POLICY NOTE

THE PLANT HEALTH (IMPORT INSPECTION FEES) (SCOTLAND) AMENDMENT REGULATIONS 2024

SSI 2024/XXX

The above instrument is made by the Scottish Ministers in exercise of powers conferred by paragraph 7 of schedule 4 and paragraph 21 of schedule 7 of the European Union Withdrawal Act 2018 (c. 16). The instrument is subject to affirmative procedure.

Purpose of the Regulations:

The Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2024("the 2024 Regulations") amend the Plant Health (Import Inspections Fees) (Scotland) Regulations 2014 ("the Import Fees Regulations") to ensure that fees are charged for plant health checks on medium-risk commodities imported into Scotland from third countries, that align with the new Border Target Operating Model (BTOM). The instruments coming into force date is 30 April 2024.

This instrument is linked to a UK statutory instrument, The Plant Health (Fees) (England) and Official Controls (Frequency of Checks) Amendments Regulations 2024, "DEFRA PH/040", which has been shared with the Scottish Parliament's Rural Affairs and Islands Committee, to seek approval of Scottish Ministers providing consent to the making of UK secondary legislation affecting devolved areas.

Policy Objectives

The 2024 Regulations make amendments to legislation in the field of plant health as it applies in Scotland. In particular, they amend The Plant Health (Import Inspection Fees) (Scotland) Regulations 2014, which together with 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 of plants, plant products and other objects.

The purpose of this instrument is to implement, along with the DEFRA SI PH/040, the second milestone of the Border Target Operating Model (BTOM) that comes into effect on 30 April 2024. The BTOM proposes a new approach to sanitary and phytosanitary (SPS) controls applying to imports of live animals, animal products, high-risk food and feed of non-animal origin, plants and plant products at the border, and was published by the UK Government in August 2023.

The principal legislation governing the controls required on movement into Great Britain (GB) of plants and plant products is set out in assimilated EU legislation, namely Regulation (EU) 2016/2031 ("the Plant Health Regulation") for plant health and the Official Controls Regulation for animal, plant and public health (together "the EU Regulations"), and the additional legislation made under these Regulations.

Under Annex 6 of the Official Control Regulations, plant health checks are currently carried out on high-priority (also known as high-risk) consignments of imported plants, plant products and other objects imported into GB from certain countries, including EU Member States, Liechtenstein and Switzerland, and on regulated goods imported from all other third countries, on a risk-basis. Businesses are charged for these plant health services accordingly, to prevent the introduction and spread of organisms harmful to plants or plant products. The existing fees legislation ensures that the cost of plant health services, including import inspections, is recovered via fees.

UK SI PH/040 makes changes to the Official Controls Regulation to reflect the introduction of checks on certain medium-risk goods along with similar amendments to the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022, which implemented the current risk-targeted inspection regime. The 2024 Regulations are being introduced to ensure the import inspection fees for plants and products in Scotland reflect the changes being introduced by the BTOM medium-risk checks (physical, identity and documentary) from 30 April 2024. The same BTOM medium-risk import checks will be applied in England and Wales from 30 April 2024.

The fees in the 2024 Regulations are in line with the Scottish Government's approach to achieve the full cost recovery of service delivery from businesses using these services. For consignments eligible for reduced levels of physical checks, a proportionally reduced fee is applied to every imported consignment.

The GB risk-targeted inspection regime was introduced in July 2022 in the UK SI Official Controls (Plant Health) (Frequency of Checks) Regulations 2022, and it allows the frequency of plant health checks to be determined for specific trade import pathways based on the level of plant health risk to GB. The regime established new frequency of checks levels for each commodity dependent on the country of origin

The fees set out in Schedule 1 of the 2024 Regulations are determined on the methodology as set out by The Official Controls (Plant Health) (Frequency of Checks) Regulations 2022. The import fees in Schedule 1 for several commodities have been amended to reflect a change in their level of risk as determined by the GB risk-targeted inspection regime. The amended fees for these commodities have also been applied in England and Wales. The new medium-risk documentary check fees for specific commodities from the EU, Liechtenstein and Switzerland were also calculated using the methodology.

In the 2024 Regulations, some Schedule 1 commodities have had their 'country of origin' entries amended because the commodity is no longer regulated from that country of origin.

