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Finlay Carson MSP
Convener
Rural Affairs and Islands Committee
The Scottish Parliament
EDINBURGH
EH99 1SP

25 March 2024

Dear Finlay

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE PHYTOSANITARY CONDITIONS (AMENDMENT) REGULATIONS 2024 “DEFRA
PH/051/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 negative legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the former Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance and 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 PH/051/R 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.

PH/051/R is subject to negative procedure and on current DEFRA plans is to be laid in Westminster on 9 May 2024. On this occasion, the Scottish Parliament will have the 28 days to consider this notification.

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

Kind regards



LORNA SLATER

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

SI NOTIFICATION: SUMMARY

Title: The Phytosanitary Conditions (Amendment) Regulations 2024 – Defra PH/051/R.
Proposed laying date at Westminster. Laying on 9 May 2024 The coming into force date is split into two stages: <ul style="list-style-type: none">• 31 May 2024 in relation to the most urgent changes based on biosecurity risk pests pose to GB and facilitating trade measures.• 9 November 2024 in relation to all other changes
Date by which Committee is to respond. By 8 May 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 Articles 5(3), 30(1), 37(5) and 5A, 40(3), 41(3) and 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 (“the Plant Health Regulation”).
Categorisation under SI Protocol Type 1
Purpose: Defra PH/051/R is amending Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation” (PCR)), establishing uniform conditions for the Plant Health Regulation as regards protective measures against pests of plants. These will be introduced in two stages - From 31 May 2024: <ul style="list-style-type: none">• Amending Annex 2 to add four new GB quarantine pest entries and Annex 2A, to remove these four provisional quarantine pests which have now been reclassified as GB quarantine pests; and• Amending Annex 7 by introducing new import requirements on certain plants, wood and wood chips from USA and Canada that are known host of <i>Chrysobothris</i> (woodborer) beetles and introducing specific import requirement for cut spruce trees from Norway for display use only. From 9 November 2024: <ul style="list-style-type: none">• Amending Annex 2A by adding three new provisional quarantine pests;• Amending Annexes 4 and 5 to regulate imports of <i>Solanum sisymbriifolium</i> seed (sticky nightshade) due to the risk of Potato Spindle Tuber Viroid (PSTVd) which is a GB Regulated Non-Quarantine Pest; and• Amending Annex 11 to introduce certification requirements for all seed of <i>Solanum</i> species to mitigate the risk of PSTVd.
Other information <ul style="list-style-type: none">- To the extent required, UK Government has notified these amendments to the World Trade Organisation (WTO) in accordance with their rules.- UK stakeholders has also been consulted on these changes.

- In relation to the Scottish Government's policy of EU alignment, it is not considered that the changes included in this SI would give rise to any particular difficulties were Scotland to seek to re-join the EU in the future.

SG Policy contact:

Plant Health: Yvonne Hay (Yvonne.Hay@gov.scot)

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Phytosanitary Conditions (Amendment) Regulations 2024 – Defra PH/051/R.

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

This SI is subject to negative procedure and is made in exercise of powers conferred by Articles 5(3), 30(1), 37(5) and 5A, 40(3), 41(3) and 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 (“the Plant Health Regulation”) Following the outcomes of risk assessments by the UK Plant Health Risk Group, which includes Scottish Government, it amends Annexes 2, 2A, 4, 5, and 11 of Commission Implementing Regulation (EU) 2019/2072 (the Phytosanitary Conditions Regulation – “the PCR”). The PCR establishes uniform conditions for the Plant Health Regulation as regards protective measures against pests of plants.

The SI is to be laid on 9 May 2024. The coming into force date is split: (i) 31 May 2024 for necessary amendments to maintain robust Great Britain (GB) biosecurity by introducing sanitary and phytosanitary measures for certain goods entering UK and to allow the introduction of gifted spruce Christmas trees from Norway for display use only; (ii) 9 November 2024 for amendments of the same type but are deemed non-urgent.

