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Convener
Rural Affairs, Island and Natural Environment
Committee
Scottish Parliament
EDINBURGH
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26 August 2022

Dear Finlay

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE PESTS OF PLANTS (AUTHORISATIONS) (AMENDMENT) REGULATIONS 2022 “PH/037”**

I am writing in relation to the protocol on obtaining 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 and 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 the SI which the UK Government propose 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/037 is subject to negative procedure and on current DEFRA plans is to be laid in Westminster on 3 October and will come into force on 1 November 2022. It is with regret to advise you that on this occasion the Scottish Parliament will not have the 28 days to consider this notification.

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

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PH/037 is a GB wide SI which as noted in the notification is introducing changes to the area of scientific licensing which are designed to improve the scientific licensing regime by adapting the administrative process when applying for authorisations (licenses).

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

Kind regards



LORNA SLATER

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SI NOTIFICATION: SUMMARY

Title: The Pests of Plants (Authorisations) (Amendment) Regulations 2022 (PH/037)
Proposed laying date at Westminster Laying on 3 October 2022 – come into force 1 November 2022
Date by which Committee is to respond 29 September 2022
Power(s) under which SI is to be made Articles 8(5) and 48(5) of retained Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (the Plant Health Regulation)
Categorisation under SI Protocol Type 1
Purpose: PH/037 amends retained EU Commission Delegated Regulation 2019/829 and introduces changes related to the administrative process for scientific authorisation (licencing) process on material being imported for official testing, scientific or educational purposes, trials, varietal selections, or breeding. The amendments made make changes to the application form for a scientific licence, and are mainly to simplify and improve the administrative process introduced as part of the EU Smarter Rules Safer Food legislation in 2019.
Other information In the process of developing the policy for this SI, a GB wide consultation of stakeholders took place; the general consensus was supportive of the changes. This consultation included Scottish authorisation (licensee) holders. Scottish Government Plant Health Licensing Team were involved in developing the streamline process. It was not possible to provide required 28 days of Parliamentary time as policy details were not able to be finalised prior to summer recess.
SG Policy contact: Yvonne Hay (Yvonne.Hay@gov.scot)

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Pests of Plants (Authorisations) (Amendment) Regulations 2022 – “PH/037”

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

PH/037: The proposed changes are related to the administrative process for applying for scientific authorisation (licencing). The aim is to improve the process for applying for material for scientific purposes to enter GB.

PH/037 proposes amendments to retained EU Commission Delegated Regulation 2019/829 authorising Member States to provide for temporary derogations in view of official testing, scientific or educational purposes, trials, varietal selections or breeding. (“Delegated Regulation 2019/829”).

The SI is made in exercise of powers contained in Articles 8(5) and 48(5) of retained Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (known as the Plant Health Regulation).

PH/037 is to be made on 3 October 2022 and is to come into force on 1 November 2022.

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

Summary of the proposals:

The changes being made in this SI are administrative ones, mainly to the layout, content and process of application forms (known as Letters of Authority (LoA)) for authorisation (licence) holders wishing to import plants under these letters for official testing, scientific or educational purposes, trials, varietal selections, or breeding purposes.

Background

Since the introduction of the EU Smarter Rules for Safer Food legislation package in 2019 the existing application process has been set out in the Delegated Regulation 2019/829. This contains the detailed requirements surrounding scientific authorisation (licensing) and was deficiency fixed by regulation 47 of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 ahead of EU Exit, so that it would continue to operate effectively.

Why the need for change?

The aim of this SI is to amend the existing legislation to simplify and improve the existing application process without compromising biosecurity.

Changes being proposed and why; -

- Remove Article 3(3) (recording of information) which requires the movement and introduction of material into GB to be recorded on a computerised information management system

This change is being made to remove a duplication of provision: An authorisation (licensing) holder is required to keep records of all material entering and leaving their facility. (Article 62 (3) (c) and (d) of the Plant Health Regulation)

- Amend Article 6 (LoA following the authorisation) to remove the various stipulations in paragraph 4 concerning multiple introductions under the LoA and add provision that LoA are only valid to 31 December in the year it is issued.

This change is being made to allow LoA's to contain multiple introductions of all material on a particular authorisation (licence) from all authorised origins. Currently LoAs are either for a single introduction or for multiple introductions for one type of material, from the same origin, under the same conditions. Given the size and complexity of many licences this is not practical. Each LoA will be time limited to 1 year as opposed to being open ended.

