

**EXPLANATORY MEMORANDUM TO**  
**THE OFFICIAL CONTROLS AND PHYTOSANITARY CONDITIONS**  
**(AMENDMENT) (NO. 2) REGULATIONS 2021**

**2021 No. 187**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
- 1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to facilitate the objectives introduced by The Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021 (S.I. 2021/136) (“the 2021 Regulations”), to enable the checking of certain goods for official control checks at places of destination (“PoDs”) for a transitional period, and protect biosecurity and support trade between Great Britain (“GB”) and the relevant third countries by enhancing the level of protection against the entry of a high-risk pest into GB via imported plants (see section 7.1).
- 2.2 This instrument clarifies that Part 2 of the 2021 Regulations applies in relation to the importation of those goods that are specified in the 2021 Regulations, for the duration of the transitional staging period beginning on or after the coming into force date of the 2021 Regulations.
- 2.3 This instrument also amends the 2021 Regulations, to correct a sentence relating to the introduction of GB-wide emergency measures against the import of host plants of certain pests from any third country that poses an unacceptable level of risk to GB. Without this correction, the current provisions of the 2021 Regulations will remove the highest risk hosts from the scope of import requirements, contrary to the policy intention. As a result of the correction, this instrument will strengthen import conditions in line with the policy intention of the 2021 Regulations.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 The required corrections need to come into force immediately before 4 March 2021, when the 2021 Regulations come into force, to confirm the Part 2 provisions apply from the commencement of the transitional staging period, and to ensure that weaker import conditions are not implemented. This would have potentially damaging effects on GB’s biosecurity and reputation as a trader. The 21-day rule must be breached to address these urgent risks.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales, and Scotland.  
4.2 The territorial application of this instrument is England and Wales, and Scotland.

**5. European Convention on Human Rights**

- 5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 Regulation (EU) 2016/2031 (“the Plant Health Regulation”) and Regulation (EU) 2017/625 (“the Official Controls Regulation”) respectively, establish protective measures against pests of plants, and provide for the conduct of official controls and other official activities to ensure the proper application of rules on plant health and plant protection products (amongst other things). The Official Controls Regulation, and the Plant Health Regulation (and additional tertiary legislation made under the Plant Health Regulation), has been incorporated into domestic law using powers under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), and amended in relation to Great Britain to deal with a range of deficiencies in the legislation arising from the withdrawal of the United Kingdom from the European Union. Further, Commission Implementing Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”), establishing uniform conditions for the Plant Health Regulation, was amended to enable operability, by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1527).
- 6.2 The 2021 Regulations were laid on 11 February 2021 in exercise of powers under the Plant Health Regulation and the Official Controls Regulation, to enable the conduct of official control checks on certain goods at PoDs, and to introduce stronger measures against host plants of *Xylella* by amending the Phytosanitary Conditions Regulation, in response to a risk assessment demonstrating that existing measures were not providing the required level of protection.
- 6.3 This instrument clarifies provision in Part 2 relating to the transitional staging period provisions as defined in the Official Controls Regulation. This instrument also corrects one sentence in Part 3 of the 2021 Regulations. This sentence erroneously removed all high-risk hosts from certain import requirements, by excluding “those” that belong to the *Xylella* host list, rather than “seeds”. Correcting this sentence, from “those” to “seeds”, ensures that import requirements apply to high-risk *Xylella* hosts (but excluding their seeds) entering into GB from all third countries and that the risk of introduction of this pest is proportionally controlled, in line with the intention of the 2021 Regulations.

## **7. Policy background**

### *What is being done and why?*

- 7.1 *Xylella fastidiosa* is a bacterium which causes disease in a wide range of woody commercially grown plants such as grapevine, citrus, olive and several species of broadleaf trees widely grown in the UK, as well as many shrubs and herbaceous plants. Outbreaks of the disease have occurred in Italy, France, Spain, Germany and Portugal. There is considered to be a particular risk of introducing *Xylella* with olive, almond, lavender, rosemary, coffee and polygala plants, and these are the hosts which would be subject to additional requirements.
- 7.2 Outbreaks in southern Italy have devastated olive production and have had major social and economic impacts. Substantial impacts have been observed elsewhere, both on businesses affected and more generally. The pathogen is not known to be present in the UK, but we remain concerned about the possibility of *Xylella* arriving in the UK on high risk hosts, such as olive, and those plant species commonly associated with outbreaks in the EU. The long latency period of *Xylella* means that, without additional requirements, it could be carried into non-infected countries via imports of plants, long before the infection is identified.
- 7.3 *Xylella* is continuing to spread in Europe. In September 2018, *Xylella* was confirmed in three symptomatic olive trees in Belgium, which had originated from Spain in May 2018. Spain has not been able to trace the source of infection. In August 2020, a new outbreak in lavender nurseries in the Occitanie region of France was identified. There have also been further findings in 2020 in Italy and Spain. The uncertain distribution and ongoing findings in other European countries indicate an ongoing risk of disease spread.
- 7.4 We are therefore correcting the 2021 Regulations to ensure that the import of high risk *Xylella* host plants are suitably controlled and therefore to enhance the level of protection against the risk of *Xylella* being introduced into GB in accordance with the original policy objective.
- 7.5 The amendments to Part 2 of the 2021 Regulations to enable the checking of certain goods at PoDs for a transitional period of time, beginning with the coming into force date of the 2021 Regulations until new Border Control Posts are operationally ready to take on the checks, in line with the original policy objective.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to the withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 This is not a consolidation instrument and is the first amendment instrument regarding the Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021.

