

Top Lines – Northern Ireland Protocol

- Scotland **unconditionally supports to preservation of the Good Friday Agreement** and is committed to the maintenance of peace on the island of Ireland.
- I am currently **unable to share with Parliament any detailed thoughts on the agreement that has been negotiated under the Joint Committee** because the UK government has **neither involved devolved governments in the UK position for the negotiation nor given us any readout afterwards.**
- What is clear, unfortunately, is that if reporting of the agreement is accurate, we note that it **leaves Scotland in a uniquely much worse position**, without access to the Single Market and Customs Union.

Annex I: Background – The December Joint Committee agreements on the Northern Ireland Protocol

Lines-to-take

- The Scottish Government unconditionally supports the Good Friday Agreement and arrangements to ensure a frictionless border on the island of Ireland.
- The UK Government [Michael Gove in the House of Commons on 9 December] has said that the new arrangements mean Northern Ireland will get the "*the opportunity to enjoy the best of both worlds*" after the Brexit transition period – "*access to the European single market... ..and at the same time unfettered access to the rest of the UK market.*"
- In 2016, the people of Scotland voted decisively to be part of the European Union. Since then, the Scottish Government has worked tirelessly to defend Scotland's interests. We published compromise proposals as early as 2016, which included Single Market and Customs Union membership for the whole UK or, failing that, a differentiated solution for Scotland.
- In contrast to the arrangements agreed for Northern Ireland, the UK Government dismissed those compromise options for Scotland without meaningful consideration or engagement. We were told it was impossible.
- We therefore remain of the view that the UKG is not willing to reach decisions in the best interests of the people of Scotland.

Background

The December Joint Committee agreements

1. The UK Government and the EU Commission announced on 8 December that 'agreement in principle' had been reached at the EU-UK Joint Committee, resolving the remaining key issues related to operation of the Withdrawal Agreement and Northern Ireland Protocol. UK Government confirmed that the agreement meant that clauses contradicting the NI Protocol would be dropped from the Internal Market Bill; the NI Protocol would apply in full from 1 January 2021. The Withdrawal Agreement Joint Committee met on 17 December and formally approved the agreements.

10 December UK Government Command Paper

2. In the evening of 10 December, UK Government published a Command Paper on the Northern Ireland Protocol, setting out details on and its interpretation of what had been agreed.

3. The Command paper reiterated the over-arching positions the UK Government had adopted in its May Command paper, which had driven its approach to discussions at the Withdrawal Agreement Joint Committee:

- Northern Ireland businesses must have unfettered access to the rest of the UK market.
- Trade from Great Britain to Northern Ireland which remained in the UK customs territory should not be subject to tariffs; and Northern Ireland must benefit from the Free Trade Agreements we strike with third countries - protecting Northern Ireland's place in the UK customs territory.
- The additional processes on goods arriving in Northern Ireland must take account of all flexibilities and discretion - ensuring a smooth flow of trade with no need for new physical customs infrastructure.

4. The Command paper then set out details of the new agreements between the UK Government and the EU, summarised below.

Goods moving from GB to NI - Definition of goods 'not at risk' of onward transit to the EU Single Market

5. The Northern Ireland Protocol contained an assumption that goods entering NI were at risk of onward movement to the EU and therefore subject to EU customs rules and any applicable tariffs; the Joint Committee was to agree criteria for identifying goods that were not at risk. The new Joint Committee agreements meant criteria would largely not focus on attributes of the goods themselves - type; origin; or tariff differential. Instead, a new UK Trader Scheme would allow authorised businesses to undertake that the goods they are moving into Northern Ireland are "not at risk" of onward movement to the EU, and therefore not liable to EU tariffs. The scheme would include safeguards to ensure that it is not available to those with serious criminal records or existing compliance issues. Where traders reported that goods were moving on into the EU Single Market, EU customs rules would apply. The agreement also meant that businesses using the UK Trader Scheme would not need to complete origin certification, irrespective of Rules of Origin requirements that would apply to trade with the EU under the future EU-UK relationship.

6. The NI Protocol also provided that any goods subject to commercial processing were automatically considered at risk of entering the EU market. The Joint Committee agreed that a series of sectors would be exempt from that provision and could therefore qualify to be not considered "at risk". This included food for sale to end consumers in the UK; construction, direct health and care provision, and not for profit activities in Northern Ireland; and processing carried out by importers of animal feed for final use at their premises in Northern Ireland.

7. UK Government had earlier committed that "*Northern Ireland must benefit from the Free Trade Agreements UK strikes with third countries*". The Command Paper reported an agreement on tariff rules for the "*much smaller number of direct cargo shipments*" into Belfast from the rest of the world: traders could participate in the UK Trader Scheme where UK tariffs are up to 3% less than those applied by the EU.

8. An "*emergency brake mechanism*" was agreed, allowing UK Government or the EU to halt this system in 2024, in the event of significant diversion of trade, or fraud or other illegal activities, and on the basis that replacement arrangements protecting Northern Ireland's place in the UK customs territory would then be put in place.

9. The Command Paper noted that there may still be potential for some cases where internal UK trade would not qualify for the scheme so confirmed that UK Government still intended to introduce the reimbursement scheme announced in May for goods that attract an EU tariff, but which can subsequently be shown to have remained in the UK customs territory.

Goods moving from GB to NI - Transitional arrangements

10. The Joint Committee agreed that authorised traders, such as supermarkets and their trusted suppliers, would have a temporary grace period, for three months through to 1 April 2021, from official certification for products of animal origin, composite products, food and feed of non-animal origin and plants and plant products, exported from GB to NI. The Command Paper reported that UKG and NIE would ensure these traders were identified prior to 31 December so they could benefit from the grace period. UK officials have indicated that they do not expect exemption from EH Certification requirements to extend beyond three months.

11. The Joint Committee agreement also provided a temporary exemption from legal restrictions and prohibitions on certain types of chilled meats, such as sausages, from Great Britain to Northern Ireland, for six months, subject to appropriate certificates and channelling procedures.

12. The agreement also provided temporary arrangements for free movement of medicines for twelve months - a *"period of adaptation"* to the regulatory measures required by the Protocol with regards to batch testing, regulatory importation requirements and the Falsified Medicines Directive.

Goods moving from NI to GB – Export declarations

13. The Command Paper confirmed that the Joint Committee had agreed that there would not be a requirement for export declarations for goods moving into GB from NI. Relevant authorities would have access to equivalent information and reciprocal data sharing on Northern Ireland to Great Britain movements, drawing on data sources such as shipping manifests.

Goods moving from NI to GB – 'Qualifying status' for 'unfettered access'

14. The Command Paper reiterated UK Government's activity to legislate for a "qualifying status" to ensure goods have "unfettered access" when moving from NI to GB. This would include goods on essential trade routes through Ireland to Great Britain (provided these movements are done under transit procedures and goods are under customs supervision until cleared in Northern Ireland).

15. The Command Paper reconfirmed that UK Government would guarantee in law through the UK Internal Market Bill that *"goods with 'qualifying status' could not be subject to new checks or controls in the future; and that they could always be placed throughout the UK internal market."* *"Once moved into Great Britain, 'qualifying' goods will be able to be placed on the market without any additional approvals, regardless of future decisions on legislation by the UK Government or devolved administrations."*

16. The Command Paper nonetheless re-committed to anti-avoidance measures to prevent abuse, so that *"only genuine Northern Ireland businesses would benefit from unfettered access"* to GB markets. This would include registration of traders based in NI, through a 'trusted trader scheme', with auto-enrolment for many traders.

State aid - reach-back

17. Previously, concerns had been expressed, including in UK Parliament, that the Protocol could be interpreted to enable “reach back” of EU state aid rules to subsidies given to companies in Great Britain, if those companies also operated in NI (and were therefore subject to the Protocol). The EU made declarations in the Joint Committee, which will have legal force in interpreting the Protocol, confirming that:

- for an aid measure to have an effect on trade between Northern Ireland and the European Union, and for the state aid provisions in the Protocol to apply, there must be a “genuine and direct link” to Northern Ireland;
- Northern Ireland’s integral place in the UK internal market must be taken into account; and
- the potential effects of an aid measure on trade between Northern Ireland and the EU must be real and foreseeable.

State aid - Agriculture and fisheries in NI

18. The NI Protocol had set out that agricultural subsidies in Northern Ireland would be exempted from EU state aid rules, with the Joint Committee tasked with agreeing on the maximum ceiling of such subsidies. The Joint Committee agreements provided for a baseline of more than £380m of agricultural support to be exempt from EU state aid rules - with up to £25m of any of the cap which is not used to be rolled forward to the subsequent year. In addition it provided for nearly £7m of further support to be deployed in any year where there are crisis conditions which require it. In addition the agreement in principle also provided for an exemption for nearly £17m of fisheries spending from EU state aid rules every five years, with a maximum spend of £4m in any given year.

Business support

19. The Command Paper reiterated previous measures UK Government had introduced to provide support to businesses. The Trader Support Service launched in August provides access to training and other resources, as well as a service which completes customs import formalities (such as import and safety and security information) on their behalf.

20. The Command Paper reported plans for a new Movement Assistance Scheme for agri-food traders. Under the scheme, the UK Government would take care of new direct costs for traders moving agri-food goods for which specific SPS controls apply - such as the need to secure Export Health Certificates (EHCs) from official vets. The scheme was to begin in mid-December with a dedicated helpline to guide businesses through the new requirements for moving their goods.

Corrections and clarifications

21. The Joint Committee also agreed various corrections and clarifications to the NI Protocol. The UK and the EU agreed to 13 changes to the list of provisions of EU law which apply in Northern Ireland – Annex 2 of the Protocol. Eight changes were additional pieces of legislation and three were explanatory notes to be inserted alongside legislation already listed in Annex 2. There were two areas in which the changes removed or limited provisions from the scope of the Annex: ensuring that Northern Ireland CO₂ emissions counted towards UK rather than EU targets; and

limiting the scope of EU trade defence instruments by excluding Northern Ireland industries from EU calculations on trade remedies investigations.

Other measures

22. The Command Paper also reiterated previously announced plans for VAT arrangements to avoid new registrations for moving goods into NI; and reiterated arrangements planned the Single Electricity Market.

23. The Joint Committee also agreed EU supervision of implementation of the NI Protocol. EU officials could be present at ports to oversee some checks but they would have no autonomous functions and would be observing British official procedures. UK Government reported that there would be no EU “mission” in Northern Ireland.

Annex A – Readout of the 10 December UK Government Command Paper on the Northern Ireland Protocol

1. The Command paper reiterates the over-arching positions the UK Government adopted in its May Command paper, which had driven its approach to discussions at the Withdrawal Agreement Joint Committee:
 - Northern Ireland businesses must have unfettered access to the rest of the UK market.
 - Trade from Great Britain to Northern Ireland which remained in the UK customs territory should not be subject to tariffs; and Northern Ireland must benefit from the Free Trade Agreements we strike with third countries - protecting Northern Ireland's place in the UK customs territory.
 - The additional processes on goods arriving in Northern Ireland must take account of all flexibilities and discretion - ensuring a smooth flow of trade with no need for new physical customs infrastructure.
2. The paper then sets out the new agreements between the UK Government and the EU.

Goods moving from GB to NI - Definition of goods 'not at risk' of onward transit to the EU Single Market

3. The Northern Ireland Protocol contained an assumption that goods entering NI were at risk of onward movement to the EU and therefore subject to EU customs rules and any applicable tariffs; the Joint Committee was to agree criteria for identifying goods that were not at risk. UK Government reports that the new agreements in principle at the Joint Committee mean criteria will largely not focus on attributes of the goods themselves - type; origin; or tariff differential. Instead, a new UK Trader Scheme will allow authorised businesses to undertake that the goods they are moving into Northern Ireland are “not at risk” of onward movement to the EU, and therefore not liable to EU tariffs. The scheme will include safeguards to ensure that it is not available to those with serious criminal records or existing compliance issues. Where traders report that goods are moving on into the EU Single Market, EU customs rules would apply, with any tariffs dependent on what is agreed for the EU-UK future relationship. The agreement also means that businesses using the UK Trader Scheme would not need to complete origin certification, irrespective of Rules of Origin requirements that might apply to trade with the EU under the future EU-UK relationship.
4. The NI Protocol also provided that any goods subject to commercial processing were automatically considered at risk of entering the EU market. The Joint Committee has agreed in principle that a series of sectors will be exempt from this provision and can therefore qualify to be not considered “at risk”. This includes food for sale to end consumers in the UK; construction, direct health and care provision, and not for profit activities in Northern Ireland; and processing carried out by importers of animal feed for final use at their premises in Northern Ireland.
5. UK Government had previously committed that "*Northern Ireland must benefit from the Free Trade Agreements UK strikes with third countries*". The Command Paper reports an agreement on tariff rules for the "*much smaller number of direct cargo shipments*" into Belfast from the rest of the world: traders could participate in the UK Trader Scheme where UK tariffs are up to 3% less than those applied by the EU.
6. There will be an "*emergency brake mechanism*" allowing UK Government or the EU to halt this system in 2024, in the event of significant diversion of trade, or fraud or other illegal activities, and on the basis that replacement arrangements protecting Northern Ireland's place in the UK customs territory are then put in place.

7. The Command Paper notes that there may still be potential for some cases where internal UK trade does not qualify for the scheme so confirms that UK Government still intends to introduce the reimbursement scheme announced in May for goods that attract an EU tariff, but which can subsequently be shown to have remained in the UK customs territory.

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13. The Command Paper reconfirms that UK Government will guarantee in law through the UK Internal Market Bill that "goods with 'qualifying status' cannot be subject to new checks or controls in the future; and that they can always be placed throughout the UK internal market." "Once moved into Great Britain, 'qualifying' goods will be able to be placed on the market without any additional approvals, regardless of future decisions on legislation by the UK Government or devolved administrations."
14. The paper nonetheless re-commits to anti-avoidance measures to prevent abuse, so that "*only genuine Northern Ireland businesses would benefit from unfettered access*" to GB markets. This would include registration of traders based in NI, through a 'trusted trader scheme', with auto-enrolment for many traders.

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- for an aid measure to have an effect on trade between Northern Ireland and the European Union, and for the state aid provisions in the Protocol to apply, there must be a “genuine and direct link” to Northern Ireland;
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21. The Command paper also reports in principle agreement on EU supervision of implementation of the NI Protocol. EU officials could be present at ports to oversee some checks but they would have no autonomous functions and would be observing British official procedures. UK Government reports that there would be no EU “mission” in Northern Ireland.

Withdrawal Agreement Joint Committee meeting

The fifth ordinary meeting of the EU-UK Withdrawal Agreement Joint Committee took place on Thursday 17 December.

The Joint Committee is chaired by European Commission Vice-President Maroš Šefčovič and the Chancellor of the Duchy of Lancaster Michael Gove and met via videoconference. The First Minister and Deputy First Minister of Northern Ireland were also in attendance.

The meeting was expected to formally endorse the points that had been agreed in principle at the 7 December meeting, to ensure that the Withdrawal Agreement (WA) is operational for 1 January when the Transition Period ceases. Following the meeting, the [EU Commission](#) and the [UK Government](#) reported that the UK and the EU had made five decisions and five unilateral declarations. Formal texts of these decisions and declarations have not yet been published but the scope of the subject matter appears to be consistent with the agreements in principle reported by the UK Government Command Paper on 10 December.

With regard to EU citizens resident in the UK and vice-versa, the Joint Committee also endorsed the second Citizens' Rights Specialised Committee report on Residency and agreed to its publication. The Joint Committee also agreed to finalise the list of arbitrators for the Arbitration Panel before the end of the transition period.

In a press-statement following the meeting, Šefčovič highlighted the EU's two main priorities – first, to ensure robust working arrangements for the EU's presence in Northern Ireland which will allow it to carry out its work effectively; and second, to strongly welcome the UK Government's commitment to withdraw the parts of the UK Internal Market Bill which breach the Withdrawal Agreement and to refrain from introducing similar parts to its Taxation Bill.

Šefčovič noted that 90% of UK nationals resident in EU Member States can now apply for a new residence status. He also said he had received assurances from the UK Government on its Settlement Scheme for EU citizens in the UK, noting that the EU is committed to monitor the situation closely.

Going forward, Šefčovič reported that the Joint Committee would meet at least quarterly in 2021 to ensure the implementation of the Withdrawal Agreement.

NI Protocol Implementation – Outstanding Questions from Devolved Administrations

Issue	Current situation	Update requested (red) and Update response (green)	Stakeholders required to provide update
Expectations in relation to qualifying goods in phase 1	<p>Definition of qualifying goods is published.</p> <p>Anti-avoidance SI will be in place.</p>	<p>The content of the anti-avoidance SI – what requirements will be placed on devolved administrations.</p> <p>What is planned in terms of anti-avoidance resourcing and how will anti-avoidance measures connect to relevant DA authorities (SPS, etc)?</p>	HMT HMRC
Expectations in relation to qualifying goods in phase 2	Infrastructure for checks on goods to be in place before July	<p>What checks will be required for qualifying goods, and who will carry them out?</p> <p>What infrastructure will need to be in place at ports?</p> <p>How will assurance that checks don't distort trade be provided?</p>	TTF
Implementation of SPS controls		How will it be possible to maintain SPS controls in light on unfettered access?	
Requirements for movement of goods from GB to NI	<p>Business guidance published 7 August, providing high level guidance.</p> <p>Trader support service (for NI business)</p>	<p>What infrastructure will be required?</p> <p>What checks will need to be carried out and to what standard, and where (NI or GB)? And who will be expected to carry them out? And who will pay?</p> <p>Will Scottish businesses trading with NI be eligible for TSS?</p>	

Issue	Current situation	Update requested (red) and Update response (green)	Stakeholders required to provide update
	Definition of goods 'at risk' for entering EU	Has any definition been agreed with Joint Committee? If not, how does UKG propose to implement this aspect of the NIP? Who will check this, where, when and how? (HMRC?)	
EU Tariffs	EU Tariffs will be applied where there is a clear risk of goods passing to the EU through NI	What appeal mechanisms will be in place for tariff decisions?	
Impact of GB/NI border checks on transport		How increased port traffic will be managed Will new infrastructure be required	BPDG
Transit	The Common Transit Convention will apply	How will the Protocol be implemented with respect to transit after the transition period concludes?	
Agricultural support	The protocol makes provision for agricultural support and funding in NI	Will there be competitive distortions between NI and GB caused by protocol provisions on agricultural support? What are these expected to be?	
The Business Guidance	High level business guidance was published on 7 August and updated on 10 August	How effective is the guidance in preparing businesses for the end of the transition period? Will the haulier guidance now promised for first half of December include NIP implementation guidance?	
Fisheries and Fish Landings		Can WG and SG vessels land at any port or only a Border Control Point? Will catch certificates be required for WG and SG vessels? Will this also apply to NI vessels? What about NEAFC designation?	

Issue	Current situation	Update requested (red) and Update response (green)	Stakeholders required to provide update
VAT	NI goods will be aligned with EU on VAT, GB may have different rules.	Will there be a competitive disadvantage for SG if NI can match ROI reliefs and exemptions?	
Animal Health and Welfare	Defra paper on unfettered access in relation to biosecurity	<p>What support will there be for GB businesses who are disadvantaged by the need or health certification GB-NI that doesn't apply for NI-GB?</p> <p>Can this Defra paper be shared?</p>	
Secondary legislation		<p>DAs will need time to draft and put into effect secondary legislation to give effect to some elements of the protocol. They will also need to be able to contribute to the drafting of, and then implement, UK SIs that affect devolved matters. When will DAs receive the required clarity to ensure SIs are implemented in time for the end of the transition period?</p> <p>N.B. SG view is that it is now the case that it is too late to implement any outstanding legislation, e.g. that dependent on the definitions and treatment of NI Vessels, or on extent of NI protocol in NI waters. Will Defra take responsibility for the risk of challenge on this basis?</p>	
Plant Health	Unfettered access could have implications for plant health in GB	<p>When will DAs have access to the replacement plant product and plant trade database?</p> <p>Is there any update on the equivalence application for seeds and propagating material including seed potatoes? Is there any confirmation on adding the missing seed marketing</p>	

Issue	Current situation	Update requested (red) and Update response (green)	Stakeholders required to provide update
		<p>directives to the NIP so that our industry can know if they can trade in fodder seed?</p> <p>Is there any update on the RMS scheme? We know very little about the proposals , but it may require prep for both us and industry so some detail would be welcomed.</p>	
State Aid		How will state aid apply to NI fisheries?	
Definition of goods at risk		<p>When will goods at risk be defined?</p> <p>What is the definition?</p>	
Interaction of Protocol with common frameworks	<p>Most frameworks are currently going through the review and assessment process, with representation from all DAs and UKG. During this process, policy teams are strongly encouraged to set out how their framework is expected to interact with the protocol. All frameworks will contain robust governance mechanisms that allow the management of divergence resulting from the protocol to be considered.</p>		
Trade route incentivisation		How will it be possible to manage the risk that the approach to implementing the unfettered access	

Issue	Current situation	Update requested (red) and Update response (green)	Stakeholders required to provide update
		commitments will incentivise use of NI-GB routes instead of RoI-GB routes for NI and RoI goods?	
Waste – shipments GB - NI	<p>SI on international shipments of waste places increased financial and administrative burdens on (Scottish) businesses and local authorities who ship waste to NI, and on regulators (SEPA in Scotland).</p> <p>Scottish Ministers have written to Defra seeking assurances on commitment from UKG to cover the long-term additional costs, and, through UK-EU negotiations to seek an approach that minimises non-tariff barriers in the application of EU waste shipment regulations.</p>	<p>When will UKG clarify the commitment on meeting costs of implementing the NIP?</p> <p>When will UK-EU negotiations clarify checks on waste NI-GB?</p>	Defra TTF
Implications of decisions made in the Joint Committee and	Specialised committee decisions on medicines and labelling, on Thursday 5 th .	What are the details and implications of the decisions made on medicines and labelling.	

Issue	Current situation	Update requested (red) and Update response (green)	Stakeholders required to provide update
Specialised Committees (where not already covered above)			

DRAFT

BREXIT

13 December: Following telephone call between PM and President von der Leyen, EU and UK announce that negotiations are to continue. The PM continues to say that no-deal outcome is *“the most likely thing”*.

13 December: Daily Record reports comments from James Withers, the CEO of Scotland Food and Drink, has warned that a no-deal Brexit would be an *“act of huge economic negligence”*

13 December: Sunday Times reports comments from Tory Brexiter Peter Duncan (Scotland's only Tory MP from 2001 to 2005) that a no-deal Brexit could prove *“the hammer blow that was feared for Scotland’s place within the UK”*.

12 December: Scotsman reports Ms Forbes has written to the Chancellor requesting more funding from the UK Government following the announcement of a £400 million post-Brexit support package for Northern Ireland.

11 December: Daily Record reports on warnings from the Scottish Retail Consortium food price rises, saying that retailers will struggle to insulate consumers from £3 billion of new tariffs on food.

10-11 December: European Council meets, with a brief report on negotiations from Commission President von der Leyen.

10 December: The Commission publishes no deal contingency plans relating to air and road transport, and fisheries.

9 December: Meeting between PM and EU Commission President Ursula von der Leyen in Brussels ends with both sides emphasising *“large gaps”* between them.

9 December: CDL Gove updates Parliament on Joint Committee agreement on NI Protocol. Detail on individual measures not yet published.

8 December: UKG and Commission release statement following Joint Committee meeting between Gove and Šefčovič, reporting substantive agreement over many decisions required to implement the Withdrawal Agreement and Northern Ireland Protocol. UK has therefore agreed to withdraw clauses 44, 45 and 47 of the UK Internal Market Bill, and not introduce any similar provisions in the Taxation Bill. Maroš Šefčovič comments **QUOTE:** *“We removed ... one big obstacle from the way [for a trade deal]”*.

