



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

10th Meeting, 2021 (Session 5)

Wednesday 17 March 2021

The Committee will meet at 10.00 am in a virtual meeting which will be broadcast on www.scottishparliament.tv

1. **Decision on taking business in private:** The Committee will decide whether to take items 5 and 6 in private.
2. **Digital connectivity:** The Committee will take evidence from—
 - Paul Wheelhouse, Minister for Energy, Connectivity and the Islands, Clive Downing, R100 Programme Director, and Robbie McGhee, Deputy Director, Digital Connectivity, Scottish Government.
3. **Subordinate legislation:** The Committee will consider the following negative instruments—
 - Plant Health (Export Certification) (Scotland) Amendment Order 2021
 - Plant Health and Plant Propagating Material (Miscellaneous Amendments) (Scotland) Regulations 2021
 - Bee Diseases and Pests Control (Scotland) Amendment Order 2021.
4. **European Union (Withdrawal) Act 2018:** The Committee will consider proposals by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals—
 - The Common Fisheries Policy (Amendment etc.) Regulations 2021
 - The Plant Health, Seeds and Seed Potatoes (Amendment) Regulations 2021
 - The Vegetable and Ornamental Plant Propagating Material and Fodder Plant Seed (Amendment) Regulations 2021.

5. **Legacy paper:** The Committee will consider a draft report reflecting on its work during the current session and suggesting priorities for Session 6.
6. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 13 May 2020 to 24 March 2021.

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The papers for this meeting are as follows—

Agenda Item 2

Note by Clerk

REC/S5/21/10/1

PRIVATE PAPER

REC/S5/21/10/2
(P)

Agenda Item 3

Note by Clerk

REC/S5/21/10/3

Agenda Item 4

Note by Clerk

REC/S5/21/10/4

PRIVATE PAPER

REC/S5/21/10/5
(P)

Agenda Item 5

PRIVATE PAPER

REC/S5/21/10/6
(P)

Agenda Item 6

PRIVATE PAPER

REC/S5/21/10/7
(P)

Rural Economy and Connectivity Committee

10th Meeting, 2021 (Session 5), Wednesday, 17 March 2021

Digital Connectivity

Background

1. The Committee will take evidence from Paul Wheelhouse, the Minister for Energy, Connectivity and the Islands on digital connectivity. The Committee's last updates on this topic from the Minister for Energy, Connectivity and the Islands were on 29 January and 19 August 2020.
2. The session will focus on the Scottish Government's [R100 programme](#) for superfast broadband, as well as the operation of broadband voucher schemes. It will also cover wider broadband and mobile connectivity developments such as the [Scottish Government's Response](#) to the Advisory Group on Economic Recovery.
3. As the end of the current parliamentary session approaches, the session is the last in a series of regular updates from the Cabinet Secretary to assist it in monitoring digital connectivity developments.

Clerking team
Rural Economy and Connectivity Committee
March 2021

Rural Economy and Connectivity Committee**10th Meeting, 2021 (Session 5), Wednesday 17 March 2021****Subordinate Legislation****The Plant Health and Plant Propagating Material (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/87) ([Annexe A](#))****Type of Instrument:** Negative**Purpose:**

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.

Points to note:**There are no points to note on this instrument.****The Plant Health (Export Certification) (Scotland) Amendment Order 2021 (SSI 2021/88) ([Annexe B](#))****Type of Instrument:** Negative**Purpose:**

Phytosanitary certificates are now required for export of plants, plant products and other objects from Scotland into the EU as a result of the UK withdrawal from the EU. Northern Ireland remains subject to EU law governing the requirement for phytosanitary certificates for import and export of goods in terms of the Northern Ireland protocol. The instrument exempts plants, plant products and related objects being transported from Scotland to Northern Ireland from fees payable to the Scottish Ministers for inspection and issue of phytosanitary certificates.

Points to note:

There are no points to note on this instrument.

The Bee Diseases and Pests Control (Scotland) Amendment Order 2021 (SSI 2021/91) ([Annexe C](#))

Type of Instrument: Negative

Purpose:

This instrument amends the Bee Diseases and Pests Control (Scotland) Order 2007 to require persons who own or are in in charge of a hive, to report the presence of any species of Varroa mite in that hive to the Scottish Ministers.

Points to note:

There are no further to note on this instrument.

ANNEXE A

Title of instrument: [The Plant Health and Plant Propagating Material \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(SSI 2021/87\)](#)

Type of Instrument: Negative

Laid date: 22 February 2021

Coming into force: 1 April 2021

Minister to attend the meeting: No

Procedure

1. Under the [negative procedure](#), an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Policy Objectives and Background

2. These Regulations are made by the Scottish Ministers in exercise of powers conferred by, in relation to regulations 2 and 3, paragraph 11M(1) of schedule 2 of the European Union (Withdrawal) Act 2018 (“the 2018 Act”), and in relation to regulation 4, 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”).
3. Regulations 2 and 3 make amendments to the legislation on plant propagating material for vegetable and ornamental plants, as a consequence of changes to the Northern Ireland Protocol following Decision 03/2020 of the Joint Committee amending the Protocol on Ireland and Northern Ireland. The regulations change existing references to the United Kingdom to Great Britain so that Northern Ireland is subject to relevant EU rules.
4. Regulation 4 makes provision in the field of plant health relating to the conduct of official controls on certain goods at the place of destination where the transitional derogations and modifications set out in Annex 6 of the Official Controls Regulation apply. Specifically, these Regulations amend provisions relating to

offences in the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019.

Consideration by the Delegated Powers and Law Reform Committee

5. The Delegated Powers and Law Reform Committee considered this at their meeting on 9 March 2021, and made no recommendations in relation to this instrument.

Points to note

6. **No points to note regarding this instrument.**

Recommendation

7. **The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.**

**Rural Economy and Connectivity Committee Clerks
March 2021**

SCOTTISH STATUTORY INSTRUMENTS

2021 No. 87

EXITING THE EUROPEAN UNION

PLANT HEALTH

SEEDS

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

Made - - - - *18th February 2021*

Laid before the Scottish Parliament *22nd February 2021*

Coming into force - - *1st April 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 11M(1) of schedule 2 of the European Union (Withdrawal) Act 2018^(a), 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^(b) (“the Official Controls Regulation”) and all other powers enabling them to do so.

In accordance with Article 144(7) of the Official Controls Regulation, before making these Regulations the Scottish Ministers have consulted such bodies and persons as appear to them to be representative of the interests likely to be substantially affected by these Regulations and other such bodies or persons as they consider appropriate.

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Plant Health and Plant Propagating Material (Miscellaneous Amendments) (Scotland) Regulations 2021 and come into force on 1 April 2021.

(2) These Regulations extend to Scotland only.

^(a) 2018 c.16. Paragraph 11M was inserted by section 22 of the European Union (Withdrawal Agreement) Act 2020 (c.1).
^(b) EUR 2017/625, amended by S.I. 2020/1481, there are other amending instruments but none is relevant.

PART 2

Plant Material

The Marketing of Vegetable Plant Material Regulations 1995

2.—(1) The Marketing of Vegetable Plant Material Regulations 1995(a) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 3(2)(a) (plant material to which these Regulations apply), for “the United Kingdom” substitute “Great Britain”.

(3) In schedule 2 (content of supplier’s document)—

- (a) in Part A (information to appear on a supplier’s document), in paragraph 1, for “UK” substitute “GB”,
- (b) in Part B (information to accompany a plant passport which constitutes a supplier’s document), in paragraph 1, for “UK” substitute “GB”.

The Marketing of Ornamental Plant Propagating Material Regulations 1999

3. In regulation 3(2)(a) (marketing requirements and exceptions) of the Marketing of Ornamental Plant Propagating Material Regulations 1999(b), for “the United Kingdom” substitute “Great Britain”.

PART 3

Plant Health

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

4.—(1) The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019(c) have effect in relation to specified goods entering Great Britain from a relevant third country during the transitional staging period, subject to the following modifications.

