

EXPLANATORY MEMORANDUM TO
THE PHYTOSANITARY CONDITIONS (AMENDMENT) (NO. 2) REGULATIONS
2021

2021 No. 1171

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to protect biosecurity and support trade between Great Britain (“GB”) and relevant third countries by introducing further protective measures for at-risk plant goods (see section 7).

2.2 This instrument amends the Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”), to:

- Introduce GB-wide measures against the import of host plants and other relevant regulated goods for certain pests. These measures apply to specific third countries that pose an unacceptable level of risk to GB.
- Deregulate pests which have been assessed as being of negligible biosecurity risk to GB, as their continued regulation is no longer technically justified.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

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5. European Convention on Human Rights

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

6. Legislative Context

6.1 Under the European Union (Withdrawal) Act 2018 (c. 16) (“the Withdrawal Act”), Regulation (EU) 2016/2031 (“the Plant Health Regulation”) and the Phytosanitary Conditions Regulation, (together “the EU Regulations”), and additional tertiary legislation made under the EU Regulations, were converted and preserved into domestic law (“retained EU law”) at the end of the Transition Period.

6.2 The Plant Health Regulation and the Phytosanitary Conditions Regulation respectively establish protective measures against pests of plants and establish uniform conditions for the Plant Health Regulation (amongst other things).

- 6.3 Under powers conferred by the Withdrawal Act, the EU Regulations were amended where necessary, in order to address failures in retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In particular, the Phytosanitary Conditions Regulation was amended by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1527) so as to set out the lists of pests that pose a risk to the biosecurity of GB, and measures in relation to the introduction into and movement within GB of plants, plant products and other objects, to reduce the risks in connection with those pests to an acceptable level.
- 6.4 Subsequent amendments have been made to the Phytosanitary Conditions Regulations by statutory instruments such as the Phytosanitary Conditions (Amendment) Regulations 2021 (S.I. 2021/641), to reflect ongoing assessments of the different risks posed to GB biosecurity. This instrument introduces further such amendments.

7. Policy background

What is being done and why?

- 7.1 This instrument amends the Phytosanitary Conditions Regulation to include additional measures to prevent the introduction into GB of the plant pests *Prodiplosis longifila* (“citrus gall midge”), *Agrilus fleischeri*, *Thekopsora minima* (“blueberry rust disease”) and *Agrilus planipennis* (“emerald ash borer”). These measures are being introduced following Pest Risk Analyses which in each case, demonstrated risks associated with the relevant pest becoming established in GB. This instrument also introduces a prohibition, pending a risk assessment, on the introduction of Yacón into GB, to mitigate the risks of introducing certain viruses, including potential GB quarantine pests that affect potatoes.
- 7.2 Finally, this instrument deregulates the following pests which, following a review, were found not to pose a risk to GB biosecurity: *Pseudomonas savastanoi* pv. *Savastanoi* (“bacterial canker of olive”), *Epidiaspis leperii*, *Heterodera fici*, Apricot latent virus (“ALV”) and Aucuba mosaic agent and blackcurrant yellows agent combined.

Explanations

- 7.3 This instrument introduces specific requirements for the import of host plants (either for planting purposes or the import of wood from such plants) to enhance the level of protection against the risk of citrus gall midge, *Agrilus fleischeri* and blueberry rust disease entering GB, and additional measures to enhance the level of protection against the risk of emerald ash borer entering GB.
- 7.4 Citrus gall midge is present in South America where it attacks a wide range of crops, such as tomato crops. The Pest Risk Analysis (“PRA”) conducted by the European and Mediterranean Plant Protection Organisation (“EPPO”) concluded that the citrus gall midge has the potential to establish itself in GB. If this pest were to become established in GB, the conclusions of the PRA indicate it is likely that it would have unacceptable economic impacts on produce quality leading to crop losses and increased costs for pest control on crops such as asparagus, bell pepper and tomato.
- 7.5 *Agrilus fleischeri* is an Asian wood boring beetle of poplars and willow. In parts of China, it has become a destructive pest causing tree mortality on poplar plantations.

The PRA conducted by the EPPO concluded that the pest has the potential to establish itself in GB.

