EXPLANATORY MEMORANDUM TO

THE MARKETING OF FRUIT PLANT AND PROPAGATING MATERIAL (ENGLAND) (AMENDMENT) REGULATIONS 2025

2025 No. 812

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 His Majesty.

2. Declaration

2.1 Baroness Hayman of Ullock, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Nicola Spence, Deputy Director for Plant Health, Bee Health and Seeds, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Melanie Tuffen at the Department for Environment, Food and Rural Affairs can be contacted with any queries regarding the instrument. Telephone: 02087203379 or email: defra-plant-varieties-and-seeds@defra.gov.uk

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This SI amends The Marketing of Fruit Plant and Propagating Material (England) Regulations 2017 (FMR hereafter) and makes the following amendments:

(a) Removes the requirement for a post-implementation review.
(b) Inserts a definition of marketing to ensure clarity over what activities are covered by the regulations.
(c) Inserts a requirement that supplier documents moving with fruit plants of the CAC (*Conformitas Agraria Communitatis*) grade must state if the variety is genetically modified.
(d) Makes a minor correction where the term variety was used instead of the correct term of species.

4.2 Inserts a schedule to change how Implementing Directive 2014/98/EU is read to make the following modifications:

(a) Adds the pests Tobacco Ringspot Virus, Tomato Ringspot Virus and *Pucciniastrum minimum* (blueberry rust) as Regulated Non-Quarantine Pests (RNQP) on hosts in line with changes made byThe Official Controls (Plant Health) and Phytosanitary Conditions (Amendment) Regulations 2025 (S.I. 2025/13).

(b) Adds requirements related to the site of production, testing and inspection in respect of the addition of these RNQPs on their respective hosts.
(c) Removes Fig Mosaic Agent as an RNQP due to the lack of recorded economic impacts.
(d) Removes *Candidatus* Phytoplasma australiense as an RNQP, and any associated requirements, as this is a quarantine pest for Great Britain.
(e) Modifies requirements in relation to site of production, testing and inspection for *Candidatus* Phytoplasma pyri (pear decline phytoplasma) to bring them in line with similar pests.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The FMR regulates the quality of fruit plants (for fruit production) and fruit propagating material on the market. It does this through setting production standards for that material to ensure that it meets minimum standards for plant health and quality as well as varietal identity standards where appropriate.

5.2 In England and Wales, the Fruit Propagating Certification Scheme (FPCS)[1] implements the regulations for the production of certified fruit plants and fruit propagating material of the Pre-Basic, Basic and Certified category. The different categories will have different quality requirements, with Pre-Basic being the more stringent when material is primarily being used for propagation, whereas certified represents the grade of plants that may be sold for fruit production.

5.3 CAC grade represents the minimum standards that any fruit plant for fruit production should meet in England, and growers will carry out inspections and confirm their plants meet these requirements through the current plant passporting scheme.

5.4 Assimilated Commission Implementing Regulation (EU) 2019/2072 (The Phytosanitary Conditions Regulations) will list RNQPs on fruit plants and propagating material, and the tolerance level, but does not include any other testing, import or movement requirements. Instead, requirements to ensure RNQP tolerances are met are included within the FMR. This includes production requirements such as asymptomatic virus testing of mother plants and inspection requirements to confirm visual freedom/production site tolerances are being met. Since Tobacco Ringspot Virus, Tomato Ringspot Virus and blueberry rust have been listed as RNQPs on regulated fruit hosts in 2019/2072, it is appropriate to add associated testing and inspection requirements to the FMR for those RNQPs.

5.5 In addition, the UK is currently the only country that has been granted EU wide equivalence for the marketing of fruit plants and fruit propagating material as long as it continues to meet the EUs requirements. The EU are also introducing testing, inspecting and site of production requirements for these RNQPs that are in line with similar pests in the FMR. To maintain equivalence, it is appropriate for us to mirror

[1] https://www.gov.uk/guidance/fruit-propagation-certification-scheme

those requirements, which we judge are suitable and justified, within our legislative framework so that trade can continue uninterrupted.

5.6 Currently, Tobacco Ringspot Virus and Tomato Ringspot Virus, though present in GB, have only been recorded in certain ornamentals. These requirements should help ensure freedom on the fruit plant industry from these viruses, which are much more damaging on fruit plants than ornamentals.

What was the previous policy, how is this different?

