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Finlay Carson MSP
Convener
Rural Affairs, Island and Natural Environment
Committee
Scottish Parliament
EDINBURGH
EH99 1SP

20 September 2022

Dear Finlay

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
The Phytosanitary Conditions (Amendment) (No.3) Regulations 2022 – “PH/039”**

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 the Parliament, accompanied the letter from the 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.

PH/039 is subject to negative procedure and on current UK Government plans this instrument is to be laid in Westminster on 3 November 2022. The coming into force date is split; the

earliest being 25 November 2022, non urgent changes will come into force on 3 May 2023. I look forward to hearing from you by 1 November 2022.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

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

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SI NOTIFICATION: SUMMARY

Title: The Phytosanitary Conditions (Amendment) (No. 3) Regulations 2022 (PH/039)
Proposed laying date at Westminster Laying on 3 November 2022. The coming into force date is split – <ul style="list-style-type: none">• 25 November 2022 in relation urgent changes relating to reclassification of a GB quarantine pest,• 3 May 2023 in relation to all other changes.
Date by which Committee is to respond 01 November 2022
Power(s) under which SI is to be made This SI is subject to a negative resolution procedure and its enabling powers are Articles 5(3), 30(1), 37(5), 41(3), 72(3) and 105(6) of retained 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
Other information The amendments to the Annexes have been notified to the World Trade Organisation in accordance with its rules.
SG Policy contact: Yvonne Hay (Yvonne.Hay@gov.scot)

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Phytosanitary Conditions (Amendment) (No. 3) Regulations 2022 – “PH/039”

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

The SI is made in exercise of powers conferred by Articles 5(3), 30(1), 37(5), 41(3), 72(3) and 105(6) of retained Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (known as the Plant Health Regulation).

Following the outcomes of risk assessments conducted in accordance with Articles 5(3), 30(1), 37(5), 41(3) and (3A) and 72(3) of that Regulation it has been determined that it is appropriate to amend Annexes 2, 2A, 4 7 and 11 of retained Commission Implementing Regulation (EU) 2019/2072 (the Phytosanitary Conditions Regulation – “the PCR”).

PH/039 is to be made on 3 November 2022 and the coming into force date is split, the earliest being 25 November (urgent measures) and all other changes coming into force on 3 May 2023.

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

Summary of the proposals:

This instrument makes necessary changes using powers contained in the Plant Health Regulation. PH/039 amends Annexes of the PCR, to alter the classification of specific plant pests and diseases, amend the import conditions placed on certain plants, plant products and other objects entering Scotland to reflect the biosecurity risk that they pose, and corrects a drafting error.

Background

The purpose of this instrument is to protect biosecurity and support trade between Great Britain (“GB”) and third countries by enhancing protective measures by

- making changes to special import requirements for at-risk goods
- revisiting and updating GB quarantine and provisional quarantine pest/disease lists
- extending requirements, to include EU member states, Liechtenstein and Switzerland, of specific plants, plant products and other objects originating in third countries which may only be introduced into Great Britain if special requirements are met. This is to ensure that pest measures comply with WTO requirements to treat all third countries in the same manner.

As the UK has left the EU the focus of pest measures being introduced is now on pests which pose a risk to Great Britain, rather than to the EU as a whole. The measures being introduced will be GB wide, as this avoids disparity at any GB borders.

The amendments proposed in the SI are based on decisions taken at 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).

The following proposed amendments are all technical and are made to various annexes of the PCR.

Changes being proposed -

To come into force on 25 November 2022 – change status of *Thekopsora minima* (Arthur) Sydow & P Sydow (common name: Blueberry rust) to now be listed as a regulated non quarantine pest (RNQP) (both adding and removing from pest lists as stated below).

The remaining amendments will come into force on 3 May 2023.

Annex 2 Part A - List of GB quarantine pest, pest known to occur in GB - Table B (fungi and Oomycetes)

- Removal of *Thekopsora minima* (Arthur) Sydow & P Sydow [THEKMI]

Thekopsora minima (Arthur) Sydow & P Sydow was added as a GB quarantine pest in UK SI, the Phytosanitary Conditions (Amendment No. 2) Regulations 2021. However, following a further assessment it is being relisted and moved to the list of GB regulated non-quarantine pests (Annex 4 part I) and special conditions for *Vaccinium* L being the host plants are removed from Annex 7. .

