Dear Gillian

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (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 Convenors of the Finance & Constitution and Delegated Powers and 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 a notification which sets out the details of a UK SI which the UK Government proposes to make and the reasons why I am content that Scottish devolved matters are to be included in that SI. 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 the final SI is in keeping with the terms of this notification.

The SI is subject to the affirmative procedure and will be laid in the UK Parliament on 20 June 2019 in draft. The Chancellor of the Duchy of Lancaster Minister for the Cabinet Office has given an undertaking that the UK Government will not schedule debates for affirmative SIs

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

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www.gov.scot
until the Scottish Parliament has given a view on the SI notification under the protocol. We would welcome a view from the committee as soon as possible, however the Scottish Parliament will have 28 days for consideration if needed under the agreed protocol to consider the proposal to consent to the SI.

I am copying this letter to the Cabinet Secretary for Rural Economy, the Convenor of the Rural Economy and Connectivity Committee and the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

MAIRI GOUGEON
NOTIFICATION TO THE SCOTTISH PARLIAMENT

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

The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019 ("the Proposed SI").

A brief explanation of the law and recent history

The Import and Trade of Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/795) was laid on 17 January 2019 using powers under the European Union (Withdrawal) Act 2018 in order to correct deficiencies in what will become retained EU law relating to trade in animals and animal products and the non-commercial movement of pet animals. The Scottish Parliament was informed of the laying of the instrument on 27 February 2019. Subsequently the Department for Environment, Food and Rural Affairs (DEFRA) identified elements of SI 2019/795 that required to be corrected before exit day in order for it to work as intended, and as outlined in the original notification for SI 2019/795 to the Scottish Parliament.

Following consultation with the devolved administrations, official consent was given for DEFRA to proceed with a correcting statutory instrument (“SI”) on the basis that it would contain no substantive changes that would result in SI 2019/795 becoming incompatible with the notification to the Scottish Parliament.

That correcting SI was the Animal Health, Alien Species in Aquaculture and Invasive Non-native Species (Amendment) (EU Exit) Regulations 2019 (SI 2019/813). It corrected errors in SI 2019/795 by ensuring that the relevant EU regulations and decisions were correctly fixed. SI 2019/813 was debated in the House of Commons and House of Lords on 9 and 13 May respectively. A letter outlining in more detail the changes made in that instrument was shared with the Rural Economy and Connectivity Committee on 11 June 2019.

The Proposed SI is a stand-alone instrument that, amongst other things, transfers from the Commission the power to amend lists of approved third countries for trade in animals and animal products, and to publish and amend lists of animals and products that require veterinary import checks and those composite products and foodstuffs that are exempt from such checks.

Summary of the proposals and how these correct deficiencies

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 31 October 2019 and – in conjunction with SI 2019/795 and SI 2019/813 – make further amendments to ensure the operability of existing provisions relating to the import and trade in animals and animal products.

Third country lists

EU legislation allows the Commission to add to, vary or remove from the lists of third countries from which live animals, germplasm, products of animal origin and animal
by-products may be imported. The Proposed SI will confer upon the Secretary of State the power to make such changes on a UK wide basis by regulations, subject to the consent of all devolved administrations. This will carry on the current arrangements by ensuring that there are single lists for the whole of the UK, rather than lists of each constituent nation.

Lists of animals and products subject to veterinary checks

SI 2019/813 omitted from Annexes 1 and 2 Commission Decision 2007/275 ("2007/275") lists of animals and products that require veterinary import checks and those composite products and foodstuffs that are exempt from such checks. Consequently, provision is made within the Proposed SI that will allow for replacements for these lists to be published. The Secretary of State will be given the power to publish and amend from time to time lists covering the United Kingdom of animals and products that are subject to import checks, only with the consent of all devolved administrations.

Amendment of SI 2019/795

2007/275 contains cross-references to the lists that were omitted by SI 2019/813. The Proposed SI contains provisions that will amend SI 2019/795 and, in turn, 2007/275 to substitute those cross-references with references to the replacement lists that will, as noted above, be published by the Secretary of State.

Annexes 1 and 2 of 2007/275 ("the Annexes") are referenced in the Trade in Animals and Related Products Regulations 2011, appropriate amendments to which are consequently included in the Proposed SI. Similarly, the Annexes are referenced in the Trade in Animals and Related Products (Scotland) Regulations 2012 (SSI 2012/177). A Scottish SI will in due course make appropriate amendments to SSI 2012/177.

Amendment to the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019

The Proposed SI contains an amendment to the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019, which relates to regulation of veterinary surgeons which is reserved and so does not trigger the notification protocol with the Scottish Parliament.

