

**2020 No. 381**

**PLANT HEALTH, ENGLAND**

**The Official Controls (Plant Health and Genetically Modified Organisms) (England) (Amendment) Regulations 2020**

<i>Made</i>	- - - -	<i>30th March 2020</i>
<i>Laid before Parliament</i>		<i>31st March 2020</i>
<i>Coming into force</i>	- -	<i>21st April 2020</i>

The Secretary of State is designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the common agricultural policy(b).

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of that Act.

**Citation and commencement**

1. These Regulations may be cited as the Official Controls (Plant Health and Genetically Modified Organisms) (England) (Amendment) Regulations 2020 and come into force on 21st April 2020.

**Amendment of the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019**

2.—(1) The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019(c) are amended as follows.

(2) In regulation 6(3), after the definition of “non-forestry material” insert—

““official controls” includes any official controls within the meaning given in paragraph 5 of Schedule 1;”.

(3) In regulation 12—

(a) in paragraph (1)(a) and (b), after “controlled consignments”, in both places where it occurs, insert “, consignments which are subject to a prohibition or restriction by virtue of Part 1 of Schedule 1”;

(b) after paragraph (1) insert—

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(a) 1972 c. 68; the European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c.1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(b) S.I. 1972/1811, to which there are amendments not relevant to these Regulations. The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794.

(c) S.I. 2019/1517.

“(1A) In paragraph (1), “official controls” includes any official controls within the meaning given in paragraph 5 of Schedule 1.”.

(4) In regulation 14(2), in the definition of “prohibited material”—

(a) in sub-paragraph (b), at the end insert “or Part 1 of Schedule 1”;

(b) in sub-paragraph (c), at the end insert “or Part 2 of Schedule 1”.

(5) In regulation 38(1)(b), for “2 or 4” substitute “2(1), 2A(1), 2B(1), 2C(2), 2D(2), 2E(1), 2F(3), 3A, 4(1), 7(2) or (4) or 11(1)”.

(6) In Schedule 1—

(a) for paragraph 1 substitute—

“1. In this Schedule—

“controlled material” means any plant, plant product or other object of a description specified in paragraph 2(1), 2A(1), 2B(1), 2C(2), 2D(2) or 2E(1);

“in transit”, in relation to a Schedule 1 consignment or controlled material, means a Schedule 1 consignment or controlled material which—

(a) is being moved through England under customs supervision on its journey from one third country to another third country; or

(b) is being moved through England on its journey from one part of the Union territory to another part of the Union territory, and has passed or is passing through the territory of a third country during that journey;

“introduce” means introduce into England from a third country or another part of the Union territory, and “introduction” is to be construed accordingly;

“IPPC” means the International Plant Protection Convention 1951(a);

“ISPM 4” means International Standard for Phytosanitary Measures No. 4 of November 1995 on the requirements for the establishment of pest free areas, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(b);

“phytosanitary certificate” means—

(a) in the case of any plant, plant product or other object that must be accompanied by a phytosanitary certificate pursuant to Article 72, 73 or 74 of the EU Plant Health Regulation and paragraph 2A(1), 2B(1), 2C(2) or 2E(1), a phytosanitary certificate which complies with the requirements in Article 71(1) and (2) of the EU Plant Health Regulation as modified by paragraph 2A(2), 2C(3) or 2E(2) (as the case may be);

(b) in the case of any other plant, plant product or other object that must be accompanied by a phytosanitary certificate pursuant to paragraph 2C(2), a phytosanitary certificate for export in the form set out in Part A of Annex 5 to the EU Plant Health Regulation, or a phytosanitary certificate for re-export in the form set out in Part B of Annex 5 to that Regulation, which—

(i) complies with the requirements specified in Article 76(2) of the EU Plant Health Regulation; and

(ii) has been issued by the national plant protection organisation of the country of export or re-export in accordance with the provisions of Article 5(2) of the IPPC;

“Schedule 1 consignment” means a consignment which contains controlled material, including any controlled material for non-commercial use;

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(a) Adopted in 1951 (Treaty Series No.16 (1954), Cmd 9077) and last revised in 1997 (Miscellaneous Series No.15 (2003), Cmd 5945).

(b) Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

“transhipment”, in relation to a Schedule 1 consignment or controlled material, means its arrival in England by sea or air from a third country, and its movement under customs supervision from the vessel or aircraft of arrival to another vessel or aircraft in the same port or airport in preparation for onward travel, and “transhipped” is to be construed accordingly;

“transit declaration”, in relation to any controlled material, means a signed declaration of the professional operator who is in control of the controlled material stating that the controlled material is in transit or for transhipment.”;

(b) in Part 1—

(i) for the heading to paragraph 2 substitute “**Temporary measures in relation to *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.**”;

(ii) in paragraph 2—

(aa) after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) is subject to paragraph 2F(1).”;

(bb) omit sub-paragraph (2);

(iii) after paragraph 2 insert—

“**2A.**—(1) No person may introduce any plants described in columns (2) and (3) of Table A1 unless they are accompanied by a phytosanitary certificate which includes an official statement confirming the matters set out in the corresponding entry in column (4) of that table.

