

## EXPLANATORY MEMORANDUM TO

### THE OFFICIAL CONTROLS (PLANT HEALTH AND GENETICALLY MODIFIED ORGANISMS) (ENGLAND) (AMENDMENT) REGULATIONS 2020

2020 No. 381

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food, and Rural Affairs (“Defra”) and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517). It introduces measures to strengthen plant health protection against certain pests (including *Xylella*, Emerald ash borer, Canker stain of plane and Elms yellow) which pose an unacceptable level of risk for the UK.
- 2.2 The EU Plant Health Regulation ((EU) 2016/2031) and the EU Official Controls Regulation ((EU) 2017/625) (“the EU Regulations”) establish controls and restrictions which apply to the import (from third countries), and internal movement within and between EU Member States, of certain plants, plants pest and other material (such as soil). The purpose of the regulations is to help reduce biosecurity risk, strengthen the current plant health regime and protect the environment from the spread of harmful pests.
- 2.3 Article 52 of the EU Plant Health Regulation allows member states to take additional, temporary national measures against pests which are absent or not widely distributed in the EU.
- 2.4 The UK has already introduced a number of national measures under the Article 52 procedure (against the potato pest *Epitrix*, the import of Swiss vehicles and machinery and potatoes from Poland). This instrument will introduce further national legislation in response to new or increased threats to plant health, recognising that EU legislation will not provide the required level of protection.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

## 5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 6. Legislative Context

6.1 The EU Plant Health Regulation and the EU Official Controls Regulation apply from 14th December 2019. They replace Council Directive 2000/29/EC on protective measures against the introduction of organisms harmful to plants or plant products into the EU and against their spread within the EU. This was implemented in England by the Plant Health (England) Order 2015 (S.I. 2015/610) and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) which extends to Great Britain. Similar but separate legislation operate in Scotland, Wales and Northern Ireland.

6.2 The EU Regulations, and the tertiary legislation made under these Regulations, are directly applicable in the United Kingdom. Domestic legislation is not needed to implement the substantive provisions in this EU legislation. However, supplementary domestic provisions are necessary to enable the competent authorities to carry out their obligations under the EU Regulations, enforce these Regulations and implement derogations to various provisions in the EU legislation that are available to member States. The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 contains these supplementary domestic provisions. Separate but parallel legislation is in place in Wales, Northern Ireland, and Scotland.

## 7. Policy background

### *What is being done and why?*

7.1 Article 52 of the Plant Health Regulation allows member States to take additional, temporary national measures. Such national measures can be introduced when a member State (or in this case the UK) has written to the European Commission with a technical case to request EU measures against a specific pest, and those measures have not or will not be introduced in time to mitigate the risk concerned. Article 52 provides for an immediate review of the risk by the Commission, and an Implementing Act may be adopted by the Commission to repeal or amend the national measures in the event they are considered to be disproportionate or not adequately justified.

7.2 It is proposed that further national legislation is introduced in response to new threats, recognising that EU legislation will not provide the required level of protection for the time being.

### *Xylella fastidiosa*

7.3 *Xylella fastidiosa* is a bacterium which causes disease in a wide range of woody plants such as grapevine, citrus, olive and several species of broadleaf trees. The disease is not present in the UK but has limited distribution in some other European countries. The UK has significant concerns about the risk of plant material infected with *Xylella fastidiosa* being moved within the EU, as well as the risk of introductions from third countries. The interception of infected olive trees by Belgium and the recent case on *Vinca* in Italy, demonstrate that there is a risk of infected plants being moved without

visual symptoms. There is also the scientific opinion published by the European Food Safety Authority in May 2019 (<https://www.efsa.europa.eu/en/efsajournal/pub/5665>), including details of asymptomatic periods for infected plants (e.g. olive), which highlights that some species have very long asymptomatic periods. The same is likely to be true for other host species commonly associated with outbreaks in the EU.

- 7.4 These developments, along with other new evidence, are reflected in an updated Pest Risk Analysis (PRA) published by the UK and available at: <https://planthealthportal.defra.gov.uk/assets/pras/Xylella-Draft-PRA.pdf>.
- 7.5 The current EU emergency measures on *Xylella fastidiosa* do not address the risks highlighted in the PRA. In particular, it is not clear if or when the EU emergency measures will be reviewed to address these risks and ensure a greater degree of assurance of disease freedom in relation to plants of those species being moved in the EU and introduced from third countries. As such, there remains an unacceptable level of pest risk and this instrument introduces national measures under Article 52, in the absence of EU requirements. Under the new measures the import of olive, coffee, polygala and almond plants, other than those which can meet prescribed stringent requirements, is prohibited, with stronger import requirements for other high risk hosts (e.g. lavender and rosemary).

