
WELSH STATUTORY INSTRUMENTS

2020 No. 206 (W. 48)

**ENVIRONMENTAL PROTECTION, WALES
PLANT HEALTH, WALES**

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

<i>Made</i>	- - - -	<i>2 March 2020</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>5 March 2020</i>
<i>Coming into force</i>	- -	<i>27 March 2020</i>

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 ^{M1} (“the 1972 Act”) in relation to the common agricultural policy ^{M2} and measures relating to the control and regulation of the deliberate release, placing on the market and transboundary movements of genetically modified organisms ^{M3}.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears expedient to the Welsh Ministers for the references to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants ^{M4}, and to the European Union instruments mentioned in regulation 3(1), to be construed as references to those instruments as amended from time to time.

Marginal Citations

M1 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 The European Communities Act 1972 was repealed by section 1 of the [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#) with effect from exit day, but saved with modifications until IP completion day by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 \(c. 7\)](#). Paragraph 1A of Schedule 2 was inserted by section 28 of the [Legislative and Regulatory Reform Act 2006](#) and amended by Part 1 of the Schedule to the [European Union \(Amendment\) Act 2008](#) and [S.I. 2007/1388](#).

M2 [S.I. 2010/2690](#).

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- M3** S.I. 2003/2901, to which there are amendments not relevant to these Regulations. By virtue of paragraph 28(1) of Schedule 11 to the [Government of Wales Act 2006 \(c. 32\)](#), the designation has effect as if made under section 59(1) of that Act.
- M4** OJ No. L 319, 10.12.2019, p. 1.

PART 1

Introduction

Title, application and commencement

1. The title of these Regulations is the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020, they apply in relation to Wales and come into force on 27 March 2020.

Commencement Information

- II** Reg. 1 in force at 27.3.2020, see reg. 1

Interpretation: general

2.—(1) In these Regulations—

“the 2005 Order” (“*Gorchymyn 2005*”) means the Plant Health (Forestry) Order 2005^{M5};

“the 2018 Order” (“*Gorchymyn 2018*”) means the Plant Health (Wales) Order 2018^{M6};

“appropriate authority” (“*awdurdod priodol*”) means the Welsh Ministers, and is to be construed in accordance with regulation 6;

“commencement date” (“*dyddiad cychwyn*”) means the date on which these Regulations come into force;

“controlled consignment” (“*llwyth a reolir*”) means a consignment containing any plant, plant product or other object—

- (a) which may not be brought into the Union territory without a phytosanitary certificate for export or a phytosanitary certificate for re-export pursuant to—
- (i) Article 72 or 74 of the EU Plant Health Regulation,
 - (ii) an EU emergency decision, or
 - (iii) any other EU plant health rule, other than Article 73 of the EU Plant Health Regulation, or
- (b) which was exported from the Union territory to a third country and is returning to the Union territory following the refusal by that third country to allow its entry into the country;

“controlled plant pest” (“*pla planhigion a reolir*”) means—

- (a) a plant pest of a description specified in Annex 2, 3 or 4 to the Phytosanitary Conditions Regulation,
- (b) a plant pest of a description specified in an EU emergency decision, or
- (c) a plant pest subject to any other EU plant health rule^[F1], including a potential quarantine plant pest within the meaning given in regulation 21(3)];

“Council Directive 2000/29/EC” (“*Cyfarwyddeb y Cyngor 2000/29/EC*”) means Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ^{M7};

“EU emergency decision” (“*penderfyniad brys gan yr UE*”) means an instrument referred to in regulation 3(1);

“EU Plant Health Regulation” (“*Rheoliad Iechyd Planhigion yr UE*”) means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants ^{M8};

“EU plant health rule” (“*un o reolau iechyd planhigion yr UE*”) means a rule within the meaning given in Article 1(2)(g) of the Official Controls Regulation;

“ISPM 15” (“*SRFFf 15*”) means International Standard for Phytosanitary Measures No. 15 of March 2002 on Guidelines for regulating wood packaging material in international trade, prepared by the Secretariat of the International Plant Protection Convention established by the Food and Agriculture Organisation of the United Nations ^{M9};

“Official Controls Regulation” (“*Rheoliad Rheolaethau Swyddogol*”) means Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, insofar as it applies to EU plant health rules ^{M10};

“Phytosanitary Conditions Regulation” (“*Rheoliad Amodau Ffytioiechydol*”) means Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants ^{M11};

“plant health inspector” (“*arolygydd iechyd planhigion*”) means an official plant health officer appointed by the Welsh Ministers;

“plant pest” (“*pla planhigion*”) means a pest within the meaning given in Article 1(1) and (2) of the EU Plant Health Regulation;

“regulated item” (“*eitem a reoleiddir*”) means—

- (a) any plant, plant product or other object to which an EU plant health rule applies, other than any plant, plant product or other object which is part of a controlled consignment, or
- (b) a controlled plant pest;

“Wales” (“*Cymru*”) means the combined area of the counties and county boroughs in Wales (see Parts 1 and 2 of Schedule 4 to the Local Government Act 1972 ^{M12}).

(2) Unless the context otherwise requires, words and expressions which are not defined in these Regulations and appear in the EU Plant Health Regulation or the Official Controls Regulation have the same meaning in these Regulations as they have in the EU Plant Health Regulation or the Official Controls Regulation (as the case may be).

Textual Amendments

- F1** Words in reg. 2(1) inserted (13.11.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, **2(2)**

Commencement Information

- I2** Reg. 2 in force at 27.3.2020, see reg. 1

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Marginal Citations

- M5** S.I. 2005/2517; amended by S.I. 2013/755 (W. 90). There are other amending instruments but none are relevant
- M6** S.I. 2018/1064; there are amending instruments but none are relevant.
- M7** OJ No. L 169, 10.7.2000, p. 1, as last amended by Commission Implementing Directive (EU) 2019/523 (OJ No. L 86, 28.3.2019, p. 41).
- M8** OJ No. L 317, 23.11.2016, p. 4, amended by Regulation (EU) 2017/625 of the European Parliament and of the Council (OJ No. L 95, 7.4.2017, p. 1).
- M9** Available from the Secretariat of the International Plant Protection Convention, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.
- M10** OJ No. L 95, 7.4.2017, p. 1, amended by Commission Delegated Regulation (EU) 2019/478 (OJ No. L 82, 25.3.2019, p. 4).
- M11** OJ No. L 319, 10.12.2019, p. 1.
- M12** 1972 c. 70.

Interpretation: EU instruments relating to plant health

3.—(1) In these Regulations—

“Commission Decision 98/109/EC” (“*Penderfyniad y Comisiwn 98/109/EC*”) means Commission Decision 98/109/EC authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand ^{M13};

“Commission Decision 2002/757/EC” (“*Penderfyniad y Comisiwn 2002/757/EC*”) means Commission Decision 2002/757/EC on provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Phytophthora ramorum* Werres, De Cock & Man in ‘t Veld sp. nov. ^{M14};

“Commission Decision 2004/200/EC” (“*Penderfyniad y Comisiwn 2004/200/EC*”) means Commission Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus ^{M15};

“Commission Implementing Decision 2011/787/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2011/787/EU*”) means Commission Implementing Decision 2011/787/EU authorising Member States temporarily to take emergency measures against the dissemination of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards Egypt ^{M16};

“Commission Implementing Decision 2012/138/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2012/138/EU*”) means Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster) ^{M17};

“Commission Implementing Decision 2012/270/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2012/270/EU*”) means Commission Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) ^{M18};

“Commission Implementing Decision 2012/535/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2012/535/EU*”) means Commission Implementing Decision 2012/535/EU on emergency measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (the pine wood nematode) ^{M19};

“Commission Implementing Decision 2012/697/EU” (“*Penderfyniad Gweithredu'r Comisiwn 2012/697/EU*”) means Commission Implementing Decision 2012/697/EU as regards measures

to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry)^{M20},

“Commission Implementing Decision (EU) 2015/789” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2015/789*”) means Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.)^{M21};

“Commission Implementing Decision (EU) 2015/893” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2015/893*”) means Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky)^{M22};

“Commission Implementing Decision (EU) 2016/715” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2016/715*”) means Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa.^{M23};

F2
...

“Commission Implementing Decision (EU) 2018/638” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2018/638*”) means Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith)^{M24};

“Commission Implementing Decision (EU) 2018/1503” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2018/1503*”) means Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann)^{M25};

F3
...

“Commission Implementing Decision (EU) 2019/1739” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2019/1739*”) means Commission Implementing Decision (EU) 2019/1739 establishing emergency measures to prevent the introduction into and the spread within the Union of Rose Rosette Virus^{M26};

“Commission Implementing Decision (EU) 2019/2032” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2019/2032*”) means Commission Implementing Decision (EU) 2019/2032 establishing measures to prevent the introduction into and the spread within the Union of *Fusarium circinatum* Nirenberg & O'Donnell (formerly *Gibberella circinata*)^{M27}.

[^{F4}“Commission Implementing Regulation (EU) 2020/885” (“*Rheoliad Gweithredu'r Comisiwn (EU) 2020/885*”) means Commission Implementing Regulation (EU) 2020/885 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto;

“Commission Implementing Regulation (EU) 2020/1191” (“*Rheoliad Gweithredu'r Comisiwn (EU) 2020/1191*”) means Commission Implementing Regulation (EU) 2020/1191 establishing measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV).]

(2) References to the Phytosanitary Conditions Regulation and to the European Union instruments referred to in paragraph (1) are to be construed as references to those instruments as amended from time to time.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Textual Amendments

- F2** Words in reg. 3(1) omitted (13.11.2020) by virtue of [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, **2(3)(a)(i)**
- F3** Words in reg. 3(1) omitted (13.11.2020) by virtue of [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, **2(3)(a)(ii)**
- F4** Words in reg. 3(1) inserted (13.11.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, **2(3)(b)**

Commencement Information

- I3** Reg. 3 in force at 27.3.2020, see reg. 1

Marginal Citations

- M13** OJ No. L 27, 3.2.1998, p. 47.
- M14** OJ No. L 252, 20.9.2002, p. 37, as last amended by Commission Implementing Decision (EU) 2016/1967 (OJ No. L 303, 10.11.2016, p. 21).
- M15** OJ No. L 64, 2.3.2004, p. 43.
- M16** OJ No. L 319, 2.12.2011, p. 112.
- M17** OJ No. L 64, 3.3.2012, p. 38, as amended by Commission Implementing Decision (EU) 2014/356/EU (OJ No. L 175, 14.6.2014, p. 38).
- M18** OJ No. L 132, 23.5.2012, p. 18, as last amended by Commission Implementing Decision (EU) 2018/5 (OJ No. L 2, 5.1.2018, p. 11).
- M19** OJ No. L 266, 2.10.2012, p. 42, as last amended by Commission Implementing Decision (EU) 2018/618 (OJ No. L 102, 23.4.2018, p. 17).
- M20** OJ No. L 311, 10.11.2012, p. 14.
- M21** OJ No. L 125, 21.5.2015, p. 36, as last amended by Commission Implementing Decision (EU) 2018/1511 (OJ No. L 255, 11.10.2018, p. 16).
- M22** OJ No. L 146, 11.6.2015, p. 16.
- M23** OJ No. L 125, 13.5.2016, p. 16, as last amended by Commission Implementing Decision (EU) 2019/449 (OJ No. L 77, 20.3.2019, p. 76).
- M24** OJ No. L 105, 25.4.2018, p. 31, as amended by Commission Implementing Decision (EU) 2019/1598 (OJ No. L 248, 27.9.2019, p. 86).
- M25** OJ No. L 254, 10.10.2018, p. 9.
- M26** OJ No. L 265, 18.10.2019, p. 12.
- M27** OJ No. L 313, 4.12.2019, p. 94.

Measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation

4. Any reference in the EU Plant Health Regulation to a pest that is subject to the measures adopted pursuant to Article 30(1) includes the following plant pests—

- (a) *Epitrix cucumeris* (Harris), *Epitrix papa*. (Orlova-Bienkowskaja), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner);
- (b) *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyuma & Goto;
- (c) Rose rosette virus;
- (d) Tomato brown rugose fruit virus.

Commencement Information

I4 Reg. 4 in force at 27.3.2020, see reg. 1

Article 82 of the EU Plant Health Regulation: meaning of “close proximity”

5.—(1) For the purposes of Article 82 of the EU Plant Health Regulation, the premises of a registered operator are to be regarded as being in “close proximity” to other premises of that operator if any point on the boundary of its operative area, or of any of its operative areas, is within ten miles of any point on the boundary of the operative area, or of any of the operative areas, of the other premises.

- (2) In paragraph (1), “operative area”, in relation to the premises of a registered operator, means—
- (a) in the case of premises which are used entirely by the registered operator to carry out one or more of the activities mentioned in Article 65(1) of the EU Plant Health Regulation, the area comprising those premises;
 - (b) in the case of any other premises used by the registered operator to carry out one or more of the activities mentioned in Article 65(1) of the EU Plant Health Regulation, an area within the premises which is used by the registered operator to carry out any of those activities.

Commencement Information

I5 Reg. 5 in force at 27.3.2020, see reg. 1

PART 2

Competent authorities: plant health

Designation of competent authorities

6.—(1) The Welsh Ministers are designated as the competent authority responsible for the organisation and the performance of official controls and other official activities in Wales insofar as they relate to—

- (a) plant pests, plants, tree pests, trees, forestry material or non-forestry material, or
- (b) forestry professional operators or other professional operators.

