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The Scottish Parliament  
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7 June 2022

Dear Finlay,

**DEFRA APH/008 - THE ANIMALS, FOOD AND FEED, PLANT HEALTH AND SEEDS  
(MISCELLANEOUS AMENDMENTS ETC.) REGULATIONS 2022 – 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.

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

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The UK Government plans to lay the Instrument for sifting on 1 July 2022. Drafts of the SI have only been shared in recent days and it is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid. I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee. I look forward to hearing from you by 30 June 2022.

Yours sincerely,



**MAIRI GOUGEON**

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## **NOTIFICATION TO THE SCOTTISH PARLIAMENT**

### **The Animals, Food and Feed, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022**

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

Type 1.

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

The SI is to be made under section 8(1) of the European Union (Withdrawal) Act 2018. It amends several pieces of retained EU law concerned with food and feed, animal health and welfare, the import of animals and animal products, the import of plants and plant products and, in England, the marketing of plant propagating material and seeds to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union.

The territorial application and extent of this instrument is England, Wales and Scotland, except the provisions on the marketing of plant propagating material and seeds which applies in relation to England, and extends to England and Wales.

This SI is subject to negative procedure and will be laid in draft in the UK Parliament for sifting by Parliamentary Committee on 1 July 2022.

This instrument makes various operability amendments to retained EU law. Some of these amendments make technical corrections to previous EU Exit instruments, although the majority make operability amendments to retained legislation for the first time. This instrument also revokes various pieces of retained direct EU legislation which are no longer required on the UK statute book.

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

The Scottish Ministers are being asked to consent to amendments to:

- Commission Decision 1997/747/EC fixing the levels and frequencies of sampling provided for by Council Directive 96/23/EC for the monitoring of certain substances and residues thereof in certain animal products
- Regulation (EC) 999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies
- Commission Decision 2002/994/EC concerning certain protective measures with regard to products of animal origin imported from China
- Commission Decision 2003/863/EC on health certificates for the importation of animal products from the United States of America
- Council Regulation (EC) No. 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No. 1255/97

- Commission Decision 2006/199/EC laying down specific conditions for imports of fishery products from the United States of America
- Commission Decision 2007/82/EC on emergency measures suspending the imports from the Republic of Guinea of fishery products intended for human consumption
- Commission Decision 2007/642/EC on emergency measures applying to fishery products imported from Albania and intended for human consumption
- Commission Decision 2010/381/EU on emergency measures applicable to consignments of aquaculture products imported from India and intended for human consumption
- Regulation (EU) 2017/625 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
- Commission Implementing Decision (EU) 2019/1614 authorising Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in the regions of Akkar and Bekaa of Lebanon
- Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants.
- Commission Delegated Regulation (EU) 2019/2122 supplementing Regulation (EU) 2017/625 of the European Parliament and Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market

The Scottish Ministers are also being asked to consent to the revocation of:

- Commission Implementing Decision 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa.
- Commission Implementing Decision 2017/2374 setting out conditions for movement, storage and processing of certain fruits and their hybrids originating in third countries to prevent the introduction into the Union of certain harmful organisms
- Commission Implementing Regulation (EU) 2020/178 on the presentation of information to passengers arriving from third countries and to clients of postal services and of certain professional operators concerning the prohibitions as regards the introduction of plants, plant products and other objects into the Union territory in accordance with Regulation (EU) 2016/2031 of the European Parliament and of the Council

## **Summary of the proposals**

The EU (Withdrawal) Act 2018 (EUWA) converted and preserved EU law at the end of the Transition Period into domestic law (retained EU law). It also provided for amendments to be made to address deficiencies arising from EU exit.

The provisions of the instrument extending to Scotland would make operability amendments to legislation concerning food and feed, animal health and welfare, the import of animals or animal products and the import of plants and plant products. These amendments are necessary to ensure that this legislation continues to function effectively following the withdrawal of the UK from the EU.

The majority of the amendments are to change EU references, such as to the Union and Member States, in the original European legislation to references to Great Britain and competent or appropriate authorities within Great Britain, as well as removing Articles which are otiose. None of the provisions would confer powers to legislate on UK or Scottish Ministers.

In particular it would :

- amend Commission Decision 1997/747/EC to replace references to Member States with references to Great Britain, the appropriate authority (the Scottish Ministers in relation to Scotland, or the Secretary of State if consent is given by the Scottish Ministers) or the competent authority.
- make minor operability amendments, overlooked in earlier EU Exit SIs, to Regulation (EC) 999/2001 to replace a reference to a EU reference laboratory with one to a national reference laboratory.
- amend Commission Decision 2002/994/EC to replace references to Member States, the Community or Directives with references to competent authorities, Great Britain and implementing legislation.
- amend Commission Decision 2003/863/EC to replace references to Member States with competent authority, and to provide for model certificates to be published by an appropriate authority
- make corrective amendments to retained Council Regulation (EC) No 1/2005 and Article 21 of Regulation (EU) 2017/625. These are required to correct or clarify amendments within previous EU Exit SIs so that official controls relating to animal welfare checks are correctly applied to the transport of livestock and unregistered horses, whether they are being transported from GB to third countries, from third countries into GB or through GB, and to reinstate provisions relating to the delegation of functions by the competent authority to designated bodies in respect of the inspection and approval of vehicles used to transport animals.
- amend Commission Decision 2006/199/EC to remove or replace references to the EC with Great Britain and to provide for model certificates to be published by an appropriate authority.
- amend Commission Decision 2007/82/EC to replace references to Member States with references to competent authorities.
- amend Commission Decision 2007/642/EC to replace references to Member States, or the Community with references to competent authorities, or Great Britain.

