POLICY NOTE

THE PLANT HEALTH (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2019

SSI 2019/XXX

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and paragraph 1(1) and (3) of Schedule 2 and paragraph 21 of Schedule 7 of the European Union (Withdrawal) Act 2018. The instrument is subject to affirmative procedure.

Purpose of the Instrument

The Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 correct deficiencies in domestic legislation which implements EU Directive 2000/29/EC, and its amendments, on measures to protect plant health and in retained direct EU legislation relating to plant health arising in consequence of the United Kingdom's withdrawal from the EU in a 'no deal' scenario and will come into force on exit day.

There are some 'business as usual' provisions within the Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 which require to come into force on 29 March 2019 (prior to 11pm) to ensure that they are in place for the current exit day. These provisions will take effect on 29 March, even if exit day is delayed.

Policy Objectives

1. This instrument, sets out the basis for Scotland to operate as part of the UK internal market for plant material, whilst protecting biosecurity, by providing a common list of regulated pests and plant material aligned to the rest of the UK. Currently this list is provided in Schedules 1 to 7 in the Plant Health (Scotland) Order 2005. After the UK leaves the EU in a 'no deal' scenario, these Schedules are no longer operable as they contain a large number of deficiencies. This instrument inserts new Schedules of regulated pests and plant material into the Plant Health (Scotland) Order 2005. The Schedules have been drafted in light of EU withdrawal but mirror the pests and plant material that are currently regulated under the Plant Health Directive. This instrument also makes provision for the treatment of EU imports into Scotland, following EU withdrawal.

Explanation of the law being amended by the regulations

2. Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU[1] ("the Plant Health Directive") establishes the EU plant health regime. It sets out controls for the import of plant material into the EU and provides for the

[1] This Directive can be found at http://europa.eu.int/eur-lex/en/search/index.html.

trade and movement of plant material within and between EU Member States, thereby creating an internal EU market for this material.

3. The Plant Health Directive is implemented in Scotland by the Plant Health (Scotland) Order 2005. The Order sets out obligations for the control and management of plant health risks arising from the import from third countries and movement within the EU single market of plant material in order to protect biosecurity and the value of plant material to the economy and society. Similar but separate legislation operates in England, Wales and Northern Ireland.

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

4. The changes made by the Plant Health (EU Exit) (Scotland) (Amendments etc.) Regulations 2019 are necessary to ensure that current UK plant health legislation continues to operate effectively in the event of the UK leaving the EU in a 'no deal' scenario.

5. Under the Plant Health Directive, certain areas of the EU that are free from plant pests usually established elsewhere in the EU have been designated "Protected Zones". Plants and plant products that are hosts of these pests must reach higher plant health standards before entering these zones. The Plant Health Authority prescribes additional regulatory requirements for plant movements to keep the designated area pest free. After exit the status of UK protected zones will continue by adopting the World Trade Organisation's similar concept of Pest Free Areas. The UK's protected zones will become 'UK pest free areas' (unless the whole of the UK is pest free, in which case the pest will simply be prohibited across all UK territory).
6. This instrument also sets out amendments to deal with deficiencies in retained direct EU legislation relating to plant health, comprising EU plant health derogations (to enable the UK to continue to use these in line with existing practice) and EU plant health emergency decisions (to ensure that UK biosecurity continues to be protected). To correct deficiencies in the provisions of this direct EU legislation and to make them clearer and more accessible, the instrument sets them out in full in the Plant Health (Scotland) Order 2005 and revokes the original EU instruments**.**

7. The derogations referred to in paragraph 6 are set out in Schedule 8 comprising:
    (i) Commission Decisions 2002/499/EC and 2002/887/EC - Dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. or *Pinus* L. originating in the Republic of Korea or Japan respectively,
    (ii) Commission Decision 2005/51/EC - Soil contaminated by pesticides or persistent organic pollutants for decontamination purposes
    (iii) Citrus fruits for industrial processing into juice originating in Argentina, Brazil, South Africa and Uruguay.

    The emergency decisions referred to in paragraph 6 are set out in Schedules 8A to 8I and cover requirements regarding certain pests such as ***Phytophthora ramorum*** and ***Xylella fastidiosa***. These requirements include official surveys to check for the presence of these and other pests and also measures to be taken in the event of outbreaks of these

pests, such as the demarcation of infested areas and the actions to be taken to eradicate and contain the outbreak in those areas.

