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<b>Title: The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2021 – PH/026</b>
<b>Proposed laying date at Westminster</b> Laying 21 October 21
<b>Date by which Committee is to respond</b> 15 October 21
<b>Power(s) under which SI is to be made</b> Articles 5(3), 30(1), 37(5), 40(3), 42(2), 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”)
<b>Categorisation under SI Protocol</b> Type 1
<b>Purpose:</b> PH/026 makes the following provision using Plant Health Regulation powers— <ul style="list-style-type: none"><li>• Introduces new or strengthens existing plant health measures against pests <i>Prodioplosis longifila</i>, <i>Agrilus fleischeri</i>, <i>Thekopsora minima</i> and <i>Agrilus planipennis</i>. These pests are not known to occur in GB</li><li>• Introduces a prohibition on the import of <i>Polymnia sonchifolia</i> (yacon) plants from entering Great Britain (England, Wales and Scotland). GB quarantine pests have been intercepted on samples of yacon - a daisy like plant with a tuberous root,</li><li>• Changes the classification of 6 pests as they are no longer considered a risk to GB.</li><li>• Changes the status of 4 pests to become GB quarantine pests.</li><li>• Amends provision relating to bonsai imports from South Korea to ensure that consignments are only imported into GB between the months of November and March.</li></ul> <p>These measures are expected to have a negligible impact on trade.</p>
<b>Other information</b> The SI aligns with the UKG and SG policy to continue to protect Scottish and British businesses who trade in plants, plant products, timber and timber products whilst continuing to protect plant biosecurity. In addition it does not distort the trade or disadvantage Scottish importers.
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## NOTIFICATION TO THE SCOTTISH PARLIAMENT

### **The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2021 (“PH/026”)**

#### **The notification is Type 1**

**A brief overview of the SI – The Phytosanitary Conditions (Amendment) (No. 2) Regulations 2021 (“PH/026”)**

PH/026 is to be made using powers conferred by:

- Articles 5(3), 30(1), 37(5), 40(3), 42(2), 41(3), 72(3) and 105(6) of the retained EU law Plant Health Regulation (Regulation (EU) 2016/2031 on protective measures against pests of plants - “the Plant Health Regulation”); and

The SI is subject to negative procedure and is to be laid on 21 October.

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

PH/026 makes amendments in the area of Plant Health and makes the following changes—

Using powers contained in the Plant Health Regulation, PH/026 amends the Annexes of retained EU law Commission Implementing Regulation (EU) 2019/2072 (“the Phytosanitary Conditions Regulation”) to alter the classification of specific plant pests or import conditions placed on certain plants, plant products and other objects entering Scotland to reflect the biosecurity risk that they pose.

#### **Summary of the proposals**

PH/026 uses powers contained in the Plant Health Regulation to make the following amendments to the Phytosanitary Conditions Regulation.

##### *1. ANNEX 2 List of GB quarantine pests*

Adds the following to

Fungi and oomycetes

- *Thekospora minima* (Arther) Sydow & P. Sydow [THEKMI] (blueberry rust)
- Insects and mites
- *Agrilus fleischeri* (Obenberger) [AGRLFL] (wood boring beetle measures)
- *Prodiplosis longifolia* Gagné [PRDILO] (gall midge).

An extensive Pest Risk Analysis has been conducted for each of these pests and all analyses demonstrated that the nature of the biosecurity risk posed by these pests justified additional legislative measures. The presence of these pests in the

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UK would introduce an additional threat to crops such as blueberries, tomato, asparagus, as well as poplar and willow trees. Engagement with stakeholders has been undertaken who support the specific import requirements to enhance the level of protection against the risk of these pests entering GB measures being introduced.

### 2. ANNEX 2 PART A - List of provisional GB quarantine pests

#### Bacteria

- Removing: *Pseudomonas savastanoi* pv. *Savastanoi* (Smith) Gardan et al. [PSDMSA] (affects olive plants)

#### Insects and mites:

- Removing: *Epidiaspis leperii* Signoret [EPIDBE]; (European pear scale).

#### Nematodes:

- Removing: *Heterodera fici* Kirjanova [HETDFI]; (fig cyst nematode),

#### Viruses, viroids, virus-like diseases and phytoplasmas:

- Removing: Apricot latent virus [ALV000].
- Removing: Aucuba mosaic agent and blackcurrant yellows agent combined

Four of these pests (*Apricot latent virus*, *Epidiaspis leperii*, *Heterodera fici*, *Pseudomonas savastanoi* pv. *Savastanoi*) have been classified as GB regulated non-quarantine pests (RNQPs) but are being deregulated as they are not considered a risk to plants for planting in Great Britain. The remaining pests (*Blackcurrant yellows agent* and *Aucuba mosaic agent*) had been classified as GB RNQPs but are now to be deregulated as there is very limited evidence to support their existence in GB.