(2) None of the requirements specified in point 39 of Annex 7 to the Phytosanitary Conditions Regulation are to be treated for the purposes of Articles 41(1) and 71(1)(c) of the EU Plant Health Regulation as applying to the introduction of any plants described in columns (2) and (3) of Table A1.

(3) Sub-paragraph (1) is subject to paragraph 2F(1).

**Table A1**

(1)	(2) <i>Description of plants</i>	(3) <i>CN code</i>	(4) <i>Details of official statement</i>
1.	Plants intended for planting, other than seeds, of <i>Platanus</i> L., originating in Albania, Armenia, Switzerland, Turkey or the USA	ex 0602 10 90 ex 0602 20 20 ex 0602 20 80 ex 0602 90 41 ex 0602 90 45 ex 0602 90 46 ex 0602 90 48 ex 0602 90 50 ex 0602 90 70 ex 0602 90 99	The official statement must confirm that the plants have been grown throughout their life in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Ceratocystis platani</i> (J.M. Walter) Engelbr. & T.C. Harr.

<sup>(1)</sup> The name of the area(s) must be included in the phytosanitary certificate under the heading “Additional declaration”.

**Temporary measures in relation to *Candidatus Phytoplasma ulmi***

**2B.**—(1) No person may introduce any plants intended for planting, other than seeds, of *Ulmus* L. which originate in Canada or the USA unless they are accompanied by a phytosanitary certificate which includes an official statement confirming that no symptoms of *Candidatus Phytoplasma ulmi* have been observed at the place of production of the plants or in the immediate vicinity of the place of production since the beginning of the last complete cycle of vegetation.

(2) Sub-paragraph (1) is subject to paragraph 2F(1).

### Temporary measures in relation to *Agrilus planipennis* Fairmaire

**2C.**—(1) This paragraph applies to plants, plant products or other objects described in columns (2) and (3) of Table A2 in so far as they are not subject to the prohibition on the introduction into the Union territory of high-risk plants, plant products or other objects that applies by virtue of Article 42(2) of the EU Plant Health Regulation.

(2) No person may introduce any plants, plant products or other objects described in columns (2) and (3) of Table A2 unless they are accompanied by a phytosanitary certificate which includes an official statement confirming —

- (a) the matters set out in the corresponding entry in column (4) of that table; and
- (b) in the case of any plants, plant products or other objects which are not subject to Article 72, 73 or 74 of the EU Plant Health Regulation, that the plants, plant products or other objects are free from Union quarantine pests and pests subject to any measures adopted pursuant to Article 30(1) of that Regulation.

(3) None of the requirements specified in points 36 and 87 to 89 of Annex 7 to the Phytosanitary Conditions Regulation are to be treated for the purposes of Articles 41(1) and 71(1)(c) of the EU Plant Health Regulation as applying to the introduction of any plants, plant products or other objects described in columns (2) and (3) of Table A2 where they originate in Canada, China, the Democratic People's Republic of Korea, Japan, Mongolia, the Republic of Korea, Russia, Taiwan or the USA.

(4) Sub-paragraph (2) is subject to paragraph 2F(1).

**Table A2**

(1)	(2) <i>Description of plants, plant products or other objects</i>	(3) <i>CN code</i>	(4) <i>Details of official statement</i>
1.	Plants, other than fruit or seeds, of <i>Fraxinus</i> L., <i>Juglans ailantifolia</i> Carr., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch. or <i>Pterocarya rhoifolia</i> Siebold & Zucc., originating in Belarus, Canada, China, the Democratic People's Republic of Korea, Japan, Kazakhstan, Mongolia, the Republic of Korea, Russia, Taiwan, Ukraine or the USA	ex 0602 10 90 ex 0602 20 20 ex 0602 20 80 ex 0602 90 41 ex 0602 90 45 ex 0602 90 46 ex 0602 90 48 ex 0602 90 50 ex 0602 90 70 ex 0602 90 99 ex 0604 20 90 ex 1404 90 00	The official statement must confirm that the plants originate in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Agrilus planipennis</i> Fairmaire and that no part of the area lies within 100km of a known outbreak of <i>Agrilus planipennis</i> Fairmaire.  A phytosanitary certificate may not include any such official statement unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas.
2.	Wood of <i>Fraxinus</i> L., <i>Juglans ailantifolia</i>	ex 4401 12 00 ex 4403 12 00	The official statement must confirm:  (a) that the wood has undergone

