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

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C(2022) 6496 final + ANNEXES 1 to 2

COMMISSION DELEGATED REGULATION (EU) 2022/6496 OF 6.9.2022 SUPPLEMENTING REGULATION (EU) 2017/625 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL WITH REGARD TO REQUIREMENTS FOR THE ENTRY INTO THE UNION OF CONSIGNMENTS OF FOOD-PRODUCING ANIMALS AND CERTAIN GOODS INTENDED FOR HUMAN CONSUMPTION

Submitted by the Department for Environment, Food and Rural Affairs

14 December 2022

SUBJECT MATTER

1. This EU Delegated Regulation concerns requirements relating to food-producing animals and associated animal products entering the European Union (and Northern Ireland) from non-EU trading partners. These requirements aim to ensure such animals and animal products comply with a suite of relevant controls which fall under the EU's Official Controls regime (Regulation (EU) No 2017/625[1]).

2. The Delegated Regulation maintains various existing controls, merging them into a single regulation. It also supplements these with updated arrangements for assurance from countries trading with the EU, particularly relating to monitoring to provide assurance that animals and products of animal origin entering the EU comply with EU rules on contaminants, veterinary medicines and pesticides. Other policy areas are unaffected as the purpose of the Delegated Regulation is to cover all the supplementary requirements for entry of such goods into the EU in a single regulation.

<u>Veterinary medicines and contaminants</u>

3. With respect to veterinary medicines and contaminants, the controls outlined in this Delegated Regulation are an iteration on existing requirements. The legislation updates and reaffirms existing controls on products of animal origin (POAO) and requires non-EU trading partners (termed 'third countries') to ensure that they have an equivalent level of controls in place to monitor for residues of prohibited

[1] of the European Parliament and of the Council of 15 March 2017 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.

substances, veterinary medicines and contaminants in POAO such as meat, milk, fish, eggs and honey.

4. The requirements for monitoring remain broadly similar to existing requirements for third countries (those outlined in Annexes I-IV of Council Directive 96/23/EC and summarised in the DG Health & Food Safety's 'Guidance on EU Requirements for imports of POAO'[2]) and analysis of the monitoring required in the different food groups show that these new levels are very similar, with minor changes – thus the existing GB programme is already equivalent with these new standards.

Pesticides

5. With respect to pesticides, the controls outlined in this Delegated Regulation are also an iteration of existing requirements. This updates requirements on third countries concerning the monitoring of maximum residue levels (MRLs) of pesticides which are permitted on, or in, food and feed (including POAO), set under retained Regulation (EC) No 396/2005[3] ("the MRL Regulation"). Pesticide MRLs are established to provide a high level of protection for consumers. These apply to all foods placed on the EU market, and Northern Ireland.

6. The UK will need to apply the updated EU requirements for third countries to ensure there are equivalent levels of monitoring controls for pesticide residues in POAO in place in relation to exports from Great Britain to the EU, and the UK will need to submit monitoring control plans to the EU annually. The EU MRL rules on levels of residues themselves set under the MRL Regulation remain unchanged.

SCRUTINY HISTORY

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

MINISTERIAL RESPONSIBILITY

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

INTEREST OF THE DEVOLVED ADMINISTRATIONS

Veterinary medicines and contaminants

9. Control of residues of veterinary medicines and contaminants in POAO is a devolved policy area and the Department for Agriculture Environment and Rural

[2] Link

[3] of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC

Affairs (DAERA) in Northern Ireland is responsible for equivalent controls in NI. This Delegated Regulation places obligations on Great Britain specifically, with Northern Ireland being treated separately under the terms of the Northern Ireland Protocol to the Withdrawal Agreement ("the Protocol").

Pesticides

10. Pesticides is an area of devolved policy. The MRL Regulation is listed under Annex 2 of the Protocol, so applies directly in Northern Ireland. This Delegated Regulation focuses on third countries and therefore places obligations on the UK relating to monitoring to provide assurance on goods from Great Britain (as Northern Ireland is within the EU's pesticides regulatory regime under the terms of the Protocol). Northern Ireland is subject to the EU requirements for monitoring which apply to EU Member States rather than to requirements for third countries.

