

EXPLANATORY MEMORANDUM TO
THE PHYTOSANITARY CONDITIONS (AMENDMENT) REGULATIONS 2024
2024 No. 610

1. Introduction

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

2. Declaration

- 2.1 Lord Douglas-Miller, the Parliamentary Under Secretary of State (Minister for Biosecurity, Animal Health and Welfare) at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Nicola Spence, Deputy Director for Plant Health Bees and Seeds, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Suzie Pearce at the Department for Environment, Food and Rural Affairs. Telephone: 07557 486012 or email: Suzannah.pearce@defra.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument protects biosecurity and supports trade between Great Britain (“GB”) and third countries by introducing or amending protective measures against high-risk pests of plants. It also corrects a typographical error.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland.

5. Policy Context

What is being done and why?

- 5.1 This instrument is amending Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”) establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 (“the Plant Health Regulation”) as regards protective

measures against pests of plants following a revision in certain pest risks. The instrument makes amendments to:

- Introduce measures against the import of host plants, wood, and woodchips, for pests *Chrysobothris femorata* and *Chrysobothris mali*, from the USA and Canada to prevent the introduction of the pests into GB. The UK Plant Health Services concluded that these beetles present an unacceptable risk to deciduous trees in GB, following a Pest Risk Analysis (“PRA”) by the European and Mediterranean Plant Protection Organisation (“EPPO”) on these pests.
- Regulate the seed of *Solanum sisymbriifolium* (“sticky nightshade”) as a host of the regulated non-quarantine pest (“RNQP”), potato spindle tuber viroid (“PSTVd”), after the pest risk was recently re-assessed, as it was recently found to harbour this pest. Consequently, seed of sticky nightshade being moved within, or introduced into, GB will need to meet official testing requirements to certify freedom from that pest. Imported seed of other *Solanum* species will require health certification and additional checks (unless already required) to mitigate the risk of PSTVd being associated with these goods.
- Provide a set of import requirements for the introduction of, and movement within GB, of spruce (*Picea* spp.) Christmas trees from Norway, for short term display only, not intended to be placed on the market. These measures are required to ensure high biosecurity standards to prevent the introduction of certain *Ips* bark beetles, in light of the existing risk assessments on these GB quarantine pests, in association with these trees.
- Alter the regulatory status of some pests following assessments of their current risk to GB biosecurity. PRAs of certain pests, which have been GB provisional quarantine pests (*Chrysobothris femorata*, *Lycorma delicatula*, Chilli vein mottle virus) or potential quarantine pests (*Chrysobothris mali*), have been completed and these pests meet the criteria to be GB quarantine pests. Other potential quarantine pests (*Agrilus mali*, *Lonsdalea populi*, *Orgyia leucostigma*) are newly added to the provisional GB quarantine pest list as they meet the criteria for such pests based on preliminary assessments.
- Add a species of bonsai trees from Japan to the existing derogation from the prohibition on importation of plants into GB. This reflects the current position, in the light of a risk assessment, that such plants continue to pose a risk of an unacceptable level but that the risk can be reduced to an acceptable level by applying specific measures relating to their production and their introduction into, and movement within, GB;
- Correct a typographical error in the Phytosanitary Conditions Regulation (by virtue of an error in an amendment made by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (“S.I. 2020/1527”).

What was the previous policy, how is this different?

- 5.2 The phytosanitary import regime in GB is not static and is kept under continuous review to ensure that it continues to address any biosecurity risk posed to the UK, and that it meets our WTO obligations by being risk-based. This instrument continues this risk-based approach.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The principal legislation governing plant health is assimilated legislation, primarily the Plant Health Regulation, on protective measures against pests of plants, that establishes controls and restrictions which apply to the import into and internal movement within GB of certain plants, plant products and other objects. Tertiary legislation adopted under the Plant Health Regulation (also assimilated legislation) includes the Phytosanitary Conditions Regulation which establishes uniform conditions for the application of the Plant Health Regulation (amongst other things).
- 6.2 Under powers conferred by the European Union (Withdrawal) Act 2018, the assimilated legislation was amended where necessary, in order to address failures to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In particular, S.I. 2020/1527, to set out (amongst other things) the lists of pests that pose a risk to the biosecurity of GB, categorised by their regulatory status, 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 certain pests to an acceptable level, or to prevent the presence of certain pests.
- 6.3 Subsequent amendments have been made to the lists and/or measures set out in the Phytosanitary Conditions Regulation to reflect the outcome of any new or revised risk assessments, pest interceptions, changes in pest distributions and other developments concerning pests, plants, plant products or other objects. Following risk assessments, this instrument further amends certain pest lists (contained in Annexes to the Phytosanitary Conditions Regulation) and measures concerning the introduction into and movement within GB of certain plants and plant products, as well as introduces a measure in respect of a particular plant for planting (seed of sticky nightshade) to prevent the presence of the RNQP PSTVd. It also corrects a typographical error in S.I. 2020/1527. Details of the changes are set out in section 5.1.

Why was this approach taken to change the law?

- 6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 Targeted stakeholder engagement was carried out on the proposed measures to regulate two new quarantine pests, *Chrysobothris femorata* and *Chrysobothris mali*, with the associated import requirements on host plants, wood and woodchips from the USA and Canada¹. Engagement was also held for the proposed regulation of seed of sticky nightshade as a known host of PSTVd².
- 7.2 These engagements were published on the Plant Health Portal and circulated to stakeholders in the Plant Health Advisory Forum. The single response received was supportive of adopting regulations to prevent the arrival of these *Chrysobothris* beetles. The summary of this feedback, and the Government's response to this, was published on gov.uk³. No comments were received on the proposed regulation of seed of sticky nightshade.

¹ <https://planthealthportal.defra.gov.uk/assets/Chrysobothris-consultation-doc.pdf>

² <https://planthealthportal.defra.gov.uk/latest-news/stakeholder-engagement/>

³ <https://planthealthportal.defra.gov.uk/assets/Chrysobothris-response-letter-.pdf>

8. Applicable Guidance

- 8.1 A summary of the measures has been provided on the Plant Health Portal here⁴. This includes a Q&A document on the measures, including the changes for trade.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because the annual impact of the legislative changes was estimated to be below £5 million, with an annual saving of £0.2 million estimated for UK businesses.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the additional requirements are considered to be minor. Any additional costs incurred are a result of changes to existing measures to protect plant biosecurity.
- 9.3 The legislation does impact small or micro businesses. There is no exemption for small businesses, given the importance of protecting plant biosecurity through the actions of all businesses, regardless of their size.
- 9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is that these measures will be kept under review following any new or revised risk assessments, pest interceptions, changes in pest distributions and other developments.
- 10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Lord Douglas-Miller has made the following statement:
- 10.3 “A statutory review clause is not required as the annual impact of the legislative changes was estimated to be below £5 million. The measures will also be kept under review following any developments as detailed in section 10.1”.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 The department confirms that it has complied with the requirement in paragraph 4.7.6 of Statutory Instrument Practice and has consulted the Statutory Instrument Registrar on the use of the free issue procedure in relation to this instrument.

12. European Convention on Human Rights

- 12.1 Lord Douglas-Miller, the Parliamentary Under-Secretary of State (Minister for Biosecurity, Animal Health and Welfare) has made the following statement regarding Human Rights:

“In my view the provisions of The Phytosanitary Conditions (Amendment) Regulations 2024 are compatible with the Convention rights.”

⁴ <https://planthealthportal.defra.gov.uk/latest-news/new-legislation-for-spring-2024/>

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).