	Carr., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch. or <i>Pterocarya rhoifolia</i> Siebold & Zucc., other than in the form of: —chips, particles, sawdust, shavings, wood waste or scrap, obtained in whole or in part from these trees, or —wood packaging material <sup>(2)</sup> , except dunnage which is supporting the wood in the consignment and which is constructed from wood of the same type and quality as that wood and meets the requirements in column (4), but including wood which has not kept its natural round surface, furniture or other objects made of untreated wood, originating in Belarus, Canada, China, the Democratic People's Republic of Korea, Japan, Kazakhstan, Mongolia, the Republic of Korea, Russia, Taiwan, Ukraine or the USA	ex 4403 99 00 ex 4404 20 00 ex 4406 12 00 ex 4406 92 00 4407 95 10 4407 95 91 4407 95 99 ex 4407 99 27 ex 4407 99 40 ex 4407 99 90 ex 4408 90 15 ex 4408 90 35 ex 4408 90 85 ex 4408 90 95 ex 4416 00 00 ex 9406 10 00	ionizing irradiation to achieve a minimum absorbed dose of 1kGy throughout the wood; or  (b) that the wood originates in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Agrilus planipennis</i> Fairmaire and that no part of the area lies within 100km of a known outbreak of <i>Agrilus planipennis</i> Fairmaire.  A phytosanitary certificate may not include the official statement referred to in paragraph (b) unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas.
3.	Wood in the form of chips, particles, sawdust, shavings, wood waste or scrap obtained in whole or in part from <i>Fraxinus</i> L., <i>Juglans ailantifolia</i> Carr., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch. or <i>Pterocarya rhoifolia</i> Siebold &	ex 4401 22 00 ex 4401 40 10 ex 4401 40 90	The official statement must confirm that the wood originates in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Agrilus planipennis</i> Fairmaire and that no part of the area lies within 100km of a known outbreak of <i>Agrilus planipennis</i> Fairmaire.  A phytosanitary certificate may not include any such official statement unless the national plant protection

<p>Zucc., originating in Belarus, Canada, China, the Democratic People's Republic of Korea, Japan, Kazakhstan, Mongolia, the Republic of Korea, Russia, Taiwan, Ukraine or the USA</p>	<p>organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas.</p>
<p>4. Isolated bark or objects made out of bark of <i>Fraxinus</i> L., <i>Juglans ailantifolia</i> Carr., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch. or <i>Pterocarya rhoifolia</i> Siebold &amp; Zucc., originating in Belarus, Canada, China, the Democratic People's Republic of Korea, Japan, Kazakhstan, Mongolia, the Republic of Korea, Russia, Taiwan, Ukraine or the USA</p>	<p>ex 1404 90 00 ex 4401 40 90</p> <p>The official statement must confirm that the bark originates in an area<sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Agrilus planipennis</i> Fairmaire and that no part of the area lies within 100km of a known outbreak of <i>Agrilus planipennis</i> Fairmaire.</p> <p>A phytosanitary certificate may not include any such official statement unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas.</p>

<sup>(1)</sup> The name of the area(s) must be included in the phytosanitary certificate under the heading "Additional declaration".

<sup>(2)</sup> "wood packaging material" means wood in the form of packing cases, boxes, crates, drums or similar packings, pallets, box pallets or other load boards, pallet collars or dunnage, whether or not actually in use in the transport of objects of any kind.

**National measures in relation to *Xylella fastidiosa* (Wells et al.)**

**2D.**—(1) Sub-paragraph (2) applies to any plants that are not subject to the prohibition in Article 15 of Commission Implementing Decision (EU) 2015/789.

(2) No person may introduce any plants, other than fruit or seeds, of *Coffea* or *Polygala myrtifolia* L. which originate in any third country.

(3) Sub-paragraph (2) is subject to paragraph 2F(1).

**2E.**—(1) No person may introduce any plants described in columns (2) and (3) of Table A3 unless—

- (a) they are accompanied by a phytosanitary certificate which includes an official statement confirming the matters set out in the corresponding entry in column (4) of that table; and
- (b) in the case of any plants described in columns (2) and (3) of that table in respect of entry 1, they are individually labelled with a tamper-proof label which includes details of their place of production.

(2) None of the requirements in Articles 16 and 17 of Commission Implementing Decision (EU) 2015/789 are to be treated for the purposes of Article 71(1)(d) of the EU

Plant Health Regulation as applying to the introduction of any plants described in columns (2) and (3) of Table A3.

(3) Sub-paragraph (1) is subject to paragraph 2F(1).

