

Rural Affairs, Islands and Natural Environment Committee

12th Meeting, 2021 (Session 6), Wednesday, 24 November 2021

Subordinate legislation

Introduction

1. This paper supports the Committee's consideration of the Plant Health (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2021.¹ This instrument is made using the powers under the European Union (Withdrawal) Act 2018 and is subject to the mandatory affirmative procedure.

Mandatory affirmative procedure

2. A [protocol](#) has been agreed between the Scottish Government and Scottish Parliament on the process for considering SSIs laid under the 2018 Act.
3. Scottish Ministers have discretion about whether instruments made under Schedule 2 of the 2018 Act should be subject to the affirmative or negative procedure, unless the instrument makes provision falling within one of the categories which requires the mandatory affirmative procedure to be used. This instrument falls within one of these categories due to it relating to fees chargeable by a public body (modifying the fees and charges on export of plants, plant products and related objects from Scotland).
4. The Committee will, therefore, follow the affirmative procedure when considering this instrument.

Categorisation

5. The protocol sets out an approach which categorises SSIs – high, medium or low – to assist committees' prioritisation in terms of scrutiny. The text of the protocol provides more detail, but a low category is generally minor and technical, whereas a high category is a significant policy decision by Scottish Ministers.
6. This instrument has been categorised as medium due to the additional certification requirements imposed as a result of the UK leaving the EU, and the exemption from charges assigned to goods being transported from Scotland to Northern Ireland. As stated in paragraph 14 below, the DPLR Committee agreed with this categorisation.

¹ At the time of publication, the Instrument was not available on Legislation.gov.uk. Members may request hard copies from the clerks.

Parliamentary procedure – affirmative instrument

7. The affirmative parliamentary procedure is set out in Chapter 10 of the [Parliament's Standing Orders](#). Instruments subject to the affirmative procedure cannot come into force unless they are approved by the Parliament.
8. It is usual practice for subject committees to take evidence from the Scottish Government in advance of considering the instrument. The Committee will take evidence from Lorna Slater, Minister for Green Skills, Circular Economy and Biodiversity, and Scottish Government officials at agenda item 1.
9. During its formal consideration, a member of the Scottish Government proposes, by motion, that the lead committee recommend that the instrument or draft instrument be approved. The committee has up to 90 minutes to debate the motion. The Committee will consider the motion at agenda item 2.
10. The lead committee must report its recommendation to the Parliament within 40 days of the SSI being laid; where the lead committee recommends the instrument be approved, the Parliamentary Bureau will propose a motion that the instrument be agreed.

Policy objectives

11. The SSI was laid on 29 October 2021 and the lead committee must consider it by 7 December 2021. It was originally laid on 7 October 2021 and subsequently withdrawn and re-laid following initial questions from the DPLR Committee.
12. The Regulations amend existing subordinate legislation to make provision—
 - for increases in fees and charges for export certification in respect of plants and plant products leaving Scotland;
 - to correct deficiencies in domestic law and retained EU law arising from the UK withdrawal from the European Union;
 - to waive fees charged for considering applications for phytosanitary certificates and associated testing and examination activities in respect of plants, plant products and associated objects being transported from Scotland to Northern Ireland; and
 - to correct an error in the existing Regulations.
13. Paper 2 and the policy note, set out in **Annexe A**, provide further information on the draft Regulations.

Consideration by the Delegated Powers and Law Reform Committee

14. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on [9 November 2021](#) and agreed it had been properly categorised as of medium significance and that no points arose.

For decision

15. The Committee is invited to—

- take evidence from the Minister for Green Skills, Circular Economy and Biodiversity and Scottish Government officials on the instrument (agenda item 1);
- ask the Minister to move, and then debate, the motion on the instrument (agenda item 2); and
- delegate authority to the Convener to sign off the Committee's report to the Parliament on the instrument.

Rural Affairs, Islands and Natural Environment Committee clerks
November 2021

POLICY NOTE**THE PLANT HEALTH (EU EXIT) (SCOTLAND) (AMENDMENT) (NO. 2)
REGULATIONS 2021****SSI 2021/XXX**

These Regulations are made in exercise of the powers conferred by paragraphs 1(1) and (3) of schedule 2, paragraph 7 of schedule 4 and paragraph 21(b) of schedule 7 of the European Union Withdrawal Act 2018 (c. 16). This instrument is subject to affirmative procedure.

Purpose of the Regulations

The Plant Health (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2021 (“the 2021 Regulations”) amend a typographical error in schedule 2 of the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014 (“the Import Fees Regulations”).

The 2021 Regulations also amend the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 (“the Forestry Fees Regulations”), introducing provision increasing the fees for services in relation to plant passport authorities and applications for phytosanitary certificates. The Forestry Fees Regulations are also amended to introduce an exemption to provide that phytosanitary certificate fees are not payable in relation to exports from Scotland to Northern Ireland in certain circumstances.

In addition, the 2021 Regulations amend the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (“the 2019 Regulations”) and make provision in order to address failures of retained EU law to operate effectively arising from the withdrawal of the United Kingdom from the European Union.