(2) In this regulation—

“forestry material” (“*deunydd coedwigaeth*”) means—

- (a) wood which retains part or all of its natural round surface, with or without bark;
- (b) wood in the form of chips, particles, shavings, sawdust, wood waste or scrap;
- (c) conifer trees over 3m in height;
- (d) bark which has been removed or become detached from, or from part of, a living, felled or fallen tree;

“forestry professional operator” (“*gweithredwr proffesiynol coedwigaeth*”) means a professional operator who carries out one or more of the following activities, but no other activities described in Article 2(9) of the EU Plant Health Regulation—

- (a) the introduction of forestry material into Wales;

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (b) the storage, aggregation or movement of forestry material within Wales, the movement of forestry material into Wales from another part of the Union territory or the movement of forestry material from Wales to another part of the Union territory;
- (c) the export of forestry material from Wales to a third country;
- (d) the treatment and marking of wood packaging material or forestry material in accordance with Annex 1 to ISPM 15 or the repair of wood packaging material in Wales;
- (e) the introduction of tree pests into Wales, the movement of tree pests within Wales or the holding or multiplication of tree pests in Wales, for official testing, scientific or educational purposes, trials, varietal selection or breeding;
- (f) the introduction of trees or forestry material into Wales or the movement of trees or forestry material within Wales, for use in official testing, scientific or educational purposes, trials, varietal selection or breeding;

“non-forestry material” (“*deunydd nad yw'n ddeunydd coedwigaeth*”) means plants, plant products or other objects, other than forestry material;

“tree” (“*coeden*”) means a living tree or shrub, or a living part of a tree or shrub, at any stage of its growth;

“tree pest” (“*pla coed*”) means a plant pest which is injurious to trees or wood;

“wood packaging material” (“*deunydd pecynnu pren*”) means wood or wood products (excluding paper products) used, or intended to be used, for supporting, protecting or carrying a commodity of any kind, including dunnage.

Commencement Information

I6 Reg. 6 in force at 27.3.2020, see reg. 1

PART 3

Official controls on controlled consignments from third countries and other official controls on goods from third countries

Derogations to the requirement to give prior notification in accordance with Article 1(1) of Commission Implementing Regulation (EU) 2019/1013

7.—(1) The responsible operator of a controlled consignment which is to be brought into Wales by air must have notified the appropriate authority of the consignment's expected arrival at least four working hours before its expected arrival in Wales.

(2) In the case of any controlled consignment which consists, in whole or in part, of unprocessed logs or sawn or chipped wood and is to be brought into Wales at a point of entry which only has a temporary border control post, the responsible operator must have notified the Welsh Ministers of the consignment's arrival at least three working days before its expected arrival in Wales.

(3) Article 1(1) of Commission Implementing Regulation (EU) 2019/1013 does not apply to any responsible operator of a controlled consignment referred to in paragraph (1) or (2).

(4) In this regulation—

“Commission Implementing Regulation (EU) 2019/1013” (“*Rheoliad Gweithredu'r Comisiwn (EU) 2019/1013*”) means Commission Implementing Regulation (EU) 2019/1013 on prior notification of consignments of certain categories of animals and goods entering the Union^{M28};

“responsible operator” (“*gweithredwr cyfrifol*”), in relation to a controlled consignment, means an operator who is required to ensure that the consignment is presented for official controls at the border control post of first arrival into the Union in accordance with Article 47(5) of the Official Controls Regulation;

“temporary border control post” (“*safle rheoli dros dro ar y ffin*”) means a border control post in Wales 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 ^{M29};

“working day” (“*diwrnod gwaith*”) means any day, other than—

- (a) a Saturday or Sunday,
- (b) Christmas Day or Good Friday, or
- (c) a bank holiday in Wales under the Banking and Financial Dealings Act 1971 ^{M30};

“working hour” (“*awr waith*”) means a period of one hour during a day which in Wales is a working day, and “working hours” includes hours during more than one working day.

Commencement Information

I7 Reg. 7 in force at 27.3.2020, see reg. 1

Marginal Citations

M28 OJ No. L 165, 21.6.2019, p. 8.

M29 OJ No. L 165, 21.6.2019, p. 4.

M30 1971 c. 80, to which there are amendments not relevant to these Regulations.

Suspicion of non-compliance

8.—(1) This regulation applies where a plant health inspector suspects that a controlled consignment or a regulated item is likely to be, or has been, brought into Wales from a third country in contravention of an EU plant health rule or that any such consignment or item may not otherwise comply with an EU plant health rule.

(2) A plant health inspector must serve a notice on the operator who is responsible for the controlled consignment or regulated item—

- (a) placing the consignment or item under official detention, and
- (b) prohibiting the entry of the consignment or item into the Union territory,

pending the outcome of official controls to confirm or eliminate the suspicion referred to in paragraph (1).

(3) This regulation applies to any controlled consignment or regulated item whether or not its ultimate destination is in Wales.

Commencement Information

I8 Reg. 8 in force at 27.3.2020, see reg. 1

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Consignments not correctly presented for official controls

9. Where a plant health inspector suspects or is aware that a controlled consignment has not been presented for official controls in accordance with Article 47(1) of the Official Controls Regulation, or in accordance with the other requirements referred to in Article 66(6) of that Regulation, the plant health inspector must serve a notice on the operator who is responsible for the consignment recalling the consignment and placing the consignment under official detention.

Commencement Information

I9 Reg. 9 in force at 27.3.2020, see reg. 1

Official measures in relation to non-compliant consignments or consignments which pose a risk to plant health

10.—(1) This regulation applies to—

- (a) any controlled consignment or regulated item which, in the opinion of a plant health inspector, has been brought into Wales from a third country in contravention of an EU plant health rule,
- (b) any controlled consignment or regulated item which has been brought into Wales from a third country and which does not otherwise comply with an EU plant health rule, or
- (c) any consignment which has been brought into Wales from a third country and which, in the opinion of a plant health inspector, poses a risk to plant health in Wales or to any other part of the Union territory.

(2) A plant health inspector must serve a notice on the operator who is responsible for the consignment or item—

- (a) placing the consignment or item under official detention, and
- (b) setting out the measures which the operator must take in relation to the consignment or item.

Commencement Information

I10 Reg. 10 in force at 27.3.2020, see reg. 1

Notices under regulation 8, 9 or 10

11.—(1) A notice under regulation 8, 9 or 10 may include any of the following—

- (a) the measures that the responsible operator must take in relation to the consignment or item to isolate or quarantine the consignment or item or otherwise deal with the risk to plant health arising from the consignment or item;
- (b) where a plant health inspector requires the consignment or item 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 or item;
- (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 Wales or to any other part of the Union territory arising from the consignment or item.

(2) In paragraph (1), “responsible operator” is to be construed in accordance with regulation 8, 9 or 10 (as the case may be).

Commencement Information

I11 Reg. 11 in force at 27.3.2020, see reg. 1

Border control posts: authorisation of inspection centres and commercial storage facilities

12.—(1) The appropriate authority may grant a permit which authorises—

- (a) the use of a facility which is located within a border control post as an inspection centre for the purposes of carrying out official controls and other official activities on controlled consignments and other regulated items on their arrival at the border control post;
- (b) the use of commercial storage facilities within the close vicinity of a border control post as a place at which identity checks and physical checks may be performed on controlled consignments and other regulated items on their arrival at the border control post.

(2) An application for a permit must be made to the appropriate authority by the operator of the facility or commercial storage facilities in the manner and form required by the appropriate authority.

(3) A permit may only be granted under paragraph (1)(a) if the appropriate authority is satisfied that the facility complies with the requirements specified in respect of inspection centres in Article 8 of Regulation (EU) 2019/1014.

(4) A permit may only be granted under paragraph (1)(b) if the appropriate authority is satisfied that the commercial storage facilities comply with the requirements specified in respect of commercial storage facilities in Article 3(11) of Regulation (EU) 2019/1014.

(5) A permit granted under paragraph (1)(a) or (b) must be in writing and may be granted—

- (a) subject to conditions;
- (b) for an indefinite period or a specified period.

(6) A permit granted under paragraph (1)(a) or (b) may include provision permitting the appropriate authority to modify, suspend or revoke the permit at any time by notice in writing.

(7) In this regulation, “Regulation (EU) 2019/1014” means Commission Implementing Regulation (EU) 2019/1014 to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points ^{M31}.

Commencement Information

I12 Reg. 12 in force at 27.3.2020, see reg. 1

Marginal Citations

M31 OJ No. L 165, 21.6.2019, p. 10.

Transitional provision: approved places of inspection

13.—(1) The appropriate authority may during the relevant period authorise—

- (a) the transportation of a controlled consignment to an approved place of inspection, and
- (b) the performance of identity checks and plant health checks by a plant health inspector at an approved place of inspection.

(2) The operator who is responsible for a controlled consignment that is destined for an approved place of inspection must—

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (a) by notice in writing give the appropriate authority the particulars set out in paragraph (3) no later than three working days before the consignment arrives in Wales,
 - (b) ensure that the consignment, its packaging and the vehicle in which it is transported are closed or sealed in such a way that there is no risk of the plants, plant products or objects in the consignment causing infestation, infection or contamination or a change occurring in the contents of the consignment, and
 - (c) ensure that the consignment is accompanied by a plant health movement document.
- (3) The particulars are—
- (a) the name, address and location of the approved place of inspection to which the consignment is destined,
 - (b) the scheduled date and time of arrival of the consignment at the place referred to in subparagraph (a),
 - (c) if available, the individual serial number of the plant health movement document in relation to that consignment,
 - (d) if available, the date and place at which that plant health movement document was drawn up,
 - (e) the name, address and registration number of the operator, and
 - (f) the reference number of the phytosanitary certificate or phytosanitary certificate for re-export required in relation to the consignment pursuant to Article 72(1) or 74(1) of the EU Plant Health Regulation.
- (4) The operator must notify the appropriate authority immediately in writing of any changes to the particulars which the operator has given under paragraph (2)(a).
- (5) The notice must be given to the appropriate authority at the address given by the appropriate authority from time to time for the purposes of this regulation.
- (6) An appropriate authority may for the purposes of paragraph (1) approve a place to which a controlled consignment may be destined as a place at which identity checks and plant health checks may be performed by a plant health inspector during the relevant period.
- (7) An application for approval under paragraph (6) must be made to the appropriate authority in the manner and form required by the appropriate authority.
- (8) An approval may be granted subject to conditions, including conditions relating to the storage of controlled consignments, and may be withdrawn at any time if the appropriate authority no longer considers that the place to which the approval relates is suitable for the purpose for which the approval was given.
- (9) The appropriate authority may only approve a place as an approved place of inspection if the place has been approved by the Commissioners for Her Majesty's Revenue and Customs for use as a temporary storage facility.
- (10) In this regulation—
- “approved place of inspection” (*“man arolygu a gymeradwywyd”*) means a place which was approved as a place of inspection by an appropriate authority under article 17(1) of the 2005 Order or the 2018 Order before the commencement date and which remains approved by virtue of regulation 54(1), or a place approved under paragraph (6);
- “plant health movement document” (*“dogfen symud iechyd planhigion”*) means a document in the form set out in the Annex to Commission Directive [2004/103/EC](#) on identity and plant health checks of plants, plant products or other objects, listed in Part B of Annex V to Council Directive [2000/29/EC](#), which may be carried out at a place other than the point of entry into the Community or at a place close by and specifying the conditions related to these checks^{M32};

“relevant period” (“*cyfnod perthnasol*”) means the period beginning on the commencement date and ending immediately before 14 December 2020;

“temporary storage facility” (“*cyfleuster storio dros dro*”) means a temporary storage facility within the meaning of Article 148 of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code ^{M33};

[^{F5}“working day” (“*diwrnod gwaith*”) has the meaning given in regulation 7(4).]

F6
...

Textual Amendments

- F5** Words in reg. 13(10) inserted (13.11.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, **2(4)(b)**
- F6** Words in reg. 13(10) omitted (13.11.2020) by virtue of [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, **2(4)(a)**

Commencement Information

- I13** Reg. 13 in force at 27.3.2020, see reg. 1

Marginal Citations

- M32** OJ No. L 313, 12.10.2004, p. 16.
- M33** OJ No. L 269, 10.10.2013, p. 1, as last amended by Regulation (EU) 2019/632 of the European Parliament and of the Council (OJ No. L 111, 25.4.2019, p. 54).

PART 4

Official activities to prevent the establishment or spread of plant pests

Introduction

14.—(1) This Part applies if a plant health inspector suspects that a controlled plant pest or prohibited material is present or likely to be present, or becomes aware that a controlled plant pest or prohibited material is present, on any premises in Wales.

(2) In this Part—

“premises” (“*mangre*”) includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure;

“prohibited material” (“*deunydd gwaharddedig*”) means—

- (a) a plant, plant product or other object which is carrying, or is infested by or infected with, a controlled plant pest or may be carrying, or be infested by or infected with, a controlled plant pest;
- (b) a plant, plant product or other object the entry of which into the Union territory or Wales is prohibited under an EU plant health rule;
- (c) a plant, plant product or other object the movement of which within the Union territory, or into, within or from Wales, is prohibited under an EU plant health rule.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Commencement Information

I14 Reg. 14 in force at 27.3.2020, see reg. 1

Notices in relation to controlled plant pests or prohibited material

15.—(1) A plant health inspector may serve a notice on the appropriate person—

- (a) requiring the appropriate person to treat, destroy or otherwise dispose of the controlled plant pest or prohibited material,
- (b) prohibiting for the period specified in the notice—
 - (i) the removal of any controlled plant pest or prohibited material from the premises, or
 - (ii) any activity which the inspector considers necessary to prohibit in order to prevent the establishment or spread of a controlled plant pest,
- (c) requiring the removal of any controlled plant pest or prohibited material from the premises, or
- (d) requiring the taking of any other steps, as specified in the notice, which the inspector considers necessary to eradicate the controlled plant pest or prevent its establishment or spread.

(2) If a plant health inspector has reasonable grounds for believing that it is necessary for the purpose of preventing the spread of, or ensuring the eradication of, any controlled plant pest from any premises, the inspector may serve a notice on the occupier imposing any prohibition or requiring any reasonable step to be taken for that purpose.

(3) In paragraph (1), “appropriate person” means—

- (a) in the case of premises used by a professional operator, the professional operator;
- (b) in the case of any other premises—
 - (i) the occupier or any other person in charge of the premises;
 - (ii) any other person who is in charge of the controlled plant pest or the prohibited material at those premises.

Commencement Information

I15 Reg. 15 in force at 27.3.2020, see reg. 1

Action which may be taken by a plant health inspector

16.—(1) A plant health inspector may, on giving reasonable notice, enter any premises and any adjacent premises for the purpose of taking steps to—

- (a) eradicate, destroy or otherwise deal with any controlled plant pest,
- (b) prevent the spread of any controlled plant pest, or
- (c) destroy, treat or otherwise deal with any infected material.

(2) A plant health inspector must, if requested to do so, produce evidence of his or her authority before entering any premises for the purposes specified in paragraph (1).

(3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours' notice has been given to the occupier.