## **10. Consultation outcome**

- 10.1 The amendments in respect of Part 2 of these Regulations are made under powers in the amended Official Controls Regulation and include a consultation requirement.

Consultation was carried out with stakeholders on the introduction of checks at places of destination on the basis that these would be permitted for a temporary period of time. We are confident that the amendments made by these Regulations reflect the basis of the consultation with stakeholders on the proposal to introduce checks at places of destination for a transitional period beginning on or after the commencement of the 2021 Regulations.

- 10.2 Whilst there is no legislative requirement to consult in respect of introducing this corrective measure, earlier Xylella measures had been developed in consultation with the Plant Health Advisory Forum and individual businesses to minimise unnecessary burdens. Stakeholders supported the measures, which were the basis of temporary emergency measures, introduced in April 2020, aiming to provide protection during the transition period. These new measures, that were intended to be fully implemented by The Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021, reflect the earlier measures as regards the desired level of protection for plants imported from countries and areas where Xylella is present, while also avoiding unnecessary new burdens for those countries where Xylella is not present. The Plant Health Advisory Forum remains supportive of stronger requirements for this disease.
- 10.3 The Scottish and Welsh Devolved Administrations have been consulted about this instrument and are content.

## **11. Guidance**

- 11.1 A summary of the emergency measures against host plants of specific pests has been placed on gov.uk here: <https://planthealthportal.defra.gov.uk/latest-news/new-gb-measures-against-xylella/>. This provides a Q&A document and a list of the Xylella hosts that are relevant for these measures.

## **12. Impact**

- 12.1 The impact from the PoD scheme is estimated at an overall cost of around £0.5m over 6 months, on approximately 5000 businesses. It reflects costs to businesses to purchase the additional kit required for the inspections and time costs by members of staff to be present for the inspection.
- 12.2 The impact from the full emergency pest measures to prevent the introduction of Xylella is estimated to be around £1.5m per year, on approximately 750 businesses. This reflects the limitations for high risk plants on the import trade and the costs incurred through quarantine measures when trade does occur, though there will be beneficial opportunities for UK businesses to grow some plants domestically. The specific pests affected by the emergency measures are already subject to the Animal and Plant Health Agency (“APHA”) and Forestry Commission inspection and surveillance programmes.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the level of estimated impact across businesses is below the £5m per year cost threshold.
- 12.4 There is no, or no significant, impact on charities or voluntary bodies as a result of policy changes introduced under this instrument.
- 12.5 There is no significant impact on the public sector. The PoD scheme is estimated to incur inspectorate costs of under £0.1m over 6 months and emergency Xylella measures are estimated to incur inspectorate costs of around £0.5m per year.

### **13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 The emergency Xylella measures, with an estimated cost of around £2,000 per business on average, generally affect smaller businesses such as nurseries and garden centres, though some larger companies also sell affected plants.
- 13.3 This instrument applies equally to all businesses importing Xylella host plants. There is no exemption for small businesses, given the importance of protecting plant biosecurity through the actions of all sizes of businesses.

### **14. Monitoring & review**

- 14.1 The emergency measures will be kept under review following any new or revised risk assessments, pest interceptions, changes in pest distributions and other developments.
- 14.2 The PoD scheme is a temporary measure lasting until the Border Control Posts are operationally ready to inspect EU regulated goods.

### **15. Contact**

- 15.1 Suzie Pearce at the Department for Environment, Food and Rural Affairs, Telephone: 0208 0267 171 or email: [Suzannah.pearce@defra.gov.uk](mailto:Suzannah.pearce@defra.gov.uk) can be contacted with any queries regarding this instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health Bees and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Gardiner, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.