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Mr Finlay Carson MSP
Convener
Rural Affairs and Islands Committee
Scottish Parliament
EDINBURGH
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Copied to UKSIs@parliament.scot

09 February 2024

Dear Finlay

THE PLANT HEALTH (FEES) (ENGLAND) AND OFFICIAL CONTROLS (FREQUENCY OF CHECKS) (AMENDMENTS) REGULATIONS 2024 - (“DEFRA PH/040”) EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT

In accordance with the protocol (agreed in 2018; revised on 4 November 2020) between the Scottish Government and the Scottish Parliament, I am writing to seek the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary 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 Defra PH/040 which the UK Government proposes 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/040 is subject to affirmative procedure and on current Defra plans is to be laid in Westminster on 4 March 2024. Unfortunately due to the complexities of the new rules on medium risk goods entering Great Britain in line with the published Border Targeted Operating Model, a developed draft of the SI was only shared with my officials in recent days. It is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

To align with the changes being introduced pursuant to PH/040, plant health fees legislation in Great Britain is being updated to reflect the new frequency rates for inspections and identity checks. For Scotland, the fees changes are being made through the Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2024 (“the Fees Regulations”) which will amend the principal Plant Health (Import Inspections Fees) (Scotland) Regulations 2014. The Fees Regulations (which are subject to affirmative procedure) will be laid in draft in the Scottish Parliament on 19 February 2024. The Fees Regulations, if approved, are to come into force on 30 April 2024 to coincide with the coming into force of PH/040.

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

I look forward to hearing from you by 1 March at the latest.

Kind regards



LORNA SLATER

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SI NOTIFICATION: SUMMARY

Title: The Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024 – “Defra PH/040”
Proposed laying date at Westminster: 4 March 2024
Date by which Committee is to respond: By 1 March 2024 at the latest
Power(s) under which SI is to be made: This SI is subject to affirmative procedure and is made in exercise of powers conferred by Articles 54(3) and 144(6) of, and paragraph 3(2) of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 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 2017 Regulation”) and section 14(1) of, and paragraph 7 of Schedule 4 and paragraphs 21 and 38 of Schedule 7 to, the European Union (Withdrawal) Act 2018) (“the 2018 Act”).
Categorisation under SI Protocol: Type 1
Purpose: Defra PH/040 makes the following changes: <ul style="list-style-type: none">• Expands the frequency of phytosanitary checks on plants, plant products and other objects to include medium risk goods entering GB from the EU, Liechtenstein and Switzerland within its framework for determining the frequency of physical and ID checks. This does not extend to EU fruit and vegetables which are currently being treated as low-risk goods while risk assessments are conducted. This easement is in place until October 2024.• Amends the 2017 Regulation, by introducing frequency of checks (ID, physical) and risk-based documentary checks for regulated medium-risk plants with new rules for certain goods entering Great Britain.• Disapplies official control checks (ID, physical) for consignments originating in an EU member state, Lichtenstein or Switzerland entering via specified West Coast ports. This in line with the Border Target Operating Model commitment that there will be no checks at West Coast Ports before October 2024 at the earliest.
Other information - The SI is also updating English and Welsh importing fees relating to certain inspections and checks of plants and plant products or other objects, and for transparency clarifies a type of inspection for which a fee is chargeable. The Scottish Government is making similar updates for the same inspections and checks via the Scottish Statutory Instrument the Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2024. This SSI is being put forward to the Rural Affairs and Islands Committee on 19 February 2024.
SG Policy contact: Plant Health: Yvonne Hay (Yvonne.Hay@gov.scot)

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) Regulations 2024 – “Defra PH/040”

Is the notification Type 1 or Type 2

Type 1

A brief overview of the SI (including reserved provision)

The purpose of this instrument is to implement stage two of the Border Target Operating Model (“BTOM”)¹ as published by the UK Government in August 2023 as regards plant health. The instrument makes amendments to Regulation (EU) 2017/625 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”) and the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 (S.I. 2022/739) to introduce risk-based import checks for certain plants and plant products imported from EU member states, Liechtenstein and Switzerland from 30 April 2024.

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU because it concerns measures regarding sanitary and phytosanitary controls on goods entering Great Britain from the EU which are required as a consequence of no longer being an EU member. These measures would not create any barriers to re-entry to the European Union.

The SI is made in exercise of powers conferred by Articles 54(3) and 144(6) of, and paragraph 3(2) of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 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 2017 Regulation”) and section 14(1) of, and paragraph 7 of Schedule 4 and paragraphs 21 and 38 of Schedule 7 to, the European Union (Withdrawal) Act 2018.

The proposed instrument is expected to be laid before the UK Parliament on 4 March 2024 and to come into force on 30 April 2024.

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

The principal legislation governing the controls required on movement into Great Britain of plants and plant products is set out in assimilated EU legislation, namely Regulation (EU) 2016/2031 (“the Plant Health Regulation”) for plant health and the Official Controls Regulation for animal, plant and public health (together “the EU Regulations”), and the additional legislation made under these Regulations. This instrument makes changes to the Official Controls Regulation to reflect the introduction of checks on certain goods. Similar amendments are made to the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 which implemented the current risk-targeted inspection regime.

This instrument introduces risk-based import checks (documentary, identity and physical) on medium-risk goods from EU member states, Liechtenstein, and Switzerland, from 30 April 2024, as published in the BTOM. The instrument will also ensure that fruit and vegetables from EU member states, Liechtenstein, and Switzerland, are not in scope of

¹ [The Border Target Operating Model: August 2023 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/the-border-target-operating-model-august-2023)

this change as they are currently being treated as low-risk goods while risk assessments are being conducted. This easement is in place until 31 October at least.

