POLICY NOTE

THE PLANT HEALTH (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2021

SSI 2021/XXX

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) and 11M(1) of schedule 2, paragraph 7 of schedule 4 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) Regulations 2021 ("the 2021 Regulations") amend the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014, by correcting deficiencies and amending the existing fee structure in connection with fees to be levied on goods arriving in Scotland from the European Union.

The 2021 Regulations also amend the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 to introduce provisions relating to export certification fees in relation to consignments of goods being exported from Scotland to Northern Ireland.

In addition, the 2021 Regulations also amend the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 to introduce enforcement provision relating to plant passports on goods arriving in Scotland from Northern Ireland.

Policy Objectives

The 2021 Regulations make amendments to legislation in the field of plant health as it applies in Scotland. In particular they make provision to fix deficiencies arising from the withdrawal of the United Kingdom from the European Union and to deal with matters arising out of, or related to, the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement. They also make modifications in consequence of the withdrawal of the United Kingdom from the European Union to certain fees payable to the Scottish Ministers in relation to inspections of imports of plants, plant products or other objects.

Regulation 2 of the 2021 Regulations amends the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014 ("the 2014 Regulations"), and in particular restructures the existing fees schedules to include fees schedules for imports of plants and plant products from the European Union, Liechtenstein and Switzerland. After the end of the transition period, fees are to be charged on imports to Scotland from the European Union. The 2014 Regulations currently apply fee rates to imports dependant on the item and its place of origin. Those plants, plant products and other objects which pose a lower risk, qualify for reduced fees. The amendments to the 2014 Regulations made by the 2021 Regulations do not reflect a change in policy, but are necessary to adjust the provisions in the 2014 Regulations to introduce fair fees for imports of plants, plant products and other items from the European Union, Liechtenstein and Switzerland reflecting the individual risk posed.

Regulation 3 of the 2021 Regulations amends the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 and introduces provision relating to export certification fees, to provide that such fees are not payable in relation to exports from Scotland to Northern Ireland in certain circumstances. Under the terms of the Northern Ireland protocol, Northern Ireland remains subject to EU laws relating to sanitary and phytosanitary measures. This requires that exports of regulated consignments of plants, plant products and other objects from Scotland to Northern Ireland also be issued with a phytosanitary certificate. The provision introduced by regulation 3 will remove the requirement on exporters to pay a fee on consignments which meet the criteria for fees related to a phytosanitary certificate or phytosanitary certificate for re-export, with the purpose of supporting exporters in the post-transition period. Funding for the costs incurred in providing the export certification services covered by the exemption is to be provided by the UK Government. This will last for a maximum of two years until 31st December 2022.

Regulation 4 of the 2021 Regulations amends the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 ("the 2019 Regulations") and introduces enforcement provisions relating to plant passports, specifically relating to the plant passports used on goods entering Scotland from Northern Ireland. The requirements for plant passports are set out in the retained EU law version of Regulation (EU) 2016/2031 (the Plant Health Regulation). This includes specific provision which allows goods transported from Northern Ireland to Scotland to be moved under an EU plant passport rather than a UK plant passport. The provisions contained in the 2021 Regulations will enable enforcement action to be taken in relation to consignments from Northern Ireland in respect of any breaches of the plant passport rules set out in the Plant Health Regulation.

Regulation 5 of the 2021 Regulations inserts a transitional provision relating to import fees. This is part of the Scottish Government's phased approach to imports from the EU, Liechtenstein and Switzerland after the end of the transition period.

Explanation of the law being amended by the regulations

Regulation 2 of the 2021 Regulations amends the 2014 Regulations which, together with the Plant Health (Fees) (Scotland) Regulations 2008, the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015, and the Plant Health (Export Certification) (Scotland) Order 2018, enable 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.

As part of the planning undertaken for the end of the transition period, a phased approach has been introduced in relation to the fees and official controls that imports of plants, plant products and other objects entering Scotland from the European Union will be subject to. A transitional fees provision was inserted into the Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 as part of this approach. The transitional provision removed the requirement for fees to be paid in relation to imports from the EU, Liechtenstein or Switzerland until 1 April 2020. To give the sector more time to prepare, this transitional provision is extended by regulation 5 of the 2021 Regulations until 31 May 2020. The amendments made by Regulation 2 provide the basis for import fees to be charged at the appropriate level after this transitional provision expires. As part of the phased approach, part of the changes made by these amendments will be introduced in July 2021.