8 December: Mike Russell confirms SG position that **QUOTE:** *“We won’t support a deal because we don’t believe that Brexit is the right thing to happen...Scotland did not vote for Brexit. It would be extraordinary if we were to give away all the rights and all the things that we have enjoyed for almost 50 years.”*

It is an act of extraordinary recklessness to end the Brexit transition period at the end of 2020 – just when COVID-19 is ravaging the economy.

- With negotiations now well into the eleventh hour, No Deal appears to be growing more likely.
- Even if a deal is secured, UK Government approach means it will be a very basic “low deal”.
- Either outcome will take Scotland out of the Single Market, out of the Customs Union and end freedom of movement – hitting jobs and living standards hard.
- Our modelling of a basic trade agreement of the type that the UK Government wants to negotiate, finds that Scottish GDP is estimated to be 6.1% lower by 2030 compared to continued EU membership.
- This equates to a cost to each person in Scotland of an equivalent to £1,600.

BREXIT

I am unable to share any detailed thoughts on the agreement that has been negotiated on the Northern Ireland Protocol because the UK government has neither involved devolved governments in the UK position for the negotiation nor given us any readout afterwards.

- However if reporting of the agreement is accurate, it leaves Scotland in a uniquely worse position, without access to the Single Market and Customs Union.
- It was only in October 2018 that Ruth Davidson and David Mundell wrote to Theresa May saying **QUOTE:** *“Any deal that delivers a differentiated settlement for Northern Ireland... would undermine the integrity of our UK internal market and this United Kingdom... We could not support any deal that creates a border of any kind in the Irish Sea and undermines the Union or leads to Northern Ireland having a different relationship with the EU than the rest of the UK, beyond what currently exists.”*
- Adam Tomkins MSP said **QUOTE:** *“What goes for Northern Ireland must go for Scotland also. In particular there can be no separate Brexit deal for each of the nations that comprise the United Kingdom”* (17 October 2017).

People in Scotland know the havoc that Brexit will wreak on Britain and that an independent Scotland in the EU is the best option for this country.

- Latest polling by the Scottish Social Attitudes Survey (August 2019-March 2020 – published in September 2020), finds that:
 - 61% say Britain’s economy will be worse off out of the EU, and
 - half of people in Scotland believe leaving the EU will reduce Britain’s influence in the world.
- According to Professor Sir John Curtice, **QUOTE:** *“..the pursuit of Brexit has weakened many people’s views of the merits of the Union. For a significant body of people in Scotland, independence inside the EU has now come to look more attractive than being part of a UK that is outside the EU.”* (Herald, 3 November)

Scottish companies will be hit hard even if a Brexit deal is secured

- James Withers, CEO of Scotland Food and Drink, has said **QUOTE:** *“there is huge concern among our members and the wider industry that the impact of Brexit could cost millions and tip many businesses over the edge”* (Scotsman, 30 November) and **QUOTE** *“cost up to £2 billion in lost revenues to the Scottish food and drink industry”* (Daily Record, 13 December).
- The UK Government has acknowledged that food prices are likely to increase as a consequence of the decision to leave the EU Single Market and Customs Union.
- This will have a particularly unwelcome impact on lower income households.
- The Environment Secretary George Eustice said **QUOTE:** *“Obviously if we don’t have a trade agreement with the EU we will be applying tariffs to some of those imports and that’s likely to mean that in the short term there would be a small, modest increase in food prices.”* (Andrew Marr, 6 December).
- The Scottish Retail Consortium have also warned of the risks of no-deal on price rises and food availability **QUOTE:** *“Avoiding a no-deal cliff edge ensures consumers continue to have the widest possible choice on shop shelves”*. (Director David Lonsdale, Daily Record, 11 December).
- In September, Michael Gove also warned of 7,000-truck queues at Channel ports for months after Brexit.

BREXIT

- Scottish food and drink businesses will face damaging and expensive new paperwork requirements, including Export Health Certificates.
- The seafood sector has estimated that Export Health Certificates, customs clearance and transportation documents will cost it between £7 million and £15 million each year – for no discernible benefit.
- The Scottish Government has been working with Scottish Local Authorities, seafood exporters and logistics providers to minimise this burden.
- This work involves a simpler, risk-based approach, and providing Food Standards Scotland staff to sign Export Health Certificates at central Scotland logistics hubs.

The Scottish Government is working hard to prepare for the end of transition period, while managing the ongoing impacts of the COVID-19 outbreak.

- A ‘no deal’ outcome would be deeply damaging and we are working tirelessly to put safeguards in place to protect Scotland’s population and its economy from the UK Government’s reckless actions.
- We know that as a result of the UK Government’s refusal to extend the transition period many households who have been hit hard financially during this pandemic will find life even harder after EU exit.
- That is why last month I announced a £100 million package of measures to help those on low incomes, children and people at risk of homelessness or social isolation cope with the economic impacts of Brexit, coronavirus and the winter weather.
- Since 2017 we have received a range of Barnett consequentialities that derive from the UK Government’s activities on Brexit preparations. Like other consequentialities, they are absorbed into the Scottish budget.
- This budget has supported a vast range of SG priority preparatory work, involving virtually every public body in Scotland.
- For example, to ensure the continuity of supplies of medicines we are working closely with the UK Government and other devolved governments.
- In response to lessons learnt from the first wave of COVID-19, we are building a national stockpile of around 60 critical care (ICU) and supportive care (end of life) medicines, as well as supplies of COVID-19 treatments.
- We also have arrangements in place for managing potential shortages, including the Scottish Medicine Shortages Response Group.

It’s been implied that the Scottish Government is somehow to blame for the remaining uncertainty about whether our seafood exporters will be able to obtain Export Health Certificates from 1 January.

- Any such suggestion is without justification and completely ignores the Scottish Government’s proactive role in dealing with a mess not of our making.
- This includes developing a risk-based approach to certification which meant the whole system wouldn’t collapse on day one (an approach subsequently adopted by the rest of the UK).
- We have also worked with logistics operators, Food Standards Scotland and Local Authorities to develop and put in place an Export Health Certificates service at central Scotland logistics hubs - reducing the burden on Local Authorities and exporters.
- This hub approach is also being adopted elsewhere in the UK.

BREXIT

- The UK Government is well aware of the UK-wide shortage of trained Environmental Health Officers and Official Vets – it takes 3-5 years to train an Environmental Health Officer and similarly for an Official Vet.
- To suggest that SG is to blame for this shortage is nonsense.

Mr Gove has recently suggested that the UK Government was fully engaging with the Devolved Administrations over Brexit negotiations.

- Meaningful engagement is measured not by the number of meetings but by the quality of joint working.
- The UK government has made no attempt to involve devolved governments in the negotiations with the EU and has made all the decisions unilaterally – contrary to the agreed terms of reference of the Joint Ministerial Committee.
- Engagement on exit readiness has also been sporadic, and we lack vital information.
- With less than a month to go until we exit the transition period we still face a great deal of uncertainty about the changes that Scottish companies must prepare for, including border planning and data flow adequacy arrangements.

The UK government asserts that the fisheries sector will benefit from the UK becoming an “independent coastal state”.

- We have consistently said that our priority is to protect the interests of all parts of seafood supply chain – both onshore and offshore – and not just individual parts of it. That remains our position.
- UK Government rhetoric - a “sea of opportunity” and frictionless trade with the EU for the Scottish seafood sector - looks like it will be another broken promise.
- Michael Gove is accusing seafood and other businesses of not being ready when his government still cannot tell us what it is they need to be ready for.

We are preparing for new border arrangements from January 2021.

- We have worked tirelessly since the 2016 referendum to defend Scotland’s interests.
- We have published compromise proposals, including remaining in the Single Market and Customs Union.
- Leaving the Single Market and Customs Union means checks at the border.
- We are working to prepare, within devolved competence, for new border arrangements after 1 January 2021.
- The UKG has said they will cover costs associated with EU-exit and we expect them to honour this.
- In any circumstances, with an FTA or not, leaving the Single Market and Customs Union will be damaging to the Scottish economy and Scottish business.
- Business has not been given adequate clarity or time to prepare for the major upheaval and the requirements for new paperwork, customs processes and specialist staff.

We expect full replacement of EU funds from the end of December to ensure no detriment to Scotland’s finances and expect the UKG to fully respect the devolution settlement in any future arrangements.

- The Cabinet Secretary for Finance wrote to the Chancellor on 23 November.

BREXIT

- She highlighted our concerns that we are yet to see any evidence that the UK Government will provide full replacement EU funding, or engage meaningfully with the Devolved Administrations across a number of EU programmes.
- The Chancellor's Spending Review announcement on 25 November has provided little clarity on the replacement of EU programmes funding, particularly on structural funds, Erasmus and Horizon.
- The Internal Market Bill as introduced represents a clear assault on our devolved spending powers.
- The provisions presume Whitehall control over the delivery of EU programme funding replacements in Scotland, which Scottish Ministers have delivered successfully for decades.
- Any attempt to bypass the Scottish Parliament or Government is unacceptable.

The Finance Secretary wrote again to the Chancellor on 12 December, following the announcement of promised additional funding to Northern Ireland.

- The UK Government has announced that Northern Ireland will receive an extra £400 million in post-Transition funding.
- Given this, a proportionate, fair and equitable level of funds should be made available to Scotland.
- If well-established funding arrangements were followed in respect of the additional money made available to Northern Ireland, Scotland would expect to receive £1.18 billion.
- As yet, there has been no response from the Chancellor to our request.

Background Briefing – Northern Ireland Protocol – Key Messages

- How likely is it that the EU will agree that the Protocol is being properly implemented?
- If not, what would be the impact on the future relationship negotiations and the reliability of the wider Withdrawal Agreement arrangements, including for Citizens' Rights?
- Much is left to be done before the transition period can be ended orderly.
- Scottish businesses moving goods to Northern Ireland do not know what tariffs, product standards, labelling, documentation, or physical checks will be required in practice from the end of 2020. They need to understand the details if they are to prepare for the end of transition.
- Much depends on possible tariff and non-tariff barriers between Northern Ireland and the rest of the UK. How will UKG's proposals for border controls satisfy the EU that the EU common tariff and single market regulations are not undermined by goods entering the EU via Northern Ireland from elsewhere?
- Similarly, how can Scotland and the rest of the UK manage risks to our own markets and regulatory regimes resulting from movement of goods into Scotland via Northern Ireland from elsewhere?
- Numerous and various technical issues need to be agreed with the EU at the Withdrawal Agreement Joint Committee and the Specialised Committee for the NI protocol. These include decisions that will determine or constrain policies in devolved areas, including agriculture, rural development, fishing, animal and plant health, and transport.
- Joint Committee decisions about movement of goods between Scotland and Northern Ireland will affect animal and plant health in Scotland – and SG's ability to deliver necessary checks and controls.
- Efforts to combat smuggling, people-trafficking and organised crime will also be affected.
- Joint Committee decisions about customs arrangements for Northern-Ireland-registered vessels will affect fishing in Scottish waters and the relative competitiveness of Scottish vessels.
- Similarly, rules around agricultural funding may affect the relative competitiveness of Scottish and Northern Irish farmers.
- When and how will SG influence these technical discussions with the EU?
- The Devolved Administrations will be responsible for implementing many UK obligations after the end of the transition period.
- If SG Ministers are not sighted on discussions and do not inform agreements, there is a risk that the Withdrawal Agreement will not be properly and orderly implemented in Scotland.
- It is important that SG Ministers have the information and access to the discussions on issues which fall into their competence.

A summary of issues arising from the Northern Ireland Protocol and SG interests therein

	Issue	Scottish Interests	Relevant Protocol articles
Implementation	On 30 April, the EU published a technical notice expressing concern about UKG progress towards implementing the Protocol. The EU Commission has requested UKG permission to establish an EU office in Belfast to monitor delivery of the Northern Ireland Protocol. The UK Government has refused. Continued failure to reach an agreement could lead to an early test of the Joint Committee's dispute resolution function.	<ul style="list-style-type: none"> Disagreement between UKG and the EU over implementation of the NI Protocol risks undermining the future relationship negotiations and, potentially, the reliability of the wider Withdrawal Agreement arrangements for the transition period and citizens' rights. 	
Constitutional impacts	The Joint Committee is responsible for ensuring proper implementation and functioning of the Withdrawal Agreement and NI Protocol. It will, for the most part, review the developing, implemented solution rather than propose or assess its design in advance. The Joint Committee is empowered to amend the Withdrawal Agreement; this will enable the EU and the UK to agree arrangements at the Joint Committee with which Scottish Government would be required to comply.	<ul style="list-style-type: none"> The Scottish Government has minimal sight of or influence over UKG plans to implement the Northern Ireland Protocol and related UKG-EU discussions at the Joint Committee, including in devolved areas, e.g. animal and plant health. The Scottish Government will need to be alert to the potential for devolved competences to be constrained either by new international obligations agreed by the UK and the EU at the Joint Committee or by new UK Government legislation to operate the protocol, e.g. to provide 'unfettered access' to the whole UK market for Northern Ireland businesses. 	
'Border' controls on movement of goods from Northern Ireland to Scotland	The UK Government intend that NI businesses will have 'unfettered access' to UK markets, with trade continuing as per current arrangements, without declaration of or other control of movement of goods.	<ul style="list-style-type: none"> SG has opposed the introduction of new trade barriers throughout the Brexit process, promoting full Customs Union and Single Market membership for the whole UK. Under UKG proposals, it is not clear how movement of goods into Scotland from elsewhere via Northern Ireland could be controlled, with risks for application of Scotland's arrangements to ensure animal and plant health in Scotland and, more broadly, for countering smuggling in general. UKG measures to deliver its proposals may constrain Scottish Government choices regarding its devolved animal and plant health regimes Scottish importers don't know what checks will be required in practice from the end of 2020 because UKG and the EU have not reached agreement. 	

		<ul style="list-style-type: none"> • Scottish Government does not know if there will be any infrastructure implications at Scottish ports from the end of 2020 – and how they would be funded – because UKG and the EU have not reached agreement. 	
‘Border’ controls on movement of goods from Scotland to Northern Ireland	<p>UKG has acknowledged that UK authorities will have to apply EU customs rules to goods entering Northern Ireland, using “streamlined and simplified” electronic processes. UKG expects these procedures to be minimal in practice, and means to review them regularly. UKG has claimed this will not require construction of any “new bespoke customs infrastructure” in Northern Ireland but that existing border control posts will require expansion to facilitate regulatory checks for agri-foods goods.</p>	<ul style="list-style-type: none"> • Scottish exporters don’t know what product standards, labelling, documentation, or physical checks will be required in practice from the end of 2020 because UKG and the EU have not reached agreement. • Scottish Government does not know if there will be any infrastructure implications at Scottish ports from the end of 2020 – and how they would be funded – because UKG and the EU have not reached agreement. 	
Transport	<p>Changes to regulations relating to border checks and controls will impact transport, and there is so far no clarity as to what will be involved.</p>	<ul style="list-style-type: none"> • Infrastructure border controls and security are reserved matters and, therefore, any resultant costs of essential infrastructure should be borne by the UK Government. • In the event that, for example, a border control point for connections to the island or Ireland was to be sited at Cairnryan, this would have significant financial and possibly logistical implications for the port, particularly after the prolonged Covid restrictions has impacted budgets to such a significant extent and they were expected to finance infrastructure development. • the siting of any infrastructure needs to be agreed as soon as possible to provide clarity for all and to allow necessary development to be progressed in a measured manner. • Traffic management at ports: Uncertainty over the treatment of the border in Ireland and plans for checks, could lead to an increase in traffic to-from NI to UK via Cairnryan rather than via the Dublin / Holyhead route. This could lead to congestion around the ports and issues associated with increased traffic on the roads leading to ports. 	
Tariffs on movement of goods from Scotland to Northern Ireland	<p>Before the end of transition, the Joint Committee will decide the criteria for considering when goods brought into Northern Ireland from outside the EU should be subject to EU tariffs (if different) because they are at risk of subsequently moving into the EU Customs Union. UK Government has indicated that it will only apply EU</p>	<ul style="list-style-type: none"> • SG has opposed the introduction of new trade barriers throughout the Brexit process, promoting full Customs Union and Single Market membership for the whole UK. • Decisions on tariffs and non-tariff barriers will affect the direct costs to and administrative overheads of Scottish businesses operating in Northern Ireland. There are implications for the relative competitiveness of 	

	tariffs where there is a real risk of goods passing to the EU from Northern Ireland; the NI Protocol assumes such a risk unless agreed otherwise by the Joint Committee.	businesses in NI, compared to Scotland, that import or export goods to the EU or to the rest of the UK. <ul style="list-style-type: none"> • SG will wish to be sighted on any development of an appeal process mechanism to unfavourable decisions, if any, for 'at risk' goods whereby Scottish businesses can address a request that its goods be classified as 'not at risk'. 	
Fisheries	Before the end of transition, the Joint Committee will agree rules to determine customs arrangements for catches by Northern-Ireland-registered fishing vessels.	<ul style="list-style-type: none"> • The Scottish Government will need to consider any potential competitive distortions between Scotland and Northern Ireland. 	
VAT	After 31 December 2020, the UK Parliament will be responsible for making VAT law for the UK. Northern Ireland will remain in the UK VAT area and will be subject to UK VAT legislation but constrained by the terms of the NIP. In particular, the rules that apply to the supply of goods in Northern Ireland will remain in full alignment with EU VAT laws (Services are excluded from this arrangement). Effectively, the UK Government has agreed that, whatever rules it might make for the rest of the UK, it will not deviate from EU requirements in respect of Northern Ireland. The details of how these arrangements can work in practice are still to be agreed by the UK-EU joint committee.	<ul style="list-style-type: none"> • Importantly, no VAT is chargeable on goods sent from Scotland to Northern Ireland. Under the rules in the NIP, goods that pass from Northern Ireland to Ireland will not be treated as imports for VAT purposes (despite the fact that they are technically imports from a third country into the EU). • Northern Ireland will be able to apply the same reduced rates of VAT that apply in Ireland (but will not be obliged to apply the Irish standard rate which, at 23%, is higher than the standard UK rate of 20%). • UK authorities will remain accountable to the EU for ensuring that the law is applied appropriately in Northern Ireland and will be subject to the Court of Justice of the European Union; traders elsewhere in Great Britain, including Scotland, will not be able to seek redress from this court. • Depending on future Joint Committee agreements and UKG decisions, the VAT aspects of the protocol have the potential to place Scotland at a commercially competitive disadvantage to Northern Ireland. Northern Ireland will be able to match Irish reliefs and exemptions, as well as enjoying border-free direct trade with Ireland. 	
Food and Drink	Changes relating to customs, labelling, supervision and enforcement	<ul style="list-style-type: none"> • As an international obligation Scotland will need to implement the Northern Ireland Protocol for areas of devolved competence, but at this stage we are still lacking the detailed information and engagement to make this possible. 	<ul style="list-style-type: none"> • Article 4 – customs territory • Article 5 – customs, movement of goods (specifically definition of 'at risk' good and Article 5(4) setting out EU

			<p>law to apply in NI)</p> <ul style="list-style-type: none"> • Article 6 – specifically unfettered market access and trade facilitation • Article 7 – product labelling • Article 12 – implementation, application, supervision and enforcement • Art 14 & 15 – committees and governance – interest in what DA engagement expected in relation to key NIP committees. • Article 17 to extent relates to unfettered access • Annexes (union law to apply in NI)
Food Standards Scotland	<p>The protocol obliges N.I. to align and keep pace with EU law for a minimum of 4 years at the end of the transition. The UKG have committed to provide unfettered access to these goods into the rest of G.B and to recognise these E.U. standards.</p>	<ul style="list-style-type: none"> • These policy obligations, coupled with the ability of G.B authorities to deviate from E.U. law, at the end of the transition, provides the probability of a two tier system of regulation developing across the UK to the potential detriment of consumers and businesses. This undermines a key object of UK frameworks and presents opportunities for an un-level playing field, 	<ol style="list-style-type: none"> 1. Unfettered Access for NI origin goods 2. Goods not at risk

		particularly with respects to specified regulated products where EU pre-market approved products, could circulate across the whole of the UK without undergoing UK approval.	<p>3. Controls on agri-foods exported from GB to NI</p> <p>4. Controls on agri-foods imported from NI/ROI to GB</p> <p>5. The concept of extending the all island of Ireland epidemiological unit to include food of animal origin</p>
Agricultural support and funding	Annex 6 of the Northern Ireland Protocol agrees arrangements for agricultural funding in Northern Ireland.	<ul style="list-style-type: none"> The Scottish Government will need to consider any potential competitive distortions between Scottish and Northern Irish farmers related to the NIP provisions on financial support to agriculture, and respond accordingly. 	
Animal Health and Welfare	An exception to the reserved matter of border control mentioned below is the prohibition and regulation of movement into and out of Scotland of— food, animals, animal products, plants and plant products for the purposes of protecting human, animal or plant health, animal welfare or the environment. These are devolved matters which intersect with international relations/ trade.	<ul style="list-style-type: none"> We understand that Defra is currently producing a paper on unfettered access in relation to biosecurity. We need to be able to input to the paper, given we have one of the main connections for goods travelling to NI through Cairnryan. At the moment we expect our producers/ businesses will be heavily disadvantaged by the requirement to provide export health certification to move goods from GB to NI, including entry via BCP, and we do not expect the same rules will apply the other way. So there is a question over support to business who have to deal with this new process, in addition to funding for any additional infrastructure. 	Article 6: “Nothing in this Protocol shall prevent the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to other parts of the United Kingdom”
Plant Health	“Unfettered access” may have implications for the protection of plant health in Scotland.	<ul style="list-style-type: none"> Concerns regarding unfettered access. We still don’t really know exactly what is meant for plant products. We don’t want products, which 	<ul style="list-style-type: none">

		<p>don't meet EU plant health standards finding their way to Scotland via Northern Ireland. We understand unfettered is to mean nothing additional to measures already in place. This means nothing would be stopped at the port for checking and goods could still potentially arrive from the rest of the EU. We would welcome clarity on what will be required for Northern Ireland when moving plants and plant products to GB.</p> <ul style="list-style-type: none"> • Frameworks <p>We have been working on a Plant Health framework where we can work together and where the only differences in the UK territory legislation would be where technically justified. How does CO expect something like a framework to work when Northern Ireland is bound by EU plant health legislation?</p> <ul style="list-style-type: none"> • Northern Ireland and equivalence <p>What is happening with our equivalence applications to enable us to export seed potatoes, and market small seed in the EU following the transition period? Risk that we will not be able to sell these products to the EU (and Northern Ireland) from 1st January 2021.</p>	
National Security, Organised Crime	<p>National Security threats may impact Scottish interests. The counter effect to such threats is largely delivered by Scottish Agencies, most notably in this case Police Scotland (working closely with UK Security and Intelligence Agencies). Scottish Ministers have made it clear that security of our communities is an absolute priority and the lack of sight SG currently has on developments/thinking in this area is concerning as it directly impacts on our ability to provide assurance to Ministers – and for Ministers to provide any necessary assurance to Parliament/the public.</p>	<ul style="list-style-type: none"> • Would like information relating to organised crime risks so that this can be factored in to Serious Organised Crime Taskforce considerations. • SG will need to maintain awareness of any implications for people smuggling, illegal immigration, asylum and change in the threat to Scotland (and the wider UK) from National Security related issues (including terrorism and hostile state activity). • Sight of any threat assessments which have been produced on the CTA and against this specific issue and a route into understanding the development of policy/response on the CTA. • Would like to understand any analysis given to the risks around human trafficking and exploitation and potential implications for Scotland 	<p>Article 17: "The Union and the United Kingdom shall counter fraud and any other illegal activities affecting the financial interests of the Union or the financial interests of the United Kingdom."</p>
Consent of Northern Ireland	<p>For the Northern Ireland Protocol to have effect, the consent of the Northern Ireland Assembly is required every four years.</p>	<ul style="list-style-type: none"> • SG will need to maintain awareness of any implications for public order in NI. 	<ul style="list-style-type: none"> •
Common Travel Area	<p>The Northern Ireland Protocol maintains the Common Travel Area.</p>	<ul style="list-style-type: none"> • SG will need to maintain awareness of any implications for people smuggling, illegal immigration and asylum. 	<ul style="list-style-type: none"> •

From: [REDACTED].[REDACTED]@gov.scot
Sent: 14 December 2020 13:03
To: [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot
Cc: [REDACTED].[REDACTED]@gov.scot
Subject: FW: OFF SEN: UKG Update on UK/EU negotiations & Northern Ireland Protocol

Thanks [REDACTED]. Adding [REDACTED] who leads on NIP for us.

