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Finlay Carson MSP
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Scottish Parliament
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Dear Finlay

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE PLANT HEALTH AND PHYTOSANITARY CONDITIONS (OAK PROCESSIONARY
MOTH AND PLANT PESTS) (AMENDMENT) REGULATIONS 2023 –“PH/043”**

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 negative 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 a Type 1 notification which sets out the details of PH/043 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/043 is subject to negative procedure and on current DEFRA plans is to be laid in Westminster on 2 May 2023. I am pleased to say on this occasion the Scottish Parliament will have the 28 days to consider this notification.

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

Kind regards



LORNA SLATER

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

SI NOTIFICATION: SUMMARY

Title:

The Plant Health and Phytosanitary Conditions (Oak Processionary Moth and Plant Pests) (Amendment) Regulations 2023 – (PH/043)

Proposed laying date at Westminster

Laying on 2 May 2023 – come into force 24 May 2023

Date by which Committee is to respond

26 April 2023

Power(s) under which SI is to be made

Articles 8(5), 17 (1), 28 (1) and (4),37(5). 48(5), 105 (6) and Annex 2 of the retained Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (the Plant Health Regulation (PHR))

Categorisation under SI Protocol

Type 1

Purpose:

PH/043 amends

- the retained Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation” (PCR)), establishing uniform conditions for the PHR as regards protective measures against pests of plants. In this case, Annex V, Part F, Measures to prevent the presence of Regulated Non-Quarantine Pest (RNQP) on specific plants for planting - Part F relating to seed potatoes,
- Corrects a drafting error of the Pest of Plants (Authorisations)(Amendment) Regulations 2022

PH/043 will also establish a demarcated area within England and apply certain measures within that area in relation to *Thaumetopoea processionea* (Oak Processionary Moth (OPM)), a GB quarantine pest.

OPM is not present in Scotland. These changes only apply in England.

Other information

A WTO notification was submitted in respect of correcting the threshold tolerances for RNQP relating to seed potatoes.

SG Policy contact:

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Plant Health and Phytosanitary Conditions (Oak Processionary Moth and Plant Pests) (Amendment) Regulations 2023 - (PH/043)

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

The Plant Health and Phytosanitary Conditions (Oak Processionary Moth and Plant Pests) (Amendment) Regulations 2023 - (PH/043)

The SI is made in exercise of powers conferred by Articles 8(5), 17(1), 28(1) and (4), 37(5), 48(5), 105(6) and Annex 2 of retained Regulation (EU) 2016/20131 of the European Parliament and of the Council on protective measures against plants (the 'Plant Health Regulation (PHR)').

The SI is subject to negative procedure and is to be laid on 2 May 2023 to come into force on 24 May 2023.

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

Summary of the proposals:

PH/043 makes the following changes to retained EU Plant Health Legislation:

- It amends Commission Delegated Regulation (EU) 2019/829 supplementing Regulation (EU) 2016/2031 on protective measures against pests of plants, authorising Member States to provide for temporary derogations in view of official testing, scientific or educational purposes, trials, varietal selections, or breeding (the "Temporary Derogations Regulation"), correcting an earlier drafting error in relation to the information to be supplied as part of an application under that Regulation.
- It amends Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council as regards protective measures against pests of plants (the "Phytosanitary Conditions Regulation"). PH/043 amends the Phytosanitary Conditions Regulation to revise the movement and import requirements for seed potatoes. It will correct a mistake in the retained Phytosanitary Conditions Regulation by including the correct table of tolerances for Regulated Non-Quarantine Pests (RNQPs) relating to seed potatoes. The EU have the same table in their legislation, with one exception, *Candidatus Phytoplasma solani*. Since the UK left the EU, GB has been imposing stricter measures on this pest as a Quarantine Pest.

Part 3 of PH/043 demarcates an area and sets out measures to control the GB quarantine pest, *Thaumetopoea processionea* L. (Oak Processionary Moth (OPM)), to continue its containment and to protect pest-free areas (PFA) in England where

OPM has not established. The movement of high-risk *Quercus* spp (Oak host plants) will only be allowed to move within the demarcated area by professional operators subject to prescribed conditions. As OPM is not present in Scotland, these measures are not required for Scotland. These measures are introduced under Article 28(1) and (4) of the PHR which is a power to make regulations to deal with the containment of a quarantine pest. The provisions in PH/043 will permit movement of large oaks within the demarcated area, although GB wide movements are generally prohibited under Annex 8 of the PCR.

Background

The purpose of this instrument is to make changes to and correct drafting errors in provisions in the field of plant health to ensure the effective operation of the regulatory system in Great Britain. This includes making corrections and clarifications to existing legislation, and, for England, changing the management measures imposed in respect of OPM.

Why the need for change?

The provisions of this PH/043 which relate to Scotland (Parts 1 and 2), are made to correct a drafting error in the Temporary Derogations Regulation which will ensure an application under that Regulation will include relevant information about the source of material for which an application is sought. PH/043 will also revise the movement and import requirements for seed potatoes.

Changes being proposed and why

PH/043 makes amendments in the area of Plant Health.