11. The devolved administrations have been consulted in the preparation of this EM and had no substantive comments.

LEGAL AND PROCEDURAL ISSUES

12. The legal and procedural bases for this Regulation are as follows:

i. Legal Basis

The legal basis for the European Commission's power to lay down the conditions for animals and goods entering the Union from third countries is Article 126(1) of Regulation (EU) 2017/625 (as it applies in the EU).

ii. Voting Procedure

The Delegated Regulation has been adopted in line with the EU's Comitology procedures, as set out in Article 144. The proposal then successfully passed the European Parliament and European Council scrutiny stages before publication as a Regulation.

iii. Timetable for adoption and implementation

This Regulation applies from 15 December 2022 and enters into force 20 days after publication in the Official Journal.

POLICY IMPLICATIONS

13. The updated arrangements in this Delegated Regulation concern obligations placed on countries which trade with the EU to annually submit monitoring information to the European Commission. These arrangements therefore place updated obligations on the UK in relation to submission of monitoring information concerning goods from Great Britain. As per the terms of the Northern Ireland

Protocol, Northern Ireland is already within the relevant EU regimes. No new action is required by Northern Ireland in relation to GB to NI movement of goods.

Veterinary medicines and contaminants

14. For both Great Britain and Northern Ireland – but more so GB in this context, with NI being out of scope of this Delegated Regulation – it should be highlighted that the controls outlined in this Regulation are an iteration on existing requirements, and as such the UK is already able to demonstrate equivalence with them. These updated requirements are less prescriptive than the existing ones (i.e., those outlined in the Annexes of Council Directive 96/23/EC) in terms of reporting, sampling and testing levels, and for some foodstuffs the monitoring required is a reduction on the level required presently.

15. The wider policy implication associated with this Regulation is around continuing to provide assurances that POAO from Great Britain placed on the EU market complies with the EU MRLs for veterinary medicines, as outlined in Commission Regulation 37/2010, and for contaminants, as outlined in Commission Regulation 1881/2006. Whilst this is ensured at present, due to limited divergence between GB and EU MRLs for both veterinary medicines and contaminants, divergence in these MRLs could pose barriers to trade in the future. Therefore, we intend to keep our current monitoring arrangements under review and anticipate that we will need to consider refinements to ensure that these arrangements remain fit for the required purpose over time, given that gradual divergence will continue to occur between EU and GB MRLs, in order to manage any risks to trade arising.

16. Regarding Northern Ireland, we are aware that the Protocol is causing significant problems. It is our preference to find a solution and resolve these problems through talks. Discussions are still ongoing and this could impact how divergence related issues are implemented and managed going forward.

Pesticides

17. With respect to pesticides, the controls outlined in this Delegated Regulation are an iteration of existing requirements for third countries.

18. This Delegated Regulation updates the requirement for all third countries trading with the EU and Northern Ireland to undertake equivalent pesticide monitoring programmes to those undertaken by EU Member States under Regulation (EC) No 396/2005, as it applies in the EU (the EU MRL Regulation), and to submit their plan annually to the European Commission. The purpose is to provide assurance that POAO placed on the EU market comply with the relevant EU MRLs. The Delegated

Regulation does not change the actual pesticide MRLs that must be met when businesses place goods on the market in the EU or Northern Ireland, i.e., the standards that goods are produced to remain unchanged.

19. To address this requirement, we have an ongoing Great Britain pesticide residue testing programme which is representative of the country's food supply and is equivalent to EU Member State programmes. The EU MRL Regulation has been retained in domestic law. All the relevant statutory requirements on standards of protection were transferred unchanged in national law. We therefore continue to have equivalent strict rules in Great Britain regulating the use of pesticides to protect human health and the environment, applying the same high standards of protection as the EU pesticide MRL regime. The vast majority of MRLs set under the MRL Regulation remain identical to those under the EU MRL Regulation, though there has been some divergence since leaving the EU. This is a consequence of operating an independent regime and will continue over time.

20. Our robust programme of monitoring is led by the Health and Safety Executive (on behalf of all UK administrations). Prior to leaving the EU, this programme delivered the UK's obligations as an EU Member State. These arrangements have continued under the retained regime. Overall levels of compliance with the GB pesticide MRL rules are very high. Our GB monitoring programme indicates that approximately 95% of products of animal origin tested had no detectable pesticide residues present at all, and over 98% of samples were compliant with the relevant MRLs[4].

21. The Delegated Regulation requires the UK (in respect of exports from Great Britain), as a third country trading with the EU, to submit its MRL monitoring control plan to the European Commission annually. We intend to keep our current pesticide MRL monitoring arrangements under review and anticipate that we will need to consider refinements to ensure that these arrangements remain fit for the required purpose over time given that gradual divergence will continue to occur between EU and GB MRLs, in order to manage any risks to trade arising.

