

POLICY NOTE

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

SSI 2019/71

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

This instrument will make minor and technical changes to ensure that domestic legislation which implements EU animal health legislation continues to function effectively in Scotland after the UK leaves the EU.

This is essential to facilitate trade, ensure effective disease prevention, eradication and control as well as the continued protection of public health.

Policy Objectives

The purpose of this instrument is 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 animal health 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.

For animal health, the Scottish Government and other devolved administrations plan to retain the current standards set out in EU legislation and EU-derived domestic legislation. Prior to exit day a number of technical corrections are required.

In addition to relying on powers in the 2018 Act to fix deficiencies which arise as a result of EU exit (*Part 3 - Amendment of secondary legislation relating to withdrawal from the European Union*), changes are being made using the power in section 2(2) of the 1972 Act (*Part 2 - Amendment of references in secondary legislation*) to make technical changes to secondary legislation in preparation for EU exit, principally to update out of date references in domestic legislation to EU instruments referred to in the domestic legislation. A number of further minor amendments are made to rectify omissions or errors in domestic legislation.

Explanation of the law being amended

This note groups the SSIs being amended by policy area and outlines the effect of each SSI.

Animal By-Products and Transmissible Spongiform Encephalopathies

The Animal By-Products (Enforcement) (Scotland) Regulations 2013 implement EU animal by-product rules as principally contained in Regulation (EC) No 1069/2009 and No 142/2011.

The Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010 make provision for arrangements for administering and enforcing Council Regulation (EC) No. 999/2001 which lays down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ('TSEs') such as bovine spongiform encephalopathy ('BSE') in cattle and scrapie in sheep and goats.

Bovine Semen

The Bovine Semen (Scotland) Regulations 2007 govern the collection, processing, storage and supply of bovine semen for the market.

Endemic Disease

The Sheep Scab (Scotland) Order 2010 (amended in Part 2 only) enhances existing controls for sheep scab in Scotland by making it compulsory for suspected or confirmed incidences of sheep scab to be notified to the Animal and Plant Health Agency and making provision for effective enforcement against those owner/keepers who are suspected of having scab in their flock but fail to deal with it.

Exotic Diseases

The African Horse Sickness (Scotland) Order 2012 implements the provisions of Council Directive 92/35/EEC laying down control measures to combat African horse sickness (an equine viral disease transmitted by midges).

The Avian Influenza (H5N1 in Poultry) (Scotland) Order 2007 provides for measures in the event of the H5N1 subtype of the Avian Influenza virus being discovered in poultry in Scotland. The effect of these measures is to reinforce the controls provided under the Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order 2006 by creating additional zones in which proportionate movement controls apply.

The Avian Influenza (H5N1 in Wild Birds) (Scotland) Order 2007 transposes Commission Decision 2006/563/EC to provide protection measures in the event of the H5N1 subtype of the Avian Influenza virus being discovered in wild birds in Scotland. In addition to transposing European legislation, the effect of these measures is to reinforce biosecurity and movement controls on the domestic poultry flock.

The Avian Influenza (Slaughter and Vaccination) (Scotland) Regulations 2006 make explicit a duty to slaughter poultry and other birds on infected premises and those judged, following a veterinary inquiry, to be dangerous contacts. It also provides powers to vaccinate birds in line with the EU Avian Influenza Directive 2005/94/EC and sets the framework for how these powers would be used. The remaining provisions of the Directive are transposed in the companion SSI, the Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order 2006 covered below.

The Avian Influenza and Influenza of Avian Origin in Mammals (Scotland) Order 2006 transposes Directive 2005/94/EC to provide powers to respond to any outbreak of Avian Influenza in Scotland. The remainder of the Directive, specifically those provisions relating to slaughter and to vaccination are transposed via the companion SSI, the Avian Influenza (Slaughter and Vaccination) (Scotland) Regulations 2006 covered above. In addition to transposing European legislation, the effect of these measures is reinforce existing controls on Highly Pathogenic Avian Influenza on a risk basis and to require control measures for Low Pathogenic Avian Influenza for the first time.

The Bluetongue (Scotland) Order 2012 implements the provisions of Council Directive 2000/75/EC, which lays down specific provisions for the control and eradication of Bluetongue (a disease that affects ruminants and is transmitted by insect vectors).

The Foot-and-Mouth Disease (Scotland) Order 2006 transposes the major part of the EU Foot-and-Mouth Disease (FMD) Directive 2003/85/EC to provide powers to respond to any outbreak of FMD in Scotland. The Order sets out the procedures and controls required on suspicion and confirmation of FMD.

The Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006 provide powers to vaccinate susceptible animals in line with the EU FMD Directive (2003/85/EC) and sets the framework for how the powers would be used.

The Poultry Compartments (Scotland) Order 2010 implements Commission Regulation (EC) No 616/2009 which makes provision for the recognition of poultry and other bird compartments that meet high standards of biosecurity, including additional preventive biosecurity measures in such compartments with respect to avian influenza.