Regulation 2(4) provides new fees for documentary checks relating to certain plants, plant products or other objects originating in an EU Member State, Liechtenstein or Switzerland. This is to align with the introduction of risk-based import checks on medium-risk goods under the BTOM, and the final stages of the Transitional Staging Period (TSP).

Regulation 2(4) also provides that no fee is payable for documentary, physical or identity checks relating to fruit and vegetables from EU member states, Liechtenstein, and Switzerland which are currently being treated as low-risk goods while risk assessments are being conducted. These goods are those listed in schedule 2A to the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 imported before 30th October 2024.

Additionally, any goods entering through a West Coast Port (WCP) from any EU Member State, Liechtenstein and Switzerland will not be subject to fees for physical, identity and documentary checks. Regulation (2) (interpretation) lists the Scottish ports as Ayr, Greenock and Cairnryan. This exception applies to consignments originating in an EU Member State, Liechtenstein or Switzerland consisting solely of plants, plant products and other objects, and are detailed in the list established pursuant to Article 72(1) of Regulation (EU) 2016/2031.

These exemptions do not apply to consignments originating in Liechtenstein containing goods falling within schedule 1 to the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 and schedule 2A of the Import Fees Regulations. Certain low-risk fruit and veg goods that originate in Liechtenstein fall within the Northern Ireland Retail Movement Scheme (NIRMS), and goods from there must receive full inspections.

Regulation 2(5) clarifies the countries to which additional fees in respect of potatoes applies. Commission Implementing Decision 2019/1614 authorises Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of potatoes, other than potatoes intended for planting, originating in the regions of Akkar and Bekaa of Lebanon. This derogation was initially deemed to be defunct and was not transposed into GB law. However, for trade purposes (mainly for England), operability amendments have been retained, and as such any imports of these potatoes must be checked and will incur an inspection fee. In Regulation (9), in Schedule 3 (additional fees), in column 2 of the table “and Lebanon” was inserted after “Egypt”. The 2024 Regulations amend, Schedule 3 for the reasons outlined above.

Regulation 2(6) updates and corrects the import inspection fees for physical and identity checks, in line with the risk-targeted inspection methodology, and to bring medium-risk goods from the EU, Liechtenstein and Switzerland in scope of the existing fees and charges regime for physical and identity checks to align with the BTOM.

Regulation 2(8) updates the table of fees for documentary checks for certain plants, plant products and other objects from any EU Member State, Liechtenstein or Switzerland. This change has been made to account for fees for documentary checks for medium-risk goods from any EU Member State, Liechtenstein or Switzerland as required by the BTOM. The documentary check fee to account for those cases where a reduced frequency of checks will apply (for example, for medium-risk goods from the EU, Liechtenstein and Switzerland). These checks are disapplied until 30 October 2024.

Grammatical errors arising from The Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022 have been corrected.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU because it concerns measures regarding sanitary and phytosanitary controls on goods entering Great Britain from the EU, which are required as a consequence of no longer being an EU member. It is not considered that the changes included in this instrument would give rise to any difficulties were Scotland to seek to re-join the EU in the future.

Consultation

A short consultation was undertaken by Defra on behalf of the UK Plant Health Service with GB-wide stakeholders, such as the UK Plant Health Advisory Forum (PHAF). PHAF members include the Fresh Produce Consortium and the Horticultural Trades Association (HTA). The Scottish Government also made Scottish importers who trade in plants and plant products aware of the consultation. The comment period was open for 10 weeks. Three responses were received, including two from Scottish businesses who raised no concerns with the proposals.

Impact Assessments

There is no significant impact on business, charities or voluntary bodies. Businesses importing goods from the EU and certain other countries will now need to comply with certain import requirements, such as checks and subsequent fees, applied to all existing third countries. This is a result of the EU now being a third country.

A full Impact Assessment has therefore not been prepared for this instrument because it does not set out new policy. These changes are amendments that reflect the impact of EU Exit and the operation of the transitional period in relation to the risk-based control of SPS imports. Physical, identity and documentary fee rates have not been increased. Therefore, no or no significant impact is expected on business as a result of the policy changes introduced under this instrument.

The 2024 Regulations do not alter the 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 Green Skills, Circular Economy and Biodiversity confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no significant and no financial effects on the Scottish Government, local government or on business as with The Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022[1].

Scottish Government
Agriculture and Rural Economy Directorate
February 2024

[1] https://www.legislation.gov.uk/ssi/2022/230/contents/made