

Rural Economy and Connectivity Committee

10th Meeting, 2021 (Session 5), Wednesday, 17 March 2021

European Union (Withdrawal) Act 2018

Introduction

1. This paper supports the Committee's consideration of consent notifications sent by the Scottish Government relating to UK statutory instruments (SIs) (see table below).

2. These regulations are being laid in relation to the European Union (Withdrawal) Act 2018. To assist the consideration of such instruments, a second protocol has been put in place between the Scottish Government and Scottish Parliament. It has replaced the [SI protocol agreed in 2018](#) and applies to all SI notifications which the Scottish Government sends to the Parliament from 1 January 2021. Information on the new protocol can be found [here](#) and additionally in this [letter from the Cabinet Secretary for the Constitution, Europe and External Affairs](#).

Reporting

3. Under the protocol referred to above, the Committee has the following two options following its consideration of the UK SI—

- a) Write to the Scottish Government to confirm it is content for consent for a UK SI to be given; or
- b) Consider the matter further, take evidence if appropriate and make a report to parliament.

4. If it chooses to report, it may make one of the following three recommendations—

- a) it is content for consent to be given for a UK SI to be made in the UK Parliament only.
- b) it is not content with the Scottish Government granting its consent and that the proposals should be made by an SSI; or
- c) it is not content with the Scottish Government granting its consent and that the proposals should be included as a UK SI in both parliaments made under the joint procedure.

5. The Committee's role in the protocol is to decide whether it agrees to the Scottish Government offering its consent to the UK Government to make regulations on its behalf. However, there are broader policy issues which may arise in future, not as a direct consequence of the notification, but due to Brexit itself. The Committee may wish to note these issues in its response to the Scottish Government and request that it be kept up to date on any developments on these matters.

INSTRUMENT

6. This table is intended to give a brief overview only. The letter and notifications related to the instruments are included in the annexes to this paper.

Instrument	Type*
The Plant Health (Amendment etc.) (EU Exit) (Amendment) Regulations 2021 (PH/11)	1
The Phytosanitary Conditions (Amendment) Regulations 2021 (PH/025)	1

*Type 1 scrutiny procedure requires the Scottish Government to seek the prior approval of the Scottish Parliament to any proposed decision to grant consent to UK Ministers

Type 2 scrutiny procedure enables Scottish Ministers to give consent to UK Ministers without prior approval by the Scottish Parliament.

DECISION

7. **The Committee is invited to consider the consent notifications referred to in this paper and determine whether it is content to write to the Scottish Government to confirm it is content for consent for the UK SIs referred to in the notifications to be given.**

Annexe A – EU Exit – Covering letter for PH/11 and PH/025

Annexe B – EU Exit – Notification for the Plant Health (Amendment etc.) (EU Exit) (Amendment) Regulations 2021 (PH/11)

Annexe C – EU Exit – Notification for the Phytosanitary Conditions (Amendment) Regulations 2021 (PH/025)

**Rural Economy and Connectivity Committee Clerking team
March 2021**

12 March 2021

Dear Edward,

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

- **THE PLANT HEALTH (AMENDMENT ETC) (EU EXIT) (AMENDMENT) REGULATIONS “PH/11”**
- **THE PHYTOSANITARY CONDITIONS (AMENDMENT) REGULATIONS 2021 “PH/025”**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to proposals by the Scottish Ministers to consent to the making of UK secondary legislation affecting devolved areas arising from EU Exit.

That protocol, as agreed between the Scottish Government and then Parliament, accompanied the letter from the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 4 November 2020 and replaced the previous protocol that was put in place in 2018.

I attach two Type 1 notifications which sets out the details of the SI's:

- the Plant Health (Amendment etc.) (EU Exit) (Amendment) Regulations 2021 (“PH/11”)
- the Phytosanitary Conditions (Amendment) Regulations 2021 (“PH/025”),

which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether the final SI is in keeping with the terms of this notification.

On current plans Defra's intention is for PH/11 to be laid for sifting on 24 March and for PH/25 to be laid on 17 May. It was only recently that Scottish Ministers were made aware of what the contents of the SI's would be, therefore the notification process could only start now. Unfortunately, due to the contents of the SI's only recently being agreed, the Scottish Parliament will not have 28 days to consider this notification.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

It would be helpful to have a response before the Scottish Parliament enters the pre-election period.