[REDACTED]
Deputy Director, EU Exit Strategy and Negotiations
Scottish Government
2H-South, Victoria Quay, Edinburgh EH6 6QQ
Tel [REDACTED] Mob [REDACTED]

From: [REDACTED].[REDACTED]@gov.scot
Sent: 11 December 2020 08:50
To: [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot
Cc: [REDACTED].[REDACTED]@gov.scot
Subject: FW: OFF SEN: UKG Update on UK/EU negotiations & Northern Ireland Protocol

Hi [REDACTED] and [REDACTED],

I expect you may have got this via others but if not, was passed to me this morning.

Thanks,
[REDACTED]
[REDACTED] | Head of International Relations Team | Directorate for External Affairs | Scottish Government | 2H South, Victoria Quay, Leith, Edinburgh, EH6 6QQ |
✉: [REDACTED].[REDACTED]@gov.scot | 📞 REDACTED | REDACTED

Update for HoMs and DHMs outside our EU27 Posts on: i) recent developments in UK-EU FTA negotiations; and, ii) the separate negotiations on the Northern Ireland Protocol.

Update on UK-EU Negotiations

Following several weeks of intensive negotiations, the Prime Minister and European Commission President Ursula von der Leyen met yesterday evening (09/12) in Brussels to continue discussions on the future relationship. The PM and VDL had a frank discussion about the state of play in the negotiations, acknowledging that the situation remained very difficult and there were still major differences between the two sides. They agreed that negotiations would resume for a few more days but that a firm decision should be taken about the future of the talks by Sunday (13/12). Our statement following the meeting is [here](#). The Commission statement is [here](#).

Joint statement by the co-chairs of the EU-UK Joint Committee – Implementation of the NI Protocol

On Tuesday (08/12) discussions between the Chancellor of the Duchy of Lancaster and Commission Vice President Maroš Šefčovič reached agreement in principle on all issues relating to the implementation of the Northern Ireland Protocol. This is part of the Withdrawal

Agreement Joint Committee Process, and has run on a separate track to the UK-EU FTA negotiations. The Government also confirmed that, in view of these mutually agreed solutions, the UK would withdraw clauses 44 (export declarations), 45 and 47 (state aid) of the UK Internal Market Bill, and not introduce any similar provisions (relating to tariffs) in the Taxation Bill.

Please find attached top lines and Q&A on this agreement on the Northern Ireland Protocol. The joint UK/EU statement is below and has been published on GOV.UK [here](#). You can also see CDL's [tweet here](#). CDL also updated parliament yesterday (09/12). You can view the [statement here](#). HMG is planning to publish a Command Paper setting out the detail later today.

Joint statement by the co-chairs of the EU-UK Joint Committee

BEGINS

The co-chairs of the EU-UK Joint Committee – European Commission Vice-President Maroš Šefčovič and the UK Chancellor of the Duchy of Lancaster, the Rt Hon Michael Gove – yesterday held a political meeting to address the outstanding issues related to the implementation of the Withdrawal Agreement. Ensuring that the Withdrawal Agreement, in particular the Protocol on Ireland and Northern Ireland, is fully operational at the end of the transition period, i.e. as of 1 January 2021, is essential. The Protocol protects the Belfast (Good Friday) Agreement in all its dimensions, maintaining peace, stability and prosperity on the island of Ireland.

Following intensive and constructive work over the past weeks by the EU and the UK, the two co-chairs can now announce **their agreement in principle on all issues**, in particular with regard to the Protocol on Ireland and Northern Ireland.

An agreement in principle has been found in the following areas, amongst others: **Border Control Posts/Entry Points** specifically for checks on animals, plants and derived products, **export declarations**, the supply of **medicines**, the supply of **chilled meats, and other food products to supermarkets**, and a clarification on the **application of State aid** under the terms of the Protocol.

The parties have also reached an agreement in principle with respect to the decisions the Joint Committee has to take before 1 January 2021. In particular, this concerns the practical arrangements regarding the **EU's presence in Northern Ireland** when UK authorities implement checks and controls under the Protocol, determining criteria for **goods to be considered "not at risk"** of entering the EU when moving from Great Britain to Northern Ireland, the exemption of **agricultural and fish subsidies** from State aid rules, **the finalisation of the list of chairpersons of the arbitration panel** for the dispute settlement mechanism so that the arbitration panel can start operating as of next year, as well as the correction of **errors and omissions** in Annex 2 of the Protocol.

In view of these mutually agreed solutions, the UK will withdraw clauses 44, 45 and 47 of the UK Internal Market Bill, and not introduce any similar provisions in the Taxation Bill.

Next steps

This agreement in principle and the resulting draft texts will now be subject to respective internal procedures in the EU and in the UK. Once this is done, a fifth regular meeting of the EU-UK Joint Committee will be convened to formally adopt them. This will take place in the coming days and before the end of the year.

ENDS

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TOP LINES

- **We set out in our May Command Paper three key commitments that needed to be respected in all scenarios:**
 - Northern Ireland businesses must have **unfettered access to the rest of the UK market.**
 - Trade from Great Britain to Northern Ireland which remained in the UK customs territory should not be subject to tariffs - **protecting Northern Ireland's place in the UK customs territory.**
 - The additional processes on goods arriving in Northern Ireland must take account of all flexibilities and discretion - ensuring a **smooth flow of trade with no need for new physical customs infrastructure.**

- **The deal we have reached in principle with the EU has delivered all of those commitments** - securing the flexibilities and adaptations required to support Northern Ireland business and citizens.

- **Unfettered access has been protected**
 - ***NI-GB export declarations have been put in the bin*** - we have protected unfettered access for NI businesses to their most important market, removing the need for export declarations for those movements, while ensuring the EU has the information it requires.

 - ***We will ensure that unfettered access is only available to genuine NI businesses*** - through our ongoing phased approach.

- **NI's place in the UK customs territory is assured**
 - ***We have protected tariff-free trade within the UK*** - even with no UK-EU FTA, our UK Trader Scheme will cover the vast majority of businesses trading GB-NI, meaning their goods are not considered 'at risk' and do not have tariffs applied, with the tiny remainder able to be reimbursed if their goods stay in the UK.

 - ***Northern Ireland's place in the UK VAT area has been safeguarded*** - businesses will be able to use VAT returns as they do today, without any burdensome process for splitting services and goods claims.

- **Trade between GB and NI will be as streamlined as possible from the end of the transition period and beyond**
 - ***We have protected NI supermarket supplies*** - with an agreed three month grace period for supermarkets and their suppliers to adapt to the requirements of the Protocol, backed up by [more than £100m] of UK Government support to accelerate that process; and there will be no ban on chilled meats, like the Great British sausage, giving time for permanent arrangements to be agreed over the next six months.
 - ***We have protected the critical flow of medicines and veterinary medicines into NI*** - giving industry up to 12 months to adapt to new requirements.
- **We have retained our ability to benefit from the flexibilities that come with leaving the EU**
 - ***The threat of abusive state aid 'reach-back' into Great Britain has been neutralised*** - ensuring that firms in GB are fully outside the EU regime where there is no genuine and direct link to Northern Ireland, and no real impact on NI-EU trade.
 - ***Northern Ireland will be out of the Common Agricultural Policy with freedom to set its own agricultural subsidies*** - with a £400m+ cap for spending, giving the Northern Ireland Executive the flexibility it needs to support agricultural production.
 - ***We have ensured that support for fishermen in Northern Ireland is exempted from EU state aid rules*** - securing a crucial £17m of flexibilities over the next five years.
- **Together this means we have upheld our commitments to the people of Northern Ireland**
 - Ensuring that the Protocol can be implemented in a pragmatic, proportionate way; respecting the Belfast (Good Friday) Agreement; and providing a settlement that protects the interests of both the whole United Kingdom and the EU.

Q&A

EXPORT DECLARATIONS

Will export declarations be required?

- No. We have reached agreement with the EU that export declarations will not be required on goods moving from NI to GB, upholding our commitment on unfettered access to Northern Ireland businesses, while ensuring the EU has the information it requires.

Does that mean no export declarations for any goods whatsoever?

- The only instances in which export declarations will be required, as we acknowledged in May, are for a very limited range of goods – like exceptional movements of endangered tigers across the Irish Sea.

Does equivalent information mean an export declaration by another means?

- We will provide that information using existing data sources, such as shipping manifests - meaning we can maintain a seamless flow of goods while maintaining our capacity for effective enforcement and tackling smuggling.

TARIFFS

What does the deal mean for tariffs? Which goods have been defined as ‘at risk’? How will the at risk/ tariff rebate system work?

- Our agreement means we can establish arrangements which protect internal UK trade from tariffs, regardless of whether we have a wider FTA.
 - This will be done through a new UK Trader Scheme - allowing authorised businesses to move their goods with no tariff liabilities, and ensuring there are safeguards to prevent abuse.
 - This will provide important protections which apply in all circumstances, covering the vast majority of internal UK trade - with a reimbursement scheme to apply in cases where goods remain in the UK where a movement is not covered.
 - We will also make full use of the provisions within the Protocol enabling tariff waivers for such movements, subject to state aid de minimis ceilings.

The Trader Support Service will support and guide traders through the process for utilising these tariff waiver arrangements.

What about 3rd country goods?

- The UK internal trade scheme will be open to businesses moving goods into Belfast from GB irrespective of where those goods have originated.
- For RoW - NI direct shipments, the scheme will only apply where the differential between the UK and EU's tariffs is less than 3% points.
- We anticipate this will have a minimal impact on overall eligibility for the UK internal trade scheme.
- This is because of the nature of the bulk goods transported through this route, many of which are low or no tariff, and the fact that the vast majority of containers entering Northern Ireland are first unloaded in GB or EU ports anyway.

RULES OF ORIGIN

What about Rules of Origin?

- Regardless of an FTA, traders using the UK Trader Scheme would not need to complete origin certification. If goods could not qualify for tariff free trade under an FTA due to Rules of Origin requirements, they could still be traded tariff free under this deal by businesses who meet the criteria set out.

PARCELS

What's happening with GB-NI parcels?

- The movement of parcels into Northern Ireland is another important part of how the Protocol will work in practice for people in Northern Ireland.
- That is why, just as we have elsewhere, the UK Government will take forward a pragmatic approach that draws upon available flexibilities to implement the Protocol without causing undue disruption to lives and livelihoods.
- These arrangements will mean that goods continue to reach consumers, while ensuring that goods at risk of moving into the EU market pay the duties that are owed.

SPS CHECKS

What will the requirements be for Export Health certs on GB-NI food?

- The Government has consistently emphasised the importance of pursuing specific solutions for authorised traders, such as supermarkets. This has been a top priority throughout our talks with the EU.
- The agreement we've reached means that trusted traders, such as supermarkets and their suppliers, will benefit from a three month grace period from official certification.
- This will protect and preserve food supply into Northern Ireland while businesses adjust to the new requirements applicable under the Protocol.

What will the requirements be for documentary & physical checks?

- We have always been clear that there would be some new requirements on agri-food movements from Great Britain to Northern Ireland to reflect the island of Ireland's existing status as a Single Epidemiological Unit.
- Through technical engagement with the European Commission, the UK Government and Northern Ireland Executive have developed helpful practical arrangements to simplify and streamline these checks and controls on agri-food goods to the maximum extent.
- Our system will be based on electronic checking as far as possible of documentation; 'identity checks' focused on a simple check of the seal of a truck; and physical checks managed at a local level based on risk assessments and reflecting the full range of flexibilities provided in legislation.

The Agri-food checks required will cause significant disruption and costs. What support will you be providing to NI industry?

- We will shortly be announcing specific support to help traders navigate these checks.
- And we will also be supporting supermarkets, retailers and their suppliers to ensure they are ready for the requirements of the Protocol during the grace period we have agreed.

Where will those checks happen?

- Through technical engagement with the European Commission, the UK Government and Northern Ireland Executive have developed helpful practical arrangements to simplify and streamline these checks and controls on agri-food goods to the maximum extent.
- Our system will be based on electronic checking as far as possible of documentation; 'identity checks' focused on a simple check of the seal of a truck;

and physical checks managed at a local level based on risk assessments and reflecting the full range of flexibilities provided in legislation.

- This means we have been able to keep the expansion of infrastructure at Northern Ireland ports to a minimum, on the basis of the proportionate and pragmatic approach to new controls that we will adopt.
- We have also kept our promise to fund the new facilities with HMT providing £48m in support, including £5m for interim facilities that will be operational on Day 1, while the full builds are completed.

Will there be a phase in/ grace period for those checks?

- The agreement we've reached provides a three month grace period from official certification for trusted traders, such as supermarkets and their suppliers.
- Where checks and controls are required on agri-food (some of which exist already today), the UK Government and Northern Ireland Executive have undertaken technical engagement with the European Commission, to simplify and streamline processes to the maximum extent.
- Our system will be based on electronic checking as far as possible of documentation; 'identity checks' focused on a simple check of the seal of a truck; and physical checks managed at a local level based on risk assessments and reflecting the full range of flexibilities provided in legislation.

What happens if supermarkets aren't ready for these new requirements even after the end of the Grace Period? Is 3 months enough?

- To support traders in preparing for the end of the grace period, the UK Government will work with supermarkets, retailers and their suppliers to move to new, end-to-end digital systems that enable goods to be moved in accordance with the Protocol in the most streamlined way possible.
- This will be backed by a major injection of new UK Government funding as part of the broader support package that we have announced.

MEDICINES

Will the implementation of the Northern Ireland Protocol in relation to medicines cause delays to the supply of medicines to Northern Ireland?

- We have secured agreement to a pragmatic approach to implementing the Protocol in relation to medicines regulation.
- This will give industry the time and flexibility it needs and ensure that medicines and veterinary medicines can continue to flow to NI.
- Work is ongoing across Government to prepare for the end of the Transition Period, and we will publish further guidance for industry on moving medicines to NI.

UNFETTERED ACCESS

**How will NI qualifying goods be distinguished from non-qualifying on NI-GB trade?
How will the qualifying goods regime be enforced?**

- We have been clear that trade from NI to GB at the end of the Transition Period will continue to look and feel the same as it does now for Northern Ireland businesses.
- We will do this through a “qualifying goods” regime that applies only to genuine NI businesses, once the long-term regime is in place from the second half of 2021.
- This regime will use existing port and airport check-in processes to identify “qualifying” goods. This means it can be light-touch - with most traders auto-enrolled in the scheme - while still enabling those non-qualifying goods for whom third country checks will apply to be identified.

SUPERVISION

What’s the EU presence in NI going to amount to? How will the EU exercise their rights of supervision under Article 12?

- We have reached agreement with the EU on practical working arrangements which will enable EU officials to exercise their rights under Article 12 of the Protocol.
- These arrangements recognise our position that there should be no permanent EU ‘mini embassy’ in Northern Ireland, nor any concept or perception of joint controls. All processes required under the Protocol will be carried out by UK authorities.
- We will ensure that these principles are fully upheld as the arrangements are put into practice from the end of the transition period.

Will the EU have access to UK databases?

- We have agreed sensible reciprocal processes with EU, which are strictly limited to data sharing relevant to the Protocol.
- The EU has provided the UK with access to EU databases, with appropriate safeguards. We have agreed in return for the EU to access a limited number of databases relevant to the Protocol, again with safeguards attached.
- These are normal proportionate information and data sharing arrangements; EU officials will have no wider access to UK national systems, and it will only relevant officials working for the EU itself, and not for Member States, who have access.

But will there be an EU office in Belfast, as the Commission has previously proposed?

- We have always been clear that it wouldn't be acceptable for the EU to establish some kind of mini-embassy in Northern Ireland - which is what some in the EU had originally suggested - and the agreement we've reached does not allow that.
- What we will of course permit is EU officials to fulfil the role envisaged under the Protocol in assuring that the arrangements we've agreed are operating properly.
- And of course we will not be barring the EU from renting some limited office space, or accommodation for their staff.
- But there will be no EU flags flying above brass-placked entrances in Belfast.

VAT

What agreement has been reached on VAT?

- As part of implementing the VAT elements of the NI Protocol, the UK and the EU Commission have needed to agree how EU VAT rules will apply in the unique circumstances created in NI, where traders will continue to be part of both the UK and the EU VAT systems.
- Further guidance on both of these topics has been published for traders.

The Protocol consequences for the VAT Margins Scheme will affect the NI second hand car market?

- We have heard the concerns raised about the application of the EU second hand margin scheme. These changes will not affect stock bought in advance of 1 January, even if sold at a later date.
- We acknowledge that this is not a longer-lasting solution to the issues here.
- The Government is aiming to minimise disruption for NI traders to the extent possible and is continuing to explore options for addressing the impacts here.

STATE AID

Will NI continue to follow all EU State Aid rules?

- No. EU State Aid rules will only apply in NI in certain cases, where this is relevant to trade between Northern Ireland and the EU.
- This is limited in scope to the movement of goods and wholesale electricity markets, and concerns only measures that "affect trade" between Northern Ireland and the EU.
- Northern Ireland will enjoy new freedoms in relation to support for its services and other sectors of the future.

- We have secured new exemptions for state aid in NI on agriculture and fisheries.

What about the issue of “reachback” of EU state aid rules capturing Great Britain.

- As part of our agreement, this concern has now been addressed.
- The EU will need to demonstrate a “*genuine and direct link*” of any aid in GB to Northern Ireland, and the effects of that aid will need to be “*real and foreseeable*”.

Why is there a specific agreement for agricultural subsidies?

- The Protocol sets out that agricultural subsidies in Northern Ireland will be exempted from EU state aid rules.
- The Joint Committee was tasked with agreeing a maximum ceiling for this support.
- We have worked closely alongside the Northern Ireland Executive in taking forward those Joint Committee discussions - focused on providing appropriate flexibility for Northern Ireland’s agricultural and fishing industries, and maintaining the ability to respond to any market uncertainty and disruption.

FORWARD PROCESS

When will this agreement be finalised?

As the statement I issued jointly with my counterpart Maroš Šefčovič yesterday made clear, we will be holding a Joint Committee as soon as possible to formalise the agreement, and I will be saying more in my statement to Parliament this afternoon.

SCRIPT ON UKIM/TAX CLAUSES

- The UK Government set out on 17 September that Parliament would be asked to support the use of provisions in clauses 44, 45 and 47 of the UK Internal Market Bill, and any similar subsequent provisions in a Finance Bill, only in circumstances where the fundamental purposes of the Northern Ireland Protocol would be undermined.
- These clauses were introduced as reasonable steps to create a safety net so that the government would always be able to deliver on its commitments to the people of Northern Ireland in the event that a negotiated outcome could not be reached in the Joint Committee.
- Following intensive and constructive work over the past weeks by the UK and EU, we now have an agreement in principle on all issues in relation to the Protocol on Ireland and Northern Ireland.
- This agreement delivers on our commitment to the people of Northern Ireland to make sure they continue to have unfettered access to the UK under all circumstances; to ensure there are no tariffs on goods remaining within the UK customs territory; and to ensure that there is no legal confusion about the fact that, while Northern Ireland will remain subject to the EU's State Aid regime for the duration of the Protocol, GB will not be subject to EU rules in this area.
- As we have mutually agreed solutions, the UK can now withdraw clauses 44 (export declarations), 45 and 47 (state aid) of the UK Internal Market Bill, and not introduce any similar provisions (tariffs) in the Taxation Bill.
- Due to tabling deadlines, it has not been possible to fully reflect the Joint Committee statement in the motions tabled today [8 December] for Lords consideration of the Commons amendments on UKIM. The Government will ask the Lords to remove these clauses tomorrow, and when the Bill returns to the Commons there will be further tidying amendments to ensure the legislation functions as it should.
- We will table a new clause today, for the Commons to consider on Thursday, requiring the Government to set out domestic guidance for how the provisions agreed with the EU on the application of State Aid under the Protocol will work in practice.
- The taxation bill has been introduced in the House of Commons via Ways and Means resolutions today, with Second Reading and Committee on Wednesday.

From: [REDACTED]
ARE: SASA
12 December 2020

Minister for Rural Affairs and The Natural Environment

The Seed and Plant Propagating Material (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2020

Purpose

1. To provide you with advance drafts of:
 - a. the Seed and Plant Propagating Material (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2020 (“the SSI”), attached at Annex A, and accompanying policy note, attached at Annex B;
 - b. a letter to the Presiding Officer which has been prepared to explain why the requirement to lay negative SSIs at least 28 days before coming into force will not be complied with on this occasion, attached at Annex C; and
 - c. the Ministerial Statements required by the European Union (Withdrawal) Act 2018, attached at Annex D.

The SSI may be subject to minor changes as the process of checking and finalising the SSI for signature and laying progresses is currently on going.

Priority

2. **Routine** – a signing slot has been booked on 18 December 2020. The SSI will be laid later that same day in the Scottish Parliament.

Background

3. The SSI updates previous EU exit related amendments, made in 2019 in anticipation of the UK’s exit from the EU, to legislation relating to plant propagating material and seeds to ensure that it remains operable following the end of the implementation period. These updates are necessary in light of the Withdrawal Agreement and the Protocol on Ireland / Northern Ireland (“the NI Protocol”) and recent updates to EU law / resulting amendments to our domestic legislation since the previous EU exit amendments were made.
4. The SSI is subject to negative procedure and will in the main amend both the Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Forestry (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (“the earlier EU Exit SSIs”) to update amendments those instruments make to–
 - A. The Vegetable Seed Regulations 1993;
 - B. The Marketing of Vegetable Plant Material Regulations 1995;

- C. The Marketing of Ornamental Plant Propagating Material Regulations 1999;
- D. The Oil and Fibre Plant Seed (Scotland) Regulations 2004;
- E. The Cereal Seed (Scotland) Regulations 2005;
- F. The Fodder Plant Seed (Scotland) Regulations 2005;
- G. The Beet Seed (Scotland) (No. 2) Regulations 2010;
- H. The Seed Potatoes (Scotland) Regulations 2015;
- I. The Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017; and
- J. The Forest Reproductive Material (Great Britain) Regulations 2002.

known collectively as “the Marketing Regulations” for seeds and plant propagating material.

5. The Marketing Regulations prescribe processes to ensure minimum quality standards and traceability for marketed seed and plant propagating material. They also set out administrative provisions, impose record-keeping requirements and provide for the licensing of industry crop inspectors, seed samplers and seed testing stations. These rules and standards have been transposed from EU Marketing Directives for each of the crop species.

Effect of the SSI

6. The amendments made by the SSI to the earlier EU Exit SSIs amending the Marketing Regulations fall to be considered alongside provision made by UK SIs which the Scottish Ministers agreed (after notification to/consent being given by the Scottish Parliament) would be made on a GB basis to make other provision necessary as a result of the UK’s exit from the EU/the end of the transition period.
7. The provisions of the SSI will update the earlier EU Exit SSIs, which, as amended, will address deficiencies in the Marketing Regulations, for example by removing references to EU institutions that are no longer appropriate; removing obligations to report to, or seek approval from, the European Commission; and removing or updating other provisions that will not as they stand operate properly following the end of the transition period. The Marketing Regulations will be updated so that appropriate alternative provision is made for the domestic context after the end of the transition period. For example, the changes provided for in the SSI mean that Ministers may act in place of the Commission, EU labels will become GB labels, and EU Member States will be treated as ‘third countries’ whose rules and standards are required to be assessed as equivalent to our own if seed from those third countries is to be marketed in GB.

