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22 November 2024

Dear Finlay,

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE OFFICIAL CONTROLS (PLANT HEALTH) AND PHYTOSANITARY CONDITIONS
(AMENDMENT) REGULATIONS 2025 - “DEFRA PH/052/R”**

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 then 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 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.

Defra PH/052/R is subject to the negative procedure and on current Defra plans is to be laid in the UK Parliament on 8 January 2025.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee, and I look forward to hearing from you by 20 December 2024.

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

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Yours sincerely,



JIM FAIRLIE

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SI NOTIFICATION: SUMMARY

Title: The Official Controls (Plant Health) and Phytosanitary Conditions (Amendment) Regulations 2025 – “Defra PH/052/R”
Proposed laying date at Westminster 8 January 2025
Date by which Committee is to respond By 20 December 2024 at the latest
Power(s) under which SI is to be made This SI is subject to negative procedure and is made in exercise of powers conferred by: a) Articles 5(3), 30(1) and (1A) and (5), 37(5), 41(3), 72(3) and 73(2) of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (“the Plant Health Regulation” (PHR)); and b) Articles 64(4), 144(6) and paragraph 3(2) of Annex 6 to 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 Regulations”).
Categorisation under SI Protocol Type 1
Purpose: Defra PH/052/R amends: <ul style="list-style-type: none">• Annex 8 of the Official Controls Regulation,• Commission Implementing Regulation (EU) 2019/1014 to exempt exceptional loads of large plants and plants products and other large objects to be inspected inside official designated inspection facilities under cover of a roof,• Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulations” (PCR)), establishing uniform conditions for the PHR as regards protective measures against pests of plants. In this case, Annexes 2, 2A, 4,5,7,8,11 and 13, and• The Plant Health (Amendment etc.) (EU Exit) Regulations 2020.
Other information A WTO notification was submitted in respect of various amendments made to PCR Annexes.
SG Policy contact: Plant Health: Yvonne Hay (Yvonne.Hay@gov.scot)

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Official Controls (Plant Health) and Phytosanitary Conditions (Amendment) Regulations 2025 – “Defra PH/052/R”.

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

This SI is subject to the negative resolution procedure and its enabling powers are under Articles 5(3), 30(1) and (1A) and (5), 37(5), 41(3), 72(3) and 73(2) of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (“the Plant Health Regulation” (PHR)); and Articles 64(4), 144(6) and paragraph 3(2) of Annex 6 to 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”(OCR)).

The SI is to be laid on 8 January 2025 and will come into force on 30 January 2025. As far as the instrument extends to Scotland, it will make provision which relates to devolved matters.

This is an area where alignment with the EU has to be seen in the context of the UK’s operation of its system of SPS controls post EU Exit. This instrument implements parts of [The Border Target Operating Model \(BTOM\)](#) (which sets out UK Government plans to implement a global, risk based approach for SPS controls on imports from the United Kingdom’s trading partners). These objectives are bespoke to GB. Whilst they differ from the EU, they are considered necessary and appropriate in a GB context.

Additionally, following the UK’s exit from the EU, the focus of pest measures being introduced is now on those pests which pose a risk to GB, rather than to the EU. The phytosanitary import regime in GB is not static and is kept under continuous review to ensure it continues to address any biosecurity risk posed to the UK, and that it meets our WTO obligations by being risk-based. All new measures are aligned with the scientific principles we share with the EU.

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

Summary of the proposals:

PH/052/R amends certain official control measures to ensure the application of plant health rules and carries out technical updates to the PHR and OCR. It also amends Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation” (PCR)) establishing uniform conditions for the implementation of the Plant Health Regulation as regards protective measures against pests of plants, following completion of risk

assessment for certain pest. The PCR annexes that are being amended are Annexes 2, 2A, 4,5,7,8,11 and 13.

Background

The purpose of this instrument is to protect plant biosecurity and support trade between GB and third countries by ensuring the appropriate level of checks required on goods entering GB are proportional to the risk level of those products.