22. We have engaged with the European Commission on this Delegated Regulation to clarify several detailed technical points (in response to the EU's WTO notification under the Sanitary and Phytosanitary Agreement). This was to confirm that the EU intended to continue to apply the usual default MRL level where no specific EU MRLs have been set (i.e. 0.01mg/kg), and that monitoring should be risk-based, rather than attempting to cover all pesticides. The Commission confirmed its view on both points aligned with the UK's own understanding. The Commission also advised that the new provisions on the testing and monitoring requirements have not changed in substance and their view is therefore that the Delegated Regulation

[4] Figures from 2020. Excludes fish for which MRLs are not set.

does not impose significant additional burdens on third countries beyond what is currently legally required.

CONSULTATION

23. The European Commission's Explanatory Memorandum sets out that it has consulted Member State experts, other countries through notification under the WTO Agreement on Sanitary and Phytosanitary Measures and undertaken public consultation.

24. The UK Government has not undertaken any additional consultation, as the new obligations are placed on Government, rather than businesses.

FINANCIAL IMPLICATIONS

25. This regulation places obligations on third countries trading with the EU. It does not impose any new obligations on Northern Ireland, and so there are no new financial obligations for Northern Ireland. Similarly, it maintains current requirements to place goods on the market in Northern Ireland so there are no direct financial implications for business anticipated at this stage.

26. There will be some administrative burden on the UK to meet the reporting requirements to the European Commission. As noted above, we intended to keep our current pesticide MRL monitoring arrangements under review to consider any adjustments required to address this Delegated Regulation, including over the longer term due to divergence. It is too soon to confirm any financial implications arising.

27. The Commission's Explanatory Memorandum states that no impact assessment was required as the Delegated Regulation is maintaining current requirements.

THE RT. HON. MARK SPENCER M.P.
MINISTER OF STATE FOR FOOD, FARMING AND FISHERIES
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

COMMISSION DELEGATED REGULATION (EU) …/... OF 6.9.2022 SUPPLEMENTING REGULATION (EU) 2017/625 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL WITH REGARD TO REQUIREMENTS FOR THE ENTRY INTO THE UNION OF CONSIGNMENTS OF FOOD-PRODUCING ANIMALS AND CERTAIN GOODS INTENDED FOR HUMAN CONSUMPTION

COMMISSION DELEGATED REGULATION 2019/625 WITH REGARD TO REQUIREMENTS FOR THE ENTRY INTO THE UNION OF CONSIGNMENT OF CERTAIN ANIMALS AND GOOD INTENDED FOR HUMAN CONSUMPTION WAS SCRUTINISED AS EU DOCUMENT 7238/19, COM(19)11.

DEFRA SUBMITTED AN EM DATED 27 MARCH 2019

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
THE HOUSE OF COMMONS EUROPEAN SCRUTINY COMMITTEE DID NOT REPORT SUBSTANTIVELY ON THE DELEGATED ACT AND COMPLETED SCRUTINY OF 15 MAY 2019 (REPORT 66, 17/19).	THE DELEGATED ACT WAS SENT FOR INFORMATION TO THE HOUSE OF LORDS EUROPEAN UNION COMMITTEE'S SUB-COMMITTEE ON ENERGY AND THE ENVIRONMENT; THERE WAS NO SUBSTANTIVE FOLLOW UP FROM THE SUB-COMMITTEE (CHAIR'S SIFT 1735, 2 APRIL 2019).

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 WAS SUBJECT TO SCRUTINY AS EU DOCUMENT 9464/13, COM(13)265

FSA SUBMITTED AN EM DATED 3 JUNE 2013

SCRUTINY COMMITTEES' RECOMMENDATIONS:

COMMONS	LORDS
THE HOUSE OF COMMONS EUROPEAN SCRUTINY COMMITTEE REPORTED ON THREE OCCASIONS THAT THE PROPOSAL RAISED ISSUED OF LEGAL AND POLITICAL IMPORTANCE AND COMPLETED SCRUTINY ON 28 OCTOBER 2015 (REPORTS 9, 13/14; 39, 14/15; AND 67, 15/16)	THE PROPOSAL WAS EXAMINED BY THE HOUSE OF LORDS EUROPEAN UNION COMMITTEE' S SUB-COMMITTEE D AND SCRUTINY WAS COMPLETED ON 14 DECEMBER 2016.