EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (PLANT HEALTH) (PRIOR NOTIFICATION) AND PHYTOSANITARY CONDITIONS (AMENDMENT) REGULATIONS 2023

2023 No. 1131

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of His 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 third countries by introducing or amending protective measures against high-risk pests of plants (see section 7 below) in Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 as regards protective measures against pests of plants ("the Phytosanitary Conditions Regulation").

2.2 This instrument also amends Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products ("the Official Controls Regulation") to exempt certain fruit and vegetables imported from the EU, Liechtenstein, and Switzerland from the requirement to give prior notification to the competent authority (as defined in the Official Controls Regulation) of their arrival into GB.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, and Scotland, apart from Regulation 10(2)(a) which applies to England and Wales, and Regulation 10(2)(b) which applies to Scotland only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The principal legislation governing plant health is set out in retained EU legislation, namely Regulation (EU) 2016/2031 ("the Plant Health Regulation") and the Official

Controls Regulation (together "the EU Regulations"), and additional tertiary legislation made under the EU Regulations (such as the Phytosanitary Conditions Regulation).

6.2 The Plant Health Regulation and the Phytosanitary Conditions Regulation respectively establish protective measures against pests of plants and establish uniform conditions for the Plant Health Regulation (amongst other things).

6.3 Under powers conferred by the Withdrawal Act, this retained EU legislation was amended where necessary, in order to address failures in retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In particular, the Phytosanitary Conditions Regulation was amended by the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 ("S.I. 2020/1527") to set out the lists of pests that pose a risk to the biosecurity of GB, and measures in relation to the introduction into and movement within GB of plants, plant products and other objects, to reduce the risks in connection with those pests to an acceptable level.

6.4 Subsequent amendments have been made to those lists within the Phytosanitary Conditions Regulations by statutory instruments, such as the Phytosanitary Conditions (Amendment) (No. 3) Regulations 2022 ("S.I. 2022/1120"), to reflect ongoing assessments of the different risks posed to GB biosecurity. This instrument introduces further such amendments.

6.5 Annex 6 to the Official Controls Regulation provides for a transitional staging period which temporarily eases the requirement for certain official documents and the performance of official controls in relation to specified categories of plants and other goods imported into Great Britain from relevant third countries (defined in Annex 6). This instrument amends those arrangements to create an exception to the requirement for prior notification in respect of certain plants entering GB from EU Member States, Liechtenstein or Switzerland.

7. Policy background

What is being done and why?

7.1 This instrument amends the Phytosanitary Conditions Regulation to:

- Introduce measures against the import of host plants and other relevant goods for Citrus exocortis viroid, Columnea latent viroid, Pepper chat fruit viroid and Tomato planta macho viroid (together, "the solanaceous pospiviroids") to prevent their introduction into GB. The UK Plant Health Services concluded that these pathogens present an unacceptable risk to tomato and pepper crops in GB, following the European Food Safety Authority ("EFSA") Scientific Opinion on the risk of these pests.
- Revise the import requirements for certain goods to ensure that they are fully aligned to the risk posed by these goods. The revisions include the expansion of existing import requirements on potato tubers to cover plants for planting of potato (other than seeds). Trading volume data has shown that imports from the EU include both potato tubers and potato plants which could be associated with high-risk pests and diseases. Strengthening the measures is required to prevent the risk of harmful pests and diseases being introduced to GB via these imports and causing unacceptable impacts to GB potato production.

- Incorporate existing trade easements, including derogations retained from the EU that apply to certain wood from Canada and the United States of America ("USA") and to certain species of bonsai trees from Japan, that have recently expired or are due to expire soon. In addition, a temporary trade easement for testing requirements on seeds of tomato and pepper for *Tomato brown rugose fruit virus* ("ToBRFV") is included and made permanent.
- Align legislation with provisions which have already been amended by S.I. 2022/1120 to ensure that the same rules apply to EU member states, Liechtenstein, and Switzerland as other third countries.
- Alter the regulatory status of some pests following a technical review of their current risk to GB biosecurity. Certain pests are deregulated, in cases where their continued regulation is no longer technically justified, whilst other pests are newly added to the GB quarantine pest list, or to the provisional GB quarantine pest list.

7.2 Finally, this instrument amends the Official Controls Regulation to remove the requirement to give prior notification of certain fruit and vegetables, from the EU, Liechtenstein, and Switzerland, to the competent authority (as defined in the Official Controls Regulation) of their arrival into GB. This requirement was first introduced from 1st January 2022 which helped to assess the volume of imported goods and inform risk modelling. This instrument now ensures that these goods are being treated as low-risk goods while risk assessments are being conducted. This provision will reduce the administrative burden and cost to traders in the meantime.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to 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.

10. Consultation outcome

10.1 The measures addressing the solanaceous pospiviroids have been developed following targeted stakeholder engagement on the Scientific Opinion on the risk of these pests, conducted by EFSA. Engagement was also carried out for the deregulation of certain pests and the expansion of the import requirements of potato plants for planting. These engagements were published on the Plant Health Portal. Responses from stakeholders, including those from the Plant Health Advisory Forum, were supportive of the proposed measures to tackle the associated biosecurity risks.

10.2 Targeted stakeholder engagement was also conducted for the pre-notification exemption for certain fruit and vegetables. Similarly, this engagement was published on the Plant Health Portal and sent out to stakeholders, including those in the Plant Health Advisory Forum. The feedback was supportive of the proposal, given its benefits to trade.

10.3 A consultation regarding the existing trade easements, or the technical updates to regulatory status, was not deemed necessary as these amendments do not constitute policy changes.

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

11. Guidance

11.1 A summary of the changes to the Phytosanitary Conditions Regulation has been provided on the Plant Health Portal here: New Pest Measures - legislation for Autumn 2023 - UK Plant Health Information Portal (defra.gov.uk). This includes a Q&A document on the measures.

11.2 Similarly, a description of the pre-notification exemption has been provided on the Plant Health Portal here: Update on EU low-risk fruit and vegetables pre-notification requirements - UK Plant Health Information Portal (defra.gov.uk).

12. Impact

12.1 The impact on business, charities or voluntary bodies is estimated to be low. Any additional costs incurred are a result of changes to existing measures to protect plant biosecurity.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because no significant impact on the private or voluntary sector is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The amendments to the Phytosanitary Conditions Regulation and the Official Controls Regulation apply 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 businesses, regardless of their size.

14. Monitoring & review

14.1 The measures will be kept under review following any new or revised risk assessments, pest interceptions, changes in pest distributions and other development.

14.2 The instrument does not include a statutory review clause.

15. Contact

15.1 Suzie Pearce at the Department for Environment, Food and Rural Affairs, Telephone: 07557 486012 or email: Suzannah.pearce@defra.gov.uk can be contacted with any queries regarding the 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 Benyon, Minister of State, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.