



The Scottish Parliament
Pàrlamaid na h-Alba

SPICe

The Information Centre
An t-Ionad Fiosrachaidh

SPICe Briefing

Pàipear-ullachaidh SPICe

Brexit Statutory Instruments: Identifying the Challenges

Dr Robert Brett Taylor and Prof Adelyn L M Wilson, University of Aberdeen
School of Law

This briefing paper is the third in a series of three briefing papers on Brexit Statutory Instruments produced as part of a Scottish Parliament Academic Fellowship undertaken with the Scottish Parliament Information Centre. This third briefing paper highlights some of the challenges encountered in the implementation of Protocol 1 which, it is hoped, will assist the committees, their support staff and MSPs in future scrutiny exercises under Protocol 2.



19 August 2021
SB 21-53

Contents

Introduction	3
The content of the notifications	5
Changes to the legislative proposal after notification	6
The lead subject committees not receiving the UK Exit SI	8
The length of time for scrutiny	11
Categorisation	13
Impact assessments and consultation with stakeholders	15
The relationship of UK Exit SIs with common frameworks	17
Conclusion	19
Bibliography	20

Introduction

The European Union (Withdrawal) Act 2018 provides legislative continuity after Brexit by transforming EU law from a body of international law into a body of UK domestic law, known collectively as ‘retained EU law’, from 11pm on Implementation Period (IP) Completion Day, 31 December 2020. However, this retained EU law had to be amended to allow it to work effectively at the domestic level. In relation to Scottish devolved matters, these changes have either been made by the UK Government through Statutory Instruments laid at the UK Parliament with the consent of the Scottish Government (UK Exit SIs), or by the Scottish Government through Scottish Statutory Instruments (Exit SSIs) laid in the Scottish Parliament.

A new process was introduced to enable the Scottish Parliament to approve the Scottish Government giving its consent to the UK Government making UK Exit SIs on devolved issues. This was introduced by an agreement between the Scottish Government and the Scottish Parliament referred to as Protocol 1, which ran from September 2018 until IP Completion Day on 31 December 2020¹. This Protocol 1 process was replaced by an amended process introduced under Protocol 2, which has been in effect since 1 January 2021².

This briefing paper is the third in a series of three briefing papers on Brexit Statutory Instruments produced as part of a Scottish Parliament Academic Fellowship undertaken with the Scottish Parliament Information Centre (SPICe) to explain and analyse the implementation of the Protocol 1 process. The purpose of these papers is to help inform the implementation of Protocol 2, and any other future processes by which scrutiny of UK SIs on devolved matters will be undertaken.

The [first paper already published in this series](#)³ outlined the processes by which retained EU law in areas of devolved competence was amended in the Scottish Parliament and the UK Parliament, including the Protocol 1 process. The [second briefing paper in this series](#) already examined: the implementation of Protocol 1, the impact of UK Exit SIs on the devolution settlement, and who will set the future policy direction in Scotland in devolved areas.

This third briefing paper highlights some of the challenges encountered in the implementation of Protocol 1 which, it is hoped, will assist the committees, their support staff and MSPs in future scrutiny exercises under Protocol 2. It examines seven challenges which can be identified with this process:

It is not the purpose of this paper to make recommendations as to how these challenges might be overcome. It is recognised that the nature of the Protocol 1 process and the wider context in which it has operated may mean that addressing all of these challenges may not be possible.

These papers also recognise that both the Scottish Government and the Scottish Parliament had to respond to a situation that was not of their making or choosing. They have had to engage in the exceptionally complex task of correcting deficiencies in retained EU law on devolved matters. This process involved coordination between multiple governments and legislative bodies, but was initiated and led by the UK Government. The scale of the task was unprecedented, had to be performed in advance of Exit Day and other deadlines which transpired to be moveable, and had to incorporate changes in EU

law during this time.

The content of the notifications

As [explained in the first paper in this series](#)³, the process by which the Scottish Government informed the Scottish Parliament that it intended to consent to the UK Government making a UK Exit SI on a devolved matter was by sending a short document summarising the proposed change to retained EU law (a ‘notification’) to the relevant lead subject committee. Sometimes the notifications were ambiguous or lacked clarity on aspects of the planned legislation, as was discussed in [the second paper in this series](#).

Protocol 1 required the Scottish Government to inform the Scottish Parliament of a proposed UK Exit SI ‘at the earliest opportunity’, to provide ‘sufficient time’ for scrutiny and for an alternative Exit SSI to be prepared instead if required.¹ As a result, the Scottish Government often stated in the letter accompanying the notifications that it had not seen the final UK Exit SI when it wrote the notification, although Scottish Parliament officials have indicated that sometimes the Scottish Government had seen at least a draft of the UK Exit SI.

Additionally, sometimes the discussions were still ongoing between Governments on how to resolve some points when the notification was written. This might include discussions relating to transitional provisions relating to checks on imported goods,ⁱ or import control notification systems,⁵ or certain definitions.⁶ These points might be resolved in a manner inconsistent with the expectations of the Scottish Government as laid out in the notification. Where that became apparent at any early stage, the Scottish Government might choose to withdraw from the discussions and not provide consent to the proposed UK Exit SI but rely on other existing legislative frameworks.⁷

However, this approach led to the lead subject committees expressing concern about being asked to approve Ministers giving consent to the proposed UK Exit SI, both because they were being asked to approve proposals based ‘on the Scottish Government’s best guess about what the UK Government will do’, and because this caused difficulties for holding the Scottish Government to account for UK Exit SIs it had not seen.ⁱⁱ

i The Plant Health (Amendment) (EU Exit) Regulations 2020⁴ and the Plant Health (Amendment) (No 2) (EU Exit) Regulations 2020 (notified together 28 September 2020).

ii Health and Sport Committee, Official Report, 23 October 2018⁸, 6 November 2018⁹.

Changes to the legislative proposal after notification

Even after the lead subject committee approved the Scottish Government giving consent, the proposed UK Exit SI might be changed and re-notified to the relevant committee. In one case, proposals were notified and approved by the Rural Economy and Connectivity Committee (RECC) on three separate occasions: when Exit Day was postponed, when the UK Parliament went into recess, and when changes became necessary in light of the Withdrawal Agreement and Northern Ireland Protocol.ⁱⁱⁱ While on this particular occasion the proposals were non-contentious and did not take much time in the Committee's meetings,^{iv} this is indicative that re-notification could result in an additional workload burden for the lead subject committees and the parliamentary officials supporting them.

Alternatively, after the UK Exit SI was made, the Scottish Government would write to the lead subject committee to inform it of the UK Exit SI having been made and would highlight any variations between the final UK Exit SI and the notification. It was common for the letters to highlight some inconsistency, which is unsurprising given the notifications were often written without the final UK Exit SI having been seen by the Scottish Government and because policy might still be evolving in these areas. Where this inconsistency was identified as a 'substantive variation' by the Scottish Government, a joint SI or an SSI would be laid instead.¹ However, no examples were found where the Scottish Government identified a 'substantive variation'.

