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07 September 2023

## **DEFRA AH/081 - THE OFFICIAL CONTROLS (ESTABLISHMENT LISTS) REGULATIONS 2023 – PROTOCOL WITH SCOTTISH PARLIAMENT**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and the Parliament, accompanied the letter from the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this 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 UK Government plans to lay the instrument on 18 October 2023. I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee. I look forward to hearing from you.

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Yours sincerely



**Gillian Martin**  
Minister for Energy and the Environment

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## NOTIFICATION TO THE SCOTTISH PARLIAMENT

### Defra AH/081 - The Official Controls (Establishment Lists) Regulations 2023 (“the Instrument”)

#### Is the notification Type 1 or Type 2

Type 1.

#### A brief overview of the SI (including reserved provision)

The Instrument is to be made under in exercise of powers conferred by Article 126(1) of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products<sup>1</sup>.

It revokes retained Commission Implementing Regulation (EU) 2018/700<sup>2</sup>. This will allow establishments in Brazil removed, by that Implementing Regulation, from the lists of establishments permitted to export meat and meat products to Great Britain be added again to the list of permitted establishments, upon submission of an updated list of approved establishments by the Brazilian Competent Authority. Once re-added to these lists, the establishments concerned will be permitted to export certain meat and meat products to Great Britain.

In terms of the Scottish Government’s policy of alignment with the EU, the EU has yet to revoke Commission Implementing Regulation (EU) 2018/700. However, we understand that the Brazilian authorities have also formally requested that the EU review the enhanced controls, as they requested of the United Kingdom, and their request is still ongoing. The United Kingdom is required to make its own assessment of risk for sanitary and phytosanitary measures in accordance with the World Trade Organisation’s Agreement on the Application of Sanitary and Phytosanitary Measures<sup>3</sup>. In light of a scientific risk assessment and audit by the UK Government on behalf of all GB administrations, revocation of the existing restrictions on Brazil contained in Commission Implementing Regulation 2018/700 is considered appropriate.

As this is a technical instrument which could be similarly revoked by the EU in due course, following a similar risk assessment, it is not considered that there would be any impact in terms of Scotland’s commitment in maintaining and advancing the high standards that Scotland shares with the EU, access to EU markets for people, goods, and services, and a future re-accession to the Union. This SI is subject to negative procedure and will be laid in the UK Parliament on 18 October 2023, and is to come into force on 8 November 2023.

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<sup>1</sup> [Regulation \(EU\) 2017/625](#)

<sup>2</sup> [Commission Implementing Regulation \(EU\) 2018/700](#)

<sup>3</sup> [WTO | Sanitary and Phytosanitary Measures - text of the agreement](#)

## **Details of the provisions that Scottish Ministers are being asked to consent to**

The revocation of retained Commission Implementing Regulation (EU) 2018/700.

### **Summary of the proposals**

In 2018, the European Commission removed a number of Brazilian food establishments from the list of establishments approved to export to the EU following cases of non-compliance for Salmonella and fraud related to health certification. The cases of non-compliance revealed that the guarantees provided by the Brazilian Competent Authorities in respect of these establishments were insufficient to satisfy the legislative requirements. The restrictions were implemented through retained Commission Implementing Regulation (EU) 2018/700, which was subsequently retained in domestic law when the United Kingdom left the European Union.

This instrument will revoke retained Commission Implementing Regulation (EU) 2018/700 to remove restrictions on the re-approval of the delisted establishments. This follows the outcome of an in-country audit conducted by Defra on behalf of the GB administrations in 2022, which found that Brazil had taken sufficient action to address the shortcomings in its sanitary and phytosanitary (SPS) regulatory system that had triggered the implementation of restrictions in 2018.

### **Does the SI relate to a common framework or other scheme?**

Provisional Animal Health and Welfare Framework

### **Summary of stakeholder engagement/consultation**

Article 144(7) of Regulation (EU) 2017/625 sets out a requirement, before making regulations, to consult such bodies or persons as appear to be representative of the interests likely to be substantially affected and such other bodies or persons as are considered appropriate.

The UK Government consulted the International Meat Trade Association (IMTA) on 4 August 2023 on the intention to revoke Commission Implementing Regulation (EU) 2018/700. IMTA has indicated broad support of the proposed action but did seek clarification on when any newly listed Brazilian establishments would be permitted to export to GB and it is understood that the amended lists from Brazil typically take around two days to populate the Import of products, animals, food and feed system (IPAFFS).

IMTA also questioned under what conditions products exported to GB from these establishments would be permitted to enter Northern Ireland. At present, the decision to lift enhanced testing requirements for consignments of poultry meat and meat products from Brazil, and to relist certain establishments, will apply only for imports to Great Britain, with NI subject to EU rules. Imported meat and meat products from Brazil will also not be able to move into Northern Ireland via the

Green Lane under the Northern Ireland Retail Movement Scheme when it comes into operation on 1 October 2023.

**A note of other impact assessments, (if available)**

There is no, or no significant, impact on the public sector.  
A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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

The assessment of risk to animal or public health have been deemed satisfactory and it is considered that the proposed amendments are necessary or appropriate in light of the audit conducted.

Given the reasons outlined above, the Scottish Ministers consider that it is appropriate to consent to the Instrument to give effect to the proposed changes.

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

The Instrument will be laid in on 18 October 2023.

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

Not applicable.

**Information about any time dependency associated with the proposal**

Not applicable.

**Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

None.

**Any significant financial implications?**

None.

## SI NOTIFICATION: SUMMARY

<b>Title of Instrument</b>
The Official Controls (Establishment Lists) Regulations 2023
<b>Proposed laying date at Westminster</b>
18 October 2023
<b>Date by which Committee has been asked to respond</b>
12 October 2023
<b>Power(s) under which SI is to be made</b>
Article 126(1) of Regulation (EU) 2017/625
<b>Categorisation under SI Protocol</b>
Type 1
<b>Purpose</b>
This SI will revoke retained Commission Implementing Regulation (EU) 2018/700 and will permit the previously restricted establishments to be added to the list of establishments approved to export to Great Britain, as published on GOV.UK, upon submission of an updated list of approved establishments by the Brazilian Competent Authority. Once re-added to these lists, the establishments concerned will be permitted to export certain meat and meat products to Great Britain.
<b>Other information</b>
<b>SG Policy contact:</b>
Ian Cox Agriculture and Rural Economy Directorate Animal Health and Welfare Division: International Trade