

## **POLICY NOTE**

### **The Plant Health and Plant Propagating Material (Miscellaneous Amendments) (Scotland) Regulations 2021**

**SSI 2021/87**

The above instrument was made in exercise of the powers conferred by paragraph 11M(1) of schedule 2 of the European Union (Withdrawal) Act 2018 (the “2018 Act”) and Articles 22 and 144 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 instrument is subject to negative procedure.

#### **Purpose of the instrument.**

The Plant Health and Plant Propagating Material (Miscellaneous Amendments) (Scotland) Regulations 2021 (the “2021 Regulations”) make minor amendments to the Marketing of Vegetable Plant Material Regulations 1995 (the “1995 Regulations”) and the Marketing of Ornamental Plant Propagating Material Regulations 1999 (the “1999 Regulations”) to take into account amendments to the Protocol on Ireland/Northern Ireland (the “Northern Ireland Protocol”) forming part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the “Withdrawal Agreement”).

The 2021 Regulations also introduce an enforcement provision to the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (the “2019 Regulations”), in relation to those consignments of plants, plant products and other objects which will have official controls and other official activities carried out upon them at their place of destination (PoD) rather than a Border Control Post.

#### **Policy Objectives**

The 2021 Regulations amend the Marketing of Vegetable Plant Material Regulations 1995 and the Marketing of Ornamental Plant Propagating Material Regulations 1999 to reflect amendments to the Northern Ireland Protocol.

The amendments made by the 2021 Regulations ensure that plant health inspectors have suitable enforcement powers when carrying out official controls on plants, plant products and other objects at a PoD. The requirements surrounding the establishment and operation of PoDs have been introduced in the GB SI, the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021.

#### **Explanation of the law being amended by the regulations**

Part 2 of the 2021 Regulations concerns the marketing of plant propagating material which is regulated in Scotland by the relevant marketing regulations:

- The Marketing of Vegetable Plant Material Regulations 1995 (the “1995 Regulations”)
- The Marketing of Ornamental Plant Propagating Material Regulations 1999 (the “1999 Regulations”)

These two instruments require amended to take account of the EU Directives being added to Annex 2 of the Northern Ireland Protocol. Reference to “UK” is changed to “GB” as the rules for marketing seed and other propagating material now differ from NI.

Part three 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 Regulation (EU) 2016/2031 (the “Plant Health Regulation”) and 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.

### **Reasons for and effect of the proposed change or changes on retained EU law**

Part 2 of the 2021 Regulations makes amendments to reflect updates to the Northern Ireland Protocol.

Point (d) of Article 164(5) of the Withdrawal Agreement enables the Joint Committee established under Article 164(1) thereof (‘the Joint Committee’) to adopt decisions amending the Withdrawal Agreement, provided that such amendments are necessary to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when the Withdrawal Agreement was signed, provided that such decisions do not amend essential elements of that Withdrawal Agreement. Pursuant to Article 166(2) of the Withdrawal Agreement, the decisions adopted by the Joint Committee are binding on the Union and the United Kingdom. The Union and the United Kingdom must implement such decisions, which have the same legal effect as the Withdrawal Agreement. Under Article 182 of the Withdrawal Agreement, the Northern Ireland Protocol forms an integral part of that Agreement.

Decision No 3/2020 of the Joint Committee (“the Decision”) added a number of legal acts to Annex 2 of the Protocol, which were omitted from the Protocol at the time of adoption.

Article 1(6) of the Decision adds the following entries to Annex 2 of the Protocol;

- Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed,
- Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants, and
- Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed.

As a result of Article 1(6) of the Decision, the 1995 Regulations and the 1999 Regulations require amendment to reflect the fact that Council Directive 98/56/EC and Council Directive 2008/72/EC continue to apply in Northern Ireland. No change is required as a result of the inclusion of Council Directive 66/401/EEC, such changes as required having been made by

the Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc.) Regulations 2020.

The amendments in the 2021 Regulations replace certain references to “the United Kingdom”/ “the UK” with “Great Britain”/ “GB” within the 1995 Regulations and the 1999 Regulations. For example all domestic labelling requirements will now require reference to “GB” rather than “UK”.

Part 3 of the 2021 Regulations makes amendments to introduce enforcement provisions to allow the plant health inspectors to enforce statutory action for any non-compliance in relation to PoDs which threatens to undermine the biosecurity regime.

### **Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament**

The Regulations are made in exercise of the power in the 2018 Act to implement the Northern Ireland Protocol (paragraph 11M(1) of schedule 2) and the powers in Articles 22 and 144 of the Official Controls Regulation.

This additional information relates to the power to implement the Northern Ireland Protocol.

### **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 Rural Affairs and the Natural Environment, Ben Macpherson, has made the following statement “In my view the Plant Health and Plant Propagating Material (Miscellaneous Amendments) (Scotland) Regulations 2021 have had due regard to the need 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.”.

### **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)**

The Minister for Rural Affairs and the Natural Environment, Ben Macpherson, has made the following statement “In my view the Plant Health and Plant Propagating Material (Miscellaneous Amendments) (Scotland) Regulations 2021 do not alter current policy on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence).”.

### **An indication of how the regulations should be categorised in relation to the significance of the change proposed**

Low – the amendments are necessary, these are technical in nature to allow for continuity of law and do not amount to a change in policy.

### **Statement setting out the Scottish Ministers’ reasons for their choice of procedure**

In relation to the exercise of the Northern Ireland Protocol powers, this instrument is subject to negative procedure under Schedule 7, paragraph 8F(6) of the European Union (Withdrawal) Act 2018.

## **Further information**

### **Consultation**

In reference to the amendments to the 1995 Regulations and the 1999 Regulations, the amendments in the legislation are technical in nature. There are no policy changes so no public consultation has been undertaken.

In respect of the provisions in the 2021 Regulations relating to PoDs, numerous stakeholder engagement activities have been undertaken amongst Scottish audiences to test the feasibility of the new process and ascertain stakeholder knowledge on this. Relevant stakeholders, including the Fresh Produce Consortium and the Horticultural Trade Association have been consulted with from summer 2020 to January 2021. Additionally a webinar for interested stakeholders, focussing on the PoD scheme, was organised for November 2020. These stakeholder activities were well attended by representatives from Scottish industry, who demonstrated a strong understanding of the PoD scheme and an openness to having official controls conducted at PoDs.

### **Impact Assessments**

Full impact assessments have not been prepared for this instrument because the amendments it makes are with a view to preserving the effect of the current regulatory regimes. The amendments do not alter 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**

The Minister for Rural Affairs and the Natural Environment, Ben Macpherson, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Agricultural & Rural Economy (ARE) Directorate

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