

**EXPLANATORY MEMORANDUM TO**  
**THE OFFICIAL CONTROLS AND PHYTOSANITARY CONDITIONS**  
**(AMENDMENT) REGULATIONS 2021**

**2021 No. 136**

**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 the relevant third countries by introducing measures for high risk plant goods (see paragraph 7.5). This instrument enables official controls to be carried out on high risk EU goods at Places of Destination (“PoDs”), under the amended provisions of Regulation (EU) 2017/625 (“the Official Controls Regulation”). This instrument extends the enforcement provisions contained in the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) (“the 2019 Regulations”) to include inspections undertaken at PoDs, enabling official controls and other official activities relating to plant health rules to be enforced.

2.2 This instrument also introduces further amendments to the Commission Implementing Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”), to introduce GB-wide emergency measures against the import of host plants of certain pests from any third country that poses an unacceptable level of risk to GB.

**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, and Scotland.

4.2 The territorial application of this instrument is England and Wales, and Scotland.

4.3 Part 2 of this instrument, regarding official control checks applies in England and Wales, and Scotland, and amends regulations relating to offences which apply in England only. Part 3 of this instrument applies in respect of England and Wales, and Scotland.

## **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 Regulation (EU) 2016/2031 (“the Plant Health Regulation”) and the Official Controls Regulation, amended as retained EU law, (“the EU Regulations”) respectively establish protective measures against pests of plants, and provide for the conduct of official controls and other official activities to ensure the proper application of rules on plant health and plant protection products (amongst other things). The 2019 Regulations gave effect to the EU Regulations and provide for a corresponding enforcement regime.
- 6.2 The EU Regulations, and additional tertiary legislation made under them, have been incorporated into domestic law using powers under the European Union (Withdrawal) Act 2018 (“the Withdrawal Act”), and amended in relation to Great Britain to deal with a range of deficiencies in the legislation arising from the withdrawal of the United Kingdom from the European Union. This included the amendment of the Phytosanitary Conditions Regulation, establishing uniform conditions for the Plant Health Regulation, by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1527), and the amendment of the Official Controls Regulation by the Official Controls (Animals, Feed and Food, Plant Health etc.) (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1481) (“the 2020 Regulations”).
- 6.3 Part 2 of this instrument makes provision for the conduct of official controls on certain goods to take place at PoDs, as permitted under the transitional derogations and modifications made to the Official Controls Regulation by Annex 6 (as inserted by the 2020 Regulations). These transitional derogations and modifications apply to goods entering Great Britain from a relevant third country and will apply for a limited period of time, as set out in the Annex 6 amendments. Part 2 of this instrument also amends the 2019 Regulations, the domestic legislation relating to plant health as it applies in England, to extend the existing inspection requirements to PoDs, and to include inspections at PoDs within the existing enforcement framework.
- 6.4 Part 3 of this instrument makes amendments to the Phytosanitary Conditions Regulation, to introduce stronger measures against host plants of certain pests (*Xylella fastidiosa* (Wells et al.)). Emergency regulations were introduced in England in the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2020 (S.I. 2020/381), in response to the threat from a number of pests including *Xylella fastidiosa* (Wells et al.). However, these emergency measures were revoked by the Official Controls (Plant Health and Genetically Modified Organisms) (England) (Amendment) (No.5) Regulations 2020 (S.I. 2020/1466) in accordance with an infraction notice from the European Commission. Following the commencement of amendments to the Phytosanitary Conditions Regulation made by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020, these measures are being reintroduced to mitigate against the risk of introduction of these pests into Great Britain.

## 7. Policy background

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

#### Places of Destination (PoDs)

- 7.1 The purpose of this instrument is to facilitate the EU Exit phased plant health import control regime, to support businesses after the end of the Transition Period, whilst also protecting biosecurity in Great Britain.
- 7.2 This instrument makes amends to allow high risk plants and plant products to undergo plant health inspections away from the border at inland PoDs, because Border Control Posts where these checks are due to take place, are not expected to be operationally ready to cope with the increase in trade volumes until later in the year. Traders can continue to use Border Control Posts, however, Government guidance (see paragraph 11.1) will encourage businesses to use the PoD scheme.
- 7.3 The requirements for businesses wishing to act as a PoD will be set out in these Regulations. Without mandating for place of destination requirements, UK plant health competent authorities would have very limited power to enforce statutory action for any non-compliance and could be subject to legal action, thereby undermining the biosecurity regime. In addition, setting out legislative requirements will ensure consistency in how PoDs are operated.
- 7.4 The new provisions will enable the phased approach to function effectively in early 2021. This will be a temporary contingency measure until the Border Control Posts are operationally ready to inspect EU regulated goods.

#### *Xylella fastidiosa*

- 7.5 *Xylella fastidiosa* (“Xylella”) is a bacterium which causes disease in a wide range of woody commercially grown plants such as grapevine, citrus, olive and several species of broadleaf trees widely grown in the UK, as well as many shrubs and herbaceous plants. Outbreaks of the disease have occurred in Italy, France, Spain, Germany and Portugal. There is considered to be a particular risk of introducing *Xylella* with olive, almond, lavender, rosemary, coffee and polygala plants, and these are the hosts which would be subject to additional requirements.
- 7.6 Outbreaks in southern Italy have devastated olive production and have had major social and economic impacts. Substantial impacts have been observed elsewhere, both on businesses affected and more generally. The pathogen is not known to be present in the UK, but we remain concerned about the possibility of *Xylella* arriving in the UK on high risk hosts, such as olive, and those plant species commonly associated with outbreaks in the EU. The long latency period of *Xylella* means that, without additional requirements, it could be carried into non-infected countries via imports of plants, long before the infection is identified.
- 7.7 *Xylella* is continuing to spread in Europe. In September 2018, *Xylella* was confirmed in three symptomatic olive trees in Belgium, which had originated from Spain in May 2018. Spain has not been able to trace the source of infection. In August 2020, a new outbreak in lavender nurseries in the Occitanie region of France was identified. There have also been further findings in 2020 in Italy and Spain. The uncertain distribution and ongoing findings in other European countries indicate an ongoing risk of disease spread.

