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Mr Finlay Carson MSP
The Convener,
Rural Affairs, Island and Natural Environment
Committee
Scottish Parliament
EDINBURGH
EH99 1SP

14 November 2022

Dear Finlay

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE PLANT HEALTH (AMENDMENT) (EU EXIT) REGULATIONS 2022 – “PH/045”**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK affirmative legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the former Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach a Type 1 notification which sets out the details of PH/045 which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

PH/045 is subject to urgent affirmative procedure and on current DEFRA plans is to be laid in Westminster on 15 December 2022. I am pleased to say on this occasion the Scottish Parliament will have the 28 days to consider this notification.

This notification relates to content which was previously intended to be included in the UK SI - the Animals and Animal Health, Feed and Food, Plants and Plant Health (Amendment)

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Regulations 2022, APH/009). It was withdrawn from that SI as detailed in my letter to you dated 31 October 2022.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Kind regards



LORNA SLATER

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SI NOTIFICATION: SUMMARY

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| Title |
| The Plant Health (Amendment) (EU Exit) Regulations 2022 “PH/045” |
| Proposed laying date at Westminster |
| Laying on 15 December following made affirmative procedure |
| Date by which Committee is to respond |
| 13 December 2022 at the latest, but a response in the earliest possible timeframe would be desirable to enable a formal response to be sent to the UKG. |
| Power(s) under which SI is to be made |
| Section 8(1) of, and paragraph 21 of schedule 7 to, the European Union (Withdrawal) Act 2018 (“EUWA”). |
| Categorisation under SI Protocol |
| Type 1 |
| Purpose: |
| This instrument makes operability amendment to retained direct EU legislation Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (the Plant Health Regulation) and domestic legislation the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019, and equivalent domestic legislation in England and Wales. |
| Other information: |
| SG Policy contact: Yvonne Hay (Yvonne.Hay@gov.scot) |

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Plant Health (Amendment) (EU Exit) Regulations 2022 - "PH/045"

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

The Plant Health (Amendment) (EU Exit) Regulations 2022 ("PH/045")

The purpose of PH/045 is to reinsert provision, with appropriate modifications, which was removed in error in a previous EU Exit deficiency fixing SI. The provision in PH/045 will ensure that on the discovery of a plant pest or disease, demarcated areas can be established across borders within Great Britain to prevent or reduce the spread of the pest/disease.

PH/045 is made in exercise of powers contained section 8(1) and paragraph 21 of schedule 7 of the European Union (Withdrawal) Act 2018 ("EUWA"). It is to be laid on 15 December 2022 using the urgent made affirmative procedure and is to come into force on 31 December 2022.

PH/045 amends Article 18 of retained Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants ("the Plant Health Regulation"). Article 18 of the Plant Health Regulation is to be amended to ensure that demarcated areas can be established across borders of GB nations. Paragraph 5 of Article 18 which made provision in relation to cross Member State demarcated areas was removed, rather than amended, in error by regulation 27(17)(b) of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1482).

In addition to the Article 18 amendments, consequential amendments are required to be made to domestic legislation in England, Wales and Scotland ("the domestic enforcement legislation") to allow a competent authority to issue Notices in relation to cross border demarcated areas. For Scotland this will form an amendment to regulation 17 of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 ("SSI 2019/421"). Identical provision will be provided in PH/045 for England in the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 and for Wales in the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. The amendments to the domestic enforcement legislation will be made using the consequential power in paragraph 21(b) of schedule 7 of EUWA.

Details of the provisions that Scottish Ministers are being asked to consent to

Summary of the proposals:

EUWA converted and preserved the Plant Health Regulation at the end of the transition period into domestic law. It also provided for amendments to be made to address deficiencies arising from EU exit. PH/045 makes necessary changes to retained direct EU legislation and domestic primary and secondary legislation to ensure they are fully operable following the UK's exit from the EU.