(2) In regulation 2 (interpretation: general), after the definition of “the Phytosanitary Conditions Regulation”, insert—

““place of destination” in relation to any specified goods, means the first place where the goods are delivered for unloading in Great Britain, and for this purpose “specified goods” means plants, plants products and other objects specified in the schedule to the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021(d).”

(3) In schedule 3 (offences in retained direct EU legislation), Part 2 (the Official Controls Regulation)—

- (a) in the entry relating to Article 47(5), in the second column, at the end insert “or place of destination or, where required, any other place specified in Article 44(3)”,
- (b) in the entry relating to Article 50(1), in the second column, at the end insert “or place of destination or, where required, any other place specified in Article 44(3)”,
- (c) after the entry relating to Article 56(4)—
 - (i) in the first column, insert “Article 56A”,

(a) S.I. 1995/2652, as relevantly amended by S.S.I. 2007/133, S.I. 2011/1043, S.S.I. 2014/111, S.S.I. 2018/391 and S.S.I. 2019/59.

(b) S.S.I. 1999/1801, as relevantly amended by S.S.I. 2019/59.

(c) S.S.I. 2019/421, as amended by S.S.I. 2020/176 and S.S.I. 2020/466.

(d) S.I. 2021/136.

(ii) in the second column, insert—

“During the transitional staging period, requires the operators of relevant goods from a relevant third country, to give prior notification to the relevant competent authority before the expected time of arrival of the goods at a point of entry in Great Britain.”.

(4) In this regulation—

“Official Controls Regulation” means 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,

“relevant third country” has the meaning set out in Annex 6 to the Official Controls Regulation, and

“transitional staging period” has the meaning set out in Annex 6 to the Official Controls Regulation.

BEN MACPHERSON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
18th February 2021

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made by the Scottish Ministers in exercise of powers conferred by, in relation to regulations 2 and 3, paragraph 11M(1) of schedule 2 of the European Union (Withdrawal) Act 2018 (“the 2018 Act”), and in relation to regulation 4, 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”).

Regulations 2 and 3 make amendments to the legislation on plant propagating material for vegetable and ornamental plants, as a consequence of changes to the Northern Ireland Protocol following Decision 03/2020 of the Joint Committee amending the Protocol on Ireland and Northern Ireland. The regulations change existing references to the United Kingdom to Great Britain so that Northern Ireland is subject to relevant EU rules.

Regulation 4 makes provision in the field of plant health relating to the conduct of official controls on certain goods at the place of destination where the transitional derogations and modifications set out in Annex 6 of the Official Controls Regulation apply. Specifically, these Regulations amend provisions relating to offences in the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019.

A business and regulatory impact assessment has not been prepared in relation to these Regulations as no, or no significant, impact upon businesses, charities or voluntary bodies is foreseen.

ANNEXE B

Title of instrument: [The Plant Health \(Export Certification\) \(Scotland\) Amendment Order 2021 \(SSI 2021/88\)](#)

Type of Instrument: Negative

Laid date: 22 February 2021

Coming into force: 1 April 2021

Minister to attend the meeting: No

Procedure

1. Under the [negative procedure](#), an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Policy Objectives and Background

2. The instrument amends the Plant Health (Export Certification) (Scotland) Order 2018 to disapply in certain circumstances the fees which would otherwise be payable to the Scottish Ministers for inspection and issue of phytosanitary certificates in respect of plants, plant products and related objects which are transported from Scotland to Northern Ireland. These goods will not attract certification fees if, when they reach Northern Ireland, they are for private use and are not intended to be sold, or they are destined for delivery to a professional operator based in Northern Ireland. A professional operator is defined in EU law as a person professionally involved in plant production and related activities.
3. The Policy Note indicates that the UK government will offset the costs to the Scottish Government of the fees exemption for a period of two years until 31 December 2022. No significant impact upon businesses, charities or voluntary bodies is anticipated and a business and regulatory impact assessment has not been prepared as certification fees are being waived rather than imposed.

Consideration by the Delegated Powers and Law Reform Committee

4. The Delegated Powers and Law Reform Committee considered this at their meeting on [2 March 2021](#) and made no recommendations in relation to this instrument.

Points to note

5. **No points to note regarding this instrument.**

Recommendation

- 6. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.**

**Rural Economy and Connectivity Committee Clerks
March 2021**

SCOTTISH STATUTORY INSTRUMENTS

2021 No. 88

PLANT HEALTH

**The Plant Health (Export Certification) (Scotland) Amendment
Order 2021**

Made - - - - *18th February 2021*
Laid before the Scottish Parliament *22nd February 2021*
Coming into force - - *1st April 2021*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3(1) and 4A of the Plant Health Act 1967(a) and all other powers enabling them to do so.

Citation, commencement and extent

1.—(1) This Order may be cited as the Plant Health (Export Certification) (Scotland) Amendment Order 2021 and comes into force on 1 April 2021.

(2) This Order extends to Scotland only.

Amendment of the Plant Health (Export Certification) (Scotland) Order 2018

2.—(1) The Plant Health (Export Certification) (Scotland) Order 2018(b) is amended as follows.

(2) In article 4 (fees for export certification services)—

(a) in paragraph (1) for “A person” substitute “Subject to paragraph (4), a person”,

(b) after paragraph (3) insert—

“(4) The fees specified at entries 1, 3, 4, 5, 6, 8, 12, 13, 15 and 16 in the schedule are not payable in relation to a consignment—

(a) destined for delivery to a professional operator based in Northern Ireland,

(b) transported into Northern Ireland by a private individual and which is not intended to be placed on the market, or

(c) destined for delivery to a private individual who is resident in Northern Ireland and which is not intended to be placed on the market.

(a) 1967 c.8 (“the 1967 Act”). Section 3(1) of the 1967 Act was amended by section 4 and schedule 4, paragraph 8 of the European Communities Act 1972 (c.68) and S.I. 2020/1482. Section 4A of the 1967 Act was inserted by section 3 of the Agriculture Act 1986 (c.49). Section 1(2) of the 1967 Act specifies the competent authorities for the purposes of the Act. The functions of the Secretary of State insofar as exercisable within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain Treasury consent was removed by section 55 of that Act.

(b) S.S.I. 2018/132, relevantly amended by S.S.I. 2020/466.

(5) In this regulation, “professional operator” has the same meaning as in Article 2(9) of the Plant Health Regulation.”.

BEN MACPHERSON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
18th February 2021

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under sections 3(1) and 4A of the Plant Health Act 1967 and makes provision in the area of plant health fees.

Article 2 amends the Plant Health (Export Certification) (Scotland) Order 2018 and introduces provision relating to export certification fees, to provide that such fees are not payable in relation to exports from Scotland to Northern Ireland in certain circumstances.

A business and regulatory impact assessment has not been prepared in relation to these Regulations as no, or no significant impact upon businesses, charities or voluntary bodies is foreseen.

ANNEXE C

Title of instrument: [The Bee Diseases and Pests Control \(Scotland\) Amendment Order 2021 \(SSI 2021/91\)](#)

Type of Instrument: Negative

Laid date: 23 February 2021

Coming into force: 21 April 2021

Minister to attend the meeting: No

Procedure

1. Under the [negative procedure](#), an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Policy Objectives and Background

2. Varroosis is the disease caused by the infestation of Varroa mites species, an ectoparasite of honey bees. It is endemic in the UK and present in most bee hives in Scotland.
3. Varroosis is currently not a reportable or notifiable disease in the UK. Making the presence of Varroa mites reportable by beekeepers will enable the Scottish Government to gather information to inform future policy, strategic decisions on controls of Varroa and reduce its incidence and spread.

Consideration by the Delegated Powers and Law Reform Committee

4. The Delegated Powers and Law Reform Committee considered this at their meeting on [2 March 2021](#) and made no recommendations in relation to this instrument.

Points to note

5. **No points to note regarding this instrument.**

Recommendation

6. **The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.**

**Rural Economy and Connectivity Committee Clerks
March 2021**

SCOTTISH STATUTORY INSTRUMENTS

2021 No. 91

BEE DISEASES

**The Bee Diseases and Pests Control (Scotland) Amendment
Order 2021**

Made - - - - - *19th February 2021*

Laid before the Scottish Parliament *23rd February 2021*

Coming into force - - - *21st April 2021*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 1 of the Bees Act 1980(a) and all other powers enabling them to do so:

Citation and commencement

1. This Order may be cited as the Bee Diseases and Pests Control (Scotland) Amendment Order 2021 and comes into force on 21 April 2021.