### 3. ANNEX 6 List of plants, plant products and other objects which may not be introduced into Great Britain if originating or dispatched from certain third countries

*PART A List of plants, plant products and other objects from third countries, other than high-risk plants, plant products and other objects, which may not be introduced into Great Britain*

- adding plants of *Fraxinus* L where *Agilus planipennis* Fairmaire [AGRLPL] occurs

*PART B List of high-risk plants, plant products and other objects from third countries which may not be introduced into Great Britain pending a risk assessment*

- adding plants of *Polymnia sonchifolia* Pöppig & Endlicher, [POMSO] originating from any third country.

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GB quarantine pest were found in consignments of these plants – common name Yacon – a daisy tuber like flower, so extra import controls are considered necessary.

#### 4. ANNEX 7 List of plants, plant products and other objects originating from third countries and the corresponding special requirements for their introduction into Great Britain

*PART A Plants, plant products and other objects originating in third countries which may only be introduced into Great Britain if special requirements are met*

- amending special requirements for certain host plants to include any third country for where *Agilus planipennis* Fairmaire [AGRLPL] is known to occur
- inserting special requirement for entries of host plants that are free from certain countries where *Prodiplosis longifila* Gagné [PRDILO] is not known to occur
- inserting special requirement for entries of host plants from countries where *Agilus fleischeri* Obenberger) [AGRLFL] is not known to occur
- inserting special requirement for entries of host plants from any third country where *Thekospora minima* (Arther) Sydow & P. Sydow [THEKMI] is not known to occur

#### 5. ANNEX 11 List of plants, plant products and other objects and the respective third countries of origin or dispatch in respect of which phytosanitary certificates are required

*PART A List of plants, plant products and other objects and the respective third countries of origin or dispatch, which may not be introduced into Great Britain unless they are accompanied by a phytosanitary certificate, as referred to in Article 72(1) of Retained EU (EU) 2016/2031 Regulation*

amending entries for the restriction of host plants to protect the threat against

- *Agilus fleischeri* Obenberger) [AGRLFL] (wood boring beetle measures)
- *Agilus planipennis* Fairmaire [AGRLPL] (Emerald Ash Borer (EAB))
- *Prodiplosis longifila* Gagné [PRDILO] (gall midge)
- *Thekospora minima* (Arther) Sydow & P. Sydow [THEKMI] (blueberry rust)

6. PH/26 also makes provision in relation to the import of bonsai from Republic of Korea. In a previous UK SI which extended to Scotland and was notified to the Scottish Parliament (The Phytosanitary Conditions (Amendment) Regulations 2021 – “PH/25”), the contents of Commission Decision 2002/499/EC were incorporated into the Phytosanitary Conditions Regulation. This incorporation mistakenly missed out dates from the provisions. These now require to be added to the bonsai entries in the Phytosanitary Conditions Regulation to limit the import of bonsai plants from the Republic of Korea to between 1st November and 31st March each year.

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The decision to progress with this legislation in respect of pest measures was taken at the UK Plant Health Risk Group (a decision-making body that has representatives from Defra, Forestry Commission and all Devolved Administrations) 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). These measures are expected to have a negligible impact on trade.

The amendments made by PH/026 do not confer powers to make legislation on UK or Scottish Ministers.

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

No.

### **Summary of stakeholder engagement/consultation**

The UK Plant Health Services (“UKPHS”), comprised of the four UK administrations are in continuous informal/formal engagement with GB-wide stakeholders, such as the Plant Health Advisory Forum (PHAF) who members are, but not all, the Fresh Produce Consortium; Horticultural Trades Association (HTA) as well as Scottish Stakeholders, National Farmers Union for Scotland (NFUS).

For the proposed changes to the Phytosanitary Conditions Regulation, an extensive Pest Risk Analysis has been conducted for pest of conducted for blueberry rust, *Agrilus fleischeri*, and gall midge. In addition PHAF was also consulted the measures being proposed to prohibit the import of *Polymnia sonchifolia* plants, and as *Agrilus planipennis* is spreading to St. Petersburg new measures were needed. The measures strengthening the existing measures for *Agrilus planipennis* (EAB) and taking precautionary action against the new threat of *polymnia sonchifolia* (Yacon) was well received.

