
WELSH STATUTORY INSTRUMENTS

2019 No. 674

**The Plant Health (Amendment)
(Wales) (EU Exit) Regulations 2019**

PART 2

Amendment of the Plant Health (Wales) Order 2018

2. The Plant Health (Wales) Order 2018(1) is amended as follows.
3. In Schedule 13, in paragraph 3, for “A notice under article 32 may require” substitute “An inspector must serve a notice under article 32 requiring”.
4. In Schedule 14—
 - (a) omit paragraph 1;
 - (b) for paragraph 2 substitute—

“In this Schedule—

“field” (“*cae*”) means an area which has been demarcated as a field for the purposes of Article 3 of [Directive 2007/33/EC](#)(2);

“host plants” (“*planhigion cynhaliol*”) means plants with roots of *Capsicum* spp., *Solanum lycopersicum* L. or *Solanum melongena* L.;

“infested field” (“*cae wedi ei heigio*”) means a field which is recorded as infested pursuant to paragraph 2B;

“notice” (“*hysbysiad*”) means a notice under article 32;

“susceptible bulbs” (“*bylbiau sy’n dueddol o gael plâu neu glefydau*”) means bulbs, tubers or rhizomes, grown in soil and intended for planting, other than those for which there is evidence by their packaging or by other means that they are intended for sale to final consumers not involved in professional plant or cut flower production, of *Allium ascalonicum* L., *Allium cepa* L., *Dahlia* spp., *Gladiolus* Tourn. Ex L., *Hyacinthus* spp., *Iris* spp., *Lilium* spp., *Narcissus* L. or *Tulipa* L.;

“susceptible material” (“*deunydd sy’n dueddol o gael plâu neu glefydau*”) means host plants, susceptible bulbs or susceptible plants;

“susceptible plants” (“*planhigion sy’n dueddol o gael plâu neu glefydau*”) means plants with roots of *Allium porrum* L., *Asparagus officinalis* L., *Beta vulgaris* L., *Brassica* spp. or *Fragaria* L.”;
 - (c) after paragraph 2, insert—

“Official investigations and surveys

- 2A.** The Welsh Ministers must ensure that—

(1) [S.I. 2018/1064 \(W.223\)](#).

(2) OJNo. L 156, 16.6.2007, p. 12.

- (a) official investigations are carried out in accordance with Articles 4 and 5 of [Directive 2007/33/EC](#) for the presence of Potato cyst nematodes in fields in which seed potatoes or susceptible material intended for the production of plants for planting are to be planted or stored;
- (b) official surveys are carried out in accordance with Article 6 of [Directive 2007/33/EC](#) for the presence of Potato cyst nematodes in fields used for the production of potatoes, other than those intended for the production of seed potatoes.

Official records

2B. The Welsh Ministers must ensure that the results of each official investigation or official survey carried out pursuant to paragraph 2A are recorded to indicate whether Potato cyst nematodes were found in the field during the investigation or survey.

2C. Where the officially approved measures set out in Section 3(C) of Annex 3 to [Directive 2007/33/EC](#) have been taken in a field which has been recorded as infested pursuant to paragraph 2B and, following the completion of those measures, the presence of Potato cyst nematodes is not confirmed, the Welsh Ministers must ensure that the record is updated accordingly.”;

- (d) in paragraph 3—
 - (i) omit the heading;
 - (ii) for the words from “the field”, in the first place it occurs, to the end, substitute “an infested field which specifies the boundaries of the field”;
- (e) in paragraph 4, for the words from “pursuant” to “[Directive 2007/33/EC](#),” substitute “in accordance with paragraph 2C”;
- (f) after paragraph 4, insert—

“Official designation

4A. An inspector must by notice designate as contaminated any potatoes or susceptible material which comes from a field that has been officially recorded as infested under paragraph 2B or any susceptible material which has been in contact with soil in which Potato cyst nematodes have been found.”;

- (g) in paragraph 5—
 - (i) in sub-paragraph (a)—
 - (aa) omit “in a demarcated field”;
 - (bb) after “seed potatoes” insert “in an infested field”;
 - (ii) in sub-paragraph (b), for the words from “in a” to the end substitute “any susceptible material which is intended for planting in an infested field”;
- (h) in paragraph 6, for the words from “in a” to the end substitute “of susceptible bulbs or susceptible plants in an infested field”;
- (i) in paragraph 8—
 - (i) omit “in a demarcated field”;
 - (ii) for the words from “unless” to the end substitute “in an infested field unless authorised to do so by an inspector”;
- (j) after paragraph 8 insert—