- amend Commission Decision 2010/381/EU to replace references to Member States and the Commission with references to competent authorities and the appropriate authority
- make operability amendments to Commission Implementing Decision 2019/1614 of 26 September 2019 authorising Member States to provide for derogations from certain provisions of Commission Implementing Regulation (EU) 2019/2072 “the Phytosanitary Conditions Regulation”. It would make various operability amendments, including—
  1. amending Article 1 to permit the competent authority to authorise the entry of potatoes from Akkar or Bekka of Lebanon into GB by way of derogation from Article 7 of the Phytosanitary Conditions Regulation as read with point 17 of the table in Annex 6 to that Regulation.
  2. references to “the Union” are replaced with “Great Britain”.
  3. references to “Member States” are replaced with “competent authority”.
  4. redundant provision at Article 3(2) (points of entry) and Article 5 (notification of suspect or confirmed findings) are removed.
  5. references to EU Directive 93/85/EEC are replaced with “EPPO PM 7/59”<sup>1</sup>.
  6. in the Annex, reference to EU Directive 2000/29/EC is replaced with “Annex 6 to Regulation (EU)2019/2072”.
  7. in the Annex, the requirement for Lebanon to communicate pest free areas is changed from the Commission to the UK NPPO.
  8. in the Annex, the results of surveys of pest free areas are to be made available to the UK NPPO on request.

These amendments were not made in earlier EU exit SIs, as it was thought that this derogation would not be used in Great Britain. However, it has since been established that this is not the case and therefore needs to be made operable.

- amend entry 71 of Part A to Annex 7 of the Phytosanitary Conditions Regulation which sets out import requirements for live pollen and plants for planting, other than seeds, of *Actinidia* sp. (kiwi). This amendment corrects an error in an earlier UK SI, the Official Controls, Plant Health, Seeds and Seeds Potatoes (Amendment etc.) Regulations 2021 which removed the term “the specified plants” in column 1 of entry 71 but failed to omit the word “specified” where it appeared in column 3. This amendment now omits the word “specified” in each place it occurs.
- amends Commission Delegated Regulation (EU) 2019/2122 to ensure that pet birds entering GB from Andorra, the Faroe Islands, Greenland, Iceland, Liechtenstein, Monaco, Norway, San Marino, Switzerland and the

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<sup>1</sup> “EPPO PM 7/59” means the standard describing a diagnostic protocol for *Clavibacter michiganensis* subsp. *sepedonicus* approved by the European and Mediterranean Plant Protection Organization Approved by the European and Mediterranean Plant Protection Organization in September 2005 and available from its Secretariat at 21 Boulevard Richard Lenoir, 75011, Paris, France and at [https://www.eppo.int/RESOURCES/eppo\\_standards/pm7\\_diagnostics](https://www.eppo.int/RESOURCES/eppo_standards/pm7_diagnostics).

Vatican City State are subject to the same import requirements as all other third countries.

- revokes Commission Implementing Decision 2016/715. The legislation introduced additional import requirements for certain citrus fruits (fruit of *Citrus*, *Fortunella*, *Poncirus* and their hybrids) originating in certain third countries to prevent the introduction of the pest *Phyllosticta citricarpa*. The Decision expired on 31 March 2022.
- revokes Commission Implementing Decision 2017/237 setting out the conditions for movement, storage and processing of certain fruits and their hybrids originating in third countries to prevent the introduction into the Union of certain harmful organisms. This legislation no longer needed as it relates to citrus fruit which is not required for GB as we do not have commercial citrus based agriculture.
- revokes Commission Implementing Regulation (EU) 2020/178. This regulation implements instructional phytosanitary posters relating to the introduction of plants, plant products and other objects at all seaports, airports and international transport operators at entry points into EU territory. This Implementing Regulation is no longer required due to previous deficiency amendments to Article 45 of EU Regulation 2016/2031 (the Plant Health Regulation).

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

None.

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

As the amendments are technical in nature, and there has been no policy changes, a public consultation was not undertaken.

#### **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 Defra's assessment is that there is 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**

This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to

operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

This instrument also corrects technical deficiencies that arise from the UK's withdrawal from the EU and ensures that the existing regimes for safeguarding UK biosecurity will continue to operate effectively .

As such, given the reasons outlined above, Scottish Ministers consider that it is appropriate to consent to the instrument to give effect to these changes.

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

The Instrument will be laid in draft for sifting by Parliamentary Committee on 1 July 2022.

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

Drafts of the Instrument have only been shared in recent days and it is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

**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 Animals, Food and Feed, Plant Health, Plant Propagating Material and Seeds (Miscellaneous Amendments etc.) Regulations 2022
<b>Proposed laying date at Westminster</b>	1 July 2022
<b>Date by which Committee has been asked to respond</b>	30 June 2022
<b>Power(s) under which SI is to be made</b>	Section 8(1) of the EU (Withdrawal) Act 2018 .
<b>Categorisation under SI Protocol</b>	Type 1
<b>Purpose</b>	This instrument makes various operability amendments to retained direct EU legislation and domestic legislation relating to food and feed, animal health and welfare, imports of animals and animal products, imports of plants and plant products and, in relation to England only, the marketing of seed and fruit planting material as a result of the UK's Exit from the European Union. Some of these amendments make technical corrections to previous EU Exit instruments, although the majority make operability amendments to retained legislation for the first time. This instrument also revokes various pieces of retained direct EU legislation which are no longer required on the UK statute book.
<b>Other information</b>	
<b>SG Policy contact:</b>	Ian Cox Agriculture and Rural Economy Directorate Animal Health and Welfare Division