However, although not identified as sufficiently significant, the variations between the proposed UK Exit SI as notified and the laid UK Exit SI were sometimes widespread or connected to key areas of the notification. This might include a large number of variations, including the name of the legislation, the removal of content to other legislation, and the transfer of additional functions (including legislative functions) being added.^v A laid UK Exit SI might also amend legislation beyond that which was mentioned in the original notification.^{vi} Such variations added to the amount of time spent by parliamentary officials on supporting this process.

A particularly notable example of this is the Fluorinated Greenhouse Gases and Ozone-Depleting Substances (EU Exit) (Miscellaneous Amendments) Regulations 2018. The notification stated that quota-setting and license-granting functions were to be transferred

iii The Food and Drink (Amendment) (EU Exit) Regulations 2019 (notified 26 March 2019), the Agricultural Products, Food and Drink (Amendment etc) (EU Exit) Regulations 2019 (notified 30 May 2019), the Agricultural Products, Food and Drink (Amendment etc) (EU Exit) Regulations 2020 (notified 10 September 2020). The legislation was made as the Agricultural Products, Food and Drink (Amendment etc) (EU Exit) Regulations 2020 (SI 2020/1637)¹⁰, having been laid on 22 October 2020 and approved by both Houses on 2 December 2020.

iv Rural Economy and Connectivity Committee, Official Report, 3 April 2019¹¹, 12 June 2019¹², 30 September 2020¹³.

v The letter from the Cabinet Secretary for the Rural Economy to the Convener of the Rural Economy and Connectivity Committee, 5 March 2019, on the Agriculture (Transfer of Functions) (EU Exit) (No 2) Regulations 2019 (notified 8 January 2019)¹⁴; the letter from the Minister for Rural Affairs and the Natural Environment to the Convener of the Rural Economy and Connectivity Committee, 26 March 2019, on the Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2018¹⁵.

vi See the letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the ECCLRC, 16 January 2019, on the Waste (Miscellaneous) Amendments (EU Exit) Regulations 2019 (which additionally amended the Environmental Protection Act 1990)¹⁶.

to the Environment Agency to administer on a UK-wide basis. However, the UK Exit SI when laid on 13 December transferred these powers to the Scottish Environment Protection Agency (SEPA) instead. Therefore, the Scottish Government indicated in its follow-up letter to the Environment, Climate Change and Land Reform Committee (EECLRC) that Ministers would intend to address this variation in practice by ‘direct[ing] the Environment Agency ... to administer the quota and licensing regimes’. This was described as ‘only a procedural step and is not a change in policy approach, which remains consistent with the Scottish Ministers’ consent’.¹⁷

However, the original notification had categorised this proposed UK Exit SI as B explicitly based on the transfer of legislative and non-legislative functions to the Scottish Ministers and regulatory agencies, and had highlighted cost of administration of the licensing system as a consideration in any future exercise of these functions. The identification of these variations as ‘not so significant as to engage the need for a further process of obtaining the Parliament’s approval’¹ may not be consistent with the basis of categorisation within the original notification. This variation does not appear to have been corrected when the draft UK Exit SI was withdrawn and re-laid on 6 February 2019. Additionally, it is notable that the name of the legislation as laid changed to the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc) (EU Exit) Regulations 2019, although this was not highlighted in the letter.

Similarly, while the lead subject committees were routinely informed about the laying of the UK Exit SI, it is unclear the extent to which they were kept apprised of any re-laying which might have been required. For example, the Food and Drink Veterinary Medicines and Residues (Amendment etc) (EU Exit) Regulations 2018 was laid on 13 February and made on 2 April 2019, then revoked and remade on 11 April, as the earlier version ‘did not reflect the version approved by Parliament’.^{vii} The Scottish Government wrote to confirm the progress of the UK Exit SI, but the letter cannot currently be found. However, still in 2020, these Regulations were being described in the notifications for the Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020 as having been ‘laid in the UK Parliament on 13 February 2019’.^{viii}

vii Food and Drink, Veterinary Medicines and Residues (Amendment etc) (EU Exit) Regulations 2019¹⁸ (SI 2019/788, 2019/865); originally notified as the Quality Agricultural Products and Foodstuffs, Spirit Drinks, Wine and Aromatised Wine (Amendments etc) (EU Exit) Regulations 2018 (notified 11 December 2018)¹⁹.

viii See also the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019²⁰. That UK Exit SI was made with a drafting error in the relevant provision, omitting that the function being transferred to the Secretary of State was to make regulations. This drafting error was corrected by the Environment and Wildlife (Legislative Functions) (EU Exit) (Amendment) Regulations 2019²¹ (SI 2019/1424). This new UK Exit SI does not appear to have been notified to the Scottish Parliament.

The lead subject committees not receiving the UK Exit SI

Under Protocol 1, the lead subject committees were approving the Scottish Government's request to consent to the UK Government making secondary legislation on a devolved matter, rather than approving the UK Exit SI itself. The UK Exit SI itself was laid at the UK Parliament and the Scottish Parliament had no formal role in the UK Parliament's processes, as discussed in the [first paper in this series](#)³. A copy of the UK Exit SI was therefore not routinely provided to the committees when they were approving the notifications.

However, this caused concern for the lead subject committees. Some of the lead subject committees requested at an early stage that copies of the draft UK Exit SI or drafting instructions be provided,^{ix} and committees resolved to seek reassurance that final versions of the UK Exit SI would be provided before approval had to be given.⁹ However, the committee scrutiny process was routinely completed without recourse to the draft UK Exit SI. A keyword search of the correspondence and committee papers on the Scottish Parliament website indicates that only rarely was a committee directed to draft UK Exit SIs prior to consent being given,^x or indeed was provided with a link to the legislation in the letter sent following the UK Exit SI being made at the UK Parliament.^{xi} Committees appear to have been directed to the draft versions of only around five of the approximately 200 UK Exit SIs laid under Protocol 1. While lead subject committees could have found the draft legislation on the UK Parliament's website by their own initiative, this would not have been possible where the draft legislation had not yet been laid and would be particularly challenging where the name of the legislation had changed since the notification was written. This would also result in an additional burden on the time of the lead subject committees and the parliamentary officials supporting them.

One consequence of the committees not receiving the UK Exit SI was that their scrutiny was heavily dependent on the detail contained in the notification. As discussed above, the notifications could be general or unspecific (even on key issues such as the nature and transfer of functions) and could represent the anticipated rather than the final content of the UK Exit SI. The lead subject committees therefore routinely requested clarification from the Scottish Government, sometimes including a very large number of questions on a diverse range of connected issues.^{xii} The committees sometimes additionally took oral

ix See e.g. the letter from Convener of the ECCLRC to Cabinet Secretary for Environment, Climate Change and Land Reform, 26 October 2018 re Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2018²².

x Per Google Advance Search. See the letter from the Minister for Rural Affairs and the Natural Environment to the Convener of the RECC, 18 November 2020, with links to the Official Controls (Animals Feed and Food Plant Health etc) (Amendment) (EU Exit) Regulations 2020, the Import of and Trade in Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020 and Animal Welfare and Invasive Non-Native Species (EU Exit) Regulations 2020.²³

xi The letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the ECCLRC, 16 January 2019, with a link to the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019²⁴; the letter from the Cabinet Secretary for Health and Sport to the Convener of the HSC, 19 February 2019, with links to the Social Security Coordination (Reciprocal Healthcare) (Amendment etc) (EU Exit) Regulations 2019 and the National Health Service (Cross-Border Healthcare and Miscellaneous Amendments etc) (EU Exit) Regulations 2019²⁵; letter from the Cabinet Secretary for Justice to the Convener of the Justice Committee, 2 March 2019, with a link to the Criminal Justice (Amendment etc) (EU Exit) Regulations 2019.²⁶

evidence on the proposed UK Exit SI from the Scottish Ministers, governmental officials and legal advisers.^{xiii}

Another consequence for scrutiny of the lead subject committees not receiving the UK Exit SI was that they were also highly reliant on the Scottish Government's description of any variations arising in the UK Exit SI when it was laid, as set out in the subsequent letter. As shown above, sometimes these letters did not give an accurate account of any inconsistencies.

