EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

7536/22+ ADD 1
C(2022) 744 FINAL+ ANNEXES 1 TO 2

COMMISSION DELEGATED REGULATION (EU) …/...OF 23.3.2022 SUPPLEMENTING REGULATION (EU) 2017/625 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL BY LAYING DOWN RULES FOR THE PERFORMANCE OF OFFICIAL CONTROLS AS REGARDS CONTAMINANTS IN FOOD

Submitted by the Department for Environment, Food and Rural Affairs

24 May 2022

SUBJECT MATTER

1. This Regulation ('C(2022) 744 final') outlines new requirements for Member States on the monitoring of contaminants in products of animal origin (POAO) and in food not of animal origin (FNAO). For POAO this is a technical iteration on existing residue monitoring requirements, and for FNAO this is a new requirement, and will come into force on the 1 January 2023.

2. This legislation will sit under the existing EU Regulation 2017/625[1] on Official Controls on Food and Feed, termed the OCR. This draft legislation applies in Northern Ireland (NI) under the terms of the Protocol of Ireland/Northern Ireland Protocol (NIP). In NI the Department for Agriculture, Environment and Rural Affairs (DAERA) and the Food Standards Agency will be responsible for its operational implementation and delivery.

3. Prior to the publication of the OCR in 2017, the previous requirements for the monitoring of contaminants, veterinary medicines and prohibited substances in POAO were outlined in Council Directive 96/23/EC[2]. This legislation was partly repealed by the OCR, with Annexes I-IV remaining live until the 14 December 2022 as per Article 150 of the OCR on transitional measures relating to 96/23/EC.

4. Annexes I-IV of 96/23/EC are critical as they outline the requirements for monitoring of residues in POAO, including the substances that must be monitored for and the sampling/testing frequencies required for each foodstuff. Without these Annexes

[1] Link
[2] Link

remaining live there would be no clearly prescribed basis for monitoring by EU Member States.

5. Up until now there have been no detailed rules setting out requirements for national surveillance of contaminants in food not of animal origin (FNAO). Controls are covered by the general requirement for official controls to be carried out regularly, on a risk basis and with appropriate frequency. This new measure requires Member States to have in place a sampling strategy and describes relevant criteria to inform such a strategy.

6. Although this regulation will not apply in Great Britain (GB), the detail of 96/23/EC and any future contaminants and residues regulations remain relevant in the UK post EU-Exit as the EC expects the same level of POAO monitoring for non-EU trading partners as they do Member States. As a result, the existing requirements for POAO continue to be implemented in GB.

7. The requirement for non-EU trading partners to adhere to the existing requirements of 96/23/EC is captured in the DG Health & Food Safety's 'Guidance on EU Requirements for imports of POAO'[3], and this document also outlines the requirement for trading partners to submit their residue monitoring plans and results to the EC annually, by the 31 March each year.

8. This annual submission of residue plans and results, made by the Veterinary Medicines Directorate (VMD) with the sight of the UK Chief Veterinary Officer's Office, allows the United Kingdom (GB specifically, with NI out of scope under the terms of the NIP) to make exports of POAO into the EU, with the EU summarising the goods approved for EU import in Commission Decision 2011/163/EU[4]. Within this legislation GB are approved to export foodstuffs such as bovine meat, milk, fish, eggs and honey etc.

SCRUTINY HISTORY

9. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in Annex A.

MINISTERIAL RESPONSIBILITY

10. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

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INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. The control of residues of prohibited substances, veterinary medicines and contaminants is a devolved policy matter across England, Wales, Northern Ireland and Scotland, but in practice for most POAO these activities are coordinated by the VMD in GB, with some sampling undertaken by the Food Standards Agency, Food Standards Scotland or local authorities. The Department of Agriculture, Environment and Rural Affairs (DAERA) are the equivalent Competent Authority for residues in Northern Ireland and operate the monitoring and testing in accordance with EU legislation under the terms of the NIP in addition to sampling by the Food Standards Agency and local authorities.

12. The Devolved Administrations were consulted in the preparation of this Explanatory Memorandum and no concerns were raised by Scottish Government and Welsh Government.

13. Officials from the DAERA NI have an interest in this proposal as it falls within the scope of the Protocol on Ireland/Northern Ireland. As the proposal affects multiple policy areas more time is required to analyse the proposal. Its policy officials are liaising with their UK government policy counterparts to determine what action is required and what possible impacts the proposal may have. Input has been provided at official level and does not represent the views of NI Executive Ministers.

