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22 September 2025

Dear Convener,

**EU EXIT LEGISLATION – PROTOCOL 2 WITH SCOTTISH PARLIAMENT
THE PHYTOSANITARY CONDITIONS (AMENDMENT) (No. 2) REGULATIONS 2025 -
“DEFRA PH/058”**

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 secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the then 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 the SI which the UK Government proposes 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.

Defra PH/058 is subject to the negative procedure and on current Defra plans is to be laid in the UK Parliament on 6 November 2025.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee, and I look forward to hearing from you by 5 November 2025 at the latest.

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

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Jim Fairlie', written in a cursive style.

JIM FAIRLIE

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SI NOTIFICATION: SUMMARY

Title: The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2025 - Defra PH/058
Proposed laying date at Westminster Laying on 6 November 2025 and coming into force 30 November 2025, except for the provision on <i>Xylella fastidiosa</i> which will come into force on 6 May 2026.
Date by which Committee is to respond By 5 November 2025.
Power(s) under which SI is to be made This SI is subject to a negative resolution procedure and its enabling powers are conferred by Articles 5(3), 30(1), 32(3), 41(3), 72(3) and 105(6) of 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: <p>1. Defra PH/058 amends Annexes 2, 2A, 3, 7, 11 and 13 of the EU Commission Implementing Regulation (EU) 2019/2072 (the Phytosanitary Conditions Regulation) establishing uniform conditions for the implementation of the Plant Health Regulation. More specifically, the SI –</p> <ul style="list-style-type: none">• Changes and amends the status of certain quarantine and provisional quarantine pests, including a pest name change,• Amends the list of pest-free area (PFA) quarantine pests and GB PFAs to remove two forestry beetles and their respective areas from the list,• Adds new and removes special import requirements because of changes to the quarantine and provisional quarantine lists and adds Armenia to the existing import requirements for <i>Bursaphelenchus xylophilus</i>,• Consequential amendments to Annex 11 to reflect Armenia being subject to import requirements for <i>Bursaphelenchus xylophilus</i>,• Makes technical updates to correct the legislation relating to updating a pest name and to existing import requirements for <i>Xylella fastidiosa</i>, and• Makes a correction to Annex 11 due to failing to make a consequential change to a previous amendment.
Other information All changes to the Annexes, except the last one, have been shared with the World Trade Organization as required. The last change only affects movement within GB and does not need to be notified.
SG Policy contact: Yvonne Hay (Yvonne.Hay@gov.scot)

NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2025 - Defra PH/058

Is the notification Type 1 or Type 2?

Type 1

A brief overview of the SI

This SI is subject to a negative resolution procedure and its enabling powers are conferred by Articles 5(3), 30(1), 32(3), 41(3), 72(3) and 105(6) of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (“the Plant Health Regulation” (PHR)).

The SI is to be laid on 6 November 2025 and come into force on 30 November 2025, except for correcting existing legislation to the import requirement for *Xylella fastidiosa* which will be delayed until 6 May 2026, to comply with the World Trade Organization (WTO) rules. As far as the instrument extends to Scotland, it will make provision which relates to devolved matters.

This instrument focuses on pest measures being introduced for pests which pose a risk to GB, rather than to the EU. The phytosanitary import regime in GB is not static and is kept under continuous review to ensure it continues to address any biosecurity risk posed to the UK, and that it meets our WTO obligations by being risk-based. All new measures are aligned with the scientific principles we share with the EU.

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

Summary of the proposals:

PH/058 amends Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation” (PCR)) establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 (“the Plant Health Regulation”) as regards protective measures against pests of plants, following a revision in certain pest risks. The PCR annexes that are being amended are Annexes 2, 2A, 3, 7, and 11.

Background

The purpose of this instrument is to protect plant biosecurity and support trade between GB and third countries by introducing or amending protective measures against high-risk pests of plants.

The SI makes the following changes in relation to pest measures:

- It changes the status of certain pests, or adds new pests to the quarantine and provisional quarantine pest classifications and corrects a pest name, (Annexes 2 and 2A)
- It amends the list of pest-free area (PFA) quarantine pests and GB PFAs to remove two forestry beetles and their respective areas from the list (Annex 3)
- It adds new and removes special import requirements (due to changes to

Annexes 2 and 2A), and adds Armenia to existing import requirements for *Bursaphelenchus xylophilus* (pine wood nematode (PWN)) (Annex 7)

- It adds *Solanum sisymbriifolium* (sticky nightshade) to the list of seeds that a UK plant passport is required for movement within GB (Annex 13)
- It makes technical updates to correct the legislation relating to updating a pest name and to existing import requirements for *Xylella fastidiosa*.

Why the need for change?

The phytosanitary import regime in GB is not static and is kept under continuous review. The amendments proposed in the SI are based on decisions taken by the UK Plant Health Risk Group “PHRG” in response to the results of the risk assessments made under the Plant Health Regulation. The PHRG is a decision-making body that has representatives from Defra, Scottish Government, Forestry Commission, and the other Devolved Governments with oversight from the UK National Plant Protection Organisation (consisting of the four Chief Plant Health Officers of the UK and senior Forestry Commission officials).