7.8 We are therefore looking to increase restrictions and requirements for the import of high risk Xylella host plants to reduce the chances that Xylella is introduced into GB. The aim of these measures is to enhance the level of protection against the risk of entry of Xylella into GB via imported plants.

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

8.1 This instrument does not relate to the 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. The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 have been modified by five amending instruments as well as other instruments relating to EU Exit.

## **10. Consultation outcome**

10.1 The vires used to make amendments to facilitate the conduct of checks at PoDs includes a consultation requirement under Article 144(7) of the Official Controls Regulation. Early informal engagement in July 2020 with stakeholders, to test the feasibility of the new process against business practices covering a range of import issues, indicated that they would be open to having checks done at PoDs for flexibility sake. Continuous engagement with GB-wide stakeholders and trade, including the Fresh Produce Consortium and the Horticultural Trade Association, took place from Summer 2020 to January 2021, including feasibility testing sessions as the PoD scheme was being developed. In addition, a webinar focusing on imports and the PoD scheme was organised in November 2020. We are confident that this level of engagement with relevant stakeholders across Great Britain satisfies the consultation requirement, as the PoD scheme was introduced as a contingency and accommodating measure to enable the phased import regime to take account of the readiness of Border Control Posts.

10.2 Earlier Xylella measures had been developed in consultation with the Plant Health Advisory Forum and individual businesses to minimise unnecessary burdens. Stakeholders supported the measures, which were the basis of temporary emergency measures, introduced in April 2020, aiming to provide protection during the transition period. These new measures reflect the earlier ones as regards the desired level of protection for plants imported from countries and areas where Xylella is present, while also avoiding unnecessary new burdens for those countries where Xylella is not present. Defra has not held a further consultation for the new measures as the overall scope of the measures being introduced, is in line with the earlier measures, but with new options included where there is a high level of assurance that imports are from areas where Xylella is not present. The Plant Health Advisory Forum remains supportive of stronger requirements for this disease.

10.3 The Scottish and Welsh Devolved Administrations have been consulted about this instrument and are content.

## **11. Guidance**

11.1 Businesses that import plant and plant products can find out how to register their PoD here: <https://www.gov.uk/government/publications/place-of-destination-plants-and->

[plant-products](https://planthealthportal.defra.gov.uk/assets/uploads/Place-of-Destination-PoD-Question-and-Answer-Guide.pdf). Guidance is also available on what the minimum requirements are for PoDs: <https://planthealthportal.defra.gov.uk/assets/uploads/Place-of-Destination-PoD-Question-and-Answer-Guide.pdf>.

- 11.2 A summary of the emergency measures against host plants of specific pests will be placed on gov.uk before this instrument comes into force on the 4<sup>th</sup> March 2021.

## **12. Impact**

- 12.1 The impact from the PoD scheme is estimated at an overall cost of around £0.5m over 6 months, on approximately 5000 businesses. It reflects costs to businesses to purchase the additional kit required for the inspections and time costs by members of staff to be present for the inspection.
- 12.2 The impact from the emergency pest measures to prevent the introduction of Xylella is estimated to be around £1.5m per year, on approximately 750 businesses. This reflects the limitations for high risk plants on the import trade and the costs incurred through quarantine measures when trade does occur, though there will be beneficial opportunities for UK businesses to grow some plants domestically. The specific pests affected by the emergency measures are already subject to the Animal and Plant Health Agency (“APHA”) and Forestry Commission inspection and surveillance programmes.
- 12.3 A full Impact Assessment has not been prepared for this instrument because the level of estimated impact across businesses is below the £5m per year cost threshold.
- 12.4 There is no, or no significant, impact on charities or voluntary bodies as a result of policy changes introduced under this instrument.
- 12.5 There is no significant impact on the public sector. The PoD scheme is estimated to incur inspectorate costs of under £0.1m over 6 months and emergency Xylella measures are estimated to incur inspectorate costs of around £0.5m per year.

## **13. Regulating small business**

- 13.1 This instrument applies to activities that are undertaken by small businesses.
- 13.2 The PoD scheme is not expected to lead to any significant disproportionate burdens on small businesses (expected to be £80 per PoD for additional kit and around £3 of time cost per inspection required) though costs may affect small businesses more.
- 13.3 The emergency pest measures, with an estimated cost of around £2,000 per business on average, generally affect smaller businesses such as nurseries and garden centres, though some larger companies also sell affected plants.
- 13.4 This instrument applies equally to all businesses importing high risk plant goods. There is no exemption for small businesses, given the importance of protecting plant biosecurity through the actions of all sizes of businesses.

## **14. Monitoring & review**

- 14.1 The emergency measures will be kept under review following any new or revised risk assessments, pest interceptions, changes in pest distributions and other developments.
- 14.2 The PoD scheme is a temporary measure lasting until the Border Control Posts are operationally ready to inspect EU regulated goods.

## **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](mailto: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 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.