Stakeholder Views

8. The SSI does not amount to a change in policy and is being made to resolve deficiencies arising as a result of the UK’s withdrawal from the EU / implement the NI Protocol. There have been no formal public consultations during the Transition Period, however we have worked closely with all stakeholders to discuss the WA and NI Protocol and what it signified for the different sectors.

Impact Assessments

9. A full impact assessment has not been prepared for the SSI, as it is aimed at amending the existing EU Exit SSIs so that they make amendments to preserve the effect of existing regulatory regimes. The changes made are expected to have minimal impact to stakeholders.

Risks

10. The SSI is considered low risk. Its amendments do not amount to policy change.

Timing and Parliamentary Handling

11. The Seed and Plant Propagating Material (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2020 are scheduled to be made and laid in the Scottish Parliament on the 18 December 2020, coming into force at the end of the transition period, on 31 December 2020. This is a significant breach of the requirement to lay negative SSIs at least 28 days before coming into force. A letter to the Presiding Officer has been prepared to explain the reason why the laying requirement has not been complied with on this occasion. Officials are engaging with the relevant Parliamentary clerks about the SSI.

Recommendations

12. It is recommended that you approve and sign
- a. the statements required by the European Union (Withdrawal) Act 2018, a draft of which is attached at Annex C, by 12 noon on Wednesday 17 December 2020
 - b. the Seed and Plant Propagating Material (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2020;
- when it come forward for signature on 18 December 2020.
13. An early indication of any concerns you may have or any further information you require would be appreciated to avoid the risk of delays at a later stage.

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Rural Economy			X		
Cabinet Secretary for Constitution, Europe and External Affairs			X		

Minister for Parliamentary Business & Veterans					X
Lord Advocate					X
Solicitor General					X

Lord Advocate's Legal Secretariat Solicitor to the Scottish Government SSI Unit, SGLD [REDACTED] DG Economy DG Constitution and External Affairs [REDACTED] Communications Rural Economy & Environment

**ANNEX A – Draft of The Seed and Plant Propagating Material (EU Exit)
(Scotland) (Miscellaneous Amendments) Regulations 2020**

See separate attachment

ANNEX B – draft Policy Note

See separate attachment

Annex C - 28 day letter to the Presiding Officer.

See separate attachment

ANNEX D – Ministerial Statements

See separate attachment

First Minister

Cabinet Secretary for Constitution, Europe and External Affairs

Minister for Europe and International Development

UK Government Command Paper on the NI Protocol

1. The UK Government and the EU Commission announced on 8 December that 'agreement in principle' had been reached at the EU-UK Joint Committee, resolving the remaining key issues related to operation of the Withdrawal Agreement and Northern Ireland Protocol.
2. In the evening of 10 December, UK Government published a further Command Paper on the Northern Ireland Protocol, setting out details of what had been agreed. [In parallel, the EU Commission and UK Government published formal texts of their agreement - TO BE CONFIRMED.] Officials will consider the details of these agreements and provide comprehensive briefing in due course. Ahead of that, the conclusions of an initial review of the Command Paper are reported here.
3. The Command paper reiterates the over-arching positions the UK Government adopted in its May Command paper, which had driven its approach to discussions at the Withdrawal Agreement Joint Committee:
 - Northern Ireland businesses must have unfettered access to the rest of the UK market.
 - Trade from Great Britain to Northern Ireland which remained in the UK customs territory should not be subject to tariffs; and Northern Ireland must benefit from the Free Trade Agreements we strike with third countries - protecting Northern Ireland's place in the UK customs territory.
 - The additional processes on goods arriving in Northern Ireland must take account of all flexibilities and discretion - ensuring a smooth flow of trade with no need for new physical customs infrastructure.
4. The paper then sets out the new agreements between the UK Government and the EU.

Goods moving from GB to NI - Definition of goods 'not at risk' of onward transit to the EU Single Market

5. The Northern Ireland Protocol contained an assumption that goods entering NI were at risk of onward movement to the EU and therefore subject to EU customs rules and any applicable tariffs; the Joint Committee was to agree criteria for identifying goods that were not at risk. UK Government reports that the new agreements in principle at the Joint Committee mean criteria will largely not focus on attributes of the goods themselves - type; origin; or tariff differential. Instead, a new UK Trader Scheme will allow authorised businesses to undertake that the goods they are moving into Northern Ireland are "not at risk" of onward movement to the EU, and therefore not liable to EU tariffs. The scheme will include safeguards to ensure that it is not available to those with serious criminal records or existing compliance issues. Where traders report that goods are moving on into the EU Single Market, EU customs rules would apply, with any tariffs dependent on what is agreed for the EU-UK future relationship. The agreement also means that businesses using the UK Trader Scheme would not need to complete origin certification, irrespective of Rules of Origin requirements that might apply to trade with the EU under the future EU-UK relationship.

6. The NI Protocol also provided that any goods subject to commercial processing were automatically considered at risk of entering the EU market. The Joint Committee has agreed in principle that a series of sectors will be exempt from this provision and can therefore qualify to be not considered "at risk". This includes food for sale to end consumers in the UK; construction, direct health and care provision, and not for profit activities in Northern Ireland; and processing carried out by importers of animal feed for final use at their premises in Northern Ireland.
7. UK Government had previously committed that "*Northern Ireland must benefit from the Free Trade Agreements UK strikes with third countries*". The Command Paper reports an agreement on tariff rules for the "*much smaller number of direct cargo shipments*" into Belfast from the rest of the world: traders could participate in the UK Trader Scheme where UK tariffs are up to 3% less than those applied by the EU.
8. There will be an "*emergency brake mechanism*" allowing UK Government or the EU to halt this system in 2024, in the event of significant diversion of trade, or fraud or other illegal activities, and on the basis that replacement arrangements protecting Northern Ireland's place in the UK customs territory are then put in place.
9. The Command Paper notes that there may still be potential for some cases where internal UK trade does not qualify for the scheme so confirms that UK Government still intends to introduce the reimbursement scheme announced in May for goods that attract an EU tariff, but which can subsequently be shown to have remained in the UK customs territory.

Goods moving from NI to GB – 'Qualifying status' for 'unfettered access' and export declarations

10. The Command Paper confirms that the Joint Committee has agreed in principle that there will not be a requirement for export declarations for goods moving into GB from NI. Relevant authorities would have access to equivalent information and reciprocal data sharing on Northern Ireland to Great Britain movements, drawing on data sources such as shipping manifests.
11. The Command Paper reiterates UK Government's activity to legislate for a "qualifying status" to ensure goods have unfettered access when moving from NI to GB. This is to include goods on essential trade routes through Ireland to Great Britain (provided these movements are done under transit procedures and goods are under customs supervision until cleared in Northern Ireland).
12. The Command Paper reconfirms that UK Government will guarantee in law through the UK Internal Market Bill that "goods with 'qualifying status' cannot be subject to new checks or controls in the future; and that they can always be placed throughout the UK internal market." "Once moved into Great Britain, 'qualifying' goods will be able to be placed on the market without any additional approvals, regardless of future decisions on legislation by the UK Government or devolved administrations."
13. The paper nonetheless re-commits to anti-avoidance measures to prevent abuse, so that only genuine Northern Ireland businesses would benefit from unfettered access to GB markets. This would include registration of traders based in NI, through a 'trusted trader scheme', with auto-enrolment for many traders.

Transitional arrangements

14. The Joint Committee's agreement in principle means that authorised traders, such as supermarkets and their trusted suppliers, will benefit from a temporary grace period, for three months through to 1 April 2021, from official certification for products of animal origin,

composite products, food and feed of non-animal origin and plants and plant products. The Command Paper reports that UKG and NIE will ensure these traders are identified prior to 31 December so they can benefit from the grace period. UK officials have indicated that they do not expect exemption from EH Certification requirements to extend beyond three months.

15. The agreement in principle also provides a temporary exemption from legal restrictions and prohibitions on certain types of chilled meats, such as sausages, from Great Britain to Northern Ireland, for six months, subject to appropriate certificates and channelling procedures.
16. The agreement in principle also provides temporary arrangements for free movement of medicines for twelve months - a "*period of adaptation*" to the regulatory measures required by the Protocol with regards to batch testing, regulatory importation requirements and the Falsified Medicines Directive.

State aid - reach-back

17. Previously, concerns had been expressed, including in UK Parliament, that the Protocol could be interpreted to enable "reach back" of EU state aid rules to subsidies given to companies in Great Britain. There is agreement in principle for EU to make declarations in the Joint Committee, which will have legal force in interpreting the Protocol, confirming that:
 - for an aid measure to have an effect on trade between Northern Ireland and the European Union, and for the state aid provisions in the Protocol to apply, there must be a "genuine and direct link" to Northern Ireland;
 - Northern Ireland's integral place in the UK internal market must be taken into account; and
 - the potential effects of an aid measure on trade between Northern Ireland and the EU must be real and foreseeable.

State aid - Agriculture and fisheries in NI

18. The NI Protocol had set out that agricultural subsidies in Northern Ireland would be exempted from EU state aid rules, with the Joint Committee tasked with agreeing on the maximum ceiling of such subsidies. The agreement in principle provides for a baseline of more than £380m of agricultural support to be exempt from EU state aid rules - with up to £25m of any of the cap which is not used to be rolled forward to the subsequent year. In addition it provides for nearly £7m of further support to be deployed in any year where there are crisis conditions which require it. In addition the agreement in principle also provides for an exemption for nearly £17m of fisheries spending from EU state aid rules every five years, with a maximum spend of £4m in any given year.

Business support

19. The Command Paper reiterates previous measures UK Government has introduced to provide support to businesses. The Trader Support Service launched in August provides access to training and other resources, as well as a service which completes customs import formalities (such as import and safety and security information) on their behalf.
20. The Command Paper reports plans for a new Movement Assistance Scheme for agri-food traders. Under the scheme, the UK Government will take care of new direct costs for traders moving agri-food goods for which specific SPS controls apply - such as the need to secure Export Health Certificates (EHCs) from official vets. The scheme will begin in mid-December with a dedicated helpline to guide businesses through the new requirements for moving their goods.

Corrections and clarifications

21. The Command Paper also reports Joint Committee agreement on various corrections and clarification to the NI Protocol. The UK and the EU have agreed in principle to 13 changes to Annex 2 of the Protocol. Eight changes are additional pieces of legislation and three are explanatory notes to be inserted alongside legislation already listed in Annex 2. There are two areas in which the changes remove or limit provisions from the scope of the Annex: ensuring that Northern Ireland CO₂ emissions count towards UK rather than EU targets; and limiting the scope of EU trade defence instruments by excluding Northern Ireland industries from EU calculations on trade remedies investigations.

Other measures

22. The paper also reiterates previously announced plans for VAT arrangements to avoid new registrations for moving goods into NI; and reiterates arrangements planned for the Single Electricity Market.

23. The Command paper also reports in principle agreement on EU supervision of implementation of the NI Protocol. EU officials could be present at ports to oversee some checks but they would have no autonomous functions and would be observing British official procedures. UK Government reports that there would be no EU “mission” in Northern Ireland.

Next steps

24. The EU Strategy and Negotiations team will ensure that ministers are informed of any developments, including over the coming weekend, when a formal decision is expected on the future of the negotiations.

From: [REDACTED]
ARE: SASA
11 December 2020

Minister for Rural Affairs and the Natural Environment

EU EXIT LEGISLATION – NOTIFICATION MANUFACTURING AND MARKETING FERTILISERS

Purpose

1. To provide you with a draft notification and covering letter for the Scottish Parliament's Rural Economy and Connectivity Committee regarding the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) (No. 2) Regulations 2020 ("the Fertilisers Regulations")
2. The following are provided with this submission:
 - Notification for the fertilisers Regulations (Annex A)
 - A summary of the notification (Annex B)
 - Covering letter to send to the relevant Committees of the Scottish Parliament (Annex C).

Priority

3. Routine.

Background

4. On 18 June 2018, Cabinet agreed that portfolios should undertake essential contingency planning and preparation for EU Exit, on the basis of an assessment of risk and potential harm. Fertilisers was an area where you signalled your agreement in principle to UK SIs containing Scottish devolved provisions.
5. The main corrections required to fertilisers legislation as a result of EU Exit have already been put in place through earlier EU Exit SIs, primarily the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) 2019 Regulations and the Fertilisers and Ammonium Nitrate Material (Amendment) (EU Exit) Regulations 2020.
6. The further amendments in the Fertilisers Regulations are required as a consequence of the Northern Ireland Protocol; to reflect the continued application of Regulation (EC) No 2003/2003 in Northern Ireland under the Protocol and to enable the marketing of 'UK fertilisers' in Northern Ireland without prejudice to the application in Northern Ireland of Regulation (EC) No 2003/2003.

Consent of Scottish Ministers

7. The consent of the Scottish Parliament is needed for the Scottish Government to formally agree to the UK Government making provision in a devolved area by a UK SI. A new protocol between the Scottish Government and Scottish Parliament that provides for parliamentary scrutiny of UK EU Exit related SIs from a wider range of sources that contain devolved provision is being developed but is not in place yet. The Fertilisers Regulations are being made using powers conferred by section 8C(1) of the European Union (Withdrawal) Act 2018 which will be covered by the new protocol. In the meantime the Scottish Government has agreed to act as if the original protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 applies.
8. DEFRA have undertaken that all UK Exit SIs which require the consent of Scottish Ministers will not be made until after the consent of the Scottish Parliament is obtained. That protocol requires you to send a Notification of Intention to Consent to the lead Committee (in this case, the Rural Economy and Connectivity (REC) Committee) and copied to the Delegated Powers and Law Reform Committee (DPLRC). In this instance it is suggested that the notification is also copied to the Environment, Climate Change and Land Reform (ECCLR) Committee for awareness.
9. The enclosed notification provides the rationale for agreeing to the UK Government making provisions for devolved purposes within a UK SI, namely that this is a pragmatic approach. The Committees do not scrutinise the actual draft UK SIs (although we along with SGLD have considered the draft SI in detail).
10. The protocol provides for a 28 day scrutiny period of the Notification. While this SI was laid at Westminster on 9 December as a draft affirmative, it is not expected to be debated until the end of January at the earliest and therefore the Scottish Parliament does have 28 days to consider in advance of the SI being made.

Recommendation

11. It is recommended that you consider and issue the notification (attached at Annex A), notification summary (attached at Annex B) and accompanying cover letter (attached at annex C) to the REC, DPLRC Committees of the Scottish Parliament as soon as is possible. In this instance it is suggested that the notification is also copied to the Environment, Climate Change and Land Reform (ECCLR) Committee for awareness.

[REDACTED]
ARE: SASA
REDACTED

OFFICIAL - SENSITIVE

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constitution Interest	General Awareness
Cabinet Secretary for Rural Economy and Tourism			X		
Cabinet Secretary for Climate Change & the Environment					X
Cabinet Secretary for the Constitution, Europe and External Affairs			X		
Minister for Parliamentary Business & Veterans			X		X
Lord Advocate					X
Solicitor General					

DG Economy
 DG Constitution and External Affairs
 Solicitor to the Scottish Government
 Director of Sustainable Land Use and Rural Policy
 REDACTED ARE
 EU Exit Coordination Hub
 REDACTED
 Communications Rural Economy & Environment

UKG Command Paper on implementation of the WA/NIP

What has UKG said?	Key questions?
Export declarations for NI to GB trade	
NI firms will be able to export to GB without export declarations, with exception of CITES species and controlled diamonds.	What update on the definition of Qualifying Northern Ireland Goods (those that will benefit from unfettered access to GB) after July 2021, including enforcement measure? What update on the handling of non-QNIGs (EU/RoW goods arriving in GB via NI)? What are the specific customs arrangements agreed for NI goods transiting ROI to enter GB? [SG interest relates to assumptions we might make about flow of NI goods diverting to NI-Scotland routes to avoid UK-EU customs documentation]
State aid	
Companies in GB would stay outside EU state aid rules <i>“where there is no genuine and direct impact on NI and no real, foreseeable impact on NI-EU trade.”</i>	How will whether or not there is an impact on NI be assessed? How can assessment be challenged?
Northern Ireland agriculture and fisheries will be exempt from EU state aid provisions.	Are there limits on the magnitude of funding that can be provided before any restrictions agreed with the EU do apply?
The definition of goods “not at risk” of onward transit into the ESM	
<i>“NI businesses selling goods to consumers or using goods in NI would be free of all tariffs – from cars to lamb”.</i>	What is the complete definition of “goods [not] at risk of entering the single market”, and what if those goods are exported to ROI and re-imported as part of cross-border sectoral value-add activity? How can a definition be enforced? Has the EU agreed?
Flow of goods across borders after 1 Jan 2021	
The free flow of supplies to supermarkets in NI is protected. Supermarkets will have a “grace period” of three months to get systems up and running to prevent disruption in January. Sausage and chilled meats (on the prohibitions list) will be allowed to enter.	Will GB to NI movements of live animals still be required to meet EU health requirements, or have derogations been agreed?
The free flow of supplies of human and veterinary medicines is protected by a 12-month grace period to adapt to new rules.	
Access by EU officials to implementation measures for the NI Protocol	
EU officials to be present at ports to oversee some checks. They would have no autonomous functions and would simply be observing British official procedures. There would be no EU “Embassy” in Northern Ireland.	

[REDACTED]
Marine Scotland
9th December 2020

Cabinet Secretary for the Rural Economy and Tourism
Minister for Rural Affairs and the Natural Environment

THE UKG MOVEMENT ASSISTANCE SERVICE –GB - NI

Purpose

1. To inform the Cabinet Secretary of UKG Movement Assistance Service and our involvement.

Priority

2. Urgent

The Movement Assistance Service

3. The UKG and Northern Ireland Executive have been working on a joint communications plans to assist traders wishing to export products of animal origin (POAO), and plants and plant products to Northern Ireland at the end of the Implementation Period. The Movement Assistance Service (MAS) aims to simplify processes for exporters to Northern Ireland and to provide direction to the relevant government department/agency. This service differs from the Trader Support Service which has been established to guide/importer exporters to Northern Ireland with customs processes. The movement assistance service (MAS) consists of three stages: MAS1 is a customer help line which aims to direct people to the relevant government department. MAS2 aims to cover the costs of certificates for GB businesses directly exporting to NI. MAS3 aims to cover the costs of EHC's for GB exporters which export to the Republic of Ireland, where Northern Ireland is the final destination.

4. Following the announcement yesterday by the two co-chairs of the EU-UK Joint Committee – European Commission Vice-President Maroš Šefčovič and the UK Chancellor of the Duchy of Lancaster, the Rt Hon Michael Gove that there is agreement in principle of all issues, including the areas of Border Control Posts, Entry Points specifically for checks on animals, plants and derived products and export declarations, amongst other areas, the Movement Assistance Scheme is being reviewed by the UKG. We are expecting to be further updated on the scope of the scheme next week and are seeking further clarity on what was agreed, and its implications. We understand there may be further announcements made about the Movement Assistance Scheme on the 10th December. The scope and our proposed involvement in the Movement Assistance Scheme, doesn't include the implications of yesterday's announcement, but reflects our current understanding of the MAS scope.

Official Sensitive

5. The MAS has been set up at pace with limited Scottish Government engagement to date. The UKG currently anticipate this being a UK wide service, with MAS1 currently scheduled to go live on the 16th December. We understand that service testing is expected to commence on Wednesday the 9th and have begun discussions around its operation. Establishing the Movement Assistance Service doesn't prevent Scottish exporters getting directly in touch with the appropriate government department/agency, and we would prefer businesses to come through the established Prepare for Brexit route. However, MAS should provide a systematic way of directing exporters who are unsure who is best placed to address their query. Scottish stakeholders have expressed their preference for the Scottish approach of directing everything to "Prepare for Brexit" and the helpline run by the enterprise agencies rather than the multiple separate helplines and sources of assistance that the UK Government is establishing.

6. We have requested that public communication material is shared with us at the earliest opportunity. To date there has been limited information relating to MAS2 shared with us. We currently understand that MAS2 and 3 isn't expected to go live until 2021.

7. The UKG MAS1 current proposals anticipate the Fish Health Inspectorate (FHI) and SASA will cover queries relating to aquatics and plant health in Scotland. Queries relating to animal health are being covered by the Animal and Plant Health Agency (APHA). Queries relating to Catch Certificates are directed to the existing Fisheries Export Service assistance line. Following discussions it is currently understood that queries relating to fisheries products will either be directed to APHA, if the query is in relation to an Export Health Certificate, or the Fisheries Export Service, if in relation to a Catch Certificate. Queries relating to Border Control Posts, fisheries landings or more general queries are currently out of scope. A organogram covering the scope of MAS1 is in Annex A.

8. To align with existing work practices, and minimise resourcing pressures on the Fish Health Inspectorate it is proposed that the MAS1 phone line for Scottish aquatics directs callers to the existing FHI trade web pages. Phone queries would be passed to the Duty inspector during office hours, who can subsequently contact the trade team. As dealing with queries via email is preferable, we would like to point people to the existing generic Fish Health Inspectorate inbox at the end of the web page.

<https://www.gov.scot/publications/importing-and-exporting-live-aquatic-animals-from-1-january-2021/>

9. As with aquatic queries, we anticipate callers will be first directed to our SASA webpages which contains guidance on exporting to NI. Phone queries will be directed to assigned members of staff in SASA, most likely those conducting the office-based work of the Horticulture and Marketing Unit (HMU). These staff are already in full knowledge of the procedures for export so we anticipate they will be able to answer the queries at this point but otherwise they can contact either the inspectors or policy for answers. We will ensure there is a rota assigned to this line whilst it is in operation to ensure the hours are covered. The hours of operation are understood to be regular office hours so this should not provide any issues.

10. MAS 2, which was mentioned in passing at the IMG on 7 December, is intended to cover elements of the costs of export certification, **subject to securing funding from HM Treasury**. We understand that Defra's intention is that costs of certificates issued in

Official Sensitive

GB for 2 years from 1 Jan 2021 would be met by the UK Government, with the certifying officer being reimbursed by Defra rather than charging the business. The Scottish Government has long been pressing the UK Government to meet the costs to businesses and public authorities of export health certification, so far without success. We should therefore be content that they are at least considering covering the costs of exports to Northern Ireland. Depending on the scope of the scheme, it is possible that this will include reimbursement to Scottish local authorities and Food Standards Scotland in respect of certification for fisheries products.

11. MAS 2 is not yet in the public domain and we believe it will not be until negotiations are finalised.

Recommendation

12. To note FHI and SASA's involvement in MAS1

13. To note the position in relation to MAS 2 and that we will continue to engage with Deloitte the contracted company for this scheme, which may involve sharing our costs so that we can claim this back later.