As the UK has left the EU, the focus of pest measures being introduced is now on 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. These measures would not create any barriers to re-entry to the European Union

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

Summary of the proposals:

PH/051/R amends Annexes of the PCR to alter the classification of specific plant pests and diseases (and subsequent imports requirements due to their reclassification); amends further import conditions placed on certain plants, plant products and other objects entering Scotland to reflect the biosecurity risk that they pose, and incorporates import conditions to allow Norwegian cut Christmas trees by incorporating specific import requirements.

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.

Pest measures

Urgent or trade-facilitating legislative changes to come into force on 31 May 2024:

- Reclassifying provisional quarantine pests (listed at Annex 2A of the PCR) to quarantine pests (QPs) to Annex 2 of the PCR (with corresponding import requirements in Annex 7 Part A and Annex 11 Part A) which have been assessed as meeting the criteria to be a QP.
- Incorporating specific import requirements for the introduction of spruce (*Picea* spp.) Christmas trees, not intended to be placed on the market, from Norway for short term display only.

Why the need for change?

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).

Changes being proposed:

For introduction on 31 May 2024

Annex 2 Part A: List of GB quarantine pest:
(Under the headings the following are being added:

C Insects and mites

- *Chrysobothris femorata* (Olivier) [CHRBFE]
- *Chrysobothris mali* (Horn) [CHRBMA]
- *Lycorma delicatula* (White) [LYCMDE]

Regarding the two *Chrysobothris* beetles (woodborer), due to the outcome of the risk assessments, corresponding import requirements are required and as such will be added to Annex 7 Part A and Annex 11 Part A.

F. Viruses, Viroiod and phytoplasmas

- Chilli veinal mottle virus [CHIVMV]

As these pests are currently listed under Annex 2A: List of provisional GB quarantine pest they will now need to be removed.

Annex 7 Part A (plants, plant products and other objects originating in third countries which may only be introduced into Great Britain if special requirements are met)

- regulating two *Chrysobothris* beetle species that attack a wide range of deciduous trees additional import requirements on host material of plants, wood and wood chips from the USA and Canada will be introduced. The requirements provide assurances that host material has not been grown or has come into contact of these beetles during the materials growing cycle or that any wood and/or wood chips have undergone specific treatment that will eliminate these pests and their eggs.
- Providing specific import requirements for the introduction of spruce Christmas trees (*Picea* spp) from Norway, not intended for the market, for short-term display only.

Annex 11 (Part A) list of plants, plant products and other objects and the respective third countries of origin or dispatch in respect of which phytosanitary certificates are required)

- Listing of the wood of the relevant host species of *C. femorata* and *C. mali* from Canada and the USA ie *Acer* L., *Aesculus* L., *Carpinus* L., *Carya illinoensis* (Wangenheim) Koch., *Corylus* L., *Crataegus* L., *Fagus sylvatica* L., *Malus* Mill., *Pyrus* L., *Salix* L., *Sorbus aucuparia* L., *Tilia* L., *Ulmus* L., other than wood packaging material, but including wood which has not kept its natural round surface from Canada and the USA
- Listing *Platanus* L. other than wood packaging material but including wood which has not kept its natural round surface from Canada.

For introduction for 9 November 2024

Annex 2A: List of provisional GB quarantine pest

Under the following headings adding:

B. Insects and mites

- *Agrilus mali* Matsumura [AGRLMA]
- *Orgyia leucostima* (Smith) [HEMELE]

D. Bacteria

- *Lonsdalea populi* Li, Xue, Guo, Koltay, Palacio-Bielsa, Chang, Xie & Yang [LNSDQP]

The addition of a new GB regulated non-quarantine pest (RNQP) which has been assessed as meeting the criteria to be a RNQP.