“8A. An authorisation under paragraph 8 must be by notice and may only be given if the inspector is satisfied that all reasonable steps to suppress Potato cyst nematodes in the field have been taken in accordance with the official control programme adopted for the suppression of Potato cyst nematodes.”;

- (k) in paragraph 9, for the words from “plants” to “field”, in the second place it occurs, substitute “host plants which have been designated as contaminated pursuant to paragraph 4A”;
- (l) after paragraph 10 insert—

“Controls on potatoes for industrial processing or grading

10A. No person may move any potatoes which have been designated as contaminated pursuant to paragraph 4A and are intended for industrial processing or grading, unless authorised to do so by an inspector.

10B. An authorisation under paragraph 10A must be by notice and must require the potatoes to be delivered to a processing or grading plant that has appropriate and officially approved waste disposal procedures that ensure that there is no risk of Potato cyst nematodes spreading.”;

- (m) in paragraph 11, for the words from “plants” to the end substitute “susceptible bulbs or susceptible plants which have been designated as contaminated pursuant to paragraph 4A, unless they have been subject to the measures set out in Section 3(A) of Annex 3 to [Directive 2007/33/EC](#) and an inspector has confirmed by notice that they are no longer contaminated”;
- (n) omit paragraph 12;
- (o) at the end insert—

“Further investigations

13. If any suspected occurrence or confirmed presence of Potato cyst nematodes in Wales results from a breakdown or change in the effectiveness of a resistant potato variety which relates to an exceptional change in the composition of nematode species, pathotype or virulence group, the Welsh Ministers must ensure that the species of Potato cyst nematode and, where applicable, the pathotype and virulence group involved, is investigated and confirmed by appropriate methods.”.

5. In Schedule 15—

- (a) in paragraph 1—
 - (i) at the appropriate place insert—

““official testing” (“*profion swyddogol*”) means testing in an official laboratory or an officially supervised laboratory;”;
 - (ii) in the definition of “notice” (“*hysbysiad*”), after “means” insert “in Part A to C”;
- (b) after paragraph 1 insert—

“PART A

Official surveys and testing

1A. The Welsh Ministers must ensure that systematic official surveys for Potato ring rot are carried out on tubers of *Solanum tuberosum* L. and, where appropriate, on plants of *Solanum tuberosum* L., originating in Wales in accordance with Article 2(1) of [Directive 93/85/EEC](#)(3).

1B. Where the presence of Potato ring rot in susceptible material is suspected, the Welsh Ministers must ensure that—

- (a) official testing is carried out using the method set out in Annex 1 to [Directive 93/85/EEC](#) and in accordance with the conditions specified in point 1 of Annex 2 to [Directive 93/85/EEC](#) to confirm or refute its presence;
- (b) the following are retained and appropriately conserved pending completion of the official testing—
 - (i) all tubers sampled, and wherever possible, all plants sampled;
 - (ii) any remaining extract and additional preparation material for the screening tests;
 - (iii) all relevant documentation; and
- (c) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of Potato ring rot have been seen or symptoms of Potato ring rot have been identified by a positive immunofluorescence test or other appropriate positive test—
 - (i) the movement of all lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato ring rot spreading;
 - (ii) steps are taken to trace the origin of the suspected occurrence; and
 - (iii) additional appropriate precautionary measures based on the level of estimated risk to prevent any spread of the plant pest are taken.

1C. A notice may contain measures for the purposes of paragraph 1B(c)(i) to (iii).

PART B

Measures to be taken following the confirmation of the presence of Potato ring rot

1D. If the presence of Potato ring rot is confirmed in a sample of susceptible material following official testing carried out pursuant to paragraph 1B(a) or 1E, the Welsh Ministers must ensure that—

- (a) the susceptible material, the consignment or lot and any object from which the sample was taken and, where appropriate, the place of production and field from

(3) OJ No. L 259, 18.10.1993, as amended by Commission [Directive 2006/56/EC](#) (OJ No. L 182, 4.7.2006, p. 1).

which the susceptible material was harvested is designated as contaminated by an inspector;

- (b) an inspector determines the extent of the probable contamination through pre- or post-harvest contact or through any production link with anything designated as contaminated under sub-paragraph (a), taking into account the provisions in point 1 of Annex 3 to [Directive 93/85/EEC](#);
- (c) a zone is demarcated by an inspector on the basis of the designation made under sub-paragraph (a), taking into account the provisions in point 2 of Annex 3 to [Directive 93/85/EEC](#).