[REDACTED]

Date 09 December 2020

Copy List:
Director of Marine Scotland [REDACTED]

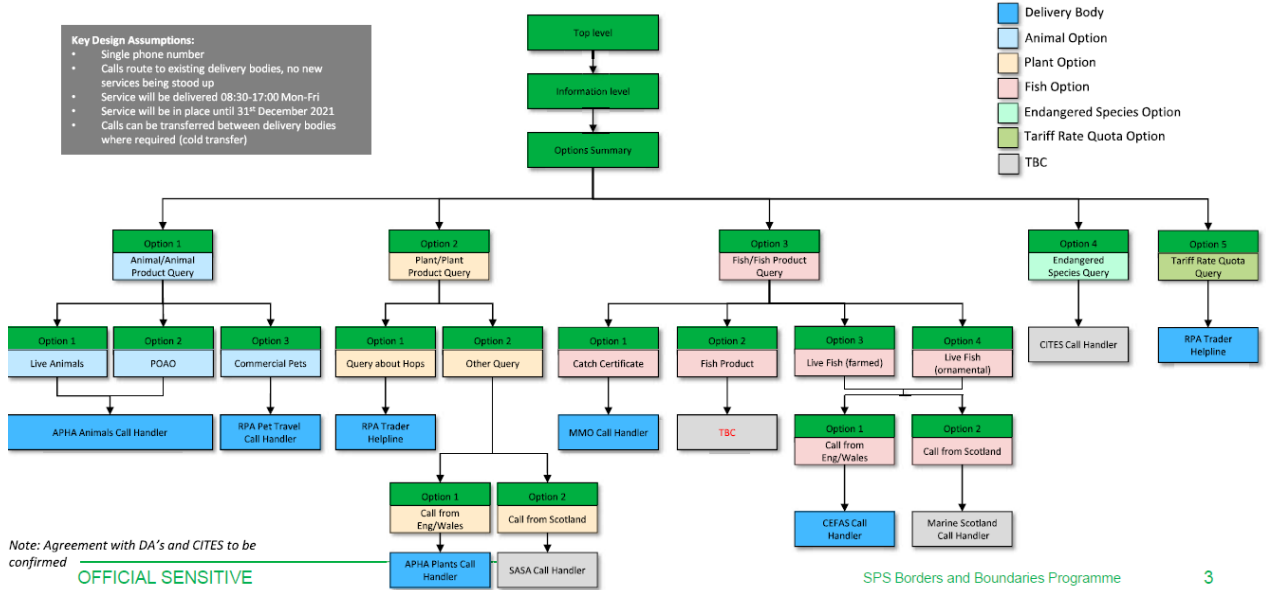
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ANNEX A

MAS1 MVP Scope: IVR – Summary – 1st Jan

Key Design Assumptions:

- Single phone number
- Calls route to existing delivery bodies, no new services being stood up
- Service will be delivered 08:30-17:00 Mon-Fri
- Service will be in place until 31st December 2021
- Calls can be transferred between delivery bodies where required (cold transfer)



Note: Agreement with DA's and CITES to be confirmed

OFFICIAL SENSITIVE

SPS Borders and Boundaries Programme

3

From: [REDACTED].[REDACTED]@gov.scot

Sent: 09 December 2020 16:21

To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>;
Minister for Europe and International Development <MinisterEID@gov.scot>

Cc: First Minister <firstminister@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>;
DG Constitution and External Affairs <dgcea@gov.scot>; DG Economy <DGEconomy@gov.scot>;
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[REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot

Subject: Update on Michel Gove statement to Parliament on the Northern Ireland Protocol

*Cabinet Secretary for Constitution, Europe and External Affairs
Minister for Europe and International Development*

UK GOVERNMENT STATEMENT IN THE HOUSE OF COMMONS: EU-UK JOINT COMMITTEE AGREEMENT CONCERNING IMPLEMENTATION OF THE NORTHERN IRELAND PROTOCOL

1. This note is to update you following the statement made by the Chancellor of the Duchy of Lancaster in Parliament today on the above agreement, on which [REDACTED] attached submission of yesterday evening provided initial guidance.

Ministerial statement

2. Mr Gove referred to the Command Paper published by the UKG in May: the Government had wanted to ensure unfettered access for NI businesses to the GB market, ensure a smooth trade flow into 2021, and avoid the need for new physical border infrastructure in Northern Ireland. He claimed that all of those objectives had been achieved by the agreement reached in principle in the Joint Committee, which will ratify the agreement in the coming days. He thanked the EU side in the Joint Committee, as well as Northern Ireland Ministers, for working together to reach this agreement.
3. Mr Gove said there would be no interruption to trade, and NI firms would be able to export to GB without export declarations. The free flow of supplies to supermarkets, and of human and veterinary medicines, was protected. Supermarkets will have a “grace period” of three months to prevent disruption in January.
4. He reported that Northern Ireland agriculture and fisheries would be exempt from EU state aid provisions. Companies in GB would stay outside EU state aid rules “*where there is no genuine and direct impact on NI and no real, foreseeable impact on NI-EU trade.*”

5. Mr Gove said the agreement reached on “at risk” goods meant that “*NI businesses selling goods to consumers or using goods in NI would be free of all tariffs – from cars to lamb*”. We will however have to await further detail before we can assess the implications for all goods.
6. EU officials would have access to the administration of the Protocol in Northern Ireland, but they would have no autonomous functions and would simply be observing British official procedures. There would be no EU “Embassy” in Northern Ireland. There would be no new border infrastructure in Northern Ireland.
7. Mr Gove confirmed that the Government was dropping clauses 44, 45 and 4 from the UKIM Bill, and would not include analogous provisions in the Taxation Bill. The Government would provide further financial support for Northern Ireland businesses, and would be publishing further guidance on the agreement shortly.
8. For Labour, Rachel Reeves welcomed the statement, but questioned the period during which exemptions from trade restrictions would apply. In response to this, and further questions about chilled meat, Mr Gove said a moratorium on further checks on this commodity had been agreed for a period of six months, after which there would be a further review.
9. Mr Gove’s statement was ambiguous on various points and it is not yet possible to be definitive about the details of what has been agreed by the Joint Committee. Mr Gove said the Government would shortly publish written texts setting out what has been agreed, which will require careful scrutiny to fully understand their implications.

[REDACTED]

EU Intelligence and Analysis Team

- Latest Brexit briefing: <http://saltire/orgspaces/Brexit>

EU Directorate | Scottish Government

I am currently working from home. Mobile number: [REDACTED] |

From: [REDACTED].[REDACTED]@gov.scot

Sent: 08 December 2020 18:56

Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>

Cc: First Minister <firstminister@gov.scot>; Permanent Secretary <PermanentSecretary@gov.scot>; DG Constitution and External Affairs <dgcea@gov.scot>; DG Economy <DGEconomy@gov.scot>;

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[REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot

Subject: OFF SEN: TFE update on negotiations

PS Cabinet Secretary for the Constitution, Europe and External Affairs
PS Minister for Europe and International Development

Good Evening

Please find attached a read-out of the latest state of play in regards to the ongoing UK-EU negotiations. As ever please note the OFFICIAL SENSITIVE marking and treat accordingly.

Kind regards,
[REDACTED]

[REDACTED] | Negotiation Strategy and Delivery, EU Directorate | Tel: [REDACTED]
Mob: [REDACTED]

*Cabinet Secretary for Constitution, Europe and External Affairs
Minister for Europe and International Development*

READOUT FROM SPECIAL MEETING ORGANISED IN RELATION TO WITHDRAWAL AGREEMENT JOINT COMMITTEE ANNOUNCEMENT

Purpose

1. To provide you with an update on the latest Task Force Europe call and today's announcement from the Withdrawal Agreement Joint Committee.

Withdrawal Agreement Joint Committee announcement

2. The UK Government will drop proposed laws that the EU had warned would undermine last year's Brexit Withdrawal Agreement and which have raised trust issues in the trade negotiations. CDL and Maroš Šefčovič said "*agreement in principle*" had been reached on all issues being worked on by the Joint Committee, which oversees the implementation of the Withdrawal Agreement.
3. The statement also includes a commitment to withdraw clauses 44, 45, 47 of the UK Internal Market Bill and not introduce similar provisions in the Taxation Bill. This will be well-received by the EU, and it may help build momentum in the negotiations in advance of the political talks later this week. But it is also being reported that the overall announcement could lessen the impact of no deal.
4. In more detail, the UKG and EU Commission reported implementing agreements regarding the following:
 - Border Control Posts / Entry Points specifically for checks on animals, plants and derived products;
 - export declarations;
 - the supply of medicines;
 - the supply of chilled meats, and other food products to supermarkets; and
 - clarification of the application of State aid under the terms of the Protocol.

Furthermore, the Joint Committee has also 'reached agreement in principle with respect to the decisions the Joint Committee has to take before 1 January 2021' on:

- the practical arrangements regarding the EU's presence in Northern Ireland when UK authorities implement checks and controls under the Protocol;
- determining criteria for goods to be considered "not at risk" of entering the EU when moving from Great Britain to Northern Ireland;
- the exemption of agricultural and fish subsidies from State aid rules;
- the finalisation of the list of chairpersons of the arbitration panel for the dispute settlement mechanism so that the arbitration panel can start operating as of next year; and
- the correction of errors and omissions in Annex 2 of the Protocol.

Assessment

We have not yet been shown the detail of the agreements reached, because of the sensitivity. The agreement covers both the areas on which the Withdrawal Agreement specifies that arrangements still need to be negotiated, notably in relation to the definition of goods at risk of entry to the EU

single market beyond Northern Ireland, and implementation arrangements on the other issues where UKG was planning to give itself powers to override the effect of the protocol.

UKG's commitment to withdraw the parts of the Internal Market and Finance Bills which could lead to a potential breach of international law seems firm, and not only in the 'deal' scenario. But there has to be a formal Joint Committee meeting (with potential involvement of the Member States) in the next few days to sign off the agreed solutions – including on significant elements, like the definition of goods at high risk of re-export, which will be sensitive in the context of the outcome of the main negotiations. The joint UK/EU statement on the outcomes is carefully crafted to give the impression that all issues are resolved, but such is the volatility of the situation that it is only when the UKIM Bill clauses have been removed, and the Joint Committee has taken formal decisions, that there will be complete certainty

[REDACTED].

SASA

December 2020

Minister for Rural Affairs and Natural Environment

EU EXIT – GB TO NORTHERN IRELAND TRADE – SANITARY AND PHYTOSANITARY (SPS) PRODUCTS

Purpose

1. To advise you of the recent changes to the GB to Northern Ireland (NI) trade from 1st January and what this means for Scottish traders.

Priority

2. Routine

Background

3. Under the terms of the Northern Ireland Protocol (NIP), from 01 January 2021, GB will become a third country to Northern Ireland for sanitary and phytosanitary purposes (SPS).
4. This means that full SPS checks would be conducted at the border for all imports of plants and plant products, and products of animal origin (POAO) into NI.
5. This is unlike trade from NI to GB which under the NIP benefits from unfettered access to the GB market and therefore is not subject to any additional SPS conditions following the end of the transition period. Any SPS measures which already existed between NI and GB such as plant passports, will continue.

6. Being a third country to NI also means that items prohibited for entry into the EU for SPS reasons such as seed potatoes and chilled meats, would not be permitted into NI.

Easements – supermarket trade

7. On 10 December, the UK Government published the Northern Ireland Protocol – Command Paper. This paper recognised that the importance of protecting the epidemiological area of the island of Ireland should not come at the cost of putting food supplies at risk and therefore easements were required.
8. Meeting the SPS demands of the protocol has been seen as challenging, particularly by the large supermarkets with depots in GB which supply NI. These operate on a short time-scale, with orders placed and fulfilled within 24 hours. To put this into perspective, the production of phytosanitary certificates normally operate with a 7 day notice period. Whilst Scottish Government officials were working with the supermarket depots to find solutions to this problem, this was not the only certification required so major changes to their supply and distribution model would be required.
9. With concern for the supermarket shelves in NI becoming bare, an agreement was met whereby there would be a 3 month grace period in 2021 where agri-food products moving as part of the supermarket supply chain would be except from providing EHCs or phytosanitary certificates and the relevant inspections.
10. This clearly should be a good news for industry, however a number of issues remain unresolved, which has caused concern, including the scope, and labelling requirements.
11. To take advantage of the easements, there are a number of requirements
 - i. the goods are packaged for end consumers and they bear a label reading “These products from the United Kingdom may not be marketed outside NI”

- ii. they are destined solely for sale to end consumers in supermarkets located in NI, and they cannot be sold to other operators of the food chain
- iii. they are accompanied by a simplified official certificate globally stating the products meet all the import requirements of EU legislation
- iv. they enter NI through a designated point of entry, where they are submitted to a systematic documentary check and to a risk-based identity check on a selection of items in the means of transport
- v. they are monitored through a channelling procedure applicable from the designated point of entry to the destination supermarket in NI

12. Our current understanding is that within scope of the easements are all plant and animal products from within the supermarket food chain. This includes cut flowers and plants so long as they are sold at a supermarket. Out of scope is food destined for hospitality or the public sector such as hospitals and prisons. Plants destined for NI garden centres are not in scope.

Movement Assistance Scheme (MAS)

13. On 09 December, Ms Gougeon was sent a submission from –[REDACTED]. outlining MAS (submission attached in the email for information).

14. MAS operates in 3 parts;

- i. **MAS 1** – Focuses on the provision of advice and guidance on GB to NI trade. This has included a helpline and SASA is taking part in this by answering queries from Scottish based inspectors for plants and plant products, calls will also go through to the Fish Health Inspectorate from this helpline where appropriate.
- ii. **MAS 2** – Waives the cost of inspection fees. Authorities will not charge the trader for these inspections and will instead make a claim to the Treasury (a further submission will be sent regarding phytosanitary fees where we require a Ministerial decision on the legal provisions). – [REDACTED]. It is hoped that this gives industry enough time to

streamline processes and have as little fees as possible when MAS 2 ends.

- iii. **MAS 3** – adopts a similar charging remuneration scheme as MAS 2 that covers transit to NI via the Republic of Ireland.

Errors and Emissions

- 15. Point (d) of Article 164 (5) of the Withdrawal Agreement enables the Joint Committee to adopt decisions to amend the Withdrawal Agreement to correct errors and to address omissions.
- 16. Various regulations and directives which were missing from the protocol as originally published including those regarding; emission standards for new cars and waste, were agreed to be added to the NIP.
- 17. Three Directives had been omitted regarding small seed. Now that this seed is included, Scotland cannot trade in this seed with NI, thus missing out on a significant trade in grasses. This finalised a period of uncertainty for the trade, but we hope that this being included will help us secure equivalence to allow us to trade in small seed with both NI and the EU. The equivalence application is currently being considered by the Commission.

Recommendation

- 18. That you note the above, and officials will discuss it in more detail with Mr McPherson at a meeting organised for Wednesday 23rd December at 11am.

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness

<p>Cabinet Secretary for Rural Economy and Tourism</p> <p>Cabinet Secretary for the Constitution, Europe and External Affairs</p>			<p>X</p> <p>X</p>		
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DG Economy
 Director of Sustainable Land Use and Rural Policy
 Communications Rural Economy & Environment
 –[REDACTED].

From: [REDACTED].[REDACTED]@gov.scot

Sent: 08 December 2020 14:39

To: [REDACTED].[REDACTED]@gov.scot, [REDACTED].[REDACTED]@gov.scot

Cc [REDACTED].[REDACTED]@gov.scot

Subject: RE: Perm Sec call with [REDACTED]UKG today FW: Brexit briefing

Further to my previous email below, here are some updated questions, reflecting input from DITI, animal health, and David's suggestions:-

Background

UKG and EU Commission are reporting new JC agreements today regarding the following:-

- Border Control Posts/Entry Points specifically for checks on animals, plants and derived products;
- export declarations;
- the supply of medicines;
- the supply of chilled meats, and other food products to supermarkets; and
- clarification of the application of State aid under the terms of the Protocol.

It is reported that the JC has also agreed to reach decisions by the end of the year on:-

- the practical arrangements regarding the EU's presence in Northern Ireland when UK authorities implement checks and controls under the Protocol;
- determining criteria for goods to be considered "not at risk" of entering the EU when moving from Great Britain to Northern Ireland;
- the exemption of agricultural and fish subsidies from State aid rules;
- the finalisation of the list of chairpersons of the arbitration panel for the dispute settlement mechanism so that the arbitration panel can start operating as of next year; and
- the correction of errors and omissions in Annex 2 of the Protocol.

Potential questions

On the specific agreements:-

- How have UKG concerns about the scope of state aid rules been resolved? Will NI be subject to EU state aid rules?
- What was agreed in relation to Border Control Posts? What are the details of the solutions for export declarations for NI trade to GB?
- What has been agreed with regards to checks in Northern Ireland from 1 January and what will this mean for border flow when transition ends?
- Has there been any discussion of how the EU will handle, for customs purposes, goods moving from NI to GB via ROI? eg whether they will be required to complete EU customs exit declarations?

- The statement says there has been an agreement on chilled meats and food to supermarkets - what was agreed? Will all Products of Animal Origin still require an EHC? Will supermarkets be exempted? How will this work and be implemented for 1 Jan?
- Will GB to NI movements of live animals still be required to meet EU health requirements, or have derogations been agreed?
- What has been agreed regarding medicines?
- How will UKG engage with DAs on the operational consequences of these decisions?
- Will there be a transitional period/ allowance period for any of these agreements?
- Does any part of what has been agreed create new legislative requirements? How will they be handled?
- What is the significance of part of the offending UKIM Bill content being removed and another part merely being deactivated?

On the planned decision-making:-

- What specific decisions have UKG and EU agreed to take before 1 Jan? When will they be taken....?
- When and how will UKG engage with SG regarding these?
- Decisions around criteria for deciding whether goods are “not at risk” of entering the EU when moving from Great Britain to Northern Ireland have significant implications for Scottish economy. SG is unsighted on UKG thinking here and our views have not yet been sought. How can we inform decision-making?

From: [REDACTED].[REDACTED]@gov.scot

Sent: 08 December 2020 14:07

To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; [REDACTED].[REDACTED]@gov.scot ; [REDACTED].[REDACTED]@gov.scot >

Cc: [REDACTED].[REDACTED]@gov.scot >; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Cameron DA (Donald) (Constitution and UKR) <Donald.Cameron@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Johnson M (Martin) <Martin.Johnson@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; [REDACTED].[REDACTED]@gov.scot; Rogers S (Shirley) <Shirley.Rogers@gov.scot>; Neilson M (Mike) <Mike.Neilson@gov.scot>; [REDACTED].[REDACTED]@gov.scot Barnes D (David) <David.Barnes@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; Johnston ATF (Alan) <Alan.Johnston@gov.scot>; [REDACTED].[REDACTED]@gov.scot >; [REDACTED].[REDACTED]@gov.scot; Johnson M (Martin) <Martin.Johnson@gov.scot>; Quinlan K (Kevin) <Kevin.Quinlan@gov.scot>; Aitken R (Reuben) <Reuben.Aitken@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot >; Mckenzie Smith J (Justin) <Justin.Mckenziemsmith@gov.scot>

Subject: RE: FOR ACTION BY 12 7 December: Ministerial Statement: Brexit Readiness 081220

Importance: High

Hi [REDACTED]

Apologies for the last minute email, [REDACTED] had tried to send but has unfortunately suffered some outbox issues. Please make sure that the Cabinet Secretary has sight of this ahead of his statement if possible.

EU-UK Joint Committee statement on implementation of the Withdrawal Agreement – published 8 December 2020

The co-chairs of the EU-UK Joint Committee – European Commission Vice-President Maroš Šefčovič and the UK Chancellor of the Duchy of Lancaster, the Rt Hon Michael Gove – yesterday held a political meeting to address the outstanding issues related to the implementation of the Withdrawal Agreement. Ensuring that the Withdrawal Agreement, in particular the Protocol on Ireland and Northern Ireland, is fully operational at the end of the transition period, i.e. as of 1 January 2021, is essential. The Protocol protects the Belfast (Good Friday) Agreement in all its dimensions, maintaining peace, stability and prosperity on the island of Ireland. Following intensive and constructive work over the past weeks by the EU and the UK, the two co-chairs can now announce their agreement in principle on all issues, in particular with regard to the Protocol on Ireland and Northern Ireland.

An agreement in principle has been found in the following areas, amongst others: Border Control Posts/Entry Points specifically for checks on animals, plants and derived products, export declarations, the supply of medicines, the supply of chilled meats, and other food products to supermarkets, and a clarification on the application of State aid under the terms of the Protocol.

The parties have also reached an agreement in principle with respect to the decisions the Joint Committee has to take before 1 January 2021. In particular, this concerns the practical arrangements regarding the EU's presence in Northern

Ireland when UK authorities implement checks and controls under the Protocol, determining criteria for goods to be considered “not at risk” of entering the EU when moving from Great Britain to Northern Ireland, the exemption of agricultural and fish subsidies from State aid rules, the finalisation of the list of chairpersons of the arbitration panel for the dispute settlement mechanism so that the arbitration panel can start operating as of next year, as well as the correction of errors and omissions in Annex 2 of the Protocol.

In view of these mutually agreed solutions, the UK will withdraw clauses 44, 45 and 47 of the UK Internal Market Bill, and not introduce any similar provisions in the Taxation Bill.

1. Next steps

This agreement in principle and the resulting draft texts will now be subject to respective internal procedures in the EU and in the UK. Once this is done, a fifth regular meeting of the EU-UK Joint Committee will be convened to formally adopt them. This will take place in the coming days and before the end of the year.

Kind regards,
[REDACTED]

[REDACTED] | Negotiation Strategy and Delivery, EU Directorate | Tel: [REDACTED]
Mob [REDACTED]

From: [REDACTED].[REDACTED]@gov.scot **On Behalf Of** Cabinet Secretary for Constitution, Europe and External Affairs

To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; [REDACTED].[REDACTED]@gov.scot ; [REDACTED].[REDACTED]@gov.scot >

Cc: [REDACTED].[REDACTED]@gov.scot >; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Cameron DA (Donald) (Constitution and UKR) <Donald.Cameron@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Johnson M (Martin) <Martin.Johnson@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; [REDACTED].[REDACTED]@gov.scot; Rogers S (Shirley) <Shirley.Rogers@gov.scot>; Neilson M (Mike) <Mike.Neilson@gov.scot>; [REDACTED].[REDACTED]@gov.scot Barnes D (David) <David.Barnes@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; Johnston ATF (Alan) <Alan.Johnston@gov.scot>; [REDACTED].[REDACTED]@gov.scot >; [REDACTED].[REDACTED]@gov.scot; Johnson M (Martin) <Martin.Johnson@gov.scot>; Quinlan K (Kevin) <Kevin.Quinlan@gov.scot>; Aitken R (Reuben) <Reuben.Aitken@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot >; Mckenzie Smith J (Justin) <Justin.Mckenziemsmith@gov.scot>

Subject: RE: FOR ACTION BY 12 7 December: Ministerial Statement: Brexit Readiness 081220

Importance: High

Hi [REDACTED],

Thanks to all who contributed to pulling this together.

BW,

[REDACTED],

[REDACTED], | Private Secretary to Michael Russell, Cabinet Secretary for Constitution, Europe and External Affairs | [REDACTED], | [REDACTED],
cabsecCEAEA@gov.scot

#SCOTLAND|SNOW



From: [REDACTED].[REDACTED]@gov.scot >

Sent: 08 December 2020 13:20

To: Cabinet Secretary for Constitution, Europe and External Affairs <CabSecCEAEA@gov.scot>; [REDACTED].[REDACTED]@gov.scot ; [REDACTED].[REDACTED]@gov.scot >

Cc: [REDACTED].[REDACTED]@gov.scot >; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Minister for Europe and International Development <MinisterEID@gov.scot>; Cameron DA (Donald) (Constitution and UKR) <Donald.Cameron@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Johnson M (Martin) <Martin.Johnson@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; [REDACTED].[REDACTED]@gov.scot; Rogers S (Shirley) <Shirley.Rogers@gov.scot>; Neilson M (Mike) <Mike.Neilson@gov.scot>; [REDACTED].[REDACTED]@gov.scot Barnes D (David) <David.Barnes@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; Johnston ATF (Alan) <Alan.Johnston@gov.scot>; [REDACTED].[REDACTED]@gov.scot >; [REDACTED].[REDACTED]@gov.scot; Johnson M (Martin) <Martin.Johnson@gov.scot>; Quinlan K (Kevin) <Kevin.Quinlan@gov.scot>; Aitken R (Reuben) <Reuben.Aitken@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot >; Mckenzie Smith J (Justin) <Justin.Mckenzie-smith@gov.scot>

Subject: RE: FOR ACTION BY 12 7 December: Ministerial Statement: Brexit Readiness 081220

Importance: High

[REDACTED],

With thanks to colleagues for turning this round so quickly please see attached responses as requested, Pasted below for ease too.