The Products of Animal Origin (Disease Control) (Scotland) Order 2008 implements Council Directive 2002/99/EC which requires control of meat for human consumption during an outbreak of specified exotic animal diseases and Commission Decision 2007/118/EC laying down detailed rules in relation to marking and supply of poultry meat during an outbreak of Newcastle Disease (a disease of birds).

Equine Identification

The Equine Animal (Identification) (Scotland) Regulations 2019 relate to Commission Implementing Regulation (EU) 2015/262 laying down rules on methods for the identification of equidae.

Livestock (Records, Identification and Movement)

The Cattle Identification (Scotland) Regulations 2007 make provision in relation to cattle identification and tracing. The instrument implements EU law which provides for a system of identification and traceability, the aim of which is to ensure that each bovine animal can be identified and its movements traced.

The Pigs (Records, Identification and Movement) (Scotland) Order 2011 make provision for the identification and registration of pigs as set out in Council Directive 2008/71/EC. It clarifies and simplifies the existing requirements in terms of the identification and registration of pigs; and allows keepers to report movements in a number of ways.

The Sheep and Goats (Records, Identification and Movement) (Scotland) Order 2009 make provision for the administration and enforcement of Council Regulation (EC) No.21/2004 establishing a system for the identification, and registration of ovine and caprine animals.

Trade in Animals and Related Products

The Trade in Animals and Related Products (Scotland) Regulations 2012 make provision concerning trade in live animals and animal products.

Zoonotic Diseases

The Tuberculosis (Scotland) Order 2007 makes provision in relation to the operation of a monitoring and testing programme for bovine tuberculosis.

The Zoonoses Monitoring (Scotland) Regulations 2007 bring together and enhance powers to monitor zoonoses and zoonotic agents as required under EU Directive 2003/99/EC. It facilitates a monitoring system in Scotland which gathers information on zoonoses and zoonotic agents in all animals, including domestic and wild animal populations, in order to assess the risk to human health.

Reasons for and effect of the proposed change

The instrument updates Regulations and Orders listed above.

In Part 2 of the instrument amendments are made principally to update out of date references in domestic legislation to EU instruments referred to in the domestic legislation. A number of further minor amendments are made to rectify omissions or errors in domestic legislation.

Part 3 of the instrument makes changes to animal health legislation to ensure that the law functions correctly after exit day by amending provisions in the legislation which are inappropriate or redundant as a result of EU withdrawal. This is together with changes to directly applicable EU instruments becoming retained law in relation to animal health being made by UK Statutory Instruments, including those listed below:

- The Transmissible Spongiform Encephalopathies and Animal By-Products (Amendment etc.) (EU Exit) Regulations 2019
<http://www.legislation.gov.uk/uksi/2019/170/contents/made;>
- The Animals (Legislative Functions) (EU Exit) Regulations 2019
<http://www.legislation.gov.uk/ukdsi/2019/9780111178737/contents;>
- The Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2019
<http://www.legislation.gov.uk/ukdsi/2019/9780111178089/contents;>
- The Exotic Disease (Amendment etc.) (EU exit) Regulations 2018
<http://www.legislation.gov.uk/uksi/2018/1410/contents/made;>
- The Farriers and Animal Health (Amendment) (EU Exit) Regulations 2019
<http://www.legislation.gov.uk/ukdsi/2019/9780111176832/contents;>
- The Import and Trade of Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019
<http://www.legislation.gov.uk/ukdsi/2019/9780111178690/contents;>
- The Livestock (Records, Identification and Movement (EU Exit) (Amendment) Regulations 2019
<http://www.legislation.gov.uk/ukdsi/2019/9780111178133/contents;>
- The Trade in Animals and Related Products (Amendment) (EU Exit) Regulations 2019
<http://www.legislation.gov.uk/ukdsi/2019/9780111178621/contents;> and
- The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019
<http://www.legislation.gov.uk/ukdsi/2019/9780111181201/contents>

Neither the UK Statutory Instruments (which are being laid by the UK Government with the agreement of the Scottish Government and the Scottish Parliament) nor the Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019 reflect a change in policy. The

provision in the UK Statutory Instruments and the provision in Part 3 of the instrument has been brought forward in exercise of powers in the 2018 Act in order to address failures of retained EU law to operate effectively after the UK's exit from the EU.

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 (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made only to ensure, following a 'no deal' United Kingdom exit from the European Union, continued and effective functioning of the legislation being amended and do not introduce policy change".

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 legislation continues to function effectively in Scotland. This is essential to facilitate trade, ensure effective disease prevention, eradication and control as well as the continued protection of public health. The amendments made by the instrument are technical in nature to ensure legislative operability only".

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 (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 (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 Animal Health (EU Exit) (Scotland) (Amendment) 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)

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement, “In my view the Animal Health (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 amount to a 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 necessary 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 animal health UK Statutory Instruments and this instrument, as appropriate, to ensure legislative operability in Scotland on day one of the UK’s exit from the EU.

Given that this proposed 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.

Impact Assessments

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

Financial Effects

The Minister for Rural Affairs and the 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

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