Amendment of the Bee Diseases and Pests Control (Scotland) Order 2007

2. After article 2 of the Bee Diseases and Pests Control (Scotland) Order 2007(b) insert—

“Reporting of Varroa mite (Varroosis)

2A.—(1) Any owner or person in charge of a hive who knows or suspects that any species of the Varroa mite is present in the hive must report, as soon as practicable, that fact to the Scottish Ministers.

(2) A person reporting under paragraph (1) may submit to the Scottish Ministers samples of—

- (a) any bee pest to establish if it is any species of the Varroa mite; or
- (b) any other thing, including soil, to establish if it is infected with any species of the Varroa mite.

(a) 1980 c.12. The functions of the Minister of Agriculture, Fisheries and Food, the Secretary of State for Scotland and the Secretary of State for Wales were, so far as exercisable within devolved competence, transferred to Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2007/506.

(3) Any sample submitted under paragraph (2) must be packed in a way which prevents, as far as possible, the risk of the spread of infection during transit.”.

BEN MACPHERSON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
19th February 2021

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Bee Diseases and Pests Control (Scotland) Order 2007 (“the 2007 Order”) which makes provision for the control of pests and diseases affecting bees.

Article 2 of this Order inserts a new article 2A into the 2007 Order regarding reporting of the presence of Varroa mites. New article 2A requires persons owning or in charge of a hive to report the presence of any species of Varroa mite in that hive to the Scottish Ministers, and makes provision for the sending of samples to the Scottish Ministers for identification.

Rural Economy and Connectivity Committee

10th Meeting, 2021 (Session 5), Wednesday, 17 March 2021

European Union (Withdrawal) Act 2018

Introduction

1. This paper supports the Committee's consideration of consent notifications sent by the Scottish Government relating to UK statutory instruments (SIs) (see table below).

2. These regulations are being laid in relation to the European Union (Withdrawal) Act 2018. To assist the consideration of such instruments, a second protocol has been put in place between the Scottish Government and Scottish Parliament. It has replaced the [SI protocol agreed in 2018](#) and applies to all SI notifications which the Scottish Government sends to the Parliament from 1 January 2021. Information on the new protocol can be found [here](#) and additionally in this [letter from the Cabinet Secretary for the Constitution, Europe and External Affairs](#).

Reporting

3. Under the protocol referred to above, the Committee has the following two options following its consideration of the UK SI—

- a) Write to the Scottish Government to confirm it is content for consent for a UK SI to be given; or
- b) Consider the matter further, take evidence if appropriate and make a report to Parliament.

4. If it chooses to report, it may make one of the following three recommendations—

- a) it is content for consent to be given for a UK SI to be made in the UK Parliament only.
- b) it is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or
- c) it is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI in both parliaments made under the joint procedure.

5. The Committee's role in the protocol is to decide whether it agrees to the Scottish Government offering its consent to the UK Government to make regulations on its behalf. However, there are broader policy issues which may arise in future, not as a direct consequence of the notification, but due to Brexit itself. The Committee may wish to note these issues in its response to the Scottish Government and request that it be kept up to date on any developments on these matters.

INSTRUMENT

6. This table is intended to give a brief overview only. The letter and notification related to the instrument are included in Annexe A to this paper.

Instrument	Type*
The Common Fisheries Policy (Amendment etc.) Regulations 2021	1
The Plant Health, Seeds and Seed Potatoes (Amendment) Regulations 2021	1
The Vegetable and Ornamental Plant Propagating Material and Fodder Plant Seed (Amendment) Regulations 2021	1

*Type 1 scrutiny procedure requires the Scottish Government to seek the prior approval of the Scottish Parliament to any proposed decision to grant consent to UK Ministers

Type 2 scrutiny procedure enables Scottish Ministers to give consent to UK Ministers without prior approval by the Scottish Parliament.

DECISION

7. The Committee is invited to consider the consent notifications referred to in this paper and determine whether it is content to write to the Scottish Government to confirm it is content for consent for the UK SIs referred to in the notifications to be given.

[Annexe A](#) – EU Exit – The Common Fisheries Policy (Amendment etc.) Regulations 2021 – Notification and letter from the Scottish Government

[Annexe B](#) - EU Exit – The Plant Health, Seeds and Seed Potatoes (Amendment) Regulations 2021 – Notification and letter from the Scottish Government

[Annexe C](#) – EU Exit - The Vegetable and Ornamental Plant Propagating Material and Fodder Plant Seed (Amendment) Regulations 2021 - Notification and letter from the Scottish Government

**Rural Economy and Connectivity Committee Clerking team
March 2021**

**NOTIFICATION TO THE SCOTTISH PARLIAMENT –
The Common Fisheries Policy (Amendment etc.) Regulations 2021**

Type 1 Notification

The Common Fisheries Policy (Amendment etc.) Regulations 2021 (“**the Regulations**”) implement aspects of the Protocol on Ireland/Northern Ireland in the Withdrawal Agreement between the United Kingdom and the European Union (“**the Protocol**”) concerning retained European Union (“**EU**”) law marine and fisheries legislation. The Regulations will amend retained EU law governing aspects of fishing activity in UK – including Scottish - waters and may reasonably be expected to influence the activity of the Scottish fleet. Further, new regulation-making powers are being created for the fisheries administrations in Great Britain (including the Scottish Ministers) as well as the Secretary of State (with the consent of the Scottish Ministers). As such, this notification is being treated as a Type 1 notification.

The Scottish Government still has concerns about the operation of the Protocol, but we also recognise the need for the Protocol to continue to work. We are therefore proceeding on the basis that we are notifying the Scottish Parliament now of our intention to consent to this instrument, but invite the Committee to note that the Scottish Government continues to engage with the UK Government on the Protocol and to press for ongoing involvement.

Brief overview of the SI (including reserved provision)

Legislative Background

The Regulations amend direct retained EU legislation that now forms part of domestic law, as well as amending one provision in a Statutory Instrument (“**SI**”) which extends to England and Wales only. The Regulations also revoke (now superseded) amendments made by a previous EU Exit SI to direct retained EU legislation applicable in Northern Ireland (“**NI**”) only. The amendments made by the Regulations will come into force on the day after the day on which they are made.

The amendments to direct retained EU legislation will do two main things. Firstly, they amend retained EU marine and fisheries Regulations (the EU law versions of which are listed in paragraph 46 of Annex 2 of the Protocol) to ensure that control of illegal, unreported and unregulated (“**IUU**”) sea fishing activities, as well as marketing standards and consumer information for certain fishery products, are regulated in accordance with the UK Government’s international obligations under the Protocol. This is done by clarifying on the face of the statute book that these retained EU Regulations or specific provisions thereof apply in Great Britain (“**GB**”) only, given the EU law versions of these Regulations are directly applicable in whole or in part in NI by virtue of Article 5(4) and Annex 2 of the Protocol and s.7A of the European Union (Withdrawal) Act 2018. Secondly, they make some amendments to correct deficiencies arising from the UK’s withdrawal from the EU to ensure that retained EU law is operable.

In addition, amendments are made by the Regulations to the retained Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate IUU fishing, to facilitate unfettered market access to the GB market for NI fishery products which are qualifying NI goods¹. The amendments also create new regulation-making powers for the GB fisheries administrations (including the Scottish Ministers) and the Secretary of State (with the consent of the Scottish Ministers, where the power is exercised in an area of devolved competence).

Further amendments are made which are applicable to NI only, to ensure that NI continues to be a part of those aspects of the UK's IUU fishing regime that do not relate to the trade in goods between Northern Ireland and the EU, by consolidating into one instrument for clarity all the amendments to the retained Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate IUU fishing and to other retained EU law implementing that Regulation² which apply in NI only.