- Amend Annex 1, paragraph 1 (changes to the information which must be gathered as part of the application process). The points in particular are:

i. (c) to remove the requirements to provide quantities of material which will be imported and "sending's". "Sending's" refers to the authorisation (licence) holder carrying out multiple introductions/imports of specified material under their Letter of Authority.

Due to the nature of pests, defining quantities is not always possible. While for plants and soil quantities can be defined, that information is not needed per consignment as part of the application process. It is more sensible that the inspector continually assesses that material being held in authorised facilities is of an appropriate quantity for the facility in question. Also regarding number of sending's, this is not often known in advance during the application process. However, for multiple use applications it will be necessary for authorisation (licence) holders to include a unique reference number of the individual 'sending's' on the LoA.

ii) (d) to remove the details of the consignor and provider

The change to point (d) is made because in many cases this information will not be known. Material may be wild collected or come from a number of sources. The risk posed by an organism will in most cases not change based on location. As such listing countries or geographical areas is enough for the assessment of the risk posed by a particular pest.

Specific alterations to the model LoA in Annex 2

i. Box 1 – will now read: "name and address of the place and country of origin of the specified material".

Listing consignor/the Plant protection organisation or competent authority of the place of origin does not make sense as they have no involvement with the LoA.

ii. Box 3 – now contains the logo of the appropriate GB competent authority.

iii. Box 6 the requirement to provide details of quantity ahead of import is deleted (see comments above).

- iv. Box 8 – delete wording in second column so it can be entered as free text i.e. if being transported as passenger baggage, courier company etc.
- v. Box10 – This entry will be amended by removing “Multiple sending’s” The date of issuance and reference number is retained. A validation date is added to clarify that the LoA is only valid to 31 December of the same year issued.
- vi. Box 12 – The requirement for Third country endorsement is deleted– this has no value in terms of biosecurity. It adds an administrative burden and several Third countries refuse to endorse.
- vii. Box 14 –“IMSOC reference” is removed this related to the computer reference, and amended to state the licence number and version.
- viii. Additional boxes are added to the LoA:
 - a) requirement to include the declared point of entry for material introduced from a third country. This is because material may enter through a different part of GB to its destination i.e. material entering under authorisations (licence) in Wales or Scotland will often enter through an English point of entry.
 - b) an entry is included to indicate where an endorsement has been given by a GB competent authority authorising internal movement of the specified material within GB.

Consultation

A GB wide consultation on the proposals included in this SI has taken place. The responses received were generally supportive of the plans to amend the legislation as stated. The Scottish Government Plant Health Scientific Licensing Team who deal with the operational aspects of granting LoAs and authorisations (licencing) were involved in the development of these proposals.

Detailed guidance will be issued to licence holders and online guidance will be created. The on-line guidance will be published on the UK Plant Health Portal. (an online hub on the UK Government website where GB plant health information data and resources are held.) This will also be published on SASA website too ahead of legislation changes coming into force.

Other information

This SI does not transfer any legislative functions.

A notification to the World Trade Organisation is not required for this SI. This is because the changes are internal administrative processes and do not relate to changes to Sanitary and Phytosanitary import measures.

Despite the changes being introduced to the process and to the LoA, the scientific authorisation (licencing) arrangements under retained EU law will remain substantially in line with the equivalent EU law plant health model and the amendments support the better operation of that model in the GB context.

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

Provisional Plant Health Framework

A note of other impact assessments, (if available)

An impact assessment has not been produced for this instrument, as no or no significant impact on the private or voluntary sector is foreseen

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

The Scottish Ministers reasons for consenting to the proposal are as follows:

Scientific authorisation (licensing) allows quarantine pests and other prohibited material to be imported into Great Britain for scientific research and other work. As such it is vital that we have a robust legislative framework to allow us to mitigate the risks of these introductions. The instrument amends the administrative process in obtaining LoA with the aim of simplifying and improving the scientific authorisation (licensing) regime. The amendments are designed to improve the way this regime works and more importantly does not compromise plant biosecurity.

Scottish Ministers consider that consenting to PH/037 is the most effective and transparent way to introduce these amendments. It provides clarity and confidence to Scottish authorisation (licence) holders and continues close collaboration across the UK under the provisional Plant Health Common Framework.

Intended laying day (if known) of instruments likely to arise

PH/037 is a negative SI and it is intended to be made 3 October 2022 and will come into force on 1 November 2022.

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

On this occasion, it is with regret that 28 days parliamentary time has not been provided. This was because the policy contents of the SI were agreed over summer recess.

Information about any time dependency associated with the proposal.

N/A

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. The changes proposed are to streamline the administrative process.