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Finlay Carson MSP
Convener
Committee for Rural Affairs, Islands and
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Scottish Parliament

Email: **rural.committee@parliament.scot**

3 November, 2022

Dear Finlay,

Thank you for your questions on behalf of the Committee for Rural Affairs, Islands and Natural Environment. Please find my answers below.

1. The response indicates that a number of functions are not being retained because "alternative legislative provision has already been made". Can you indicate what these alternative provisions are and highlight whether they are equivalent to those functions that are not being retained. The Committee notes that the explanatory memorandum for the draft SI states that the SI does not change policy.

It is correct to say that the instrument does not change policy. The purpose of the instrument is to address deficiencies in existing legislation that have arisen as a result of EU exit.

The following articles contain functions that have not been retained because Article 37 of Regulation (EU) 2017/625 contains alternative provision for the competent authority to designate official laboratories, and Article 100 of Regulation (EU) 2017/625 contains alternative provision for the appropriate authority to designate national reference laboratories:

In Council Directive 64/432/EEC (on animal health problems affecting intra-Community trade in bovine animals and swine):

- Article 6A regarding the adoption of rules for the designation of state institutes, national references laboratories or official institutes

In Council Directive 2009/158/EC (on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs):

- Article 4 regarding the adoption of rules for the designation of a national reference laboratory

The following articles contain functions that have not been retained because Part 5 of Annex I to Commission Regulation (EU) No 206/2010 (as referred to in article 4 of that Regulation) contains alternative provision regarding detailed rules for assembly centres for ungulates:

In Council Directive 64/432/EEC (on animal health problems affecting intra-Community trade in bovine animals and swine):

- Article 11 regarding the adoption of detailed rules regarding approval of assembly centres

In Council Directive 91/68/EEC (on animal health conditions governing intra-Community trade in ovine and caprine animals):

- Article 8a regarding the adoption of detailed rules relating to assembly centres

The following article contains a function that has not been retained because all of the diseases listed in Annex E (I) to Council Directive 64/432/EEC are notifiable diseases named in section 88 of the Animal Health Act 1981 or an Order made under that Act. The diseases are also listed by the World Organisation for Animal Health and the UK is obliged to notify the Organisation of any cases of listed disease:

In Council Directive 64/432/EEC (on animal health problems affecting intra-Community trade in bovine animals and swine):

- Article 8 regarding criteria for member states to provide information to the Commission regarding diseases listed in Annex E (I) to this Directive.

The following articles contain functions that have not been retained because Articles 120 – 123 of Regulation (EU) 2017/625 contain alternative provision providing for controls to be carried out in third countries:

In Council Directive 88/407/EEC (laying down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species):

- Article 16 in so far as relating to the frequency and method by which veterinary experts of the Commission carry out checks on third countries

In Council Directive 89/556/EEC (on animal health conditions governing intra-Community trade in and importation from third countries of embryos of domestic animals of the bovine species):

- Article 15 in so far as relating to the frequency and method by which veterinary experts of the Commission carry out checks on third countries

In Council Directive 2002/99/EC (laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption):

- Article 10 relating to the procedure for carrying out inspections and/or audits of third countries by experts from the Commission

In Council Directive 2004/68/EC (laying down animal health rules for the importation into and transit through the Community of certain live ungulate animals):

- Article 12 relating to inspections/audits in third countries by Commission experts

The following article contains a function that has not been retained because Articles 126 and 128 of Regulation (EU) 2017/625 contain alternative provision for the appropriate authority to establish additional conditions for entry into Great Britain of animals and goods or to lay down special measures regarding the entry to Great Britain of certain animals and goods:

In Council Directive 2002/99/EC (laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption):

- Article 6 regarding measures to safeguard animal health following the identification of a serious animal health risk identified during a Commission audit or inspection and the adoption of detailed rules governing the procedure for cooperation with national authorities

The following article contains a function that has not been retained because regulation 13(1) of the Trade in Animals and Related Products (Scotland) Regulations 2012 contains alternative provision which would require products of animal origin to be presented at a border control post together with the relevant export health certificate as published by the Scottish Ministers or the Secretary of State from time to time:

In Council Directive 2002/99/EC (laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption):

- Article 5 regarding the drawing up of detailed implementing rules and models for veterinary certificates for products of animal origin intended for human consumption

In my letter dated 12 October 2022, the following article was incorrectly listed as a function for which alternative legislative provision had already been made. The article contains a legislative function that was relevant to intra-Community trade but that is not relevant to imports into Great Britain from third countries following the UK's exit from the EU:

In Council Directive 91/68/EEC (on animal health conditions governing intra-Community trade in ovine and caprine animals):

- Article 8b regarding the adoption of detailed rules relating to dealers

2. The explanatory memorandum to the proposed SI indicates that, though the Welsh Government intends to consent for the Secretary of State to have concurrent powers in relation to Wales to be exercised with the consent of Welsh Ministers, the Welsh Government plans to lay an equivalent Welsh SI which amends the Welsh TARP regulations. We understand from a Welsh Government written statement that the equivalent Welsh SI will also create a number of regulation-making powers for the Welsh Ministers. Why has the Scottish Government chosen to make all amendments, including to TARP Scotland, by UKSI, rather than taking the Welsh approach?

The Scottish Government's position is that Scottish Ministers will normally wish to give consent to the inclusion of devolved provision within a UK statutory instrument where the policy objectives of UK and Scottish Ministers are aligned and there are no good reasons for having separate Scottish subordinate legislation. Scottish Ministers were therefore content for the amendments, including the amendments to TARP Scotland, to be made by way of UK statutory instrument.

3. The explanatory memorandum sets out that the EU made changes to its animal health laws which were not captured in retained EU law. It states that this instrument "preserves and maintains the policy and legislative regime as of exit day and does not try to align itself with the EU's Animal Health Law". Why have the four governments taken a decision not to align with EU law? Where does the EU's Animal Health Law now differ from the UK's?

The purpose of the instrument is to remedy deficiencies within existing GB legislation that have arisen as a result of the UK's exit from the EU. The purpose of the instrument is not to align with the EU's Animal Health Law, which is a substantial restatement of existing EU law that also introduces reforms in various areas of EU animal health legislation. Analysis of the EU's Animal Health Law and the ways in which it differs to current UK legislation is the focus of an ongoing project across all four administrations.

I hope that the above answers the concerns of the committee fully, but if I can provide any further information or guidance, please feel free to contact me.

Yours sincerely,

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