

EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (PLANT HEALTH AND GENETICALLY MODIFIED ORGANISMS) (ENGLAND) (AMENDMENT) (NO. 5) REGULATIONS 2020

2020 No. 1466

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 revokes the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2020 (S.I. 2020/381) (the “2020 Regulations”). The 2020 Regulations made amendments to the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) to impose additional emergency measures to prevent the establishment or spread of the following harmful plant pests in England - (a) *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr. (Plane canker); (b) *Candidatus Phytoplasma ulmi* (Elm yellows); (c) *Agrilus planipennis* Fairmaire (Emerald ash borer); and (d) *Xylella fastidiosa* (Wells et al.), and this instrument removes those amendments in so far as they relate to *Ceratocystis platani* and *Xylella fastidiosa*. The revocation of the temporary national measures for England will provide legal clarity about the approach for these pests.

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 this 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 ((EU) 2016/2031) and the EU Official Controls Regulation ((EU) 2017/625) (“the EU Regulations”) establish controls and restrictions

which apply to the import into, and internal movement within and between, EU Member States, of certain plants, plants pest and other material. The purpose of the EU Regulations is to help reduce biosecurity risk, strengthen the current plant health regime and protect the environment from the spread of harmful pests.

- 6.2 The EU Regulations, and the implementing 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 exemptions to various provisions in the EU Regulations that are available to Member States. The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (the “2019 Regulations”) contain 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 Commission Implementing Decision (EU) 2015/789 sets out measures to prevent the presence in the EU of *Xylella fastidiosa*. Commission Implementing Regulation (EU) 2019/2072 establishes uniform conditions for the implementation of Regulation 2016/2031, including measures regarding protection against harmful pests and movement of goods.
- 7.2 Emergency regulations were introduced in England through the 2020 Regulations in response to the threat from *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr. (Plane canker); *Candidatus Phytoplasma ulmi* (Elm yellows); *Agrilus planipennis* Fairmaire (Emerald ash borer); and *Xylella fastidiosa* (Wells et al.). This was on the basis of a technical assessment which indicated that the EU regulations mentioned above were not adequately mitigating the risk of introduction of these pests during the period that EU law remained directly applicable.
- 7.3 With the introduction of the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020, new requirements for each of these pests will be in place from the end of the transition period for Great Britain as a whole. These Regulations are being introduced in accordance with the provisions of the European Union Withdrawal Act 2018. The revocation of the temporary national measures for England will provide legal clarity about the approach for these pests and does not affect the substantive content of the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 which will apply from 1 January 2021.

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 nor trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

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

10. Consultation outcome

- 10.1 Stakeholders have not been consulted, as the amendments introduced by this instrument are not policy changes.

11. Guidance

- 11.1 The main stakeholders 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 Animal and Plant Health Agency and Forestry Commission inspection and surveillance programmes.

13. Regulating small business

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 This instrument 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 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 can be contacted with any queries regarding this 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.