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Finlay Carson MSP  
Convener, Rural Affairs and Islands Committee  
The Scottish Parliament  
EDINBURGH  
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Dear Finlay

## **EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT**

I refer to the above protocol and in accordance with paragraph 34, I am now writing to you concerning the outcome of the GB wide SI The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2023 “PH/044”.

PH/044 was subject to negative procedure. The Scottish Parliament agreed on 4 October 2023 that it was content for Scottish Ministers to give their consent to PH/044 which includes Scottish devolved matters, as set out in the notification to the Parliament. I can now confirm that this SI varies in some respects from the original proposal but that the variations are not so significant to need any further process. The changes being:

- The title of SI was renamed from The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2023 to The Official Controls (Plant Health) (Prior Notification) and Phytosanitary Conditions (Amendment) Regulations 2023. This change better reflects the content of the SI.
- After further consideration by drafting lawyers, it was necessary to also use powers referred to 1A and (5) as well as article 30(1) of the retained Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (the Plant Health Regulation”) and not to rely on powers under s23 (6) EUWA. It was considered that broadening out the scope to include these powers was the best way to extend the exemption to remove prior notification of certain fruit and vegetables, from the EU, Liechtenstein, and Switzerland. This was achieved by amending Annex 6 of the retained 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”).

- In Annex 7 (list of plants, plant products and other objects originating from third countries and the corresponding special requirements for their introduction into Great Britain) additional import requirements for fruits of *Capsicum*, *Solanaceae* and *Cucurbitaceae* and *Solanaceae* have been added (item numbers, 94, 100 and 102A respectively). The additional requirements are required to allow these goods to be moved to NI under the Retail Movement Scheme (as per the Windsor Framework Agreement 2023/1231). These conditions were omitted when introducing the Windsor Framework package of legislation.
- After publication it was necessary to further amend the SI due to a drafting error. Reference to Annex 7 to the Official Control Regulations had already been inserted by the Windsor Framework (Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions) Regulation (SI 2023/239). To avoid confusion, the best course of action was to use a correction slip to correct the numbering of the Annex within regulation 10(2) and (3). Annex 7 has now been amended to state Annex 8

It is unfortunate that these changes took place after the notification was put forward to the Committee for its consideration. However, my officials from both the Scottish Legal and Agriculture Directorates confirmed these were necessary operational amendments to ensure continued and effective operation of the GB wide Plant Health regime.

I also take this opportunity to confirm the outcome of the Phytosanitary Conditions (Amendment) (Regulations) 2021 (PH/025). This SI was subject to the negative procedure and was laid in the UK Government on 27 May 2021. The Scottish Parliament agreed on 17 March 2021 that it was content for Scottish Ministers to give their consent to this, including Scottish devolved matters, as set out in the notification to the Parliament.

The Regulations were made in exercise of the powers conferred by Articles 5(3), 30(1), 40(3), 41(3), 72(3) and 105(6) of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants on 27 May 21 and came into force on 22 June 21.

As PH/25 has been laid I can confirm that the SI is consistent with the consent granted by the Scottish Government on 17 March 2021.

Please accept my apologies for the exceptional delay in making this known.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee, and the Cabinet Secretary for Rural Affairs, Land Reform and Islands.

Kind regards



**LORNA SLATER**