(4) A plant health inspector may be accompanied by such other persons (including representatives of the European Commission) and bring onto the premises such equipment and vehicles as the inspector considers necessary.

(5) A person accompanying a plant health inspector under paragraph (4) may—

- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
- (c) carry out work on the premises in a manner directed by a plant health inspector.

(6) In paragraph (1), “infected material” means—

- (a) a plant, plant product or other object which is carrying, or is infested by or infected with, a controlled plant pest or may be carrying, or be infested by or infected with, a controlled plant pest;
- (b) a plant, plant product or other object which is not carrying, or is not infested by or infected with, a controlled plant pest but the presence or existence of which may, in the opinion of a plant health inspector, cause a controlled plant pest to spread or be spread.

Commencement Information

I16 Reg. 16 in force at 27.3.2020, see reg. 1

Establishment of demarcated areas and measures to be taken in those areas

17.—(1) This regulation applies where an appropriate authority has officially confirmed the presence of a controlled plant pest which is not known to be present in Wales or the presence of a controlled plant pest in an area of Wales where it was not previously present.

(2) An appropriate authority may by notice—

- (a) demarcate an area in relation to the presence of the controlled plant pest for the purpose of eradicating or containing the plant pest;
- (b) specify the prohibitions or restrictions which are to apply to the demarcated area for that purpose.

(3) A notice under paragraph (2)—

- (a) must be in writing;
- (b) must describe the extent of the demarcated area;
- (c) must specify the date on which any such prohibitions or restrictions are to commence;
- (d) must be published in a manner appropriate to bring it to the attention of the public;
- (e) may be amended or revoked, in whole or in part, by further notice.

Commencement Information

I17 Reg. 17 in force at 27.3.2020, see reg. 1

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

PART 5

Temporary national measures relating to plant health

Schedule 1

18. Schedule 1 contains additional temporary measures to prevent the entry of certain controlled plant pests into Wales, or their establishment in, or spread within, Wales.

Commencement Information

I18 Reg. 18 in force at 27.3.2020, see reg. 1

PART 6

Registration, authorisations and certificates relating to plant health

Applications for registration

19. An application for registration pursuant to Article 66(1) of the EU Plant Health Regulation which is to be submitted to an appropriate authority must be submitted in the manner and form required by the appropriate authority.

Commencement Information

I19 Reg. 19 in force at 27.3.2020, see reg. 1

Other applications

20.—(1) The following applications must be made to the appropriate authority in the manner and form required by the appropriate authority—

- (a) an application for a temporary authorisation to permit a relevant activity for official testing, scientific or educational purposes, trials, varietal selection or breeding;
- (b) an application for an authorisation referred to in the following provisions of the EU Plant Health Regulation—
 - (i) Article 64(2),
 - (ii) Article 89(1), or
 - (iii) Article 98(1);
- (c) an application for the issue of a phytosanitary certificate for export, a phytosanitary certificate for re-export or a pre-export certificate.

(2) In this regulation—

“relevant activity” means an activity which would otherwise be prohibited under the EU Plant Health Regulation, an EU emergency decision or another EU plant health rule involving—

- (a) the introduction of a plant pest or a plant, plant product or other object into Wales,
- (b) the movement of a plant pest or a plant, plant product or other object within Wales,
- (c) the holding of a controlled plant pest or a plant, plant product or other object at premises in Wales, or

- (d) the multiplication of a plant pest at premises in Wales.

Commencement Information

I20 Reg. 20 in force at 27.3.2020, see reg. 1

Authorisations for other purposes

21.—^[F7](1) The appropriate authority may grant an authorisation to permit—

- (a) the carrying out of any activity specified in a plant health derogation,
- (b) the introduction into Wales, the movement within Wales, or the holding or multiplication in Wales, of a potential quarantine plant pest for official testing, scientific or educational purposes, trials, varietal selection or breeding, or
- (c) the carrying out of any other activity which requires the approval of the appropriate authority under the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.]

(2) An application for any such authorisation must be made to the appropriate authority in the manner and form required by the appropriate authority.

^[F8](3) In paragraph (1)—

“plant health derogation” (“*rhanddirymiad iechyd planhigion*”) means—

- (a) a derogation from provisions of the EU Plant Health Regulation which is set out in an implementing or delegated act adopted by the European Commission under the EU Plant Health Regulation or the Official Controls Regulation, or
- (b) a derogation in any decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, which continues to apply for the purposes of the EU Plant Health Regulation on or after the commencement date and allows member States to authorise an activity which would otherwise be prohibited by or under the EU Plant Health Regulation;

“potential quarantine plant pest” (“*pla planhigion cwarantîn posibl*”) means a plant pest which is not a Union quarantine pest, a protected zone quarantine pest or a plant pest subject to any measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation, but which, in the opinion of the appropriate authority, fulfils the criteria set out in Subsection 1 of Section 3 of Annex 1 to that Regulation or may fulfil the criteria in Subsection 2 of that Section.]

Textual Amendments

F7 Reg. 21(1) substituted (13.11.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, [2\(5\)\(a\)](#)

F8 Reg. 21(3) substituted (13.11.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, [2\(5\)\(b\)](#)

Commencement Information

I21 Reg. 21 in force at 27.3.2020, see reg. 1

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Authorisations granted by an appropriate authority

22.—(1) An authorisation granted by an appropriate authority for the purposes of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations must be in writing and may be granted—

- (a) subject to conditions;
- (b) for an indefinite period or a specified period.

(2) An authorisation granted by an appropriate authority may permit the appropriate authority to modify, suspend or revoke the authorisation at any time by notice in writing.

Commencement Information

I22 Reg. 22 in force at 27.3.2020, see reg. 1

PART 7

Measures relating to certain solanaceous species

Schedule 2

23. Schedule 2 contains specific measures relating to certain solanaceous species.

Commencement Information

I23 Reg. 23 in force at 27.3.2020, see reg. 1

PART 8

Notification requirements: plant health

Notification requirements in relation to seed potatoes

24.—(1) A professional operator who is bringing any of the following potatoes into Wales must, at least two days before the expected date of their arrival in Wales, provide written notification to a plant health inspector of the matters referred to in paragraph (2)—

- (a) seed potatoes grown or suspected of having been grown in another member State or in Switzerland, or
 - (b) potatoes, other than seed potatoes, grown or suspected of having been grown in Poland, Portugal, Romania or Spain.
- (2) The matters are—
- (a) the expected time and date of their arrival,
 - (b) their intended use,
 - (c) their intended destination,
 - (d) their variety and quantity, and
 - (e) the identification number of the producer of the potatoes.

(3) In paragraph (1)(b), “Spain” means that part of Spain which is included within the Union territory for the purposes of the EU Plant Health Regulation, other than the Balearic Islands.

Commencement Information

I24 Reg. 24 in force at 27.3.2020, see reg. 1

Notification requirements in relation to citrus fruits

25.—(1) A professional operator who is introducing notifiable citrus fruits into the Union territory through a border control post in another part of the Union territory must, before their arrival at that border control post, provide written notification to the Welsh Ministers at the specified address of the matters referred to in paragraph (2).

(2) The matters are—

- (a) the expected date of their introduction into the European Union;
- (b) the name of the border control post;
- (c) their volume;
- (d) the identification numbers of their containers;
- (e) the names, addresses and the locations of the premises in Wales at which they are to be processed.

(3) In paragraph (1)—

“notifiable citrus fruits” (“*ffrwythau sitrws hysbysadwy*”) means fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., *Microcitrus* Swingle, *Naringi* Adans., or *Swinglea* Merr., originating in a third country, which are to be industrially processed into juice in Wales;

“specified address” (“*cyfeiriad penodedig*”) means the address given by the Welsh Ministers from time to time for the purposes of this regulation.

Commencement Information

I25 Reg. 25 in force at 27.3.2020, see reg. 1

Notification requirements in relation to other plants and plant products

26.—(1) A professional operator who is bringing any of the following plants or plant products into Wales must, before or no later than four days after the date of their arrival in Wales, provide written notification to a plant health inspector of the matters referred to in paragraph (2)—

- (a) plants of *Castanea* Mill., *Fraxinus* L., *Olea europaea* L., *Pinus* L., *Platanus* L., *Prunus* L., *Quercus* L. or *Ulmus* L. intended for planting, which have been grown or are suspected of having been grown in another member State,
- (b) plants of *Castanea* Mill., *Fraxinus* L., *Olea europaea* L., *Pinus* L., *Platanus* L., *Prunus* L., *Quercus* L. or *Ulmus* L. intended for planting, which have been grown or are suspected of having been grown in Switzerland and to which Article 47(1) of the Official Controls Regulation does not apply, or
- (c) solid fuel wood from another member State, or solid fuel wood from a third country to which Article 47(1) of the Official Controls Regulation does not apply.

(2) The matters are—

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (a) the expected date of the arrival of the consignment or, if the consignment has arrived in Wales, the date on which it first arrived in Wales;
 - (b) the intended destination of the consignment, or if the consignment has arrived at its intended destination in Wales, its current location;
 - (c) the genus, species and quantity of the plants or wood in the consignment;
 - (d) the country from which the plants or wood have been, or are to be, consigned;
 - (e) in the case of plants intended for planting, the identification number of the supplier of the plants;
 - (f) in the case of solid fuel wood—
 - (i) the address of the consignor, and
 - (ii) details of any phytosanitary treatments applied to the wood.
- (3) In this regulation “solid fuel wood” means fuel wood in the form of logs, billets, twigs, faggots or other similar forms.

Commencement Information

I26 Reg. 26 in force at 27.3.2020, see reg. 1

PART 9

General powers of plant health inspectors and enforcement

Interpretation

27.—(1) In this Part—

“ISPM 15 mark” (“*nod SRFFf 15*”) means the mark referred to in Article 96(1) of the EU Plant Health Regulation, which may be applied to wood packaging material to attest that it has been treated in accordance with Annex 1 to ISPM 15;

“premises” (“*mangre*”) includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure;

“wood packaging material” (“*deunydd pecynnu pren*”) includes any wood or other object which is required to be treated and marked in accordance with Annex 1 to ISPM 15.

(2) For the purposes of regulations 32 and 33, a person “incorrectly” applies the ISPM 15 mark to wood packaging material if the person applies the mark otherwise than in the manner specified in Article 96(1) of the EU Plant Health Regulation, as read with Article 97(1) of the EU Plant Health Regulation.

Commencement Information

I27 Reg. 27 in force at 27.3.2020, see reg. 1

Powers of entry

28.—(1) A plant health inspector may enter any premises at a reasonable time for the purpose of—

- (a) performing official controls to verify that—

- (i) an operator is complying with the Official Controls Regulation,
 - (ii) a professional operator is complying with the EU Plant Health Regulation,
 - (iii) a person is complying with these Regulations, or
 - (iv) any plants, plant products or other objects which are subject to an EU plant health rule or to the requirements in Schedule 1 comply with that rule or those requirements;
- (b) carrying out other official activities which are to be performed by the appropriate authority pursuant to the Official Controls Regulation, the EU Plant Health Regulation or these Regulations;
- (c) enforcing the Official Controls Regulation, the EU Plant Health Regulation or these Regulations;
- (d) verifying information supplied by a person in connection with an application for registration or for an authorisation or permit granted, or to be granted, under these Regulations;
- (e) ascertaining whether a condition of an authorisation or permit granted by an appropriate authority under these Regulations or for the purpose of the EU Plant Health Regulation or the Official Controls Regulation is being or has been complied with.
- (2) A plant health inspector must, if requested to do so, produce evidence of his or her authority before entering any premises for the purposes specified in paragraph (1).
- (3) Paragraph (1) does not apply to any premises which are used wholly or mainly as a private dwelling unless 24 hours' notice has been given to the occupier.
- (4) A plant health inspector who enters premises for a purpose specified in paragraph (1) or under a warrant issued by a justice of the peace may—
- (a) examine, photograph or mark any part of the premises, any object on the premises or anything that is attached to or otherwise forms part of the premises;
 - (b) in the case of premises being used to manufacture wood packaging material, examine or test any treatment facility, machinery, tools or other equipment used for the manufacture of wood packaging material or observe and monitor the manufacture of wood packaging material;
 - (c) take samples of or from—
 - (i) any plant pest,
 - (ii) any plant, plant product or other object, or
 - (iii) any container, package or item which has been or may have been in contact with a plant pest or plant, plant product or other object;
 - (d) open any container or package or require the owner or person in charge of any container or package to open the container or package;
 - (e) inspect or make copies of any documents or records (in whatever form they may be held) relating to the production of, or any activities relating to, any plant, plant product or other object.
- (5) A plant health inspector may destroy or otherwise dispose of any sample taken under this regulation when the sample is no longer required.
- (6) A plant health inspector may—
- (a) be accompanied—
 - (i) by a representative of the European Commission or an authorised officer of any competent authority designated in the Union territory for the purposes of the EU Plant Health Regulation or the Official Controls Regulation, or

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (ii) such other persons as the inspector considers necessary, and
 - (b) bring onto the premises such equipment and vehicles as the inspector considers necessary.
- (7) A plant health inspector who is accompanied by a person mentioned in paragraph (6)(a)(i) may—
- (a) show the person any documents or records which are inspected by the inspector under paragraph (4)(e), and
 - (b) make copies, or require copies to be made, of those documents or records for that person.
- (8) A person accompanying a plant health inspector under paragraph (6)(a)(ii) may—
- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
 - (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
 - (c) carry out work on the premises in a manner directed by a plant health inspector.

Commencement Information

I28 Reg. 28 in force at 27.3.2020, see [reg. 1](#)

Right of entry conferred by a warrant issued by a justice of the peace

29.—(1) A justice of the peace may by signed warrant permit an inspector to enter premises under regulation 16(1), 28(1) or 31(1), if necessary by reasonable force, if the justice, on sworn information in writing, is satisfied that—

- (a) there are reasonable grounds to enter those premises, and
 - (b) any of the conditions in paragraph (2) are met.
- (2) The conditions are that—
- (a) entry to the premises has been, or is likely to be, refused and notice of the intention to apply for a warrant has been given to the occupier,
 - (b) asking for admission to the premises, or giving notice of the intention to apply for a warrant, would defeat the object of the entry,
 - (c) entry is required urgently, or
 - (d) the premises are unoccupied or the occupier is temporarily absent.
- (3) A warrant is valid for one month.
- (4) An inspector who enters any unoccupied premises must leave them as effectively secured against unauthorised entry as they were before entry.

