EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH AND PHYTOSANITARY CONDITIONS (OAK PROCESSIONARY MOTH AND PLANT PESTS) (AMENDMENT) REGULATIONS 2023

2023 No. 497

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.

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 introducing protective measures against high-risk pests of plants. This instrument makes provision for a demarcated area for the GB quarantine pest, *Thaumetopoea processionea* L. ("Oak Processionary Moth"), consisting of an area where this pest is established ("the infested zone") and a buffer zone around that infested zone. Within this demarcated area, the movement of high-risk oak trees (which are oak trees for planting with a girth of at least 8 cm measured at 1.2 metres from the root collar) will only be permitted if professional operators comply with prescribed biosecurity and movement conditions. This instrument prohibits the movement of high-risk oak trees to any area outside of the demarcated area.

2.2 In addition, this instrument makes two corrections, firstly, to Commission Implementing Regulation (EU) 2019/2072 ("the Phytosanitary Conditions Regulation") to revise the movement and import requirements for seed potatoes. Secondly, it amends Commission Delegated Regulation (EU) 2019/829 ("the Temporary Derogations Regulation") to specify certain requirements on the authorisation application, which is seeking to temporarily allow the introduction or movement of regulated pests or plant commodities in GB.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Pests of Plants (Authorisations) (Amendment) Regulations 2022 ("S.I. 2022/1020") which amended the Temporary Derogations Regulation was reported for defective drafting by the Joint Committee on Statutory Instruments; please see the Committee's Sixteenth Report of Session 2022-23. That defective drafting is corrected by regulation 2.

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, for Parts 1 and 2, England and Wales, and Scotland; and for Part 3, England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is, for Parts 1 and 2, England and Wales, and Scotland; and for Part 3, England.

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 Regulation (EU) 2016/2031 ("the Plant Health Regulation") on protective measures against pests of plants establish controls and restrictions which apply to the import and internal movement in GB of certain plants, plant products and other objects. Tertiary legislation under the Plant Health Regulation include the Phytosanitary Conditions Regulation and the Temporary Derogations Regulation, these respectively establish uniform conditions for the application of the Plant Health Regulation (amongst other things) and supplement the Plant Health Regulation to provide temporary derogations for regulated pests or plant commodities for the purpose of official testing, scientific or educational purposes, trials, varietal selections, or breeding.

6.2 Under powers conferred by the European Union (Withdrawal) Act 2018 (c. 16), the Plant Health Regulation and tertiary legislation were amended where necessary, 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.

6.3 Subsequent amendments have been made to the Phytosanitary Conditions Regulations 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. Point 20 of Part A to Annex 8 of the Phytosanitary Conditions Regulation (inserted by S.I. 2022/114) makes provision for high-risk oak trees originating in GB and provides production requirements in relation to Oak Processionary Moth. This Annex was made in exercise of powers conferred by Article 41 of the Plant Health Regulation.

6.4 Article 28 of the Plant Health Regulation provides the appropriate authority may by regulations set out measures against specific GB quarantine pests. Those can include measures to be taken immediately by professional operators, establishment of demarcated areas plus provisions concerning the containment of the pest where the appropriate authority has concluded, on the basis of surveys or other evidence, that the eradication of the GB quarantine pest in a demarcated area is not possible.

6.5 The Temporary Derogations Regulation was amended by S.I. 2022/1020 to reduce administrative burdens on applicants and authorisation holders of scientific authorisations.

7. Policy background

What is being done and why?

7.1 Oak Processionary Moth is a significant threat to oak trees in GB and poses some risks to human and animal health as caterpillars can cause skin irritations, breathing difficulties and rashes. The UK Government operates a management programme to control the spread of this pest. The Forestry Commission conducts an annual surveillance programme to monitor spread and level of infestation of Oak Processionary Moth. The appropriate authority has determined on the basis of this surveillance data that the pest is established in London and some surrounding areas, and that eradication is not possible within the infested zone. Therefore, this instrument exercises the power conferred by Article 28 of the Plant Health Regulation to demarcate an area for the control and containment of Oak Processionary Moth.

7.2 This demarcation is necessary to manage the risk of potential spread of Oak Processionary Moth, whilst enabling a proportionate approach to trade of high-risk oak trees in a biosecure manner, through the implementation of strict containment measures within areas where the pest is present. The instrument creates provisions concerning measures to be taken immediately by professional operators to ensure acceptable biosecurity practices are followed prior to any movement. The provisions also make clear restrictions that prevent any high-risk oak trees moving within 10km of the area free from the pest.

7.3 Amendment of the Phytosanitary Conditions Regulation by S.I. 2020/1527 substituted the wrong table of tolerances for the presence of certain regulated pests, known as Regulated Non-Quarantine Pests ("RNQPs"), on the growing plants of seed potatoes entering and moving within GB. This is rectified by regulation 3.

7.4 As identified by the Joint Committee on Statutory Instruments, S.I. 2022/1020 amended the Temporary Derogations Regulation and failed to require the name and address of the laboratory or institution from which the material originated to be included in an application under that Regulation. This is rectified by regulation 2.

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 Defra have carried out informal engagement with relevant professional operators trading in high-risk oak trees, as identified by the Plant Health and Seeds Inspectorate and through relevant trade associations such as the Horticultural Trades Association and the British Association of Landscape Industries, during the development of this policy concerning Oak Processionary Moth.

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

11. Guidance

11.1 A summary of the measures has been provided on the Plant Health Portal here. This includes a Q&A document on the measures, including the changes for trade.

11.2 Further information on the Oak Processionary Moth policy changes have been provided on Gov.uk here.

12. Impact

12.1 There is no, or no significant negative, impact on business, charities or voluntary bodies. Businesses trading high-risk oak trees within the demarcated area will benefit from the introduction of trade with an estimated benefit of £20 million, over a 10-year period (the annual impact remains below £5 million throughout). The provisions have no impact on international trade as these are internal arrangements.

12.2 The corrections to legislation have no impact on trade. The correct RNQP tolerances have continued to be applied.

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

12.4 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 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.

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, Parliamentary Under Secretary of State for Rural Affairs, Access to Nature and Biosecurity can confirm that this Explanatory Memorandum meets the required standard.