6th February 2019

Dear Edward,

EU EXIT LEGISLATION - PROTOCOL WITH SCOTTISH PARLIAMENT
POLICY AREA: ANIMAL HEALTH

The Animal Health, Plant Health and Seed Marketing (Amendment) (EU Exit) Regulations 2019

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell wrote to the Conveners of the Finance & Constitution and the Delegated Powers & Legislative Reform Committees on 11 September 2018 setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach one notification (as detailed in the heading above) which sets out the details of the SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in this instrument. This is in addition to the series of such notifications that myself and Ministerial colleagues sent to Parliamentary committees over the past number of weeks. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether it is in keeping with the terms of this notification.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
This particular notification and Instrument The Animal Health, Plant Health and Seed Marketing (Amendment) (EU Exit) Regulations 2019 is being made using powers under the European Union (Withdrawal) Act 2018 in order to correct deficiencies in what will become retained EU law with regard to animal health control measures relating to African swine fever in certain Member States.

The proposed SI also amends a number of Animal and Plant Health Regulations for England, Wales and/or Northern Ireland, however, only one instrument concerning Scotland, namely Commission Implementing Decision (2014/709) is relevant as stated in the notification.

It is expected that the Scottish Parliament will have 28 days to scrutinise the SI.

I am copying this letter to Graham Simpson MSP, Convener of the Delegated Powers and Law Reform Committee.

MAIRI GOUGEON
NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area


A brief explanation of the law that the proposals amend

So far as relevant to Scotland the proposed SSI is to be made in exercise of powers under the European Union (Withdrawal) Act 2018 ("the Withdrawal Act") in order to correct deficiencies in what will become part of retained EU law relating to animal health. The law amended by the proposed SI covers a number of policy areas, however, only one instrument concerning Scotland, namely Commission Implementing Decision (2014/709) concerning animal health control measures relating to African swine fever in certain Member States.

The proposed SI also amends a number of other Animal and Plant Health Regulations for England, Wales and/or Northern Ireland. The amendments to those Regulations are not referred to further in this notification.

Summary of the proposals and how these correct deficiencies

Currently, Commission Implementing Decision 2014/709 applies certain movement restrictions to regions within the EU where African swine fever is present, with the aim of preventing transmission to disease-free areas. The UK is designated free from the disease, so is not currently subject to these restrictions.

The legislative amendments contained in the proposed SI do not change existing policy, but will be necessary in the event of a ‘no deal’ exit from the EU on 29 March 2019 to ensure the continued operability of Commission Implementing Decision 2014/709, hereafter referred to as ‘the Decision’.

The Decision was due to expire in December 2018 but has been extended by the Commission, thus requiring certain deficiency amendments to be made. The amendments are technical in nature to ensure operability of the provisions that apply to all Member States post-EU exit. The Decision requires Member States to prohibit movement of live feral pigs and requires advisory signage regarding the dangers of spread of the disease.

The amendments that will be brought forward by the proposed SI include:

- For the purposes of the Decision, the appropriate authority means Scottish Ministers in relation to Scotland.
- References to Member State are either deleted or substituted for the appropriate authority.

An explanation of why the change is considered necessary
The changes made by this proposed SI, are fairly minor and technical in nature and are necessary to ensure that what will become retained EU law continues to be operable should the UK leave the EU under a 'no deal' scenario. It is also hoped that maintaining in the UK a system based on EU-wide rules will help to facilitate and maintain trade between the UK and the EU post EU Exit.

The amendments to the Decision ensure that the on-going requirements applicable to all Member States are transferred to the appropriate authority and so in Scotland's case it is the Scottish Ministers. This will ensure that disease movement restrictions will be applicable. This response aims to prevent the transmission of the disease to disease-free areas within and outside of the UK. The amendments are minor and technical in nature, and no change is being made to the current policy. The remainder of the EU instrument is not relevant to the UK as we are not a Member State affected by this pig disease.

Scottish Government categorisation of significance of proposals

Category A. The amendments which will be made by the proposed SI do not change existing policy. The Scottish Government has worked with DEFRA on the amendments and is content that the provision to be made is necessary and appropriate to ensure that what will become retained EU law continues to be operable once the UK leaves the EU.

Impact on devolved areas

The proposed SI will make provision in a devolved area. The amendments in the proposed SI are technical in nature, do not include policy changes and are required to ensure the continued operability of existing measures. It will not have a significant impact on devolved areas of competence. It is intended that the proposed changes will respect and protect the Scottish Ministers’ powers under the devolution settlement. In particular, the proposed SI will also make provision for administrative functions in the Decision being amended to be exercised by the “appropriate authority”, in relation to Scotland, by the Scottish Ministers.

An example of a provision made for functions to be exercised by the appropriate authority is in relation to the movement of pigs whereby the appropriate authority must prohibit the export of live feral pigs.

Summary of stakeholder engagement/consultation

Other than engagement with DEFRA and other devolved administrations there has been no formal stakeholder engagement or consultation in relation to the proposed SI as there will be no measureable change to policy and no operational or financial impact is anticipated.

A note of other impact assessments, (if available)

An impact assessment has not been carried out in relation to the proposed SI as its main aim is to allow the continuation of the effective functioning of the regime.
Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

It is the view of the Scottish Government that the amendments in the proposed SI are necessary and appropriate, to secure continuation of effective disease control measures. In the current circumstances, where there is existing directly applicable EU law (the Decision) having effect throughout the UK that requires to be amended to prepare for a no-deal exit from the EU, the Scottish Ministers consider that it is appropriate for fixing legislation to be made on a UK-wide basis by the UK Government. Officials have worked with UK Government to ensure the drafting delivers for our interests and respects devolved competence in Scotland.

Where relevant – detail how Scottish Ministers have had regard to the guiding principles on animal welfare and the environment

The amendments made by the proposed SI are technical and therefore do not change existing policy, however they are necessary to ensure that existing controls relating to African swine fever can continue to operate in the UK should the UK leave the EU under a ‘no deal’ scenario. The EU instrument which has been amended has been made with the guiding principles on animal welfare and the environment in mind. We are content therefore that the proposed SI will not adversely impact on animal welfare (in particular that regard must be given to the welfare requirements of animals as sentient beings).

Intended laying date (if known) of instruments likely to arise

The proposed SI is subject to the negative procedure and will be laid for sift at Westminster on 11 February 2019. We are working with Defra on the basis no EU Exit SIs will proceed to be made (for negative procedure SIs), or laid in draft (for affirmative SIs), until after they have been through the consent process agreed with the Scottish Parliament.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

It is expected that the Scottish Parliament will have 28 days to scrutinise the SI.

Information about any time dependency associated with the proposal

N/A.

Any significant financial implications?

The proposed SI is not expected to have any financial implications, including for the Scottish Government and for stakeholders in Scotland.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?
There are no broader governance issues anticipated with the proposed SI and the Scottish Government will continue its good working relationships with UK Government and the other devolved administrations. The proposed SI will simply make the necessary amendments to ensure the operability of what will become retained EU law in the event of a 'no deal' UK exit from the EU on 29 March 2019.

**Lead Official:**

Jesus Gallego  
Animal Health and Welfare Division  
Ext: 49243  
6 February 2018