POLICY NOTE

THE PLANT HEALTH (EXPORT CERTIFICATION) (SCOTLAND) AMENDMENT ORDER 2024

SSI 2024/86

The above instrument is made by the Scottish Ministers in exercise of powers conferred by sections 3(1) and 4A of the Plant Health Act 1967. The instrument is subject to negative procedure.

Purpose of the Regulations:

The Plant Health (Export Certification) (Scotland) (Amendment) Order 2024 ("the 2024 Amendment") amends the The Plant Health (Export Certification) (Scotland) Order 2018 to introduce fees associated with the delegation of inspection functions. This will allow the Scottish Government to introduce the Plant Health Exports Audited Trader Scheme (PHEATS) in Scotland.

The 2024 Amendment adds three new fees to the The Plant Health (Export Certification) (Scotland) Order 2018 in relation to the delegation of inspection functions. These are for the initial site visit (training, assessment and authorisation), an ongoing auditing/monitoring fee (per audit) and the fee for consideration and issue of a phytosanitary certificate. These fees are required to ensure that the Scottish Government recovers full costs for services to deliver PHEATS, and which are necessary to ensure that members meet the required phytosanitary inspection standards that are delegated to them by Scottish Ministers.

A fee defrayment exemption has been inserted for PHEATS' members who export goods only to Northern Ireland (NI). The fees are remimbursed to Scottish tax payers via the NI Movement Assistance Scheme (MAS).

Policy Objectives

The Plant Health (Export Certification) (Scotland) (Amendment) Order 2024 ("the 2024 Amendment") makes amendments to legislation in the field of plant health. In particular, the 2024 Amendment amends the Plant Health (Export Certification) (Scotland) Order 2018 enabling the Scottish Government to levy export fees related to plant health, including fees associated with the export of plants, plant products and other objects.

The purpose of the instrument is to introduce fees to allow the Scottish Government to delegate inspection functions thereby delivering PHEATS in Scotland. PHEATS is a voluntary trade facilitation exports scheme currently for exporters of low-risk fruit, veg and cut flowers (hereafter 'produce') developed by the Department for Environment, Food and Rural Affairs (DEFRA). PHEATS has been in operation in England and Wales since 2021. PHEATS operates on a devolved authority model where the Authorised Business (AB) is audited, assessed and certified by an official inspector. The phytosanitary inspections are delegated from official inspectors to a Person Responsible (PR), who has overall reponsibility for the phytosanitary inspections, and Authorised Person(s) (AP) who conduct the phytosanitary inspections. The responsibility for issuing Phytosanitary Certificates (PCs) remains with the competent authority, and not the AB. The business would be subject to audits to ensure they are complying with the phytosanitary requirement for inspections. Scottish Governemnt, SASA

Division, Horticulture and Marketing Unit (HMU) will be reponsible for the administration of PHEATS in Scotland.
Article 2 amends the Plant Health (Export Certification) (Scotland) Order 2018 introducing fees associated with the delegation of inspection functions in relation to the issuance of phytosanitary certificates. These fees are specified in a new Schedule 2 of the 2018 Order.

Regulation 4A(1) allows Scottish Ministers to delegate official inspection functions under Article 28 of retained Regulation (EU) 2017/625 'The Official Controls Regulation' (OCR) related to the issue of a 'phytosanitary certificate' (PC). The business to whom inspection functions have been delegated, must pay the Scottish Government the fee listed in column 3 of Schedule 2 that corresponds to: (1) either a service described in column 2 of Schedule 2, or (2) which has been performed by an inspector in connection with the delegation of functions, or the issue of a phytosanitary certificate.

Regulation 4A(2) provides that fees associated with delegated inspection functions and the issue of a PC are not charged in relation to goods moved exclusively to Northern Ireland (NI). For Scottish members of PHEATS' who send produce to NI only, all auditing fees are covered by the NI Movement Assistance Scheme (MAS) which is due to run until 2025.