Regulation 3 of the 2021 Regulations amends the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015. These Regulations set out fees that are to be charged in forestry matters in relation to plant passports, licences, certain imports and exports, or authorisations.

Regulation 4 of the 2021 Regulations amends the 2019 Regulations which contain provision to enable the competent authorities in Scotland to carry out their obligations under the Plant Health Regulation and the retained EU law version of Regulation (EU) 2017/625 (the Official Controls Regulation) and associated retained EU tertiary legislation relating to plant health (including tree health) and official controls ("the EU Regulations"). The 2019 Regulations make provision for enforcement of the EU Regulations and implement derogations to various provisions in the EU Regulations. Separate but parallel domestic legislation applies in England, Northern Ireland, and Wales.

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

The changes made by the 2021 Regulations are necessary to enable the Scottish Government to levy appropriate fees related to plant health, including fees concerning imports and exports on plants, plant products and other objects and forestry material, and to make provision in connection with the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement.

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 ("the 2018 Act") to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of schedule 2), to implement the Northern Ireland Protocol (paragraph 11M(1) of schedule 2) and to modify pre-exit fees or charges (paragraph 7 of schedule 4). The Regulations are also made in exercise of the powers contained in paragraph 21 of schedule 7.

Regulations 2, 3 and 5 are made in exercise of the powers in paragraphs 1(1) and (3) of schedule 2 and paragraph 7 of schedule 4 and paragraph 21 of schedule 7 of the 2018 Act.

Regulation 4 is made in exercise of the power to implement the Northern Ireland Protocol (paragraph 11M(1) of Part 1C of schedule 2).

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 powers to implement the Northern Ireland Protocol and the powers to modify pre-exit fees.

<u>Statements required by European Union (Withdrawal) Act 2018</u>

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, Ben Macpherson, has made the following statement "In my view the Plant Health (EU Exit) (Scotland) (Amendment)

Regulations 2021 do no more than is appropriate". This is the case because the amendments are being made to ensure continuing and effective functioning of the legislation being amended.

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, Ben Macpherson, 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 to ensure continuing and effective operation of the law in relation to plant health import fees".

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, Ben Macpherson, has made the following statement "In my view the Plant Health (EU Exit) (Scotland) (Amendment) Regulations 2021 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, Ben Macpherson, has made the following statement "In my view the Plant Health (EU Exit) (Scotland) (Amendment) Regulations 2021 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, Ben Macpherson, has made the following statement "In my view the Plant Health (EU Exit) (Scotland) (Amendment) Regulations 2021 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 2021 Regulations are predominantly concerned with technical detail and make minor changes to allow fees to continue to be charged on imports of plants, plant products and other objects into Scotland.

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

This SSI is subject to the affirmative procedure under paragraphs 1(6) and 8F(5) 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

Whilst no formal consultation has been undertaken, the Scottish Government has engaged with stakeholders during the planning of EU exit legislation to be introduced in Scotland as part of preparations for the end of the transition period and beyond.

In relation to the amendments made to the 2014 Regulations, and the fee changes contained therein, information will be published on the Scottish Government website and issued to trade stakeholders in advance of their introduction.

Impact Assessments

Full impact assessments have not been prepared for this instrument because the amendments preserve the existing regime and the direct impacts are minimal. In addition the 2021 Regulations 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 Minister for Rural Affairs and the Natural Environment confirms that no BRIA is necessary as the instrument is an extension to the existing plant health import inspection charging regime to cover import of goods from the EU.

Funding for the costs incurred in providing the export certification services - covered by the exemption put in place by the amendments to the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 made by regulation 3 of the 2021 Regulations - is to be provided by the UK Government, and exporters will not be charged, instead reimbursement will be to the Scottish Government. The UK Government confirmed this funding in December 2020, to be applicable from 1st January 2021.

Scottish Government
Agriculture and Rural Economy Directorate

3 March 2021