

POLICY NOTE

THE PLANT HEALTH (OFFICIAL CONTROLS AND MISCELLANEOUS PROVISIONS) (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2020

SSI 2020/176

The above instrument was made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure.

Purpose of the instrument

The principal purpose of this instrument is to amend the Plant Health (Official Controls and Miscellaneous Provision) (Scotland) Regulations 2019 (SSI 2019/421) (the “2019 Regulations”).

It introduces Temporary National Measures to strengthen plant health protection and introduce import controls against certain pests (*Agrilus Planipennis* and *Candidatus Phytoplasma ulmi*) which pose an unacceptable level of risk for Scotland and the rest of the UK.

The instrument also makes amendments to the 2019 Regulations to implement further required measures associated with plant health and imported wood and wood packaging material under the EU Plant Health Regulation (Regulation (EU) 2016/2031) and the plant health elements of the EU Official Controls Regulation (Regulation (EU) 2017/625) and associated tertiary legislation.

Policy Objectives

Temporary National Measures

Article 52 of the EU Plant Health Regulation allows Member states to take additional, Temporary National Measures (TNM) for plant health purposes. Such national measures can be introduced when a Member state (the UK is classed as a Member state for plant health purposes throughout the Implementation Period) has written to the European Commission with a technical case to request EU measures against a specific pest, and those measures have not or will not be introduced in time to mitigate the risk concerned.

It was the intention to introduce legislation in response to new threats for four pests, *Agrilus Planipennis*, *Candidatus Phytoplasma ulmi*, *Ceratocystis plantani* (J.M. Walter) Engelbr. & T.C. Harr and *Xylella fastidiosa* (Wells et al.). In England, these measures have already been introduced and similar measures were be introduced by the other administrations in the UK Plant Health Services.

The Scottish Government laid and made these TNM under the Plant Health (Official Controls and Miscellaneous Provision) (Scotland) Regulations 2020 (SSI 2020/152, “the 2020

Regulations”) which were to come into force 27 June 2020. However following UK notification to the EU of the new measures for these four pests, the European Commission have indicated that they believe for two of these pests, *Ceratocystis plantani* and *Xylella fastidiosa* the TNM proposed are not justified.

Subsequently, the Commission has, in accordance with Article 52(4) of the EU Plant Health Regulation, adopted Commission Implementing Decision 2020/758 (“Decision 2020/758”) requiring the revocation of the provisions relating to these pests. Although Decision 2020/758 specifically requires the revocation of English Regulations, equivalent legislation to the English Regulations has been made and laid in Scotland and under the 2020 Regulations.

In these circumstances this instrument revokes the 2020 Regulations in their entirety before they come into force, and the content of the 2020 Regulations is re-made with the appropriate provisions relating to the two pests removed.

This instrument therefore introduces TNM in relation to two pests, *Agrilus Planipennis* and *Candidatus Phytoplasma ulmi*).

Agrilus planipennis (Emerald ash borer)

The emerald ash borer (EAB), *Agrilus planipennis* Fairmaire is a highly destructive wood-boring beetle that feeds on the phloem of ash trees. It is present in a number of countries including Ukraine, other parts of eastern Europe, Asia and North America, where the risk of EAB is spreading from favourable host products is high. Measures already exist under the EU Plant Health Regulation for this regulated pest, but after further deliberation it is considered that these are not comprehensive enough, based on developing science, as the pest continues to spread. To combat the spread of EAB strengthened measures are necessary. This will be achieved by extending the required distance from outbreak sites and the removal of bark and sapwood from imported wood will reduce the likelihood of infected material being imported.

Candidatus Phytoplasma ulmi (Elms yellow)

This instrument corrects an error whereby import and movement requirements were inadvertently omitted from the EU Plant Health Regulation concerning the UK *Candidatus Phytoplasma ulmi* (Elms yellow) protected zone. The Commission has committed to correct this, but the timing of this unclear.