5.7 Previously, Tobacco Ringspot Virus, Tomato Ringspot Virus and blueberry rust were not regulated under the FMR and there were no associated testing, inspection or production requirements, so this SI will introduce these.

5.8 For *Candidatus* Phytoplasma pyri, the previous regulation would require all grades of material to fail if there was any detection of visible symptoms on a production site. This was disproportionate, and not in line with similar phytoplasma diseases on other fruit trees. On production sites, material of different grades is often kept physically isolated (in fact it is required for pre-Basic material to be produced under physical protection). We have updated the regulations so that now findings of *Candidatus* Phytoplasma pyri on a site will only cause material of the grade it was observed on to not qualify for certification.

5.9 A post implementation review was carried out in June 2022[2]. It is not appropriate to retain this review clause as the annual impact of the legislative changes was estimated to be below £10 million.

6. Legislative and Legal Context

How has the law changed?

6.1 The FMR outlines the quality, varietal identity and health requirements that regulated fruit plants and fruit propagating material must meet for different grades of material.

6.2 The FMR cross references the relevant annexes of Commission Implementing Directive 2014/98/EU for the health requirements that plants must meet at each grade, this is the version of that Directive as of IP completion day. These requirements will include testing of mother plants for RNQPs at appropriate intervals, requirements for visual inspection and requirements around pest freedom/tolerance levels for pests at the place of production. These requirements vary by grade, being most stringent for Pre-Basic and allowing some tolerance for pest findings at CAC grade, the lowest grade material can be marketed at.

6.3 We have used powers from the Plant Varieties and Seeds Act 1964 in order to insert a schedule that changes how 2014/98/EU is read in order to include requirements for these new RNQPs and update those for *Candidatus* Phytoplasma pyri.

Why was this approach taken to change the law?

6.4 The approach of inserting a schedule to change how Council Directive 2014/98/EU is read was taken because the alternative option of transposing all regulations into the FMR would have taken considerable time and would not have enabled new regulations to be in force in a timely manner. For other amendments, this was the only possible approach to make the necessary changes.

[2] https://www.legislation.gov.uk/uksi/2017/595/pdfs/uksiod_20170595_en_001.pdf

7. Consultation

Summary of consultation outcome and methodology

7.1 An informal stakeholder consultation was undertaken via email with all current users of the FPCS as well as other key stakeholder groups representing those involved in plant breeding and plant production. A joint consultation was carried out with Welsh and Scottish Governments, who were introducing equivalent regulations. There were no written responses to the consultation – this was also the case when stakeholders were consulted in relation to adding the RNQPs to the Phytosanitary Conditions Regulations and where no respondent provided any feedback on their addition. This is likely due to that fact there are no recent impacts of these pests on businesses in England.

8. Applicable Guidance

8.1 Guidance on the requirements for plants certified under FPCS is available[3] and will be updated again before the new requirements come into force in October. Guidance on the new measures was also provided to stakeholders during consultation.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because instrument because the annual impact of the legislative changes was estimated to be below £10 million, a saving of £0.02 million estimated for English businesses.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or voluntary bodies because the additional costs of these measures are limited to the cost of testing of pre-basic and basic mother plants at intervals, which is a fraction of all the plants produced. The other additional requirements are considered to be minor, and costs incurred will help protect the biosecurity and quality of fruit plants being produced in England.

9.3 The legislation does impact small or micro businesses. There is no exemption for small businesses, given the importance of protecting plant biosecurity and ensuring plant quality through the actions of all businesses, regardless of their size.

9.4 There is no significant impact on the public sector because there is no major effect on the functioning of the FPCS from these amendments and modifications to the requirements.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that these measures will be kept under review taking into consideration how they impact pass/failure rates of the FPCS scheme as well as reviewed in response to new information about the pests, such as interceptions or pest distributions.

[3] https://www.gov.uk/guidance/fruit-propagation-certification-scheme

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Baroness Hayman of Ullock has made the following statement:

10.3 "A statutory review clause is not required as the annual impact of the legislative changes was estimated to be below £10 million. The measures will also be kept under review following any developments as detailed in section 10.1"

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Baroness Hayman of Ullock, Parliamentary Under-Secretary of State, has made the following statement regarding Human Rights:

"In my view the provisions of The Marketing of Fruit Plant and Propagating Material (England) (Amendment) Regulations 2025 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").