Using powers contained in the PHR to substitute an incorrect table with correct tolerances to Annex V, part F for seed potatoes to the retained EU law Commission Implementing Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”). This includes a footnote containing reference to legislation that sets out the planting requirement for seed potatoes in Scotland, clarifying that the import thresholds for seed potatoes into Scotland are tighter than these general tolerances.

Annex V -Part F

Measures to prevent the presence of Regulated Non-Quarantine Pests (RNQP) on Seed Potatoes

Replacing the second table with:

(1) RNQPs or symptoms caused RNQPs	(2) Plants for planting (genus or species)	(3) Thresholds for growing plants of pre-basic seed potatoes		(4) Thresholds for growing plants of basic seed potatoes	(5) Thresholds for growing plants of certified seed potatoes
		PBTC	PB		

Blackleg (<i>Dickeya</i> Samson <i>et al.</i> spp. [1DICKG]; <i>Pectobacterium</i> Waldee emend. Hauben <i>et al.</i> spp. [1PECBG])	<i>Solanum</i> <i>tuberosum</i> L.	0%	0%	1%	4%
<i>Candidatus</i> Liberibacter <i>solanacearum</i> Lieting <i>et al.</i> [LIBEPS]	<i>Solanum</i> <i>tuberosum</i> L.	0%	0%	0%	0%
Mosaic symptoms caused by viruses and symptoms caused by Potato leaf roll virus [PLRV00]	<i>Solanum</i> <i>tuberosum</i> L.	0%	0.1%	0.8%	6%
Potato spindle tuber viroid [PSTVD0]	<i>Solanum</i> <i>tuberosum</i> L.	0%	0%	0%	0%

Footnote to state:

For additional restrictions concerning the planting of seed potatoes see:

1 For additional restrictions concerning the planting of seed potatoes see:

The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019
The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019
The Seed Potatoes (England) Regulations 2015
The Seed Potatoes (Scotland) Regulations 2015
[The Plant Health \(Potatoes\) \(Scotland\) Order 2006 \(legislation.gov.uk\)](#)
[The Plant Health \(Potatoes\) \(Scotland\) Amendment Order 2010 \(legislation.gov.uk\)](#)

PH/043 also corrects a drafting error in the Pests of Plants (Authorisations)(Amendment) Regulations 2022 ('PH/037'). PH/037 was subject to negative resolution procedures to amend requirements relating to GB Authorisation (Licensing) Scheme by amending the Retained EU law Commission Delegated Regulation (EU) 2019/829. The very purpose of these changes is to make the process easier for the user of this Scheme. However, Regulation 2(4)(b) did the opposite. By removing 'consignor and provider' from the original text from the application form, it was not clear to the applicant whose details were required. Therefore, to avoid any doubt who details it should be 'laboratory or institution from which the material originated' is being added

Regulation 2 (4) (b) of the Temporary Derogations Regulation will be amended to read:

“The place of origin of the specified material, including the name, and address (including country) of the laboratory or institution from which the material originated, with appropriate documentary evidence where the specified material is to be introduced from a third country”

Changes to the Phytosanitary Condition Regulation

It is important that correct thresholds for Regulated Non-Quarantine Pests for seed potatoes imported into and moving within GB is known. Equally it is important to make it known that domestic tolerances are tighter so that the exporting countries are aware of these and ensure that they are met prior to export.

Changes to the Temporary Derogations Regulation

The changes were originally made to make the Authorisation (Licensing) Scheme easier for those involved in the scheme. Therefore, it is essential to reach the objective of the original changes to address this omission by inserting laboratory or institution from which the material originated.

Consultation

As these amendments are correcting previous errors, and there has been no policy changes, a public consultation was not undertaken.

Other information

This SI does not transfer any legislative functions.

The World Trade Organisation (WTO) has been notified of the table being corrected.

Although the new regulation Defra are introducing in relation to OPM does not affect Scotland, it should be noted of its use and its intention of Article 28 following measures outlined in Annex 2 section 1 both within PHR. i.e., introducing specific measures to allow movement in specifically defined areas in England where the pest cannot be eradicated. This is being implemented to allow internal movement for English traders and domestic production of wood in England that now fall in the demarcated areas to trade whilst protecting surrounding areas which are free from OPM.

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

Provisional Plant Health Framework.

A note of other impact assessments, (if available)

An impact assessment has not been produced for this instrument, as no or no significant impact on the private or voluntary sector is foreseen

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

The Scottish Ministers reasons for consenting to the proposals are as follows:

- The policy intention is aligned across the GB Plant Health Services (which consist of England, Scotland, and Wales), and by consenting to the use of devolved provision within PH/043 is consistent with previous plant health provisions and amendments to the Plant Health Regulation.
- Scottish Ministers consider that consenting to PH/043 is the most effective and transparent way to introduce these amendments. It provides clarity and confidence and continues close collaboration across the UK under the provisional Plant Health Common Framework.
- Whilst not applying to Scotland, Scottish Ministers are content with the proposal to introduce measures under Article 28 PHR to permit movement of large oaks within the OPM demarcated area.

Intended laying day (if known) of instruments likely to arise

PH/043 will be made using the negative procedure, and it is intended to be made on 2 May 2023 to come into force on 24 May 2023.

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

N/A

Information about any time dependency associated with the proposal.

N/A

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

None.

Any significant financial implications?

No significant financial implications.