Official Control Measures

As part of the on-going technical review* of Annex 11 goods under the UK Border Target Operating Model, parallel changes to Annex 8 to OCR and Schedule 2A of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 ("S.I. 2020/1482") are necessary. These amendments alter the list of certain fruit and vegetables exempt from the requirements to be accompanied by a phytosanitary certificate (PC) and pre-notified when being imported from certain countries, including the EU, Liechtenstein and Switzerland.

Goods added to the list of those exempt from the PC and pre-notification requirements are root and tubercle vegetables (such as carrots, turnips), *Fragaria* L., *Malus* Mill., *Persea americana* Mill., *Pyrus* L., *Rubus* L., *Vaccinium* L. and *Vitis* L.

*The review of Annex 11 goods is a BTOM objective where plant and plant products from specific origins are risk assessed to determine what level of checks are required without compromising biosecurity. Goods listed in Annex 11 are split into three categories and are either regulated and notifiable, regulated or deregulated. Goods assessed as high/medium risk goods are subject to high level of checks and require prenotification and a PC. Regulated goods are low risk but will require to be accompanied with a PC and these have lower check levels and if deemed low risk enough can be deregulated.

Commission Implementing Regulation (EU) 2019/1014 which lays down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control posts is being amended to create a derogation to allow the unloading and inspection of large plants and plant products and other large objects without a roof whilst maintaining biosecurity. The derogation will apply in exceptional circumstances and relates to goods such as large/mature trees or used agricultural and forestry machinery.

Pest measures

- The addition of a new GB Quarantine Pest (QP), *Heterobasidion irregulare* (known to cause annosus root and butt rot), to the list of QPs with specific import requirements.
- The introduction of specific import requirements for an existing GB QP, *Popillia japonica* (known as the Japanese beetle).
- The introduction of a new requirement for certain imported plants for planting to have been grown on a nursery.

- The addition of a new option for the import of ornamental *Capsicum* (Pepper) plants destined for the final user (i.e. those not involved in plant production).
- The recategorisation of certain plants and plant products, following the completion of risk assessments as outlined under the Border Target Operating Model.
- Technical updates to clarify or correct the legislation.

Why the need for change?

Official control measures

The OCR provides the framework for the performance of official controls and other official activities by the competent authorities of GB to ensure the application of food and feed law, rules of animal health and welfare, plant health and plant protection products. Regulation 2019/1014 lays down rules for border control posts to expand upon minimum requirements set out under the OCR.

Plant health controls apply to specific categories of plants and plant products to prevent the introduction or movement of harmful pests into and within Great Britain. Sanitary and Phytosanitary measures (SPS) are appropriately weighted against the risk posed to GB in line with the objectives of the BTOM. The changes in PH/052/R are necessary to maintain an efficient and effective plant health regime without compromising plant health biosecurity.

Pest measures

The phytosanitary import regime in GB is not static and is kept under continuous review. The amendments proposed in the SI are based on decisions taken by the UK Plant Health Risk Group (“PHRG”) in response to the results of the risk assessments made under the Plant Health Regulation. The PHRG is a decision-making body that has representatives from Defra, Scottish Government, Forestry Commission, and the other Devolved Administrations with oversight from the UK National Plant Protection Organisation (consisting of the four Chief Plant Health Officers of the UK and senior Forestry Commission officials).

Summary of all proposals are at Annex A.

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

Provisional Plant Health Framework

Summary of stakeholder engagement/consultation

Targeted stakeholder engagements were carried out by Defra on behalf of the UK Plant Health Service, which comprises of the four UK administrations. This included the UK Plant Health Advisory Forum (PHAF) which includes the Fresh Produce Consortium (FPC) and Horticultural Trades Association (HTA) whose representation includes Scottish businesses. At the same time, the Scottish Government made Scottish importers who trade in regulated plant and plant products aware of the consultation and plans. The responses have been summarised as follows:

- Measures to regulate the new quarantine pest *Heterobasidion irregulare* (Laminated root rot (fungal pathogen)): no comments were received.
- Annex 11 Changes - re-categorise certain plants and plant products (low risk fruit and vegetables): Responses were received from HTA, FPC and a private business. All were supportive in making the proposed changes and the results were published [on UK Plant Health Portal](#).
- Introduce a new requirement for plants for planting from third countries: Defra confirmed 9 responses were received. Stakeholders were the British Society of Plant Breeders (BSPB), Buglife, Elsoms Seeds, Horticultural Trades Association (HTA), National Farmers' Union (NFU), Ornamental Aquatic Trade Association (OATA), private trading group, The Cyclamen Society and the Woodland Trust. Some stakeholders supported the proposal given the additional biosecurity assurances, whilst others were concerned by what they perceived as a trade ban and some additional administrative burdens.
- Derogation for large plant, large plants products and other objects from carrying out inspections under cover: Defra confirmed a total of 11 responses were received. 2 were out with the scope of the consultation (as these were from EU private nurseries) 2 were from Border Control Post operators, 3 from UK private nurseries and the others being, HTA, NFU, the Animal and Plant Health Agency and the Woodland Trust. Due to the range of stakeholders' representation, the feedback was mixed. Some stakeholders supported the proposals, recognising operational constraints at border control facilities and recommending additional procedural and mitigation measures, which will be incorporated as part of standard operating procedures to apply the derogation. Other more critical responses related to the wider border inspection regime and did not address the specific proposals.

There were no direct responses received from Scottish businesses. As with the Annex 11 responses the intention is to publish the consultation outcomes on the UK Plant Health Portal in due course.

Past engagement was also held in 2015 on the Pest Risk Analysis concerning *Popillia japonica* before it became a GB QP. The changes being applied now reflect the assessed risk of this pest.

In addition, the Scottish Government will communicate the amendments in PH/052/R to Scottish businesses that trade in plants, plant products and other objects once the legislation has been laid at Westminster and again when the measures are due to come into force.

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

The policy intention is aligned across the GB Plant Health Services and consenting to the use of devolved provision within PH/052/R is consistent with previous plant health provisions and amendments to the Plant Health Regulation and legislation made under it. Pest risks have been identified and measures have been developed to ensure these pests do not enter GB or appropriate action can be taken against

any pest findings. Not implementing these measures would leave an identified risk to GB biosecurity unmitigated.

Scottish Ministers consider that consenting to PH/052/R is an effective and transparent way to introduce these amendments. It provides clarity and confidence and continues close collaboration across the UK under the provisional Plant Health Common Framework.

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

PH/052/R will be made using the negative procedure and is to be laid on 8 January 2025.

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

Not applicable

Information about any time dependency associated with the proposal

Not applicable

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

None

Any significant financial implications?

No significant financial implications.

Other information

Plant Health is a devolved area of law and in the main, plant health legislation was based on EU law, which has now become assimilated law (formerly known as retained EU law). The purpose of any amendments to the OCR, the regulation 2019/1014 and the PCR is to protect biosecurity and facilitate safe trade between Great Britain and the relevant third countries by introducing further measures against the import of host plants and other regulated goods for pests that will pose potential risks to plant health in Scotland (GB). These measures being introduced are bespoke to GB. They apply to specific third countries from which imports currently do not meet the appropriate level of protection for GB.

Similar, but separate Regulations (EU 2019/2072, EU/2016/2031 and EU/2019/1014) apply in the EU. It is considered that the measures to be introduced provide the best outcome for Scotland from environmental/trade and biosecurity perspectives. The law that will be put in place by this instrument will differ in some respects from the equivalent law applied in the EU to imports from third countries. On the specific exemption from the need for a roof in areas where large plants and other objects are inspected, there are currently other categories of goods exempted

from this requirement under 2019/1014 as it applies in the EU. These measures are considered necessary and appropriate in the GB domestic context, particularly taking into account the increased volume of checks required once the transitional staging period comes to an end. It is not considered that they would be a barrier to future accession to the EU: the measures are able to be amended or revoked at any point in the future.

This This SI does not transfer any legislative functions.

The World Trade Organisation (WTO) has been notified of the pest measures.