Commencement Information

I29 Reg. 29 in force at 27.3.2020, see [reg. 1](#)

Information notices

30.—(1) A plant health inspector or any other officer of an appropriate authority may by notice in writing require an appropriate person to give to the inspector or officer, within the time specified in the notice, any information which the person may possess as to—

- (a) the plants grown or products stored at any time on the premises specified in the notice,

- (b) any plant pest or plant, plant product or other object referred to in paragraph (4)(b), or
 - (c) the persons who have had, or are likely to have had, any plant pest or plant, plant product or other object referred to in paragraph (4)(b) in their possession or under their charge.
- (2) The time within which the information is required to be given to the inspector or other officer must be reasonable.
- (3) An appropriate person must produce for examination by the inspector or other officer any authorisation, official statement, certificate, plant passport, record, invoice or other document relating to a plant pest or any plant, plant product or other object specified in the notice.
- (4) In this regulation, “appropriate person” means—
- (a) in relation to any premises to be specified in a notice under paragraph (1), a person who is the owner, occupier or other person in charge of the premises,
 - (b) a person who has, has had, or is reasonably suspected by the inspector or officer to have or have had, possession or charge of—
 - (i) a controlled plant pest,
 - (ii) any plant, plant product or other object which was carrying a controlled plant pest or which was infested by or infected with a controlled plant pest, or
 - (iii) any plant, plant product or other object which the inspector or officer knows or suspects to have been imported into or exported from Wales, or
 - (c) a person who, as auctioneer, salesman or otherwise, has sold, offered for sale or otherwise disposed of a controlled plant pest.

Commencement Information

I30 Reg. 30 in force at 27.3.2020, see reg. 1

Failure to comply with a notice

31.—(1) If a person fails to comply with a notice served on that person under these Regulations, a plant health inspector may enter any affected premises at all reasonable times to take or cause to be taken any steps that the plant health inspector considers necessary to ensure compliance with the notice or to remedy the consequences of the failure to carry them out.

(2) A plant health inspector acting under paragraph (1) must, if requested to do so, show evidence of authority to act.

[^{F9}(3) Paragraph (1) does not apply—

- (a) to any premises which are used wholly or mainly as a private dwelling unless 24 hours’ notice has been given to the occupier, or
- (b) in relation to any notice served under Schedule 4A.]

(4) A plant health inspector may be accompanied by such other persons (including representatives of the European Commission) and bring onto the premises such equipment and vehicles as the inspector considers necessary.

(5) A person accompanying a plant health inspector under paragraph (4) may—

- (a) remain on the premises and from time to time re-enter the premises without a plant health inspector,
- (b) bring onto the premises any equipment or vehicles that the person considers necessary, and
- (c) carry out work on the premises in a manner directed by a plant health inspector.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Textual Amendments

- F9** Reg. 31(3) substituted (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), regs. 1, **2(2)**

Commencement Information

- I31** Reg. 31 in force at 27.3.2020, see reg. 1

Removal of ISPM 15 mark from wood packaging material

32. Where an inspector knows, or has reasonable grounds for suspecting, that the ISPM 15 mark has been incorrectly applied to wood packaging material, a plant health inspector may remove the mark or, by notice in writing, require another person to remove it.

Commencement Information

- I32** Reg. 32 in force at 27.3.2020, see reg. 1

Marking of wood packaging material: power of seizure

33.—(1) This regulation applies where a plant health inspector knows, or has reasonable grounds for suspecting, that a person has incorrectly applied, or intends to incorrectly apply, the ISPM 15 mark to wood packaging material at any premises in Wales.

(2) The plant health inspector may seize and detain from that person or from those premises any stencil, template or other item of equipment that appears to the inspector to be capable of being used to apply the ISPM 15 mark.

(3) If, in the opinion of the plant health inspector, it is not for the time being practicable for the inspector to seize and remove any item, the inspector may require any person on the premises to secure that the item is not removed or otherwise interfered with until such time as the inspector may seize and remove it.

(4) The plant health inspector must make reasonable efforts to give written notice to the appropriate person—

- (a) stating what has been seized and the reason for its seizure;
- (b) explaining the effect of paragraphs (5) to (12).

(5) Any item seized under paragraph (2) may be retained by the Welsh Ministers for as long as is necessary in all the circumstances, and in particular for the purposes of proceedings in relation to an offence specified in regulation 38(1).

(6) The Welsh Ministers may apply to the magistrate's court for the forfeiture of any item retained under paragraph (5).

(7) Where an application is made under paragraph (6), the court may order the item to be forfeited if the court is satisfied that—

- (a) an offence specified in regulation 38(1) has been committed in respect of it, or
- (b) it was used in the commission of such an offence.

(8) If the court orders the item to be forfeited, the Welsh Ministers may dispose of it in whatever way they think appropriate.

(9) If the court does not order the item to be forfeited, it must order the item to be returned to the appropriate person.

(10) The Welsh Ministers may recover from the appropriate person all reasonable costs incurred by the Welsh Ministers for the purposes of securing the forfeiture of an item under paragraphs (6) to (8).

(11) Where the retention of any item has been, but is no longer, authorised under this regulation—

- (a) the item must be returned to the appropriate person;
- (b) the appropriate person may apply to the magistrate's court for an order that the item be returned.

(12) Where the item is required to be returned to the appropriate person and reasonable efforts have been made, without success, to return the item to that person, the Welsh Ministers may dispose of the item in whatever way they think appropriate.

(13) In this regulation—
“appropriate person” means—

- (a) in the case of an item seized from a person, the person from whom the item was seized;
- (b) in the case of an item seized from premises, the occupier or any other person in charge of the premises;
- (c) in the case of an item seized from a person or premises which does not belong to a person falling within paragraph (a) or (b), the person to whom it belongs and who asserts ownership over it.

(14) Nothing in this regulation affects the powers of a plant health inspector under regulation 32.

Commencement Information

I33 Reg. 33 in force at 27.3.2020, see reg. 1

Disclosure of information held by the Commissioners for Her Majesty's Revenue and Customs

34.—(1) The Commissioners for Her Majesty's Revenue and Customs may disclose any information in their possession to an appropriate authority for the purposes of enabling or assisting the appropriate authority to carry out any function conferred on it under or by virtue of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

(2) Nothing in paragraph (1) affects any other power or requirement of the Commissioners to disclose information.

Commencement Information

I34 Reg. 34 in force at 27.3.2020, see reg. 1

Disclosure of information to other competent authorities

35.—(1) The Welsh Ministers may disclose information to any other competent authority in another part of the Union territory for the purposes of the EU Plant Health Regulation or the Official Controls Regulation.

(2) Nothing in paragraph (1) affects any other power or requirement of the Welsh Ministers to disclose information.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Commencement Information

I35 Reg. 35 in force at 27.3.2020, see reg. 1

PART 10

General and supplemental provisions relating to plant health notices

Miscellaneous provisions as to notices

36.—(1) This regulation applies to any notice given by a plant health inspector under these Regulations, other than a notice given under regulation 33(4) [^{F10}or Schedule 4A].

(2) The notice may—

(a) specify—

(i) one or more requirements or alternative requirements;

(ii) the manner in which and the period in which any requirement or condition specified in the notice must be carried out or fulfilled, or

(b) require the owner or any other person who appears to be in charge of the premises to which the notice relates to—

(i) notify the appropriate authority of any change in occupation of the premises, the date of the change and the name of the new occupier, and

(ii) inform the new occupier of the premises of the contents of the notice.

(3) Any destruction, disposal, re-export or treatment of a plant, plant product or other object or a plant pest which is required to be carried out under the notice must be carried out, or arranged to be carried out, to the satisfaction of a plant health inspector by the person on whom the notice has been served from or at the place specified in the notice.

(4) A plant health inspector may amend or withdraw the notice by a further notice.

(5) The notice may define by reference to a map or plan or otherwise the extent of the premises referred to in the notice.

Textual Amendments

F10 Words in reg. 36(1) inserted (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), regs. 1, **2(3)**

Commencement Information

I36 Reg. 36 in force at 27.3.2020, see reg. 1

Service of notices

37.—(1) A notice may be served on a registered operator by—

(a) delivering it personally,

(b) leaving it at, or sending it by post to, the contact address of the registered operator, or

(c) sending it to the email address that the operator has given to the appropriate authority for the service of notices.

- (2) A notice may be served on any other person by—
- (a) delivering it personally,
 - (b) leaving it at, or sending it by post to, the person's last known place of abode or business, or
 - (c) sending it to any email address that the person has given to the appropriate authority for the service of notices.

(3) If a notice is to be given by a plant health inspector [^{F11}or the appropriate authority] to an occupier or other person in charge of premises and the last known place of abode or address of that person cannot be ascertained after reasonable enquiry, the notice may be served on that person by addressing it to “the occupier” and leaving it conspicuously affixed to an object on the premises for a period of seven days.

- (4) A notice may—
- (a) in the case of a body corporate (other than a limited liability partnership), be served on the secretary or clerk of that body at the address of the registered or principal office of that body,
 - (b) in the case of a partnership (other than a limited liability partnership, but including a Scottish partnership), be served on a partner or a person having the control or management of the partnership business at the address of the principal office of the partnership, or
 - (c) in the case of a limited liability partnership, be served on a member of the partnership at the address of the registered or principal office of the partnership.

(5) For the purposes of paragraph (4), the principal office of a company registered outside the United Kingdom or a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.

- (6) In this regulation—

“notice” (“*hysbysiad*”) means a notice to be given by a plant health inspector [^{F12}or the appropriate authority] under these Regulations;

“contact address” (“*cyfeiriad cysylltu*”), in relation to a registered operator, means—

- (a) the operator's principal address in the register, or
- (b) any other postal address in Wales that the operator has given to the appropriate authority as a contact address for the service of notices.

Textual Amendments

F11 Words in reg. 37(3) inserted (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), regs. 1, **2(4)(a)**

F12 Words in reg. 37(6) inserted (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), regs. 1, **2(4)(b)**

Commencement Information

I37 Reg. 37 in force at 27.3.2020, see reg. 1

PART 11

Offences relating to plant health legislation

General

- 38.**—(1) A person commits an offence if the person contravenes or fails to comply with—
- (a) regulation 24(1), 25(1) or 26(1);
 - (b) paragraph 2 or 4 of Schedule 1;
 - (c) paragraphs 2(1) or (2), 5(1) or (2), 11(1), 12(1), 13(1), 14(1), 15, 20(1), 21(7), 22(2), 27(1), 28(7), 29(2) or 31(2) of Schedule 2;
 - (d) a provision of the EU Plant Health Regulation specified in Part 1 of Schedule 3;
 - (e) a provision of the Official Controls Regulation specified in Part 2 of Schedule 3 (insofar as it applies to plants, plant products or other objects which are subject to an EU plant health rule);
 - (f) a provision of any other EU legislation specified in Part 3 of Schedule 3;
 - (g) a provision of an EU emergency decision specified in Schedule 4.
- (2) But paragraph (1) does not apply to anything done under, or in accordance with—
- (a) an authorisation or permit which is granted under these Regulations or has effect under or by virtue of these Regulations;
 - (b) an approval granted under regulation 13(6) or an approval referred to in regulation 54(1);
 - (c) a notice which is given by a plant health inspector or an appropriate authority under these Regulations, or has effect under or by virtue of these Regulations.

Commencement Information

I38 Reg. 38 in force at 27.3.2020, see reg. 1

Failure to comply with requirements of notices etc.

- 39.** [^{F13}(1)] A person commits an offence if the person fails to comply with—
- (a) a provision or condition of a notice which has been served on the person under these Regulations or has effect under or by virtue of these Regulations,
 - (b) a provision or condition of an authorisation or permit which has been granted to the person under these Regulations or has effect under or by virtue of these Regulations, or
 - (c) a provision or condition of a direction given under these Regulations.

[^{F14}(2) Paragraph (1)(a) does not apply in relation to any notice served under Schedule 4A.]

Textual Amendments

F13 Reg. 39 renumbered as reg. 39(1) (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), regs. 1, **2(5)(a)**

F14 Reg. 39(2) inserted (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), regs. 1, **2(5)(b)**

Commencement Information

I39 Reg. 39 in force at 27.3.2020, see reg. 1

Defence: reasonable excuse

40. It is a defence for a person charged with an offence under regulation 38 or 39 to show that the person had a reasonable excuse for contravening or failing to comply with the prohibition or requirement in question.

Commencement Information

I40 Reg. 40 in force at 27.3.2020, see reg. 1

Provision of false or misleading information

41. A person commits an offence if, for the purposes of obtaining an authorisation or a permit or procuring the issue of a plant passport or certificate, the person—

- (a) knowingly or recklessly makes a statement or representation which is false in a material particular,
- (b) knowingly or recklessly furnishes a document or information which is false in a material particular, or
- (c) intentionally fails to disclose any material information.

Commencement Information

I41 Reg. 41 in force at 27.3.2020, see reg. 1

Improper use of plant passports or certificates

42.—(1) A person commits an offence if the person—

- (a) dishonestly issues a plant passport or a certificate,
- (b) dishonestly alters a plant passport or a certificate, or
- (c) dishonestly re-uses a plant passport or a certificate.

(2) In paragraph (1), “certificate” means a phytosanitary certificate for export, a phytosanitary certificate for re-export or a pre-export certificate.

Commencement Information

I42 Reg. 42 in force at 27.3.2020, see reg. 1

Obstruction

43.—(1) A person commits an offence if the person—

- (a) intentionally obstructs a plant health inspector or an authorised person acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations,

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (b) without reasonable excuse, fails to give to a plant health inspector or an authorised person any assistance or information which the inspector or authorised person may reasonably require for those purposes, or
 - (c) fails to produce a document or record when required to do so by an appropriate authority or a plant health inspector acting in the execution or enforcement of the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.
- (2) In paragraph (1), “authorised person” means a person authorised by an appropriate authority.

Commencement Information

I43 Reg. 43 in force at 27.3.2020, see [reg. 1](#)

Offence relating to the disclosure of information held by Revenue and Customs

44. A person commits an offence if the person discloses any information received from the Commissioners for Her Majesty's Revenue and Customs under regulation 34(1) and—

- (a) the information relates to a person whose identity is specified in the disclosure or can be deduced from the disclosure,
- (b) the disclosure is for a purpose other than specified in regulation 34(1), and
- (c) the Commissioners have not given their prior consent to the disclosure.