Solanum sisymbriifolium (sticky nightshade) can harbour Potato spindle tuber viroid (PSTVd). PSTVd is currently regulated as an RNQP on seeds and plants for planting of potatoes, tomatoes and peppers. *Solanum sisymbriifolium* is being used as a trap crop for potato cyst nematode (PCN) and is therefore being grown in rotation with potatoes, meaning there is a significant risk of transfer of PSTVd to potatoes. PSTVd has been detected in seeds of *Solanum sisymbriifolium* imported into GB. Due to the risk this would pose to potato crops in GB the pest host combination of PSTVd and *Solanum sisymbriifolium* have been assessed as meeting the criteria to be a RNQP. To achieve this Annexes 4 and 5 are amended as follows:

Annex 4 List of GB regulated non-quarantine pests and their respective plants for planting.

Insert new listing to the content: Part L: RNQPs concerning seed of *Solanum sisymbriifolium*.

RNPQs concerning seed of Solanum sisymbriifolium.

Viruses, viroids, virus-like diseases and phytoplasmas

1) RNQP	(2) Plants for planting	(3) Threshold for seed
Potato spindle tuber viroid [PSTVD0]	<i>Solanum sisymbriifolium</i> Lam.	0%"

Annex 5 Measures to prevent the presence of RNQP on specific plants,
Insert new entry (Part K) in contents and at the end insert table K.

(a) in the table of contents,

Part K:	Measures to prevent the presence of RNQPs on seed of <i>Solanum sisymbriifolium</i>
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Part K

Measures to prevent the presence of RNQPs on seed of *Solanum sisymbriifolium*.

The competent authority, or the professional operator under the official supervision of the competent authority, must carry out checks and take any other action which is necessary or appropriate to ensure that the requirements specified in the following table in relation to the respective RNQPs and plants for planting are satisfied:

Viruses, viroids, virus-like diseases and phytoplasmas

(1) RNQPs or symptoms caused by RNQPs	(2) Plants for planting (genus or species)	(3) Requirements
Potato spindle tuber viroid [PSTVD0]	Seed of <i>Solanum sisymbriifolium</i> Lam.	The seeds have been subjected to official testing for Potato spindle tuber viroid, on a representative sample and using appropriate methods, and have been found in those tests to be free from that pest

Annex 11 (list of plants, plant products and other objects and the respective third countries of origin or dispatch in respect of which phytosanitary certificates are required), in the table in Part A—

New entry

27A	<i>Solanum</i> spp.	Other seeds, for sowing: ex 1209 99 99	Any third country
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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

The UK Plant Health Services (UKPHS), comprised of the four UK administrations, are in continuous informal engagement with GB stakeholders on matters of plant health. A short consultation was undertaken by Defra on behalf of the UK Plant Health Service in December 2023 regarding the regulation of two new Quarantine Pests, *Chrysobothris femorata* and *C. mali*, with the associated import requirements on host plants, wood and woodchips from the USA and Canada. Engagement was also held for the proposed regulation of seed of sticky nightshade as a known host of PSTVd. GB-wide stakeholders includes the UK Plant Health Advisory Forum (PHAF) whose members include the Fresh Produce Consortium and Horticultural Trades Association (HTA). These stakeholders' groups were supportive of these changes recognising the benefits to plant biosecurity. Similarly, members of the Scottish Tree Health Action Group (STHAG) including Confor, Woodland Trust, and Scottish Stakeholders, Cheviot Trees were made aware of the proposals contained within the SI and were also supportive as many of the changes enhance plant biosecurity. Additionally, the tradition of permitting the import of *gifted Norwegian Christmas Trees is being preserved.

*Since 1947 trees have been gifted to UK which includes Christmas trees which are placed in various locations in GB. For Scotland these are in Aberdeen, Shetland, and Orkney.

In addition, the Scottish Government will communicate the amendments in PH/051/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/051/R is consistent with previous plant health provisions and amendments to the Plant Health Regulation and tertiary legislation. Pest risks have been identified and measure have been developed to ensure these pests do not enter GB or appropriate action can be taken against that finding. Not implementing these measures would leave identified risk to GB biosecurity to be unmitigated.