The BTOM also indicates that EU SPS goods that enter GB via West Coast Ports (WCPs) will not be subject to checks until 31 October 2024 at the earliest. This is because some Border Control Posts on the west coast will not be operational until 31 October at the earliest. The SI therefore removes the requirement for official checks on EU goods entering GB at WCPs in that timeframe.

Summary of the proposals

In so far as it extends to Scotland, the SI will make the following provisions:

- It expands the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022, to include those plants and plant goods from the EU, Liechtenstein and Switzerland currently categorised as medium risk, within the framework for determining the frequency of physical and ID checks.
- It amends Annex 6 of the Official Controls Regulation to ensure that the 'appropriate frequency rate' of physical and identity checks for medium risk goods from the EU, Liechtenstein and Switzerland is established by the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022. The frequency of documentary checks for these goods will continue to be determined by article 44 and captures these goods entering GB via west coast ports. At the same time it 'switches off' the appropriate checks for any plant and plant products from EU, Liechtenstein and Switzerland entering through a West Coast port, and fruit and vegetables from the EU Liechtenstein and Switzerland.
- It makes adjustments ensuring that any rest of the world good listed as being eligible for movements under the Northern Ireland Retail Movement Scheme (under the umbrella of the Windsor Framework package) is not captured and will be treated as any other third country import.
- It inserts a provision to disapply the rule as to the frequency rates for certain checks under the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022.

As far as the provisions extend to Scotland, the provisions relate to devolved matters, and the consent of the Scottish Ministers is sought for their inclusion in the instrument.

The SI is also expanding the Plant Health etc. (Fees) (England) Regulations 2018 and the Plant Health etc. (Fees) (Wales) Regulations 2018 to include fees for risk-based levels of documentary checks on medium risk goods from the EU, Liechtenstein and Switzerland and to introduce fees for physical and identity checks on these goods. Similar but separate amendments covering fees in Scotland will be made to the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014, which will be presented to the Rural Affairs and Islands Committee on 19 February 2024.

Regulation 4 makes changes to the Transitional Staging Period (TSP) in order to phase in import checks as published in the BTOM. The amendments here:

- Alter the way in which the 'appropriate frequency rate' is determined for medium risk goods from the EU, Liechtenstein and Switzerland to ensure that they are determined by regulations made under Article 54(3) of the OCR. This means the frequency rate of checks for medium risk goods from the EU, Liechtenstein and Switzerland is set in the same way as that for medium risk goods from non-EU countries and high-risk goods from all third countries (EU and non-EU).

- Defines 'excluded goods' to ensure the below are excluded from checks:
 - fruit and vegetables from the EU, Liechtenstein and Switzerland
 - any goods from the EU, Liechtenstein and Switzerland entering through a West Coast port.
- The definition of 'excluded goods' also ensures that any rest of world good listed as being eligible for movements under Northern Ireland Retail Movement Scheme (NIRMS) is not captured and will be treated as any other third country import in line with our obligations under the Windsor Framework.
- Make an amendment to ensure that the frequency of documentary checks for goods from the EU, Liechtenstein and Switzerland is at least that of the frequency of physical and identity checks. This allows for risk-based documentary checks.

Reg 5.

Reg 5 makes changes to the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 to extend the scope of those regulations to include medium risk goods from the EU, Liechtenstein and Switzerland whilst ensuring that the below are excluded from scope:

- fruit and veg from the EU, Liechtenstein and Switzerland
- any goods from the EU, Liechtenstein and Switzerland entering via West Coast ports.

Finally, it ensures that any rest of world good listed as being eligible for movements under NIRMS, is captured by the Official Controls (Plant Health) (Frequency of Checks) Regulations 2022 and will be treated as any other third country import.

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

Provisional Plant Health Framework

Summary of stakeholder engagement/consultation

There was a GB-wide consultation on the introduction of import checks and fees on medium risk goods from the EU, Liechtenstein, and Switzerland. This included engagement with relevant stakeholders such as the UK Plant Health Advisory Forum which includes the Fresh Produce Consortium, the Horticultural Trades Association and other Scottish representatives. At the same time, the Scottish Government made Scottish importers who trade in regulated plant and plant products aware of the consultation and plans.

Three responses were received to the consultation.. Two were from Scottish businesses who raised no concerns with the proposals and one from the NFU. The NFU response was out of scope of the current consultation which focused only on medium risk goods from the EU.

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

The SI takes account of devolved competence. Since 1 January 2021, GB has operated its own sanitary and phytosanitary (SPS) regime, which is focused on addressing the risks it faces. This regime includes risk-based import checks of plants, plant products and other objects to avoid the introduction of harmful plant pests and diseases. These risk-based checks are in line with WTO/SPS principles and consistent with UK obligations under the EU Withdrawal Act. To support businesses in adopting the new EU-GB requirements,

Scottish Ministers consented to the UK Government decision to introduce new measures in phases for the import of EU plants and plant material. The model delivers the needed plant biosecurity controls whilst maintaining the efficient trade in goods such as plants and plant products. The amendments in this SI are the next steps in meeting the objectives of the BTOM and ensuring smooth flow of trade for Scottish businesses who import medium risk goods from the EU, Liechtenstein and Switzerland.

Therefore, the Scottish Ministers consider that consenting to this SI is acceptable.

Intended laying date (if known) of instruments likely to arise.

PH/040 will be made using affirmative procedure and is to be laid on 4 March 2024 to come into force on 30 April 2024.

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

Due to the complexities of the new rules on medium risk goods entering Great Britain, in line with published Border Targeted Operating Model, a developed draft of the SI was only shared in recent days. It is therefore regrettable that on this occasion it has not been possible to comply with the requirement that members should have a full 28 days to scrutinise before the instrument is laid.

Information about any time dependency associated with the proposal.

Not applicable

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.