**Table A3**

(1)	(2) <i>Description of plants</i>	(3) <i>CN code</i>	(4) <i>Details of official statement</i>
1.	Plants intended for planting, other than fruit or seeds, of <i>Olea europaea</i> L. or <i>Prunus dulcis</i> (Mill.) D.A. Webb, originating in any third country	ex 0602 1090 ex 0602 2020 ex 0602 2080 ex 0602 9041 ex 0602 9045 ex 0602 9046 ex 0602 9047 ex 0602 9048 ex 0602 9050 ex 0602 9070 ex 0602 9091 ex 0602 9099	<p>The official statement must confirm:</p> <ul style="list-style-type: none"> <li>(a) that the plants have been grown in a place of production<sup>(1)</sup> which has been registered and supervised by the national plant protection organisation for a period of at least one year prior to the export of the plants;</li> <li>(b) that the place of production, together with a 200m zone surrounding the place of production, is known to be free from <i>Xylella fastidiosa</i> (Wells et al.) on the basis of official inspections, which included testing where appropriate, and were carried out at appropriate times during the 12 months prior to the export of the plants;</li> <li>(c) that the plants have been subjected to an annual official inspection at an appropriate time which included sampling and testing that confirmed the absence of <i>Xylella fastidiosa</i> (Wells et al.) and was carried out in accordance with international standards using a sampling scheme able to identify with 99% reliability a level of presence of infected plants of 1%;</li> <li>(d) that, immediately prior to their export, the plants were subjected to an official visual inspection for the presence of <i>Xylella fastidiosa</i> (Wells et al.) and, where any symptoms giving rise to a suspicion of its presence were observed, were tested in line with international standards for its presence, confirming its absence; and</li> <li>(e) where the place of production of the plants is located in an</li> </ul>

area where *Xylella fastidiosa* (Wells et al.) is known to occur, that the plants have been grown under complete physical protection for a period of at least four years prior to their export or, in the case of plants which are younger than four years, throughout their life.

A phytosanitary certificate may not include any such official statement unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the place(s) of production.

2. Plants intended for planting, other than seeds, of *Lavandula* L., *Nerium oleander* L. or *Rosmarinus officinalis* L., originating in any third country

The official statement must confirm:

- (a) in the case of plants, other than unrooted cuttings:
  - (i) that the plants have been grown in a place of production<sup>(1)</sup> which has been registered and supervised by the national plant protection organisation for a period of at least one year prior to the export of the plants;
  - (ii) that the place of production, together with a 200m zone surrounding the place of production, is known to be free from *Xylella fastidiosa* (Wells et al.) on the basis of official inspections, which included testing, where appropriate, that was carried out at appropriate times;
  - (iii) that the plants have been subjected to an annual official inspection at an appropriate time, which included sampling and testing that confirmed the absence of *Xylella fastidiosa* (Wells et al.) and was carried out in accordance with international standards



using a sampling scheme able to identify with 99% reliability a level of presence of infected plants of 5%;

- (iv) that, immediately prior to their export, the plants were subjected to an official visual inspection for the presence of *Xylella fastidiosa* (Wells et al.) and, where any symptoms giving rise to a suspicion of its presence were observed, were tested in line with international standards for its presence, confirming its absence;
  - (v) where there has been any evidence of the presence of the vector of *Xylella fastidiosa* (Wells et al.) at the place of production, that chemical and cultural controls have been used to suppress the vector; and
  - (vi) where the place of production is located in an area where *Xylella fastidiosa* (Wells et al.) is known to occur, that:
    - (aa) the plants have been grown throughout their life under complete physical protection; and
    - (bb) appropriate hygiene measures have been implemented at the place of production to ensure that *Xylella fastidiosa* (Wells et al.) is not transmitted by tools or equipment;
- (b) in the case of unrooted cuttings, that they derive from mother plants which were grown in accordance with the requirements specified in paragraph (a)(i) to (vi).

A phytosanitary certificate may not include any such official statement

unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the place(s) of production.

<sup>(1)</sup> Details of the place(s) of production must also be included in the official statement.

### **Exception for controlled material in transit**

**2F.**—(1) Paragraphs 2(1), 2A(1), 2B(1), 2C(2), 2D(2) and 2E(1) do not apply to the introduction of any controlled material from a third country if the controlled material is in transit when it arrives in England, or is to be transhipped on its arrival in England, and the conditions in sub-paragraph (2) are met.

(2) The conditions are that the controlled material is—

- (a) accompanied by a transit declaration; and
- (b) packed and introduced in such a way that there is no risk of any Union quarantine pests, protected zone quarantine pests<sup>(a)</sup> or pests subject to the measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation being spread on its introduction.

(3) No person may move any controlled material in transit through England unless it is—

- (a) accompanied by a transit declaration; and
- (b) packed and transported in such a way that there is no risk of any Union quarantine pests, protected zone quarantine pests or pests subject to the measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation being spread on its movement through England.”.

(7) in Part 2—

(a) after paragraph 3 insert—

“**3A.** No person may introduce any plants, other than fruit or seeds, of *Coffea* or *Polygala myrtifolia* L. which originate in any part of the Union territory, other than the United Kingdom.”;

(b) in paragraph 4—

(i) the existing text becomes sub-paragraph (1);

(ii) in that sub-paragraph—

- (aa) for “they” substitute “that person is a registered operator and the plants, plant products or other objects”;
- (bb) at the end insert “and, in the case of any plants described in column (2) of that table in respect of entry 5, they are individually labelled with a tamper-proof label which contains details of their place of production”;

(iii) after that sub-paragraph insert—

“(2) None of the requirements specified in point 17 of Annex 8 to the Phytosanitary Conditions Regulation are to be treated for the purposes of Articles 41(1) and 85(c) of the EU Plant Health Regulation as applying to the introduction or movement of any plants described in column (2) of Table 1 in respect of entry 3.

