

EXPLANATORY MEMORANDUM TO

THE PHYTOSANITARY CONDITIONS (AMENDMENT) REGULATIONS 2022

2022 No. 114

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.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to protect biosecurity and support trade between Great Britain (“GB”) and relevant third countries by introducing further protective measures for at-risk plant goods (see section 7).
- 2.2 This instrument amends Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”), to:
- Introduce GB-wide measures against the import of host plants and other relevant regulated goods for *Scolytus morawitzi* “Morawitz’s bark beetle” and *Polygraphus proximus* “Sakhalin fir bark beetle”. These measures apply to specific third countries that pose an unacceptable level of risk to GB.
 - Update existing pest measures to enable trade and to strengthen protections against *Thaumetopoea processionea* “oak processionary moth” in GB.
 - Modify the regulatory status of certain other pests to ensure that legislative action is proportionate to the threat of each pest.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Under the European Union (Withdrawal) Act 2018 (c. 16) (“the Withdrawal Act”), Regulation (EU) 2016/2031 (“the Plant Health Regulation”) and the Phytosanitary Conditions Regulation, (together “the EU Regulations”), and additional tertiary legislation made under the EU Regulations, were converted and preserved into domestic law (“retained EU law”) at the end of the Transition Period.

- 6.2 The Plant Health Regulation and the Phytosanitary Conditions Regulation respectively establish protective measures against pests of plants and establish uniform conditions for the Plant Health Regulation (amongst other things).
- 6.3 Under powers conferred by the Withdrawal Act, the EU Regulations were amended where necessary, in order to address failures in retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In particular, the Phytosanitary Conditions Regulation was amended by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1527) to set out the lists of pests that pose a risk to the biosecurity of GB, and measures in relation to the introduction into and movement within GB of plants, plant products and other objects, to reduce the risks in connection with those pests to an acceptable level.
- 6.4 Subsequent amendments have been made to the Phytosanitary Conditions Regulations by statutory instruments such as the Phytosanitary Conditions (Amendment) Regulations 2021 (S.I. 2021/641) “the 2021 Regulations” and the Phytosanitary Conditions (Amendment) (No. 2) Regulations 2021 (S.I. 2021/1171), to reflect ongoing assessments of the different risks posed to GB biosecurity. This instrument introduces further such amendments.

7. Policy background

What is being done and why?

- 7.1 This instrument amends the Phytosanitary Conditions Regulation to include additional measures to prevent the introduction of Morawitz’s bark beetle and Sakhalin fir bark beetle into GB. Morawitz’s bark beetle and Sakhalin fir bark beetle are both pests that attack conifer trees and many of their known hosts are important forestry trees in the UK. Although native to Asia, these pests have recently spread into European parts of Russia. They have both been added to the EPPO A2 list, meaning that the European and Mediterranean Plant Protection Organisation (“EPPO”) recommended these pests for regulation. It was concluded from their respective Pest Risk Analyses (“PRAs”) that these pests present an unacceptable risk to GB.
- 7.2 Secondly, this instrument revises the import requirements for host goods to clarify the measures applicable to *Bemisia tabaci* in legislation. Import requirements are also amended for *Spodoptera frugiperda*, *Cronartium* and *Liriomyza* species, and for oak casks from the USA and Canada, to enable trade. In addition, Taiwan is excluded from the *Neocerambyx raddei* measures, introduced by the 2021 Regulations, as Taiwan has been shown to be free of this pest.
- 7.3 Existing measures against oak processionary moth are also updated. Oak processionary moth is a significant threat to the oak trees of GB, and it is currently established across London and Surrey. As a result, the majority of GB, outside of South East England is currently designated as a Pest Free Area (“PFA”). This means that, currently, measures are in place to restrict imports and movements of high-risk oak trees into the PFA, but no such restrictions apply to these imports outside the PFA. This instrument extends restrictions for the import and internal movement of high-risk oak trees to the whole of GB to further strengthen protections against this pest.
- 7.4 Finally, this instrument alters the regulatory status of some pests following a review of their current risk to GB biosecurity. Certain pests are deregulated, in cases where their

continued regulation is no longer technically justified, whilst other pests are newly added to the GB quarantine pest list, or to the provisional GB quarantine pest list.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to 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.

10. Consultation outcome

- 10.1 The measures addressing Morawitz's bark beetle and Sakhalin fir bark beetle have been developed following a consultation on the PRA for each pest. These consultations were published on the Plant Health Portal. Stakeholders were supportive of the proposed measures to tackle the associated biosecurity risks. The new measures define the import requirements of host plants, to provide greater clarity to exporting countries and set in place the process by which we can be assured that imports into GB are free from the pests of concern.
- 10.2 Targeted stakeholder engagement occurred for the changes to the oak processionary moth measures. A consultation for the revised import requirements (see section 7.2) or for the changes to pest regulatory statuses was not deemed necessary as these amendments do not constitute policy changes.
- 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 measures has been provided on the Plant Health Portal here: <https://planthealthportal.defra.gov.uk/latest-news/legislation-for-spring-2022/>. This includes a Q&A document on the measures.
- 11.2 The revised import requirements for *Bemisia tabaci*, *Spodoptera frugiperda*, *Cronartium* and *Liriomyza* species are detailed on the Plant Health Portal: <https://planthealthportal.defra.gov.uk/eu-exit-guidance/imports/updated-gb-special-requirements-for-imports-of-plants-and-plant-products/>.

12. Impact

- 12.1 The estimated financial impact of the introduction of pest measures to prevent the introduction of Morawitz's bark beetle, Sakhalin fir bark beetle and oak processionary moth is expected to be low. The additional costs incurred are as a result of import and movement requirements introduced to protect plant biosecurity. A pragmatic approach to enforcement for oak processionary moth measures will be taken to support trade as they adjust to the new requirements.
- 12.2 An Impact Assessment has not been prepared for this instrument because no significant impact on the private or voluntary sector is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 This instrument applies equally to all businesses importing high risk plant goods, given the importance of protecting plant biosecurity through the actions of all businesses, regardless of their size.

14. Monitoring & review

- 14.1 The measures will be kept under review following any new or revised risk assessments, pest interceptions, changes in pest distributions or other developments.

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 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 Benyon, Parliamentary Under Secretary of State (Minister for Rural Affairs and Biosecurity) at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.