1. Policy Objectives

The 2021 Regulations make amendments to legislation in the field of plant health as it applies in Scotland. In particular they make modifications to the level of certain fees payable to the Scottish Ministers in relation to plant passports and phytosanitary certification, and for the inspection of imports of plants, plant products or other objects. They also make provision to fix deficiencies arising from the withdrawal from the European Union.

Regulation 2 of the 2021 Regulations corrects a typographical error in the Import Fees Regulations.

Regulation 3(2) of the 2021 Regulations amends the Forestry Fees Regulations 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. Regulation 3(2) substitutes regulation 3(5AA) of the Forestry Fees

Regulations with a new regulation 3(5AA) and 3(5BB). The new regulation 3(5AA) of the Forestry Fees Regulations removes the requirement on exporters to pay the fee for a phytosanitary certificate or phytosanitary certificate for re-export specified in schedule 5A of the Forestry Fees Regulations in the circumstances set out in that regulation, with the aim of supporting exporters 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. The exemption from paying the fees will last until 31st December 2022.

Regulation 3(3) and (4) of the 2021 Regulations amends the Forestry Fees Regulations to provide for increases in the fees for services, in relation to Scotland, to reflect an inflationary rise in the cost of providing those services since the introduction of those fees. The fees for export certification services were introduced in 2004 and the fees for inspections in connection with a plant passport authority were introduced in 2006. There have been no changes to these fees since they were introduced. The increase in fees is to mirror increased costs associated with export certification services and inspections. Similar legislation came into force for England in July 2021 via the Plant Health (Fees) (Forestry) (England) (Amendment) Regulations 2021.

Regulation 4 of the 2021 Regulations makes amendments to the 2019 Regulations to deficiency fix retained EU law to make it operable.

2. Explanation of the law being amended by the regulations

Regulation 2 of the 2021 Regulations amends the Import Fees Regulations which, together with the Forestry Fees Regulations, 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 on plants, plant products and other objects.

Regulation 3 of the 2021 Regulations amends the Forestry Fees Regulations. These Regulations set out fees that are to be charged in forestry matters in relation to plant passports, licences, certain imports and exports and 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 retained EU law versions of Regulation (EU) 2016/2031 (the Plant Health Regulation) and 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.

3. 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 of plants, plant products and other objects and to correct deficiencies to enable retained EU law to operate effectively.

4. Statements required by the European Union Withdrawal Act 2018 and Additional Information required by the Protocol between the Scottish Government and the Scottish Parliament

These Regulations are, in part, made in the 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).

Regulations 2 and 3 of the 2021 Regulations are made under the powers in the 2018 Act to modify pre-exit fees or charges (paragraph 7 of schedule 4 and paragraph 21 of schedule 7 of the 2018 Act).

Regulation 4 of the 2021 Regulations is made in exercise of powers in the 2018 Act to deal with deficiencies in retained EU law (paragraphs 1(1) and (3) of Part 1 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 modify pre-exit fees.

Statements required by European Union (Withdrawal) Act 2018

5. Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate

The Minister for Green Skills, Circular Economy and Biodiversity, Lorna Slater, has made the following statement “In my view the Plant Health (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2021 do no more than appropriate”. This is the case because the amendments are being made to ensure continuing and effective functioning of the legislation being amended.

6. 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 Green Skills, Circular Economy and Biodiversity, Lorna Slater, 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”.

7. 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 Green Skills, Circular Economy and Biodiversity, Lorna Slater, has made the following statement “In my view the Plant Health (EU Exit) (Scotland) (Amendment) (No. 2) 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.”

8. 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 Green Skills, Circular Economy and Biodiversity, Lorna Slater, has made the following statement “In my view the Plant Health (EU Exit) (Scotland) (Amendment) (No. 2) 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

9. 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 Green Skills, Circular Economy and Biodiversity, Lorna Slater, has made the following statement “In my view the Plant Health (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2021 have had due regard 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.”

10. 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

11. 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, however fee increases are introduced by the instrument along with a new exemption from paying export certification fees in circumstances.

12. Statement setting out the Scottish Ministers’ reasons for their choice of procedure

This SSI is subject to mandatory affirmative procedure under paragraph 1(6) of schedule 7 of the European Union (Withdrawal) Act 2018.

Further information

13. Consultation

No formal consultation has been undertaken. Informal conversations with sector representatives regarding the impact of the amendments outlined in regulation 3(3) suggest that the changes would not have any significant negative effect on the sector.

14. Impact Assessment

The proposed amendments either provide only for inflationary fee increases or do not bring in new fees, but instead remove the requirement to pay fees in respect of phytosanitary certification process for exporters to Northern Ireland. Therefore impact assessments were not deemed necessary.

The 2021 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.

15. Financial Effects

Funding for the costs incurred in providing the export certification services outlined in regulation 3(2) 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.

The financial impact of the fee changes outlined in regulation 3(3) on the sector is expected to be minimal and follows equivalent changes already in place in England and Wales.

Scottish Forestry
Environment and Forestry
Directorate Date: 26 October 2021