

POLICY NOTE

THE TRADE IN ANIMALS AND RELATED PRODUCTS (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2020

SSI 2020/XXX

The above instrument is made in exercise of the powers conferred by paragraphs 1(1) and (3) and 11M(1) of schedule 2, paragraph 7 of schedule 4 and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018.

The instrument is subject to affirmative procedure.

Purpose of the instrument.

To makes changes to the Trade in Animals and Related Products (Scotland) Regulations 2012, so that they continue to operate effectively after IP completion day.

Policy Objectives

Where practical and appropriate, European legislation is being retained in UK law on IP completion day. In relation to the importation of live animals, products of animal origin, germinal products and animal by-products. Scottish Government and other administrations plan to retain the current rules set out in EU legislation and EU-derived domestic legislation on official controls to be carried out to verify the compliance with rules to protect human and animal health. The instrument is required to ensure appropriate official controls are carried out on animals and products entering Scotland from a third country to protect human and animal health, and to provide continuity for businesses and consumers.

Upon IP completion day a number of amendments are required to reflect that the UK is no longer a member State. The objective of the instrument is to ensure a functioning system of controls on imports of live animals and products of animal origin, germinal products and animal by-products.

The amendments are necessary to ensure that official controls on imports of live animals and animal products to verify that imported goods continue to meet the specific import conditions laid down in the relevant retained European Union legislation to safeguard animal and public health.

Explanation of the law being amended by the regulations

The Trade in Animals and Related Products (Scotland) Regulations 2012 (“the 2012 Regulations) establishes arrangements for trade between member States (and countries or territories which as a result of agreements with the EU were to be treated as member States) in live animals and genetic material, and for the importation of live animals and products of animal origin, germinal products and animal by-products from a third country outside the European Union.

The Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland)

(Amendment) Regulations 2019 contain amendments to the 2012 Regulations to deal with deficiencies arising from withdrawal, and which are due to come into force on IP completion day. The 2012 Regulations were however substantially amended after these instruments were made by the Official Controls (Agriculture etc) (Scotland) Regulations 2019 which implemented Regulation (EU) 2017/625 (“the Official Controls Regulation”) and which will form part of retained direct EU law.

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

The instrument makes changes to the 2012 Regulations which reflect that the arrangements for the system of trade in animals and products between member States will no longer exist and to reflect other changes to the Official Controls Regulation as it will form part of retained direct EU law as amended by a UK Statutory Instrument, the Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020.

Principally, the instrument will omit provisions in the 2012 Regulations in connection with the system of trade between member States, and will treat member States (and countries or territories that were treated by the 2012 Regulations as member States) as a third country to which the system for the importation of animals and products applies, with official controls carried out at border control posts. The instrument will make transitional provision, in addition to that made in the Official Controls Regulation as amended by the UK Statutory Instrument, for the application of the system for the importation of live animals and products from a third country, in relation to animals and products originating from member States (and from countries and territories that were treated by the 2012 Regulations as member States) so that they need not enter Scotland via a border control post, provided certain requirements are satisfied.

The provisions in connection with the system of trade between member States that will be omitted include revoking a provision for the charging of fees in relation to movements between member states, which will no longer have any application.

Other amendments to the 2012 Regulations include

- Updating references to retained direct EU legislation governing importation, including the Official Controls Regulation, and provisions made in it
- Removing provision for information to be given by Scottish Ministers to the Commission and member States if suspending the approval of border control post, which is no longer appropriate
- Referring to Great Britain, rather than the United Kingdom, where the application of the provision to the United Kingdom would no longer be appropriate in accordance with the Northern Ireland Protocol to the Withdrawal Agreement
- Transitional provision that animals and products from Scotland which are rejected from entering the European Union, are also not required to re-enter via a border control post provided certain requirements are satisfied
- Substituting references to EU legislation which will not form part of retained EU law with references to appropriate domestic legislation
- Restating aspects of the 2012 Regulations, including those which contain EU references, in a clearer or more accessible way

The instrument will also omit the provisions of the Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019, which amend the 2012 Regulations and which are no longer appropriate in light of the Official Controls Regulation, the subsequent amendments to the 2012 Regulations, and the Northern Ireland Protocol to the Withdrawal Agreement.

Statements required by European Union (Withdrawal) Act 2018

Principally, this instrument is made in exercise of powers under Part 1 of schedule 2 of the European Union (Withdrawal) Act 2018. Regulation 2(13)(a) and (21)(a)(i) implement the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement. Regulation 2(26) is made in exercise of powers under paragraph 7 of schedule 4 of the European Union (Withdrawal) Act 2018. The statements below relate to the exercise of powers under Part 1 of schedule 2 of the 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 has made the following statement “In my view The Trade in Animals and Related Products (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 necessary to secure continuation of an effective regime for official controls on the trade in animals and animal related products, and provide continuity of business in these areas on EU exit.

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 Trade in Animals and Related Products (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 Trade in Animals and Related Products (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 made the following statement “In my view The Trade in Animals and Related Products (EU Exit)(Scotland) (Amendment) Regulations 2020 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 has made the following statement, “In my view the Trade in Animals and Related Products (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

Medium – The instrument contains provision which relates to a fee in respect of a function exercisable by a UK public authority, but this is being repealed as it is no longer of any application as a result of the Official Controls Regulation becoming retained direct EU law as amended by the UK SI: the Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020.

The instrument as framed is primarily concerned with technical detail but does include some more significant provisions that may warrant committee scrutiny; or more significant policy choice for Ministers but with limited implications in particular the provisions adding a new schedule 5 to the 2012 Regulations which will supplement the provision in the Official Controls Regulation for a phased introduction of checks and pre-notification of EU (and EEA) goods at the end of the transition period. From 1 January 2021, the provisions in schedule 5 will also require pre-notification for imports of animal by-products and products which have been presented to certain member State Border Control Posts (as well as the pre-notification required for live animals and germinal products under the Official Controls Regulation) and from 1 April 2021 will also require pre-notification of products of animal origin.

A transitional provision will also be added to regulation 23 of the 2012 Regulations which pertains to the re-importation of animals and products from Scotland which are rejected from entering the European Union. These will not be required to re-enter via a Border Control Post

provided that the Scottish Ministers or Food Standards Scotland are pre-notified and that they authorise the re-entry other than via a Border Control Pos. This provision also supplements the phased approach of the system for the importation of live animals and products from EU (and EEA) countries which will be provided for in the Official Controls Regulation.

Provision to similar effect is being made by the UK Government in respect of England, and Welsh Ministers in respect of Wales thereby ensuring a consistent GB-wide approach.

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

This SSI is subject to mandatory affirmative procedure under paragraph 1(6) of Schedule 7 of the European Union (Withdrawal) Act 2018. Therefore, the sifting procedure in the SSI protocol is not relevant to this SSI.

Further information

Consultation

There is a requirement to consult the UK Secretary of State under paragraph 4 of schedule 2 of the EU (Withdrawal) Act 2018. The Parliamentary Under-Secretary of State for Farming, Fisheries and Food 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

12 November 2020