Commencement Information

I44 Reg. 44 in force at 27.3.2020, see [reg. 1](#)

Defence: lawful disclosure

45. It is a defence for a person charged with an offence under regulation 44 to prove that the person reasonably believed that—

- (a) the disclosure was lawful, or
- (b) the information had previously been made available lawfully.

Commencement Information

I45 Reg. 45 in force at 27.3.2020, see [reg. 1](#)

Offences by bodies corporate

46.—(1) Where an offence under this Part [^{F15}or paragraph 22 of Schedule 4A (failure to comply with a stop notice)] has been committed by a body corporate and the offence is proved—

- (a) to have been committed with the consent or connivance of an officer, or
- (b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “officer”, in relation to a body corporate, means—

- (a) a director, manager, secretary or other similar officer of the body, or

(b) a person purporting to act in any such capacity.

(3) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of a body corporate.

Textual Amendments

F15 Words in reg. 46(1) inserted (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), regs. 1, **2(6)**

Commencement Information

I46 Reg. 46 in force at 27.3.2020, see reg. 1

Offences by partnerships and unincorporated associations

47.—(1) Proceedings for an offence under this Part [^{F16}or paragraph 22 of Schedule 4A (failure to comply with a stop notice)] alleged to have been committed by a partnership or an unincorporated association must be brought against the partnership or association in the name of the partnership or association.

(2) For the purposes of such proceedings—

- (a) rules of court relating to the service of documents have effect as if the partnership or unincorporated association were a body corporate, and
- (b) section 33 of the Criminal Justice Act 1925 (procedure on charge of offence against corporation) ^{M34} and Schedule 3 to the Magistrates' Courts Act 1980 (corporations) ^{M35} apply in relation to the partnership or association as they apply in relation to a body corporate.

(3) A fine imposed on a partnership or unincorporated association on its conviction of an offence under this Part is to be paid out of the funds of the partnership or association.

(4) If an offence under this Part committed by a partnership is proved—

- (a) to have been committed with the consent or connivance of a partner, or
- (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In paragraph (4), “partner” includes a person purporting to act as a partner.

(6) If an offence under this Part committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association, or
- (b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) In paragraph (6), “officer”, in relation to an unincorporated association, means—

- (a) an officer of the association or a member of its governing body, or
- (b) a person purporting to act in such a capacity.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the *The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020*. (See end of Document for details)

Textual Amendments

F16 Words in reg. 47(1) inserted (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), regs. 1, **2(7)**

Commencement Information

I47 Reg. 47 in force at 27.3.2020, see reg. 1

Marginal Citations

M34 [1925 c. 86](#); section 33 was repealed in part by Schedule 6 to the [Magistrates Courts Act 1952 \(c. 55\)](#), and amended by paragraph 19 of Schedule 8 to the [Courts Act 1971 \(c. 23\)](#) and paragraph 71 of Schedule 8, and Schedule 10, to the [Courts Act 2003 \(c. 39\)](#) (subject to savings specified in [S.I. 2004/2066](#)).

M35 [1980 c. 43](#); Schedule 3 was amended by Schedule 13 to the [Criminal Justice Act 1991 \(c. 53\)](#) and paragraph 51 of Schedule 3, and Part 4 of Schedule 37 to the [Criminal Justice Act 2003 \(c. 44\)](#).

Penalties

48.—(1) A person guilty of an offence under regulation 38(1), 39, 41, 42 or 43 is liable on summary conviction to a fine.

(2) A person guilty of an offence under regulation 44 is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months, to a fine or to both;
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

Commencement Information

I48 Reg. 48 in force at 27.3.2020, see reg. 1

[^{F17} PART 11A

Civil Sanctions

Textual Amendments

F17 Pt. 11A inserted (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), regs. 1, **2(8)**

Civil sanctions

48A. Schedule 4A (which provides for civil sanctions) has effect.]

PART 12

Miscellaneous: plant health

Minor and consequential amendments

49. Schedule 5 contains minor and consequential amendments to secondary legislation relating to the marketing of seeds and plant propagating material and plant health fees.

Commencement Information

I49 Reg. 49 in force at 27.3.2020, see reg. 1

Revocation of plant health instruments

50. The instruments listed in Schedule 6 are revoked.

Commencement Information

I50 Reg. 50 in force at 27.3.2020, see reg. 1

Transitional provisions: licences under article 39(1) of the 2005 Order or article 41(1) of the 2018 Order

51.—(1) Any licence granted by the Welsh Ministers under article 39(1) of the 2005 Order or under article 41(1) of the 2018 Order, which is in force immediately before the commencement date, has effect during the relevant period as if it had been granted by the appropriate authority in accordance with Article 5 of Commission Delegated Regulation (EU) 2019/829 on the date on which it was granted under the 2005 Order or the 2018 Order.

(2) Nothing in paragraph (1) affects anything carried out prior to the commencement date under, or for the purposes of, the licence.

(3) Any reference in the licence to the 2005 Order, the 2018 Order, Council Directive [2000/29/EC](#) or Commission Directive [2008/61/EC](#) is to be read as a reference to the corresponding provision in or under the EU Plant Health Regulation or these Regulations.

(4) In this regulation—

“Commission Delegated Regulation (EU) 2019/829” (“*Rheoliad Dirprwyedig y Comisiwn (EU) 2019/829*”) means Commission Delegated Regulation (EU) 2019/829 supplementing Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants, authorising Member States to provide for temporary derogations in view of official testing, scientific or educational purposes, trials, varietal selections, or breeding ^{M36};

“Commission Directive [2008/61/EC](#)” (“*Cyfarwyddeb y Comisiwn [2008/61/EC](#)*”) means Commission Directive [2008/61/EC](#) establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive [2000/29/EC](#) may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections ^{M37};

“relevant period” (“*cyfnod perthnasol*”), in relation to a licence, means—

(a) if the licence expires on or after 31 December 2020, the period beginning on the commencement date and ending on 31 December 2020, or

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (b) if the licence expires before 31 December 2020, the period beginning on the commencement date and ending on the date of expiry of the licence specified in the licence.

Commencement Information

I51 Reg. 51 in force at 27.3.2020, see reg. 1

Marginal Citations

M36 OJ No. L 137, 23.5.2019, p. 15.

M37 OJ No. L 158, 18.6.2008, p. 41.

Transitional provisions: other licences under the 2005 Order or the 2018 Order

52.—(1) Any licence granted by the Welsh Ministers under article 38(1)(a) of the 2005 Order or under article 40(1)(a) of the 2018 Order and which has effect on the commencement date remains in force as if it were an authorisation granted by the appropriate authority under regulation 21(1)(a) on the date on which the licence was granted under the 2005 Order or the 2018 Order.

(2) Nothing in paragraph (1) affects anything carried out before the commencement date under, or for the purposes of, the licence.

(3) Any reference in the licence to the 2005 Order, the 2018 Order or Council Directive [2000/29/EC](#) is to be read as a reference to the corresponding provision in or under the EU Plant Health Regulation or these Regulations.

Commencement Information

I52 Reg. 52 in force at 27.3.2020, see reg. 1

Transitional provisions: notices

53.—(1) Any notice given under the 2005 Order, the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006^{M38} or the 2018 Order and which has effect on the commencement date—

- (a) remains in force and continues to have effect as if it were given under these Regulations for an equivalent purpose on the date on which it was given under the 2005 Order, the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006 or the 2018 Order (as the case may be), and
- (b) is to be read with such modifications as are necessary for it to do so.

(2) In paragraph (1), the reference to any notice under the 2005 Order, the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006 or the 2018 Order includes any official approval given for the purposes of the notice.

Commencement Information

I53 Reg. 53 in force at 27.3.2020, see reg. 1

Marginal Citations

M38 [S.I. 2006/2695](#), amended by [S.I. 2013/755](#) (W. 90) and [S.I. 2019/734](#).

Transitional provisions: approvals granted under article 17(1) of the 2005 Order or the 2018 Order

54.—(1) Any approval granted by the Welsh Ministers under article 17(1) of the 2005 Order or under article 17(1) of the 2018 Order which is in force immediately before the commencement date remains in force and continues to have effect during the relevant period.

(2) In paragraph (1), “relevant period”, in relation to an approval granted under 17(1) of the 2005 Order or the 2018 Order, means—

- (a) if the approval expires on or after 13 December 2020, the period beginning on the commencement date and ending on 13 December 2020, or
- (b) if the approval expires before 13 December 2020, the period beginning on the commencement date and ending on the date of expiry of the approval specified in the approval.

Commencement Information

I54 Reg. 54 in force at 27.3.2020, see reg. 1

PART 13

Official controls in relation to genetically modified organisms

Amendment to secondary legislation on official controls in relation to genetically modified organisms

55.—(1) The Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 ^{M39} are amended as follows.

(2) In regulation 2(1), in the definition of “relevant legislation”, for “sub-paragraphs (a), (c), (d), (e) and (f)” substitute “ sub-paragraphs (a) to (f) ”.

(3) In regulation 13(5)(b), in the Welsh language text, after “bodlonir” insert “ un ”.

Commencement Information

I55 Reg. 55 in force at 27.3.2020, see reg. 1

Marginal Citations

M39 [S.I. 2020/44](#) (W. 5).

Lesley Griffiths
Minister for Environment, Energy and Rural
Affairs, one of the Welsh Ministers

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

SCHEDULE 1

Regulation 18

Temporary national measures

Interpretation

1. In this Schedule, “introduce” means introduce into Wales from a third country or another part of the Union territory.

Commencement Information

I56 Sch. 1 para. 1 in force at 27.3.2020, see reg. 1

PART 1

Plants, plant products or other objects from third countries

Temporary measures applying to the introduction of plants, plant products or other objects from third countries

2.—(1) No person may introduce any used machinery or vehicles which have been operated for agricultural or forestry purposes and exported from Switzerland unless the machinery or vehicles—

- (a) have been exported from an area established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr., or
- (b) in the case of any machinery or vehicles exported from an area infested with *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr., they have been cleaned and were free from soil and plant debris prior to being moved out of the area.

(2) In paragraph (1), “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

M40

Commencement Information

I57 Sch. 1 para. 2 in force at 27.3.2020, see reg. 1

Marginal Citations

M40 Available from the IPPC Secretariat, AGPP-FAO, Viale Delle Terme di Caracalla, 00153, Rome, Italy and at <https://www.ippc.int/int>.

PART 2

Plants, plant products or other objects from another part of the Union territory

Temporary measures applying to the introduction of plants, plant products or other objects from another part of the Union territory

3. In this Part—

“move” (“*symud*”) means move within Wales;

“official statement” (“*datganiad swyddogol*”) means a statement issued by, or under the supervision of, an authorised representative of the competent authority in the member State of origin;

“Spain” (“*Sbaen*”) means that part of Spain which is included within the Union territory for the purposes of the EU Plant Health Regulation, other than the Balearic Islands.

Commencement Information

I58 Sch. 1 para. 3 in force at 27.3.2020, see reg. 1

4. No person may introduce or move any plants, plant products or other objects described in column 2 of Table 1 unless they are accompanied by an official statement confirming the matters set out in the corresponding entry in column 3 of that Table.

Table 1

<i>(1)</i>	<i>(2) Description of plants, plant products or other objects</i>	<i>(3) Details of official statement</i>
1.	Tubers of <i>Solanum tuberosum</i> L., including those intended for planting which originate in Spain except where those tubers originate in an area which has been established in accordance with Article 5 of Decision 2012/270/EU	The official statement must confirm that the tubers have been washed so that there is no more than 0.1% of soil remaining
2.	Tubers of <i>Solanum tuberosum</i> L., originating in Poland	The official statement must confirm that the tubers have been found free from <i>Clavibacter michiganensis</i> ssp. <i>Sepedonicus</i> (Spieckermann and Kotthoff) David <i>et al.</i> in laboratory tests

Commencement Information

I59 Sch. 1 para. 4 in force at 27.3.2020, see reg. 1

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

SCHEDULE 2

Regulation 23

PART 1

General interpretation

1. In this Schedule—

“Directive 93/85/EEC” (“*Cyfarwyddeb 93/85/EEC*”) means Council Directive 93/85/EEC on the control of potato ring rot ^{M41};

“Directive 98/57/EC” (“*Cyfarwyddeb 98/57/EC*”) means Council Directive 98/57/EC on the control of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* ^{M42};

“Directive 2007/33/EC” (“*Cyfarwyddeb 2007/33/EC*”) means Council Directive 2007/33/EC on the control of potato cyst nematodes ^{M43};

“premises” (“*mangre*”) includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure;

“potato” (“*taten*”) means any tuber or true seed or any other plant of *Solanum tuberosum* L. or other tuber-forming species of the genus *Solanum* L.;

“Potato brown rot” (“*Pydredd coch tatws*”) means either the disease of potatoes caused by *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* or that bacterium, as the context requires;

“Potato ring rot” (“*Pydredd cylch tatws*”) means either the disease of potatoes which is caused by the bacterium *Clavibacter michiganensis* (Smith) Davis *et al.* spp. *Sependonicus* (Spieckermann and Kotthof) Davis *et al.* or that bacterium, as the context requires;

“Seed Potatoes Regulations” (“*Rheoliadau Tatws Hadyd*”) means the Seed Potatoes (Wales) Regulations 2016 ^{M44}.

Commencement Information

I60 Sch. 2 para. 1 in force at 27.3.2020, see reg. 1

Marginal Citations

M41 OJ No. L 259, 18.10.1993, p. 1, as amended by Commission Directive 2006/56/EC (OJ No. L 182, 4.7.2006, p. 1). It is repealed from 1 January 2022 (see Article 113(2) of Regulation (EU) 2016/2031 (OJ No. L 317, 23.11.2016, p. 4).

M42 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). It is repealed from 1 January 2022 (see Article 113(2) of Regulation (EU) 2016/2031).

M43 OJ No. L 156, 16.6.2007, p. 12. It is repealed from 1 January 2022 (see Article 113(2) of Regulation (EU) 2016/2031).

M44 [S.I. 2016/106](#) (W. 52).

