

Rural Affairs, Islands and Natural Environment Committee

20th Meeting, 2022 (Session 6), Wednesday, 15 June 2022

Subordinate legislation

Introduction

1. This paper supports the Committee's consideration of—
 - a consent notification for a UK statutory instrument (SI), the **Official Controls (Plant Health) (Frequency of Checks) Regulations 2022**; and
 - a Scottish SI (SSI), the **Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022**.¹
2. The Committee will take evidence from the Minister for Green Skills, Circular Economy and Biodiversity on both the consent notification and SSI at agenda item 2. The Committee will then consider the consent notification at agenda item 3 and the SSI at agenda item 4.
3. Background information relating to the process for parliamentary scrutiny of consent notifications for UK subordinate legislation is set out in **Annexe A**.
4. The SSI is subject to the affirmative parliamentary procedure and further information about the procedure is set out in paragraphs 16 to 19.

Background

5. Following the UK's withdrawal from the EU, a risk-targeted import inspection regime was developed for GB which enabled inspections to be targeted using country of origin compliance history for imports on consignments of plants and plant products.
6. As a result, plant health checks (documentary, identity and physical) are 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. These import checks are currently conducted using the EU methodology.

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

7. To align with the changes being introduced by the UK SI, fees changes to reflect the new frequency rates are being made through the SSI, the Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022.

UK SI consent notification for the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022

8. The Minister for Green Skills, Circular Economy and Biodiversity [wrote to the Committee in relation to the notification](#) on 20 May 2022. The instrument is due to be made and laid on 30 June 2022 and is to come into force on 22 July 2022.
9. The notification states that the instrument—
 - makes provision for determination of the frequency rates of plant health checks (physical and identity) of consignments of certain plants, plant products and other relevant goods entering Great Britain (GB) from a third country, including for the modification of those frequency rates; and
 - revokes Part 6 of The Official Controls, Plant Health, Seeds and Seed Potatoes (Amendment etc.) Regulations 2021 to remove the existing frequency of checks model for the highest risk goods from the EU so they are replaced by the methods set out above.
10. The notification sets out the Scottish Government's reasons for the legislative changes being made at UK level as—

“Scottish Ministers consider that consenting to the [SI] PH/038 is the most effective and transparent way to introduce the new system. It provides certainty to Scottish importers that there is to be a GB wide approach.”

The Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022

11. The SSI was laid on 20 May 2021 and will come into force on 22 July 2022. The deadline for lead committee consideration is 28 June 2022.

Purpose of the Regulations

12. The policy note states the purpose of the SSI is to amend the Plant Health (Import Inspections Fees) (Scotland) Regulations 2014 to ensure that the fees charged for plant health checks on commodities imported into Scotland from third countries can be aligned with the new risk-targeted inspection regime.
13. The 2022 Regulations also amend the Plant Health (Fees) Forestry (England and Scotland) Regulations 2015 which 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 SSI would change the date this exemption ceases to have effect from 31 December 2022 to 31 December 2023.

14. The policy note, set out in **Annexe B**, provides further information on the draft Regulations.

Consideration by the Delegated Powers and Law Reform Committee

15. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [7 June 2022](#). The DPLRC raised no points in relation to the instrument.

Parliamentary procedure – affirmative instrument

16. 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.
17. 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.
18. 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.
19. 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.

For decision

20. **The Committee is invited to—**

- **take evidence from the Minister for Green Skills, Circular Economy and Biodiversity and Scottish Government officials on the consent notification and SSI (agenda item 2);**
- **to consider whether it agrees with the Scottish Government's decision to consent to the provisions set out in the notification being included in UK, rather than Scottish, subordinate legislation (agenda item 3);**
- **ask the Minister to move, and then debate, the motion on the SSI (agenda item 4); and**

- **delegate authority to the Convener to sign off the Committee's report to the Parliament on the SSI.**

**Rural Affairs, Islands and Natural Environment Committee clerks
June 2022**

Process for parliamentary scrutiny of consent notifications for UK statutory instruments

1. The process for the Scottish Parliament's consideration of consent notifications is set out in a [protocol](#) agreed between the Scottish Government and Scottish Parliament.
2. The protocol provides for the Scottish Parliament to scrutinise the Scottish Government's decisions to consent to certain secondary legislation made by the UK Government. Specifically, this relates to UK Government secondary legislation on matters which are within devolved competence and are in areas formerly governed by EU law.
3. [The protocol](#) establishes a proportionate scrutiny approach and categorises SIs into type 1 and type 2.
4. For type 1 SI notifications, the Scottish Parliament's agreement is sought before the Scottish Government gives consent to the UK Government making secondary legislation in devolved competence. Except in respect of urgent notifications, the Scottish Parliament will have a minimum of 28 days to consider type 1 notifications.
5. For type 2 SI notifications, however, the Scottish Government will notify the Scottish Parliament within five days after giving consent.
6. Type 2 applies where all aspects of the proposed instrument are either clearly technical, do not involve a policy decision or update references in legislation that are no longer appropriate following EU exit. All other proposals fall into the type 1 category. In line with the proportionate scrutiny approach, each type 1 notification will be considered by the Committee. Committees will be notified of all type 2 notifications which fall within their remit; it is not, however, anticipated that these will normally be considered at a committee meeting. The protocol includes a number of review mechanisms and the categorisation of type 2 notifications will be monitored in this way.
7. **The Committee's role in relation to type 1 notifications is to decide whether it agrees with the Scottish Government's proposal to consent to the UK Government making regulations within devolved competence.**
8. If members are content for consent to be given, the Committee will write to the Scottish Government accordingly. The Committee may wish to note any issues in its response or request that it be kept up to date on any relevant developments.
9. If the Committee is not content with the proposal, however, it may make one of the following three recommendations—

- (1) that the Scottish Government should not give its consent to the provision being made in a UK SI and that the Scottish Government should instead produce an alternative Scottish legislative solution;
- (2) that the Scottish Government should not consent to the provision being made in a UK SI laid solely in the UK Parliament and should instead request that the provision be included in a UK SI laid in both Parliaments under the joint procedure (N.B. joint procedure is not available in every case so the option of making this recommendation will not always be available); or
- (3) that the provision should not be made at all (that is, that the Scottish Government should not consent to the provision being included in a UK SI, nor should the Scottish Government take forward an alternative Scottish legislative solution).

POLICY NOTE

The Plant Health (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2022 SSI 2022/XXX

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, reimbursement 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
20 May 2022