(3) None of the requirements in Articles 9 and 9a of Commission Implementing Decision (EU) 2015/789 are to be treated for the purposes of Article 85(d) of the EU Plant Health

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(a) “Protected zone quarantine pest” is defined in Article 32 of Regulation (EU) 2016/2031.

Regulation as applying to the introduction or movement of any plants described in column (2) of Table 1 in respect of entries 5 and 6.”;

(c) in Table 1, after entry 2 insert—

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|---|---|
| “3. Plants intended for planting, other than seeds, of <i>Platanus</i> L., originating in any part of the Union territory, other than the United Kingdom  | The official statement must confirm that the plants have been grown throughout their life in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Ceratocystis platani</i> (J.M. Walter) Engelbr. & T.C. Harr.  |
| 4. Plants intended for planting, other than seeds, of <i>Ulmus</i> L., originating in any part of the Union territory, other than the United Kingdom  | The official statement must confirm that no symptoms of <i>Candidatus Phytoplasma ulmi</i> have been observed at the place of production of the plants or in the immediate vicinity of the place of production since the beginning of the last complete cycle of vegetation.  |
| 5. Plants intended for planting, other than fruit or seeds, of <i>Olea europaea</i> L. or <i>Prunus dulcis</i> (Mill.) D.A. Webb, originating in any part of the Union territory, other than the United Kingdom | <p>The official statement must confirm:</p> <ul style="list-style-type: none"><li>(a) that the plants have been grown in a place of production<sup>(2)</sup> which<ul style="list-style-type: none"><li>(i) has been registered and supervised by the relevant competent authority in the member State of origin for a period of at least one year prior to the movement of the plants from the place of production; and</li><li>(ii) has previously been notified by the competent authority to the national plant protection organisation of the United Kingdom;</li></ul></li><li>(b) that the place of production, together with a 200m zone surrounding the place of production, is known to be free from <i>Xylella fastidiosa</i> (Wells et al.) on the basis of official inspections, which included testing, where appropriate, and were carried out at appropriate times during the 12 months prior to the movement of the plants from the place of production;</li><li>(c) that the plants have been subjected to an annual official inspection at an appropriate time, which included sampling and testing that confirmed the absence of <i>Xylella fastidiosa</i> (Wells et al.) and was carried out in accordance with international standards using a sampling scheme able to identify with 99% reliability a level of presence of infected plants of 1%;</li><li>(d) that, immediately prior to their movement from the place of production, the plants were subjected to an official visual inspection for the presence of <i>Xylella fastidiosa</i> (Wells et</li></ul> |

al.) and, where any symptoms giving rise to a suspicion of its presence were observed, were tested in line with international standards for its presence, confirming its absence; and

- (e) where the place of production of the plants is located in an area where *Xylella fastidiosa* (Wells et al.) is known to occur, that the plants have been grown under complete physical protection for a period of at least four years prior to their movement from the place of production or, in the case of plants which are younger than four years, throughout their life.

- 6. Plants intended for planting, other than seeds, of *Lavandula* L., *Nerium oleander* L. or *Rosmarinus officinalis* L., originating in any part of the Union territory, other than the United Kingdom

The official statement must confirm:

- (a) in the case of plants, other than unrooted cuttings:
  - (i) that the plants have been grown in a place of production<sup>(2)</sup> which
    - (aa) has been registered and supervised by the relevant competent authority in the member State of origin for a period of at least one year prior to the movement of the plants from the place of production; and
    - (bb) has previously been notified by the competent authority to the national plant protection organisation of the United Kingdom;
  - (ii) that the place of production, together with a 200m zone surrounding the place of production, is known to be free from *Xylella fastidiosa* (Wells et al.) on the basis of official inspections, which included testing, where appropriate, that was carried out at appropriate times;
  - (iii) that the plants have been subjected to an annual official inspection at an appropriate time, which included sampling and testing that confirmed the absence of *Xylella fastidiosa* (Wells et al.) and was carried out in accordance with international standards using a sampling scheme able to identify with 99% reliability a level of presence of infected plants of 5%;
  - (iv) that, immediately prior to their movement from the place of production, the plants were subjected to an official visual inspection for the

presence of *Xylella fastidiosa* (Wells et al.) and, where any symptoms giving rise to a suspicion of its presence were observed, were tested in line with international standards for its presence, confirming its absence;

- (v) where there has been any evidence of the presence of the vector of *Xylella fastidiosa* (Wells et al.) at the place of production, that chemical and cultural controls have been used to suppress the vector; and
- (vi) where the place of production is located in an area where *Xylella fastidiosa* (Wells et al.) is known to occur, that:
  - (aa) the plants have been grown throughout their life under complete physical protection; and
  - (bb) appropriate hygiene measures have been implemented at the place of production to ensure that *Xylella fastidiosa* (Wells et al.) is not transmitted by tools or equipment;
- (b) in the case of unrooted cuttings, that they derive from mother plants which have been grown in accordance with the requirements specified in paragraph (a)(i) to (vi).