These consequences can be seen in the example of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019. As will be shown below, there was significant inconsistency between the transfer of some functions as described in the notification of this UK Exit SI, as discussed in the Cabinet Secretary's letter following the making of the UK Exit SI, and as actually transferred in the legislation itself.^{xiv}

Firstly, a function in the UK Exit SI 'to specify forms to be used for export and import restrictions' was said in the notification to be a reserved issue so the function would be exercisable only by the UK Government's Secretary of State without mention of consent. However, the letter sent after the UK Exit SI was laid indicated that, 'follow[ing] further assessment of devolved competence in this area', the function was instead being transferred to the Scottish Ministers. Neither description appears to have been correct: an examination of the legislation itself shows that these functions were actually transferred to the Scottish Ministers and also to the Secretary of State with consent.

Secondly, the notification stated that a function to 'authorise new mercury-added products or manufacturing processes' would be transferred to the Scottish Ministers. However, the letter following the laying of the UK Exit SI indicated that these were instead transferred to the Secretary of State to use only with consent of the devolved administrations. The letter stressed that this change was 'an error in the original notification and is not a change in policy' and was necessitated by overlapping devolved and reserved competencies. Yet, in the made UK Exit SI, the function was transferred to the Secretary of State alone and there is no mention in that provision of requiring consent.

Finally, two further functions ('to set out technical requirements for environmentally-sound interim storage of mercury' and to 'extend the period allowed for temporary storage of mercury waste') were said in the notification to transfer to the Scottish Ministers. These were not highlighted as a subject of variation in the Minister's subsequent letter, but in the made legislation they were transferred to both the Scottish Ministers and to the Secretary of State to use with the consent of the Scottish Ministers.²⁰

xii See e.g. the letter from the Convener of the ECCLRC to the Cabinet Secretary for Environment, Climate Change and Land Reform, 8 October 2018, which asked almost fifty questions on the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2018²⁷; the responding letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the ECCLRC, 12 October 2018, answering those questions.²⁸

xiii See e.g. ECCLRC, Official Report, 24 October 2018 (in relation to the Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2018)²⁹, 3 November 2020 (in relation to the Detergents (Amendment) (EU Exit) Regulations 2020, the Waste and Environmental Permitting etc (Legislative Functions and Amendment etc) (EU Exit) Regulations 2020, the Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc) (EU Exit) Regulations 2020, and the REACH etc (Amendment etc) (EU Exit) Regulations 2020)³⁰.

xiv Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (notified 27 November 2018, as the 2018 Regulations)³¹; the letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the ECCLRC, 11 February 2019³²; the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (SI 2019/473)³³, reg 8, amending Regulation EU 2017/852 of the European Parliament and of the Council, Articles 6, 8, 7(3), 13(2) respectively³⁴.

These inconsistencies also had an impact on committee scrutiny of subsequent notifications. The relevant provisions of that UK Exit SI were subsequently repealed by the Control of Mercury (Amendment) (EU Exit) Regulations 2020. The notification of that new UK Exit SI ³⁵ (notified 8 October 2020) indicated that it should be ‘read alongside’ the earlier notification because ‘[f]ull details of the transfers of functions are contained in the previous notification and the Parliament has already recommended consent to them.’ This cross-reference was criticised by the ECCLRC ³⁶, which highlighted that there had been variations (as laid out in the Cabinet Secretary’s previous letter rather than as found in the actual made UK Exit SI). The Committee commented:

“ The Committee is entirely reliant on the content of each notification when considering whether it is content with what is being proposed. Contrary to the statements in the notification, it was therefore not possible for the Committee to rely on the previous notifications to work out what was being proposed. Incorrect information in a notification as to how functions, particularly legislative functions, are going to be transferred (i.e. whether to Scottish Ministers or to someone else) is not, from the Committee’s point of view, a minor matter. It is very unfortunate that the error was compounded in the present notification (by referring to the previous (erroneous) notification for information how powers would be transferred). The Committee would therefore be grateful for future notifications to include full and accurate information on this point.”

It is notable that the new UK Exit SI transferred the functions as they had been in the earlier UK Exit SI, and that this was not how they were described in either the earlier notification or the letter. In such cases, the lack of sight of the UK Exit SI frustrated aspects of the lead subject committees’ scrutiny. In this present case, the lack of provision of the actual UK Exit SI was perhaps even more unfortunate, as the 2020 Regulations were laid at the UK Parliament only 14 days after they were notified to the Scottish Parliament. Receipt of the UK Exit SIs would have removed the ECCLRC’s need to rely on descriptions of the transfer of functions in the 2019 Regulations and 2020 Regulations which were not wholly accurate or clear.

The length of time for scrutiny

Protocol 1 stated that the lead subject committees ‘will normally have a maximum of 28 days to consider the notification.’¹ This period was intended to allow appropriate time to the committees for scrutiny, and provided the opportunity to correspond with the Scottish Government and stakeholders regarding the proposals as notified. However, sometimes the full 28-day period was not provided to the Scottish Parliament for scrutiny, which put additional pressure on the process.

Sometimes the provision of a notification to the relevant lead subject committee was delayed due to the late agreement between the relevant devolved governments and the UK Government on competence or policy issues due to their complexity.^{xv} In other cases, the notification was made with explicit recognition that some areas were still under discussion. Resolution of these outstanding areas might then need to be postponed to subsequent legislation to allow the UK Exit SI to progress on schedule, if on narrower terms.^{xvi}

Generally, however, the explicit reason for a reduced scrutiny period was adherence to the UK Government’s timetable.⁴² On at least one occasion, the Scottish Government indicated that the UK Government had broken the agreed timetable by laying the proposed UK Exit SI unilaterally under the made affirmative procedure such that it was already signed into law when considered by the lead subject committee.^{xvii}

Whatever the reason, a shortened timeframe reduced the opportunity for committee scrutiny. Although sometimes scrutiny was undertaken within only a few days when required, this became a cause for concern among the committees and placed an undue burden on parliamentary officials.^{xviii}

In the Finance and Constitution Committee’s (FCC) review of Protocol 1 in preparation of Protocol 2, they found that ‘[s]ome Committees pointed out that in some cases there has

xv The Import of and Trade in Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020³⁷ (notified 20 October 2020); Animals and Food (Transfer of Functions) (EU Exit) Regulations 2018³⁸ (notified 12 December 2018).