PART 2

General provisions relating to the planting of certain solanaceous species

General restrictions on the planting of potatoes

2.—(1) A person must not knowingly plant, or knowingly cause or permit to be planted—

(a) any potatoes which have been grown in a third country, other than Switzerland, or

- (b) any potatoes produced from those potatoes.
- (2) A person must not knowingly plant, or knowingly cause or permit to be planted, any potatoes unless—
 - (a) they derive in direct line from potato material which has been obtained under an officially approved programme in the European Union or Switzerland,
 - (b) they have been found to be free from Potato ring rot in official tests using the methods set out in Annex 1 to Directive 93/85/EEC, and
 - (c) they have been found to be free from Potato brown rot in official tests using the methods set out in Annex 2 to Directive 98/57/EC.

Commencement Information

I61 Sch. 2 para. 2 in force at 27.3.2020, see reg. 1

PART 3

Measures for the control of Potato wart disease

Interpretation

3. In this Part—
- (a) “Potato wart disease” means either the disease of potatoes which is caused by the fungus *Synchytrium endobioticum* (Schilbersky) Percival or that fungus, as the context requires;
 - (b) a plot of land is to be regarded as a contaminated plot if Potato wart disease is confirmed by an official test to be present on at least one plant that is growing or was grown on that plot.

Commencement Information

I62 Sch. 2 para. 3 in force at 27.3.2020, see reg. 1

Official measures relating to contaminated plots of land

- 4.—(1) A plant health inspector must demarcate any contaminated plot and a safety zone around that plot which is large enough to ensure the protection of the surrounding area.
- (2) A plant health inspector must serve a notice under regulation 15(1) requiring any potato tubers or haulms which are present on the contaminated plot, or which come from the contaminated plot, to be treated in such a way that the Potato wart disease present on them is destroyed.
- (3) Where a plant health inspector is satisfied that any potato tubers or haulms are contaminated with Potato wart disease and the inspector cannot determine whether those tubers or haulms have been present on a contaminated plot, the inspector may serve a notice under regulation 15(1) which requires the whole batch containing the affected tubers or haulms to be treated in such a way that there is no risk of Potato wart disease spreading.

Commencement Information

I63 Sch. 2 para. 4 in force at 27.3.2020, see reg. 1

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Prohibition on the planting of potatoes on contaminated plots

5.—(1) Where a contaminated plot is demarcated under paragraph 4(1), no person may—

- (a) grow any potatoes on the plot, or
- (b) grow or store on the plot any plants intended for transplanting.

(2) No person may grow potatoes in a safety zone demarcated under paragraph 4(1) unless a plant health inspector is satisfied that they are of a variety which is resistant to the races of Potato wart disease found on the contaminated plot to which the safety zone relates.

(3) A potato variety is to be considered resistant to a particular race of Potato wart disease for the purposes of sub-paragraph (2) where that variety reacts to contamination by the pathogenic agent of that race in such a way that there is no danger of secondary infection.

Commencement Information

I64 Sch. 2 para. 5 in force at 27.3.2020, see reg. 1

Revocation of the demarcation of a contaminated plot

6. Where a plant health inspector is satisfied that Potato wart disease is no longer present on a plot which was demarcated under paragraph 4(1) or on its associated safety zone, the inspector must revoke that demarcation.

Commencement Information

I65 Sch. 2 para. 6 in force at 27.3.2020, see reg. 1

PART 4

Measures for the control of European populations of Potato cyst nematode

Interpretation

7. In this Part—

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

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

“infested field” (“*cae a heigiwyd*”) means a field which is recorded as infested pursuant to paragraph 9(1);

“notice” (“*hysbysiad*”) means a notice under regulation 15(1);

“Potato cyst nematode” (“*Llyngyr tatws*”) means any cyst-forming nematode of the species *Globodera pallida* (Stone) Behrens or *Globodera rostochiensis* (Wollenweber) Behrens that infests and multiplies on potatoes, including any strain or pathotype of any such nematode;

“susceptible bulbs” (“*bylbiau sy'n dueddol o gael plâu neu glefydau*”) means bulbs, tubers or rhizomes, grown in soil and intended for planting, of *Allium ascalonicum* L., *Allium cepa* L., *Dahlia* spp., *Gladiolus* Tourn. Ex L., *Hyacinthus* spp., *Iris* spp., *Lilium* spp., *Narcissus* L. or *Tulipa* L., 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;

“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.

Commencement Information

I66 Sch. 2 para. 7 in force at 27.3.2020, see reg. 1

Official investigations and surveys

8. The Welsh Ministers must ensure that—

- (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, and
- (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.

Commencement Information

I67 Sch. 2 para. 8 in force at 27.3.2020, see reg. 1

Official records of investigations and surveys

9.—(1) The Welsh Ministers must ensure that the results of each official investigation or official survey carried out pursuant to paragraph 8 are recorded to indicate whether Potato cyst nematodes were found in the fields during the investigation or survey.

(2) 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 subparagraph (1) and, following the completion of those measures, it is officially confirmed that Potato cyst nematodes are no longer present in the field, the Welsh Ministers must ensure that the record is updated accordingly.

Commencement Information

I68 Sch. 2 para. 9 in force at 27.3.2020, see reg. 1

Notices in relation to infested fields and contaminated susceptible material

10.—(1) A plant health inspector must serve a notice in writing on the occupier or other person in charge of an infested field which specifies the boundaries of the infested field.

(2) The notice may not be withdrawn until it is confirmed, in accordance with paragraph 9(2), that Potato cyst nematode is no longer present in the field.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

(3) A plant health inspector must by notice designate as contaminated any susceptible material which comes from a field that has been officially recorded as infested under paragraph 9(1) or any susceptible material which has been in contact with soil in which Potato cyst nematodes have been found.

Commencement Information

I69 Sch. 2 para. 10 in force at 27.3.2020, see reg. 1

Prohibition on the planting of potatoes in infested fields

11.—(1) Unless authorised to do so by an inspector, no person may—

- (a) plant any potatoes that are intended for the production of seed potatoes in an infested field, or
- (b) plant or store any susceptible material which is intended for planting in an infested field.

(2) A plant health inspector may authorise the planting of susceptible bulbs or susceptible plants in an infested field.

(3) An authorisation under sub-paragraph (2) must be by notice and must contain the measures set out in Section 3(A) of Annex 3 to Directive [2007/33/EC](#).

Commencement Information

I70 Sch. 2 para. 11 in force at 27.3.2020, see reg. 1

Suppression of Potato cyst nematodes

12.—(1) No person may plant any potatoes that are not intended for the production of seed potatoes in an infested field unless authorised to do so by a plant health inspector.

(2) An authorisation under sub-paragraph (1) 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 by the Welsh Ministers for the suppression of Potato cyst nematodes.

Commencement Information

I71 Sch. 2 para. 12 in force at 27.3.2020, see reg. 1

Controls on contaminated seed potatoes etc.

13.—(1) No person may plant any seed potatoes or any host plants which have been designated as contaminated pursuant to paragraph 10(3), unless authorised to do so by an inspector.

(2) An authorisation under sub-paragraph (1) must be by notice and must contain the measures which the inspector considers necessary to decontaminate those seed potatoes or host plants.

Commencement Information

I72 Sch. 2 para. 13 in force at 27.3.2020, see reg. 1

Controls on potatoes for industrial processing or grading

14.—(1) No person may move any potatoes which have been designated as contaminated pursuant to paragraph 10(3) and are intended for industrial processing or grading, unless authorised to do so by an inspector.

(2) An authorisation under sub-paragraph (1) 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.

Commencement Information

I73 Sch. 2 para. 14 in force at 27.3.2020, see reg. 1

Controls on contaminated bulbs etc.

15. No person may plant any susceptible bulbs or susceptible plants which have been designated as contaminated pursuant to paragraph 10(3), 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.

Commencement Information

I74 Sch. 2 para. 15 in force at 27.3.2020, see reg. 1

Further investigations for the presence of Potato cyst nematodes

16. 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 are investigated and confirmed by appropriate methods.

Commencement Information

I75 Sch. 2 para. 16 in force at 27.3.2020, see reg. 1

PART 5

Measures for the control of Potato ring rot

Interpretation

17. In this Part—

“certified seed potatoes” (“*tatws hadyd ardystiedig*”) means pre-basic seed potatoes, basic seed potatoes or certified seed potatoes within the meaning given in regulation 2(1) of the Seed Potatoes Regulations;

“contaminated” (“*halogedig*”) means designated by a plant health inspector as contaminated for the purposes of Article 5(1)(a) of Directive [93/85/EEC](#);

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

“first growing year” (“*blwyddyn dyfu gyntaf*”), in the case of measures to be taken in relation to a contaminated place of production, means the first growing year following the growing year in which the place of production is designated as contaminated for the purposes of Article 5(1)(a) of Directive 93/85/EEC;

“notice” (“*hysbysiad*”), in relation to a notice to be given by a plant health inspector, means a notice under regulation 15(1);

“object” (“*gwrthrych*”) means any item of machinery, vehicle, vessel, store or other object, including packaging material;

“possibly contaminated” (“*halogedig o bosibl*”) means determined by a plant health inspector to be possibly contaminated for the purposes of Article 5(1)(b) of Directive 93/85/EEC;

“susceptible material” (“*deunydd sy'n dueddol o gael plâu neu glefydau*”) means tubers or plants of *Solanum tuberosum* L.;

“zone” (“*parth*”) means any area, including any individual premises.

Commencement Information

I76 Sch. 2 para. 17 in force at 27.3.2020, see reg. 1

Official surveys and testing

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

(2) 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 whether or not it is present,
 - (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 of its presence or the refutation of its suspected 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 are taken to prevent any spread of the plant pest.
- (3) A notice may contain measures for the purposes of sub-paragraph (2)(c)(i) to (iii).

Commencement Information

177 Sch. 2 para. 18 in force at 27.3.2020, see reg. 1

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

19.—(1) If the presence of Potato ring rot is confirmed in a sample of susceptible material following official testing carried out pursuant to paragraph 18(2)(a) or sub-paragraph (2), 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 which the susceptible material was harvested are designated as contaminated by a plant health inspector;
- (b) a plant health 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 paragraph (a), taking into account the matters set out in point 1 of Annex 3 to Directive [93/85/EEC](#);
- (c) a zone is demarcated by a plant health inspector on the basis of the designation made under paragraph (a), taking into account the matters set out in point 2 of Annex 3 to Directive [93/85/EEC](#).

(2) Where susceptible material has been designated as contaminated under sub-paragraph (1)(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 18(2)(a) in order to determine the probable primary source of infection and the extent of the probable contamination.

(3) 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.

(4) Any designation by a plant health inspector under this paragraph must be made by notice.

(5) Where any susceptible material or object is determined by a plant health inspector under sub-paragraph (1)(b) to be possibly contaminated, the inspector must by notice designate that material or object as possibly contaminated.

Commencement Information

178 Sch. 2 para. 19 in force at 27.3.2020, see reg. 1

Restrictions in relation to susceptible material or objects contaminated or possibly contaminated with Potato ring rot

20.—(1) No person may knowingly plant or knowingly cause or permit to be planted—

- (a) any contaminated susceptible material, or
- (b) any possibly contaminated susceptible material.

(2) Where susceptible material or an object has been designated as contaminated or possibly contaminated under paragraph 19(1) or (5), a plant health inspector must serve a notice requiring that—

- (a) in the case of contaminated susceptible material, the material be disposed of by destruction or by any other measure that complies with point 1 of Annex 4 to Directive [93/85/EEC](#);
- (b) in the case of possibly contaminated susceptible material, the material be used or disposed of in accordance with point 2 of Annex 4 to Directive [93/85/EEC](#);

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (c) in the case of a contaminated object or a possibly contaminated object, the object be—
 - (i) disposed of by destruction, or
 - (ii) cleansed and disinfected so that there is no identifiable risk of Potato ring rot surviving or spreading.
- (3) Anything cleansed and disinfected in accordance with sub-paragraph (2)(c)(ii) may no longer be treated as contaminated for the purposes of Directive [93/85/EEC](#).

Commencement Information

I79 Sch. 2 para. 20 in force at 27.3.2020, see reg. 1

Measures in relation to a contaminated place of production

21.—(1) A plant health inspector must serve the following notices on any occupier or other person who is in charge of a contaminated place of production—

- (a) in relation to any contaminated field which is part of the place of production, a notice containing the first set of eradication measures or a notice containing the second set of eradication measures;
- (b) in relation to any field which is part of the place of production but is not contaminated, a notice containing the third set of eradication measures.
- (2) The first set of eradication measures is—
 - (a) the measures to be taken in the field from the date of receipt of the notice and for at least three growing years from the start of the first growing year so as to eliminate volunteer potato plants, and other naturally found host plants, of Potato ring rot,
 - (b) a prohibition on the planting of any of the following in the field during that period—
 - (i) potato tubers, plants or true seeds;
 - (ii) naturally found host plants of Potato ring rot;
 - (iii) crops for which there is a risk of Potato ring rot spreading,
 - (c) a requirement that in the first potato cropping season following that period, only potatoes for ware production be planted in the field, that they only be planted if the field has been found free from volunteer potato plants and other naturally found host plants of Potato ring rot for at least two consecutive growing years prior to planting, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to Directive [93/85/EEC](#), and
 - (d) a requirement that in the next potato cropping season only potatoes for seed or ware production be planted in the field following an appropriate rotation cycle (which must be at least two years where the potatoes are to be planted for seed production).
- (3) The second set of eradication measures is—
 - (a) the measures to be taken in the field from the date of receipt of the notice and for four growing years from the start of the first growing year so as to eliminate volunteer potato plants, and other naturally found host plants, of Potato ring rot,
 - (b) a requirement that, during that period, the field be maintained in bare fallow or in permanent pasture with frequent close cutting or intensive grazing, and
 - (c) a requirement that in the first potato cropping season following that period, only potatoes for seed or ware production be planted, that they only be planted if the field has been found free from volunteer potato plants and other naturally found host plants of Potato ring rot for

at least two consecutive growing years prior to planting, and that the harvested tubers be subjected to official testing using the method set out in Annex 1 to Directive [93/85/EEC](#).

