EXPLANATORY MEMORANDUM TO

THE PHYTOSANITARY CONDITIONS (AMENDMENT) (NO. 2) REGULATIONS 2022

2022 No. 484

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 Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

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 enhancing protective measures for at-risk plant goods (see section 7).

2.2 This instrument amends Regulation (EU) 2019/2072 ("the Phytosanitary Conditions Regulation") to update existing pest measures to strengthen protections against the risk of Thaumetopoea pityocampa ("pine processionary moth") being introduced to GB.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument has been made to reduce the risk of pine processionary moth entering GB. Pine processionary moth is a significant threat to the coniferous forests of GB. The Department recognises the importance of there being a 21-day period between the laying and coming into force of an S.I. This S.I. however comes into force a day after it is laid to urgently remove an option in legislation which has allowed the import of infested plants into GB.

3.2 Currently the import of pine and cedar trees from third countries is allowed provided one of four measures is satisfied. One of these measures includes a requirement that plants for planting are accompanied by an official statement that the plants have been produced in nurseries which along with its vicinity has been found free of pine processionary moth on the basis of official inspections and surveys carried out at appropriate times. This measure is no longer effective as trees imported with this official statement have been found to be infested with pine processionary moth. This has demonstrated that the existing measures are not being complied with and that host trees are being exported from nurseries where the pest is present. It also shows that there is significant uncertainty regarding the pest status of nurseries exporting to GB.

3.3 The S.I. also extends the three remaining requirements to plants (in addition to plants for planting), other than seeds, as pine processionary moth has previously been found on imported foliage of pine species.

3.4 The main risk at this time of year is that soil and growing media attached to host trees will be infested with pupae of pine processionary moth, which cannot be detected on

visual inspection, either pre-export or at the point of import. Such pupae emerge as adults in late spring/early summer, to lay eggs on host trees and establish new populations. An urgent update to regulations is needed to minimise the risk of further infested consignments being imported into GB.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, and Scotland.

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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 Under the European Union (Withdrawal) Act 2018 (c. 16) ("the Withdrawal Act"), Regulation (EU) 2016/2031 ("the Plant Health Regulation") and the Phytosanitary Conditions Regulation, (together "the EU Regulations"), and additional tertiary legislation made under the Plant Health Regulation, were converted and preserved into domestic law ("retained EU law") at the end of the Transition Period.

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, the EU Regulations were 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 the Phytosanitary Conditions Regulation by statutory instruments such as the Phytosanitary Conditions (Amendment) Regulations 2022 (S.I. 2022/114) to reflect ongoing assessments of the different risks posed to GB biosecurity. This instrument introduces further such amendments.

7. Policy background

What is being done and why?

7.1 This instrument amends the Phytosanitary Conditions Regulation to update and extend the existing measures relating to pine processionary moth. Pine processionary moth is a significant threat to the coniferous forests of GB.

7.2 The range of pine processionary moth ("PPM") has been spreading north in mainland Europe and is becoming an increasing concern to the UK. In February and March 2022 pine processionary moth nests containing live caterpillars were intercepted on pine trees from France. Infested trees were found at two GB nurseries following

imports from a nursery in France. A third GB nursery also received trees from the same nursery in France, although the pest has not been identified in this case.

7.3 The Phytosanitary Conditions Regulations allows imports of pine and cedar trees from either: a) countries which are free from pine processionary moth; b) from a pest a free area within a country; c) from a nursery which along with its immediate vicinity is free from the pest (pest free place of production); or d) from a nursery or growing site where the trees have been grown under complete physical protection.

7.4 Currently option C allows the import of pine and cedar trees when accompanied by an official statement that the plants have been produced in nurseries known as "pest free place of production", which along with their vicinity, have been found free from pine processionary moth on the basis of official inspections and surveys carried out at appropriate times. Of the four import options it is the only one which allows imports from areas where PPM is present and trees have been grown outdoors. In light of the recent interceptions, this requirement has not been effective in preventing the entry of this pest into GB.

7.5 Recent information received from the National plant protection office (NPPO) in France confirmed that other places of production, which have been exporting pine and cedar trees to GB, have also been found to have infestations of pine processionary moth in their immediate vicinity. This provides further evidence that the existing measures relating to pest free places of production will not provide adequate assurance that host trees are free from pine processionary moth.

7.6 This instrument removes the option to import host trees of pine processionary moth from a pest free place of production which along with its vicinity has been inspected and found free from pine processionary moth, to address this risk and further strengthen protections against this pest. This instrument will impact all third countries that currently import these goods to GB under this option. Countries which comply with any of the three remaining import options stated in paragraph 7.3 will be able to continue exporting Pine and Cedar trees to GB.

7.7 The existing measures against pine processionary moth are also extended by this instrument to include plant products such as cut trees and foliage of pine. This is because cut trees pose a similar risk of being infested with pine processionary moth nests as growing trees. Additionally in 2020 pine processionary moth caterpillars were identified in imported cut foliage of Pinus strobus (weymouth pine).

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 existing measures to prevent the introduction of pine processionary moth into GB were originally developed following a consultation on the Pest Risk Analysis ("PRA"), which demonstrated risks associated with pine processionary moth becoming established in GB. An addendum to this PRA has been produced to provide an update on the current situation in relation to pine processionary moth and to further

support the need to extend these measures to plant products (cut trees and foliage) as well as plants for planting.

10.2 This instrument updates the existing measures following changes in the risk of this pest. Another consultation was not deemed necessary as these amendments do not constitute policy changes.

10.3 Stakeholders have been engaged on the content of this statutory instrument and are supportive of the measures being taken.

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 measures will be provided on the Plant Health Portal. This will include a Q&A document on the measures.

12. Impact

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

12.2 The impact on the public sector is expected to be low.

12.3 An 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 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 This instrument applies equally to all businesses importing high risk plant goods, 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 or other developments.

15. Contact

15.1 Kate Somerwill-Owens at the Department for Environment, Food and Rural Affairs, Telephone: 0208 565 4319 or email: kate.somerwill-owens@defra.gov.uk can be contacted with any queries regarding this 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, Parliamentary Under Secretary of State (Minister for Rural Affairs and Biosecurity) at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.