Background

Phytosanitary certification

Regulated plants and plant products need to meet the import requirements of the receiving country in accordance with the 'International Standards for Phytosanitary Measures' (ISPMs), stated in the 'International Plant Protection Convention' (IPPC) as an intergovernmental treaty that protects the world's plant resources from the spread and introduction of pests, and promotes safe trade. The Scottish Government (SG) is the 'National Plant Protection Organisation' (NPPO) in Scotland who is solely responsible for conducting plant health inspections, and whom can only issue a PC.

Under specific circumstances, third parties may be authorised to perform specific phytosanitary actions on behalf of the NPPO under the 'Official Controls Regulation' 2017/625 (OCR), and the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 with the exception of the issuance of PCs. In this light, PHEATS enables an AP to undertake devolved phytosanitary inspections (and uphold phytosanitary security), which is the physical inspection of all produce exported under PHEATS. This contrasts with exports outside of PHEATS, where the SG conduct all physical inspections of exported plant commodities. The NPPO retains ultimate responsibility for ensuring the phytosanitary actions have been performed according to the NPPO's requirements.

Eligibility

A business can apply for membership using the PHEATS application form, (that will be hosted on the SASA website) and they must identify one 'Person Responsible' (PR) for overall management of the scheme who acts as a point of contact with the SG. AP(s) are also nominated to be authorised to conduct the official export inspections. After nomination, the PR and the AP(s) must do the online training and pass the in-person audits. A business must implement and monitor an approved 'Biosecurity Control Management Plan' (BCMP) for PHEATS (which you can see in the PHEATS user guide).

Training

Following review of an application, the PR and the AP(s) will be sent a link to online pest, disease and export application training. The links to further PHEATS guidance for training and testing will be detailed on the SASA website. All AP(s) and the PR must complete the training and pass the assessments for the application to progress. Each module has an online test that must be passed to complete the training.

Upon completion of the pest & disease and export application training and assessments, an SG inspector will arrange an authorisation inspection of the business in accordance with the requirements of the BCMP. This includes AP(s) and the PR demonstrating the implementation of the BCMP (parts A and B). All candidate AP(s) and the PR must attend the inspection training at this visit, and pass an assessment.

Acceptance onto PHEATS will be decided by an independent representative of the SG. Once these steps have been completed, and the business is accepted onto PHEATS, then they become an 'Authorised Business' (AB).

Biosecurity Control Management

Plant health biosecurity concerns the procedures and measures put in place by the AB, PR and AP(s), to protect against the introduction and movement of harmful pests and diseases. This relates to consignments exported from Great Britain, for example, by identifying plant health risks and implementing action to mitigate these risks. The BCMP for PHEATS is designed to ensure the points made above. The BCMP is a checklist of necessary steps to follow, to ensure effective plant biosecurity, and the sections are:

- Authorised Person(s): names and details of the APs.
- Commodities, country of export and country of origin: provide a list of goods to be sent to the exporting country, and the times they will be sent each week.
- Site Plan: e.g. label the inspection area and post-inspection holding area.
- Conflict of Interest: declare any conflict of interest.

Inspecting Consignments

Once accepted onto PHEATS, the AP(s) will be authorised to inspect commodities exported under PHEATS. The responsibility of the phytosanitary function of official inspection is delegated to the AP(s) as per Article 31(2) of the retained OCR who may carry out this function only in relation to PHEATS.

To ensure consignments meet the plant health requirements of the importing country, at least one AP must officially inspect every consignment being exported under PHEATS at the business site, to ensure consignments are free from pests and diseases, and that it meets the importing country's requirements.

Phytosanitary certification of consignments

Following the export consignment passing the physical official inspection undertaken by an AP(s), an application for export can be made to the SG for a PC for those commodities that have passed the official inspection. Where goods have not passed the physical inspection, this will need to be recorded in the official records, and be made available to the SG upon request.

