

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION
LEGISLATION/DOCUMENTS WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL
AGREEMENT AND THE WINDSOR FRAMEWORK**

COM (2023) 661 final

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) 2016/2031 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS MULTIANNUAL SURVEY PROGRAMMES, NOTIFICATIONS CONCERNING THE PRESENCE OF REGULATED NON-QUARANTINE PESTS, TEMPORARY DEROGATIONS FROM IMPORT PROHIBITIONS AND SPECIAL IMPORT REQUIREMENTS AND ESTABLISHMENT OF PROCEDURES FOR GRANTING THEM, TEMPORARY IMPORT REQUIREMENTS FOR HIGH RISK PLANTS, PLANT PRODUCTS AND OTHER OBJECTS, THE ESTABLISHMENT OF PROCEDURES FOR THE LISTING OF HIGH RISK PLANTS, THE CONTENT OF PHYTOSANITARY CERTIFICATES, THE USE OF PLANT PASSPORTS AND AS REGARDS CERTAIN REPORTING REQUIREMENTS FOR DEMARCATED AREAS AND SURVEYS OF PEST

Submitted by Department for Environment Food and Rural Affairs

6 February 2024

SUBJECT MATTER

1. The European Commission (“the Commission”) document sets out a Proposal for a Regulation of the European Parliament and of the Council, to amend Regulation (EU) 2016/2031 on protective measures against pests of plants (“the EU Plant Health Regulation”). The EU Plant Health Regulation is one of the principal regulations of the plant health regime and establishes lists of regulated pests and products in line with prescribed criteria based on phytosanitary principles.
2. The amendments to the EU Plant Health Regulation by COM(23)661 (“the proposal”) are proposed to enhance its effectiveness, transparency, and the practical implementation of EU rules for plant health. The Commission emphasise that these amendments do not change the EU’s plant health policy but aim to improve the application of the existing policy. An Explanatory Memorandum (“EM”) has been requested for this Proposal, similar to the EMs which will be submitted separately on similar proposals (COM(23)639 and 643) to rationalise reporting requirements in other legislation applying to Northern Ireland.
3. The proposed measures will:
 - Require the reporting of non-compliances with the rules on Regulated Non-Quarantine Pests (“RNQPs”) via the electronic notification system, the Information Management System for Official Controls (“IMSOC”).

- Introduce a power to allow certain goods, for which it is impractical to attach an EU Plant Passport (such as logs), to move without an EU Plant Passport attached to the trade unit. EU Plant Passports must still be used and relate to the goods being moved under the EU Plant Health Regulation.
 - Amend the reporting obligations concerning the pest survey programme and demarcated areas.
4. The proposed measures will impact the process of exporting certain goods from Great Britain (“GB”) to the EU, as well as moving such goods to NI unless moved via the green lane, by:
- Clarifying that temporary measures may introduce specific import requirements for the respective plants and other goods against pests that provisionally qualify as Union Quarantine Pests.
 - Requiring that Phytosanitary Certificates (“PCs”) specifically state how the exporting country has ensured that the relevant goods comply with import requirements on RNQPs.
 - Providing the legal power to adopt a temporary derogation, from import prohibitions and special import requirements for goods that have been removed from the list of high-risk plants, plant products and other objects, based on a provisional assessment.
 - Consequently, providing the legal power to adopt procedural rules on how to submit and examine a request for granting temporary derogations.
 - Providing the legal power to adopt rules on the process for identifying and listing high-risk plants.
 - Clarifying the legal basis for expanding requirements for third countries’ equivalence to refer not only to internal movement requirements but also to existing import requirements, in line with the relevant International Standard.
 - Enabling official attestations, issued by exporting countries for specific imported plants, plant products and other objects, to be accepted as alternatives to international standards.

SCRUTINY HISTORY

5. There is no recent Parliamentary scrutiny history relevant to this Explanatory Memorandum.

MINISTERIAL RESPONSIBILITY

6. Responsibility lies with the Secretary of State for Environment, Food and Rural Affairs.

INTEREST OF THE DEVOLVED GOVERNMENTS (DGs)

7. Plant health is a devolved area. The proposal covers requirements in relation to the import of plants and plant products into the EU, as well as movements into NI from GB, which interacts with the Plant Health Common Framework that was provisionally agreed (subject to parliamentary scrutiny) with the Devolved Governments in 2020.

8. The Scottish and Welsh Governments, as well as the Department for Agriculture, Environment and Rural Affairs, have an interest in this Proposal. As agreed in the Plant Health Common Framework, NI participates in the plant health framework fully and on an equal basis to the other UK administrations. This includes involvement in all stages of policy development and in discussions to resolve disputes, which are open to Northern Ireland Executive officials and ministers. The arrangements established under the plant health framework reflect NI's integral place in the United Kingdom and provide the necessary consensus-based governance and dispute resolution mechanisms to facilitate continued cooperation between all four UK administrations on plant health matters. The Devolved Governments have been consulted in the preparation of this EM and any relevant comments were reflected in the EM.