Statement on EU Exit – Additional Briefing

On the £100m package of measures to support vulnerable people. Can we have a little more detail of what's involved, the criteria and how people apply etc please?

Key elements of the plan include:

- £22m for low income families including £16m to give the low income families of an estimated 156,000 children in receipt of free school meals a one-off £100 payment by Christmas
- £23.5m to help vulnerable children through additional support for residential and care homes, social work, and the Children's Hearing system
- £15m for the Communities and Third Sector Recovery Programme to support the work of local organisations
- £5.9m to promote digital inclusion for older people, support social isolation and loneliness and to promote equality
- £7m to help people who are struggling to pay fuel bills
- £5m to help those at risk of homelessness find a settled home

The investment is strengthening existing supports and ensuring that services are able to cope with demand during the winter months. The £100 payment announced will be made automatically by local authorities and will not require an application from eligible individuals.

Where it says we are building a national stockpile of around 60 critical care / supportive medicines. Is this just in Scotland?

This is a national, UK wide stockpile. However, we have asked NSS National Procurement to make sure our share is available in Scotland. As a result, NSS NP have already procured 75% of the medicines involved. The 25% outstanding are being procured via UK Government Procurement framework contracts, and we are currently pressing them to confirm delivery dates.

Is SGoRR currently operating on a 7 day a week basis? Or does that happen in a few weeks. The statement says that from yesterday it was activated on a 7 day a week basis, so Mr Russell just wanted to check that was indeed the case?

Yes SGoRR is now active seven days a week. At weekends it is on call and watchkeeper function only rather than having staff physically in the room. But SGoRR has stood up for EU exit on a seven day a week basis.

REDACTED

Organisational Readiness (COVID-19 Response)

Scottish Government

WFH – Please Call, e-mail or Skype

REDACTED

From: [REDACTED].[REDACTED]@gov.scot **On Behalf Of** Cabinet Secretary for Constitution, Europe and External Affairs

Sent: 08 December 2020 12:18

To: [REDACTED].[REDACTED]@gov.scot ; [REDACTED].[REDACTED]@gov.scot >

Cc: [REDACTED].[REDACTED]@gov.scot >; Crawford E (Ewan) <Ewan.Crawford@gov.scot>; Minister

for Europe and International Development <MinisterEID@gov.scot>; Cameron DA (Donald) (Constitution and UKR) <Donald.Cameron@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot Rogers D (David) (Constitution and Cabinet Director) <David.Rogers@gov.scot>; Johnson M (Martin) <Martin.Johnson@gov.scot>; Minister for Parliamentary Business and Veterans <MinisterPBV@gov.scot>; [REDACTED].[REDACTED]@gov.scot; Rogers S (Shirley) <Shirley.Rogers@gov.scot>; Neilson M (Mike) <Mike.Neilson@gov.scot>; [REDACTED].[REDACTED]@gov.scot Barnes D (David) <David.Barnes@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; Johnston ATF (Alan) <Alan.Johnston@gov.scot>; [REDACTED].[REDACTED]@gov.scot >; [REDACTED].[REDACTED]@gov.scot; Johnson M (Martin) <Martin.Johnson@gov.scot>; Quinlan K (Kevin) <Kevin.Quinlan@gov.scot>; Aitken R (Reuben) <Reuben.Aitken@gov.scot>; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot; [REDACTED].[REDACTED]@gov.scot >; Mckenzie Smith J (Justin) <Justin.MckenzieSmith@gov.scot>
Subject: RE: FOR ACTION BY 12 7 December: Ministerial Statement: Brexit Readiness 081220

Hi all,

Thanks to all who contributed. Please see attached statement which we've been through this morning.

A few questions:

On the £1m package of measures to support vulnerable people. Can we have a little more detail of what's involved, the criteria and how people apply etc please?

Where it says we are building a national stockpile of around 60 critical care / supportive medicines. Is this just in Scotland?

In SGoRR currently operating on a 7 day a week basis? Or does that happen in a few weeks. The statement says that from yesterday it was activated on a 7 day a week basis, so Mr Russell just wanted to check that was indeed the case?

Thanks,

[REDACTED]

[REDACTED] Private Secretary to Michael Russell, Cabinet Secretary for Constitution, Europe and External Affairs | [REDACTED] [REDACTED]

cabsecCEAEA@gov.scot

#SCOTLAND|SNOW



08 December 2020

Cabinet Secretary for the Constitution, Europe and External Affairs
Cabinet Secretary for Social Security and Older People

**WITHDRAWAL AGREEMENT JOINT COMMITTEE - DRAFT DECISION ON THE
TRIANGULATION OF SOCIAL SECURITY COORDINATION**

Purpose

1. To seek your agreement to endorse a decision of the UK and EU relating to Article 33 of the Withdrawal Agreement.

Priority

2. Routine

Issue

3. The Specialised Committee on Citizens' Rights oversees the implementation and application of the Citizens' Rights part of the Withdrawal Agreement. The committee drafts decisions and recommendations on citizens' rights and refers them to the Withdrawal Agreement Joint Committee.

4. The UK intend to agree a decision with the EU before the end of the transition period. The decision is on triangulation as set out in Article 33 of the Withdrawal Agreement. This Article provides for Title III provisions on social security coordination to apply to European Free Trade Association (EFTA) nationals who have interacted with the UK and EU member state social security systems before the end of the transition period. It ensures that there are no gaps in their social security cover in the future. For example, a Swiss citizen who has worked in the UK, Switzerland and Germany before the end of the transition period will have their pension contributions aggregated.

5. For the triangulation provisions to apply, the UK and the EU had to conclude corresponding agreements with the EEA EFTA States and separately with Switzerland. The UK has already agreed the necessary arrangements with the EFTA states for EU citizens. The EU has now completed their own agreements for UK nationals.

6. The EU will be publish a Council Decision in the coming weeks (Annex A) which allows a decision to be made at the Withdrawal Agreement Joint Committee.

The UK Government intend to lay the Explanatory Memorandum (Annex B) in the UK Parliament. The Secretariat of the Specialised Committee will then complete the final procedures to submit the draft decision and covering recommendation to the Withdrawal Agreement Joint Committee for adoption before the end of the transition period.

7. The Cabinet Secretary for the Constitution, Europe and External Affairs will remember that UK Government officials suggested in advance of the JMC(EN) meeting on 3 December that UK ministers might ask devolved administration ministers to endorse the decision then. However, they backed down when the devolved administrations said their ministers should not be 'bounced' in this way.

8. Officials welcome the opportunity to consult on this decision. It is not clear why the UK Government have decided to consult on this matter and not others where there is a Scottish interest. This is the only example where the UK Government have consulted with us on specific decisions and agreements arising from the Withdrawal Agreement.

9. Officials have examined these proposals and recommend that Ministers support them. They will move EFTA nationals from their distinct agreements with the UK and bring them within the social security coordination systems provided for in Article 33 of the Withdrawal Agreement.

Recommendation

10. You are invited to endorse the proposed Council Decision.

[REDACTED]
 Population and Migration Division
 Directorate for External Affairs
 [REDACTED]

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Public Finance and Migration			X		
Minister for Europe and International Development			X		

Annex A

EU draft decision on the triangulation of social security coordination

See attachment in covering email.

Draft explanatory memorandum on triangulation.

See attachment in covering email.

Cabinet Secretary for Rural Economy and Tourism
Minister for Rural Affairs and Natural Environment
Minister for Public Health, Sport and Wellbeing

EU EXIT – GB TO NORTHERN IRELAND TRADE – SPS PRODUCTS

Purpose

1. To advise you of the recent changes to the GB to Northern Ireland (NI) trade from 1st January and what this means for Scottish traders.

Priority

2. Routine

Background

3. Under the terms of the Northern Ireland Protocol (NIP), from 01 January 2021, GB will become a third country to Northern Ireland for sanitary and phytosanitary purposes (SPS).
4. This means that full SPS checks would be conducted at the border for all imports of plants and plant products, and products of animal origin (POAO) into NI.
5. This is unlike trade from NI to GB which under the NIP benefits from unfettered access to the GB market and therefore is not subject to any additional SPS

conditions following the end of the transition period. Any SPS measures which already existed between NI and GB such as plant passports, will continue.

6. Being a third country to NI also means that items prohibited for entry into the EU for SPS reasons such as seed potatoes and chilled meats, would not be permitted into NI.

Easements – supermarket trade

7. On 10 December, the UK Government published the Northern Ireland Protocol – Command Paper. This paper recognised that the importance of protecting the epidemiological area of the island of Ireland should not come at the cost of putting food supplies at risk and therefore easements were required.
8. Meeting the SPS demands of the protocol has been seen as challenging, particularly by the large supermarkets, with depots in GB which supply NI. These operate on a short time-scale, with orders placed and fulfilled within 24 hours. To put this into perspective, the production of phytosanitary certificates normally operate with a 7 day notice period. Whilst Scottish Government officials were working with the supermarket depots to find solutions to this problem, this was not the only certification required so major changes to their supply and distribution model would be required.
9. With concern for the supermarket shelves in NI becoming bare, an agreement was met whereby there would be a 3 month grace period in 2021 where agri-food products moving as part of the supermarket supply chain would be except from providing EHCs or phytosanitary certificates and the relevant inspections.
10. This clearly should be a good news for industry, however a number of issues remain unresolved, which has caused concern, including the scope, and labelling requirements.
11. To take advantage of the easements, there are a number of requirements

- i. the goods are packaged for end consumers and they bear a label reading “These products from the United Kingdom may not be marketed outside NI”
- ii. they are destined solely for sale to end consumers in supermarkets located in NI, and they cannot be sold to other operators of the food chain
- iii. they are accompanied by a simplified official certificate globally stating the products meet all the import requirements of EU legislation
- iv. they enter NI through a designated point of entry, where they are submitted to a systematic documentary check and to a risk-based identity check on a selection of items in the means of transport
- v. they are monitored through a channelling procedure applicable from the designated point of entry to the destination supermarket in NI

12. Our current understanding is that within scope of the easements are all plant and animal products from within the supermarket food chain. This includes cut flowers and plants so long as they are sold at a supermarket. Out of scope is food destined for hospitality or the public sector such as hospitals and prisons. Officials have had mixed messages regarding plants for the garden centre trade.

13. We also do not have clarity on some prohibited items such as potatoes both ware and seed. Messages so far have indicated that ware potatoes would be acceptable when destined for a supermarket unprocessed, but not when going to processors. There was confirmation at a public seminar that seed potatoes when sold in retail bags at supermarkets would not be permitted.

Movement Assistance Scheme (MAS)

14. On 09 December, you were sent a submission from Louise Pell-Walpole outlining MAS (submission attached in the email for information).

15. MAS operates in 3 parts;

- i. **MAS 1** – Focuses on the provision of advice and guidance on GB to NI trade. This has included a helpline and SASA is taking part in this by

answering queries from Scottish based inspectors for plants and plant products, calls will also go through to the Fish Health Inspectorate from this helpline where appropriate.

- ii. **MAS 2** – Waives the cost of inspection fees. Authorities will not charge the trader for these inspections and will instead make a claim to the Treasury (a further submission will be sent regarding phytosanitary fees where we require a Ministerial decision on the legal provisions). This will run for a maximum of 2 years, however there is only a public guarantee until the end of March 2021 to coincide with the end of the supermarket grace period. It is hoped that this gives industry enough time to streamline processes and have as little fees as possible when MAS 2 ends.
- iii. **MAS 3** – adopts a similar charging remuneration scheme as MAS 2 that covers transit to NI via the Republic of Ireland.

Errors and Emissions

16. Point (d) of Article 164 (5) of the Withdrawal Agreement enables the Joint Committee to adopt decisions to amend the Withdrawal Agreement to correct errors and to address omissions.
17. Various regulations and directives which were missing from the protocol as originally published including those regarding; emission standards for new cars and waste.
18. Three Directives had been omitted regarding small seed. Now that this seed is included, Scotland cannot trade in this seed with NI, thus missing out on a significant trade in grasses. This finalised a period of uncertainty for the trade, but we hope that this being included will help us secure equivalence to allow us to trade in small seed with both NI and the EU. The equivalence application is currently being considered by the Commission.

Recommendation

19. That you note the above, and as requested, if time permits, officials will organise a discussion on this with you.

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constitution Interest	General Awareness
Cabinet Secretary for the Constitution, Europe and External Affairs			X		

DG Economy
 Director of Sustainable Land Use and Rural Policy

 Communications Rural Economy & Environment
 [REDACTED]

EU Exit – Sheep movements to from GB Northern Ireland

Top Lines

- Requirements for trade under the Northern Ireland protocol are subject to ongoing negotiations.
- However, unless an alternative arrangement is agreed between the EU and UKG, movements of SPS goods, including livestock, will be required to meet EU health requirements and enter NI using the current model health certificate for exports to the EU.
- The EU has been clear that they expect full checks and controls to apply from the end of the transition period.
- The Scottish Government has requested that the UK Government negotiates an outcome that allows the continuation of trade without barriers.
- It looks increasingly unlikely that alternative arrangements will be negotiated in the short time remaining to the end of the transition period.
- The EU model health certificate for movement of sheep and goats is available to view on the UKG's export health certificate finder.
- One of the attestations includes a requirement to have a controlled risk of Scrapie. In GB this can be achieved by the SRUC scrapie monitoring scheme.
- As stands, there would be a three year monitoring requirement before exports were permitted.
- UKG is failing to communicate the requirements of the NI protocol to businesses with 4 weeks to go until the end of the transition period.
- Scottish Government issued its own communications this week to ensure businesses understand the consequences of the application of the NI Protocol.
- Figures from APHA show that ~ 6500 sheep moved from Scotland to NI for breeding in 2019.

Options for Scrapie controls to enable Scotland-NI sheep trade post 1 January 2020

- UK officials met on 1 December and considered various alternative options (numbered below). Following this meeting Defra spoke with their Minister and UK CVO; they then proposed that the UK CVO approach DG Sante with a request for a derogation from scrapie requirements (second option below).
- NI supported this proposal (presumably because it removes immediate pressure).
- SG officials replied that SG's position was for a complete derogation to enable trade to continue as is. Our reason being that it is unlikely that Blackface breeders would join the SMS scheme during the 3-4 years grace period as they produce commercial animals for this trade, rather than very high value stock.
- We have not had a reply from Defra, however the 3-4 year derogation may be the only viable option in the current circumstances, if the EU agreed to it. This option might be taken forward at a technical rather than political level and therefore avoid being caught in bigger negotiation issues. Although not providing a long term solution it would at least relieve immediate pressure provided that the other requirements of the Export Health Certificate could be met.

1. **Complete derogation from scrapie free requirement.** Industry preference. Stated SG preference. Needs EU approval but unlikely to be agreed due to the Northern Ireland Protocol.
2. **Derogation from scrapie free requirement for 3-4 years.** Defra proposal, agreed by NI. Allows time for farmers to join SMS and achieve scrapie free flock status. Industry unwilling to join SMS as no financial benefit for commercial sheep flocks. Needs EU approval.
3. **Derogation for ewes already purchased by NI farmers.** Allows contracts to be fulfilled and new markets found for future years. Short term. Needs EU approval.
4. **No derogation.** Purchased ewes based in Scotland would not be able to move to NI. New market need to be found for them and future ewes. Could be sold on UK market. Sheep prices high at the moment, possible limited financial impact on Scottish farmers. However impact may fall on 2021 lamb crop.
5. **Scrapie free veterinary declaration.** Non option as veterinarians unlikely to have sufficient information to certify scrapie free requirements.
6. **Scrapie free status via disease surveillance.** Non option as the UK does not carry out sufficient scrapie surveillance to demonstrate scrapie free flock level for export (currently UK samples 10k fallen stock and 10k abattoir animals).

Background

- The [Protocol on Ireland/ Northern Ireland](#) ('the Northern Ireland Protocol') seeks to avoid a hard border between the Republic of Ireland and Northern Ireland and to uphold the Good Friday Agreement of 10 April 1998.
- The Northern Ireland Protocol includes Northern Ireland in the EU's SPS zone and requires NI to align with EU SPS law for as long as the protocol is in place.
- This means that movements of SPS goods from GB to NI will have to meet the same SPS requirements as GB to EU movements, unless alternative arrangements are agreed by the UKG and EU Specialised Committee.
- SPS Exports will be required to enter through BCP, pre notify (TRACES NT) and provide a valid export health or phytosanitary certificate.
- This requirement will apply to all SPS goods – and not just livestock.
- For sheep and goats (breeding and production) - the EHC requires;
 - 1) 6 months residency (or since birth) within GB
 - 2) 40 days residency in exporting herd/flock (60 days for uncastrated rams)
 - 3) No contact with imported cloven hoofed animals in the 30 days prior to export
 - 4) Official system for notification of the following ovine diseases – Maedi- Visna, Pulmonary Adenomatosis, Paratuberculosis, Caseous Lymphadenitis
 - 5) Exports can only take place from holding or Export Assembly Centre, i.e movement through a market not allowed
 - 6) For breeding sheep - flocks must be members of Scrapie Monitored
 - 7) Flock Scheme or individual sheep be genotype ARR/ARR.

- Restrictions do not apply to NI to GB movements due to the commitment of unfettered access to the GB market for NI businesses, meaning that trade will continue in the same way that it does now.

The Scrapie Monitoring Scheme

- Scrapie Monitoring Scheme (SMS) was introduced to facilitate sheep and goat owners who wished to maintain a breeding flock or herd for intra-Community trade purposes. The SMS is administered on a GB basis by SRUC.
- Participation in the scheme is voluntary but is a pre-requisite for anyone wishing to maintain a breeding flock or herd for intra-Community trade purposes, including trade with the Northern Ireland after the transition period.
- It ensures that the sheep and goats to be exported fully meet the export health requirements in respect of scrapie.

Communications

- UKG has failed to communicate the requirements of the NI protocol which would apply from 1 January without agreed flexibilities.
- The Scottish Government will issue its own communications this week to ensure that the worst case scenario is understood by impacted businesses in Scotland.

Annex A

EU Exit – Sheep moves to Northern Ireland – Detailed Scrapie Requirements

The EU TSE Regulations (EC No 999/2001) have strict conditions for intra-Community trade that apply to live sheep and goats and their semen and embryos. There are equivalently strict measures in place for imports into the Union.

The key conditions for trade are summarised below:

1. Kept continuously since birth in a country where the following conditions are fulfilled:
 - classical scrapie is compulsorily notifiable;
 - an awareness, surveillance and monitoring system for classical scrapie is in place;
 - ovine and caprine animals affected with classical scrapie are killed and completely destroyed;
 - the feeding to ovine and caprine animals of meat-and-bone meal or greaves of ruminant origin has been banned and effectively enforced in the whole country for a period of at least the last seven years, and
2. **either** they come from a holding or holdings that have complied with the requirements laid down in point 1.3 of Section A of Chapter A of Annex VIII to Regulation (EC) No 999/2001 (**have a Controlled Risk of scrapie**); **or** they are ovine animals of the ARR/ARR prion protein genotype (**the most scrapie resistant genotype**) and they come from a holding where no official

movement restriction has been imposed due to BSE or classical scrapie during the last two years.

- Scotland meets the requirements for 1.
- For 2, to have a Controlled Risk of scrapie, farmers need to be members of the Scrapie Monitoring Scheme. It is unlikely that a non-pedigree sheep farmer will genotype all their sheep and even if they did, to all be the ARR/ARR prion protein genotype would again be highly unlikely.

Figures for all sheep exports from Scotland to NI for 2019

Row Labels	Number of animals
Breeding	6408
Fattening	67
Slaughter	169
Grand Total	6644

Data provided by APHA

From: [REDACTED]
SASA Plant Health
Scottish Forestry
30 November 2020

Minister for Rural Affairs and the Natural Environment

**Notification to Scottish Parliament of intention to consent to UK SI:
The Plant Health (Amendment) (EU Exit) Regulations 2020 (APH/21)**

Purpose

1. To seek your agreement to the proposed policy solutions and approaches to rectify legislative deficiencies as set out below, and;
2. To provide you with a draft letter, advice and summary for the Scottish Parliament, in relation to the EU Exit SI APH/21.

Timing

3. **Urgent.** If you are content with the attached then these should to be sent to the Rural Economy and Connectivity Committee. Officials have now seen a near final draft of this APH/21 which is expected to be laid as a draft affirmative on 9 December 2020. Unfortunately, UKG officials have not been able to confirm when this SI will be debated. Their intention was for the SI would be laid around 9 December then debated after the Scottish Parliament had considered the SG Notification before coming into force on IP completion day. Unfortunately, due to scheduling issues at Westminster the UKG has advised they are not currently able to meet this timetable and the SI may not be debated and come into force until January 2020. The UKG could however, at short notice advise that the SI will revert to the initial or a similar timetable so it is considered necessary that the SP considers the Notification as soon as possible. The UKG have undertaken, if possible, not to debate the SI until the SP has considered the notification.

Background

4. On 13 November, the plant health Policy Team provided you with a response to Victoria Prentis' letter of 26 October requesting provisional agreement to two of the UK Governments proposed approaches. You issued provisional consent in a letter to Ms. Prentis on 17 November. We now request that you issue the notification letter to the Scottish parliament for APH/21.

5. APH/21 makes provision for Qualifying Northern Ireland Goods (QNIGs) to move into and circulate within Great Britain under an EU Plant Passport (EUPP) providing certain requirements are met; ensuring that these goods have unfettered access to GB.

6. In this policy area, plant health officials have been noting Defra's development of the policy position with the devolved administrations on unfettered access of NI goods in GB. When SG officials could engage on discussion with Defra and the other

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devolved administrations good progress and a practical solution was found on the technical amendments to ensure that there are no changes to policy and minimum disruption regarding the movement into and circulation within GB of the plants, plant products and other objects which are QNIGs.

6. Please be aware that until the final version of APH21 is received by the Welsh Government, they cannot give consent (following Welsh Parliament Protocol). However, the Welsh Government believe the content is in line with policy that has been agreed by the plant health officials in the devolved administrations.

7. The draft notification and covering letter provide a summary of the legislation affected, the approach we are taking and the reasons why approval is required. We are yet to have sight of the final SI, and it is not available in the public domain at this stage. However, we have had sight of a draft and have held discussion with Defra about its terms.

8. It should be noted that these proposals are expected to be in force for an interim period from January 2021 to around July 2021 whilst policy develops around Qualifying Northern Ireland Goods. Therefore, separate legislation is expected to be brought forward at a later date in order to make further legislative arrangements in respect of imports from Northern Ireland to GB as part of a longer term policy. At this stage the policy development is in its infancy and we are not able to advise the Scottish Parliament of what it will contain. In the area of Plant Health QNIG, Scottish Government officials will continue to work with UK Government Officials to agree this policy

9. The need to prepare for the end of the transposition period is recognised by the Scottish Government. As such, the consent of the Scottish Parliament is needed to formally agree to the UK Government making provision in a devolved area by a UK SI. A protocol has been agreed between the Scottish Government and the Scottish Parliament, which requires you to send a Notification of Intention to Consent to the lead Committee (Rural Economy Committee - REC) and copied to the Delegated Powers and Law Reform Committee (DPLRC). For this SI, APH/21, we are asking the Scottish Parliament to consider the notification, but invite the Committee to note that the SG continues to engage with the UK Government on NI protocol.

Conclusion

11. You are invited to approve:

The draft notification to the Scottish Parliament (Annex A), in accordance with the protocol with UK Government, on:

- The Plant Health (Amendment) Regulations 2020 APH/21 (including short summary)
- the draft covering letter for Edward Mountain MSP, Convener of the Rural Economy and Connectivity Committee. (Annex B)

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[REDACTED]
30 November 2020

Copy List	For Action	For Comments	Portfolio Interest	Constituency Interest	General Awareness
Cabinet Secretary for the Constitution, Europe and External Affairs			x		
Cabinet Secretary for Rural Economy and Tourism					x
Minister for Parliamentary Business and Veterans			x		
Lord Advocate					x

DG Economy DG Constitution and External Affairs Solicitor to the Scottish Government Deputy Director, RPID [REDACTED]

AGENDA ITEM 2 – Joint Committee and Northern Ireland Protocol – Handling Note

Handling Information

Northern Ireland asked for these issues to be taken under the agenda item on future relationship negotiations, [REDACTED].