BEN MACPHERSON

ANNEXE B

The Plant Health (Amendment etc) (EU Exit) (Amendment) Regulations 2021 (PH/11)

The notification is Type 1

A brief overview of the SI – The Plant Health (Amendment etc.) (EU Exit) (Amendment) Regulations 2021 (PH/11)

PH/11 is to be made using powers under section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 to change the date of a transitional provision (from 31 March to 31 December 2021) contained at regulation 52 of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (PH/05).

The SI is subject to proposed negative procedure and is to be laid for sifting on 24 March.

Details of the provisions that Scottish Ministers are being asked to consent to.

To consent to extending the duration of a transitional provision relating to imports of plants, plant products and other objects into Great Britain from EU Member States. This transitional provision provides exemptions for specific commodities, listed at schedule 2 of PH/05, from the requirement for imports into GB from the EU to be accompanied by a phytosanitary certificate. The date on which that transitional provision expires is amended from 31st March 2021 to 31st December 2021.

Summary of the proposals

The transitional provision relates to the phased introduction of the requirement of import of plants, plants products and other objects into GB to have a phytosanitary certificate. Only high priority plant imports from the EU were subject to this requirement between 1 January and 31 March 2021. As the transitional provision was initially drafted, from 1 April all regulated plants and plant products from the EU would require to have a phytosanitary certificate to be imported into GB. The change made by PH/11 pushes back the date that all regulated products will require to have a phytosanitary certificate to commence on 1 January 2022.

The revised date is a necessary technical change. Imports of high priority goods from EU member states are still required to be accompanied by a phytosanitary certificate.

The amendment made by PH/11 does not confer powers to make legislation on UK or Scottish Ministers.

Does the SI relate to a common framework or other scheme?

No.

Summary of stakeholder engagement/consultation

The UK Plant Health Services, comprised of the four UK administrations have carried out numerous informal engagements with GB-wide stakeholders, such as the Fresh Produce Consortium and the Horticultural Trade Association, from Summer 2020 to January 2021, on the GB plant health import regime, regarding the extension of the third country plant health regime to include to plant, plant products

from EU member states, Liechtenstein and Switzerland. The traders welcomed the phased approach as this would allow not only the them to get used to the new system.

To extend the time period where only high priority plants are required to be imported with a phytosanitary certificate would be welcomed by Scottish stakeholders. The change to the date of the phasing for phytosanitary certificates is consistent with a robust plant health import regime, protecting biosecurity and avoids distorting trade or disadvantaging Scottish importers. Therefore it was deemed not necessary to consult specifically on this issue.

The Scottish Government will announce this to the trade through appropriate communications.

A note of other impact assessments, (if available)

An impact assessment was not carried out.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The provision to be made by the UK Government in PH/11 reflects the GB wide approach taken to continue to have an effective plant health import regime in place which supports traders without comprising biosecurity. Scottish Ministers consider that consenting to the SI is the most effective, pragmatic and transparent way to make the proposed changes.

Intended laying date (if known) of instruments likely to arise

It is intended to be laid for sifting on 24 March 2021.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

It was only very recently that the Scottish Ministers were advised of the UK Governments decision to change the date of the transitional provision for England. Whilst the late decision of the UKG is far from ideal, the Scottish Ministers, having considered the approach being taken by the UKG are content that the best approach for Scottish plant health interests and trade is to align with this approach and to agree to the extension of the date of the transitional provision being made by a UK SI. Unfortunately, due to the late communication of this change in England Scottish Parliament will not have 28 days to consider this notification.

However, it is hoped that on this occasion the Scottish Parliament, will consider it before Parliament enters the pre-election period.

Information about any time dependency associated with the proposal

The amendments made by the proposed instrument ensure the continued and effective operation of the GB wide-plant health regime.

Are there any broader governance issues in relation to this proposal, and how with these be regulated and monitored post-withdrawal

No

Any significant financial implications?

No.

THE PHYTOSANITARY CONDITIONS (AMENDMENT) REGULATIONS 2021 (PH/25)

The notification is Type 1

A brief overview of the SI - The Phytosanitary Conditions (Amendment) Regulations 2021 (“PH/25”)

PH/25 is made using powers under Articles 5(3), 30(1), 41(3), 72(3) and 105(6) of retained Regulation (EU) 2016/2031 (“the Plant Health Regulation”) to amend:

- retained Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 (“the Phytosanitary Conditions Regulation”).

