EXECUTIVE NOTE

THE PLANT HEALTH FEES (SCOTLAND) AMENDMENT REGULATIONS 2007 S.S.I. 2007/314

Introduction

1. The above instrument is made by the Scottish Ministers in exercise of powers conferred by section 2(2) of the European Communities Act 1972 and all other powers enabling them in that behalf. The instrument is subject to negative resolution procedure.

Policy Objective

2. To amend the existing Plant Health Fees (Scotland) Regulations 1996 in order to provide the Scottish Executive Rural Directorate with the authority to charge for inspections related to the issue of plant passports in respect of host material for *Phytophthora ramorum*.

Background

3. Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ("the Plant Health Directive") establishes the Community plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The Directive is implemented in Scotland, for non-forestry matters, by the Plant Health (Scotland) Order 2005 (as amended). Similar but separate legislation operates in England, Wales and Northern Ireland.

4. Under the Directive a limited range of plants which host the most serious pests and diseases require a plant passport to facilitate movement within the Community. Anyone wishing to trade in such material must be authorised to issue plant passports. Authorisation involves the provision of basic details about the business, followed by an inspection by SE-RD Horticultural Officers of the premises. Visits are also necessary to maintain authorisation to issue plant passports. Charges apply for inspections associated with authorisation to issue plant passports and generally there would be one growing season inspection and one record check inspection carried out each year.

5. The Plant Health (Scotland) Order 2005 (which replaced The Plant Health (Great Britain) Order 1993) provides Scottish Ministers with the power to authorise a person to issue plant passports and provides that this authorisation shall be conferred pursuant to a satisfactory inspection. The Plant Health (Fees) (Scotland) Regulations 1996 provide that a fee shall be payable in respect of any inspection for the purposes of conferring or maintaining an authority to issue plant passports under the Plant Health Order.

6. In November 2002 The Plant Health (*Phytophthora ramorum*) (Scotland) (No.2) Order 2002 came into force implementing EC measures and extending the plant passport regime to the genera *Rhododendron* and *Viburnum* by cross-reference to the 1993 Plant Health Order. This was followed by The Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004 which extended plant passporting to include *Camellia* and also provides that a person who is authorised under the Plant Health Order is also authorised to issue plant passports under that Order. Anyone not

authorised under the Plant Health Order and who trades only in *Camellia*, *Rhododendron* and *Viburnum* may be authorised under the 2004 *P. ramorum* Order.

Discussion

7. Earlier this year we received a copy of legal advice obtained by Defra policy colleagues which concluded that there is no legal basis for the charging of fees in respect of authorisations made under the English equivalent of our *P. ramorum* Order. This means that, as with Defra, where SE-RD receives an application for authorisation only in respect of *P. ramorum*-susceptible material it does not have the power to charge for any plant passport inspection carried out for the purpose of conferring or maintaining that authority.

8. We have considered the implications of this advice with OSSE who have confirmed that we are in a similar position to Defra in this matter, and will need to introduce legislation in order to provide SE-RD with the authority to charge for inspections related to the issue of plant passports as discussed above. It is also confirmed that we should repay any fees that have been levied unlawfully. However, an initial assessment of the situation in Scotland indicates that the scale of the repayment exercise will be relatively small (it is estimated that 8 Scottish businesses are affected and that about £2,000 of fees for these services has been unlawfully collected by SEERAD since November 2002). OSSE have confirmed that in view of the relatively insignificant sums of money involved, there is no requirement to pay interest on the monies refunded.

9. Further charging for these services in Scotland has been suspended until the legislation to which this Executive Note relates comes into force.

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