

PARTIAL BUSINESS AND REGULATORY IMPACT ASSESSMENT

1. Title of proposal

The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019

2. Purpose and intended effect

Context

Plant health is at the heart of Scotland's thriving rural economy and natural environment. There are increasing risks to plant health from the globalisation of trade, and the consequent threat of introduction of new pests and invasive non-native species, as well as the additional pressure of climate change.

Plant health is vital in protecting a £1.8 billion sector of the Scottish rural economy, which includes agriculture, horticulture, parks and gardens, forestry and the natural environment. Plant health also underpins the Scottish £15 billion food and drink sector, which includes £6 billion food and drink exports, and the UK's food production.

Protection of plant health is also vital for the forestry sector. In Scotland, forests and woodlands cover 1.4 million ha, which is approximately 19% of our land area and 45% of the UK's forest area. The timber harvest is 7 million tonnes per year around 60% of the UK harvest. The gross value added of the forest industries in Scotland including forestry-related tourism is £954 million per annum.

Safeguarding plant health is therefore essential for achieving the following SG National Outcomes:

- We have a globally competitive, entrepreneurial, inclusive and sustainable economy.
- We have a thriving and innovative businesses with quality jobs and fair work for everyone.
- We value, enjoy, protect and enhance our environment.
- We are healthy and active.
- We are open, connected and make a positive contribution internationally.
- We respect, protect and fulfil

Objective and purpose

The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 is a set of EU proposals for protecting against animal disease and plant pests in the food chain, aiming to bring improved plant health inspections and revised measures to enact should any plant disease or other containment be discovered upon inspection. All EU Member States are expected to implement these regulations with effect from 14 December 2019. The Scottish Government is committed to implementing this instrument as an EU Member State.

Summary of the changes

The regulations aim to help the agricultural, horticultural and forestry sectors remain sustainable and competitive, as well as protecting domestic biodiversity and ecosystems. Globalised trade and climate change now presents a greater risk to these sectors. The regulations set out controls and restrictions that will apply to imports and internal movement of certain plants, plant pests, and other materials like soil, to help reduce these risks.

Some of the areas changing include:

- The use of plant passports is being extended to cover all plants for planting and timber. The format of the plant passport label is changing. New requirements for authorisation will also be introduced;
- More goods being imported into the EU will require a phytosanitary certificate;
- New requirements for the registration of professional operators;
- Strengthened measures for protected zones;
- New requirements applying to high risk plants and regulated non-quarantine pests (RNQPs);
- A more precautionary approach to new trade flows and a commitment to undertake thorough pest risk assessments; and
- A new category of priority pests will be introduced, including annual surveying requirements and outbreak contingency planning.

Consultation

Within Government

- Better Regulation and Industry Engagement Branch, Scottish Government has provided advice on the preparation of this partial BRIA;
- Scottish Government Legal Directorate has provided advice on the legal issues raised in relation to these regulations;
- Scottish Government Criminal Justice Division has provided advice in relation to the regulations;
- The Department for Environment Food & Rural Affairs (DEFRA) has provided advice from UK Government's perspective;
- The Department of Agriculture, Environment and Rural Affairs has provided advice from a Northern Ireland perspective;
- Welsh Government has provided advice from a Wales perspective;

- The Crown Dependencies (the Bailiwick of Guernsey, Bailiwick of Jersey and the Isle of Man) have provided advice from their perspective
- HM Revenue & Customs have provided appropriate advice;
- The Information Commissionaires Office (ICO) has provided advice from a data protection perspective; and
- SASA (Science & Advice for Scottish Agriculture) is the lead Scottish Government department for the regulations, and has provided all policy advice.

Public Consultation

Implementation of these EU Regulation in Scotland and the rest of the UK has been complicated by the continued uncertainty related to the timing of the UK's exit from the EU. It was only following agreement to further extend Article 50 until the end of January 2020 that there was certainty that the UK would be legal required to implement the OCR and the PHR by 14 December 2019. These complexities, coupled with the significant challenge and prioritisation of resources associated with ensuring the necessary fixes to the EU law were in place for a possible no-deal EU Exit on 31 October 2019, have meant the necessary work to prepare for implementation in Scotland has been undertaken in shorter than normal timescales.