1E. Where susceptible material has been designated as contaminated under paragraph 1D(a), the Welsh Ministers must ensure that testing is carried out on potato stocks which are clonally related to that susceptible material in the manner specified in paragraph 1B in order to determine the probable primary source of infection and the extent of the probable contamination.

1F. Any such testing must be carried out on as much susceptible material as is necessary to determine the probable primary source of infection and the extent of the probable contamination.

1G. Any designation by an inspector under this Part must be made by notice.

1H. Where any susceptible material or object is determined by an inspector under paragraph 1D(b) to be possibly contaminated, the inspector must by notice designate that material or object as possibly contaminated.
PART C”;

- (c) in paragraph 3—
 - (i) for the words before sub-paragraph (a) substitute “Where susceptible material or an object has been designated as contaminated or possibly contaminated under Part B, an inspector must serve a notice requiring that”;
 - (ii) in sub-paragraph (a)—
 - (aa) at the beginning insert “in the case of”;
 - (bb) after “material” insert “, the material”;
 - (iii) in sub-paragraph (b)—
 - (aa) at the beginning insert “in the case of”;
 - (bb) after “material” insert “, the material”;
 - (iv) in sub-paragraph (c)—
 - (aa) in the words before paragraph (i), at the beginning insert “in the case of” and after “object”, in the second place it occurs, insert “, the object”;
 - (bb) in paragraph (ii), after “Potato ring rot” insert “surviving or”;
- (d) in paragraph 5—
 - (i) in the heading, omit “which may be required”;
 - (ii) in the words before sub-paragraph (a), for “may” substitute “must”;
- (e) in paragraph 6(c), at the end insert “, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to [Directive 93/85/EEC](#)”;
- (f) in paragraph 7(c)—
 - (i) after “potatoes for” insert “seed or”;

- (ii) at the end insert “, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to [Directive 93/85/EEC](#)”;
- (g) in paragraph 8—
 - (i) in sub-paragraph (a)—
 - (aa) at the beginning, insert “where an inspector is satisfied that the risk of volunteer potato plants and other naturally-found host plants of Potato ring rot has been eliminated,”;
 - (bb) in paragraph (iii), omit the words from “and an” to the end;
 - (ii) in sub-paragraph (d), at the end, insert “and a requirement that official testing be carried out on harvested tubers in each field using the method set out in Annex 1 to [Directive 93/85/EEC](#)”;
- (h) in paragraph 9, for “A notice may” substitute “Except where the Welsh Ministers have published a notice under Part D, a notice must”;
- (i) after paragraph 10 insert—

“**10A.** Where an inspector serves a notice containing the first set of eradication measures, the Welsh Ministers must ensure that an official survey is carried out in relation to the field mentioned in paragraph 6(d) in accordance with Article 2 of [Directive 93/85/EEC](#).”;
- (j) in paragraph 12(a), after “Potato ring rot” insert “and to remove all host plants”;
- (k) after paragraph 13 insert—

“PART D

Demarcation of zones for the control of Potato ring rot

- 14.** This Part applies where an inspector has demarcated a zone pursuant to paragraph 1D(c).
- 15.** The Welsh Ministers may, by notice, specify—
- (a) how long the zone is to remain demarcated; and
 - (b) the measures which apply in the demarcated zone.
- 16.** A notice under paragraph 15—
- (a) must be in writing;
 - (b) must describe the extent of the demarcated zone;
 - (c) must specify the date on which each measure takes effect;
 - (d) must be published in a manner appropriate to bring it to the attention of the public; and
 - (e) may be amended, suspended or revoked, in whole or in part, by further notice.
- 17.** Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this Schedule, except where the part which is outside the demarcated zone is not in Wales.
- 18.** A notice published in accordance with paragraph 16 is to be treated as having been served on—

- (a) any occupier or other person in charge of any premises within the demarcated zone; and
- (b) any person who operates machinery or carries out any other activity in relation to the production of potatoes within the demarcated zone.

