POLICY NOTE

THE PLANT HEALTH (FEES) (MISCELLANEOUS AMENDMENT) (SCOTLAND) REGULATIONS 2022

SSI 2022/230

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 (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022 ("the 2022 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 commodities imported into Scotland from third countries, aligned with a new risk-targeted inspection regime.

The 2022 Regulations also amend the Plant Health (Fees) Forestry (England and Scotland) Regulations 2015 ("the Forestry Fees Regulations"). The Forestry Fees Regulations include provision relating to phytosanitary certification fees, including an exemption to provide that such fees are not payable in relation to exports from Scotland to Northern Ireland in certain circumstances. The 2022 Regulations amend the Forestry Fees Regulations to change the date on which this exemption ceases to have effect from 31 December 2022 to 31 December 2023.

Policy Objectives

The 2022 Regulations make amendments to legislation in the field of plant health as it applies in Scotland.

In particular, they amend the Import Fees Regulations and the Forestry Fees Regulations which together with the Plant Health (Fees) (Scotland) Regulations 2008 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 of plants, plant products and other objects.

Regulation 2 of the 2022 Regulations amends the Import Fees Regulations.

Plant health checks (documentary, identity and physical) are currently carried out on regulated consignments imported into Scotland from all non-EU countries and on higher risk consignments from EU Member States, Liechtenstein and Switzerland. The highest risk commodities are subject to 100% documentary, identity and physical checks, and lower risk goods are subject to lower frequencies of checks.

A new GB risk-targeted inspection regime is being introduced from July 2022 in a UK statutory instrument - the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 ("the Frequency of Checks Regulations") – allowing the determination of the frequency of plant

health checks on specific import trade pathways to be made depending on the level of plant health risk posed to GB and the history of compliance. This regime will apply to imports of all regulated consignments from non-EU countries and high-risk goods from EU Member States, Liechtenstein and Switzerland, and will establish new frequency of checks levels for each commodity dependent on the country of origin. The frequency of checks set by the regime will be reviewed annually, but there will be discretion to increase the rates temporarily at any time if deemed necessary, following any new or revised risk assessments, pest interceptions, changes in pest distributions or other developments. Once the risk is no longer there, the frequency will either be reduced or made permanent.

The 2022 Regulations are being introduced to ensure that the import inspection fees for Scotland reflect the changes being introduced by the Frequency of Checks Regulations, and in line with the standard approach that the full cost of service delivery be recovered 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 Frequency of Checks Regulations will be made using Articles 22(3) and 54(3) of Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (the Official Controls Regulation).

The 2022 Regulations and the Frequency of Checks Regulations will both come into force on 22 July 2022. Equivalent legislation to amend import fees to reflect the new GB risk-targeted inspection regime established by the Frequency of Checks Regulations is also being introduced for England and Wales to take effect from 22 July 2022.

Since January 2021, imports of high-risk consignments from the EU, including Liechtenstein and Switzerland, have been subject to risk-based plant health import inspections and charged accordingly (based on the plant biosecurity risk). Plant health checks and the charging of fees accordingly in relation to goods imported from the EU, Liechtenstein and Switzerland is new, following the UK's exit from the EU and the end of the implementation period in December 2020. More generally, plant health checks and the charging of fees accordingly is well established for goods imported from non-EU Countries, arrangements for such checks and related fees having been in place before January 2021 and have continued since then.

The intention from January 2021 was to phase in plant health checks on goods imported from the EU, Liechtenstein and Switzerland and associated fees, allowing businesses to adjust, focusing initially on the highest risk goods. For lower risk goods, checks had been due to commence on 1 July 2022.

However, on 28 April 2022, the UK Government announced that the remaining import controls (namely, in the plant health context, plant health checks on lower risk regulated goods imported from the EU, Liechtenstein and Switzerland such as cut flowers and fruit) will no longer be introduced this year. This change has resulted in the new methodology outlined in the Frequency of Checks Regulations only applying to imports of EU high-risk goods and all regulated goods imported from other third countries.

The Import Fees Regulations are amended by the 2022 Regulations to remove the existing fees charged on imports and replace them with the new fees for physical and identity checks that

are payable under the new GB risk-targeted inspection regime pursuant to the Frequency of Checks Regulations.

The fees in the Import Fees Regulations as amended by the 2022 Regulations will not therefore be payable in relation to lower risk regulated goods from the EU, checks in relation to which are no longer being introduced this year. Provision is inserted in the form of a new regulation 4(8) of the Import Fees Regulations which identifies the goods arriving from the EU, Liechtenstein and Switzerland that will not be required to pay import fees.

The fee for a documentary check is not amended because the new GB risk-targeted inspection regime relates only to physical and identity checks. All imported plant products must receive a documentary check if accompanied by a phytosanitary certificate.

Regulation 3 of the 2022 Regulations amends the regulation 3(5BB) of the Forestry Fees Regulations which makes provision relating to phytosanitary certification fees, including an exemption to provide that such fees are not payable in relation to exports from Scotland to Northern Ireland in certain circumstances. The 2022 Regulations amend the Forestry Fees Regulations to change the date on which this exemption ceases to have effect from 31 December 2022 to 31 December 2023.

Consultation

A joint UK-wide consultation was conducted on the risk-targeted inspection regime methodology behind the revised frequency of checks. The details of the methods used to establish the frequencies will be published on the Scottish Government SASA website and on the UK Plant Health Portal (the online hub on the UK Government website for plant health information, data and resources). Additionally, importers will be informed of the new inspection fee rates by mailshot.

Future amendments to the frequencies will be considered yearly, based on the risk targeted inspection regime set out in the Frequency of Checks Regulations and will be discussed with the GB-wide stakeholder group, namely the Plant Health Advisory Forum, which includes representatives from Scotland. Any changes to the frequency rates will be published on the Scottish Government SASA website and the UK Plant Health Portal, and the fees set out in the Import Fees Regulations will be amended by further legislation as appropriate.

Impact Assessments

The proposed amendments do not introduce new fees, but amend existing import fees as a result of the new risk-targeted inspection regime being introduced as a consequence of the UK leaving the EU. The fees which are currently charged for 100% and reduced checks have been adjusted to reflect the frequency of checks methodology. No or no significant impact is expected on business as a result of the policy changes introduced under this instrument.

The 2022 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

A business and regulatory impact assessment (BRIA) has not been produced for the 2022 Regulations. The Minister for Green Skills, Circular Economy and Biodiversity confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

The impact on the sector from the changes to fees in the Import Fees Regulations made by regulation 2 of the 2022 Regulations is expected to be minimal.

Funding for the costs incurred by the change to the Forestry Fees Regulations in providing export certification services outlined in regulation 3 of the 2022 Regulations is to be provided by the UK Government, and exporters will not be charged. Instead, reimbursment for costs incurred providing the export services will be made to the Scottish Government. The UK Government confirmed this funding in December 2020 and it has applied from 1 January 2021.

Scottish Government
Agriculture and Rural Economy Directorate
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