<sup>(1)</sup> The name of the area(s) must be included in the official statement.

<sup>(2)</sup> Details of the place(s) of production must also be included in the official statement.”.

(8) After Part 2 insert—

## “PART 3

### Official controls on consignments from third countries

#### 5.—(1) In this Part—

“border control post” means a border control post in England which has been designated pursuant to Article 59(1) of the Official Controls Regulation for the purposes of the rules referred to in Article 1(2)(g) of that Regulation;

“documentary check”, in relation to a Schedule 1 consignment, means an examination of the phytosanitary certificate or transit declaration which is required to accompany the consignment on its introduction from a third country pursuant to Part 1;

“domestic import rule” means any prohibition, restriction or requirement in respect of the introduction of controlled material which applies by virtue of Part 1;

“identity check”, in relation to a Schedule 1 consignment, means a visual inspection of the controlled material in the consignment to verify that its contents correspond to the information provided in the phytosanitary certificate or transit declaration accompanying the consignment;

“official controls” means activities performed by an appropriate authority or a plant health inspector pursuant to this Part to verify that the controlled material in a Schedule

1 consignment complies with the domestic import rules relating to the material and that the operator of the consignment complies with this Part;

“operator”, in relation to a consignment, means the importer of the consignment, or the person, acting on behalf of the importer, who is in charge of the consignment when presented at the border control post of first arrival in England and makes the necessary declarations to the appropriate authority;

“physical check”, in relation to the controlled material in a Schedule 1 consignment, means any check on that material, the packaging of the consignment or its means of transport which, in the opinion of a plant health inspector, is necessary to verify that the controlled material complies with the domestic import rules relating to that material;

“plant health entry document” has the meaning given in paragraph 7(1);

“responsible operator”, in relation to a consignment, means the operator who is responsible for that consignment.

(2) Where any controlled material is required to be accompanied by a phytosanitary certificate pursuant to Part 1, any reference in this Part to the controlled material complying with the domestic import rules relating to that material is to be construed as including its compliance with the matters certified in the official statement that has been included in the phytosanitary certificate in respect of the controlled material.

### **Application of this Part**

6.—(1) This Part applies to a Schedule 1 consignment which is to be, or is, brought into the Union territory from a third country where its point of first arrival into the Union territory is in England.

(2) But it does not apply to—

- (a) any Schedule 1 consignment which forms part of the personal luggage of a passenger where the controlled material in the consignment is intended for personal consumption or use and does not include any plants for planting; or
- (b) any small Schedule 1 consignment addressed to a natural person which is not intended to be placed on the market and does not include any plants for planting.

(3) Where a Schedule 1 consignment contains any plant, plant product or other object which is not controlled material, and Article 47(1) of the Official Controls Regulation applies in relation to that plant, plant product or other object, this Part applies only for the purposes of the performance of official controls on the controlled material in the consignment.

### **Notification and presentation of Schedule 1 consignments**

7.—(1) A “plant health entry document” is an entry document, in the form required by an appropriate authority, to be used—

- (a) for the prior notification of the arrival of a Schedule 1 consignment at a border control post in England; and
- (b) for the purposes of recording the outcome of official controls on the consignment and any decisions taken by a plant health inspector in relation to the consignment under this Part.

(2) The operator responsible for a Schedule 1 consignment must complete the relevant part of a plant health entry document and submit the completed part to the appropriate authority—

- (a) in the case of a consignment which is to be brought in by air, at least four working hours before its expected arrival in England;
- (b) in the case of a consignment which consists in whole or in part of unprocessed logs or sawn or chipped wood and is to be brought into a point of entry which only has

a temporary border control post, at least three working days before its expected arrival in England;

- (c) in the case of any other consignment, at least one working day before its expected arrival in England.

(3) In the case of a Schedule 1 consignment which is intended to be transhipped, the appropriate authority may by notice in writing require the responsible operator to provide it, by the time or date specified in the notice, with the information set out in the notice in relation to the proposed transhipment.

(4) The operator responsible for a Schedule 1 consignment must arrange for the consignment, together with the phytosanitary certificate or transit declaration accompanying the consignment, to be presented to the appropriate authority at the border control post of first arrival.

(5) In sub-paragraph (2)—

“temporary border control post” means a border control post which has been exempted from the obligations in Article 64(3)(a), (c) and (f) of the Official Controls Regulation pursuant to Article 4 of Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts(a);

“working day” and “working hour” have the same meanings as in regulation 7(4).

