

Draft Regulations laid before the Scottish Parliament under paragraph 1(6) of schedule 7 of the European Union (Withdrawal) Act 2018

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

EXITING THE EUROPEAN UNION
AGRICULTURE
ANIMALS
ANIMAL HEALTH

The Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2020

Made - - - - 2020
Coming into force in accordance with regulation 1(2)
and (3)

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraphs 1(1) and (3) and 11M(1) of schedule 2, paragraph 7 of schedule 4 and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018⁽¹⁾ and of all other powers enabling them to do so.

In accordance with paragraph 4 of schedule 2 of that Act⁽²⁾, to the extent that these Regulations are to come into force before IP completion day, they have consulted with the Secretary of State.

In accordance with paragraph 1(6) of schedule 2 of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2020.

(2) These Regulations, except for regulation 2, come into force immediately before IP completion day.

(3) Regulation 2 comes into force on IP completion day.

(1) 2018 c.16; paragraph 11M of schedule 2 was added by the European Union (Withdrawal Agreement) Act 2020 (c.1) (“the 2020 Act”); paragraph 21 of schedule 7 was amended by the 2020 Act, section 41(4) and schedule 5, paragraph 53.
(2) Paragraph 4 of schedule 2 was amended by the 2020 Act, section 27(7)(a).

Amendment of the Trade in Animals and Related Products (Scotland) Regulations 2012

2.—(1) The Trade in Animals and Related Products (Scotland) Regulations 2012⁽³⁾ are amended as follows.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the appropriate places insert—

““border control post” has the meaning given in regulation 9, except where the context otherwise requires;”;

““CHED” has the meaning given in regulation 8;”;

““third country” means any country or territory other than the British Islands.”;

(ii) omit the definition of “Commission Delegated Regulation (EU) 2019/1666”;

(iii) in the definition of “importer” for “United Kingdom” substitute “British Islands”;

(iv) in the definition of “intensified official controls” after “Article 65(4)” insert “of the Official Controls Regulation”;

(v) in the definition of “official controls” for “EU Regulation” substitute “Official Controls Regulation”;

(b) in paragraph (3)—

(i) in sub-paragraph (a) for “EU Regulation”, in both places where it occurs, substitute “Official Controls Regulation”;

(ii) omit sub-paragraphs (b) and (c).

(3) Omit regulation 4 (international agreements).

(4) Omit Part 2 (movement between member States).

(5) In regulation 7 (scope of Part 3)—

(a) in paragraph (a)—

(i) for “country outside the European Union” substitute “third country”;

(ii) omit “and”;

(b) after paragraph (a) insert—

“(aa) applies subject to the derogations and modifications set out in schedule 5; and”.

(6) In regulation 8(4) (Common Health Entry Document) for “EU Regulation” substitute “Official Controls Regulation”.

(7) In regulation 9 (border control posts)—

(a) in paragraphs (1) and (2) for “EU Regulation” substitute “Official Controls Regulation”;

(b) omit paragraph (5).

(8) In regulation 10 (appointment of official veterinarians and official fish inspectors)—

(a) in paragraph (1) for “border inspection posts” substitute “border control posts”;

(b) in paragraph (2) for “border inspection post” substitute “border control post”.

(9) In regulation 11 (place of importation)—

(a) for “border inspection post” substitute “border control post”;

⁽³⁾ S.S.I. 2012/177, amended by S.S.I. 2012/198, S.I. 2014/3158, S.S.I. 2015/100, S.S.I. 2015/401, S.S.I. 2018/391, S.S.I. 2019/5, S.S.I. 2019/71 and S.S.I. 2019/412.