The direct retained EU legislation being amended by the Regulations formed part of the body of EU legislation known as the Common Fisheries Policy (“**CFP**”). The CFP comprises around 100 EU Regulations and other instruments and ensures a common approach to the sustainable management of fisheries across the EU and its waters. The majority of the direct retained EU legislation being retained from the CFP has already been amended in EU Exit SIs, the relevant provisions of which came into force on IP completion day (23:00 on 31 December 2020). Notification of the amendments made by those earlier EU Exit SIs have already been considered by the Scottish Parliament, resulting in recommendations that the Scottish Ministers consent to those amendments.

The amendments which are considered to be within devolved competence are set out further in the below section entitled “Details of the provisions that Scottish Ministers are being asked to consent to”.

Laying and entry into force dates

The Regulations are expected to be laid before the UK Parliament on 25 February 2021. Defra have been unable to give a definitive entry into force date for these Regulations as it is too early to say with certainty how long the UK Parliamentary process will take. Defra's best estimate of the commencement date for these Regulations is 14 April 2021.

¹ The term “qualifying Northern Ireland goods” is defined in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454).

² Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 (EUR 2009/1010); Commission Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing (EUR 2010/468); and Council Implementing Decision (2014/170/EU) of 24 March 2014 establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 (EUDN 2014/170)

Legislation being amended

The Regulations amend the following retained EU Regulations, which now form part of domestic law:

- Council Regulation (EEC) No 2136/89 of 21 June 1989 laying down common marketing standards for preserved sardines and trade descriptions for preserved sardines and sardine-type products (“**retained Regulation 2136/89**”).
- Council Regulation (EEC) No 1536/92 of 9 June 1992 laying down common marketing standards for preserved tuna and bonito (“**retained Regulation 1536/92**”).
- Council Regulation (EC) No 2406/96 of 26 November 1996 laying down common marketing standards for certain fishery products (“**retained Regulation 2406/96**”).
- Regulation (EU) 2019/1241 of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, which repealed and replaced Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (“**retained Regulation 2019/1241**”). This retained EU Regulation is amended only insofar as it concerns provisions relating to minimum sizes of marine organisms.
- Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (“**retained Regulation 1224/2009**”). This retained EU Regulation is amended only insofar as it concerns provisions relating to marketing standards.
- Regulation (EU) No 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products (“**retained Regulation 1379/2013**”). This retained EU Regulation is amended only insofar as it concerns provisions relating to marketing standards and consumer information.
- Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy (“**retained Regulation 1380/2013**”). This retained EU Regulation is amended only insofar as it concerns provisions relating to marketing standards for fishery and aquaculture products.
- Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (“**the retained IUU Regulation**”). This retained EU Regulation provides for the UK’s regime to tackle IUU fishing to ensure the conservation and sustainable exploitation of fisheries resources under the retained CFP;
- Commission Regulation (EC) No 1010/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (“**retained Regulation 1010/2009**”).

- Council Regulation (EC) No 1100/2007 of 18 September 2007 establishing measures for the recovery of the stock of European eel (“**retained Regulation 1100/2007**”).
- Commission Implementing Regulation (EU) 2020/967 of 3 July 2020 laying down the detailed rules on the signal and implementation characteristics of acoustic deterrent devices as referred to in Part A of Annex XIII of Regulation (EU) 2019/1241 (“**retained Regulation 2020/967**”).
- The retained versions of the below two Regulations are being given effect in Northern Ireland for the purposes of the provisions of the retained versions of Council Regulation (EC) No 1005/2008 and Commission Regulation (EC) No 1010/2009 which are being modified by these Regulations and given effect in their modified form in Northern Ireland:-
 - Commission Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing; and
 - Council Implementing Decision 2014/170/EU of 24 March 2014 establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Council Regulation (EC) No 1005/2008.

The Regulations also omit certain provisions from the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020. The omitted provisions only applied to Northern Ireland and are superseded by provisions in the Regulations.

Finally, the Regulations amend an offence provision in the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009 (following on from amendments made by the Regulations to Article 12(1), (2) and (2A) of the retained IUU Regulation). That offence provision only applies in England and Wales.

A similar amendment will be made in relation to the equivalent Scottish offence provided for at article 9(3) of the Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013. This amendment is contained in the Sea Fishing (EU Exit) (Scotland) (Amendment) Regulations 2021, which were laid in the Scottish Parliament on 4 February 2021 and which will come into force on 1 June 2021. The expected laying date of 25 February 2021 for the Regulations has meant that, in order to comply with the minimum laying period for affirmative SSIs as prescribed in the Scottish Parliament’s Standing Orders prior to the pre-election purdah period beginning on 25 March 2021, this SSI had to be laid before the Regulations.

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

The Regulations make textual amendments to retained direct EU legislation - that falls within devolved competence - to reflect the direct application of certain provisions of EU legislation in NI, by virtue of the Protocol. These amendments do this by clarifying, on the face of the statute book, that the retained version of the relevant aspects of the EU Regulations listed in paragraph 46 of Annex 2 of the Protocol apply in GB only.

The Regulations also make amendments to correct deficiencies arising from the UK’s withdrawal from the EU.

The Regulations amend the retained IUU Regulation to facilitate unfettered market access to the GB market, in the context of IUU fishing controls, for NI fishery products which are qualifying NI goods³.

These amendments are intended to continue existing policy with regard to the rules that apply to the marketing standards and consumer information for certain fishery products and the control of IUU fishing activities, to ensure the UK's continued ability to tackle IUU fishing and promote sustainable fishing. These amendments are intended to ensure a clear and consistent legislative framework through a range of mostly technical changes.

In addition, a new regulation-making power is created in the retained IUU Regulation for the GB fisheries administrations (including the Scottish Ministers), in connection with controlling IUU fishing.

A similar power is also created for the Secretary of State. The Secretary of State requires the consent of the Scottish Ministers where this power is exercised in an area of devolved competence.

Summary of amendments to the retained IUU Regulation and retained Regulation 1010/2009

To reflect the direct application of provisions of EU law in Northern Ireland and to correct deficiencies arising from the UK's withdrawal from the EU, some specific technical amendments are being made to the retained IUU Regulation and retained Regulation 1010/2009 (which implements the retained IUU Regulation), including changing references from "the United Kingdom" to "Great Britain" and from "the ports of the United Kingdom" to "ports in Great Britain". In addition the Regulations:

- implement the UK's commitment to unfettered access to the GB market for certain qualifying Northern Ireland goods⁴ (fishery products) by not requiring a catch certificate for those goods when they are imported into Great Britain;
- introduce regulation-making powers into the retained IUU Regulation for the GB fisheries administrations (including the Scottish Ministers)⁵ (Article 16(1)) and the Secretary of State (with the consent of the Scottish Ministers, where this power is exercised in an area of devolved competence) (Articles 16(1A) and (1B)), to specify a different deadline for the submission of catch certificates by importers than the deadline already provided for by Article 16(1) (being three working days before the

³ The term "qualifying Northern Ireland goods" is defined in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454).

⁴ See footnote 3.

⁵ The term "fisheries administration" is defined in Article 1(9)(a) of the retained Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy (EUR 2013/1380)

estimated time of arrival of the fisheries products at the place of entry into the territory of GB); and

- make deficiency fixes to remove cross-references to Chapters IV, X and XI of the retained IUU Regulation as these Chapters were omitted by a previous deficiency-fixing EU Exit SI⁶ with effect from IP completion day (23:00 on 31 December 2020) and did not become part of retained direct EU legislation.

Summary of amendments to retained Regulation 1100/2007

Amendments to the retained Regulation 1100/2007 are to reflect, by virtue of the Protocol, the direct application of provisions of certain EU legislation in Northern Ireland, to include Northern Ireland's coastal lagoons, estuaries, rivers and inland waters. The amendments do this by making clear, on the face of the statute book, that the retained Regulation 1100/2007 applies to "UK waters"⁷ and the coastal lagoons, estuaries, rivers and inland waters of GB. Otherwise, references to "exit day" are replaced with references to "IP completion day" and some references to "the United Kingdom" are replaced with "Great Britain" where these are intended to refer to fisheries in GB or imports to or exports from GB, reflecting the GB application of the retained Regulation 1100/2007.