The SI is subject to the negative procedure and is to be laid week commencing 17 May 2021.

Details of the provisions that Scottish Ministers are being asked to consent to.

Technical amendments using powers in the Plant Health Regulation to be made to various Annexes in the Phytosanitary Conditions Regulation to protect plant biosecurity.

Summary of the Proposals

Amendment of the Phytosanitary Conditions Regulation

These amendments are technical in nature. The Phytosanitary Conditions Regulation was previously deficiency fixed by the UK SI, the Plant Health (Phytosanitary Conditions) (Amendment) (EU Exit) Regulations 2020 (PH/06). The Phytosanitary Conditions Regulation contains Annexes which list the measures to be taken in respect of the import of specific commodities into GB to ensure the continued functioning of plant health phytosanitary controls within GB and to protect biosecurity.

1. Strengthening measures in respect of import of host plants of two forestry pests

To protect *Quercus* (Oak) and genera of *Castanea* (chestnut), strengthened import measures are required to be introduced in respect of two forestry pests that are not known to occur in GB. If the pests were introduced this would result in ecological and economic losses. The wood-boring beetles can cause serious damage to host trees, and in some cases kill them outright. The measures introduced impose conditions on imports of host plants for planting, round wood and sawn wood, and wood packaging material. The forestry pests are:

- *Agrilus bilineatus* (Weber) (AGRLBL) (two-lined chestnut borer)
- *Neocerambyx raddei* (Blessig) (MALLRA) (formerly known as *Massicus raddei*), (longhorn beetle).

In addition, amendments are made to:

- measures for wood, wood chips and for plants for planting of *Castanea* and *Quercus*, and isolated bark of *Quercus* from certain countries

- measures for wood and plants of *Quercus* and *Castaniopsis* from certain countries

2. Correction of entry in relation to *Xylella*

The SI will make corrections to the Phytosanitary Conditions Regulation by removing an unnecessary exclusion on in vitro olive or almond plants.

3. Re-introduces a derogation in relation to bonsai plants from Republic of Korea

The SI introduces provision in relation to imports of bonsai plants from Republic of Korea, enabling certain types of plants to be permitted into GB during specific times. This reflects the contents of Commission Decision (EU) 2002/499/EC. This expired on 31 December 2020 in the EU without extension so did not form part of retained EU law. It is expected that the EU will re-introduce these measures.

In terms of the UK's new relationship with the EU, the UK-EU Trade and Cooperation Agreement makes provision in relation to sanitary and phytosanitary measures, informed by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which envisages that the parties may take proportionate measures to address risks identified. Consistent with the TCA and SPS principles, the new measures apply equitably to all trading partners.

Further details in relation to the technical amendments made to the Phytosanitary Conditions Regulation are included in Annex A of this notification.

None of the amendments made by PH/25 confer powers to make legislation on UK or Scottish Ministers.

Does the SI relate to a common framework or other scheme?

No.

Summary of stakeholder engagement/consultation

The strengthened measures relating to the two forestry pests were developed in consultation with the Plant Health Advisory Forum, Defra Tree Health Group and the Scottish Tree Health Advisory Group, the latter of which includes stakeholders such as the Woodland Trust (Scotland), the Confederation of Forest Industries (Confor), and representatives from the forest tree production and wood use and processing sectors. This engagement found Scottish (and wider UK) stakeholders to be supportive of these measures.

In respect of the measures in relation to Korean bonsai, in Scotland we do not currently have any importers of this product.

The Scottish Government will also provide a mail shot to Scottish industry when the new measures come into force.