In the summer, more than six months after agreeing in principle, UKG eventually established an official-level UKG-DA working group to discuss implementation of the Protocol, which has now met three times including Monday of this week. But little information has been forthcoming and at official level we have stressed our dissatisfaction with the group. The Scottish Government has concerns over the implementation of the Protocol: its provisions affect many issues which will affect Scotland, such as cross border trade, health, transport and security.

There is as yet no equivalent UKG-DAs engagement forum on the work of the Withdrawal Agreement Joint Committee other than the Protocol; one of the key areas here is citizens' rights. We are pursuing this lack of engagement with UKG's Transition Task Force at official level.

The Joint Committee met on 19 October and the Commission reiterated its concerns about implementation of the protocol, including on border control posts, VAT and access for EU officials. Both sides agreed to "intensify" discussions.

Speaking Points

The Cabinet Secretary may wish to reiterate the importance of the Scottish Government having involvement in the relevant work of the Joint Committee and the specialised NI Protocol sub-committee, and early sight of and, in devolved areas, agreeing to implementation planning.

Key Points to make

- The SG has noted the concerns of the Commission on what it regards as inadequate implementation of the Protocol, and that it has begun legal action against the UK over provisions of the Internal Market Bill. We are concerned over the implications of this for Scotland's interests in cross-border issues.
- In all three of the areas where UKG proposes giving itself powers to override the Protocol – state aids, unfettered NI access to GB markets, and tariffs on goods moving from GB to NI – there is **no ambiguity about the requirements of the Protocol, and it is absolutely clear that UKG fully appreciated these implications at the time they were agreed.**
- We appreciate that we now have **a joint work-stream on the Northern Ireland Protocol**. The most recent of the three meetings of this group was on 26 October. [REDACTED]. **It is still unclear to us if the UKG intends to engage seriously with the DAs.**

Official Sensitive

- This is now urgent because of the **real-world decisions** that are needed. For example, in our view the UK government's approach to border checks makes it essential that there be a Border Control Point from 1 July for non-Northern Ireland goods potentially entering GB via Cairnryan. [REDACTED]
- The meeting of the Joint Committee on 19 October signalled a readiness by both sides to intensify discussion in this forum, which in reality has mainly discussed the Northern Ireland Protocol. **We ask for assurance that we are involved in the Joint Committee discussions, and in those of the specialised committees.**
- The UKG's proposal to legislate to undermine provisions of the Northern Ireland Protocol breaches international law, and has seriously damaged the relationship with EU partners and the UK's standing as a trade partner throughout the world.

(D) – NORTHERN IRELAND PROTOCOL

- The UKG's proposal to legislate to **undermine provisions of the Northern Ireland Protocol breaches international law**, and has seriously **damaged the relationship with EU partners and the UK's standing as a trade partner throughout the World**.
- The **UK Internal Market Bill** provisions do not provide "clarification" in relation to aspects of the NI Protocol, **they give ministers powers to unilaterally change the fundamental meaning and intent of the agreement**, particularly on state aids.
- In all three of the areas where UK Government proposes giving itself powers to override the Protocol – state aids, unfettered NI access to GB markets, and tariffs on goods moving from GB to NI – there is **no ambiguity about the requirements of NI Protocol, and it is absolutely clear that UK Government fully appreciated these implications at the time they were agreed**.
- All three devolved administrations have repeatedly made clear to the UKG that **we lack the detailed information on the trade arrangements** that will apply, without which neither we nor businesses can prepare properly. This is true **both for the import arrangements** for products entering Scotland from or via Northern Ireland, where we are responsible for import requirements in devolved policy areas; **and for the conditions exporters will have to meet** when sending products from Scotland to Northern Ireland.

ANNEX (VII) – NORTHERN IRELAND PROTOCOL BACKGROUND NOTE NIP

- UK Government told us in January that it would set up a joint work-stream on the Northern Ireland Protocol with the Devolved Administrations. The first meeting on this took place on 10 July. UK Government used these meetings to report information that it had already published about decisions it had made.
- The implementation of the Protocol is overseen by the EU-UK Joint Committee, and one of its Specialised Committees. The most recent meeting of the NI Specialised Committee was on 5 November, after which the Commission pointed to the need for progress over EU representation/monitoring capacity in Northern Ireland, and reiterated concerns over VAT and Border Control Posts.
- The SG has asked for opportunity to inform and influence positions taken in meetings of the Joint Committee and its specialised committees. As yet we have received no satisfactory response from the UKG on this.
- On 1 October, following the publication of the UKIM Bill, the Commission launched infringement proceedings against the UK in view of what it regards as a breach of the UK's treaty obligations under the Withdrawal Agreement. The UK had a month to respond to the Commission's letter in this regard. It did not in fact respond, but the Commission has so far not taken any further steps. Following the US election, commentators have speculated that a Biden-led US administration may increase pressure on the UKG to adhere strictly to the Protocol.
- Most commentators believe that any trade agreement reached by EU and UK negotiators would effectively render nugatory the provisions of the UKIM Bill which are concerning the EU, it is therefore likely that the infringement proceedings would not be pursued in the event of such an agreement. If they were to be pursued, there is a possibility that the EU Commission could eventually refer the matter to the CJEU.

NI-GB goods and Cairnryan

- The Northern Ireland Protocol guarantees unfettered access for Northern Irish goods to the GB market. For the period January-July 2021, the UK Government has laid a Statutory Instrument that defines Qualifying Northern Ireland Goods as goods which currently move freely from NI to GB. This includes EU goods that transit Northern Ireland and is consistent with the wider UK continuity approach of phasing border controls over the six-month period.
- The UK Government has yet to come forward with a definition of Qualifying Northern Ireland Goods for when the transitional arrangements end in June 2021. Nevertheless, there will be goods that do not meet this definition, such as goods which, as they do now, originate in the Republic of Ireland or wider

EU and transit through NI, without any form of processing, to arrive in GB at Cairnryan ports. Nearly 65,000 vehicles arrive at Cairnryan from Northern Ireland each year, carrying goods from Northern Ireland and the Republic of Ireland, often in mixed shipments. [Data on the exact split is unavailable as this is currently domestic trade, but anecdotal evidence suggests a small but significant proportion are ROI/EU goods].

- It is the Scottish Government's view that these goods should be subject to the same treatment as EU goods arriving at other ports. Scottish Ministers are responsible for animal and plant health as well as food safety and failing to enforce the relevant border checks would be a failure to discharge our responsibilities for public health. Therefore, we are doing the work now to build the necessary border control infrastructure at Cairnryan.
- Obviously, the Scottish Government's preference would have been for the UK to remain in a regulatory relationship with the EU such that none of this would be required, but this is the reality of the relationship after Brexit.
- Border checks and controls have both devolved and reserved elements, and in this case we need the UK Government to work with us to ensure that Cairnryan will be fully functional. We are also clear that the UK should cover the costs as this is a direct consequence of Brexit. [I/we] have just [this week] written to Michael Gove on both these points.

From: [REDACTED]
ENFOR: EQCE
13 November 2020

Cabinet Secretary for Environment, Climate Change and Land reform

THE INTERNATIONAL WASTE SHIPMENTS (AMENDMENT) (EU EXIT) REGULATIONS 2020

Purpose

1. **To update you** on the current position regarding the implications of the Northern Ireland Protocol (NIP) for waste shipments between GB and Northern Ireland (NI); and to **seek your approval** to commence stakeholder engagement, despite ongoing uncertainties.

Priority

2. **Urgent** – It is proposed (subject to Ministerial clearances) to commence stakeholder engagement as part of a coordinated UK wide strategy on Friday 20 November in order to aid preparations for the end of the transition period. Therefore, a reply by Tuesday 17th November would be helpful.

Background

3. Attached for ease is my submission to you from 9 October 2020 which outlines the background regarding the EU Exit waste shipments legislation. As you will be aware, an official response from Ms Gougeon was issued to Defra Minister Rebecca Pow MP on 20 October, indicating Scottish Ministers were not yet content to consent to the draft SI 'The International Waste Shipments (Amendment) (EU Exit) Regulations 2020'. The letter set out our concerns given the unresolved issues, and sought assurances regarding the SI and its implementation. As yet we have not received a response from Defra, but we understand this is forthcoming. The letter is attached for reference.
4. [REDACTED]
5. [REDACTED]

Timing

6. Following Cabinet Office advice, Defra has delayed the laying of the SI to allow for further discussions with the EU Commission, and at present has a provisional laying date of 20 January 2021. Although Defra is still keeping open the option of proceeding quickly and laying the SI this year, this is now considered unlikely.
7. This would give rise to a legislative "airgap" from 1 January until the regulations come into force, which could be as late as Spring 2021 to full

implementation. Existing EU Exit 'no deal' regulations made in 2019 will partially cover the legislative "airgap". In summary, these regulations set out the necessary amendments to existing waste shipment legislation to ensure it is operable after EU Exit. These amendments ensure the UK's rules governing shipments between the UK and the European Union are aligned with the European Union rules governing shipments between the EU and the UK and reflect that the EU will treat the UK as a third country following its withdrawal from the European Union.

8. **However, these 2019 'no deal' regulations do not fulfil the legal requirements of the Northern Ireland Protocol agreed as part of the EU-UK Withdrawal Agreement. Therefore Defra have confirmed that the UK Government would be breaching international obligations, as set out in the EU-UK Withdrawal Agreement.** Defra consider that for waste exporters and importers between GB and NI, this arrangement would effectively mean no change from the regulatory controls system currently in place for waste shipments during this "airgap" period. SGLD is currently considering the implications of this for Scottish Ministers or SEPA, and what options are available to Scottish Ministers. Further advice will be provided in due course.

Funding

9. [REDACTED]

Stakeholder engagement

10. [REDACTED]. Due to the uncertainties surrounding the SI and advice to Defra from the Cabinet Office, no active stakeholder engagement on the impacts of the NIP on waste shipments, or the nature of any likely future additional controls, has yet taken place. However, we have advised the Scottish waste sector forum that we are actively working with UK colleagues regarding future legislative arrangements following the end of the transition period, including consideration of the implications of implementing the NIP.
11. Given the potential impact that the additional controls on waste movements to and from NI could have on businesses/local authorities in Scotland, we consider that some initial engagement is now critical and discussions were initiated with Defra and other DAs, as well as regulators, to gauge their views.
12. Following these further discussions, there is a general consensus that engagement with stakeholders is now critical on a caveated basis to outline the likely need for controls, at least for GB to NI, where there is more certainty. Defra plans to seek clearance from their Secretary of State next week for initial stakeholder engagement.
13. [REDACTED]
14. There has been general agreement between the administrations at official level to undertake engagement as part of a coordinated UK wide approach, given the UK-wide approach to making the SI, but if the Secretary of State

objects, we would reserve the right to instigate our own engagement, subject to your approval.

Next steps

15. All DAs will be seeking Ministerial approval by early next week prior to commencement of any stakeholder engagement.
16. A letter to those stakeholders most directly affected by the potential new controls is being drafted by the Environment Agency and will be shared with Scottish Government and SEPA officials for comment and approval, prior to it being issued jointly by governments or regulators across the UK. It is planned to issue the letter sometime next week.
17. In addition, Defra plans to hold a webinar discussion on Friday 20 November with stakeholders affected from the waste industry such as trade associations etc to discuss readiness for the end of the transition period in relation to international waste shipments. This will include updates on the new border operating model and potential changes to international waste shipments in relation to plastic waste (as a result of changes to the Basel Convention that were agreed last year). However, Defra also propose to include an update on considerations regarding the implications of the NIP for waste shipments, given stakeholder interest in this. A number of key Scottish stakeholders have been invited to this session.
18. [REDACTED]
19. Following the UK wide event on 20 November, we would propose to engage with our waste sector forum and with Scottish waste businesses and local authorities likely to be affected by potential changes.

Commented [GG(1)]: No reason to withhold

Communications and handling issues

20. Subject to your approval on the approach set out above, we would propose to run any final messages past constitutional and communications colleagues, as well as SpAds.
21. We would also propose to provide a short note to the ECCLR Committee Convenor to sight them on the position as it stands regarding the SI and ongoing discussions with Defra.

Recommendation

22. You are asked to:
 - **Note** the current position relating to the EU Exit Waste shipments regulations, ongoing uncertainties and work in train to address these; and

- **Approve** Scottish Government participation in the coordinated UK wide stakeholder engagement, subject to our agreement of key messages regarding the implications of the NIP for waste shipments; and subsequent engagement with Scottish waste sector representatives

[REDACTED]
ENFOR: EQCE

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Minister for Rural Affairs and the Natural Environment			X		
Cabinet Secretary for the Rural Economy			X		
Cabinet Secretary for Constitution, Europe and External Affairs			X		
Lord Advocate					X

DG Economy
Solicitor to the Scottish Government
[REDACTED]

From: [REDACTED]
ARE: SASA
12/11/2020

Minister for Rural Affairs and The Natural Environment

The Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020

Purpose

1. To invite you to approve and sign the Ministerial Statements, the policy note and the above Regulations when they come forward for signature on 17 November 2020.

Priority

2. **Routine** – a signing slot for the Regulations and Ministerial Statements has been arranged for 17 November 2020.

Background

3. The Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (“the 2020 Regulations”) amends The Genetically Modified Organisms (EU Exit) (Scotland) (Amendment) Regulations 2019 and The Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 to ensure retained EU law relating to genetically modified organisms and pesticides operates effectively at the end of the implementation period. These provisions come into force on 31 December 2020.
4. You have written on 30 October to the UK Minister to comply with a requirement under paragraph 4(a), schedule 2 of EUWA that where EUWA powers are to come into force ahead of IP completion date, devolved administrations consult with the Secretary of State.

Effect of the SSI

5. Specifically this SSI will:
 - Amend references to “exit day” to “IP completion day”, in accordance with the European Union (Withdrawal Agreement) Act 2020, including in relation to transitional arrangements for labelling;
 - Amend references to “United Kingdom” to “Great Britain” as necessary in connection with implementation of the NI Protocol

Stakeholder Views

6. The Scottish Government has not consulted stakeholders as changes are technical in nature.

Impact Assessments

7. Impact Assessments have not been prepared for this instrument because the changes made are in reflection of the Northern Ireland Protocol and to take into account the Implementation Period. The impacts are expected to be minimal.

Risks

8. This SSI is considered low risk.

SSI draft

9. At this stage the SSI is in draft and may be subject to changes as a result of final checking.

Recommendations

10. It is recommended that you approve and sign the 2020 Regulations and accompanying statements when they come forward for signature on 17 November.

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Rural Economy			X		
Cabinet Secretary for Climate Change & the Environment			X		
Cabinet Secretary for Constitution, Europe and External Affairs			X		
Minister for Parliamentary Business & Veterans					X X
Minister for Public Health, Sport and Wellbeing					
Lord Advocate			x		
Solicitor General					

DG Economy
DG Constitution and External Affairs
Solicitor to the Scottish Government
[REDACTED]

**ANNEX A – The Genetically Modified Organisms and Pesticides (EU Exit)
(Scotland) (Amendment etc.) Regulations 2020**

See separate attachment

ANNEX B – draft Policy Note

See separate attachment

ANNEX C – Ministerial Statements

See separate attachment

Handling Note – Latest Political Developments
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AGENDA ITEM 3

First Minister and Mr Russell

Speaking Note – 3.1

CHRONOLOGY: 65 minutes for this item.

HANDLING

The item is scheduled to last 65 minutes. There will be one opportunity for comments with around **five minutes** for each delegation.

The Taoiseach will introduce the issue and invite remarks. The part of the speaking note provided for Mr Russell contains a number of different examples for Mr Russell to choose from on the day.

There is no Summit paper for this item.

Background

This discussion will follow on from those that have been held at the last seven British Irish Council summits, which discussed the impact of the result of the UK's EU Referendum. The Irish Government has specifically requested that this item be named 'latest political developments'.

The **UK Government** representatives will probably update on the EU-UK negotiations progress and discuss plans following the transition period. This may include showcasing their communications to businesses for readiness and refer to the letter issued by Mr Gove to the DA's on 03 November inviting officials to the newly formed SRO group focused on business readiness. At the most recent JMC(EN) Lindsay Appleby made clear that a deal may not be done until closer to the 15 November. As such it is likely that the outcome will remain unknown at the time of the BIC summit. The nature of the negotiations during this current phase also means that we are unlikely to be well sighted on the progress of talks and the chances of an agreement.

We expect **the Irish Government ministers** to reiterate their views on the UK Internal Market Bill and the Good Friday Agreement. They may also raise the US Election, as Joe Biden, who may have been elected US President by then, has warned that he will not sign any US/UK trade deal if he believes it runs counter to the Belfast Agreement.

Welsh ministers will probably raise their issues on fishing rights and state aid, highlighting the damage this would cause to businesses and jobs.

It is expected that representatives from **Jersey and Guernsey** may update on the UK Government attempting to take control of territorial waters and the Permissive Extent Clause would be included in the UK Fisheries Bill, which they will not recommend or support. **Isle of Man** representatives may touch on preparations for EU exit, its role on future trade discussions and future relationships in the context of the British Isles "family".

In relation to the **Northern Ireland Protocol**, official level meetings are taking place but the quality thus far has been very poor, with little new information being made available to us. The UK has proposed a definition of **NI qualifying goods** to include "any goods in circulation or processed in NI for the first 6 months of 2021" – it is unclear what will happen after this initial 6 month period. Discussions continue regarding **Cairnryan Ports**.

AGENDA ITEM 4

BORDERS AND NORTHERN IRELAND PROTOCOL (20 MIN)

Purpose: To discuss future border arrangements and requirements

- *DAERA paper on a points of entry plan*
- *Defra paper on GB-NI movement*

LEAD MINISTER – MR EWING

CHAIR REMARKS – MS GOUGEON

- **The purpose of this item is to discuss further border arrangements and requirements**
- **Defra and DAERA have both provided us with papers covering GB-NI movement of goods and delivery of a points of entry plan for NI**
- **The DAERA paper on points of entry, asks us to note;**
 - **Arrangements necessary to deliver documentary and identity checks for SPS goods entering NI**
 - **The substantive plans for facilities which will be necessary to undertake physical checks; and**
 - **Contingency plans for covering any gap in arrangements between January 1 2021 and the implementation of full delivery arrangements**
- **The Defra paper provides an update on GB-NI movement for which responsibility rests with Defra, namely pre-movement certification processes and systems and proposed flexibilities for good retail trade**

- **The paper asks us to note;**
 - **arrangements and systems in place in order to enable traders to obtain required certification for GB-NI**
 - **and an update on proposed food retail trade flexibilities**
- **Given these have been presented as a 1-2 so to speak, I suggest we tackle them together and will ask Edwin to start followed by George**

Suggest you then invite Ms Griffiths and Mr Ewing to comment before turning to Mr Poots and Defra to respond as required.

LEAD MINISTER – MR EWING

SG OBJECTIVES AND PRIORITIES FOR THIS ITEM / SUB ITEMS

Issue:

- DAERA will table a paper summarising plans for points of entry in Northern Ireland from 1 January
- Ministers are being asked to note; the arrangements necessary to delivery documentary and ID checks; The substantive plans for infrastructure required for physical checks; and, the contingency plans to cover gaps in arrangements from 1 January
- Defra will table a paper on movement of agri-foods from GB to NI. This paper focusses on the systems required to support certification and potential flexibilities for GB-NI retail trade

SG Objective:

- Understand how the plans for Points of Entry facilities in NI are progressing and what the current risks are to trade between Scotland and NI and establish what would be expected of SG or Scottish LAs at Cairnryan
- Emphasise the need for Defra and DAERA to share with WG and SG – in writing – the current position regarding minimisation of import and export processes from goods moving between GB and NI
- Seek further details on the intensified talks at the Joint Committee, especially in relation to minimisation mechanisms
- Re-emphasize concerns about economic viability of trade to NI at the end of the transition period

Positon of UKG/other DAs

- **UKG** – will support NIs position given that they have been working closely with NI to deliver the NI protocol
- **WG** – we expect them to support our line of questioning and concerns regarding delays and ID checks
- The paper avoids commenting on whether these plans are adequate to the EU

TOP LINES

- I want to firstly acknowledge the difficult position which NI finds itself in and the speed at which plans for checks on SPS goods has been prepared for. An almost impossible task and situation
- That is also the situation facing many of our businesses that send goods to the NI market (a concern clearly set out in the Food & Drink sector's recent letter to Mr Eustice) – neither paper today talks about trader readiness
- The NI papers avoids making comment on how acceptable plans are to the EU – **what does the Commission make of NI arrangements?**
- Retained law will mean that trade of goods such as fresh meat preparations (eg. mince) is prohibited, affecting imports and exports to the EU and NI. The papers do not address barriers to trade. **How are complete barriers to trade being considered?**
- Delays at Belfast are not acceptable. With 45,397 movements of SPS goods between Scotland and Belfast, delays at point of entry are likely to have significant impacts in Scotland
- The NI paper highlights that documentary checks may need to take place at Cairnryan, this has not yet been discussed with Scottish Ministers
- Also important to note that we continue to have significant concerns about available and suitably-qualified capacity in Scotland to sign EHCs for trade to NI

(1) Questions on NI's paper

(a) Arrangements for documentary and identity checks

- The paper states that certificates will need to be entered into an appropriate IT system which links with the EUs system. There is no IT system in Scotland for phytosanitary checks. There is an agreement for plants and their products to be added into the export health certification online system, but no date yet

Q: Can you give a guarantee that businesses looking to move plants from GB to NI will not be affected by the lack of a working IT system for plant certificates?

- The paper identifies the significant requirement for certification for GB goods. I have raised concerns regarding certification at every IMG meeting, and most recently wrote to Mr Eustice to outline my concerns on the impact on businesses which will no longer be economically viable as a result of new costs. My officials continue to be contacted by businesses to ask if the UKG is planning to offer financial help with these additional costs

Q: When organisations, such as Seafood Scotland, next approach me to ask about UKG support for these additional costs – for trade to NI or to the EU, what answer can I give them?

- The paper states that plans are being formulated by DAERA for staff to conduct visual ID checks and that staff may be located in Cairnryan. This is the first we have been told of these plans. As you will be aware, there is no BCP infrastructure at the two ports associated with the Cairnryan route

Q: Any plans would require full co-operation with SG, the ports and the local authorities. When was DAERA planning in engaging with SG on these proposals?

Q: What does checks by DAERA authorised staff mean – is the suggestion that these staff will not be directly employed by DAERA? If not, who? Who will meet the costs?

(b) Facilities for Physical Checks

- Infrastructure for physical checks will not be ready for 1 January and there will be delays in Belfast. Full infrastructure will not be completed until June 2021 at the earliest
- Contingency plans are being put in place with contractors and are yet to be finalised – it is vital that these are finalised quickly and shared with Scottish Ministers.

(2) Questions UKG's paper on minimisation of checks for supermarkets

- I recently wrote to George Eustice to outline my significant concerns for SMEs providing food into the NI market and the competitiveness of their business should help be given to big retailers who already have a large market share. Many of our small food and drink businesses may cease to exist.

Q: You will have seen the letter from the Food & Drink sector suggesting that in the absence of urgent clarity on arrangements some may cease trade in NI

altogether. With that in mind, we need to know what minimisation of checks for supermarkets have been agreed with the EU and are now being implemented?

Q: How realistic an outcome is the minimisation of checks for supermarkets from 1 January?