Pest Free Area (PFA)

The changes to the list of PFA quarantine pests and GB pest-free areas are necessary to reflect the changed status of two conifer bark beetles – *Ips cembrae* (Large larch bark beetle) and *Dendroctonus micans* (Great spruce bark beetle) as official monitoring and surveillance programmes have confirmed that it is no longer possible to classify as pest-free the sole remaining area of GB which is currently listed as a pest-free area for these two beetles.

A summary of proposals is at Annex A.

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

Plant Health Common Framework

Summary of stakeholder engagement/consultation

The UK Plant Health Service (UKPHS), comprised of the four UK Governments, are in continuous informal engagement with GB stakeholders on matters of plant health. In connection with the specific pest measures, targeted engagement was undertaken by Defra on behalf of the UK Plant Health Service.

All the members of the UK Plant Health Advisory Forum (PHAF) were targeted, including the forestry sector, and GB organisations such as Fresh Produce Consortium and the Horticultural Trades Association (HTA).

Summary of outcomes for:

Helicoverpa armigera (common name in the UK cotton bollworm)

- Defra has confirmed that four stakeholders replied. Three were supportive of the proposed deregulation of *Helicoverpa armigera*, with one noting sector-specific risks and the need for improved communication, while one had

concerns over deregulation due to impact on crops. However, on this point the absence of feasible and effective measures to prevent the pest's natural spread continues to support the case for deregulation.

Toumeyella parvicornis (pine tortoise scale)

- Defra has confirmed there were no responses.

These outcomes will be published on the [UK Plant Health Portal](#) in due course. There was no direct feedback from Scottish stakeholders.

Concerning the provisions for new quarantine pests *Pseudomonas avellanae* (stem dieback of hazel) and *Neodiprion abietis* (Balsam fir sawfly), these were the recommendations from the previous UK Pest Risk Analysis (PRA).

- [PRA-Pseudomonas-avellanae.pdf](#)
- <https://planthealthportal.defra.gov.uk/assets/Neodiprion-abietis-PRA-v4-.pdf>

Regarding the changes to the list of PFA quarantine pests and GB pest-free areas, additional stakeholder engagement has been undertaken by Scottish Government with forestry sector stakeholders in Scotland, including the Scottish Tree Health Advisory Group (STHAG), as the necessary changes will remove pest-free area status in relation to two conifer bark beetles in part of the west of Scotland.

The Scottish Government will also communicate the amendments in Defra PH/058 to Scottish businesses that trade in plants, plant products and other objects before the measures are due to come into force.

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

The policy intention is aligned across the GB Plant Health Services, and consenting to the use of devolved provisions within Defra PH/058 is consistent with previous plant health provisions and amendments to the Plant Health Regulation and tertiary legislation. Pest risks have been identified, and measures have been developed to ensure these pests do not enter GB or that appropriate action can be taken against any finding. Not implementing these measures would leave the identified risk to GB biosecurity as unmitigated. Additionally, including the necessary changes to the list of PFA quarantine pests and GB pest free areas to reflect a change in pest status in an area of the west of Scotland provides an efficient process for making these amendments.

Scottish Ministers consider that consenting to Defra PH/058 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 Plant Health Common Framework.

Intended laying date (if known) of instruments likely to arise.

Defra PH/058 will be made using the negative procedure and is to be laid in the UK Parliament on 6 November 2025.

If the Scottish Parliament does not have 28 days to scrutinise Scottish

Minister's proposal to consent, why not?

N/A

Information about any time dependency associated with the proposal.

Not applicable

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.

Other information

Plant Health is a devolved area of law and in the main, plant health legislation was based on EU law, which has now become assimilated law (formerly known as retained EU law). The purpose of the amendments to the PCR is to protect biosecurity and facilitate safe trade between Great Britain and the relevant third countries by introducing further measures against the import of host plants and other regulated goods for pests that will pose potential risks to plant health in Scotland (GB). These measures being introduced are bespoke to GB. They apply to specific third countries from which imports currently do not meet the appropriate level of protection for GB.

Similar but separate Regulations (EU 2019/2072 and EU 2016/2031) are applicable to the EU. It is considered that the measures to be introduced provide the best outcome for Scotland from environmental, trade and biosecurity perspectives. Although the pest measures proposed by the UK may differ from those imposed by the EU, this is a result of the application of those principles to specific GB conditions and does not represent a diminution of the high standards we share. It is not considered that they would be a barrier to future accession to the EU: the measures are able to be amended or revoked at any point in the future.

Despite the evolving dynamics of the EU/UK relationship, the UK Plant Health Service—of which the Scottish Government is a part—is continuing with the development of the GB-wide Statutory Instrument (SI). This SI is focused solely on pest control measures aimed at protecting the UK environment and supporting trade for Scottish businesses. Importantly, it does not interfere with any ongoing SPS negotiations.

This SI does not transfer any legislative functions.

The World Trade Organization (WTO) has been notified of these measures.