Provided the PC application is successful, the physical PC and two copies will be posted on the application day. Also, a pdf scan of the original and a cover letter stating the original will be posted is included. Submission of an application will be taken to mean that the goods subject to the application have passed their physical inspection, and meet the importing country's plant health requirements.

Goods eligible for export

All fruit, vegetables and cut flowers can be exported under PHEATS. It does not currently include the exports of:

- Plants for planting
- Plant products
- Seeds
- Grain
- Used machinery
- Wood and wood products
- Potatoes (seed and ware)

DEFRA have indicated that they plan to extend PHEATS in the near future to include the export of ware potatoes. There is the possibility of used machinery coming into scope as well. Scottish businesses could also benefit from any extension in the scope of PHEATS, and SG are working with DEFRA on this. PHEATS is a voluntary scheme and the normal export process will remain in place, however, we will engage with Scottish ware potato and used machinery businesses on the option of using the scheme should the extension in scope proceed to gauge interest.

EU Alignment Consideration

No impact on alignment with EU law is expected because PHEATS complies with EU Member States' importing requirements. PHEATS' members in England and Wales have been successfully exporting to EU countries since 2021. The Scottish Government's EU Alignment Team have no concerns with Scottish PHEATS membership, re-accession or EU law alignment.

Consultation

A public consultation took place from 23 October 2023 to 15 December 2023 on Scottish membership of PHEATS. The Scottish Government consulted with relevant Scottish low-risk fruit, vegetable and cut flowers producers. Relevant businesses were contacted via email to make them aware of the consultation and they were provided with a link. It was mentioned on the Twitter account of the Chief Plant Health Officer for Scotland. The consultation was also placed on Citizen Space and the SG website for wider awareness. One response was received during the consultation. The business saw merit in the scheme, but they were unprepared to commit outright at this time. A second response was received after the consultation was closed

from a major Scottish low-risk fruit and vegetable producer, indicating that they would be interested in using PHEATS. This suggests that if PHEATS were operational in Scotland, further consideration would be given to join, and take full advantage of PHEATS' benefits.

Despite the low response rate to the consultation, the Scottish Government believe the best approach is to proceed with implementation of PHEATS in Scotland, and that other businesses will look to join the scheme once it is operational. Once PHEATS is available in Scotland, we can then consider if there is interest from other sectors, such as ware potato and possibly used machinery exporters in using PHEATS. This can only be done if PHEATS is rolled out in Scotland.

The 2024 Amendment will allow the Scottish Government to charge the appropriate fees associated with the delegation of inspection functions (as required for PHEATS services), which would equally apply to any extension in scope to other sectors.

Impact Assessments

The Scottish Firms Impact Test, Competition Assessment, Legal Aid Impact Test, Equality Impact Assessment (EQIA), UK Internal Market Act (2020) and Common Frameworks Impact Test, EU Alignment Impact Test, Fairer Scotland Duty impact assessments have been completed for the 2024 Amendment and are detailed in the partial BRIA.

There are no equality impacts caused or raised by the 2024 Amendment or by Scottish membership of PHEATS. This is because no marginalised individuals or excluded groups with protected characteristics, and by extension their opportunities, will not be affected by PHEATS. PHEATS is a voluntary exports scheme, it does not seek to redress any social, political or economic outcomes.

Financial Effects

A partial Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is not fully apparent because the Scottish Firms Impact Test was not completed since no business' came forward to be interviewed. However, as the scheme is entirely voluntary, any business who wishes to participate does so on the basis of whether they feel it is beneficial or not.

The impact on the sector from the introduction of PHEATS fees in the 2024 Amendment is expected to be minimal as they only apply to members of PHEATS who would join voluntariliy, and the PHEATS fees have no wider application to aspects of plant good exports in Scotland.

The Minister for Green Skills, Circular Economy and Biodiversity has approved the partial BRIA.

SG: SASA Division
Agriculture and Rural Economy Directorate
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