19. A notice under paragraph 15 must specify that—

- (a) any machinery or storage facilities at premises within the demarcated zone which are used for potato production must be cleansed and disinfected in an appropriate manner so that there is no identifiable risk of Potato ring rot surviving or spreading;
- (b) during the specified period, only certified seed potatoes or seed potatoes grown under official control may be planted and any seed potatoes grown in a place of production which is possibly contaminated must be officially tested after harvesting;
- (c) during the specified period, potatoes intended for planting must be handled separately from all other potatoes at premises within the zone or that a system of cleansing and, where appropriate, disinfection must be carried out between the handling of seed and ware potatoes.

20. The Welsh Ministers must ensure that during the specified period—

- (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by an inspector;
- (b) an official survey is carried out in accordance with Article 2 of [Directive 93/85/EEC](#);
- (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.

21. For the purposes of paragraphs 19 and 20, the “specified period” means the period specified in the notice, which must be at least three growing seasons following the year in which the relevant zone was demarcated.”.

6. In Schedule 16—

- (a) in paragraph 1, in the definition of “notice” for “Part A” substitute “Parts A to C”;
- (b) after the heading to Part A insert—

“Official surveys and testing

1A. The Welsh Ministers must ensure that annual systematic official surveys are carried out to identify the presence of Potato brown rot on susceptible material originating in Wales in accordance with Article 2 of [Directive 98/57/EC](#)(4).

1B. Where the presence of Potato brown rot is suspected, the Welsh Ministers must ensure that—

- (a) official testing is carried out to confirm or refute its presence—
 - (i) in the case of susceptible material, using the method set out in Annex 2 to [Directive 98/57/EC](#) and in accordance with the conditions specified in point 1 of Annex 3 to [Directive 98/57/EC](#);
 - (ii) in any other case, using any officially approved method;

(4) OJ No. L 235, 21.8.1998, p. 1, as amended by Commission [Directive 2006/63/EC](#) (OJ No. L 206, 27.7.2006, p. 36).

- (b) pending the confirmation or refutation of its presence, where suspect diagnostic visual symptoms of Potato brown rot have been seen and a positive result in a rapid screening test has been obtained or a positive result in the screening tests specified in point 2 of section 1 and section 3 of Annex 2 to [Directive 98/57/EC](#) has been obtained—
- (i) the movement of all plants and tubers from all crops, lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato brown rot spreading;
 - (ii) steps are taken to trace the origin of the suspected occurrence; and
 - (iii) additional appropriate precautionary measures based on the level of estimated risk are taken to prevent any spread of Potato brown rot.

1C. A notice may contain measures for the purposes of paragraph 1B(b)(i) to (iii).

PART B

Measures to be taken following confirmation of the presence of Potato brown rot

1D. If the presence of Potato brown rot is confirmed following official testing carried out pursuant to paragraph 1B, the Welsh Ministers must ensure that the actions specified in paragraphs 1E to 1G are taken in accordance with sound scientific principles, the biology of Potato brown rot and the relevant production, marketing and processing systems of host plants of Potato brown rot.

1E. In the case of susceptible material, the actions are—

- (a) an investigation by an inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to [Directive 98/57/EC](#);
- (b) further official testing, including on all clonally related seed potato stocks;
- (c) the designation of the following as contaminated by an inspector—
 - (i) the susceptible material and consignment or lot from which the sample was taken;
 - (ii) any objects which have been in contact with that sample;
 - (iii) any unit or field of protected crop production and any place of production of the susceptible material from which the sample was taken;
- (d) a determination by an inspector of the extent of probable contamination through pre- or post-harvest contact, through production, irrigation or spraying links or through clonal relationship;
- (e) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (c), the determination made under sub-paragraph (d) and the possible spread of Potato brown rot in accordance with point 2(i) of Annex 5 to [Directive 98/57/EC](#).

1F. In the case of host plants, other than susceptible material, where the production of susceptible material is identified to be at risk by an inspector, the actions are—

- (a) an investigation by an inspector to determine the extent and the primary sources of the contamination in accordance with Annex 4 to [Directive 98/57/EC](#);

- (b) the designation by an inspector of host plants from which the sample was taken as contaminated;
- (c) a determination of the probable contamination by an inspector;
- (d) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (b), the determination made under sub-paragraph (c) and the possible spread of Potato brown rot in accordance with point 2(i) of Annex 5 to [Directive 98/57/EC](#).