Scottish Ministers consider that consenting to PH/051/R is the most 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/051/R will be made using the negative procedure and is to be laid is to be laid on 9 May 2024.

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

N/A

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 Phytosanitary Conditions (GB 2019/2072) 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) are applicable to the EU. It is considered that the measures to be introduced provide the best outcome for Scotland from environmental/trade and biosecurity perspectives. The measures do diverge from what is currently provided for in EU law but are considered necessary and appropriate in the GB domestic content. 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 SI does not transfer any legislative functions.

The World Trade Organisation (WTO) has been notified.

Summary of planned amendments to Commission Implementing Regulation (EU) 2019/2072 – PH/051/R – pest measures.

Measure	Why is this measure needed?	Impact	Come into force
<p>Pests that meet the criteria to be GB Quarantine Pests are added to the QP list:</p> <ul style="list-style-type: none"> • <i>Chrysobothris femorata</i> • <i>Chrysobothris mali</i> • Chilli veinal mottle virus • <i>Lycorma delicatula</i> 	<p>Our rolling horizon scanning and risk analysis process has highlighted that these pests meet the criteria to be GB Quarantine Pests.</p> <p>They will be added to the GB quarantine pest list to maintain robust GB biosecurity.</p>	<p>Host material imported into GB will need to be free from these pests. In addition, plants, wood, and woodchips known to be hosts to the <i>Chrysobothris</i> pests will need to comply with the relevant import requirements. The pests are also subject to increased awareness raising, surveillance and action on detection within GB to protect biosecurity.</p> <p>The horticulture and forestry sectors are expected to be affected by the proposed additions to the GB Quarantine Pest list. Stakeholder engagement on the Pest Risk Analyses (PRAs) were completed for Chilli veinal mottle virus in 2022 and for <i>Lycorma delicatula</i> in 2023 and zero comments were received. Stakeholder engagement on the remaining pests is ongoing or planned. Specific import requirements have been developed based on the outcomes of the relevant GB and EPPO PRAs.</p>	<p>31 May 2024</p>
<p>Providing a specific import requirement for the introduction of spruce (<i>Picea</i> spp.) Christmas trees, not intended to be placed on the market, from Norway for short term display only.</p>	<p>Every year, a small number of culturally significant Norwegian Christmas trees are gifted to the UK government by the Norwegian government and municipalities. These measures are required to ensure high</p>	<p>Certain cut Christmas trees of <i>Picea</i> spp. destined for display in certain locations will be allowed to be imported into GB under specific conditions, including requirements applied within GB to ensure they are only displayed in</p>	<p>31 May 2024</p>

	biosecurity standards to prevent the introduction of quarantine pests (<i>Ips</i> species).	specific locations for a short period of time and are appropriately destroyed once removed from display.	
The seed of a plant species (<i>Solanum sisymbriifolium</i> , as known as sticky nightshade) will be regulated as a known host of the RNQP Potato spindle tuber viroid (PSTVd).	<i>Solanum sisymbriifolium</i> is being grown in rotation with potatoes, meaning there is a significant risk of transfer of PSTVd to potatoes. This regulation is being introduced to combat the risk of this pest to potato crops in Great Britain.	Before this commodity is issued a Phytosanitary Certificate and imported into GB, official testing requirements will need to be met to certify freedom from PSTVd. In addition, identity and physical checks for this commodity will increase from 1% to 5%.	9 November 2024
Addition of the following pests to the list of provisional GB quarantine pests: <ul style="list-style-type: none"> • <i>Agrilus mali</i> • <i>Lonsdalea populi</i> • <i>Orgyia leucostigma</i> 	Our rolling horizon scanning and risk analysis process has highlighted that these pests meet the criteria to be GB Quarantine Pests based on a preliminary assessment. They will be added to the provisional quarantine pest list to maintain robust GB biosecurity.	Pests added to the provisional GB quarantine pest list will be subject to increased, awareness raising, surveillance and action on detection on imports into GB to protect biosecurity pending a full risk assessment.	9 November 2024