With the regulations having to come into force on 14 December 2019 in order to comply with the EU Directive, this excluded the possibility to conduct any formal public consultation. Plant health inspectors and a number of affected businesses have been contacted and consulted on an informal basis. There was also discussion and feedback provided by stakeholders at the UK Plant Health Advisory Forum (this includes NFU Scotland, the Horticulture Trades Association, National Trust for Scotland and CONFOR amongst others).

Any impacted businesses or other stakeholders will be encouraged to share with the Scottish Government their experience and impacts on an on-going basis.

Competition assessment

In our view, The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 will not impact negatively on competition within the industry, which remains extremely competitive. We will apply to the Office of Fair Trade to confirm their agreement with this assumption.

Options

Option 1 – Do Nothing

As stated above, all EU Member States are expected to implement these regulations with effect from 14 December 2019. Therefore not implementing the regulations either in their entirety, or on time for 14 December 2019, would result in the United Kingdom being in breach of an EU directive, which could result in the European Commission initiating enforcement action against the member state.

Option 2 – Implement and enact the new regulations

The new regulations are required to be implemented for Scotland (and therefore the United Kingdom) to remain a complying EU Member State while it is presently a member of the European Union. It is possible any future agreement with the EU might offer flexibility in the future in regards to such regulations. At present however, the United Kingdom's exit from the European Union is still uncertain, and consequently so is any post-exit relationship.

Benefits – Option 1

None, only negative impacts are anticipated. As stated above, all EU Member States are expected to implement these regulations with effect from 14 December 2019.

The consequences of action taken by the European Commission against a Member State can vary but sanctions can typically include the withholding a portion of EU funding to the member state. This would result in further negative consequences to the bodies due that withheld funding. The Member State may also be required to compensate any affected individuals or organisations as a result of not implementing the regulations as directed.

Benefits – Option 2

In addition to Scotland and the United Kingdom remaining in compliance with the EU, the regulations aim to help the agricultural, horticultural and forestry sectors remain sustainable and competitive, as well as protecting domestic biodiversity and ecosystems. They will also assist in the protecting against animal disease and plant pests in the food chain, aiming to bring improved plant health inspections and revised measures to enact should any plant disease or other containment be discovered upon inspection.

Costs – Option 1

As outlined above, an unknown (but likely considerable) cost could possibly be incurred for the Scottish and UK Governments in the form of legal costs, EU sanctions and compensation payments as a result of not implementing the regulations as directed. Businesses and individuals would also face fines and other sanctions for failing to have their products certified and inspected in accordance to the new regulations.

Costs – Option 2

The costs to the affected businesses as a result of the regulations is at this time unknown, and it should be noted any costs would be variable from business to business. The current plant health fees and their structure does not require to be modified in the short-term, it may be the frequency of these fees being incurred that could increase as a consequence of the new regulations.

Any impacted businesses or other stakeholders will be encouraged to share with the Scottish Government their consequential costs and impacts on an on-going basis, to help more fully inform the future Business and Regulatory Impact Assessment. To achieve this we aim to review and complete this partial assessment within 12 months of the new regulations being implemented.

Enforcement, sanctions and monitoring

Due to the extremely constrained timetable of both the drafting and implementation of these regulations, and the time limitations that brings for any learning or training on the new regulations, initial enforcement by inspectors will be conducted on a pragmatic basis; seeking to inform, educate and assist the affected bodies and business in compliance of them. The decision to pursue the permitted sanctions will be taken on a case-by-case basis by inspectors and the Scottish Government.

A person guilty of an offence under these regulations is liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5,000) and/or imprisonment for a term varying between 1 – 24 months.

For monitoring purposes, the Scottish Government will maintain close and on-going contact with both inspectors and stakeholders to both better inform the future Business and Regulatory Impact Assessment, and assist in adapting to the new regulations.

Summary and Recommendation

In summary, the changes help the agricultural, horticultural and forestry sectors remain sustainable and competitive, as well as protecting domestic biodiversity and ecosystems, in addition to protecting against animal disease and plant pests in the food chain, to bring improved plant health inspections.

Adopting the regulations are also essential to Scotland and the United Kingdom remaining in compliance with its EU Member obligations, and preventing any EU sanctions or compensation payments as a result of not implementing the regulations as directed.

We therefore intend to proceed with implementing the regulations as directed (option 2).

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Fergus Ewing
Cabinet Secretary for the Rural Economy
11 December 2019

Contact

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