The Scottish Government will also communicate to those who trade in plant, plant products and other objects of these amendments at the appropriate time.

### **A note of other impact assessments, (if available)**

N/A

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

In light of the threat of the pests of *Prodioplosis longifila*, *Agrilus fleischeri*, *Thekopsora minima* and *Agrilus planipennis* to enter in the UK, enhanced protection is needed at the earliest opportunity to mitigate the risk of introduction.

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Imports of these high-risk plant goods will only be permitted under certain conditions e.g. the goods being grown in a pest free area, treated with heat.

The measures being introduced will be GB wide, this avoids any disparity at any borders within GB. These reflect the required measures as regards the desired level of protection for plants imported from countries and areas where these pests are present.

The SI introduces the deregulation of six pests which are currently RNQPs. To prevent the introduction of RNQPs to GB, the relevant plants for planting are required to have a phytosanitary certificate (health check) which attests that the imported material meets the GB import requirements. Once these pests are deregulated, the requirements associated with these pests will no longer need to be met in order for exporting countries to issue a phytosanitary certificate. These measures facilitate trade as requirements for pests, which are not a risk to GB, do not need to be met for exporting countries to issue a phytosanitary certificate.

The amendments to be made by the UK Government in PH/26 reflect the GB wide approach taken to protect GB biosecurity. Scottish Ministers consider that consenting to the SI is the most effective and transparent way to make changes to address these issues at the GB level in circumstances where the legislation being amended has effect on a GB wide basis and there is agreement across administrations about the changes being made. Officials have worked with UKG to ensure the drafting delivers for Scotland's interests and respects devolved competence in Scotland.

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

PH/026 is a negative SI and it is intended to be laid on 21 October 2021.

### **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**

N/A

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

No

### **Any significant financial implications?**

No.

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**Title of Instrument:** The Animal Health, Plant Health, Seeds and Seed Potatoes (Miscellaneous Amendments) Regulations 2021 – PH/34

**Proposed laying date at Westminster**

Laying for sifft 12 October 2021

**Date by which Committee is to respond**

By 8 October 21

**Power(s) under which SI is to be made**

Section 8 and paragraph 21 of schedule 7 to the European Union (Withdrawal) Act 2018 of the European Union (Withdrawal) Act 2018

**Categorisation under SI Protocol**

Type 1

**Purpose:**

PH/34 makes amendments to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 8(2)(a) to (d) and (g)) arising from the withdrawal of the United Kingdom from the European Union in the areas of Animal Health, Plant Health and Seeds..

With regard to animal health, Regulation (EC) No 999/2001 is being amended to remove a point which is now otiose in relation to the evaluation of risk associated with classical scrapie in sheep and goats as a consequence of the removal of points referred to therein by previous deficiency-fixing legislation. Commission Implementing Regulation (EU) No 139/2013 is being amended to remove the disapplication of this regulation for the imports of certain birds from Andorra, Liechtenstein, Monaco, Norway, San Marino, Switzerland and the Vatican City State, following the withdrawal of the UK from the EU. Commission Regulation (EU) No 576/2013 is being amended to ensure consistency in language when making reference to EU legislation

In the area of plant health, various amendments are made to retained direct EU legislation. In particular, regulations 6 to 9 of PH/34 amend 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 to fix drafting errors made in earlier deficiency fixing SIs. Regulation 10 of the SI deficiency fixes Commission Implementing Regulation (EU) 2019/2148 on specific rules concerning the release of plants, plant products and other objects from quarantine stations and confinement facilities pursuant to Regulation (EU) 2016/2031 of the European Parliament and of the Council .

The SI also amends the transitional provision at regulation 52(1) of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1482) to extend the regulation to Liechtenstein and Switzerland, which were omitted in error previously.

PH/34 include provisions to amend the Seeds (National List of Varieties) Regulations 2001, correcting a minor error made by the Seeds (Amendment etc.) (EU Exit) Regulations 2020 (SI 2020/1294). The SI makes correction to a definition in regulation 2 of the England only SI, the Seed Potatoes (England) Regulations 2015 (SI 2015/1953). Similar correction has already been made for Scotland in a previous SSI.

**Other information**

The SI aligns with the UKG and SG policy to continue to protect Scottish and British businesses who trade in plants, plant products, timber and timber products whilst continuing to protect plant biosecurity. In addition it does not distort the trade or disadvantage Scottish importers.

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