Annex A

Summary of planned amendments to Commission Implementing Regulation (EU) 2019/2072 – PH/052/R

Planned measure	Why is this measure needed?	Impact
<p><u>Annexes 2/2A and 7A</u></p> <p>The addition of <i>Heterobasidion irregulare</i> to the Quarantine Pest (QP) list, alongside associated import requirements and removing this from provisional quarantine list.</p> <p><u>Annex 2A</u> Add <i>Diaporthe phaseolorum</i> (soya bean pest)</p>	<p>UK rolling horizon scanning and risk analysis process has highlighted that this pest meets the criteria to be a GB QP. Specific import requirements can be applied to listed QPs to address the risk of introduction.</p> <p>UK rolling horizon scanning and risk analysis process assesses this can meet provisional quarantine pest category.</p>	<p>Host material imported into Great Britain would need to be free from this pest and compliant with the additional import requirements. This pest would also be subject to increased awareness raising, surveillance and action on detection within Great Britain to protect biosecurity.</p> <p>The forestry sector is expected to be affected by the proposed changes.</p> <p>Being relisted correctly.</p>
<p><u>Annex 7A</u></p> <p>The introduction of specific import requirements for an existing GB QP, <i>Popillia japonica</i>.</p>	<p><i>Popillia japonica</i> has been identified as spreading in Europe, via our risk and horizon scanning process, and therefore warrants additional measures to prevent its entry into GB.</p>	<p>Host material imported into Great Britain would need to be compliant with the additional import requirements. The horticulture sector is expected to be affected by the proposed changes.</p>
<p><u>Annex 7A</u></p> <p>The additional requirement for certain plants for planting being imported into Great Britain to have been grown on a nursery and subject to inspections prior to export.</p>	<p>This would provide greater biosecurity assurances, as all plants being imported into Great Britain would need to have grown on a production site which is registered and supervised by the National Plant Protection Organisation in the exporting country and inspected prior to export.</p>	<p>Plants grown in the wild would not be allowed to be imported into Great Britain via normal import procedures, as they carry a greater biosecurity risk. In addition, certain growers, such as private exporters, mail order traders and short notice exporters, that are not currently conducting inspections and would need to comply with this new requirement to</p>

		import plants for planting into Great Britain.
<u>Annex 7A</u> Host plants of <i>Rubus</i>	Import requirements for Tobacco streak virus black raspberry latent strain, Raspberry leaf curl virus and Cherry rasp leaf virus	Have been amended for clarification
<u>Annex 7A</u> An additional option is provided for the import of certain plants of <i>Capsicum</i> (pepper) species.	This enables the import of ornamental plants of <i>Capsicum</i> , destined for final users, to be imported into Great Britain without having to have been produced from seeds which meet certain requirements for Pepper chat fruit viroid.	This measure will enable the trade of ornamental plants of <i>Capsicum</i> without unnecessary requirements, relating to the seeds that the plants have been grown from, being applied.
<u>Annex 11</u> The re-categorisation of certain plants and plant products by risk, following the completion of risk assessments. This is part of an ongoing review on plant health regulated goods in Annex 11 (Regulation (EU) 2019/2072).	As outlined in the Border Target Operating Model (BTOM), we are ensuring that biosecurity risks are appropriately targeted, by assessing risks from all origins and ensuring that regulated goods are subject to the most relevant and up to date category as regards their regulation (or deregulation).	<p>The following fruit and vegetables from the EU and Switzerland would be deregulated:</p> <ul style="list-style-type: none"> • Root and tubercle vegetables • Strawberries • Apples • Avocados • Pears • <i>Vaccinium</i> fruit (e.g. blueberries and cranberries) • <i>Rubus</i> fruit (e.g. blackberries and raspberries) <p>In addition, grapes from the EU and Switzerland would have reduced regulation by requiring reduced checks and no pre-notification.</p> <p>Finally, asparagus from the EU, Switzerland and Liechtenstein would require pre-notification.</p>
<u>Annexes 4,5,7,8,11 and 13.</u> Technical updates to clarify or correct the legislation	Several technical changes are made to remove any redundant points in the legislation, to update taxonomic names, to clarify certain import requirements and to correct any errors in the legislation where regulated goods have been missed or	Although no impacts on trade are anticipated, these changes simplify the legislation and aids understanding for domestic and international stakeholders.

	pests have been incorrectly categorised.	
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