Summary of amendments to the retained Regulation 2019/1241

The EU law version of Regulation 2019/1241 applies to NI insofar as it concerns 'provisions relating to minimum sizes of marine organisms'. The EU's minimum conservation references sizes ("**MCRS**") will apply in NI for the purposes of the minimum marketing sizes under the EU law version of Regulation 1379/2013. The other two purposes mentioned in Article 13.1 of the EU law version of Regulation 2019/1241 are conservation purposes, and the conservation elements of the EU law version of Regulation 1380/2013 are not made applicable by the Protocol.

Summary of amendments to the retained Regulation 2020/967

The amendments made to this retained Regulation fix deficiencies which arise as a result of the UK's exit from the EU. For example, the reference in the retained Regulation 2020/967 to "Union fishing vessels" is changed to "United Kingdom fishing vessels" and references to "Member States" are changed to "a fisheries administration" so that the provisions of this retained Regulation will apply to UK vessels.

Summary of amendments to retained Regulations relating to marketing standards for fisheries products

⁶ The Common Fisheries Policy (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/739)

⁷ The term "United Kingdom waters" is defined in Article 4(40) of the retained Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy (EUR 2013/1380) as "the sea within British fishery limits but excluding the territorial sea adjacent to the Isle of Man".

The amendments to retained Regulation 2136/89, retained Regulation 1536/92, retained Regulation 2406/96, retained Regulation 1224/2009, retained Regulation 1379/2013, retained Regulation 1380/2013 and retained Regulation 2019/1241 are all technical in nature.

These amendments adjust these retained Regulations insofar as necessary to take account of the way fisheries products are dealt with in the Protocol. Article 5 of the Protocol (customs, movement of goods) provides at article 5.4 that EU law will continue to apply in Northern Ireland in respect of the EU measures listed in Annex 2 to the Protocol. Annex 2, at paragraph 46, lists (among other measures) a number of fisheries measures which either relate only to marketing standards for fisheries products, or, where they go wider, are listed only insofar as they apply to marketing standards. As a result, retained EU fisheries law that has already been deficiency-fixed to apply within the UK has to be further adjusted to ensure that the marketing standards provisions apply only in GB, leaving the equivalent EU law provision to apply directly in NI.

Does the SI relate to a Common Framework or other Scheme

Future fisheries policy will be undertaken by the Scottish Government in line with the objectives in the Fisheries Act 2020, as described in the forthcoming Joint Fisheries Statement. The Regulations are not governed by the framework provided for in this Act.

Summary of stakeholder engagement/consultation

The Department for Environment, Food and Rural Affairs (DEFRA) has consulted with the Devolved Administrations of Scotland, Wales and Northern Ireland regarding this instrument.

DEFRA has not carried out formal consultation external to government. Article 9 of retained Regulation (EC) No 178/2002⁸ requires consultation when “food law” is being revised “except where the urgency of the matter does not allow it”. The amendments relating to marketing standards for fisheries products are revisions to food law; however we accept DEFRA’s explanation that the underlying policy change was effected by the Protocol itself and that consultation was not possible during the negotiation and drafting of the Protocol for reasons of urgency. These technical amendments simply implement a policy that has already been decided and set out in an international treaty binding the UK. As such, there would be little point in consulting upon them.

Otherwise, the Regulations are intended to maintain the status quo with regard to the rules that apply to the marketing and control of fisheries products, and to ensure the UK’s continued ability to tackle IUU fishing across the UK, and to promote sustainable

⁸ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (EUR 2002/178)

fishing, as well as to ensure continuity in regulation and that the same standards are met.

Therefore, the amendments made by the Regulations do not represent any changes in policy regarding fisheries management. Whilst new regulation-making powers are created in the retained IUU Regulation for the GB fisheries administrations (including the Scottish Ministers) and the Secretary of State (with the consent of the Scottish Ministers, where the power is exercised in an area of devolved competence), in connection with controlling IUU fishing, these powers do not in and of themselves result in a policy change. As such, the Scottish Government has not undertaken any separate stakeholder engagement. Engagement with stakeholders over the long-term future of fisheries management in Scotland is ongoing with a view to the Scottish Ministers legislating in the future.

Other Impact Assessments

We have discussed the need for an impact assessment with the UK Government and on the basis that these amendments do not effect any policy changes, we have concluded that there is not a requirement to undertake an impact assessment. It is the intention that Scottish Ministers will legislate and implement measures in the future to establish a world class fisheries management system in Scottish waters.

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

The Regulations make textual amendments to retained EU law to reflect the direct application (by virtue of the Protocol) of certain provisions of EU legislation in NI. The amendments do this by clarifying on the face of the statute book that the retained versions of the corresponding EU Regulations listed in paragraph 46 of Annex 2 of the Protocol, apply in whole or in part in GB only. Failure to make these amendments would result in it not being clear on the face of the statute book that the UK Government had implemented its international obligations under the Protocol, as part of the Withdrawal Agreement between the UK and the EU.

The Regulations also make amendments to correct deficiencies arising from the UK's withdrawal from the EU. These amendments are required to ensure the continuity of fisheries management legislation in the UK. Since IP completion day has now passed and retained EU law now forms part of domestic law, the failure to correct certain deficiencies would render certain retained EU legislation pertaining to fisheries inoperable or ineffective. Inoperable or ineffective legislation could potentially risk environmental damage and overfishing as there would be less effective means to control the activities of fishers. This could risk Scotland finding itself in contravention of international obligations and risk its global reputation as sound managers of marine resources. Negative market impacts could arise as a result as many export destinations for seafood would not accept produce from unsustainably managed fisheries.

Amendments made to the retained IUU Regulation facilitate unfettered market access to the GB market, in the context of IUU fishing controls, for NI fishery products which are qualifying NI goods⁹.

New regulation-making powers are created in the retained IUU Regulation for the GB fisheries administrations (including the Scottish Ministers) and the Secretary of State (with the consent of the Scottish Ministers, where the power is exercised in an area of devolved competence) in connection with controlling IUU fishing.

These amendments do not represent any changes in policy regarding fisheries management. Over time, the Scottish Ministers will amend retained EU law within devolved competence in order to implement their own policies.

It is for these reasons that the Scottish Ministers propose to consent to these Regulations so far as they concern devolved matters.

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

As outlined above, the Sea Fishing (EU Exit) (Scotland) (Amendment) Regulations 2021 follow on from amendments made by the Regulations to Article 12(1), (2) and (2A) of the retained IUU Regulation, to amend an offence provision in article 9(3) of the Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013. The Sea Fishing (EU Exit) (Scotland) (Amendment) Regulations 2021 were laid on 4 February 2021 and will come into force on 1 June 2021.

Information about any time dependency associated with the proposal

The Sea Fishing (EU Exit) (Scotland) (Amendment) Regulations 2021 were laid on 4 February 2021 and will come into force on 1 June 2021. The 25 February 2021 laying date for the Regulations has meant that, in order to comply with the minimum laying period for affirmative SSIs as prescribed in the Scottish Parliament's Standing Orders prior to the pre-election purdah period beginning on 25 March 2021, the Sea Fishing (EU Exit) (Scotland) (Amendment) Regulations 2021 had to be laid before the Regulations.

As the Sea Fishing (EU Exit) (Scotland) (Amendment) Regulations 2021 are dependent on amendments made by the Regulations, they must come into force after the Regulations have come into force. As explained above, Defra have been unable to give a definitive date as to when the Regulations will come into force as it is too early to say with certainty how long the UK Parliamentary processes will take. Defra's current best estimate of the commencement date for the Regulations is 14 April 2021. Therefore, 1 June 2021 has therefore been chosen as the commencement date for the Sea Fishing (EU Exit) (Scotland) (Amendment) Regulations 2021 to ensure that this SSI comes into force after the Regulations.

⁹ The term "qualifying Northern Ireland goods" is defined in the Definition of Qualifying Northern Ireland Goods (EU Exit) Regulations 2020 (SI 2020/1454).

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

There are no broader governance issues in relation to this proposal.