xvi See e.g. the legislative powers under Regulation (EC) 2160/2003 of the European Parliament and of the Council³⁹ appear to have still been under discussion when the Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2018 were notified⁴⁰ (9 November 2018), but appear to have been resolved in favour of the Secretary of State exercisable with the consent of the Scottish Ministers per the notification for the Animals and Food (Transfer of Functions) (EU Exit) Regulations 2018³⁸ (notified 12 December 2018). However, when the former proposed UK Exit SI was laid (as the Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019, SI 2019/740⁴¹), it transferred these legislative functions variously to (a) the Scottish Ministers and the Secretary of State to exercise with the consent of the Scottish Ministers, or (b) the Secretary of State only but to exercise them with the consent of the Scottish Ministers. See the letter from the Minister for Rural Affairs and the Natural Environment to the Convener of the RECC, 26 March 2019¹⁵.

xvii See e.g. the Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019⁴³ (notified 29 August 2019), which was unilaterally laid on 5 September.

xviii The Rules for Direct Payments to Farmers (Amendment) Regulations 2020⁴⁴ and Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020⁴⁵ (notified together 23 January 2020) had to be approved within nine days of the notification’s receipt. This drew criticism from the DPLRC, see the letter in response from the Cabinet Secretary for the Constitution, Europe and External Affairs to the Deputy Convener of the DPLRC, 3 March 2020.⁴⁶ See also e.g. the Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) (No 2) Regulations 2020⁴⁷ (notified 14 December 2020).

been much less than 28 days to carry out scrutiny'. Indeed, the FCC suggested that '[t]here needs to be some flexibility to allow for more than a 28 day scrutiny period where there are significant issues to consider'.⁴⁸

Moreover, sometimes the period of time given to the Scottish Parliament for scrutiny coincided with scrutiny at the UK Parliament under the procedures outlined in the [first paper in this series](#).^{xix} Assurance was normally given that any debate required under the draft affirmative procedure would not be scheduled at the UK Parliament (and so the UK Exit SI would not be signed into law) before the Scottish Parliament had consented.⁵¹

xix See e.g. the Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019⁴⁹ (notified 6 February 2019), laid on 14 February; the Import of and Trade in Animals and Animal Products (Amendment etc) (EU Exit) (No 2) Regulations 2019⁵⁰ (notified 2 August 2019), laid on 5 August 2019.

Categorisation

Notifications categorised the changes to be made to retained EU law in the proposed UK Exit SIs according to criteria set down in Protocol 1. Category A applied to largely technical changes, and category B applied where specified types of changes were made or where the changes would have a more significant impact on policy or the devolution settlement.³ This was meant to enable the lead subject committees to focus their scrutiny on the most important notifications in anticipation of a large quantity of business in advance of Exit Day. The lead subject committees nonetheless retained the discretion to focus their scrutiny separate to this categorisation.¹ In practice, the categorisation does not appear to have always helped the committees in prioritising their scrutiny, for a variety of reasons.

Although a comprehensive examination of committees' official reports has been beyond the scope of the current project, it does appear that the lead subject committees on occasion exercised their discretion to depart from the categorisation in deciding their scrutiny approach. For example, the ECCLRC at its meeting on 3 September 2019 deferred consideration of the REACH etc (Amendment etc) (EU Exit) (No 3) Regulations 2019 (notified 18 June 2019) until clarification was had on some points of concern, both regarding the underlying policy and the implications for stakeholders, despite the proposal outlined in the notification being categorised by the Scottish Government as A. Meanwhile, the Committee at the same time approved another three proposed UK Exit SIs without comment.^{xx} Two of those three, as well as three other proposed UK Exit SIs, were also approved by the RECC the following day, again without comment.^{xxi} These six notifications comprised two in A category, three in B category and one which was 'A and B'.

Protocol 1 anticipated that the lead subject committees would be more likely to seek additional evidence in relation to notifications categorised as B than those categorised as A. However, the committees did sometimes seek additional evidence on proposed UK Exit SIs which had been categorised as A. For example, the ECCLRC took evidence from the Cabinet Secretary and Scottish Government officials on the Ozone-Depleting Substances and Fluorinated Greenhouse Gases (Amendment etc) (EU Exit) Regulations 2020, which was categorised as an A, at its meeting on 28 October 2020.

Committees also sometimes explicitly disagreed with the categorisation of notifications by the Scottish Government. For example, the Economy, Energy and Fair Work Committee raised concerns that the notifications for the Prohibition on Quantitative Restrictions and Equivalent Measures (Cessation) (EU Exit) Regulations 2020 should have been categorised as B rather than as A because '[i]t is not minor and technical; those are direct rights that are being removed from people in the United Kingdom.'⁶¹

xx REACH etc (Amendment etc) (EU Exit) (No 3) Regulations 2019⁵²; Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2019⁵³, Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019⁵⁴, and Import of and Trade in Animals and Animal Products (Amendment etc) (EU Exit) (No 2) Regulations 2019⁵⁵. ECCLRC, Official Report, 3 September 2019⁵⁶.

xxi Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019⁵⁴, Import of and Trade in Animals and Animal Products (Amendment etc) (EU Exit) (No 2) Regulations 2019⁵⁰, Common Fisheries Policy (Amendment etc) (EU Exit) (No 3) Regulations 2019⁵⁷, Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc) (EU Exit) Regulations 2019⁵⁸, and the Pilotage and Port Services (EU Exit) (Amendments) Regulations 2019⁵⁹. RECC, Official Report, 4 September 2019⁶⁰.

Additionally, the criteria for administration functions were sometimes interpreted narrowly. One example of this is found in the UK Statistics (Amendment) (EU Exit) Regulations 2019 (notified 20 February 2019), which amended or revoked approximately 300 items of EU law and primary and secondary legislation to amend the collection and reporting requirements for statistical information and to embed a common framework. Protocol 1 indicated that categorisation as B should be applied where changes included the '[r]eplacement, abolition, or modification of certain EU functions that have significant implications e.g.[.] reporting (both receiving and making reports)'. However, this proposed UK Exit SI was categorised as A because the changes were viewed as 'technical' changes to 'correct deficiencies'.

Impact assessments and consultation with stakeholders

Protocol 1 did not require consultations, impact assessments or financial impact assessments to be undertaken. It required only that the extent of any consultation and known financial implications be stated, and that an impact assessment be described ‘if available’.¹ The notifications normally discussed any consultations with stakeholders and any impact assessments together under the same heading, and outlined any financial implications separately.

Consultation with stakeholders tended to be across policy areas rather than in relation to a specific proposed UK Exit SI. It was normally led or undertaken wholly by the UK Government, even where Scottish stakeholders were involved. For example, the notification for the Nutrition (Amendment) (EU Exit) Regulations 2019 highlighted that a general consultation on retained EU law across nutrition issues had been led by the Department of Health and Social Care and drawn to the attention of Scottish stakeholders by Food Standards Scotland. Exceptionally, the notification offered that copies of the responses could be sent to the Health and Sport Committee ‘should they so wish’.