- (4) The third set of eradication measures is—
- (a) where a plant health inspector is satisfied that the risk of volunteer potato plants and other naturally found host plants of Potato ring rot has been eliminated, a prohibition on the planting of any of the following in the field from the date of receipt of the notice and for the first growing year—
 - (i) potato tubers, plants or true seeds,
 - (ii) naturally found host plants of Potato ring rot, and
 - (iii) certified seed potatoes, unless they are for ware production only,
 - (b) a requirement that, in the subsequent growing year only the following potatoes be planted for seed or ware production—
 - (i) certified seed potatoes, and
 - (ii) seed potatoes officially tested for the absence of Potato ring rot and grown under official control at a place of production which is not a contaminated place of production,
 - (c) a requirement that, during at least the third growing year, only certified seed potatoes or seed potatoes grown under official control from certified seed potatoes be planted for seed or ware production, and
 - (d) the measures to be taken in the field from the date of receipt of the notice to the end of the third growing year so as to eliminate volunteer potato plants, and naturally found host plants of Potato ring rot 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](#).
- (5) A notice served by a plant health inspector under sub-paragraph (1)(a) containing the first set of eradication measures must additionally—
- (a) include a requirement that all machinery and storage facilities at the place of production which are used for potato production be cleansed and disinfected immediately and following the first growing year, and
 - (b) specify the appropriate methods for cleansing and disinfecting the machinery and storage facilities.
- (6) The measures which may be specified in a notice under sub-paragraph (1) or (5) may be included in a notice with other appropriate measures.
- (7) The person on whom a notice is served pursuant to sub-paragraph (1) must ensure that the measures specified in the notice are taken in the required manner.
- (8) Where a plant health 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 sub-paragraph (2)(d) in accordance with Article 2 of Directive [93/85/EEC](#).

Commencement Information

180 Sch. 2 para. 21 in force at 27.3.2020, see reg. 1

Additional measures applicable to a unit of protected crop production

22.—(1) This paragraph applies to the planting of any potato tubers, plants or true seeds in a contaminated unit of protected crop production where it is possible to replace all of the growing medium in the unit.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

(2) No person may plant any potato tubers, plants or true seeds in the unit without the written authorisation of a plant health inspector.

(3) A plant health inspector may not grant an authorisation under sub-paragraph (2) unless—

- (a) all of the measures to eliminate Potato ring rot and to remove all host plants which are specified in a notice in relation to the place of production in which the unit is situated have been complied with,
- (b) the growing medium in the unit has been completely changed, and
- (c) the unit and all equipment used on the unit has been cleansed and disinfected to eliminate Potato ring rot and to remove all host plant material.

(4) Where an authorisation is granted under sub-paragraph (2), the authorisation may specify that only certified seed potatoes, mini-tubers or micro-plants derived from officially tested sources may be used in the production.

Commencement Information

181 Sch. 2 para. 22 in force at 27.3.2020, see reg. 1

Measures to be taken in demarcated zones for the control of Potato ring rot

23.—(1) This paragraph applies where a plant health inspector has demarcated a zone pursuant to paragraph 19(1)(c).

(2) The Welsh Ministers may, by notice, specify further prohibitions, restrictions and other measures which are to apply in the demarcated zone to prevent the risk of Potato ring rot surviving or spreading.

(3) The Welsh Ministers may, in particular, specify in a notice under sub-paragraph (2) 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) only certified seed potatoes or seed potatoes grown under official control may be planted during the specified period;
- (c) any seed potatoes grown in a place of production which is possibly contaminated must be officially tested after harvesting;
- (d) 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 potatoes and the handling of ware potatoes during the specified period.

(4) A notice under sub-paragraph (2)—

- (a) must be in writing,
- (b) must describe the extent of the demarcated zone,
- (c) must specify the date on which each measure is to take effect and for how long,
- (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.

(5) Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this paragraph, except where the part which is outside the demarcated zone is not in Wales.

(6) A notice published in accordance with sub-paragraph (4) 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.

(7) The Welsh Ministers must ensure that—

- (a) premises growing, storing or handling potato tubers, and premises which operate potato machinery under contract, are supervised by plant health inspectors for the duration of the specified period;
- (b) an official survey is carried out during the specified period 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.

(8) For the purposes of sub-paragraphs (3) and (7), “the specified period” means the period specified in the notice, which must be at least three growing seasons following the year in which the zone was demarcated.

Commencement Information

182 Sch. 2 para. 23 in force at 27.3.2020, see reg. 1

PART 6

Measures for the control of Potato brown rot

24. In this Part—

“certified seed potatoes” (“*tatws hadyd ardystiedig*”) means pre-basic seed potatoes, basic seed potatoes or certified seed potatoes within the meaning given in regulation 2(1) of the Seed Potatoes Regulations;

“contaminated” (“*halogedig*”) means designated by a plant health inspector as contaminated for the purposes of Article 5(1)(a)(ii) of Directive [98/57/EC](#);

“first growing year” (“*blwyddyn dyfu gyntaf*”), in the case of measures to be taken in relation to a contaminated place of production, means the first growing year following the growing year in which the contaminated place of production is designated as contaminated for the purposes of Article 5(1)(a)(ii) of Directive [98/57/EC](#);

“notice” (“*hysbysiad*”), in relation to a notice to be given by a plant health inspector, means a notice under regulation 15(1);

“object” (“*gwrthrych*”) means any item of machinery, vehicle, vessel, store or other object, including packaging material;

“possibly contaminated” (“*halogedig o bosibl*”) means determined by a plant health inspector to be possibly contaminated for the purposes of Article 5(1)(a)(iii) or (c)(iii) of Directive [98/57/EC](#);

“relevant RNQP requirements” (“*gofynion PRHG perthnasol*”), in relation to plants for planting of *Solanum lycopersicum* L., means—

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (a) in the case of plants for planting produced before 14 December 2019, the requirements that applied to those plants for planting under, or by virtue of, Council Directive [2000/29/EC](#);
- (b) in the case of plants for planting produced on or after 14 December 2019, the requirements that apply to those plants for planting under, or by virtue of, the Phytosanitary Conditions Regulation;

“susceptible material” (“*deunydd sy'n dueddol o gael plâu neu gleyfydau*”) means plants (including tubers), other than true seed, of *Solanum tuberosum* L. or plants, other than fruit or seeds, of *Solanum lycopersicum* L.;

“zone” (“*parth*”) means any area, including any individual premises.

Commencement Information

I83 Sch. 2 para. 24 in force at 27.3.2020, see reg. 1

Official surveys and testing

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

- (2) Where the presence of Potato brown rot is suspected, the Welsh Ministers must ensure that—
 - (a) official testing is carried out to confirm whether it is present—
 - (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;
 - (b) pending the confirmation of its presence or the refutation of its suspected 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.
- (3) A notice may contain measures for the purposes of sub-paragraph (2)(b)(i) to (iii).

Commencement Information

I84 Sch. 2 para. 25 in force at 27.3.2020, see reg. 1

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

26.—(1) If the presence of Potato brown rot is confirmed following official testing carried out pursuant to paragraph 25(2)(a), the Welsh Ministers must ensure that the actions specified in subparagraphs (2) to (4) 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.

(2) In the case of susceptible material, the actions are—

- (a) an investigation by a plant health 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 a plant health 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 a plant health 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 a plant health inspector on the basis of the designation under paragraph (c), the determination made under paragraph (d) and the possible spread of Potato brown rot, in accordance with point 2(i) of Annex 5 to Directive 98/57/EC.

(3) In the case of host plants, other than susceptible material, where the production of susceptible material is identified to be at risk by a plant health inspector, the actions are—

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

(4) In the case of surface water and associated wild solanaceous host plants where production of susceptible material is identified by a plant health inspector to be at risk through irrigation, spraying or flooding of surface water, the actions are—

- (a) an investigation by a plant health 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 a plant health inspector, to the extent appropriate and on the basis of the investigation under paragraph (a);
- (c) a determination by a plant health inspector of the probable contamination on the basis of the designation made under paragraph (b);
- (d) the demarcation of a zone by a plant health inspector on the basis of the designation under paragraph (b), the determination made under paragraph (c) and the possible spread of Potato brown rot, in accordance with point 2(ii) of Annex 5 to Directive 98/57/EC.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Commencement Information

185 Sch. 2 para. 26 in force at 27.3.2020, see reg. 1

Restrictions in relation to susceptible material or objects contaminated or possibly contaminated with Potato brown rot

- 27.**—(1) No person may knowingly plant or knowingly cause or permit to be planted—
- (a) any contaminated susceptible material, or
 - (b) any possibly contaminated susceptible material.
- (2) Where susceptible material or an object has been designated as contaminated or possibly contaminated under paragraph 26(2), a plant health inspector must serve a notice requiring that—
- (a) in the case of contaminated susceptible material, the material be subjected to any measure that complies with point 1 of Annex 6 to Directive [98/57/EC](#);
 - (b) in the case of possibly contaminated susceptible material, the material be used or disposed of in accordance with point 2 of Annex 6 to Directive [98/57/EC](#);
 - (c) in the case of a contaminated object or a possibly contaminated object, the object be—
 - (i) disposed of by destruction, or
 - (ii) cleansed and disinfected so that there is no identifiable risk of Potato brown rot surviving or spreading.
- (3) Anything cleansed and disinfected in accordance with sub-paragraph (2) may no longer be treated as contaminated for the purposes of Directive [98/57/EC](#).

Commencement Information

186 Sch. 2 para. 27 in force at 27.3.2020, see reg. 1

Measures which may be required in relation to a contaminated place of production

- 28.**—(1) A plant health inspector must serve the following notices on any occupier or other person who is in charge of a contaminated place of production which is in a zone demarcated by a plant health inspector under paragraph 26(2)(e)—
- (a) in relation to a contaminated field or a unit of protected crop production which is part of the place of production, a notice containing the first set of eradication measures or a notice containing the second set of eradication measures;
 - (b) in relation to a field which is part of the place of production but is not contaminated and, where the inspector is satisfied that the risk of volunteer potato and tomato plants and other naturally found host plants of Potato brown rot has been eliminated, a notice containing the third set of eradication measures.
- (2) The first set of eradication measures is—
- (a) the measures to be taken in the field or the unit from the date of receipt of the notice and for at least four growing years from the start of the first growing year, so as to eliminate any volunteer potato and tomato plants and other host plants, including solanaceous weeds, of Potato brown rot,
 - (b) a prohibition on the planting of any of the following in the field or the unit during that period—

- (i) potato tubers, plants or true seeds;
 - (ii) tomato plants or seeds;
 - (iii) taking into account the biology of Potato brown rot, other host plants or plants of the species *Brassica* in respect of which there is a risk of Potato brown rot surviving;
 - (iv) crops in respect of which there is a risk of Potato brown rot spreading,
 - (c) a requirement that, in the first potato or tomato cropping season following that period, only potatoes for ware production be planted in the field or the unit, that the potatoes only be planted if 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, and
 - (d) a requirement that an appropriate rotation cycle be applied in subsequent potato or tomato cropping seasons, which must be at least two years where potatoes are to be planted for seed production.
- (3) The second set of eradication measures is—
- (a) the measures to be taken in the field or the unit from the date of receipt of the notice and for five growing years from the start of the first growing year so as to eliminate volunteer potato and tomato plants and other naturally found host plants, including solanaceous weeds, of Potato brown rot,
 - (b) a requirement that—
 - (i) during the first three of those growing years, the field or the unit be maintained—
 - (aa) in bare fallow,
 - (bb) in cereals, if the inspector is satisfied that there is no risk of Potato brown rot spreading,
 - (cc) in permanent pasture with frequent close cutting or intensive grazing, or
 - (dd) as grass for seed production;
 - (ii) during the fourth and fifth growing years, only non-host plants of Potato brown rot in respect of which there is no risk of Potato brown rot surviving or spreading be planted in the field or the unit, and
 - (c) a requirement that, in the first potato or tomato cropping season following that period, only potatoes for seed or ware production be planted, that the potatoes only be planted if 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.
- (4) The third set of eradication measures is—
- (a) a requirement that from the date of receipt of the notice and for the first growing year no host plants of Potato brown rot be planted or only the following potatoes and tomato plants be planted in the field—
 - (i) certified seed potatoes for ware production;
 - (ii) tomato plants grown from seed which meets the relevant RNQP requirements for fruit production,
 - (b) a requirement that, if potatoes are to be planted in the first subsequent growing year, only the following potatoes be planted for seed or ware production in that year—

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the *The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020*. (See end of Document for details)

- (i) certified seed potatoes;
- (ii) seed potatoes officially tested for the absence of Potato brown rot and grown under official control at a place of production which is not contaminated,
- (c) a requirement that, if tomato plants are to be planted in the first subsequent growing year, only the following tomato plants be planted for plant or fruit production in that year—
 - (i) tomato plants grown from seed which meets the relevant RNQP requirements;
 - (ii) if vegetatively propagated, tomato plants grown from seed which meets the relevant RNQP requirements and grown under official control at a place of production which is not contaminated,
- (d) a requirement, in the case of potatoes, that, in the second subsequent growing year and any other subsequent growing year, only certified seed potatoes or seed potatoes grown under official control from certified seed potatoes be planted for seed or ware production in the field,
- (e) a requirement, in the case of tomatoes, that during the second subsequent growing year and any other subsequent growing year, only tomato plants grown from seed which meets the relevant RNQP requirements or if, vegetatively propagated, tomato plants grown from seed which meets the relevant RNQP requirements and grown under official control be planted for plant or fruit production in the field,
- (f) the measures to be taken in the field from the date of receipt of the notice to the end of the growing year specified in the notice so as to eliminate volunteer potato plants, and naturally found host plants, of Potato brown rot, and
- (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](#).
- (5) A notice served by a plant health inspector under sub-paragraph (1)(a) containing the first set of eradication measures must additionally—
 - (a) include a requirement that all machinery and storage facilities at the place of production which are used for potato production be cleansed and disinfected immediately and following the first growing year,
 - (b) specify the appropriate methods for cleansing and disinfecting the machinery and storage facilities, and
 - (c) prohibit any irrigation or spraying programme at the place of production or specify how any irrigation or spraying programme at the place of production must be carried out, for the purpose of preventing the spread of Potato brown rot.
- (6) The measures which may be specified in a notice under sub-paragraph (1) or (5) may be included in a notice with other appropriate measures.
- (7) The person on whom a notice is served pursuant to sub-paragraph (1) must ensure that the measures specified in the notice are taken in the required manner.