A note of other impact assessments, (if available)

Regulatory Triage Assessments have been carried out for both bark beetles by Defra. The impact on business is relatively small in comparison to the ecological and economic impact that could occur in Scotland or GB if these beetles were to become established. In one study of a *Neocerambyx raddei* (longhorn beetle) outbreak in China approximately 45% of trees in oak forests were found to be affected, and in plots with serious infestations over 80% of oak trees in a stand were infested. The UK climate overlaps with that of regions where both beetles are established, and oak and chestnut tree species in the UK are either known or likely to be susceptible hosts for

the beetles. The social and environmental value of GB woodland Oak trees is estimated to be at least £320 million per year. Costs to business are likely to be higher in England than Scotland as England is the primary arrival point for relevant products. The ecological and economic impact if these beetles were to become established in GB would also be higher in England due to larger and more widespread populations of oak and chestnut trees.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The amendments to be made by the UK Government in PH/25 reflect the GB wide approach taken to protect GB biosecurity. Scottish Ministers consider that consenting to the SI is the most effective and transparent way to make changes to address these issues at the GB level. Officials have worked with UKG to ensure the drafting delivers for Scotland's interests and respects devolved competence in Scotland.

Intended laying date (if known) of instruments likely to arise

It is intended to be week commencing 17 May.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

The UK Plant Health Services had planned an ambitious programme of legislation to be laid and come into force in the first quarter of 2021. This is comprised of legislation that could not be introduced until after the end of the transition period, further deficiency fixes that were not able to be made in the run up to the end of 2020 and other legislation implementing the post transition period Plant Health regime. The four administrations of the UK have worked together to bring forward as much of this legislation as possible before we enter the pre-election period ahead of the 2021 Scottish Parliament elections. As such, it was only very recently agreed between the GB administrations what would be included in the contents of PH/25 and this means that unfortunately the Scottish Parliament will not have the full 28 days to consider this notification.

However, it is hoped that on this occasion the Scottish Parliament will, consider it before Parliament enters the pre-election period.

Information about any time dependency associated with the proposal

The amendments made by the proposed instrument ensure the continued and effective operation of the GB wide-plant health regime.

Are there any broader governance issues in relation to this proposal, and how with these be regulated and monitored post-withdrawal

No.

Any significant financial implications?

No.

Annex 2: Part A	List of provisional GB quarantine pests: (This list differs from EU as pest are relevant to GB only)
Add	Under heading: C Insects and mites: <ul style="list-style-type: none"> • <i>Agrilus bilineatus</i> (Weber) [AGRLBL] • <i>Neocerambyx raddei</i> (Blessig) [MALLRA]. • *Bonsai pests
Annex 2: Part B	Under heading: B Insects and mites: <ul style="list-style-type: none"> • <i>Agrilus bilineatus</i> (Weber) [AGRLBL] • <i>Neocerambyx raddei</i> (Blessig) [MALLRA]
Annex 4: Part C	RNQPs concerning propagating material of ornamental plants and other plants for planting intended for ornamental purposes Bonsai Requirements for <i>Juniperus</i> , <i>Chamaecyparis</i> and <i>Pinus</i> plants
*Adding	
Annex 6: Part A	List of plants, plant products and other objects which may not be introduced into Great Britain if originating or dispatched from certain third countries
*Adding	Republic of Korea to entries for <i>Juniperus</i> , <i>Chamaecyparis</i> and <i>Pinus</i> plants
Annex 7: Part A	Plants, plant products and other objects originating in third countries which may only be introduced into Great Britain if special requirements are met:
Add	<ul style="list-style-type: none"> • New entries to definition of associated controlled dunnage • *New entries relating to the Bosnia plants from Republic of Korea
Amending	<ul style="list-style-type: none"> • regulations for wood, wood chips and for plants of planting of <i>Castanea</i> and <i>Quercus</i>, and isolated bark of <i>Quercus</i> from certain countries • regulations to wood and plants of <i>Quercus</i> and <i>Castaniopsis</i> from certain countries
Annex 7: Part B	Plants, plant products and other objects originating in third countries which are subject to emergency measures and may only be introduced into Great Britain if special requirements are met
Entry 5 - <i>Xylella</i> (plants in vitro) removing	Condition entry (c) in vitro
Annex 11 Part A	List of plants, plant products and other objects and the respective third countries of origin or dispatch, which may not be introduced into Great Britain unless they are

Adding	accompanied by a phytosanitary certificate, as referred to in Article 72(1) of Regulation (EU) 2016/2031 <ul style="list-style-type: none">• Various countries to entry for <i>Quercus</i>• New entry for types of wood for <i>Castanea</i> Mill• New entry for types of wood for <i>Castanopsis</i> (D. Don) Spach
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* The policy has been agreed but the specific changes are not yet available. It is anticipated the Bonsai requirements will be added as indicated.