#### **Consignments not correctly presented for official controls**

8. Where a plant health inspector suspects or is aware that a consignment which has arrived at a border control post in England is a Schedule 1 consignment and the operator responsible for that consignment has not presented the consignment to the appropriate authority in accordance with paragraph 7(4), the plant health inspector must serve a notice on the operator recalling the consignment and placing the consignment under official detention.

#### **Official controls to be performed on Schedule 1 consignments**

9.—(1) The appropriate authority must perform official controls on a Schedule 1 consignment at the border control post of arrival.

(2) Any documentary check, identity check or physical check in relation to a Schedule 1 consignment must be performed by a plant health inspector.

(3) In the case of a Schedule 1 consignment which is in transit, a plant health inspector may require the following official controls to be carried out before authorising any onward transit of the consignment—

- (a) a documentary check of the transit declaration and an examination of any other official documents accompanying the consignment;
- (b) a physical check of the consignment’s packaging and means of transport to verify that there is no risk of any Union quarantine pests, protected zone quarantine pests or pests subject to the measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation being spread whilst in transit through the Union territory.

(4) In the case of a Schedule 1 consignment which is being transhipped and remains, or is to remain, at the border control post of arrival for longer than the transhipment period, a plant health inspector may require the following official controls to be carried out—

- (a) a documentary check of the transit declaration and an examination of any other official documents accompanying the consignment;

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(a) OJ No. L 165, 21.6.2019, p.4.

(b) an identity check or plant health check in relation to the consignment.

(5) In the case of any other Schedule 1 consignment, a plant health inspector must carry out a documentary check, identity check and a physical check.

(6) Any documentary check, identity check or physical check which is carried out in relation to a Schedule 1 consignment must, so far as possible, be carried out by a plant health inspector in the same manner as the inspector would carry out the check if the consignment were a consignment of plants, plant products or other objects referred to in Article 47(1)(c) of the Official Controls Regulation.

(7) Where a plant health inspector suspects that a Schedule 1 consignment is likely to be, or has been, brought into England from a third country in contravention of a domestic import rule or that any controlled material in the consignment may not otherwise comply with a domestic import rule relating to the controlled material in the consignment, the plant health inspector must serve a notice on the responsible operator—

- (a) placing the consignment under official detention, and
- (b) prohibiting the entry of the consignment into England,

pending the outcome of any additional official controls on the consignment which the inspector considers are necessary to confirm or to eliminate that suspicion.

(8) In sub-paragraph (4), “transshipment period” means—

- (a) in relation to an airport, three days or more;
- (b) in relation to a port, 30 days or more.

### **Completion of official controls**

**10.** Following the completion of official controls on a Schedule 1 consignment, a plant health inspector must—

- (a) decide whether the controlled material in the consignment complies with the domestic import rules relating to that material and, where relevant, indicate the applicable customs procedure for the consignment;
- (b) finalise the plant health entry document for that consignment; and
- (c) where the finalised plant health entry document authorises the placing and handling of the consignment under a relevant customs procedure and the consignment was accompanied by a phytosanitary certificate, provide the responsible operator with an authenticated copy of the phytosanitary certificate or, if the consignment is to be split, with authenticated copies of the phytosanitary certificate for each part of the split consignment.

### **Removal of Schedule 1 consignments from border control posts of arrival**

**11.—(1)** No person may remove a Schedule 1 consignment from its border control post of arrival or split the consignment unless—

- (a) the finalised plant health entry document for that consignment authorises the placing and handling of the consignment under a relevant customs procedure and, following the presentation of the finalised plant health entry document to HMRC, HMRC has authorised the placing of the consignment under a customs procedure; or
- (b) a plant health inspector has served a notice on the person pursuant to paragraph 12 or 13 authorising its removal from that border control post.

(2) HMRC may not authorise the placing of any Schedule 1 consignment under a customs procedure which is different from the one indicated by the appropriate authority in the finalised plant health entry document for that consignment.



(3) Where a customs declaration is made for a Schedule 1 consignment and the finalised plant health entry document for that consignment is not presented to HMRC, HMRC must detain the Schedule 1 consignment and immediately notify the appropriate authority.

(4) Where a Schedule 1 consignment is permitted to leave its border control post pursuant to sub-paragraph (1), a plant health inspector may by notice in writing specify which documents (if any) must accompany the consignment to its place of destination.

(5) In this paragraph, “HMRC” means Her Majesty’s Revenue and Customs.