PH/045 reinstates, with appropriate amendments, the previously revoked Article 18(5) of the Plant Health Regulation which allowed for demarcated areas to be created across the borders of Member States. The amendments allow for the creation of cross border demarcated areas within GB. In consequence to this provision in the Plant Health Regulation, the SI amends regulation 17 of SSI 2019/421 to allow the Scottish Ministers to issue Notices to establish demarcated areas where a pest/disease is found in a neighbouring GB territory. Similar amendments are proposed for English and Welsh domestic enforcement regulations.

Background

When there is a finding of a GB Quarantine Pest in GB, competent authorities must under Article 18 of the Plant Health Regulation establish a demarcated area and specify rules relating to movements out of and within the demarcated area and any other phytosanitary measures deemed necessary. Regulation 17 of SSI 2019/421 allows the Scottish Ministers to issue Notices that establish these demarcated areas and the rules and requirements relating to movements of goods and phytosanitary measures.

Why the need for change?

The above is effective when the demarcated area does not cross country borders, however it does not allow a competent authority to establish a demarcated area based on the findings of a pest within the territory of another competent authority.

Changes being proposed and why

PH/045 reworks and re-inserts Article 18(5) which was removed by SI 2020/1482 because the provision was considered redundant at that time. It has become clear that for Article 18 to operate effectively, paragraph 5 should in fact have been retained and modified to refer to GB and GB competent authorities. The new provision requires that after the finding of a pest/disease, where a demarcated area ought to extend into a neighbouring GB territory, the competent authority where the pest is located must inform the neighbouring territory competent authority to enable that authority to take all necessary steps under Article 18(1)-(4).

The consequential powers in EUWA are being used to update regulation 17 in the domestic enforcement legislation, to ensure that competent authorities can issue Notices, covering their own territory, based on a pest/disease finding in the territory of another competent authority following notification of that finding from a neighbouring competent authority.

As the amendments to regulation of SSI 2019/421 are made using the consequential power in EUWA, it is being introduced in the same SI as the substantive provision amending Article 18 of the Plant Health Regulation rather than by SSI.

Consultation

As these amendments are correcting a previous error, and there has been no policy changes, a public consultation was not undertaken.

Other information

This SI does not transfer any legislative functions.

A notification to the World Trade Organisation is not required for this SI as this SI does not relate to trade.

Does the SI relate to a common framework or other scheme?

Provisional Plant Health Framework

A note of other impact assessments, (if available)

An impact assessment has not been produced for this instrument, as no or no significant impact on the private or voluntary sector is foreseen

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The Scottish Ministers reasons for consenting to the proposals are as follows:

SSI 2019/421 has not previously been amended by a UKG SI. However, the amendment to SSI 2019/421 will be made using a consequential power in consequence to the substantive changes proposed to Article 18 of the Plant Health Regulation. Making the proposed changes by way of PH/045 rather than SSI avoids the creation of parallel text in the Plant Health Regulation, as these amendments are required for all GB.

In addition, the policy intention is aligned across the GB Plant Health Services (which consist of England, Scotland, and Wales), and by consenting to the use of devolved provision within PH/045 is consistent with previous plant health provisions and amendments to the Plant Health Regulation.

Scottish Ministers consider that consenting to PH/045 is the most effective and transparent way to introduce these amendments. It provides clarity and confidence and continues close collaboration across the UK under the provisional Plant Health Common Framework.

Intended laying day (if known) of instruments likely to arise

PH/045 will be made using the urgent made affirmative procedure , and it is intended to be made on 15 December 2022 and will come into force on 31 December 2022. This procedure has been chosen as the ability to use EUWA deficiencies powers to make legislation sunsets on 31 December 2022.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposals to consent, why not?

N/A

Information about any time dependency associated with the proposal.

N/A

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal

None.

Any significant financial implications?

No significant financial implications. The changes proposed are to deficiency fix operational delivery to extend a demarcated area that cross borders within GB if the pest/disease is not found in that territory.