Any significant financial implications

No significant financial impacts on private or voluntary sectors is foreseen as a direct result of the Regulations. The new relationship between the UK and the EU, and the specific arrangements for NI will inevitably have substantial financial implications for Scottish fishers, importers and exporters of seafood and aquaculture products between Scotland, and NI or the EU. These impacts are already being felt by producers and exporters of seafood products, and the Scottish Government has made support available to some of those worst affected

Before the end of the transition period the Scottish Government undertook work to outline the significant financial impacts created as a result of EU exit. Information can be found in [“Scotland’s Place in Europe”](#), [“Scotland’s Place in Europe; our way forward”](#) and [“No Deal Brexit – Economic Implications for Scotland”](#).

COVER LETTER TO THE SCOTTISH PARLIAMENT

19 February 2021

Dear Edward,

THE COMMON FISHERIES POLICY (AMENDMENT ETC.) REGULATIONS 2021

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 the Parliament, accompanied the letter from the 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.

The Scottish Government still has concerns about the operation of the NI Protocol, but we also recognise the need for the NI Protocol to continue to work. We are therefore proceeding on the basis that we are notifying the Scottish Parliament now of our intention to consent to this instrument, but invite the Committee to note that the Scottish Government continues to engage with the UK Government on the NI Protocol and to press for ongoing involvement.

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.

I am also taking this opportunity to provide an update under Annex H of the previous protocol in relation to the Common Fisheries Policy (Amendment etc.) (EU Exit) (No. 2) Regulations 2020 (SI 2020/1599) (“the 2020 Regulations”)

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

I look forward to hearing from you by 19 March.

Yours sincerely,

FERGUS EWING

ANNEXE B

THE PLANT HEALTH, SEEDS AND SEED POTATOES (AMENDMENT) REGULATIONS 2021 (“PH/10”)

The notification is **Type 1**

A brief overview of the SI - The Plant Health, Seeds and Seed Potatoes (Amendment) Regulations 2021 – PH/10

PH/10 introduces provisions in relation to three separate matters. These are—

1. Amendments to plant health legislation using deficiency fixing powers (section 8(1) and paragraph 21 of schedule 7) under the European Union (Withdrawal) Act 2018

a) The following EU legislation is amended by PH/10:

- Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 (the Phytosanitary Conditions Regulation).
- Commission Implementing Regulation (EU) 2020/1217 on a derogation from the Phytosanitary Conditions Regulations for specified plants originating in Japan and revoking Decision 2002/887/EC.
- Commission Implementing Regulation (EU) 2020/1231 on the format and instructions for the annual reports of the surveys and on the formation of the multiannual survey programmes and the practical arrangements, respectively provided for in Article 22 and 23 of Regulation (EU) 2016/2031.

b) The following revocations are made by PH/10:

- Commission Implementing Regulation (EU) 2020/1292
- Commission Implementing Decision (EU) 2020 /1549

The measures that apply under paragraph b) relate to pests of *Agrilus planipennis* Fairmaire and Pepino mosaic virus. These measures have now been moved to the annexes of the Phytosanitary Conditions Regulation.

2. Amendments to seed legislation using deficiency fixing powers section 8(1) and paragraph 21 of schedule 7 under the European Union (Withdrawal) Act

PH/10 makes amendments to three pieces of secondary legislation in the area of seeds and seed potatoes. These measures apply to England only. Equivalent legislation has been made separately for Scotland in an SSI.

3. Introduction of provision in relation to frequency of official controls conducted on imports from the EU, Liechtenstein and Switzerland.

PH/10 introduces provision under Articles 22(3) of the retained Official Controls Regulation (Regulation (EU) 2017/625) in relation to plant health. This amends Commission Implementing Regulation 2019/66 and provides for a new scheme setting out the frequency of official controls to be conducted on certain plants, plant products and other objects being imported into GB from the EU, Liechtenstein and Switzerland. The SI is subject to the negative procedure and is due for sifting on 8 March and to come into force on 29 March 2021.

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

- Technical amendments using deficiency fixing powers to be made to various annexes in the Phytosanitary Conditions Regulation to protect plant biosecurity.
- Deficiency fixes of EU Commission Implementing Regulations (EU) 2020/1217 and (EU) 2020/1231 to make them operable.
- Revocation of two pieces of EU legislation in relation to two pests. The contents are now incorporated into Phytosanitary Conditions Regulation by virtue of the deficiency fixing amendments in bullet 1.
- Introduction of a new scheme relating to the frequency of official controls checks to be applied to certain plants, plant products and other objects imported into GB from the EU, Liechtenstein and Switzerland.

Summary of the proposals

1. Amendment to the retained Phytosanitary Conditions Regulation

These amendments are technical in nature. The Phytosanitary Conditions Regulation was previously deficiency fixed by the UK SI, the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (PH/06). The Phytosanitary Conditions Regulation makes operability changes and other consequential amendments to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 on protective measures against pests of plants (the “EU Plant Health Regulation”) to ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period.

PH/06 made extensive technical fixes to the Phytosanitary Conditions Regulation, and incorporated into its annexes the contents of existing EU tertiary legislation and EU Emergency Decisions to ensure it became operable on IP completion day.

PH/10 now makes further changes to the Phytosanitary Conditions Regulation. This includes correction of minor errors and the incorporation of the content of Commission Implementing Regulation (EU) 2020/1292 and Commission Implementing Decision (EU) 2020/1549 that had been introduced by the EU too late to be included in PH/06. In terms of the UK's new relationship with the EU, the UK-EU Trade and Cooperation Agreement makes provision in relation to sanitary and phytosanitary measures, informed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which envisages that the parties may take proportionate measures to address risks identified. Consistent with the TCA and SPS principles, the new measures apply equitably to all trading partners, with technically justified requirements.

Further details in relation to the technical amendments made to the Phytosanitary Conditions Regulation are included in Annex A of this notification.

2. Deficiency fixes of retained EU Law

PH/10 uses deficiency fixing powers contained in the European Union (Withdrawal) Act 2018 to make the following provision—

- Amend Commission Implementing Regulation (EU) 2020/1217 on a derogation from Implementing Regulation (EU) 2019/2072 concerning the introduction into the Union of naturally or artificially dwarfed plants for planting of certain species *Chamaecyparis* Spach, *Juniperus* L. and certain species of *Pinus* L., originating in Japan, and repealing Decision 2002/887/EC so that GB businesses who trade in these plants can continue to do so.
- Amend Commission Implementing Regulations (EU) 2020/1231 on the format and instructions for annual reports on the results of the surveys and on the format of the multiannual survey programmes and the practical arrangements, respectively provided for in Articles 22 and 23 of Regulation (EU) 2016/2031, so that they are adapted to suit GB inspecting/survey requirements.

The deficiency fixes made to these EU Regulations are minor in nature and include changing references of “Union” to “GB” or to remove references to “Member state”. The changes allow for the retained Regulations to operate effectively in Great Britain now the transition period has ended.

3. Revocation of EU legislation

Commission Implementing Regulation (EU) 2020/1292 and Commission Implementing Decision (EU) 2020/1549 were introduced by the EU during the transition period at a time too late for their contents to be included in PH/06, which amended the Phytosanitary Conditions Regulation to enable it to operate effectively in Great Britain. PH/10 now makes these changes, by revoking the two pieces of legislation and transferring their contents (as appropriately deficiency fixed) to the Phytosanitary Conditions Regulation.

4. Introduction of frequency of checks legislation

After the end of the transition period, GB treats the EU as a third country. This means that appropriate levels of official controls, conducted using a risk-based approach, are to be performed on imports from the EU. PH/10 uses powers from the retained Official

Controls Regulation (Regulation (EU) 2017/625) to amend Commission Implementing Regulation (EU) 2019/66 and introduce legislation, which stipulates the levels of performance of official controls checks on regulated plants, plant products and other objects imported into GB from the European Union, Liechtenstein, and Switzerland.

