

Minister for Agriculture and Connectivity
Ministear an Àiteachais agus Ceangal
Jim Fairlie MSP
Jim Fairlie BPA

T: 0300 244 4000
E: scottish.ministers@gov.scot

Finlay Carson MSP
Convener
Rural Affairs and Islands Committee
Scottish Parliament
EDINBURGH
EH99 1SP
By email rural.committee@parliament.scot
Copied to UKSIs@parliament.scot and
DPLR.Committee@parliament.scot

31 May 2024

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 two GB wide SIs to which the Scottish Parliament gave consent. These are as follows:

The Plant Health (Fees) (England) and Official Controls (Frequency of Checks) (Amendment) regulations 2024 - (“Defra PH/040”)

Defra PH/040 was subject to affirmative procedure. The Scottish Parliament agreed on 28 February 2024 that it was content for Scottish Ministers to give their consent to Defra PH/040 which includes Scottish devolved matters, as set out in the notification to the Parliament.

Defra PH/040 in exercise of powers conferred to by Articles 54(3) and 144(6) of, and paragraph 3(2) of Annex 6 to, Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 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 and section 14(1) of, and paragraph 7 of Schedule 4 and paragraphs 21 and 38 of Schedule 7 to, the European Union (Withdrawal) Act 2018).

This instrument came into force on 30 April 2024, and I can now confirm that the SI is consistent with the consent granted by the Scottish Government on 28 February 2024.

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

On 1 May 2024, the Scottish Parliament also agreed that it was content for Scottish Ministers to consent to the inclusion of Scottish devolved matters as set out in the notification to the Parliament in Defra PH/051/R.

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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Defra PH/051/R was subject to negative procedure and was made on 7 May 2024 and laid before the UK Parliament on 9 May 2024 using powers conferred by Articles by Articles 5(3), 30(1), 37(5) and 5A, 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”).

However, I can now confirm that this SI varies in some respects from the original proposal but that the variation is not so significant as to need any further process. It came to light that corrections were required to previously made SIs and the best way to make these amendments was through this instrument. The changes are as follows:

- Expanding a derogation on certain bonsai trees, imported from Japan, to include the species *Pinus parviflora* under Annex 6 of the retained 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. This species was omitted when the original derogation was incorporated into GB through The Official Controls (Plant Health) (Prior Notification) and Phytosanitary conditions (Amendment) Regulations 2023 (“S.I.2023/1131). 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;
- Correcting a typographical error in Annex 5 of the PCR that was made in the Phytosanitary Conditions Regulation by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (“S.I. 2020/1527”) in relation to the spelling of *Capsicum annuum* L.

It is unfortunate that these changes were necessary, but my officials confirmed these changes were appropriate, necessary and as a result the variation was not considered significant.

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.

Yours sincerely,



JIM FAIRLIE

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