LEGAL AND PROCEDURAL ISSUES

9.

i. **Legal Base**

Article 43(2) of the Treaty on the Functioning of the European Union provides the legal basis for adopting provisions necessary for the pursuit of the objectives of the common agricultural policy.

ii. **Voting Procedure**

Ordinary Legislative Procedure.

iii. **Timetable for adoption and implementation**

The Commission provided 8 weeks for feedback with a deadline of 1st January 2024. Once finalised and agreed by the EU, the proposed Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. A 6-month transition period will be granted for third countries to adapt to the new rules to declare on PCs how RNQP rules have been complied with.

POLICY AND LEGAL IMPLICATIONS

10. This proposal expands or provides several powers within the EU Plant Health Regulation, meaning that it has a wider flexibility on how it exerts plant health rules. However, there are no automatic legislative changes relating to GB.
11. Most of the proposed changes are expanding/providing powers rather than implementing changes to specific pests or host goods. Therefore, while we understand there could be a future impact, at this stage it is difficult to quantify exactly what this could look like.
12. The specific nature of impact on trade will only be clear once the EU have provided the necessary implementation regulations. However, there will be no impact to goods moving from Great Britain to Northern Ireland with a Northern Ireland Plant Health Label, where businesses will continue to benefit from reduced certification.
13. Moreover, in line with the Government's commitment to ensuring Northern Ireland traders have unfettered access to the rest of the UK internal market, these measures will in no way impede the movement of qualifying Northern Ireland goods from Northern Ireland to Great Britain. Such goods will also continue to benefit from the market access principles set out in the United Kingdom Internal Market Act 2020. Accordingly, so long as those goods meet Northern Ireland standards, they can be sold anywhere in the UK internal market.
14. GB exporters should benefit from several trade-enabling powers proposed so, in future, temporary derogations from import prohibitions and special import requirements for certain goods can be submitted, examined, and granted. The proposal sets out the information which needs to be submitted by the third country and the process the Commission will follow, including a time limit for completion, all of which improve transparency of this process. Furthermore, additional powers would allow official attestations from GB exporters (if deemed adequate for phytosanitary protection) to accompany relevant goods as required as alternatives to PCs, in the absence of suitable international standards. Finally, to increase transparency for GB and EU traders, new powers would enable the introduction of procedures for identifying and listing high-risk plants under the EU list of prohibited plants.
15. The direct impact of this proposal on GB exporters will be the change to the PC requirements; to declare how compliance with requirements on RNQPs has been ensured. This requirement will apply to all plants for planting imported into the EU, or moving to NI via the red lane, where RNQP requirements apply. No additional PCs are required - the affected plants for planting already require a PC and should meet RNQP rules, however where there are multiple options for complying with RNQP requirements, exporters will need to declare which requirement has been

met on the PC. This will have an administrative impact on exporters, as well as having an effect on the Animal and Plant Health Agency (“APHA”) IT system for exporting/re-exporting goods in GB, which the UKG is currently assessing the impact of. The process of re-exporting goods to the EU will also be impacted as the PCs provided from the country of origin will not meet the new EU requirements. The UKG is planning to engage with all relevant stakeholders on the new PC requirements on RNQP rules ahead of coming into force. The UKG has a policy on RNQPs under review, but as part of this, it will consider whether there is any benefit to introducing similar changes by requesting a declaration on compliance with RNQP requirements.

16. The Commission propose giving 6 months for third countries and their operators, including the UK, to adapt to these new rules for PCs. As above, plants for planting staying within the UK internal market and that move to NI with a Northern Ireland Plant Health label, rather than a PC, will be unaffected by these changes under the Windsor Framework.
17. Finally, the changes to EU member states are internal EU requirements and should not impact trade between GB-NI or GB-EU more widely but will be relevant as regards the movement of certain goods between NI and EU member states. They are not expected to negatively impact NI stakeholders.
18. No measures, equivalent to the changes to EU member states, by the UKG are planned, though the UK already does not attach UK Plant Passports (“UKPP”) to certain goods, such as logs, for practical reasons. Instead, UKPP are attached to delivery notes for such goods. The UKG is not aware of any other issues regarding the attachment of UKPP to other goods. In addition, the UKG is collaborating with industry to explore the use of electronic UKPP, instead of attaching physical UKPP, to hopefully develop over the next 24 months.
19. The EU Commission recently published its 2024 Work Programme, in which this proposal featured, shortly after the UK met with European Commission counterparts via the Joint Consultative Working Group (JCWG). This met the commitment set out in the EU Statement on enhanced engagement with NI stakeholders to discuss the Commission Work Programme with the JCWG.
20. To conclude, the UKG does not consider the changes proposed by the EU as being a significant risk to the biosecurity or trade of the UK.

CONSULTATION

21. No formal consultation or impact assessment was carried out as this is a proposed change to EU regulations which do not apply in GB as retained EU law, having been made after 31st December 2020.

FINANCIAL IMPLICATIONS

22. The EU Proposal has no financial implications that the UKG is aware of. The EU Commission concluded that the proposed amendments in the EU Proposal did not bear any significant economic impacts.

A handwritten signature in blue ink, appearing to read 'K Douglas-Miller', with a long horizontal line extending to the right.

LORD DOUGLAS-MILLER

**PARLIAMENTARY UNDER SECRETARY OF STATE (MINISTER FOR
BIOSECURITY, ANIMAL HEALTH & WELFARE)
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**