8. This instrument also repeals other EU legislation relating to plant health which will not need to be retained after EU exit because it will be redundant.

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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement "In my view the Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 do no more than is appropriate. This is the case because the amendments are being made only to ensure, following a 'no deal' United Kingdom exit from the European Union, continued and effective functioning of the legislation being amended and do not 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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, 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. These are to ensure, following a 'no deal' United Kingdom exit from the European Union, the continued and effective regulation relating to plant health within Scotland and that it is aligned with Defra and the other Devolved Administrations' plant health legislation. This alignment is essential to ensure intra-UK trade can run smoothly from Day 1 .

The amendments made by the instrument 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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement "In my view the Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 do 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 Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement "In my view the Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 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."

Where the regulations create a criminal offence, an explanation of why there are good reasons for creating the offence and providing for penalty in respect of it

The regulations are correcting deficiencies in domestic legislation which implements EU Directives protecting plant health arising as a consequence of the United Kingdom's exit from the EU in a 'no deal' scenario which leads to new offences being introduced.

New offence 1) in order to ensure frictionless trade, businesses wishing to bring third country regulated goods into Scotland via the EU at Ro-Ro ports will be required to facilitate plant health checks inland at their own premises. Premises will need to be authorised by the Scottish Government and provide specified inspection facilities. They will need to pre-notify arrival of consignments to the Scottish Government and specify where the consignment will be held awaiting checks. The consignments will not be permitted to be moved from the premises until the Plant health authority has carried out the necessary checks.

This only applies where the RORO port in question is in Scotland.

New offence 2) to enforce any failure to comply with any requirement in a general notice issued under the Plant Health (Scotland) Order 2005 in respect of a demarcated area, as well as to cover non-compliance with a small number of prohibitions and restrictions in EU emergency plant health decisions. The provisions in these EU decisions which require demarcated areas to be established in the event of an outbreak will be retained direct EU legislation and are being corrected and re-stated in the Plant Health (Scotland) Order 2005 by these Regulations. The EU decisions, as re-stated, will require the Scottish Ministers to demarcate areas around a pest outbreak and take measures to eradicate and contain the outbreak. It has not been necessary for any demarcated areas to be established in the United Kingdom under any of the EU decisions to date, but the new powers to issue general notices in respect of any demarcated area that is established under these provisions will ensure that the Scottish Ministers are able to meet their obligations.

These are necessary due to the UK departure from the EU; the penalty is consistent with other plant health offences and SG Criminal Justice Division have no objection.

Article 24 makes the change from EU Plant Passport to UK Plant Passport.

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

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

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has made the following statement "In my view the Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 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)

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon has stated this heading is not applicable for the Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019.

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

Medium – predominantly concerned with technical detail but categorised as medium due to amendment of offences.

Statement setting out the Scottish Ministers' reasons for their choice of procedure
This SSI is subject to mandatory affirmative procedure under paragraph 1(6) of Schedule 7 of the European Union (Withdrawal) Act 2018. Therefore, the sifting procedure in the SSI protocol is not relevant to this SSI.

Further information

Consultation

9. The amendments within the instrument serve primarily to address deficiencies in Scottish legislation arising as a result of EU Exit and correct a number of cross references to EU legislation which require to be amended as a result of EU Exit. Consultation on the content was, therefore, not considered necessary.

Impact Assessments

10. A full impact assessment has not been prepared for this instrument because it is aimed at preserving the effect of existing regulatory regimes. The impact on stakeholders is expected to be minimal.

Financial Effects

11. The only cost to industry that this instrument will bring is for importers to pay for and organise a phytosanitary certificate from the EU for regulated goods coming directly into Scotland. As we have no ferries that run directly to the EU and we do not anticipate air freight being chosen from the EU as a means of transit, then we predict the impact will be minimal. The majority of goods arrive in Scotland via England and therefore the impact may be more severe as a result of English legislation and so the impact may need to be considered more carefully by Defra.

The Minister for Natural Environment and Rural Affairs confirms that no BRIA is necessary.

Further Information

12. We recognise that the Plant Health (Scotland) Order 2005 has had various amendments and a consolidation would be welcome. We intend to do this when we have more clarity over future arrangements with the EU.

Scottish Government
Agriculture and Rural Economy Directorate

07 February 2019