

## POLICY NOTE

### THE ANIMAL HEALTH AND WELFARE AND OFFICIAL CONTROLS (AGRICULTURE) (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2020

#### SSI 2020/380

The above instrument is 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 2018 Act”).

In accordance with paragraph 4(a) of schedule 2 of the 2018 Act, to the extent that these Regulations are made under schedule 2 of that Act and are to come into force before IP completion day, the Secretary of State has been consulted.

The instrument is subject to negative procedure.

#### **Purpose of the instrument.**

The main purpose of the Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 (“the Regulations”) is to address deficiencies of retained EU law to operate effectively (in particular, to ensure that the law functions correctly after IP completion day by amending provisions in the legislation which are inappropriate as a result of EU withdrawal or the Northern Ireland Protocol) and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. This will ensure that EU-derived domestic legislation relating to animal health and official controls remains operable following IP completion day.

The Regulations also make a minor amendment to the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 to update the list of qualification authorities who issue qualification certificates that are recognised in Scotland for the purposes of obtaining a certificate of competence.

#### **Policy Objectives**

Where practical and appropriate, European legislation is being retained in UK law on the UK’s exit from the EU.

Upon exit day a number of technical corrections are required to several pieces of EU-derived domestic legislation, as set out further below. The objective is to ensure the continued operability of Scotland’s animal health and official controls legislation following the UK’s exit from the EU and the agreement of the Withdrawal Agreement and Northern Ireland Protocol.

This instrument does not introduce any policy changes.

## **Explanation of the law being amended by the regulations**

Regulation 2 amends the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012, which make provision in Scotland for the implementation of Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing.

Regulation 3 amends the Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019 (“the 2019 EU Exit Regulations”). The 2019 EU Exit Regulations 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.

The amendments to the 2019 EU Exit Regulations will in turn amend:

- The Cattle Identification (Scotland) Regulations 2007, which make provision in Scotland 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 Bovine Semen (Scotland) Regulations 2007, which govern the collection, processing, storage and supply of bovine semen for the market in Scotland.
- The Equine Animal (Identification) (Scotland) Regulations 2019, which make provision in Scotland for the enforcement of Commission Implementing Regulation (EU) 2015/2621 laying down rules on methods for the identification of equidae.

Regulation 4 amends the Official Controls (Agriculture etc.) (Scotland) Regulations 2019, which implement Regulation (EU) 2017/625 in respect of official controls and other official activities on genetically modified organisms, animals, animal by-products and derived products.

## **Reasons for and effect of the proposed change or changes on retained EU law**

The Regulations will ensure that retained EU law is modified to operate effectively; thus reducing the potential for future operational confusion following the UK’s exit from the EU.

The amendments are mainly of a technical nature and do not introduce any policy changes.

- **Amendment of the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012**

Regulation 2 makes an amendment to the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 to update the list of qualification authorities who issue qualification certificates that are recognised in Scotland for the purposes of obtaining a certificate of competence. This amendment will ensure continued mutual recognition of qualification certificates across the UK.

This is not a deficiency fix required as a result of the United Kingdom’s exit from the European Union, and accordingly has been made under the powers contained in section 2(2) of the European Communities Act 1972.

- **Amendment of the 2019 EU Exit Regulations**

Regulation 3 amends provisions of a previous EU exit deficiency fixing instrument, as some of the deficiencies that require to be addressed are no longer appropriate in light of the Northern Ireland Protocol and Withdrawal Agreement. The amendments will ensure that functioning systems for animal health continue to be operable after IP completion day.

The provisions of the 2019 EU Exit Regulations which require further amendment come into effect on IP completion day, and, as such, the amending provisions of these Regulations require to come into force immediately before IP completion day to ensure that the law will be clear following IP completion day.

Some of the amendments are to address deficiencies that are no longer appropriate in light of the Northern Ireland Protocol, such as substituting references to “the United Kingdom” for “Great Britain”. The instrument also amends references from “exit day” to “IP completion day” to reflect the European Union (Withdrawal Agreement) Act 2020 and the transition period.

- **Amendment of the Official Controls (Agriculture etc.) (Scotland) Regulations 2019**

Regulation 4 amends the Official Controls (Agriculture etc.) (Scotland) Regulations 2019 in order to correct deficiencies in retained EU law as a result of the UK’s withdrawal from the EU to ensure a functioning system on official controls and other official activities performed.

The amendments will remove provision for arrangements which involve the EU or public authorities in member States, which will no longer exist under Regulation (EU) 2017/625 as retained direct EU law. It also instrument restates a number of references to that Regulation to make it clearer and more accessible that such references should be read as references to retained direct EU law.

### **Statements required by European Union (Withdrawal) Act 2018**

Part 2 of these Regulations (regulation 2) is made in exercise of powers in section 2(2) of the European Communities Act 1972. Part 3 of these Regulations (regulations 3 and 4) is made in exercise of the deficiency fixing powers contained in the 2018 Act. The statements set out below are relevant to Part 3 of the Regulations.

#### **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 has made the following statement “In my view The Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 do no more than is appropriate. This is because the Regulations address necessary changes arising from leaving the EU”.

**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 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 exit from the EU, EU-derived domestic legislation relating to animal health and agriculture 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 has made the following statement “In my view the Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 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 has made the following statement “In my view the Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 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 has made the following statement “In my view the Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 have had due regard to the need 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 has made the

following statement, “In my view the Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 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.

### **Further information**

#### **Consultation**

There is a requirement to consult the UK Secretary of State under paragraph 4(a) of schedule 2 of the EU (Withdrawal) Act 2018 where regulations contain provisions which are due to come into force before IP completion day. The relevant UK Secretary of State has been consulted as required by the 2018 Act before the Regulations were made.

#### **Impact Assessments**

Full impact assessments have not been prepared for this instrument because the amendments do not alter Scottish Government’s current environmental policies and priorities and, therefore, do not have a significant impact on the environment. There is expected to be no impact on business, charities or voluntary bodies.

#### **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

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