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Mr Finlay Carson MSP  
The Convener  
Rural Affairs, Islands and Natural Environment  
Committee  
Scottish Parliament  
EDINBURGH  
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13 April 2022

Dear Finlay

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT  
THE PHYTOSANITARY CONDITIONS (AMENDMENT) (NO.2) REGULATIONS 2022-  
“PH/041”**

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 former 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 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/041 is subject to the negative resolution procedure and will be laid in Westminster on 28 April and come into force on 29 April 2022. The legislation being introduced is following a very expedited timetable due to the biosecurity risk posed. Due to this urgency, regrettably the Scottish Parliament will not have 28 days to consider the notification. I apologise for the inconvenience this has caused you and your committee members and would be grateful if you would consider this by 27 April 2022 at the latest, but a response in the earliest possible timeframe would be desirable.

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

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

Kind regards



**LORNA SLATER**

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## SI NOTIFICATION: SUMMARY

<b>Title:</b> The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2022 “PH/041”
<b>Proposed laying date at Westminster</b> Laying 28 April 2022 to come into force 29 April 2022
<b>Date by which Committee is to respond</b> By 27 April 2022 at the latest, but a response in the earliest possible timeframe would be desirable to enable a formal response to be sent to the UKG.
<b>Power(s) under which SI is to be made</b> by Article 41(3) of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (“the Plant Health Regulation”).
<b>Categorisation under SI Protocol</b> Type 1
<b>Purpose:</b>  PH/041 amends Commission Implementing Regulation (EU) 2019/2072 (the “Phytosanitary Conditions Regulation”) establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council as regards protective measure against pests of plants. It removes one of the special import requirements applied to plants for <i>Cedrus Trew</i> and <i>Pinus L</i> , (other than seeds) for the plants which requires them to be accompanied by an official statement that they have been produced in nurseries, along with their vicinity, which have been found to be free of <i>Thaumetopoea pityocampa</i> (Denis & Schiffermüller), pine processionary moth (PPM). It also extends the remaining special requirement to all plants (other than seeds) of these hosts, originating from any third country irrespective of whether they are plants of planting.
<b>Other information</b> The Scottish Government are unable to give the Scottish Parliament 28 days to consider this notification. This is because there have been a number of interceptions of PPM in GB over the last month linked to imports from France. It is considered essential to make urgent amendments to the PCR to tighten import controls on host plants of PPM to prevent entry and spread of this pest in GB.
<b>SG Policy contact:</b> Yvonne Hay

## NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2022 “PH/041”

### The notification is Type 1

**A brief overview of the SI** – The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2022 “PH/041”

PH/041 is to be made using powers conferred by Article 41(3) of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (“the Plant Health Regulation”).

The SI is emergency measures subject to the negative resolution procedure and is being laid on 28 April 2022 with cif date 29 April.

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

PH/041 amends Annex 7, part A, entry 57 of retained EU law Commission Implementing Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”) to enhance import requirements to prevent the introduction of the plant pest *Thaumetopoea pityocampa* (Denis & Schiffermüller) (known as pine processionary moth (PPM)) into Great Britain. The amendments alter the conditions under which host plants of PPM - *Cedrus* Trew and *Pinus* L - originating from any third country may be imported into Great Britain. In addition, entry 57 is amended to extend the remaining special requirements on imports of the host plants to all plants (other than seeds) originating from any third country. Previously this special requirement only applied to plants for planting.

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

*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*

Entry listed at 57 is amended as follows:

1. In the first column, the words “for planting” are omitted.
2. In the third column, paragraph (c) is omitted.

(1) Description of plants, plant products or other objects	(2) Origin	(3) Special requirements
Plants for planting, other than seeds, of <i>Cedrus</i> Trew., and <i>Pinus</i> L.	Any third country	<p>The plants must be accompanied by:</p> <p>(a) an official statement that the plants have been grown throughout their life in a place of production in a country in which <i>Thaumetopoea pityocampa</i> (Denis &amp; Schiffermüller) is not known to occur,</p> <p>(b) an official statement that the plants have been grown throughout their life in an area* established by the national plant protection organisation in accordance with ISPM4 as an area that is free from <i>Thaumetopoea pityocampa</i> (Denis &amp; Schiffermüller),</p> <p><del>(c) an official statement that the plants have been produced in nurseries which, along with their vicinity, have been found free from <i>Thaumetopoea pityocampa</i> (Denis &amp; Schiffermüller) on the basis of official inspections and official surveys carried out at appropriate times, or</del></p> <p>(d) an official statement that they have been grown throughout their life in a site with complete physical protection against the introduction of <i>Thaumetopoea pityocampa</i> (Denis &amp; Schiffermüller) and have been inspected at appropriate times and found to be free from <i>Thaumetopoea pityocampa</i> (Denis &amp; Schiffermüller).</p> <p>* The name of the area(s) must be included in the phytosanitary certificate under the heading "Additional Declaration".</p>

## Summary of the proposals:

- The amendments proposed in PH/041 will remove the option for host plants which have been produced a pest free place of production and its vicinity to be imported into GB
- extend the remaining special requirements to include plants of hosts rather than only plants for planting of hosts.

## Background

PPM is listed as a GB quarantine pest in Annex 2 of the Phytosanitary Conditions Regulation.

## What is PPM?

PPM larvae, or caterpillars, are an ongoing threat to the health of pine (*Pinus*) and other conifer tree species. They feed on the needles of these trees, and in large numbers they can severely defoliate trees. This can weaken the trees, making them more vulnerable to attack by other pests or diseases and to environmental stresses such as drought.

PPM have thousands of tiny hairs which contain an urticating, or irritating, protein called thaumetopoein, giving rise to its scientific name. If these hairs come into contact with people and animals, they can cause painful skin, eye and throat irritations and rashes and, in rare cases, allergic reactions. The name is derived from the caterpillars' distinctive habit of moving in nose-to-tail processions.

The moths (the adult form of the species), which are difficult to distinguish from other species, are harmless to people and animals.

## Reason for proposals

In February, a consignment of pine and cedar trees arrived in England, from France accompanied with a phytosanitary certificate (health check) with the correct additional declaration that they had been produced in a nursery which along with its vicinity had been found free of PPM on the basis of official inspections and surveys (pest free place of production). However, Defra Plant Health Inspectors found 11 pines to be infested with nests and caterpillars. Subsequent tracing identified a total of three UK nurseries which had received host trees from the affected French nursery. A number of these trees had already been delivered to landscaping sites.

Statutory plant health notices (SPHN) have been issued to the affected nurseries and the destruction of all infested *Pinus* trees has been completed. While the pest has not been detected on the other consignments, SPHNs have also been issued for removal and destruction of all trees delivered from the French Nursery, on a precautionary basis. The French Authorities have failed to provide the confidence that the trees delivered had been grown in a pest free production site and vicinity and now have confirmed they have multiple outbreak sites across France, increasing the likelihood of infected material being imported into GB.

In total, investigations identified approximately 60 pines and 45 cedar trees which had been sent to three GB nurseries, from the affected nursery in France. PPM was confirmed on 11 of the pine trees at two of the nurseries. The pines affected were a mixture of species including *Pinus ponderosa*, *Pinus nigra* and *Pinus sylvestris*.

No PPM has been detected on the Cedar trees (*Cedrus atlantica*, *Cedrus libani*, *Cedrus deodora*) which were grown at a separate location to the pines.

None of the nurseries or landscaping sites in receipt of the infected trees are in Scotland, none the less, the option of pest free place of production is not working and it is known cut trees and foliage is also a pathway for this moth, we need to do close down both these routes.

Pine trees (trees of the *Pinus* genus) are most susceptible to pine processionary moth. Other recorded conifer hosts include Atlas cedar (*Cedrus atlantica*) and European larch (*Larix decidua*).

Among these species, Scots pine, lodgepole pine and European larch are widely grown in the UK. Scots pine is our only native pine.

The amendments to our import conditions in the PCR will mean that trade in Cedrus and pine can continue from Europe, and the RoW but only where PPM does not exist.