LEGAL AND PROCEDURAL ISSUES

14.

i. Legal Base

The legal basis for the Delegated Regulation is Article 19(2)(a) of Regulation (EU) 2017/625.

ii. Voting Procedure

Not applicable - this is a Delegated Regulation to be made by the European Commission.

iii. Timetable for adoption and implementation

Under the terms of Article 150 of the OCR the European Commission will publish these new residue monitoring requirements by the 14 December 2022, and it is described in this draft legislation that the new requirements will apply in Member States from 1 January 2023.

POLICY IMPLICATIONS

15. The policy implications of this new Regulation differ for GB and NI, due to the nuances of NIP implementation and export listing, as detailed in the Subject Matter.

For Northern Ireland:

- These requirements will need to be implemented on the 1 January 2023, and failure to do so may result in the European Commission (EC) deeming NI residue controls to not meet the legal obligations in assuring compliance with food safety controls.
- The implementation of these new monitoring requirements will be challenging for NI, but it is important to note that a) the draft requirements are less prescriptive than 96/23/EC in terms of specific sampling and testing requirements and b) the monitoring NI have in place for contaminants already meets many of the specifics as outlined in Annex I of the Draft Regulation. As noted above, the exact impacts are unclear.
- However, there will need to be significant logistical planning to implement the novel aspects of the new requirements, and DAERA will need to fund the Agri-Food Biosciences Institute of Northern Ireland (AFBI NI) or their designated EU National Reference Laboratory (NRL) to validate laboratory test methods for the new commodities outlined in the Regulation (e.g. unprocessed fishery products, animal and marine fats and oils, and processed products of animal origin). In addition, more formal planning will be needed to establish the required sampling plans for contaminants in FNAO, although testing for most of these contaminants is already undertaken by local authorities in official control laboratories.

We recognise the impact the Northern Ireland Protocol is having on the ground. The UK Government has been clear for some time that the Protocol has been causing serious problems. We will continue to talk with the EU and our preference is - and has always been - to reach a negotiated outcome with EU, while in parallel moving forward with our solution to protect peace in Northern Ireland. We remain open to continuing talks with the EU, while these continue, we will take steps to stabilise the situation in Northern Ireland and bring parity to everyone living the UK.

For Great Britain:

- There is no need for these new monitoring requirements to be implemented in GB on the 1 January 2023, as GB is not bound by EU legislation. In future years the EC could update their expectations of non-EU trading partners residue monitoring, as currently outlined in DG Health & Food Safety's 'Guidance on EU Requirements for imports of POAO'[5]. When and if this happens, the VMD and Defra will need to consider when/if we will meet these requirements, in the context of continuing to secure export listings in 2011/163/EU. The new monitoring requirements for

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contaminants in FNAO also do not apply to GB. Surveillance and compliance testing is undertaken by local authorities and port health authorities as well as with ad hoc surveys by the Food Standards Agency and Food Standards Scotland.

- Unfettered Market Access will continue from NI to GB. We consider these amendments low risk for NI-GB trade

CONSULTATION

16. Communication 7536/22 confirms that the EC consulted and agreed these new legislative requirements ('C(2022) 744 final') with Member State experts in the EU Official Controls Expert Group on the 25 January 2022

17. No impact assessment was carried out by the EC in January 2022 as the Delegated Regulation is not expected to have any significant impact on MS - and likewise NI colleagues have not had sight of these drafts or discussions until now.

FINANCIAL IMPLICATIONS

18. There will likely be no economic or financial impacts if the requirements of this proposal are adopted and implemented in NI, outside of the costs of setting up additional sampling, testing, and test method validation. However, failure to bring existing monitoring in line with these new requirements could lead to rejection of NI exports of POAO to the EU, and this would have significant financial impacts for exporters in NI, as well as the wider agricultural sector.

THE RT HON LORD BENYON
PARLIAMENTARY UNDER SECRETARY OF STATE (MINISTER FOR RURAL AFFAIRS AND BIOSECURITY)
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

ANNEX A

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION DELEGATED REGULATION (EU) …/...OF 23.3.2022 SUPPLEMENTING REGULATION (EU) 2017/625 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL BY LAYING DOWN RULES FOR THE PERFORMANCE OF OFFICIAL CONTROLS AS REGARDS CONTAMINANTS IN FOOD

FSA EM 9464/13, COM (2013) 265 FINAL: DRAFT INSTRUMENT CONCERNING A PROPOSAL FOR A REGULATION 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, PLANT REPRODUCTIVE MATERIAL AND PLANT PROTECTION PRODUCTS

DATE EM SIGNED: 03/06/2013

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
REPORT NO: 09 DATED: 10/07/2013: RECOMMEND: LPINC REPORT NO: 39 DATED: 24/03/2015: RECOMMEND: LPINC REPORT NO: 07: DATED: 28/10/2015: RECOMMEND: LPIC	SIFT NO: 1508: DATED: 11/06/2013 FINAL CLEARED ON 14/11/2016