- (b) omit paragraph (2).
- (10) In regulation 12(3) (notification of importation) for “CVED” substitute “CHED”.
- (11) In regulation 13 (procedure on importation)—
 - (a) in paragraph (1)—
 - (i) for “documentation specified for that consignment in the relevant legislation listed in schedule 1” substitute “relevant export health certificate, as published by the Scottish Ministers or the Secretary of State from time to time, and other documentation specified for that consignment in retained direct EU legislation relating to importation”;
 - (ii) in sub-paragraph (a) for “EU Regulation” substitute “Official Controls Regulation”;
 - (b) in paragraph (4)—
 - (i) in sub-paragraph (a) for “the lists” to the end substitute “a list of approved third countries, or if imports from that country are otherwise prohibited”;
 - (ii) in sub-paragraph (c) for “legislation of the European Union” substitute “retained direct EU legislation relating to importation”;
 - (iii) in sub-paragraph (e) for “legislation of the European Union” substitute “retained direct EU legislation”;
 - (c) in paragraph (5) omit “of the European Union”.
- (12) In regulation 15 (supervision and monitoring consignments)—
 - (a) after “border control post” insert “(within the meaning of Article 3(38) of the Official Controls Regulation(4))”;
 - (b) for “the United Kingdom or a member State” substitute “Great Britain”.
- (13) In regulation 16 (destination outside the United Kingdom)—
 - (a) for “the United Kingdom” in each place where it occurs, including the heading, substitute “Great Britain”;
 - (b) in paragraph (1) for “border inspection post” substitute “border control post”;
 - (c) in paragraph (2)—
 - (i) for “animal consigned to a destination outside the European Union” substitute “imported animal”;
 - (ii) after “country” insert “or territory”;
 - (d) in paragraph (4)—
 - (i) for “European Union” in the first place where it occurs substitute “British Islands”;
 - (ii) for “the European Union” in the second place where it occurs substitute “any of the territories of the British Islands”.
- (14) In regulation 17(a) (unchecked consignments) for “border inspection post” substitute “border control post”.
- (15) In regulation 18 (action following non-compliance: products)—
 - (a) for “EU Regulation” in each place where it occurs substitute “Official Controls Regulation”;
 - (b) in paragraph (3) for “the European Union” substitute “Great Britain”.
- (16) In regulation 19 (consignments of products likely to constitute a risk to health) for “EU Regulation” substitute “Official Controls Regulation”.

(4) Article 3(38) was amended by S.I. 2020/xx.

(17) In regulation 20(4) (serious contraventions etc.) at the end insert “of the Official Controls Regulation”.

(18) In regulation 21 (action following non-compliance: animals) for “EU Regulation” in each place where it occurs substitute “Official Controls Regulation”.

(19) In regulation 23 (re-importation of animals and products)—

(a) in paragraph (1)—

(i) after “Article 47(1)” insert “of the Official Controls Regulation”;

(ii) for “the European Union” substitute “Great Britain”;

(iii) for “the Union” substitute “Great Britain”;

(b) in paragraph (3)(a)—

(i) omit “in the member State where the certificate was issued”;

(ii) for “border inspection post” substitute “border control post”.

(c) after paragraph (3) insert—

“(4) During the transitional staging period, animals and products that originate from Scotland and which have been rejected from entering the European Union at a member State border control post are not required to re-enter Scotland through a border control post if—

(a) the re-entry has been pre-notified through the appropriate computerised information management system to the Scottish Ministers or Food Standards Scotland; and

(b) Scottish Ministers or Food Standards Scotland have not notified the importer that the product is high risk or, in the case of animals and products that are high risk, have authorised re-entry other than through a border control post before re-entry is to take place.

(5) In paragraph (4)—

(a) “the transitional staging period” has the same meaning as in paragraph 2 of Annex 6 to the Official Controls Regulation⁽⁵⁾;

(b) “pre-notified” means notification that has been given at least one working day before the expected time of arrival at a point of entry into Scotland or, where the importer can provide evidence of a logistical constraint preventing such notification, by notification at least 4 hours in advance of the expected time of arrival;

(c) “high risk” means the animals or products are suspected of constituting a serious risk to human or animal health or animal welfare.”.

(20) In regulation 24 (admission of products into warehouses)—

(a) the existing words become paragraph (1);

(b) from “a warehouse” to the end substitute “a free zone or premises approved by HMRC.”;

(c) after paragraph (1) insert—

“(2) In this regulation “free zone” and “premises approved by HMRC” have the same meaning as in Part 2 of schedule 2 of the Taxation (Cross-border Trade) Act 2018⁽⁶⁾.”.

(21) In regulation 25 (special measures)—

(a) in paragraph (1)(a)—

(5) Annex 6 was inserted by S.I. 2020/xx.

(6) 2018 c.22.

