EXPLANATORY MEMORANDUM TO

THE PHYTOSANITARY CONDITIONS (AMENDMENT) REGULATIONS 2021

2021 No. 641

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.

2. Purpose of the instrument

2.1 The purpose of this instrument is to protect biosecurity and support trade between Great Britain ("GB") and the relevant third countries by introducing further protective measures for high risk plant goods (see section 7.1).

2.2 This instrument amends Regulation (EU) 2019/2072 ("the Phytosanitary Conditions Regulation"), to:

- introduce GB-wide measures against the import of host plants and other relevant regulated goods for certain pests. These measures apply to specific third countries that pose an unacceptable level of risk to GB.
- restore a derogation, as referenced in the Commission Decision (EU) 2002/499/EC, in respect of bonsai plants from the Republic of Korea.
- correct a sentence relating to measures against the import of host plants of the pest *Xylella fastidiosa* (Wells et al.) ("Xylella"). This minor correction removes erroneous wording about the scope of import requirements in relation to olive or almond plants grown in vitro.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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"), the Phytosanitary Conditions Regulation, ("the EU Regulations"), and additional tertiary legislation made under the EU Regulations, 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) so as to set out the lists of pests that pose a risk to the biosecurity of GB, and measures in relation to the introduction of plants, plant products and other objects into GB, and the movement of plants, plant products and other objects within GB, to reduce the risks in connection with those pests to an acceptable level.

6.4 Following the end of the Transition Period, under powers contained in the Plant Health Regulation and Regulation (EU) 2017/625 ("the Official Controls Regulation"), the Phytosanitary Conditions Regulation was amended by The Official Controls and Phytosanitary Conditions (Amendment) Regulations 2021 (S.I. 2021/136) ("the 2021 Regulations") to mitigate against the risk of introduction of pests into GB, by introducing GB-wide emergency measures against host plants of Xylella.

6.5 This instrument makes three amendments to the Phytosanitary Conditions Regulation. Firstly, it introduces new requirements against host plants of certain pests; *Neocerambyx raddei* (Blessig) ("the Oak Longhorn Beetle") and *Agrilus bilineatus* (Weber) ("the Two-Lined Chestnut Borer").

6.6 Secondly, it corrects an amendment enacted by the 2021 Regulations. One sentence in Part 3 of the 2021 Regulations erroneously omitted olive and almond plants grown in vitro from the import requirements, in contradiction to the requirements themselves, which correctly set out the conditions applicable to such plants grown in-vitro. Deleting this statement from the Phytosanitary Conditions Regulation removes ambiguity and ensures that these imports can occur, on the condition that they meet the relevant requirements.

6.7 Thirdly, it re-instates the Commission Decision (EU) 2002/499/EC ("the 2002 Decision") for the import of bonsai plants from the Republic of Korea, excluding specific bonsai species originating in the Republic of Korea from the prohibition referred to in the Phytosanitary Conditions Regulation. The 2002 Decision expired (without extension) on 31 December 2020 and did not therefore become retained EU law at the end of the Transition Period.

7. Policy background

What is being done and why?

7.1 The Oak Longhorn Beetle is a major pest of oak trees in Northeast China and has been recorded on sweet chestnut and *Castanopsis* trees. This pest is present across East Asia and has caused epidemic outbreaks in several provinces of Northeast China, resulting in ecological and economic losses. The Pest Risk Analysis ("PRA") conducted by the European and Mediterranean Plant Protection Organisation ("EPPO") concluded that the pest can establish in any areas where oak and sweet chestnut trees are grown.

7.2 The Two-Lined Chestnut Borer is a wood-boring beetle that is a pest of sweet chestnut and oak trees in North America. Widespread outbreaks of this pest have been recorded in its native range of Eastern and Central USA, as well as Canada, resulting in high levels of tree mortality and significant losses to the forestry and horticulture industries. A population of the Two-Lined Chestnut Borer has been established in Turkey, although it is not yet believed to have reached a size that could cause significant impact. It was concluded from the EPPO PRA that the GB climate would be suitable for this pest's establishment.

7.3 Both the above pests are not known to be present in GB, but there remains a concern about the possibility of them arriving in GB on imported host plants and products. The presence of these pests in the UK would introduce an additional threat to oak and sweet chestnut trees, which are already under pressure from outbreaks such as oak processionary moth and sweet chestnut blight. The tree species impacted by these pests have significant social, environmental and economic benefits in GB, all of which would be compromised by a pest outbreak. Consequently, this instrument introduces specific requirements for the import of host plants (either for planting purposes or the import of wood from such plants) to enhance the level of protection against the risk of these pests entering GB.

7.4 Correcting the error enacted by the 2021 Regulations ensures that the imports of high risk Xylella host plants are suitably controlled. This correction is in line with the original policy objective.

7.5 Finally, the amendment to the Phytosanitary Conditions Regulation, to introduce a derogation for Korean bonsai plants, does not constitute a policy change. The relevant provisions effectively re-instate the 2002 Decision, whilst incorporating amendments to reflect the withdrawal of the UK from the EU.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 have been developed following a consultation, published on the Plant Health Portal, on the EPPO PRA on each pest. Stakeholders were supportive of the

proposed measures to tackle these biosecurity risks, but there will inevitably be some negative impacts on those persons specialising in the plant species concerned (see Section 12). These pests are currently listed as provisional quarantine pests in the Phytosanitary Conditions Regulation, so there is already an obligation to ensure freedom from these pests. The new measures define the import requirements of host plants, to provide clarity to industry and set in place the process by which we can be assured that pest freedom will be achieved.

10.2 Formal consultations for the Korean bonsai derogation and the corrective Xylella measure were not deemed necessary as these amendments do not give rise to policy changes.

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

11. Guidance

11.1 A summary of the measures against host plants of the Two-Lined Chestnut Borer and the Oak Longhorn Beetle have been provided here: https://planthealthportal.defra.gov.uk/latest-news/gb-measures-against-agrilus-bilineatus-and-neocerambyx-raddei/ in a Q&A document.

11.2 The emergency measures against Xylella have been provided here: https://planthealthportal.defra.gov.uk/latest-news/new-gb-measures-against-xylella/. This includes a Q&A document and a list of the Xylella hosts that are relevant for these measures.

12. Impact

12.1 The impact of the pest measures introduced to prevent the introduction of the Two-Lined Chestnut Borer is estimated to be around £1.8m per year, affecting approximately 60 businesses. Similarly, it is estimated that the impact of the measures introduced to prevent the introduction of the Oak Longhorn Beetle will be around £0.04m per year, affecting approximately 10 businesses. Both estimated sums reflect the limitations on trade and the costs incurred from import requirements when trade does occur.

12.2 The impact of the Xylella measures are detailed in the Explanatory Memorandum to the 2021 Regulations.

12.3 A full Impact Assessment has not been prepared for this instrument because the level of estimated impact across businesses is below the £5m per year cost threshold.

12.4 There is no, or no significant, impact on charities or voluntary bodies as a result of policy changes introduced under this instrument.

12.5 There is no significant impact on the public sector.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 The measures addressing the Two-Lined Chestnut Borer, with an estimated cost of around £30,000 per business on average, are likely to affect a mix of larger chains and small businesses.

13.3 This is also the case for the measures addressing the Oak Longhorn Beetle, with an estimated cost of around £3,570 per business on average.

13.4 This instrument applies 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 developments.

15. Contact

15.1 Suzie Pearce at the Department for Environment, Food and Rural Affairs, Telephone: 0208 0267 171 or email: Suzannah.pearce@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.