Although impact assessments were discussed in the same part of the notifications as consultations, the notifications often indicated that impact assessments had not been undertaken in advance, and separate impact assessments were almost never provided.^{xxii} The lack of impact assessments was raised as a concern by the ECCLRC when the Minister was giving evidence on the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019 (notified 27 November 2018).⁶⁴ The Minister indicated that ‘because of the timescales that have been imposed on us and the lack of time that we have had to get through the process or look at the future frameworks, we have not had the opportunity to undertake impact assessments.’⁶⁴ In a subsequent letter, the Scottish Government noted that the Committee had sought ‘reassurance that impact assessments will be carried out for remaining [UK Exit] SIs and forthcoming [Exit] SSIs.’ However, the letter confirmed the Scottish Government’s view that impact assessments were not necessary where the changes were ‘minor and technical’ or ‘aimed solely at preserving the functioning of the law as it stands at present’, but would be provided where the proposed legislation would ‘make policy changes’.^{xxiii} As was shown in the [second paper in this series](#), however, few notifications explicitly identified that there would be a change in policy.

Financial impact assessments or financial considerations were discussed separately from consultations and impact assessments, in a different part of the notification. However, there were rarely stated to be any known financial implications. For example, in the Nutrition (Amendment) (EU Exit) Regulations 2019 mentioned above, the extent of the

xxii An unusual exception was that provided for the Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019⁶² (notified 1 October 2018), provided after the UK Exit SI had been made, as a link in the letter from the Cabinet Secretary for Justice to the Convener of the Justice Committee, [29] January 2019.⁶³

xxiii Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the ECCLRC, 11 February 2019 confirming the laying and extent of consistency of the Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019³². See also e.g. REACH (Amendment) (EU Exit) Regulations 2019⁶⁵ (notified 27 November 2018).

financial implications of the proposed UK Exit SI could not be stated even after the legislation had been made. The Scottish Government's letter sent after that legislation was made indicated that costs could not at that time be made public, but that most costs would be met by the UK Government—although a Scottish contribution might require wider budgetary adjustments.⁶⁶

This lack of consultations, impact assessments and financial considerations could push the need to seek further information onto the lead subject committees. This sometimes required the committees to continue their planned scrutiny of a notification until a later date, such as to undertake their own stakeholder consultation. The need for the committees to undertake such consultation was particularly challenging where key stakeholders indicated that their work would be seriously affected by the proposed UK Exit SI, but the approval timetable did not allow further investigation and issues remained outstanding.^{xxiv} Although committees do routinely undertake their own consultation, this further exacerbated the challenges discussed above regarding the 28-day timetable for approval.

xxiv For example, the Health and Sport Committee (HSC) did not agree the Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2018⁶⁷, Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2018⁶⁸ and Blood Safety and Quality (Amendment) (EU Exit) Regulations 2018⁶⁹ during its first discussion of the notification at its meeting on 2 October 2018. Rather, the Committee took written evidence from the Scottish Government and stakeholders in advance of its next relevant meeting, on 23 October 2018. The Committee then sought further evidence from the Scottish Government before consenting at a third meeting discussing the proposed UK Exit SIs, on 6 November 2018. See the HSC, Official Report, 2 October 2018⁷⁰, 23 October 2018⁸, 6 November 2018⁹.

The relationship of UK Exit SIs with common frameworks

Common frameworks are inter-governmental agreements which provide a UK-wide approach to specific policy areas within devolved competence. These policy areas might be categorised as:

- requiring ‘no further action’ (category 1);
- requiring a so-called ‘non-legislative’ framework implemented without primary legislation but potentially requiring secondary legislation (category 2); or
- ‘legislative’ frameworks requiring primary legislation (category 3).

As shown in the [second paper in this series](#), there is a close relationship between UK Exit SIs and common frameworks. However, the precise relationship of any particular UK Exit SI with the common frameworks was not made clear in the notifications. This led to committees seeking additional clarification on the relevance of common frameworks to notified UK Exit SIs as well as whether subsequent legislation would be required.⁷¹

Firstly, although notifications often referred to common frameworks in general terms, it was not always clear that proposed UK Exit SIs would contribute to any specific common framework. Conversely, sometimes notifications did not mention common frameworks even though the UK Exit SI subsequently emerged as part of a common framework. For example, the Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020 was notified without mention of common frameworks, and indeed reassurance was given that ‘[t]here are no anticipated broader governance issues anticipated with this instrument.’ However, the UK Exit SI was thereafter listed in an appendix of legislation associated with the new provisional outline agreement for the relevant common framework (Food and Feed Safety and Hygiene), which was a category 3 (legislative) policy area under all three editions of the Framework Analysis.^{xxv}

Secondly, it is unclear which UK Exit SIs are included under each common framework. To date, only a small number of final or provisional common frameworks have been published.⁷⁴ Where applicable, these frameworks include a list of associated UK Exit SIs, as in the example discussed in the previous paragraph.⁷⁵ However, unless each framework policy document identifies which UK Exit SIs intersect with it, or a separate list is produced cataloguing this data, there will remain uncertainty as to which UK Exit SIs are associated with which framework. In some cases, it might be possible for committee members or other interested parties to retrospectively map the UK Exit SIs to all of the policy areas.^{xxvi} However, this might be exceptionally difficult in other cases. It is also

xxv Secretary of State for Health and Social Care, Food and Feed Safety and Hygiene Common Framework Provisional Framework Outline Agreement and Concordat (27 November 2020)⁷², p.38; UK Government, *Framework Analysis* (2020), p.49⁷³.

xxvi For example, the Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2018⁶⁷, the Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2018⁶⁸, and the Blood Safety and Quality (Amendment) (EU Exit) Regulations 2018⁶⁹ (notified together 28 September 2018) could be seen to fall within the category 2 policy area on ‘Blood Safety and Quality Organs, tissues and cells (apart from embryos and gametes)’; the REACH (Amendment) (EU Exit) Regulations 2019⁶⁵ (notified 27 November 2018) also appears to

unclear whether a single proposed UK Exit SI might include material relevant to more than one common framework.

Furthermore, as shown in the [second paper in this series](#), some UK Exit SIs can be associated with 'no further action' policy areas (category 1). Such policy areas do not require a common framework agreement, but they may nevertheless be subject to a common approach. The absence of any lists confirming which UK Exit SIs fall under each category 1 policy area means that we cannot determine the full extent to which such UK Exit SIs have influenced the identification by Governments of those policy areas which do require a common framework relative to those which do not require a common framework.

fall under the category 3 policy area of 'Chemicals and Pesticides'. See UK Government, *Framework Analysis (2020)* ⁷³.

Conclusion

The [first paper in this series](#)³ outlined the processes by which retained EU law in areas of devolved competence was amended in the Scottish Parliament and the UK Parliament, including the Protocol 1 process. The [second briefing paper](#) in this series examined: the implementation of Protocol 1, the impact of UK Exit SIs on the devolution settlement, and who will set the future policy direction in Scotland in devolved areas.