- 7.6 Blueberry rust disease is present across many countries worldwide and is known to be present, though with restricted distribution, in the European Union. For example, in Australia, this pest costs tens of millions of dollars in lost production and control expenses each year. The PRA conducted by the EPPO concluded that the pest would be able to establish itself in GB. If established, blueberry rust disease could cause major damage to cultivated blueberry species in GB.
- 7.7 Emerald ash borer is present across East Asia and has caused epidemic outbreaks in several provinces of Northeast China, resulting in ecological and economic losses. It is present in the USA, Canada and Russia, where it has caused mortality in ash trees. Recent evidence of its spread to the St. Petersburg area is particularly concerning. Emerald ash borer is known to infest species of ash native to GB and could do significant damage to British woodland diversity and hardwood industries. Furthermore, native ash trees are already under threat due to ash dieback.
- 7.8 The prohibition of Yacón pending a risk assessment will also provide valuable protection to the GB potato sector. Testing of Yacón in the UK found it was associated with GB quarantine potato viruses, most notably Potato yellowing virus, which is considered to be absent from GB. This finding was based on very limited testing and therefore before further imports of this plant are permitted a full risk assessment should be carried out.
- 7.9 Following the precautionary principle, the following pests were previously made subject to restrictions in GB on the basis that they posed a potential biosecurity risk to GB plant health: bacterial canker of olive, *Epidiaspis leperii*, *Heterodera fici*, ALV and Aucuba mosaic agent and blackcurrant yellows agent combined. These risks have now been fully assessed and each of these pests will be deregulated by this instrument as they were found not to pose a biosecurity risk, and continued regulation of these pests would not therefore be technically justified.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 This is not a consolidation instrument.

10. Consultation outcome

- 10.1 The measures addressing citrus gall midge, *Agrilus fleischeri* and blueberry rust disease have been developed following a consultation on the EPPO PRA of each pest. These consultations were published on the Plant Health Portal. Stakeholders were supportive of the proposed measures to tackle the associated biosecurity risks. These pests are currently listed as provisional quarantine pests in the Phytosanitary Conditions Regulation, so there is already an obligation to ensure host plants are free from these pests. The new measures define the import requirements of host plants, to provide greater clarity to exporting countries and set in place the process by which we can be assured that imports into GB are free from the pests of concern.

- 10.2 Consultations for emerald ash borer and for the deregulated pests were not deemed necessary as these amendments do not constitute policy changes. Targeted stakeholder engagement on the prohibition pending a risk assessment of Yacón was carried out via the Plant Health Advisory Forum and the Animal and Plant Health Agency. This engagement found that there are little to no imports of Yacón into GB.
- 10.3 The Scottish and Welsh Devolved Administrations have been consulted about this instrument and are content.

11. Guidance

- 11.1 A summary of the measures has been provided on the Plant Health Portal here: <https://planthealthportal.defra.gov.uk/latest-news/upcoming-legislation-in-the-autumn-additional-measures/>
- 11.2 This also includes as Q&A document found here: <https://planthealthportal.defra.gov.uk/assets/uploads/QA-pests3.pdf>

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The financial impact of the introduction of pest measures to prevent the introduction of citrus gall midge is estimated at around £0.6m per year, whilst the estimated financial impact of measures introduced to prevent the introduction of *Agrilus fleischeri* is around £0.04m per year. It is estimated that the impact of the measures introduced to prevent the introduction of blueberry rust disease will be around £0.03m per year. All estimated sums reflect the additional costs incurred as a result of import requirements introduced to protect plant biosecurity.
- 12.3 There is no, or no significant, impact on the public sector.
- 12.4 For Yacón, no evidence of imports into GB was found following a search of Plant Health and Seed Inspectorate import data, and targeted stakeholder engagement with the Plant Health Advisory Forum and the Animal and Plant Health Agency. There is also no evidence that this will change in the future. Therefore, on the basis of the available data, the prohibition of Yacón is expected to have no impact and no formal assessment of impacts was carried out.
- 12.5 An Impact Assessment has not been prepared for this instrument because no significant impact on the private or voluntary sector is foreseen.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The measures will be kept under review following any new or revised risk assessments, pest interceptions, changes in pest distributions and other developments.

15. Contact

- 15.1 Suzie Pearce at the Department for Environment, Food and Rural Affairs, Telephone: 0208 0267 171 or email: Suzannah.pearce@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 Benyon, Parliamentary Under Secretary of State (Minister for Rural Affairs and Biosecurity) at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.