The targeted inspection rate is based on the level of plant biosecurity risk related to GB. The methodology used to calculate the rates of performance of the checks is the same as that used by the EU in relation to third country imports into the EU. This is the first step in introducing targeted inspection checks for the EU, Liechtenstein and Switzerland. Over time, goods will either be added or omitted from the list based on evidence of compliance/non-compliance and assessed by UK Plant Health Services. The rates and commodities are:

Category	Plant, plant product or other object	Frequency of checks
Cuttings, seedlings (except forestry reproductive material), young plants of strawberries or of vegetables, not intended for final users	All genera	100%
Bulbs, corms, rhizomes, tubers, (other than tubers of potatoes), not intended for final users	All genera	100%
Bulbs, corms, rhizomes, tubers, (other than tubers of potatoes), intended for final users	All genera	10%
Seeds, tissue cultures, not intended for final users	<i>Allium cepa</i> L., <i>Allium porrum</i> L., <i>Castanea</i> Mill., <i>Capsicum</i> spp. L., <i>Helianthus annuus</i> L., <i>Medicago sativa</i> L., <i>Phaseolus cocineus</i> , <i>Phaseolus vulgaris</i> L., <i>Solanum lycopersicum</i> L., <i>Solanum tuberosum</i> L. (True potato seed); Vegetable seeds of <i>Pisum sativum</i> L. and <i>Vicia faba</i> L.; Seeds of oil and fibre plants of <i>Brassica napus</i> L., <i>Brassica rapa</i> L., <i>Sinapis alba</i> L., <i>Glycine max</i> (L.) Merrill, <i>Linum usitatissimum</i> L.	100%
Seeds, tissue cultures, intended for final users		5%
Plants intended for planting (other than cut Christmas trees), not intended for final users	All genera	100%

Category	Plant, plant product or other object	Frequency of checks
Other plants intended for planting not specified elsewhere in this table, intended for final users	All genera	10%
Branches with foliage, parts of Conifers (other than Christmas trees)	All genera	5%
Tubers of potatoes	<i>Solanum tuberosum</i> L. intended for planting (seed potatoes)	100%
	<i>Solanum tuberosum</i> L. (ware potatoes) from Poland, Portugal or Romania)	50%
	<i>Solanum tuberosum</i> L. (ware potatoes) from Spain	100%
Soil and growing medium, bark	Bark of <i>Castanea Mill.</i> , Conifers (<i>Pinales</i>), <i>Juglans L.</i> , <i>Pterocarya Kunth.</i>	5%
Machinery or vehicles which have been operated for agricultural or forestry purposes	Machinery or vehicles which have been operated for agricultural or forestry purposes	5%

This will ensure the continued effective functioning of the plant health controls within GB and between relevant third countries and GB. It also ensures that EU goods are not being treated differently at the border from rest of the world goods.

None of the amendments made by PH/10 confer powers to make legislation on UK or Scottish Ministers.

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

No.

Summary of stakeholder engagement/consultation

In respect of the changes made using deficiency fixing powers, the majority are purely technical amendments as they either add, omit or substitute plant health conditions to protect GB and Scottish plant biosecurity and the amendments ensure a consistent approach to imports from third countries, including the EU.

The targeted inspection rates are required to ensure that these goods from the EU, Liechtenstein and Switzerland are not treated differently to other targeted inspections on commodities from non-EU countries.

Despite the fact that the amendments being introduced relate to technical operability rather than policy changes, the UK Plant Health Services have engaged extensively with GB-wide stakeholders, such as The Fresh Produce Consortium and the Horticultural Trade Association from Summer 2020 to January 2021. These

engagements included four feasibility testing sessions and a plant imports webinar where the different frequency of checks dependent on biosecurity risk were explained. All engagements were well attended by representatives from the Scottish industry and were supportive of the proposals with respect to the frequency rates.

The Scottish Government will also publish these rates and provide a mail shot to the importers of these goods, to remind them shortly before the charges will take effect.

A note of other impact assessments, (if available)

No other impact assessments have been carried out and the UK Government does not intend to produce an impact assessment for the proposed regulations since the onus largely falls to the competent authorities of the importing country to make sure any goods being imported to GB meet these conditions.

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

The provision to be made by the UK Government in PH/10 reflects the GB wide approach taken in the subject matter dealt with in the SI. Scottish Ministers consider that consenting to the SI is the most effective and transparent way to make changes to address these issues at the GB level. Officials have worked with UKG to ensure the drafting delivers for Scotland's interests and respects devolved competence in Scotland.

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

Under the current plans, Defra's intention is to lay for sifting on 8 March.

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

Although it is not certain at this stage when it will be laid, but on the basis that it will take 10 days for this process to be completed, the expected date for laying is 18 March meaning the Scottish Parliament does not have 28 days to scrutinise.

Due to the detailed technical nature of the frequency of official controls proposals and amendments to the import conditions, the GB administrations have only recently been able to agree their content. Therefore, it was only recently that the Scottish Ministers could be satisfied that this was the correct course of action and that the notification could proceed.

Information about any time dependency associated with the proposal

The amendments made by the proposed instrument ensure the continued and effective operation of the GB-wide plant health regime, including in relation to frequency of checks. For imports from the EU, Liechtenstein and Switzerland a revised fees structure for checks on these imports is contained in the Plant Health (EU Exit) (Scotland) (Amendment) Regulations 2021 an SSI that was laid in draft in the Scottish Parliament on 15 February 2021. This ensures that these goods can be charged from the 1st April and avoids adding any unnecessary costs to the taxpayer.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

No.

Any significant financial implications?

No.

Additional information

Annex 2A	List of provisional GB quarantine pests: (This list differs from EU as pests are relevant to GB only)
Add	Under heading: B Insects and mites: <ul style="list-style-type: none"> • <i>Aonidiella orient:alis</i> (Newstead) [AONDOR] • <i>Eotetranychus sexmaculatus</i> (Riley) [TETRSM]"; • <i>Platypus apicalis</i> (White) [PLTPAP]
Delete	Under heading: C Viruses, viroids and phytoplasmas <ul style="list-style-type: none"> • Tomato yellow leaf curl Sardinia virus [TYLCSV] • Tomato yellow leaf curl virus [TYLCV0]
Annex 3:	List of Pest Free Area quarantine pests and GB pest-free areas:
Entry: <i>Thaumetopoea processionea</i> L. [THAUPR]	Adding: Central Bedfordshire (part of), Luton,"; South Bedfordshire; Stevenage and Uttlesford
Annex 4	List of GB regulated non-quarantine pests and their respective plants for planting
Omit	Under heading Fungi and oomycetes <ul style="list-style-type: none"> • <i>Candidatus Liberibacter</i>
Annex 5	Measures to prevent the presence of Regulated Non Quarantine Pests (RNQP) on specific plants for planting:
Annex 5 Part C Amending	Under Viruses, viroids, virus-like diseases and phytoplasmas; <ul style="list-style-type: none"> • Tomato ringspot virus [TORSV0] entry
Annex 5 Part E Making edits to entries:	Under Heading Bacteria <ul style="list-style-type: none"> • <i>Xanthomonas euvesicatoria</i> Jones <i>et al.</i> [XANTEU], • <i>Xanthomonas gardneri</i> (ex Šutič) Jones <i>et al.</i> [XANTGA] • <i>Xanthomonas perforans</i> Jones <i>et al.</i> [XANTPF] • <i>Xanthomonas vesicatoria</i> (ex Doidge) Vauterin <i>et al.</i> [XANTVE]

<p>Annex 6 Part B</p> <p>Adding</p>	<p>List of high-risk plants, plant products and other objects from third countries which may not be introduced into Great Britain pending a risk assessment:</p> <ul style="list-style-type: none"> • Israel, New Zealand and Serbia to certain plants due to receiving risk assessments.
<p>Annex 7</p>	<p>Plants, plant products and other objects originating in third countries which may only be introduced into Great Britain if special requirements are met:</p> <ul style="list-style-type: none"> • This annex is where the bulk of import conditions are stated; many plants/majority of countries are listed here as such will be updated frequently.
<p>Annex 10</p>	<p>List of plants, plant products and other objects to be introduced into, or moved within, GB pest-free areas and corresponding special requirements:</p> <ul style="list-style-type: none"> • make corrections to account for additions in Annex 3
<p>Annex 11 Part A</p>	<p>List of plants, plant products and other objects and the respective third countries of origin or dispatch, which may not be introduced into Great Britain unless they are accompanied by a phytosanitary certificate, as referred to in Article 72(1) of Regulation (EU) 2016/2031</p> <ul style="list-style-type: none"> • Entries relating to isolated bark and wood of, making it clear when and when it does not apply to EU member states, Liechtenstein and Switzerland and adding Canada
<p>Annex 11 Part C</p> <p>Deleting</p>	<p>List of plants, together with the respective third countries of origin or dispatch, which do not require phytosanitary certificates pursuant to Article 73(2) of Regulation (EU) 2016/2031</p> <ul style="list-style-type: none"> • Grain of <i>Oryza</i> spp. L. Any third country
<p>Annex 13</p> <p>Isolated bark adding</p>	<p>List of plants, plant products and other objects for which a UK plant passport is required for their movement within Great Britain or for their introduction into Great Britain from a CD territory:</p> <ul style="list-style-type: none"> • <i>Juglans</i> L., • <i>Pterocarya</i> L..