In concluding this series, this third briefing paper has examined seven challenges encountered in the implementation of Protocol 1:

- The content of the notifications;
- Changes being made to the legislative proposal after notification;
- The lead subject committees not receiving the UK Exit SI;
- The length of time provided to the committees for scrutiny;
- Categorisation of notifications;
- Impact assessments and consultation with stakeholders not normally being provided;
and
- The relationship of UK Exit SIs with common frameworks.

It has not been the purpose of this paper to make recommendations as to how these challenges might be overcome, and indeed addressing all of these challenges may not be possible. It is hoped that, nevertheless, this paper will assist the committees and MSPs in future scrutiny exercises, including in Session 6 with scrutiny under Protocol 2.

Bibliography

- 1 Scottish Parliament. (2018, September 11). Protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament. Retrieved from https://archive2021.parliament.scot/S5_Delegated_Powers/20180911CabSec.pdf [accessed 6 August 2021]
- 2 Scottish Parliament. (2021, June 1). Protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU Exit Version 2. Retrieved from <https://www.parliament.scot/-/media/files/committees/delegated-powers-and-law-reform-committee/si-protocol-2-v2.pdf> [accessed 18 August 2021]
- 3 Dr Robert Brett Taylor and Prof Adelyn L M Wilson. (2021, August 8). Brexit Statutory Instruments: Powers and Parliamentary Processes. Retrieved from <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2021/8/9/9a8a8440-9512-4a1d-962f-d42d225eee63> [accessed 13 August 2021]
- 4 The Plant Health (Amendment etc.) (EU Exit) Regulations 2020. (2020, December 10). Retrieved from <https://www.legislation.gov.uk/uksi/2020/1482/contents/made> [accessed 12 August 2021]
- 5 The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) Regulations 2019. (2019, April 4). Retrieved from <https://www.legislation.gov.uk/uksi/2019/795/contents/made> [accessed 12 August 2021]
- 6 The Chemicals (Health and Safety) and Genetically Modified Organisms (Contained Use) (Amendment etc.) (EU Exit) Regulations 2020. (2020, December 16). Retrieved from <https://www.legislation.gov.uk/uksi/2020/1567/contents/made> [accessed 12 August 2021]
- 7 The Creative Europe Programme and Europe for Citizens Programme (Revocation) (EU Exit) Regulations 2019. (2019, March 4). Retrieved from <https://www.legislation.gov.uk/uksi/2019/447/contents/made> [accessed 12 August 2021]
- 8 Scottish Parliament. (2018, October 23). Health and Sport Committee Official Report. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11725> [accessed 12 August 2021]
- 9 Scottish Parliament. (2018, November 6). Health and Sport Committee Official Report. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11764> [accessed 12 August 2021]
- 10 The Agricultural Products, Food and Drink (Amendment etc.) (EU Exit) Regulations 2020. (2020, December 29). Retrieved from <https://www.legislation.gov.uk/uksi/2020/1637/contents> [accessed 12 August 2021]
- 11 Scottish Parliament. (2019, April 3). Rural Economy and Connectivity Committee Official Report. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12046> [accessed 12 August 2021]

- 12 Scottish Parliament. (2019, June 12). Rural Economy and Connectivity Committee Official Report. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12185> [accessed 12 August 2021]
- 13 Scottish Parliament. (2020, September 30). Rural Economy and Connectivity Committee Official Report. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12867> [accessed 12 August 2021]
- 14 Cabinet Secretary for the Rural Economy . (2019, March 5). Letter from the Cabinet Secretary for the Rural Economy to the Rural Economy and Connectivity Committee regarding the Agriculture (Transfer of Functions) (EU Exit) (No.2) Regulations 2019. Retrieved from [https://archive2021.parliament.scot/S5_Rural/20190305_Cab_Sec_RE_-_UK_SI_-_agriculture_\(transfer_of_functions\)_\(EU_Exit\)_\(No.2\)_Regulations_2019.pdf](https://archive2021.parliament.scot/S5_Rural/20190305_Cab_Sec_RE_-_UK_SI_-_agriculture_(transfer_of_functions)_(EU_Exit)_(No.2)_Regulations_2019.pdf) [accessed 12 August 2021]
- 15 Minister for Rural Affairs and Natural Environment. (2019, March 26). Letter from the Minister for Rural Affairs and Natural Environment to the Rural Economy and Connectivity Committee regarding the Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019. Retrieved from https://archive2021.parliament.scot/S5_Rural/20190327_REC_Min_RANE_-_UK_SI_-_Zoonotic_Disease_Regs_2019.pdf [accessed 12 August 2021]
- 16 The Scottish Parliament. (2019, January 16). Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the environment, Climate Change and land reform Committee of the Scottish Parliament. Retrieved from https://webarchive.nrscotland.gov.uk/20210613053100/https://archive2021.parliament.scot/S5_Delegated_Powers/20190116Consistent.pdf [accessed 13 August 2021]
- 17 The Scottish Parliament . (2019, January 30). Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the Environment, Climate Change and Land Reform Committee of the Scottish Parliament. Retrieved from https://webarchive.nrscotland.gov.uk/20210613052945/https://archive2021.parliament.scot/S5_Delegated_Powers/20190130Consistent.pdf [accessed 13 August 2021]
- 18 The Food and Drink, Veterinary Medicines and Residues (Amendment etc.) (EU Exit) Regulations 2019. (2019, April 11). Retrieved from <https://www.legislation.gov.uk/ukdsi/2019/978011181249/contents> [accessed 12 August 2021]
- 19 The Scottish Parliament . (2018, December 11). Notification from the Cabinet Secretary for the Rural Economy to the Convener of the Rural Economy and Connectivity Committee of the Scottish Parliament. Retrieved from https://webarchive.nrscotland.gov.uk/20210613060901/https://archive2021.parliament.scot/S5_Delegated_Powers/General%20Documents/quality_agriculture.pdf [accessed 13 August 2021]
- 20 The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019. (2019, February 26). Retrieved from <https://www.legislation.gov.uk/uksi/2019/473/made> [accessed 13 August 2021]
- 21 The Environment and Wildlife (Legislative Functions) (EU Exit) (Amendment) Regulations 2019. (2019, October 30). Retrieved from <https://www.legislation.gov.uk/uksi/2019/1424/contents/made> [accessed 12 August 2021]