*Agrilus planipennis* (Emerald ash borer)

- 7.6 The emerald ash borer, *Agrilus planipennis* Fairmaire is a highly destructive wood-boring beetle that feeds on the phloem of ash trees. The UK wrote to the Commission on 7th November 2019 proposing a new approach to the regulation of *Agrilus planipennis*, based on the European and Mediterranean Plant Protection Organisation Standard PM 9/14(1), which recommends a regulated area of no less than 100 km around outbreak areas, when pursuing a containment policy. Given the ongoing uncertainty about the full extent of this pest's distribution, and its confirmed spread into Ukraine, we are introducing measures through this instrument to apply import requirements to countries within 100km of outbreak areas, which brings Ukraine into scope, as well as Belarus and Kazakhstan.
- 7.7 This instrument also removes the option within EU legislation to remove the bark and sapwood to a depth of 2.5 cm (point 87, option (b) of Annex VII of Regulation 2019/2072) for all countries regulated for the purposes of *Agrilus planipennis*, due to the risk of importing wood which has not properly met the official requirements. This change has already been recognised for US and Canada. These issues have not been addressed by EU legislation and so there remains an unacceptable level of pest risk. The UK intends to introduce national measures through this instrument, in the absence of EU requirements.

*Ceratocystis platani* (Canker stain of plane)

- 7.8 *Ceratocystis platani* is an aggressive fungal pathogen that attacks plane trees by entering through wounds and causing canker stain disease and tree death. Prior to the introduction of EU Plant Health Regulation the UK was designated as a protected zone for this pest. Any *Platanus* trees introduced into the protected zone had to derive from a designated pest free area/protected zone. With the re-classification of *Ceratocystis platani* as a Union quarantine pest, protected zone designations have been revoked, and it is now possible to move *Platanus* trees from production sites within infected areas (subject to prescribed requirements being met). These new requirements do not give the

same level of assurance as area freedom and new findings of the pest have been confirmed in France, much further north than previous findings. This highlights an increased risk to the UK.

- 7.9 The proposal is to revert to the Protected Zone requirements which applied until 14th December 2019. For plants of *Platanus* L., intended for planting, other than seeds, this would mean that they must have been grown throughout their life in a pest free area or EU protected zone (point 12.1 of Annex IVB of Directive 2000/29). The requirements would apply to imports to the UK from Albania, Armenia, Switzerland, Turkey, the United States and the EU-27 and would be confirmed by an official statement.
- 7.10 This instrument also corrects an error by the Commission whereby import and movement requirements were inadvertently omitted from the EU Plant Health Regulation concerning the UK *Candidatus* Phytoplasma *ulmi* (Elms yellow) protected zone. The Commission has committed to correct this, but the timing of this is unclear.
- 7.11 The measures described in paragraphs 7.4 to 7.9 above will impose obligations on operators bringing consignments into England from third countries and the Union territory (excluding the United Kingdom). As a consequence the existing offences within the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 are being extended to cover any possible breach of the new prohibitions and requirements. The changes will not introduce a new kind of non-compliance, simply extend what is in place already in Article 38(1)(e) of the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 to cover the obligations the new measures will impose.

## **8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

- 9.1 This is not a consolidation and is the first amendment of the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019.

## **10. Consultation outcome**

- 10.1 Stakeholders have agreed in principle to the stronger requirements. The *Xylella* measures have been developed in consultation with the Plant Health Advisory Panel and individual businesses to minimise unnecessary burdens, but there will inevitably be some negative impacts, particularly on those specialising in the plant species concerned. The Animal and Plant Health Agency will advise individual clients of the implications and Defra will continue to work through the Plant Health Advisory Forum.
- 10.2 The *Agrilus planipennis* measures are unlikely to be controversial or cause significant impacts, as this is a priority Union quarantine pest, and the trade impacts will be limited as the changes mainly impact on countries from which import volumes are low.
- 10.3 Similarly, there will be no significant impacts arising from the *Ceratocystis platani* changes as until recently the UK had Protected Zone status for this pest.

## **11. Guidance**

- 11.1 The main stakeholders likely to be affected will be informed of the changes and a summary of the measures will be placed on the Defra website.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument. There are no significant financial implications. The new measures concern pests which are already subject to APHA and Forestry Commission inspection and surveillance programmes.

## **13. Regulating small business**

- 13.1 The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

## **14. Monitoring & review**

- 14.1 Changes will be made to the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments.
- 14.2 A statutory review clause is included in regulation 56 of the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019.

## **15. Contact**

- 15.1 Iain Johnstone at the Department for Environment, Food and Rural Affairs Telephone: 02080 265 265 or email: [iain.johnstone@defra.gov.uk](mailto:iain.johnstone@defra.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Nicola Spence, Deputy Director for Plant Health Bees and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.
- 15.3 Lord Gardiner, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs can confirm that this explanatory memorandum meets the required standard.