- (i) for “the United Kingdom” substitute “Great Britain”;
- (ii) after “country” in each place where it occurs insert “or territory”;
- (b) in paragraph (1)(b) for “EU Regulation” to “a member State” substitute “Official Controls Regulation in relation to imports”;
- (c) in paragraph (2)(a) after “country” insert “or territory”;
- (d) in paragraph (2)(b)(ii)—
 - (i) omit “from the European Union”;
 - (ii) for “EU Regulation” substitute “Official Controls Regulation”;
 - (iii) for “other countries” substitute “third countries”.
- (22) In regulation 27(3) (enforcement) for “Articles 134” to the end substitute “the Taxation (Cross-border Trade) Act 2018.”.
- (23) In regulation 29(h) (powers of authorised officers) for “EU Regulation” substitute “Official Controls Regulation”.
- (24) In regulation 30(3) (importation of products constituting a risk to animal or public health) for “EU Regulation” substitute “Official Controls Regulation”.
- (25) In regulation 31(1) (exchange of information) for “the enforcement authorities in Wales, England and Northern Ireland” substitute “an enforcement authority in any of the territories of the British Islands”.
- (26) In regulation 32 (fees and expenses) omit paragraph (1).
- (27) In regulation 33 (offences)—
 - (a) in paragraphs (a), (b), and (c) for “EU Regulation” in each place where it occurs substitute “Official Controls Regulation”;
 - (b) omit paragraph (d),
 - (c) in paragraph (e) in the table—
 - (i) omit the rows for “regulation 5(1)(a) and (3)” to “regulation 6(5)”;
 - (ii) for “border inspection post” substitute “border control post” in both places where it occurs;
 - (iii) for “CVED” substitute “CHED” in each place where it occurs;
 - (iv) in the rows for schedule 2 omit the rows for “paragraph 2(2)” to “paragraph 6”.
- (28) In schedule 2 (additional requirements in specific cases)—
 - (a) omit Part 1 (trade with member States);
 - (b) in Part 2 (imports from third countries) in paragraph 7(3) for “border inspection post” substitute “border control post” in both places where it occurs.
- (29) In schedule 3 (cases to which Part 3 does not apply)—
 - (a) in paragraph 1 for “Commission Delegated Regulation” to the end substitute “Commission Delegated Regulation (EU) 2019/2122.”;
 - (b) in paragraph 3—
 - (i) in sub-paragraph (1)—
 - (aa) omit “Subject to sub-paragraph (2),”;
 - (bb) for “Regulation (EU) No 142/2011” substitute “[Commission Regulation \(EU\) No 142/2011](#)”;
 - (ii) omit sub-paragraph (2);

(c) for paragraph 4 substitute—

“Case 4: Consignments cleared in Great Britain

4. Consignments of animals and products that have been presented to a border control post in Great Britain and cleared for free circulation.”;

(d) in paragraph 5(2)(d) for “an official language of a member State” substitute “English (whether or not it also appears in any other language)”.

(30) After schedule 4 insert—

“SCHEDULE 5

Regulation 7

Application of, derogations from, and modifications to, Part 3 in relation to certain territories subject to transitional import arrangements

PART 1

Introductory

Application

1.—(1) This schedule applies during the transitional staging period to animals and products falling within Article 47(1)(a) and (b) of the Official Controls Regulation which originate from a relevant third country.

(2) In sub-paragraph (1) “the transitional staging period” and “relevant third country” have the same meaning as in paragraph 2 of Annex 6 to the Official Controls Regulation(7).

(3) Animals and products falling within sub-paragraph (1) are referred to in this schedule as “relevant goods”.

Application of, derogations from, and modifications to, Part 3 of these Regulations

2. The provisions of Part 3 of these Regulations apply to relevant goods with the derogations and modifications specified in Part 2 of this schedule.

PART 2

Derogations from, and modifications to, Part 3 of these Regulations

Derogation from regulation 11: place of importation

3.—(1) Regulation 11 does not apply to relevant goods.

(2) Relevant goods are not required to enter Scotland through a border control post and may enter Scotland through any point of entry.

Derogation from regulation 12: notification of importation

4.—(1) Regulation 12 does not apply to relevant goods.

(7) Annex 6 was inserted by S.I. 2020/xx.

(2) From 1st January 2021, relevant goods of the following descriptions must be pre-notified at least one working day before the expected time of arrival at a point of entry into Scotland—

- (a) relevant goods which originate from a relevant third country other than a territory subject to special transitional import arrangements;
- (b) animal by-products comprising—
 - (i) Category 1 material;
 - (ii) Category 2 material;
 - (iii) processed animal protein derived from Category 3 material.

(3) From 1st April 2021 relevant goods consisting of products of animal origin must be pre-notified at least one working day before the expected time of arrival at a point of entry into Scotland.

(4) Where the importer can provide evidence of a logistical constraint preventing the notification under sub-paragraphs (2) or (3), that requirement may be satisfied by notification of the consignments expected time of arrival at least 4 hours in advance.

(5) This paragraph applies in addition to other requirements for prior notification of the entry into Scotland of relevant goods from a third country during the transitional staging period (see Article 56A of the Official Controls Regulation as inserted by paragraph 13 of Annex 6 to that Regulation).