- 22 Letter to the Cabinet Secretary for Environment, Climate Change and Land Reform from the Convener of the Environment, Climate Change and Land Reform Committee on the EU Emissions Trading System consent notification 26 October 2018. (2018, October 26). Retrieved from https://external.parliament.scot/S5_Environment/General%20Documents/26102018_Convener_to_Cab_Sec_regarding_EU_ETS_notification.pdf [accessed 13 August 2021]
- 23 Annex D of the papers for the Rural Economy and Connectivity Committee. (2020, November 18). Retrieved from https://archive2021.parliament.scot/S5_Rural/Meeting%20Papers/REC_Public_Paper.pdf [accessed 18 August 2021]
- 24 Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the Environment, Climate Change & Land Reform Committee. (2019, January 16). Retrieved from https://webarchive.nrscotland.gov.uk/20210613053100/https://archive2021.parliament.scot/S5_Delegated_Powers/20190116Consistent.pdf [accessed 18 August 2021]
- 25 Letter from the Cabinet Secretary for Health and Sport to the Convener of the Health and Sport Committee. (2019, February 19). Retrieved from [https://webarchive.nrscotland.gov.uk/20210608015657/https://archive2021.parliament.scot/S5_HealthandSportCommittee/General%20Documents/20190219_Ltr_IN_from_CabSec_-_response_to_our_letter_of_14_Feb_-_SI_notifications\(1\).pdf](https://webarchive.nrscotland.gov.uk/20210608015657/https://archive2021.parliament.scot/S5_HealthandSportCommittee/General%20Documents/20190219_Ltr_IN_from_CabSec_-_response_to_our_letter_of_14_Feb_-_SI_notifications(1).pdf) [accessed 17 August 2021]
- 26 Letter from the Cabinet Secretary for Justice to the Convener of the Justice Committee. (2019, March 2). Retrieved from https://webarchive.nrscotland.gov.uk/20210613051646/https://archive2021.parliament.scot/S5_Delegated_Powers/20190305Consistent.pdf [accessed 18 August 2021]
- 27 Letter from the Convener of the Environment, Climate Change and Land Reform Committee to the Cabinet Secretary for Environment, Climate Change and Land Reform. (2018, October 8). Retrieved from https://webarchive.nrscotland.gov.uk/20210611085428/https://archive2021.parliament.scot/S5_Environment/General%20Documents/20181008_Conv_to_CS_advance_Q_EU_ETS.pdf [accessed 17 August 2021]
- 28 Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the Environment, Climate Change and Land Reform Committee. (2018, October 12). Retrieved from https://webarchive.nrscotland.gov.uk/20210611085433/https://archive2021.parliament.scot/S5_Environment/Rc_ECCLRC_1210.pdf [accessed 17 August 2021]
- 29 The Scottish Parliament. (2018, October 24). Official Report, column 2. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11740&mode=pdf> [accessed 13 August 2021]
- 30 The Scottish Parliament. (2020, November 3). Official Report, columns 1-8. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12921&mode=pdf> [accessed 13 August 2021]
- 31 The Scottish Parliament. (2018, November 27). Notification of the Environment and Wildlife (legislative functions) (EU exit) regulations 2018. Retrieved from https://webarchive.nrscotland.gov.uk/20210217200656/https://www.parliament.scot/S5_Delegated_Powers/20181127SINotificationECCLR.pdf [accessed 13 August 2021]

- 32 Letter from the Cabinet Secretary for Environment, Climate Change and Land Reform to the Convener of the Environment, Climate Change & Land Reform Committee. (2019, February 11). Retrieved from https://webarchive.nrscotland.gov.uk/20210611085020/https://archive2021.parliament.scot/S5_Environment/General%20Documents/20190211_CabSec_IN.pdf [accessed 17 August 2021]
- 33 Legislation.gov.uk. (2019, February 26). The Environment and Wildlife (Legislative Functions) (EU Exit) Regulations 2019. Retrieved from <https://www.legislation.gov.uk/ukxi/2019/473/made> [accessed 13 August 2021]
- 34 EUR-Lex. (2017, May 24). Regulation (EU) 2017/852. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0852&rid=7> [accessed 13 August 2021]
- 35 The Scottish Parliament . (2018, November 8). Notification for the Persistent Organic Pollutants (EU Exit) Regulations 2018 and the Control of Mercury (EU Exit) Regulations 2018. Retrieved from https://webarchive.nrscotland.gov.uk/20210217200151/https://www.parliament.scot/S5_Delegated_Powers/20181108ECCLRSINotification.pdf [accessed 13 August 2021]
- 36 Letter from the Convener of the Environment, Climate Change and Land Reform Committee to the Cabinet Secretary for Environment, Climate Change and Land Reform. (2020, November 18). Retrieved from https://webarchive.nrscotland.gov.uk/20210611084609/https://archive2021.parliament.scot/S5_Environment/General%20Documents/Consent_letter_to_the_Cabinet_Secretary.pdf [accessed 17 August 2021]
- 37 The Import of, and Trade in, Animals and Animal Products (Miscellaneous Amendments) (EU Exit) Regulations 2020. (2020, December 7). Retrieved from <https://www.legislation.gov.uk/ukxi/2020/1462/contents/made> [accessed 17 August 2021]
- 38 Letter from the Minister for Rural Affairs and the Natural Environment to the Convenor of the Rural Economy and Connectivity Committee. (2018, December 12). Retrieved from https://webarchive.nrscotland.gov.uk/20210613060906/https://archive2021.parliament.scot/S5_Delegated_Powers/20181212RECSINotification.pdf [accessed 17 August 2021]
- 39 Ecolex. (2003, December 12). Regulation (EC) No. 2160/2003 of the European Parliament and of the Council on the control of salmonella and other specified food-borne zoonotic agents.. Retrieved from <https://www.ecolex.org/details/legislation/regulation-ec-no-21602003-of-the-european-parliament-and-of-the-council-on-the-control-of-salmonella-and-other-specified-food-borne-zoonotic-agents-lex-faoc040332/> [accessed 17 August 2019]
- 40 Scottish Parliament. (2018, November 9). The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2018 Notification to the Scottish Parliament. Retrieved from https://webarchive.nrscotland.gov.uk/20210613053539/https://archive2021.parliament.scot/S5_Delegated_Powers/20181109ZoonoticDisease.pdf [accessed 17 August 2021]
- 41 The Zoonotic Disease Eradication and Control (Amendment) (EU Exit) Regulations 2019. (2019, March 28). Retrieved from <https://www.legislation.gov.uk/ukxi/2019/740/contents> [accessed 17 August 2021]