Annex 2A – List of provisional GB quarantine pests

In response to changing risk profiles bespoke to GB, risk assessments have been undertaken by PHRG and the following pests are now listed as a provisional GB quarantine pests.

Table B (Insect and mites)

The following insects and mites are to be classified as provisional GB quarantine pests and will be inserted alphabetically into the table.

Anisandrus maiche Stark [ANIDMA]

Chrysodeixis includens (Walker) [PSEPIN]

Chrysophtharta bimaculata (Olivier) [CPTHBI]
Endoclita excrescens Butler [PHAUEX]
Ennomos subsignarius [ENNOSU]
Euzophera semifuneralis (Walker) [EUZOSE]
Hyalesthes obsoletus Signoret [HYAEOB]
Lambdina fiscellaria [LAMBFI]
Lepidosaphes ussuriensis Borkhsenius [LEPSUS];
Lymantria mathura Fabricius [LYMAMA]
Malacosoma americanum Fabricius [MALAAM]
Malacosoma disstria Hübner [MALADI]
Naupactus xanthographus (Germar) [NAUPXA]
Neodiprion abietis (Harris) [NEODAB];
Orchidophilus spp. [ORCHSP]
Trirachys sartus (Solsky) [AELSSA]

Table C (Viruses, viroids and phytoplasmas)

The following phytoplasma and viruses will be classified as provisional GB quarantine pest and be inserted alphabetically in the table.

Candidatus Phytoplasma fraxini Griffiths, Sinclair, Smart & Davis [PHYPFR]
 Groundnut bud necrosis virus [GBNV00]
 Groundnut ringspot virus [GRSV00]

Annex 4 - List of GB regulated non-quarantine pests (RNQPs) and their respective plants for planting - Part I (concerning fruit propagating material and fruit plants intended for fruit production)

The Table (fungi and oomycetes) is amended to reflect the relisting of Blueberry rust which is no longer classified as a GB quarantine pest. It will be inserted alphabetically into this table

<i>Fungi and oomycetes</i>		
• RNQPs or symptoms caused by RNQPs	(2) Plants for planting (genus or species)	(3) Thresholds for the fruit propagating and fruit plants concerned
<i>Thekopsora</i>	<i>Vaccinium</i> L.	0%

<i>minima</i> (Arthur) Sydow & P. Sydow [THEKMI]		
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Annex 7 Part A - List of plants, plant products and other objects, originating from third countries and the corresponding special requirements for their introduction into GB territory

The following plant entry requirements are being amended to require that import requirements will also apply to EU member states, Liechtenstein and Switzerland, as well as all other third countries in line with our WTO obligations.

Example of proposed changes (entry 6) -

	1) Description of plants, plant products or other objects	(2) Origin	(3) Special requirements
6.	Plants for planting, other than bulbs, corms, rhizomes, seeds, tubers, and plants in tissue culture	Any third country other than EU Member States, Liechtenstein and Switzerland	<p>The plants must be accompanied by an official statement that they have been grown in a nursery and:</p> <p>(a) that they originate in:</p> <p>(i) an area* established by the national plant protection organisation in accordance with ISPM4 as an area that is free from <i>Thrips palmi</i> Karny, or</p> <p>(ii) a place of production** established by the national plant protection organisation in accordance with ISPM10 as an area that is free from <i>Thrips palmi</i> Karny, on the basis of official inspections carried out at least monthly during the three months prior to export, or</p> <p>(b) that immediately prior to export, they have been subjected to</p>

			<p>an appropriate treatment† against <i>Thrips palmi</i> Karny and have been officially inspected and found free from <i>Thrips palmi</i> Karny.</p> <p>* The name of the area(s) must be included in the phytosanitary certificate under the heading “Additional declaration”.</p> <p>** The name of the place of production(s) must be included in the phytosanitary certificate under the heading “Additional declaration”.</p> <p>† Details of the treatment must also be included on the phytosanitary certificate.</p>
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Other entries which will have the same amendment to “origin” column are:

- 34.- Plants, other than fruits and seeds, of *Solanum lycopersicum* L. and *Solanum melongena* L.
- 36.- Plants, other than seeds, of *Chrysanthemum* L., *Dianthus* L. and *Pelargonium* l’Hérit. ex Ait.
- 37.- Plants for planting, other than seeds, of *Chrysanthemum* L. and *Solanum lycopersicum* L.
- 39.- Cut flowers of *Chrysanthemum* L., *Dianthus* L., *Gypsophila* L. and *Solidago* L., and leafy vegetables of *Apium graveolens* L. and *Ocimum* L.
- 41.- Cut flowers of *Orchidaceae*
- 43.- Plants, other than fruit and seeds, of *Pinales*
- 60.- Plants, other than fruit and seeds, of *Betula* L.
- 62.- Plants for planting, other than seeds, of *Populus* L.
- 83.- Plants for planting, other than seeds, of *Fragaria* L., *Rosa* spp. and *Rubus* spp.
- 93.- Plants of *Cryptocoryne* sp. Fischer ex Wydler spp., *Hygrophila* sp. R. Brown spp. and *Vallisneria* spp.

- 95.- Fruits of *Capsicum* L., *Momordica* L., *Solanum aethiopicum* L., *Solanum macrocarpon* L. and *Solanum melongena* L., and plants, other than live pollen, plant tissue cultures, seeds and grains, of *Zea mays* L.
- 97.- Fruits of *Malus* Mill. and *Pyrus* L.
- 98.- Fruits of *Malus* Mill. and *Pyrus* L.
- 99.- Fruits of *Malus* Mill.
- 101.- Fruits of *Capsicum annum* L., *Solanum aethiopicum* L., *Solanum lycopersicum* L. and *Solanum melongena* L.
- 102.- Fruits of *Solanum lycopersicum* L. and *Solanum melongena* L.
- 103.- Fruits of *Solanum melongena* L.
- 104.- Fruits of *Momordica* L.

Other changes to Annex 7, part A –

- Entry 50: A new additional requirement that the name of the pest free area is to be included on phytosanitary certificates for *Agrilus plannipennis* measures.
- Entry 85A: Removed due to relisting of Blueberry rust to a regulated non-quarantine pest.

Annex 7 Part B - List of plants, plant products and other objects, originating from third countries and the corresponding special requirements for their introduction into GB territory

- For entries 2, 4 and 5 - Amendments of the *Xylella fastidiosa* measures, to clarify the requirement that pest free areas for lower risk hosts to be notified in advance and that names of places/sites of production must be included on phytosanitary certificates.

Annex 11 (list of plants, plant products and other objects and the respective third countries of origin or dispatch, which may not be introduced into Great Britain unless they are accompanied by a phytosanitary certificate, as referred to in Article 72(1) of retained Regulation (EU) 2016/2031) is amended as follows.

- Entry 13: Correcting the name of the genus *Chrysanthemum* L., making no changes to the existing import requirements.
- Entry 26: Seeds of *Pinus* L. and *Pseudotsuga menziesii* (Mirbel) Franco will be added to the list of plants required to be accompanied by a phytosanitary certificate (plant health check document)

Consultation/Stakeholder engagement

The UK Plant Health Services (“UKPHS”), comprised of the four UK administrations are in continuous informal/formal engagement with GB-wide stakeholders, such as the UK Plant Health Advisory Forum (PHAF) and Scottish Tree Health Advisory Group (STHAG). The UK PHAF members include the Fresh Produce Consortium, Horticultural Trades Association

(HTA) as well as Scottish Stakeholders, National Farmers Union for Scotland (NFUS). STHAG members include Confor, Woodland Trust, and Scottish Stakeholders, Cheviot Trees.

These stakeholder groups were made aware of the proposal contained within the SI and they were supportive of these changes as many of these were enhancing plant biosecurity.

The Scottish Government will also communicate these amendments to those who 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.

Other information

This SI does not transfer any legislative functions.

The UK Government notified the World Trade Organisation of the proposed changes no objections were received.

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

Provisional Plant Health Framework

A note of other impact assessments, (if available)

An impact assessment has not been produced for this instrument, as no or no significant impact on the private or voluntary sector is foreseen.

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

Scottish Ministers consider that consenting to PH/039 is the most effective and transparent way to introduce these amendments. These changes are technical and bespoke to GB plant biosecurity. It provides clarity to Scottish stakeholders and continues close collaboration across the UK under the provisional Plant Health Common Framework.

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

PH/039 is a negative SI and it is intended to be made 3 November and will come into force on 25 November 2022 for measures relating to *Thekopsora minima* (Blueberry rust), all other changes come into force on 3 May 20223.

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

N/A

Information about any time dependency associated with the proposal.

N/A

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.