PPM has been spreading north in mainland Europe and is becoming an increasing concern to GB. The pest risk assessment suggests that PPM could potentially establish in some warmer areas of GB.

Adults of both sexes can fly, and natural dispersal depends on the flight capacity of female moths, which is lower than that of males. On average, female moths can fly distances of up to 2km, with a maximum distance of 10.5km recorded. This is consistent with the rate of spread recorded in the area south of the Paris Basin, which has been reported as 5.6km per year.

#### *World Trade Organisation notification*

The UK is a member of the World Trade Organisation (WTO) and under the SPS agreement is required to notify the WTO of changes to our biosecurity measures at least 60 days in advance (to enable the notification to be circulated to WTO members to comment). However, in cases of emergency, there is no set comment period, and the WTO members are able to comment at any time following the publication of the notification. Due to the imminent danger PPM poses to biosecurity and to Scot pine, the UK Government are proceeding with these measures under the WTO emergency procedure.

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

No.

## **Summary of stakeholder engagement/consultation**

The amendments proposed address an emergency situation, therefore consultation was restricted. Despite this, the UK Plant Health Services (“UKPHS”), comprised of the four UK administrations, called an emergency meeting with GB-wide stakeholders including organisations such as the Horticultural Trades Association (HTA) and The Tree Council to make it known about these interceptions. The option to remove the pest free place of production and within vicinity of production and to extend the hosts to cut trees and foliage was also discussed and was well received. The interceptions were made known to GB wide Plant Health Advisory Forum (PHAF) and Scottish Tree Health Advisory Group (STHAG). PHAF members include the Fresh Produce Consortium and the HTA as well as Scottish Stakeholders, National Farmers Union for Scotland (NFUS). STHAG members include Confor, Woodland Trust, NatureScot and Forestry and Land Scotland. At the same time, they were advised UKPHS was investigating ways to strengthen the import requirements.

The Scottish Government will also communicate the removal of this option and extension to include all host plants to those who trade in these products as soon as possible.

### **A note of other impact assessments, (if available)**

A Pest Risk Assessment was conducted on PPM in 2015, but has now been amended in light of the recent interceptions and also to address the fact that, PPM has been spreading north in mainland Europe and is becoming an increasing concern to GB. The review of the PRA concludes that the existing import requirements are not adequate to mitigate the risk of introduction of this pest. The PRA addendum completed in light of the new risks complies with the risk assessment requirements in Article 41(3A)(b) of the Plant Health Regulation.

### **Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation**

The measures being introduced will be GB wide. This avoids any disparity at any borders within GB. These reflect the required measures as regards the desired level of protection for these plants from countries where PPM is present.

The amendments to be made by the UK Government in PH/041 reflect the GB wide approach taken to protect GB biosecurity. Scottish Ministers consider that consenting to the SI is the most effective and transparent way to make changes to address these issues at the GB level in circumstances where the legislation being amended has effect on a GB wide basis and there is agreement across administrations about the changes being made. Officials have worked with UKG to ensure the drafting delivers for Scotland’s interests and respects devolved competence in Scotland.

Whilst within the EU, the UK as a member State had the ability to introduce what were known as “national measures” in response to a specific threat to our biosecurity. The measures being proposed now for PPM would have been able to be implemented whilst the UK was part of the EU.



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

PH/041 is subject to the negative procedure and it is intended to be laid on 28 April 2022 and come into force on 29 April 2022.

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

Whilst Scotland, has not taken any delivery of consignments, if immediate action is not taken imports can continue from third country nurseries with PPM. This could lead to a PPM outbreak within GB, which would have devastating tree health and potential economic impacts running into millions of pounds.

**Information about any time dependency associated with the proposal.**

As outlined above, the UK Government intends to lay their SI on 28 April. It is respectfully requested that the Scottish Parliament agrees to the Scottish Ministers consenting that the proposals included in PH/041 ahead of that date.

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

No

**Any significant financial implications?**

The amended legislation places additional conditions on exporting countries. Therefore no impact assessment has been prepared.