- 42 The Greenhouse Gas Emissions Trading Scheme (Amendment) (EU Exit) Regulations 2019. (2019, January 23). Retrieved from <https://www.legislation.gov.uk/ukSI/2019/107/made> [accessed 16 August 2021]
- 43 The Animal Health and Genetically Modified Organisms (Amendment) (EU Exit) Regulations 2019. (2019, September 5). Retrieved from <https://www.legislation.gov.uk/ukSI/2019/1229/made> [accessed 17 August 2021]
- 44 The Rules for Direct Payments to Farmers (Amendment) Regulations 2020. (2020, January 30). Retrieved from <https://www.legislation.gov.uk/ukSI/2020/91/contents/made> [accessed 17 August 2021]
- 45 The Financing, Management and Monitoring of Direct Payments to Farmers (Amendment) Regulations 2020. (2020, January 30). Retrieved from <https://www.legislation.gov.uk/ukSI/2020/90/contents> [accessed 16 August 2021]
- 46 Letter from the Cabinet Secretary for the Constitution, Europe and External Affairs to the Depute Convener Delegated Powers and Law Reform Committee. (2020, March 3). Retrieved from https://webarchive.nrscotland.gov.uk/20210613044555/https://archive2021.parliament.scot/S5_Delegated_Powers/General%20Documents/MrRusselltoDeputyConvener3March2020.pdf [accessed 17 August 2021]
- 47 The Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020. (2020, December 9). Retrieved from <https://www.legislation.gov.uk/ukSI/2020/1481/contents/made> [accessed 17 August 2021]
- 48 Letter from the Convener of the Finance and Constitution Committee to the Cabinet Secretary for Government Business and Constitutional Relations. (2019, June 26). Retrieved from https://archive2021.parliament.scot/S5_Finance/General%20Documents/2019.6.27.Convener_to__Mike_Russell.pdf [accessed 13 August 2021]
- 49 UK Parliament. (2019, February 14). Environment, Food and Rural Affairs (Amendment) (EU Exit) Regulations 2019. Retrieved from <https://statutoryinstruments.parliament.uk/timeline/brObFFXo/SI-2019/> [accessed 17 August 2021]
- 50 UK Parliament. (2019, August 5). Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019. Retrieved from <https://statutoryinstruments.parliament.uk/timeline/hs1x4Thn/ProposedNegative/> [accessed 17 August 2021]
- 51 Letter from Cabinet Secretary for the Constitution, Europe and External Affairs to the Convener of the Finance and Constitution Committee. (2019, August 5). Retrieved from https://archive2021.parliament.scot/S5_Delegated_Powers/General%20Documents/Letter_from_the_CSCEaEA_-_Protocol_2_-_Convener_FCC.pdf [accessed 13 August 2021]
- 52 The REACH etc. (Amendment etc.) (EU Exit) (No. 3) Regulations 2019. (2019, July 18). Retrieved from <https://www.legislation.gov.uk/ukSI/2019/1144/contents/made> [accessed 17 August 2021]
- 53 The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2019. (2019, October 14). Retrieved from <https://www.legislation.gov.uk/ukSI/2019/1340/made> [accessed 16 August 2021]

- 54 The Trade in Animals and Animal Products (Legislative Functions) and Veterinary Surgeons (Amendment) (EU Exit) Regulations 2019. (2019, September 5). Retrieved from <https://www.legislation.gov.uk/ukxi/2019/1225/contents/made> [accessed 10 August 2021]
- 55 UK Government. (2019, September 11). The Import of and Trade in Animals and Animal Products (Amendment etc.) (EU Exit) (No. 2) Regulations 2019. Retrieved from <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-import-of-and-trade-in-animals-and-animal-products-amendment-etc-eu-exit-no-2-regulations-2019> [accessed 17 August 2021]
- 56 Environment, Climate Change and Land Reform Committee Official Report. (2019, September 3). Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12226> [accessed 17 August 2021]
- 57 Letter from the Cabinet Secretary for the Rural Economy to the Convener of Rural Economy and Connectivity Committee. (2019, July 10). Retrieved from https://webarchive.nrscotland.gov.uk/20210613062442/https://archive2021.parliament.scot/S5_Delegated_Powers/General%20Documents/FE_TO_EM_PROTOCOL.pdf [accessed 17 August 2021]
- 58 The Animal Health, Invasive Alien Species, Plant Breeders' Rights and Seeds (Amendment etc.) (EU Exit) Regulations 2019. (2019, September 4). Retrieved from <https://www.legislation.gov.uk/ukxi/2019/1220/made> [accessed 17 August 2021]
- 59 Letter from the Cabinet Secretary for Transport, Infrastructure and Connectivity to the Convener of Rural Economy & Connectivity Committee . (2019, August 23). Retrieved from https://webarchive.nrscotland.gov.uk/20210613062547/https://archive2021.parliament.scot/S5_Delegated_Powers/General%20Documents/Letter_from_Michael_Matheson_MSP_to_RECC.pdf [accessed 17 August 2021]
- 60 Rural Economy and Connectivity Committee Official Report. (2019, September 4). Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12235> [accessed 17 August 2021]
- 61 Scottish Parliament. (2020, June 23). Economy, Energy and Fair Work Committee Official Report. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12718> [accessed 13 August 2021]
- 62 The Law Enforcement and Security (Amendment) (EU Exit) Regulations 2019. (2019, March 28). Retrieved from <https://www.legislation.gov.uk/ukxi/2019/742/contents/made> [accessed 17 August 2021]
- 63 Letter from the Cabinet Secretary for Justice to the Convener of the Justice Committee. (2019, January). Retrieved from https://webarchive.nrscotland.gov.uk/20210613051611/https://archive2021.parliament.scot/S5_Delegated_Powers/20190129Consistent.pdf [accessed 18 August 2021]
- 64 Scottish Parliament. (2018, December 11). Environment, Climate Change and Land Reform Committee Official Report. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11844> [accessed 13 August 2021]

- 65 The REACH etc. (Amendment etc.) (EU Exit) Regulations 2019. (2019, March 29). Retrieved from <https://www.legislation.gov.uk/ukxi/2019/758/contents> [accessed 17 August 2021]
- 66 Letter from the Minister for Public Health, Sport and Wellbeing to the Convenor of the Health and Sport Committee. (2019, February 7). Retrieved from https://webarchive.nrscotland.gov.uk/20210608015818/https://archive2021.parliament.scot/S5_HealthandSportCommittee/General%20Documents/20190207_Ltr_IN_from_MinsterPHSW.pdf [accessed 17 August 2021]
- 67 The Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations 2019. (2019, March 5). Retrieved from <https://www.legislation.gov.uk/ukxi/2019/481/contents/made> [accessed 17 August 2021]
- 68 The Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations 2019. (2019, March 5). Retrieved from <https://www.legislation.gov.uk/ukxi/2019/483/contents/made> [accessed 17 August 2021]
- 69 The Blood Safety and Quality (Amendment) (EU Exit) Regulations 2019. (2019, January 8). Retrieved from <https://www.legislation.gov.uk/ukxi/2019/4/contents/made> [accessed 17 August 2021]
- 70 Scottish Parliament. (2018, October 2). Health and Sport Committee Official Report. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=11708> [accessed 17 August 2021]
- 71 Scottish Parliament. (2020, October 28). Environment, Climate Change and Land Reform Committee Official Report. Retrieved from <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=12905> [accessed 13 August 2021]
- 72 The Secretary of State for Health and Social Care. (2020, November). Food and Feed Safety and Hygiene Common Framework Provisional Framework Outline Agreement and Concordat . Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934748/food-and-feed-safety-and-hygiene-proposed-common-framework-command-paper-print.pdf [accessed 10 August 2021]
- 73 UK Government. (2020, September). Framework Analysis 2020: Breakdown of areas of EU law that intersect with devolved competence in Scotland, Wales and Northern Ireland. Retrieved from https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919729/Frameworks-Analysis-2020.pdf [accessed 30 July 2021]
- 74 UK Government. (2021, May 20). UK Common Frameworks. Retrieved from <https://www.gov.uk/government/collections/uk-common-frameworks> [accessed 13 August 2021]
- 75 Secretary of State for Health and Social Care. (2020, November 27). Food and feed safety and hygiene: provisional common framework. Retrieved from <https://www.gov.uk/government/publications/food-and-feed-safety-and-hygiene-provisional-common-framework> [accessed 13 August 2021]

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Iain McIver on telephone number 85294 or Iain.McIver@scottish.parliament.uk.

Members of the public or external organisations may comment on this briefing by emailing us at SPICe@parliament.scot. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament's Public Information Service at sp.info@parliament.scot. Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