The measures described for EAB and Elms yellow mentioned will impose obligations on operators bringing consignments into Scotland from third countries and the Union territory (excluding the United Kingdom). Consequently, the existing offences within the 2020 Regulations are being retained to cover any possible breach of the new prohibitions and requirements. The changes will not introduce a new kind of non-compliance, simply extend regulation 37(1)(a) of the 2019 Regulations to cover the obligations the new measures will impose.

Amendments to the 2019 Regulations

The EU Plant Health Regulation and the EU Official Controls Regulation and related tertiary legislation (“the EU Regulations”) establish controls and restrictions which apply to the import (from third countries), and internal movement within and between EU Member States, of certain plants, plants pest and other material (such as soil). The purpose of the EU

Regulations is to help reduce biosecurity risk, strengthen the plant health regulatory regime and protect the environment from the spread of harmful pests.

The EU Regulations are directly applicable in the United Kingdom. Domestic legislation is not needed to implement the substantive provisions in this EU legislation. However, supplementary domestic provisions are necessary to enable the Scottish Ministers to carry out their obligations under the EU Regulations, enforce these Regulations and implement derogations to various provisions in the EU legislation that are available to Member states. For plant health in Scotland the 2019 Regulations contain these supplementary domestic provisions. Separate but parallel legislation is in place in Wales, Northern Ireland, and England.

In addition to adding provisions on TNM, this instrument also remakes provisions which were included in the 2020 Regulations. In particular, it extends definitions to include wood and wood packaging material. This instrument ensures consistency across the UK. This is of particular relevance to forestry as much of this imported material comes to Scotland via English ports.

The instrument also covers a provision in relation to Egyptian potatoes. Commission Decision 2004/4/EC (“the 2004 Decision”), which contained measures to prevent the spread of brown rot in the EU via potatoes originating in Egypt, was implemented in Scotland by the Potatoes Originating in Egypt (Scotland) Regulations 2004 (SSI 2004/111; “the 2004 Regulations”). In light of steps taken by Egypt that resulted in a reduction of cases of brown rot in the EU, Commission Implementing Decision 2011/787 (“the 2011 Decision”) repealed and replaced the 2004 Decision. The Potatoes Originating in Egypt (Scotland) Amendment Regulations 2012 (SSI 2012/37), which amended the 2004 Regulations, implemented the 2011 Decision in Scotland. The provisions of the 2004 Regulations are now nearly all duplicated in the 2019 Regulations and/or the EU Plant Health Regulation. As such, in order to streamline legalisation on the topic, this instrument revokes the 2004 Regulations and amends the 2019 Regulations to include provision to reflect the few elements of the 2004 Regulations that are not already reflected in the EU Plant Health Regulation and the 2019 Regulations.

The instrument also makes other minor additions and updates to the 2019 Regulations.

Consultation

The Scottish Government engaged with stakeholders during the planning and implementation of the EU Regulations. This included discussion and feedback provided by stakeholders at the UK Plant Health Advisory Forum (including NFU Scotland, the Horticultural Trades Association and CONFOR amongst others). Any affected businesses or other stakeholders will be encouraged to share with the Scottish Government their experience and impacts on an on-going basis.

A summary of these changes will be placed on the Scottish Government and Scottish Forestry web sites.

In addition a communications plan is being developed to manage engagement with Scottish businesses and stakeholders to mitigate the likely concern that is expected from amending these provisions.

Impact Assessments

A full impact assessment package was undertaken including an Equality Impact Assessment and a partial Business and Regulatory Impact Assessment (BRIA) for the 2019 Regulations with a commitment to undertake a full BRIA after a full year of these regulations being in force.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has not been undertaken for this instrument, as there are no significant financial implications on business charities or voluntary bodies. The new measures concern pests, which are already subject to Plant Health Inspector and Scottish Forestry inspection and surveillance programmes.

Scottish Forestry and
Scottish Government
Agriculture and Rural Economy Directorate

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