An explanation of why the change is considered necessary

The changes made by the Proposed SI 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, supplementing provision made in other EU Exit SIs subject to notification to the Scottish Parliament namely:

- The Import of and Trade in Animals and Animal Products (Amendment etc) (EU Exit) Regulations 2019 (SI 2019/795);
Scottish Government categorisation of significance of proposals

**Category B.** The legislative 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 legislative 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 and legislative functions in the legislation being amended to be exercised by the Secretary of State with the consent of the Scottish Ministers (with similar provisions for the other devolved administrations) as the lists in question are published and/or amended on a UK-wide basis.

**Summary of stakeholder engagement/consultation**

We are in regular contact and communication with DEFRA and other devolved administrations. There has been no formal stakeholder engagement or consultation in relation to the Proposed SI as it is envisaged that there will be no measurable change to policy and no operational or financial impact is anticipated.

**Other impact assessments**

An impact assessment has not been carried out in relation to the Proposed SI as its main aim is to ensure that what will become retained EU law is operable upon EU exit in a no deal scenario and no measurable change to policy is anticipated.

**Summary of reasons for Scottish Ministers proposing to consent to UK Ministers’ legislation**

The Scottish Ministers believe that the changes in the Proposed SI are necessary to secure continuation of an effective regime for import and trade in animals and animal products and thus to ensuring continuity of business in these areas on EU exit. The Proposed SI will make amendments to existing EU legislation which are minor and technical in nature and aim to ensure the continued operability of what will become retained EU law. Where the Proposed SI will make provision for exercise of administrative and legislative functions in the legislation being amended, provision is made for those functions to be exercised by the Secretary of State with the consent of the Scottish Ministers (with similar provisions for the other devolved administrations). In these circumstances the Scottish Ministers consider it is appropriate that the Proposed SI be brought forward by the UK Government. This is particularly the case
in circumstances where the Proposed SI will protect Scottish Ministers’ interests under the devolution settlement as outlined above.

Relationship to the principles on animal welfare and the environment

The Proposed SI’s amendments do not change existing policy, but are necessary to ensure that existing legislation can continue to operate in the UK should we leave the EU under a ‘no deal’ scenario. The EU law being amended was made with the guiding principles on animal health, 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).

If the Scottish Parliament does not have 28 days to scrutinise Scottish Ministers’ proposal to consent, why not?

On this occasion the Scottish Parliament does have the full 28 days to consider this proposal to consent. Officials are working with DEFRA on the basis that debates within the House of Commons and House of Lords will not be scheduled until the Scottish Parliament has provided consent. This is in keeping with the exchange of letters between Mr Lidington and Mr Russell in January 2019 which introduced the concurrent running of the 28 day period when a draft affirmative instrument is laid. Mr Lidington provided assurance that debates will not be scheduled until the Scottish Parliament has provided consent and it has been confirmed with DEFRA that this is to be the case for the Proposed SI.

Legislative timetable

The SI is subject to the affirmative procedure and will be laid in the UK Parliament on 20 June 2019 in draft. A subsequent Scottish SI, as referenced above, will be prepared to take effect before the planned EU Exit date to make the necessary corrections to 2012/177 as a result of the Proposed 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 anticipated 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 a number of 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 31 October 2019.
Lead Official:

Scott Sayers
Animal Health and Welfare Division
Ext: 49835
14 June 2019
ANNEX

Summary of provision made by The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019

2. Power to amend the third country lists in Commission Decision 2006/168/EC;
3. Power to amend the third country lists in Commission Decision 2006/766/EC;
4. Power to amend the third country lists in Commission Decision 2007/777/EC;
5. Power to amend the third country lists in Commission Regulation (EC) No 798/2008;
7. Power to amend the third country lists contained in Commission Regulation (EU) No 206/2010;
8. Power to amend the third country lists contained in Commission Decision 2010/472/EC;
9. Power to amend the third country lists contained in Commission Regulation (EU) 605/2010;
10. Power to amend the third country lists of approved residue control plans contained in Commission Decision 2011/163/EC
11. Power to amend the third country lists contained in Commission Implementing Decision 2011/630/EC;
12. Power to amend the third country lists contained in Commission Implementing Regulation (EU) 139/2013;
13. Power to amend the third country lists contained in Commission Implementing Decision 2012/137/EC;
14. Power to amend the third country lists contained in Commission Implementing Regulation 2016/759;
15. Power to amend the third country lists contained in Commission Implementing Regulation 2018/659; and
16. Amendment to the Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019 (S.I 2019/795)
17. Amendment to the Veterinary Surgeons and Animal Welfare (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/454)

To note that amendments to the Trade in Animals and Related Products Regulations 2011 and the Trade in Animals and Related Products (Northern Ireland) Regulations 2011 will apply in England and Northern Ireland only.