Submission from Friends of the Earth and Defra's response

Q1: Part 4 (regulation 5) of this SI deletes regulation 18 of The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015 – which sets out the EU authorised methods through which analysis of animal product samples and interpretation of testing must be carried out. While it appears sensible to change this regulation to function in a UK context, it does not appear to have been replaced. This risks creating a lack of clarity as to how imports of animal products will be tested in future, and creates a risk of less effective methods of testing being used.

The EU methods referred to are those 'authorised by Commission Decision 2002/657/EC implementing Council Directive 96/23/EC'. Part 5 of the Instrument goes on to amend this decision directly, in a manner congruent with the continued application of such testing measures within the UK – i.e. it suggests that the above deletion may either not have been intentional, or it may be intended that a further SI will be used to set out a new UK version of such authorised methods in order to ensure standards do not diminish.

Could the department clarify:

- *Why reference to the analysis standards set out across Decision 2002/657/EC has been removed, (and if such reference to analysis standards has also been removed in any other relevant legislation)*
- *If and where official UK methods of sample analysis (if different from those in the decision) are set out currently – and why regulation 18 has not been amended to point to these*
- *If there are plans for a future instrument to replace regulation 18 of the 2015 regulations and ensure clarity on this issue and, if not, how such standards of analysis are to be guaranteed in the testing of animal products covered by the 2015 regulations in the absence of regulation 18.*

A2: Commission Decision 2002/657/EC sets out the methodology for the performance of analytical methods and the interpretation of results in relation to the surveillance of residues of veterinary medicines. This decision will continue to apply in GB following the end of the transition period, as noted part 5 of this Instrument makes the necessary operability amendments to this decision to ensure it remains operable. Reference to decision 2002/657/EC in Regulation 18 of The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) (England and Scotland) Regulations 2015 has been removed as this requirement is also covered by Article 7 of Regulation 2019/2090 (as amended by part of 5 of this instrument) and therefore is a duplicative provision.

Q2: Regulation 7(8) omits an update to reference points for action (RPAs) set out in Article 8 of Regulation (EU) 2019/1871, which is scheduled for 28 Nov 2022. While this date is after the end of the transition period, the regulation itself was agreed while the UK was a member of the EU and it is unclear why government would choose not to update reference points to support tougher controls on Chloramphenicol, malachite green and Nitrofurans in line with the decision. This appears to represent a weakening of previous intent.

Could the department clarify:

- *Why this update to RPAs has been omitted from the transposed regulation*
- *If the UK government has already, or will commit to, set in place RPAs on or before 28 Nov 2022 which are as strong or stronger than those already agreed through our EU membership*

A2: The first paragraph of Article 8 of Commission Regulation 2019/1871 does not have effect until after the end of the transition period. Accordingly it does not form part of retained EU law – see section 3(1) and (3) of the European Union (Withdrawal) Act 2018. However, the UK Government is committed to maintaining standards after the end of the transition period.

Q3: Regulation 8(3) follows a similar path to previous SIs with which we have raised concerns, in that it removes references to MRL levels as previously agreed at EU level and set out in regulation 37/2010 and replaces them with reference to the process of setting such levels as contained in regulation 470/2009. Ministers have previously suggested that such restrictions will in future be set by the appropriate authority through administrative processes, but have not clarified when this will happen, and if EU levels will be used as the baseline.

Could the department clarify:

- *If future UK rules on MRL levels will be as strong or stronger than the current EU baseline as set out in the Annexes of regulation 37/2010*
- *The process of setting out relevant MRLs and other restrictions relating to the use of veterinary medicines in food-producing animals, and if this process will be complete before the end of the transition period.*

A3: All current EU MRLs will continue to apply in the UK from the end of the transition period. In GB these will be set out in the MRL register, established under Article 14A of Regulation 470/2009, as inserted by S.I. 2019/865. The amendments made by this instrument and the previous Exit instruments amend the administrative process by which future MRLs are set. The amendments made do not change the scientific methodology that is used to establish individual limits and this will remain unchanged. The methodology is set down in Commission Regulation 2018/782 which will form part of retained EU law, with only minor amendments for operability.

11 & 13 November 2020