

## POLICY NOTE

### THE FORESTRY (EU EXIT) (SCOTLAND) (AMENDMENT ETC.) REGULATIONS 2019

SSI 2019/XXX

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 to the European Union (Withdrawal) Act 2018. The instrument is subject to affirmative procedure.

**Purpose of the instrument.** The Regulations address deficiencies in Scottish legislation arising as a result of EU Exit, relating to the regulations of forestry plant health, forest reproductive materials and environmental impact assessments relating to forestry. .

#### Policy Objectives

The Regulations make amendments to a number of pieces of secondary legislation relating to forestry plant health and environmental impact assessments relating to forestry.

The continued functioning of forestry plant health legislation and environmental impact assessments relating to forestry have been identified as high risk areas in the event that the UK exits the EU without a deal and these amendments are part of readiness preparations for that scenario.

The majority of the amendments are making technical and minor changes to address failures of retained EU law to operate effectively. The key policy objectives are to:

- ensure that the trade in plant and plant products continues as usual, maintaining biosecurity and facilitating trade with minimal impact on business; and
- ensure that forestry developments continue to meet environmental standards after EU Exit.

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

The Regulations will amend the following pieces of legislation:

- The Plant Health (Forestry) Order 2005
- The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015
- The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017.
- The Forest Reproductive Material (Great Britain) Regulations 2002

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

The Regulations correct deficiencies in domestic legislation which implement EU Directives protecting plant health and the environment arising as a consequence of the United Kingdom's exit from the EU in a "no deal" scenario.

The Plant Health (Forestry) (Great Britain) Order 2005 implement EU rules which impose restrictions and requirements on relevant material imported into the EU from third countries, including material which is received into the UK via another EU country. Once the UK ceases to be a member of the EU these rules will not work anymore and need to be altered to ensure continuity in these controls.

The Plant Health (fees) (Forestry) (England and Scotland) regulations 2015 implement EU rules requiring the collection of fees for plant health checks carried out on consignments of wood products which come into the EU from outside the EU. These regulations need to be amended to allow these fees to continue to be charged with respect to the new system of checks which will be in place in Scotland after UK Withdrawal from the EU, via the amended Plant Health (Forestry) (Great Britain) Order 2005.

The Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017  
These Regulations apply in relation to Scotland, and in relation to projects of afforestation, deforestation, forest road works and forest quarry works (“forestry projects”). They implement EU rules which impose procedural requirements where such projects are likely to have an impact on the environment. The amendments will replace references to EU terminology so that the system for assessing environmental impact can continue to function properly after UK withdrawal from the EU.

The Forest Reproductive Material (Great Britain) Regulations 2002 regulate the marketing of FRM. These Regulations implement EC Directive 1999/105. The Regulations provide a system of identification and control of seeds, cuttings and planting stock used for forestry purposes in Great Britain.

### **Statements required by European Union (Withdrawal) Act 2018**

#### **Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Plant Health (Forestry) (Scotland) (EU Exit) Regulations 2019 does no more than is appropriate”.

This is the case because the Scottish Ministers consider that it is necessary to amend deficiencies in forestry legislation to ensure that the legislation continues to operate effectively after EU exit in order to provide clarity and legal certainty. The Regulations do no more than is appropriate to address deficiencies in devolved forestry legislation arising from this approach.

#### **Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

The amendments made by the Regulations are to ensure the continued and effective regulation of imports and movement of certain plants, seeds and organic matter, and of forestry developments within Scotland in order to protect tree health and the environment and provide continuity for businesses and consumers. The amendments made by the instrument are technical in nature to ensure legislative operability only.

**Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view the Plant Health (Forestry) (Scotland) (EU Exit) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**

The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, has made the following statement “In my view The Plant Health (Forestry) (Scotland) (EU Exit) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.” Where the regulations create a criminal offence, an explanation of why there are good reasons for creating the offence and providing for penalty in respect of it

Article 6 of the 2005 Order prohibits the landing into England, Scotland and Wales of certain material containing plant pests unless prior notice of the landing is given.

The 2019 Regulations will create a new prohibition, inserting a new article 6B into the 2005 Order which will prohibit landing certain type of plant material from third countries received via the EU into any Ro-ro port located in Scotland; unless notification has been given first.

Article 43 of the 2005 Order creates offences of contravention or failure to comply with Article 6(1) of the 2005 Order. The 2019 Regulations will amend article 43 to include a reference to inserted article 6B, so that contravention of article 6B will become an offence.

Currently Article 6 of the 2005 Order regulates the landing of certain plant material into Scotland (and elsewhere in the UK) where Scotland is the point of entry of the material in the EU.

This provision will not work after UK Withdrawal from the EU because entry into Scotland will no longer constitute entry into the EU. For that reason article 6B is required so that material from a third country consigned to the UK including Scotland, and received via the EU into Scotland continues to be regulated. There will be no change to the penalty imposed which will remain a fine not exceeding level 5 on the standard scale upon summary conviction.

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

**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, Mairi Gougeon, has made the following statement “In my view The Forestry (Scotland) (EU Exit) (Amendments) Regulations 2019 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)**

This is not applicable to The Plant Health (Forestry)(Scotland) (EU Exit) Regulations 2019.

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

Low – The amendments are technical in nature to allow continuity of law and do not amount to a change in policy.

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

It is considered that the instrument ought to be subject to affirmative procedure as the changes made create a new criminal offence (by inserting new article 6B into the Plant Health (Forestry) Order 2005).

**Further information**

**Consultation**

The amendments within the instrument serve primarily to address deficiencies in Scottish legislation arising as a result of EU Exit and correct a number of cross references to EU legislation which require to be amended as a result of EU Exit. Consultation on the content was, therefore, not considered necessary.

We have engaged with DEFRA and other UK administrations on the content of both the related UK Statutory Instruments and this instrument.

**Impact Assessments**

Full impact assessments have not been prepared for this instrument because the changes are minor and technical to ensure operability of existing legislation and to not introduce any new requirements.

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 confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Rural Environment Directorate

February 2019