POLICY NOTE

THE PLANT HEALTH (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2020

SSI 2020/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(b) of schedule 7 of the European Union (Withdrawal) Act 2018 ("EUWA 2018"). The instrument is subject to affirmative procedure.

Purpose of the Instrument

The Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 ("the 2020 Regulations") correct deficiencies in domestic legislation which implements Regulation (EU) 2016/2031 and Regulation (EU) 2017/625 ("the EU Regulations") and associated EU tertiary legislation relating to plant health (including tree health) and official controls. The 2020 Regulations also deficiency fix related fees legislation and also legislation relating to forestry Environmental Impact Assessments ahead of the end of the transition period. The provisions in the 2020 Regulations related to EU Exit will come into force on IP completion day.

The 2020 Regulations also make provision to update domestic legislation relating to plant health before it becomes retained EU law. These provisions come into force on 31 December 2020 to ensure that they are in place ahead of IP completion day.

Policy Objectives

1. Together with the UK SIs described below which deficiency fix the EU Regulations and associated EU tertiary legislation the 2020 Regulations make provision for Scotland to continue to operate a plant health regime, control plant material and protect biosecurity post IP completion day. The 2020 Regulations ensure the existing domestic official controls and plant health implementation and enforcement regime remain operable post exit.

Explanation of the law being amended by the regulations

2. The EU Regulations form part of the EU Smarter Rules for Safer Food package of regulations. This package was designed to modernise, simplify and improve existing health and safety standards for the agri-food chain, taking a risk-based approach to animal, plant and public health protection and introducing more efficient pest and disease control measures. It came into force in December 2019.
3. The EU Regulations and associated EU tertiary legislation made under those Regulations are directly applicable EU law becoming retained EU law in the UK and are being deficiency fixed by the Plant Health (Amendment Etc.) (EU Exit) Regulations

2020 and the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 UK SIs. These fixes will extend to Scotland. Legislation is also expected to be brought forward on a GB basis in relation to amendments to the EU Regulations in respect of the Northern Ireland Protocol.

4. The 2020 Regulations amend the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (SSI 2019/421) ("the 2019 Regulations") which contain supplementary domestic provisions to enable the competent authorities in Scotland to carry out their obligations under the EU Regulations, enforce the EU Regulations and implement derogations to various provisions in the EU Regulations that are available to Member States. Separate but parallel domestic legislation applies in England, Northern Ireland, and Wales.

5. The following fees legislation which enables the Scottish Government to levy fees related to plant health, including fees concerning imports and exports on plants, plant products and other objects and forestry material, is also brought up to date and, in turn, deficiency fixed—

    - The Plant Health (Fees) (Scotland) Regulations 2008
    - The Plant Health (Import Inspection Fees) (Scotland) Regulations 2014
    - The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015
    - The Plant Health (Export Certification) (Scotland) Order 2018.

6. In relation to forestry, deficiency fixing amendments are also made to the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017.

7. The 2020 Regulations also revoke, in whole, the Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 and, in part, the Forestry (EU Exit) (Scotland) (Amendment etc.) Regulations 2019. These instruments (which are already partially revoked) are further revoked either because they relate to EU exit fixes made to the previous domestic regulations on plant health which are now themselves revoked due to the introduction of the new EU Plant Health Regime in terms of the EU Regulations in December 2019 or because deficiency fixes are made of new in the 2020 Regulations.

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

8. The changes made to the 2020 Regulations are necessary to ensure the current domestic plant health legislation continues to operate effectively after the end of the transition period.

9. Part 3 of the 2020 Regulations as well as deficiency fixing the domestic implementation, enforcement and fees regime for plant health, also inserts savings and transitional provisions relating to fees. The savings provisions enable fees which were due under the pre-deficiency fixed fees SSIs to still be required to be paid. A transitional fees provision has been inserted as part of the Scottish Government's phased approach to imports from the EU after the end of the transition period. Fees will not be due in relation to imports from the EU until 1 April 2020.

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

Part 2 of the 2020 Regulations are made are made using the European Communities Act 1972.

Parts 3 and 4 of the 2020 Regulations are made using powers under EUWA 2018.

The Statements and Additional Information set out below are relevant to Parts 3 and 4.

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 2020 do no more than is appropriate". This is the case because the amendments are being made only to ensure, after IP completion day, 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, after IP completion day, the continued and effective regulation relating to plant health within Scotland and that it is aligned with the UK Government and the other Devolved Administrations' plant health legislation.."

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 2020 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 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 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 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

Medium – The 2020 Regulations are predominantly concerned with technical detail. It has been categorised as medium as it contains a transitional provision in relation to fees as part of the Scottish Governments phased approach to imports of plants and plant materials after the end of transition period.

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

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.

Fulfilling the requirement in paragraph 4, schedule 2 of EUWA 2018, the relevant UK Secretary of State was consulted on the 2020 Regulations before they were made.

Impact Assessments

Full impact assessments have not been prepared for this instrument as its purpose is to ensure continuity of law and the operability and regulatory regimes at the end of the implementation period. The amendments do not alter the Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment.

Financial Effects

A partial Business and Regulatory Impact Assessment (BRIA) was completed for the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (SSI 2019/421), now amended by this SSI. Scottish plant health policy has since remained consistent.

The Minister for Natural Environment and Rural Affairs confirms that direct impacts arising from this statutory instrument are not expected to meet the minimum threshold for requiring an impact assessment.

Scottish Government
Agriculture and Rural Economy Directorate

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