1G. In the case of surface water and associated wild solanaceous host plants where production of susceptible material is identified by an inspector to be at risk through irrigation, spraying or flooding of surface water, the actions are—

- (a) an investigation by an inspector to establish the extent of the contamination, which includes an official survey at appropriate times on samples of surface water and, if present, wild solanaceous host plants;
- (b) the designation of surface water from which the sample was taken by an inspector, to the extent appropriate and on the basis of the investigation under sub-paragraph (a);
- (c) a determination by an inspector of the probable contamination on the basis of the designation made under sub-paragraph (b);
- (d) the demarcation of a zone by an inspector on the basis of the designation under sub-paragraph (b), the determination made under sub-paragraph (c) and the possible spread of Potato brown rot in accordance with point 2(ii) of Annex 5 to [Directive 98/57/EC](#).

PART C”;

- (c) in paragraph 3—
 - (i) for the words before sub-paragraph (a) substitute “Where susceptible material or any object has been designated as contaminated or possibly contaminated under Part B, an inspector must serve a notice requiring that”;
 - (ii) in sub-paragraph (a)—
 - (aa) at the beginning insert “in the case of”;
 - (bb) after “material” insert “, the material”;
 - (iii) in sub-paragraph (b)—
 - (aa) at the beginning insert “in the case of”;
 - (bb) after “material” insert “, the material”;
 - (iv) in sub-paragraph (c)—
 - (aa) in the words before paragraph (i), at the beginning insert “in the case of” and after “object”, in the second place it occurs, insert “, the object”;
 - (bb) in paragraph (ii), after “Potato brown rot” insert “surviving or”;
- (d) in paragraph 5—
 - (i) for “may” substitute “must”;
 - (ii) for “article 39(4)” substitute “Part B”;
- (e) in paragraph 6(c)—
 - (i) after “potato”, in the first place it occurs, insert “or tomato”;
 - (ii) after “weeds,” insert “during official inspections”;

- (iii) at the end insert “, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to [Directive 98/57/EC](#)”;
- (f) in paragraph 7(b)—
- (i) in paragraph (ii), at the beginning insert “during the fourth and fifth growing years,”;
 - (ii) in paragraph (iii), at the end insert “, provided that the field or the unit has been found free from volunteer potato and tomato plants and other host plants, including solanaceous weeds, during official inspections of Potato brown rot, for at least the two consecutive growing years prior to planting, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to [Directive 98/57/EC](#)”;
- (g) in paragraph 8—
- (i) in sub-paragraph (a), after “year” insert “no host plants of Potato brown rot be planted or”;
 - (ii) in sub-paragraph (f), at the end, insert—
 - “;
 - (g) official inspections of growing crops at appropriate times and official testing of harvested potatoes in accordance with the method set out in Annex 2 to [Directive 98/57/EC](#)”;
- (h) in paragraph 9, for the words before sub-paragraph (a) substitute “Except where the Welsh Ministers have published a notice under Part D, a notice in relation to a contaminated place of production must”;
- (i) in paragraph 12(a) after “Potato brown rot” insert “and to remove all host plants of Potato brown rot”;
- (j) after paragraph 13, for “PART B” substitute “PART D”;
- (k) in paragraph 14, for “article 39(4)” substitute “Part B”;
- (l) in paragraph 19—
- (i) for the words before sub-paragraph (a) substitute “A notice under paragraph 15 must specify that”;
 - (ii) in sub-paragraph (a), for “stores” insert “storage facilities”;
 - (iii) in sub-paragraph (b), after “crops,” insert “during the specified period”;
 - (iv) in sub-paragraph (c), at the beginning, insert “during the specified period”;
 - (v) in sub-paragraph (d), after “crops,” insert “during the specified period”;
- (m) after paragraph 20 insert—
- “**21.** The Welsh Ministers must ensure that during the specified period—
- (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by inspectors;
 - (b) an official survey is carried out in accordance with Article 2 of [Directive 98/57/EC](#);
 - (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.
- 22.** For the purposes of paragraphs 19 and 21, the “specified period” means the period specified in the notice, which must be at least three growing seasons following the year in which the relevant zone was demarcated.”