From: [REDACTED]
SASA Plant Health
Scottish Forestry
30 November 2020

Minister for Rural Affairs and the Natural Environment

**Notification to Scottish Parliament of intention to consent to UK SI:
The Plant Health (Amendment) (EU Exit) Regulations 2020 (APH/21)**

Purpose

1. To seek your agreement to the proposed policy solutions and approaches to rectify legislative deficiencies as set out below, and;
2. To provide you with a draft letter, advice and summary for the Scottish Parliament, in relation to the EU Exit SI APH/21.

Timing

3. **Urgent.** If you are content with the attached then these should to be sent to the Rural Economy and Connectivity Committee. Officials have now seen a near final draft of this APH/21 which is expected to be laid as a draft affirmative on 9 December 2020. Unfortunately, UKG officials have not been able to confirm when this SI will be debated. Their intention was for the SI would be laid around 9 December then debated after the Scottish Parliament had considered the SG Notification before coming into force on IP completion day. Unfortunately, due to scheduling issues at Westminster the UKG has advised they are not currently able to meet this timetable and the SI may not be debated and come into force until January 2020. The UKG could however, at short notice advise that the SI will revert to the initial or a similar timetable so it is considered necessary that the SP considers the Notification as soon as possible. The UKG have undertaken, if possible, not to debate the SI until the SP has considered the notification.

Background

4. On 13 November, the plant health Policy Team provided you with a response to Victoria Prentis' letter of 26 October requesting provisional agreement to two of the UK Governments proposed approaches. You issued provisional consent in a letter to Ms. Prentis on 17 November. We now request that you issue the notification letter to the Scottish parliament for APH/21.

5. APH/21 makes provision for Qualifying Northern Ireland Goods (QNIGs) to move into and circulate within Great Britain under an EU Plant Passport (EUPP) providing certain requirements are met; ensuring that these goods have unfettered access to GB.

6. In this policy area, plant health officials have been noting Defra's development of the policy position with the devolved administrations on unfettered access of NI goods in GB. When SG officials could engage on discussion with Defra and the other

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devolved administrations good progress and a practical solution was found on the technical amendments to ensure that there are no changes to policy and minimum disruption regarding the movement into and circulation within GB of the plants, plant products and other objects which are QNIGs.

6. Please be aware that until the final version of APH21 is received by the Welsh Government, they cannot give consent (following Welsh Parliament Protocol). However, the Welsh Government believe the content is in line with policy that has been agreed by the plant health officials in the devolved administrations.

7. The draft notification and covering letter provide a summary of the legislation affected, the approach we are taking and the reasons why approval is required. We are yet to have sight of the final SI, and it is not available in the public domain at this stage. However, we have had sight of a draft and have held discussion with Defra about its terms.

8. It should be noted that these proposals are expected to be in force for an interim period from January 2021 to around July 2021 whilst policy develops around Qualifying Northern Ireland Goods. Therefore, separate legislation is expected to be brought forward at a later date in order to make further legislative arrangements in respect of imports from Northern Ireland to GB as part of a longer term policy. At this stage the policy development is in its infancy and we are not able to advise the Scottish Parliament of what it will contain. In the area of Plant Health QNIG, Scottish Government officials will continue to work with UK Government Officials to agree this policy

9. The need to prepare for the end of the transposition period is recognised by the Scottish Government. As such, the consent of the Scottish Parliament is needed to formally agree to the UK Government making provision in a devolved area by a UK SI. A protocol has been agreed between the Scottish Government and the Scottish Parliament, which requires you to send a Notification of Intention to Consent to the lead Committee (Rural Economy Committee - REC) and copied to the Delegated Powers and Law Reform Committee (DPLRC). For this SI, APH/21, we are asking the Scottish Parliament to consider the notification, but invite the Committee to note that the SG continues to engage with the UK Government on NI protocol.

Conclusion

11. You are invited to approve:

The draft notification to the Scottish Parliament (Annex A), in accordance with the protocol with UK Government, on:

- The Plant Health (Amendment) Regulations 2020 APH/21 (including short summary)
- the draft covering letter for Edward Mountain MSP, Convener of the Rural Economy and Connectivity Committee. (Annex B)

OFFICIAL - SENSITIVE

[REDACTED]
30 November 2020

Copy List	For Action	For Comments	Portfolio Interest	Constituency Interest	General Awareness
Cabinet Secretary for the Constitution, Europe and External Affairs			x		
Cabinet Secretary for Rural Economy and Tourism					x
Minister for Parliamentary Business and Veterans			x		
Lord Advocate					x

DG Economy DG Constitution and External Affairs Solicitor to the Scottish Government Deputy Director, RPID [REDACTED]

POLICY NOTE

The Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020

SSI 2020/XXX

The Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (“the Regulations”) are made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and paragraphs 1(1) and (3) and 11M(1) of schedule 2 of the European Union (Withdrawal) Act 2018. The Regulations are subject to negative procedure.

In accordance with paragraph 4(a) of schedule 2 of the European Union (Withdrawal) Act 2018, the Secretary of State has been consulted prior to the making of these Regulations.

The purpose of the Regulations

The Regulations are required to address failures of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the UK from the EU. The Regulations make a number of changes to existing Scottish legislation which has been amended already by EU Exit SSIs.

In addition, the Regulations transpose provisions in Council Directive 2006/88/EC of 24 October 2006 on animal health requirements for aquaculture animals and products thereof, and on the prevention and control of certain diseases in aquatic animals, so that those provisions remain operable in domestic law after IP completion day.

The Regulations will ensure that the relevant domestic legislation will continue to operate after the transition period when relevant Directives will not form part of retained EU law.

Policy Objectives

Aquaculture

With regards to aquatic animal health and alien and locally absent species in aquaculture, the Scottish Government will retain current standards set out in EU legislation and derived domestic legislation which protects aquatic animal health, relates to prevention and control of disease, protection of native species, habitats and ecosystems from harmful introduction of alien and locally absent species, and facilitates trade in aquatic animals and their products with the EU and other trading partners.

Previous EU exit legislation, namely the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 (“the 2019 Aquaculture Regulations”) made a number of technical corrections to Scottish legislation to ensure

Scotland's aquatic health framework would remain operable upon exit day. Those amendments would take effect from IP completion day. However, further amendment is required to the legislation that would be amended by the 2019 Aquaculture Regulations in order to ensure operability after IP completion day and to reflect the Withdrawal Agreement. Rather than amend the 2019 Aquaculture Regulations, these Regulations revoke the 2019 Aquaculture Regulations and amend the legislation that those Regulations would have otherwise amended.

No policy changes are made as a result of the amendments to aquaculture legislation.

Fisheries

With regards to fisheries, the Regulations make amendments to the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 ("the 2019 Fisheries Regulations"). The amendments are required for two purposes. Firstly, the Regulations remove provisions in the 2019 Fisheries Regulations that are no longer required as a result of amendments to be made to the underlying SSIs by other legislation. Secondly, the Regulations make amendments to reflect the terms of the Withdrawal Agreement between the UK and the EU ("the Withdrawal Agreement") with regards to the European Maritime and Fisheries Fund.

No policy changes are made as a result of the amendments to fisheries legislation.

Explanation of the law being amended by the Regulations

Aquaculture

(a) Aquatic animal health

The Aquatic Animal Health Regulations (Scotland) 2009 ("the 2009 Regulations") implement the requirements of Directive 2006/88/EC in Scotland. Directive 2006/88/EC on animal health requirements for aquaculture animals and products, and on the prevention and control of certain diseases in aquatic animals, establishes an EU-wide biosecurity framework for fish and shellfish diseases and lays down animal health requirements for movements of fish and shellfish and their products into and within the EU. The requirements of the Directive are wide ranging and include those relating to bringing aquaculture animals and their products to market including the authorisation of aquaculture production businesses and processing establishments and recording obligations of aquaculture production businesses. Requirements also include disease control including animal health surveillance schemes, disease prevention during transportation, animal health certification, conditions for the introduction of aquaculture animals into disease-free areas and importation into the EU from a third country, measures for investigating and controlling diseases, surveillance and eradication programmes; contingency planning and the establishment and maintenance of disease-free status of Member States and zones and compartments within Member States.

The 2009 Regulations provide a framework for the authorisation and registration of aquaculture businesses; list health, certification and transport requirements for aquaculture animals and products to allow trade and prevent disease; list obligations regarding notification and control of disease outbreaks; list requirements for a register of declarations of disease-freedom; and include a list of reportable diseases subject to national measures.

Directive 2006/88/EC is also implemented through a number of Commission Decisions, which are directly applicable in the UK.

(b) Alien and locally absent species in aquaculture

Council Regulation (EC) No. 708/2007 (“Regulation 708/2007”) relates to the use of alien and locally absent species in aquaculture and establishes an EU-wide framework governing aquaculture practices in relation to these species to assess and minimise the possible impact of these and associated species on aquatic habitats to contribute to sustainable development of the sector.

The Alien and Locally Absent Species in Aquaculture Regulations (Scotland) 2015 implement the permitting system, monitoring requirements, inspection and enforcement powers, and penalties required to implement Regulation 708/2007.

Fisheries

The 2019 Fisheries Regulations made amendments to secondary legislation to remedy deficiencies arising from EU Exit, which will come into force on IP completion day. These Regulations amend provisions in the 2019 Fisheries Regulations. The provisions of the 2019 Fisheries Regulations amended by these Regulations amend, the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011, the Sharks, Skates and Rays (Prohibition of Fishing Trans-shipment and Landing) (Scotland) Order 2012, and the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015.

Reasons for and effect of the proposed change or changes on retained EU law

Aquaculture

The Regulations make two sets of amendments to the 2009 Regulations, one of which comes into force immediately before IP completion day, with the other set coming into force on IP completion day.

The first set of amendments, in Part 2 of the Regulations, insert a new Part 3A into the 2009 Regulations concerning quarantine. These transpose Articles 17 and 20 of Directive 2006/88/EC. Articles 17 and 20 are currently given effect in Scotland through Commission Decision 2008/946/EC, which is directly applicable, so those Articles were not transposed in domestic legislation. Commission Decision 2008/946/EC is being amended by a separate statutory instrument made by the UK Government with permission from Scottish Ministers and the Scottish Parliament: the Animals, Aquatic Animal Health, Invasive Alien Species, Plant Propagating Material and Seeds (Amendment) (EU Exit) Regulations 2020 (“the 2020 Regulations”). In order to make the Decision operable after IP completion day, references in it to Directive 2006/88/EC will be amended by provision in the 2020 Regulations to references to legislation that would be applicable in Scotland as retained EU law; in this case, the 2009 Regulations. The amendments in Part 2 of these Regulations are therefore necessary so that provision exists in domestic legislation which can then be amended using powers under the European Union (Withdrawal) Act 2018 to make it operable after IP completion day. Certain provisions in Part 3 of these Regulations amend the regulations inserted by Part 2 so that they are operable after IP completion day.

Part 2 of the Regulations also corrects two minor typographical errors and removes a redundant definition in the 2009 Regulations and clarifies that the Scottish Ministers are the competent authority not only for the purposes of the 2009 Regulations but also for the purposes of directly applicable EU legislation in the field of aquatic animal health.

The amendments to the 2009 Regulations in Part 3 of these Regulations concern deficiencies in cross-references to Directive 2006/88/EC which need to be corrected so that they are operable after the transition period ends because Directive 2006/88/EC will not form part of retained EU law. References to the list of diseases in Directive 2006/88/EC (diseases which are at present subject to EU-wide controls) are replaced by references to a new Annex 1A of Commission Regulation (EC) No 1251/2008, which is being inserted into that Regulation by the 2020 Regulations. Powers of EU officials to accompany inspectors have been removed. Provision is also made for cross-references in the 2009 Regulations to Directive 2006/88/EC to be read in accordance with the appropriate modification (for example, as if references to Member States were references to the Scottish Ministers). The amendments in Part 3 also give effect to the Protocol to the Withdrawal Agreement on Northern Ireland.

Part 5 of the Regulations revokes the Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 (“the 2019 Aquaculture Regulations”). As a result of the Withdrawal Agreement, particularly the Protocol on Northern Ireland, further amendments were required to be made to both the 2009 Regulations and the Alien and Locally Absent Species in Aquaculture Regulations (Scotland) 2015 (“the 2015 Regulations”) to give effect to that Agreement. The extent of those amendments meant that the most straightforward approach was to revoke the 2019 Aquaculture Regulations and make the necessary amendments in these Regulations.

Fisheries

The provisions of the 2019 Fisheries Regulations amended by these Regulations amend, *inter alia* the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 (“the Licences and Notices Regulations”), the Sharks, Skates and Rays (Prohibition of Fishing Trans-Shipments and Landing) (Scotland) Order 2012 (“the Sharks Regulations”), and the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015 (“the EMFF Regulations”).

The UK Fisheries Bill, which has completed its passage through the UK Parliament and is expected to receive Royal Assent before IP completion day, makes various amendments to the Licences and Notices Regulations and the Sharks Regulations. Those amendments render the amendments made by the 2019 Fisheries Regulations to the Licences and Notices Regulations and the Sharks Regulations unnecessary. Consequently, these Regulations omit those amendments from the 2019 Fisheries Regulations.

The amendments made by the 2019 Regulations to the EMFF Regulations are no longer necessary as a result of the Withdrawal Agreement. These Regulations omit those amendments and make one amendment to the EMFF Regulations, to ensure that the references to EU legislation in the EMFF Regulations continue to be operable after IP completion day, even if some of all of that legislation is amended or revoked at EU level (as is anticipated). At present, the EMFF Regulations contain references to EU legislation “as amended from time to time” at EU level, so these Regulations amend the EMFF Regulations so that they refer to the relevant EU legislation as it applies in EU law at IP completion day.

Statements required by the European Union (Withdrawal) Act 2018 and Additional Information required by the Protocol between the Scottish Government and the Scottish Parliament

The Regulations are made in exercise of powers in the European Union (Withdrawal) Act 2018 both to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of schedule 2 and to implement the Northern Ireland Protocol (paragraph 11M(1) of schedule 2. The Regulations also exercise the powers in section 2(2) of the European Communities Act 1972 (“the 1972 Act”).

Regulation 2 is made in exercise of the powers under the 1972 Act.

Regulations 3, 4, 5 and 6 are made in exercise of the deficiencies powers, except for regulations 4(2) and 4(4), which are made using the power to implement the Northern Ireland Protocol.

The Statements set out below relate to the exercise of the deficiencies powers. The Additional Information set out below relates, except where indicated, to the deficiencies powers and the power to implement the Northern Ireland Protocol.

Statements required by European Union (Withdrawal) Act 2018

Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Cabinet Secretary for the Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement: “The Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 do no more than is appropriate. This is the case because amendments are not being made to introduce policy change.”

Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action

The Cabinet Secretary for the Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement: “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. We must ensure that the Aquatic Animal Health (Scotland) Regulations 2009 the Alien and Locally Absent Species in Aquaculture Regulations (Scotland) 2015 continue to operate after the transition period ends, in order to protect Scotland’s fish health status and Scotland’s aquaculture sector which is vital to our economy. We must further ensure that sea fisheries legislation continues to be operable to protect Scotland’s fisheries sector. Amendments are technical in nature to ensure legislative operability only.”

Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation

The Cabinet Secretary for the Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement: “In my view the Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 does not amend, repeal or revoke a provision or

provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

Statement that Scottish Ministers have, in preparing the Regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Cabinet Secretary for the Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement: “In my view the Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the Regulations, had due regard to the guidance principles on the environment and animal welfare

The Cabinet Secretary for the Rural Economy and Tourism, Mr Fergus Ewing, has made the following statement: “The Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 have had due regard to the need to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

This heading is not applicable.

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Low – The amendments made by this instrument are minor and technical and for the purpose of ensuring continuity of law and operability following the implementation period. There are no significant policy decisions for Ministers to make.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

In relation to the exercise of the Northern Irish Protocol powers, this instrument is subject to negative procedure under paragraph 8F(6) Schedule 7 of the European Union (Withdrawal) Act 2018.

In relation to the exercise of the deficiencies powers (paragraphs 1(1) and (3) of Part 1 of schedule 2 of the European Union (Withdrawal) Act 2018) where there is a choice of procedure in terms of paragraph 1(7) of schedule 7 of that Act, negative procedure is considered appropriate as the instrument contains minor and technical amendments and does no more than is necessary to ensure continuity of law and operability at the end of the implementation period.

Further information

Consultation

This instrument does not amount to change in policy. There has been no formal public consultation regarding this instrument. Changes are essential to ensure legislative operability from IP completion day.

Impact Assessments

Impact Assessments have not been prepared for this instrument because it relates to maintenance of existing regulatory standards and will not introduce any new policy. The amendments do not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

Financial Effects

The Cabinet Secretary for Rural Economy and Tourism, Mr Fergus Ewing, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Marine Scotland Directorate
19 November 2020

The Plant Health (EU Exit) (Scotland) (Amendment, etc) Regulations 2020

ADDITIONAL LINES

Qualified Northern Ireland Goods (QNIGs)

- In respect of Plant Health, legislation which will extend to Scotland is due to be brought forward at Westminster in December to make provision for Qualifying Northern Ireland Goods (QNIGs).
- A notification is being drafted by the SG and will be sent to the Scottish Parliament in early course. This notification will explain in more detail the policy but in essence, the legislation will enable in the area of plant health, goods considered to be QNIGs to enter and circulate in GB under an EU Plant Passport.
- QNIGs are defined in a UK SI currently laid in draft at Westminster. This SI extends to Scotland and is titled “the Definition of Northern Ireland Qualifying Goods (EU Exit) Regulations 2020”. This SI defines QNIG as goods which are processed in NI or are present in NI and not subject to any customs supervision, restriction or control which does not arise from the goods being taken out of the territory of NI or the EU.
- The power to make this SI rests with the Secretary of State alone, not the Scottish Ministers, under section 8C(6) of the European Union (Withdrawal) Act 2018. This SI was not notified to the Scottish Parliament.

Template for briefing for Defra/DA ministerial meetings

The Northern Ireland Protocol – Nephrops Product Journey Work LEAD MINISTER – Mr Ewing

SG OBJECTIVES AND PRIORITIES FOR THIS ITEM / SUB ITEMS

Issue:

The completion of the cross administration Nephrops Product Journey Work

SG Objective:

- Showcase the outcomes of the project which highlights the areas of continuing uncertainty and the risks to Scottish agencies and stakeholder readiness.
- Demonstrate that genuine collaboration results in a joint understanding of the issues.
- Request that continued joint working occurs on Northern Ireland Protocol public communications.

Positon of UKG/other DAs

- *Northern Ireland are stating that Northern Irish BCPs will be ready for the 1st of January. They may well draw upon conclusions from the recent EU Audit.*
- *All administrations are expected to agree that this has been a collaborative, positive piece of work which has explored the practical implications of the Northern Ireland Protocol.*
- *UKG expected to be defensive regarding the continuing areas of uncertainty and redirect questions regarding how prepared Scotland are to facilitate goods moving to NI.*

LINES

- *I am pleased to see the completion of this work and to hear that collaborative working has occurred and I would like to thank those who took part.*
- *Working together allows a jointly agreed meaningful assessment of the challenges. The report shows the extent to which the extra administrative burden and continuing uncertainty will impact Scottish business and the potential disruption to established trade routes.*
- *How can Scottish business prepare if they do not know all the processes they are preparing for?*
- *When will negotiations with the Joint Committee be concluded to offer this clarity?*
- *I note that the paper raises some practical issues around exporting Nephrops to Northern Ireland from Scotland. It is important that this work has brought to light practical challenges with implementing the Northern Ireland Protocol now, so they can be addressed and overall readiness improved.*
- *We have been raising issues around providing Export Health Certification for years and were told that the UKG were undertaking minimisation work to reduce the need for EHC's for products such as prawns going to Northern Ireland. Could the UKG explain what has been secured to alleviate this pressure?*
- *In line with clear and unambiguous commitments made by the UK Government during the referendum and thereafter, we expect the UK Government to meet, in full, any costs arising from EU Exit to ensure that there is no detriment to the Scottish budget.*

Template for briefing for Defra/DA ministerial meetings

- *That should include, for example, any costs arising from new non-tariff barriers to trade during, or at the end of the transition period; including any additional certifying officers for export health certificates for fish exports.*
- *Can we agree the next steps presented in the paper including using this work as a basis for joint public communications on Implementing the Northern Ireland Protocol?*

If Challenged on how the SG will address some of the practical issues raised in the paper

On EHC Provision.

The SG flagged to the UKG many months ago the issue of EHC demand and lack of suitably-qualified capacity to sign EHCs. Together with Food Standards Scotland, we have been working to mitigate the worst impacts on Scotland's seafood sector, including advanced plans to provide a signing service at three logistics hubs in central Scotland. These hubs will relieve some pressure from the worst-affected Councils (who would otherwise be expected to sign them), but meeting remaining demand in Councils remains an acute problem. We are working with Councils to identify remaining pinch-points. A funding commitment from the UKG would be welcome, but need to remember there is a limited and diminishing pool of suitably-trained resource to draw on for additional capacity.

Adding to the burden on businesses and Councils for exports to the EU is the requirement for EHCs for trade in seafood/POAO with Northern Ireland. We are working to establish how helpful the hubs are likely to be in that regard, but the overall challenge remains. Can the UKG explain its progress on minimising the compliance requirements for GB-NI trade?

On Information flow relating to Vessel hygiene inspections

It is helpful that this work has highlighted the need for Scottish Local Authorities to share information relating to vessel hygiene inspections. Raising issues such as this, is exactly what this work was designed to achieve. Is this also expected to be an issue for English/Welsh Local Authorities? ?

BACKGROUND

Template for briefing for Defra/DA ministerial meetings

- *Completing the presented Prawn Journey work was requested by the Scottish Government at the February IMG. The aim of the work was to promote good cross collaboration between administrations and to assess the practical implications of exporting of fresh and frozen Nephrops from Scotland to Northern Ireland for processing. The processed product would then be re-imported back to Great Britain for either domestic use, or for onward export.*
- *Scottish officials held detailed conversations with relevant Scottish exporters and based on the information collected, a Multi-Agency workshop was held in September to go through the product journey in detail. This was well attended by all relevant parties and highlighted the complexity of the trade route.*
- *A detailed report has been written and officials from all administrations are in agreement that this should be adapted to inform public communications material.*
- *Officials from FSS and SG are discussing with the hub operators on the extent to which seafood trade to NI will be able to be covered by the signing service at the hubs.*
- *Since the workshop occurred, we have been made aware that EU officials have been auditing the points of entry in Northern Ireland. We have also been made aware that Northern Ireland will continue to use the Traces NT imports system.*

FURTHER BACKGROUND AND CORE BRIEFING MATERIAL

In relation to vessel hygiene inspections: There has been communication to all fishing vessel owners on a few occasions to encourage them to register their vessels with their LA, this has included the Scottish Fisherman's Federation who have assisted in this message.

All vessels registered are within an inspection programme with their LAs, the intention is to inspect vessels as quickly as possible. There has been a delay to original timescales for this action due to COVID-19 pressure on Officer supply, however some LAs e.g. Aberdeenshire are quite well into their inspection programme. Interestingly of the information collated to date there have been very few issues with vessel hygiene standards identified, this is mainly attributed to the good state of the fleet as a whole (previous de-commissioning work allowed older vessels to be retired in favour of new so standards are starting from a new point)

FSS has provided training courses (during July of this year), to all LA Officers who will participate in these inspections to ensure a consistent and uniform approach. This training included the Important health and safety considerations and also use of a standard inspection aide memoir.

FSS has a system known as the Scottish National database, this system gathers all data live from LAs on interventions at food businesses. The system has been updated to hold data relating to fishing vessels so the vessel Id and inspection details. This system will be accessible to Certifying Officers issuing EHC and allow them to check directly from the system the status of an individual vessel. At the moment the system is available for FSS staff who will work from the Export Hub locations in Scotland, it is not more widely available outwith this cohort mainly due to GDPR requirement. Therefore at the moment the Scottish National

Template for briefing for Defra/DA ministerial meetings

Database isn't set up to facilitate Scottish Local Authorities sharing information regarding vessel hygiene inspections.