(6) In this paragraph—

- (a) “pre-notified” means notification that has been given through the appropriate computerised information management system to the authority responsible for performing official controls on the particular category of relevant goods at the place of destination;
- (b) “working day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971⁽⁸⁾;
- (c) “a territory subject to special transitional import arrangements” has the same meaning as in paragraph 2 of Annex 6 to the Official Controls Regulation;
- (d) “Category 1 material”, “Category 2 material” and “Category 3 material” have the meanings given in Articles 8 to 10 of Regulation (EC) No 1069/2009;
- (e) “processed animal protein” has the meaning given in point 5 of Annex I to Commission Regulation (EU) No 142/2011.

Derogation from regulation 13: procedure on importation

5.—(1) Regulation 13 does not apply to relevant goods.

(2) From 1st January 2021, relevant goods consisting of—

- (a) live animals or germinal products may not be imported into Scotland unless they are accompanied by the appropriate health certificate for third country imports, in the form published by the Scottish Ministers or the Secretary of State from time to time;
- (b) products of animal origin and animal by-products must be accompanied by relevant commercial documents which at least identify the premises of origin and destination, and contain a description of the product and the quantity of the product.

(3) From 1st April 2021, relevant goods consisting of products of animal origin may not be imported into Scotland unless they are accompanied by the appropriate health certificate for third country imports, in the form published by the Scottish Ministers or the Secretary of State from time to time.

(8) 1971 c.80.

(4) The documents described in sub-paragraphs (2) and (3) must accompany the consignment of the relevant goods concerned to its place of destination.

(5) Official controls must take place at the place of destination indicated in the relevant accompanying importation documentation on a random or risk basis, and in accordance with regulation 25 and 30.

Derogation from regulation 17(a): unchecked consignments

6. Regulation 17(a) does not apply to relevant goods which have entered Scotland through a point of entry other than a border control post in accordance with this schedule, or in accordance with Annex 6 to the Official Controls Regulation.

Modification of regulation 18: action following non-compliance: products

7. Regulation 18 applies as if—

(a) for paragraph (1) were substituted—

“(1) This regulation applies in relation to any consignment of relevant goods if the consignment does not comply with the provisions of schedule 5 of these Regulations or Article 56A of the Official Controls Regulation as inserted by paragraph 13 of Annex 6 to that Regulation.”;

(b) in paragraph (3)(b)—

(i) “from the same border control post” were omitted;

(ii) for “at the border control post” there were substituted “into Scotland”.

Modification of regulation 21: action following non-compliance: animals

8. Regulation 21 applies as if in paragraph (1) for “If the checks” to “that animal” there were substituted “If checks show that an animal does not comply with the provisions of schedule 5 of these Regulations or Article 56A of the Official Controls Regulation as inserted by paragraph 13 of Annex 6 to that Regulation”.

PART 3

Additional rules in relation to relevant goods consisting of live animals

Live animals

9.—(1) This paragraph applies in relation to relevant goods consisting of live animals.

(2) The live animals must not be moved from the place of destination indicated in the accompanying health certificate before the completed and signed health certificate has been uploaded to the appropriate computerised information management system.

(3) The person responsible for the transportation of the live animals to the place of destination must be in possession of the appropriate authorisation in accordance with Council Regulation (EC) No 1/2005.”.

Amendment of the Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019

3. In the Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019⁽⁹⁾ omit regulation 29.

Amendment of the Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019

4. In the Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019⁽¹⁰⁾ omit regulation 5.

St Andrew's House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

⁽⁹⁾ S.S.I. 2019/71.
⁽¹⁰⁾ S.S.I. 2019/288.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by the European Union (Withdrawal) Act 2018 (c. 16) (“the Act”) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the European Union or to implement the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement.

Regulation 2 of these Regulations makes amendments to the Trade in Animals and Related Products (Scotland) Regulations 2012 (“the 2012 Regulations”), which made provision for the system for trade in live animals and genetic material between member States (and countries or territories which under agreements with the European Union were treated as member States for the purpose of the 2012 Regulations), and for the importation of live animals and products of animal origin from outside the European Union. The amendments are principally made to address failures under, in particular, paragraphs (a), (d) and (g) of section 8(2) of the Act arising from the withdrawal of the UK from the European Union. The amendments include the revocation of a provision for the charging of fees which has no application (see regulation 2(26)), transitional provision regarding the importation of animals and products of animal origin from member States (and countries or territories which under agreements with the European Union were treated as member States for the purpose of the 2012 Regulations) (see regulation 2(5)(b) and (30)), and restatements of provisions within the 2012 Regulations in a clearer or more accessible way.

Regulations 3 and 4 amend instruments previously made under powers conferred by the Act to omit amendments to the 2012 Regulations which have not yet come into force.