COVER LETTER TO THE SCOTTISH PARLIAMENT

23 February 2021

Dear Mr Mountain

THE PLANT HEALTH, SEEDS AND SEED POTATOES (AMENDMENT) REGULATIONS 2021 (PH/10)

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 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 the SI, The Plant Health, Seeds and Seed Potatoes (Amendment) Regulations 2021 (PH/10) 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.

On current plans Defra's intention for this to be laid for sifting on 8 March as a proposed negative. Despite the sifting process, regrettably Scottish Ministers will not have the full 28 days before Defra considers it. It was necessary to consult with the other UK administrations to ensure the targeted inspection rate for certain regulated plant, plant products, timber and timber products from the EU countries, Liechtenstein and Switzerland for official control checks were set accurately according to the level of plant biosecurity they posed to GB; also that the technical amendments were correct. It was only just recently that Scottish Ministers were content to proceed with the notification process.

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

However, it would be helpful to have a response by 17 March 2021.

Yours sincerely,



BEN MACPHERSON

Minister for Rural Affairs and the Natural Environment

ANNEXE C

TYPE 1 NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Vegetable and Ornamental Plant Propagating Material and Fodder Plant Seed (Amendment) Regulations 2021 (“the SI”)**Details of the provisions that Scottish Ministers are being asked to consent to.**

1. For devolved purposes, this particular instrument makes provisions concerning amendments to the following retained EU law:

- Commission Regulation (EC) 217/2006: authorises Member States to permit temporarily the marketing of seed which does not meet the required germination standard;
- Commission Decision 80/512/EEC: permits the United Kingdom to relax certain fodder seed testing requirements;
- Council Decision 2003/17/EC: confers equivalence status to third countries whose processes for seed production and certification are considered comparable to those of the European Union;
- Council Decision 2005/834/EC on the equivalence of checks on practices for the maintenance of varieties carried out in certain third countries; and

referred to collectively in this notification as “the retained EU legislation”.

2. The SI is subject to negative procedure.

3. The SI is made in exercise of the powers conferred by section 8C(1) of the European Union (Withdrawal) Act 2018 (the “Withdrawal Act”) to make operability amendments to retained directly applicable EU legislation.

Summary of the proposals

4. The SI implements amendments to the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement (“the Protocol”) in consequence of Article 1.6 of Decision 3/2020 of the Joint Committee established by that agreement. Article 1.6 adds three Council Directives on plant reproductive material to Annex 2 of the Protocol. These Directives are:

(i) Council Directive 66/401/EEC of 14 June 1966 on the marketing of fodder plant seed,

(ii) Council Directive 98/56/EC of 20 July 1998 on the marketing of propagating material of ornamental plants, and

(iii) Council Directive 2008/72/EC of 15 July 2008 on the marketing of vegetable propagating and planting material, other than seed (together, the “Council Directives”),

5. Referred to collectively in this notification as “the three Council Directives”, these directives are considered by the EU as essential for the application of the rules of the

EU internal market for goods in respect of Northern Ireland and were omitted at the time of adoption of the Protocol.

6. The SI is made in exercise of the power conferred by Section 8C(1) of the Withdrawal Act to implement the Protocol. In relation to England and Wales, the SI also amends the domestic legislation which had transposed the Council Directives, to reflect the updated status of the Council Directives in Northern Ireland. The Scottish Government implemented the necessary amendments to the relevant domestic legislation, as applicable to Scotland, in (i) The Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 and (ii) The Plant Health and Plant Propagating Material (Miscellaneous Amendment) (Scotland) Regulations 2021.

An explanation of why the change is considered necessary

7. The retained EU legislation was the subject of operability amendments the UK made on the basis that the Council Directives would not apply in Northern Ireland under the Protocol. (The Aquatic Animal Health and Alien Species in Aquaculture, Animals, and Marketing of Seed, Plant and Propagating Material (Legislative Functions and Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2020). Due to the amendment of Annex 2 to the Protocol by Decision 3/2020 further operability amendments are now needed of that legislation to recognise the continued application of the Council Directives to Northern Ireland.

8. The SI amends the retained EU legislation to reflect that it will apply to GB rather than the UK.

9. The amendments also allow seed from NI to be marketed in GB under specific conditions as set out in the retained EU legislation. For example, Commission Regulation 217/2006/EC will permit the sourcing of suitable seed from Northern Ireland for marketing in GB in circumstances that there is a shortfall in GB of seed meeting the required germination standard.

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

10. The retained EU legislation provides for Ministers to act jointly. In relation to exercise of powers, the proposed Plant Varieties and Seeds Common Framework is relevant.

11. The retained EU legislation includes powers previously exercisable by the Commission to allow for the taking of a number of measures relating to the marketing of seed and plant propagating material. Going forward in GB those are to be exercisable, as appropriate, by Ministers. Under the proposed Common Framework arrangements, through a series of technical working groups with representatives from each of the four nations, recommendations are considered and delivered as appropriate.

Summary of stakeholder engagement/consultation

12. The amendments in the SI are technical in nature. There are no policy changes so no public consultation has been undertaken.

A note of other impact assessments, (if available)

13. There is no, or no significant, impact on business, charities or voluntary bodies.

14. There is no, or no significant, impact on the public sector.

15. An Impact Assessment has not been prepared for this instrument because the instrument provides for technical amendments to existing legislation.

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

16. The amendments do not amount to changes in policy and will not have a substantive impact on current marketing practices because the underlying processes and standards are unchanged, with powers now lying with Ministers rather than the Commission.

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

17. The SI is due to be laid on 6 April 2021.

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

18. The Scottish Parliament will have 28 days to scrutinise.

Information about any time dependency associated with the proposal

19. Not applicable.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

20. There are no anticipated broader governance issues anticipated in connection with the SI and the Scottish Government will continue their good working relationships between UK Administrations.

21. These are technical amendments to ensure the continued operation of the current regimes.

Any significant financial implications?

22. It is not expected that the SI will have any financial implications, including for stakeholders in Scotland.

25 February 2021

Dear Edward,

The Vegetable and Ornamental Plant Propagating Material and Fodder Plant Seed (Amendment) Regulations 2021 - Plants Varieties and Seeds

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 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.

The Scottish Government still has concerns about the operation of the NI Protocol, but we recognise the need for NI Protocol to continue to work. We are therefore proceeding on the basis that we are notifying the Scottish Parliament now of our intention to consent to these instruments, but invite the committee to note that the SG continues to engage with the UK Government on the NIP and to press for ongoing involvement.

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 SIs and they are 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.

The instrument makes provision for the marketing of plant propagating material for vegetable and ornamentals, which is a devolved competence.

The instrument being made uses powers under section 8C(1) of the Withdrawal Act to make operability amendments to retained directly applicable EU legislation in relation to an amendment to Annex 2 of the NI Protocol. The addition of three directives to the NI Protocol are considered by the EU as essential for the application of the rules of the EU internal market for goods in respect of Northern Ireland and were omitted at the time of adoption of the Protocol.

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

I look forward to hearing from you within 28 days from the date of this letter.

Yours sincerely



BEN MACPHERSON

Minister for Rural Affairs and the Natural Environment