### **Measures to be taken on non-compliant Schedule 1 consignments**

**12.**—(1) Where a plant health inspector is of the opinion that a Schedule 1 consignment has been brought into England in contravention of a domestic import rule or that it does not otherwise comply with a domestic import rule relating to the controlled material in the consignment, the plant health inspector must—

- (a) place the consignment under official detention and refuse its entry into England;
- (b) where it is not necessary to take action immediately to respond to the risk to plant health posed by the consignment, consult the responsible operator in relation to the measures to be taken to deal with the non-compliance;
- (c) without delay, serve a notice on the responsible operator ordering the operator to—
  - (i) destroy the consignment or, where appropriate, particular lots in the consignment;
  - (ii) re-dispatch the consignment to a third country;
  - (iii) treat the controlled material in the consignment in a manner that ensures that the risk to plant health arising from the controlled material is eliminated and that it otherwise complies with the domestic import rules relating to the controlled material; or
  - (iv) take any other measures which are necessary to ensure that the domestic import rules relating to the controlled material in the consignment are met; and
- (d) invalidate the phytosanitary certificate or transit declaration accompanying the consignment (as the case may be).

(2) A plant health inspector may only serve a notice pursuant to sub-paragraph (1)(c) ordering the operator responsible for the consignment to re-dispatch the consignment to a third country if the proposed destination has been agreed with the operator.

(3) The operator responsible for a Schedule 1 consignment which is detained pursuant to this paragraph must store the consignment and take the measures specified in the notice served pursuant to sub-paragraph (1)(c) at the operator’s own expense.

### **Measures to be taken on Schedule 1 consignments**

**13.**—(1) This paragraph applies where—

- (a) the official controls carried out by a plant health inspector pursuant to this Part indicate that the controlled material in a Schedule 1 consignment complies with the domestic import rules relating to that material;
- (b) although the controlled material in the consignment complies, or appears to comply, with those domestic import rules, the inspector is of the opinion that the consignment poses a risk to plant health in England or to any other part of the Union territory; and
- (b) Article 67 of the Official Controls Regulation does not apply to the consignment.

(2) The plant health inspector must—

- (a) place the consignment under official detention and ensure that the consignment is isolated or quarantined;

- (b) without delay, serve a notice on the responsible operator ordering the operator to—
  - (i) destroy the consignment; or
  - (ii) treat the controlled material in the consignment in a manner that ensures that the risk to plant health arising from the controlled material is eliminated and that it otherwise complies with the domestic import rules or any EU plant health rules relating to the controlled material; and
- (c) invalidate the phytosanitary certificate or transit declaration accompanying the consignment (as the case may be).

#### **Notification of decisions to refuse the entry of a Schedule 1 consignment into England**

**14.** The appropriate authority must ensure that any decision by a plant health inspector to refuse a Schedule 1 consignment entry into England is immediately notified in writing to—

- (a) the Commission;
- (b) the competent authorities of other member States;
- (c) the national plant protection organisation of the third country of origin; and
- (d) the responsible operator.

#### **Notices under this Part**

**15.** A notice in relation to a Schedule 1 consignment under this Part may include any of the following—

- (a) the measures that the responsible operator must take to isolate or quarantine the consignment or otherwise deal with the risk to plant health arising from the consignment;
- (b) where a plant health inspector requires the consignment to be destroyed or otherwise disposed of, re-exported or treated, the measures that the responsible operator must take to destroy or otherwise dispose of, re-export or treat the consignment;
- (c) any other measures which the plant health inspector considers are appropriate in the light of the suspected or known contravention or the risk to plant health in England or to any other part of the Union territory arising from the consignment.”.

(9) In Schedule 3, in Part 1, in the first column of the table—

- (a) in the entry relating to Article 41(1), after “48(1)” insert “and paragraphs 2A(2), 2C(3) and 4(2) of Schedule 1”;
- (b) in the entry relating to Articles 72(1) and 73, at the end insert “(as read with paragraphs 2A(2), 2C(3) and 2E(2) of Schedule 1)”;
- (c) in the entry relating to Article 85, after “87” insert “and paragraph 4(2) and (3) of Schedule 1”.

(10) In Schedule 4, in the second column of the table, in the entry relating to Commission Implementing Decision (EU) 2015/789—

- (a) omit the words from “Article 9” to “demarcated areas”;
- (b) omit the words from “Article 16” to the end.

30th March 2020

*Gardiner of Kimble*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) to impose additional emergency measures to prevent the establishment or spread of the following harmful plant pests in England—

- (a) *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.;
- (b) *Candidatus Phytoplasma ulmi*;
- (c) *Agrilus planipennis* Fairmaire; and
- (d) *Xylella fastidiosa* (Wells et al.).

Regulation 2(6)(b)(iii) makes provision to prohibit, or impose additional phytosanitary conditions on, the introduction of certain plants, plant products or other objects from third countries into England. Regulation 2(8) makes provision to enable official controls to be carried out on those plants, plant products or other objects on their arrival in England.

Regulation 2(7) makes provision to prohibit, or impose additional phytosanitary conditions on, the introduction of certain plants from the Union territory, other than the United Kingdom, into England.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

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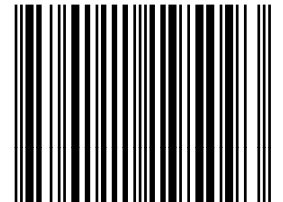
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