- Welfare of Animals in Transport (Scotland) Regulations 2006
- Welfare of Animals (Slaughter or Killing) Regulations 1995
- Welfare of Animals at the Time of Killing (Scotland) Regulations 2012

These enactments put in place Scottish standards and regimes to protect the welfare of animals on farm, during transport and at the time of slaughter.

The 2006 Act is part of the over-arching animal health and welfare legislation under which much of Scottish animal health and welfare provision is made.

The regulations that will be affected implement EU rules in Scotland that will become retained EU law post-exit. Technical amendments to ensure the continued functionality of the retained EU laws are being made in a separate UK SI, with the consent of the Scottish Parliament.

Part 2 of the Animal Health and Welfare (Scotland) Act 2006 is the over-arching Scottish legislation that protects the welfare of all animals under someone’s care, whether permanently or on a temporary basis (‘protected animals’). It promotes the welfare of animals and prevents harm through measures such as introducing a duty of care on those responsible for animals and allowing animals either suffering or in danger of suffering to be

removed. The Act prohibits causing a protected animal unnecessary suffering, failing to take reasonable steps to ensure the welfare of animals for which a person is responsible (the duty of care), the giving of animals as prizes, abandonment and animal fights. It also gives Scottish Ministers the power to make regulations to further secure animal welfare.

The Welfare of Farmed Animals (Scotland) Regulations 2010 (the “2010 Regulations”) implement a number of EU Directives relating to the welfare of animals on farm:

- Council Directive 1999/74/EC laying down minimum standards for the protection of laying hens
- Council Directive 2007/43/EC laying down minimum rules for the protection of chickens kept for meat production
- Council Directive 2008/119/EC laying down minimum standards for the protection of calves
- Council Directive 2008/120/EC laying down minimum standards for the protection of pigs.

The Directives will not become UK law post exit; however, the rules laid down by them are important to protect the welfare of livestock in Scottish agriculture. The 2010 Regulations implements specific rules for meat chickens, laying hens, calves, cattle, pigs and rabbits that cover important aspects of animal husbandry for each type of livestock such as record keeping; inspections; buildings and accommodation; mechanical equipment; feed, water and other substances; breeding procedures; staff training; stocking densities; and ethological needs.

The Welfare of Animals in Transport (Scotland) Regulations 2006 (the “2006 Regulations”) implement Council Regulation 1/2005 on the protection of animals during transport and related operations, which will become retained EU law post-exit. Amendments to the Council Regulation are being made in a separate UK SI, with the consent of the Scottish Parliament, to ensure its continued operation. Together, the 2006 Regulations and the Council Regulation lay down rules on the conditions of transport required for all live vertebrate animals being transported in connection with an economic activity. These include rules relating to the means of transport, space allowance, the duties of transporters, fitness to travel, feed, water and rest periods, and the training of animal handlers.

The Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (the “2012 Regulations”), in combination with the Welfare of Animals (Slaughter or Killing) Regulations 1995 (the “1995 Regulations”), implements Council Regulation 1099/2009 on the protection of animals at the time of killing. Council Regulation 1099/2009 will become retained EU law post-exit. Amendments to this Council Regulation are being made in a separate UK SI, with the consent of the Scottish Parliament, to ensure its continued operation. Together, the 2012 Regulations, the 1995 Regulations and the Council Regulation set out rules for the killing of agricultural livestock. These include rules on where animals may be killed; staff training; stunning methods; stunning checks; the lay-out, construction and equipment of slaughterhouses; how animals are handled and restrained; and monitoring procedures.

Reasons for and effect of the proposed change

The proposed SSI is to ensure that Scottish enactments protecting the welfare of animals whilst on farm, being transported, or at the time of their killing will continue to be operable and enforceable after the UK leaves the EU, particularly in a no deal scenario. The changes are technical in nature and do not effect any changes in animal welfare policy.

The amendment proposed to the Animal Health and Welfare (Scotland) Act 2006 is a minor change to inspection powers, removing reference to the enforcement of EU obligations and replacing it with reference to retained EU obligations. This will ensure that inspectors have the required powers to enforce relevant retained EU law post exit.

Proposed amendments to the 1995 and 2006 Regulations are also minor in nature. The changes:

- Remove the power for an Inspector to bring along a representative of the European Commission;
- Adjust cross-references to take account of changes being made to retained EU instruments; and
- Remove references to the enforcement of the EU Regulation and to member States.

More extensive amendments are proposed to the 2010 Regulations. This reflects the fact that the EU Directives that this Regulation implements will not be part of UK law after exit day, which means that some provisions must be moved from the Directives to the 2010 Regulations. Changes are proposed to:

- Remove Scottish Ministers responsibilities as competent authority for the Directives concerned;
- Remove powers of entry for European Commission representatives;
- Insert directly into the Scottish legislation requirements currently referred to in Directives regarding zootechnical treatments, and definitions of ‘flock’ and ‘dry pregnant sow’; and
- Insert training requirements for persons caring for animals.

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 Welfare (Amendment) (EU Exit) (Scotland) Regulations 2019 does no more than is appropriate”. This is the case because the amendments to Scottish animal welfare legislation do not effect any policy changes and are restricted to ensuring that the existing laws will continue to work after exit..

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 that without making the proposed amendments, Scottish animal welfare laws would not function properly following withdrawal from the EU, and that such inaction could result in reduced protection for the welfare of animals in Scotland.

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 Welfare (Amendment) (EU Exit) (Scotland) Regulations 2019 does 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 Welfare (Amendment) (EU Exit) (Scotland) 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 Animal Welfare (Amendment) (EU Exit) (Scotland) Regulations 2019 have 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)

This heading is not applicable. The SSI does not deal with such matters.

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

Low. This is because the amendments being made are minor and technical in nature and ensure the continuity of law with no policy change.

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

The instrument is considered to be appropriate for negative procedure as the changes are technical in nature, and limited to addressing deficiencies in Scots law that would otherwise exist at exit day.

Further information

Consultation

None required as no policy changes are being implemented

Impact Assessments

Full impact assessments have not been prepared for this instrument because amendments are technical in nature and have no effect on the policy implemented. The amendments do not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies 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
Directorate For Agriculture And Rural Economy

31 January 2019