Commencement Information

I87 Sch. 2 para. 28 in force at 27.3.2020, see reg. 1

Additional measures in relation to units of protected crop production

29.—(1) This paragraph applies to the planting of any potato tubers, plants or true seeds in a contaminated unit of protected crop production where it is possible to replace all of the growing medium in the unit.

- (2) No person may plant any potato tubers, plants or true seeds, tomato plants or seeds or other host plants of Potato brown rot in the unit without the written authorisation of a plant health inspector.
- (3) A plant health inspector may not grant an authorisation under sub-paragraph (2) unless—
- (a) all of the measures to eliminate Potato brown rot and to remove all host plants of Potato brown rot which are specified in a notice in relation to the place of production in which the unit is situated have been complied with,
 - (b) the growing medium in the unit has been completely changed, and
 - (c) the unit and all of the equipment used on the unit have been cleansed and disinfected to eliminate Potato brown rot and remove all host plant material.
- (4) An authorisation under sub-paragraph (2) may—
- (a) in relation to potato production, specify that only certified seed potatoes or mini-tubers or micro-plants derived from officially tested sources may be used in the production;
 - (b) in relation to tomato production, specify that only seed which meets the relevant RNQP requirements or, if vegetatively propagated, tomato plants produced from seed which meets the relevant RNQP requirements and grown under official control, may be used in the production;
 - (c) prohibit any irrigation or spraying programme at the place of production;
 - (d) specify how any irrigation or spraying programme at the place of production must be carried out for the purpose of preventing the spread of Potato brown rot.

Commencement Information

188 Sch. 2 para. 29 in force at 27.3.2020, see reg. 1

Measures to be taken in demarcated zones for the control of Potato brown rot

30.—(1) This paragraph applies where a plant health inspector has demarcated a zone in relation to a confirmed finding of Potato brown rot under paragraph 26(3)(d) or (4)(d).

(2) The Welsh Ministers may, by notice, specify further prohibitions, restrictions and other measures which are to apply in the demarcated zone to prevent the risk of Potato brown rot surviving or spreading.

- (3) The Welsh Ministers may, in particular, specify in a notice under sub-paragraph (2) that—
- (a) any machinery or storage facilities at premises within the demarcated zone which are used for growing, storing or handling potato tubers or tomatoes within the zone, or any premises within the zone from which machinery for potato or tomato production is operated under contract, must be cleansed and, where appropriate, disinfected so that there is no identifiable risk of Potato brown rot surviving or spreading;
 - (b) in the case of potato crops, only certified seed potatoes or seed potatoes grown under official control may be planted during the specified period;
 - (c) 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 potatoes and the handling of ware potatoes during the specified period;
 - (d) in the case of tomato crops, only tomato plants grown from seed which meets the relevant RNQP requirements or, if vegetatively propagated, tomato plants produced from such seed and grown under official control may be planted during the specified period;

Status: Point in time view as at 15/12/2020.

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- (e) contaminated surface water must not be used for the irrigation or the spraying of specified plant material and, where appropriate, other host plants of Potato brown rot, without the prior written authorisation of a plant health inspector;
 - (f) if liquid waste discharges have been contaminated, any waste from industrial processing or packaging premises in the zone which handle specified plant material must be disposed of under the supervision of a plant health inspector.
- (4) A notice under sub-paragraph (2)—
- (a) must be in writing,
 - (b) must describe the extent of the demarcated zone,
 - (c) must specify in relation to each measure whether it applies generally or to an area of surface water in the demarcated zone,
 - (d) must specify the date on which each measure takes effect and for how long,
 - (e) must be published in a manner appropriate to bring it to the attention of the public, and
 - (f) may be amended, suspended or revoked, in whole or in part, by further notice.
- (5) Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this paragraph, except where the part which is outside the demarcated zone is not in Wales.
- (6) A notice published in accordance with sub-paragraph (4) is to be treated as having been served on—
- (a) any occupier or other person in charge of any premises within the demarcated zone;
 - (b) any person who—
 - (i) has a right to use any contaminated surface water,
 - (ii) has any contaminated surface water on premises within the demarcated zone which the person occupies or is in charge of, and
 - (iii) operates machinery or carries out any other activity in relation to the production of potatoes or tomatoes within the demarcated zone.
- (7) The Welsh Ministers may only specify the measures referred to in sub-paragraph (3) where the zone has been demarcated—
- (a) in relation to measures referred to in paragraphs (a) to (d) of that sub-paragraph for the purposes of Article 5(1)(a)(iv) of Directive [98/57/EC](#);
 - (b) in relation to the measures referred to in paragraphs (e) and (f) of that sub-paragraph for the purposes of Article 5(1)(c)(iii) of Directive [98/57/EC](#).
- (8) The Welsh Ministers must ensure that—
- (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by plant health inspectors during the specified period;
 - (b) an official survey is carried out in accordance with Article 2 of Directive [98/57/EC](#) during the specified period;
 - (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.
- (9) For the purposes of sub-paragraphs (3) and (8), “the specified period”, in relation to a zone demarcated pursuant to paragraph 26(3)(d) or (4)(d), must be at least three growing seasons following the year in which the zone was demarcated.

Commencement Information

189 Sch. 2 para. 30 in force at 27.3.2020, see reg. 1

PART 7

Measures relating to Egyptian potatoes

Measures for the purposes of Article 7 of Commission Implementing Decision 2011/787/EC

31.—(1) In this Part, “Egyptian potatoes” means any tubers of *Solanum tuberosum* L., originating in Egypt, which are introduced into the Union territory under Commission Implementing Decision 2011/787/EC.

(2) No professional operator may—

- (a) move any Egyptian potatoes within Wales unless they are labelled to indicate that they originate in Egypt;
- (b) process, prepare, wash or package any Egyptian potatoes at premises in Wales other than at premises that the Welsh Ministers have approved in writing for that purpose.

(3) Sub-paragraph (2)(b) does not apply to the packing or preparation of any Egyptian potatoes in a shop, restaurant, canteen, club, public house, school, hospital, or similar establishment (including a vehicle or a fixed or mobile stall) for delivery to the final consumer.

Commencement Information

190 Sch. 2 para. 31 in force at 27.3.2020, see reg. 1

SCHEDULE 3

Regulation 38(1)(d) to (f)

Offences: relevant provisions in the EU Regulations

PART 1

The EU Plant Health Regulation

Commencement Information

191 Sch. 3 Pt. 1 in force at 27.3.2020, see reg. 1

Provision of the EU Plant Health Regulation **Subject matter**

Article 5(1) (as read with Article 8(1)) Prohibits the introduction of a Union quarantine pest into the Union territory, the movement of a Union quarantine pest within the Union territory or the holding,

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multiplication or the release of a Union quarantine pest in the Union territory

M45

Article 9(3) (as read with Article 33(1)) Requires professional operators immediately to notify competent authorities of any evidence they may have concerning an imminent danger of the entry of:

- (a) a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) into the Union territory or into a part of the Union territory where it is not yet present, or
- (b) a protected zone quarantine pest into the respective protected zone.

Article 14(1) (as read with Articles 16 and 33(1)) Requires a professional operator who suspects or becomes aware that:

- (a) a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) is present in plants, plant products or other objects which are under the operator's control;
- (b) a protected zone quarantine pest is present in plants, plant products or other objects which are under the operator's control in the respective protected zone,

immediately to notify the competent authority and take precautionary measures to prevent the establishment and spread of the pest.

Article 14(3)

Requires a professional operator:

- (a) to consult the competent authority where the professional operator has received an official confirmation concerning the presence of a Union quarantine pest in plants, plant products or other objects which are under the operator's control, and
- (b) where applicable, proceed with the actions required under Article 14(4) to (7).

Article 15(1) (as read with Articles 15(2), 16 and 33(1)) Requires a person who is not a professional operator immediately to notify the competent authority where the person becomes aware of, or has reason to suspect:

- (a) the presence of a Union quarantine pest;
- (b) the presence of a protected zone quarantine pest in the respective protected zone.

Article 32(2)

Prohibits the introduction of a protected zone quarantine pest into the respective protected zone, the movement of a protected zone quarantine pest within the respective protected zone or the holding, multiplication or the release of a protected zone quarantine pest in the respective protected zone

M46

Article 37(1) (as read with Article 39, and Article 17 of the Phytosanitary Conditions Regulation) Prohibits the introduction into the Union territory by a professional operator of a Union regulated non-quarantine pest on plants for planting through which it is transmitted, or the movement of a Union regulated non-quarantine pest within the Union territory by a professional operator on plants for planting through which it is transmitted

M47

Article 40(1) (as read with Articles 47 and 48(1)) Prohibits the introduction into the Union territory of certain plants, plant products or other objects if they originate from all or certain third countries or territories

M48

Article 41(1) (as read with Articles 47 and 48(1)) Prohibits:

- (a) the introduction into the Union territory of certain plants, plant products or other objects from third countries unless the special requirements in respect of those plants, plant products or other objects are fulfilled^{M49};
- (b) the movement within the Union territory of certain plants, plant products or other objects unless the special requirements in respect of those plants, plant products or other objects are fulfilled^{M50}.

Article 42(2) (as read with Articles 47 and 48(1)) Prohibits the introduction into the Union territory of high-risk plants, plant products or other objects from third countries

M51

Article 43(1)

Prohibits the introduction into the Union territory of wood packaging material, whether or not in use in the transport of objects of any kind, unless it fulfils the specified requirements or is subject to the exemptions provided for in ISPM 15.

Article 45(1), third paragraph (as read with Article 55) Requires postal services and professional operators involved in sales through distance contracts to make specified information available to their clients through the internet.

Article 53(1) (as read with Articles 57 and 58) Prohibits:

- (a) the introduction of certain plants, plant products or other objects originating from third countries into certain protected zones;
- (b) the introduction of certain plants, plant products or other objects originating within

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the Union territory into certain protected zones
M52

Article 54(1) (as read with Articles 57 and 58) Prohibits:

- (a) the introduction of certain plants, plant products or other objects into certain protected zones unless the special requirements in respect of those protected zones are fulfilled;
- (b) the movement of certain plants, plant products or other objects within certain protected zones unless the special requirements in respect of those protected zones are fulfilled^{M53}.

Article 59

Requires:

- (a) vehicles, machinery or packaging material used for specified plants, plant products or other objects moving into or within the Union territory, or through the Union territory, to be free from Union quarantine pests and pests subject to measures adopted pursuant to Article 30(1);
- (b) vehicles, machinery or packaging material used for specified plants, plant products or other objects moving into or within the protected zones, or through protected zones, to be free from the respective protected zone quarantine pests.

Article 62(1)

Requires a person responsible for a quarantine station or confinement facility to monitor the station or facility and its immediate vicinity for the unintended presence of Union quarantine pests and pests subject to measures adopted pursuant to Article 30(1).

Article 62(2)

Requires a person responsible for a quarantine station or confinement facility to take appropriate action based on the contingency plan referred to in point (e) of Article 61(1) and to comply with the obligations of professional operators in Article 14 where the unintended presence of a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) is found or suspected.

Article 64(1) (as read with Article 64(2))

Prohibits the release of plants, plant products and other objects from quarantine stations or confinement facilities unless authorised by the competent authorities.

Article 66(1) (as read with Article 65(3))

Requires certain professional operators to submit an application for registration to the competent authorities.

Article 66(5) (as read with Article 65(3))

Requires registered operators, where relevant:

- (a) to submit an annual update concerning any changes in the data referred to in points (d) and (e) of Article 66(2) or in the statements

	referred to in points (b) and (c) of Article 66(2);
	(b) to update the data referred to in point (a) of Article 66(2) no later than 30 days after the change in that data.
Article 69(1) (as read with Articles 65(3) and 69(3))	Requires a professional operator to whom plants, plant products or other objects are supplied that are subject to the specified requirements or conditions to keep a record allowing the operator to identify the professional operator who supplied each trade unit.
Article 69(2) (as read with Article 69(3))	Requires a professional operator who is supplying plants, plant products or other objects that are subject to the specified requirements or conditions to keep a record allowing the operator to identify the professional operator to whom each trade unit was supplied.
Article 69(4)	Requires professional operators to keep the records required pursuant to Article 69(1) to (3) for at least three years.
Article 70(1)	Requires professional operators who are supplied with, or supply, the plants, plant products or other objects referred to in Article 69(1) and (2) to have in place traceability systems or procedures to allow identification of the movements of those plants, plant products and other objects within and between their own premises.
Articles 72(1) and 73	Prohibits the introduction into the Union territory of certain plants, plant products and other objects from third countries unless they are accompanied by a phytosanitary certificate M54
	.
Article 74(1)	Prohibits the introduction of certain plants, plant products and other objects from third countries into certain protected zones unless accompanied by a phytosanitary certificate M55
	.
Article 79(1) (as read with Articles 81, 82 and 83)	Prohibits the movement of certain plants, plant products and other objects within the Union territory without a plant passport M56
	.
Article 80(1) (as read with Articles 81, 82 and 83)	Prohibits the introduction of certain plants, plant products and other objects into certain protected zones, or the movement of certain plants, plant products and other objects within certain protected zones, without a plant passport M57
	.

Status: Point in time view as at 15/12/2020.

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Article 84(1)	Prohibits professional operators from issuing plant passports unless they are authorised and from issuing plant passports for plants, plant products or other objects for which they are not responsible.
Article 84(3)	Prohibits authorised professional operators from issuing plant passports except at specified premises, collective warehouses or dispatching centres.
Article 85 (as read with Article 87)	Prohibits authorised professional operators from issuing plant passports for plants, plant products or other objects unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.
Article 86(1) (as read with Articles 86(2) and 87)	Prohibits authorised professional operators from issuing plant passports for plants, plant products or other objects to be introduced into, or moved within, a protected zone unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.
Article 88	Requires professional operators to attach plant passports to the trade unit of the plants, plant products or other objects concerned, or where the plants, plant products or other objects are moved in a package, bundle or container, to that package, bundle or container.
Article 90(1)	Requires an authorised operator: <ul style="list-style-type: none"> (a) to identify and monitor the points in its production process and certain other critical points as regards the movement of plants, plant products and other objects where the authorised operator intends to issue a plant passport in respect of those plants, plant products and other objects, and (b) to keep records concerning the identification and monitoring of those points for at least three years.
Article 90(2)	Requires authorised operators to ensure that appropriate training is given to its personnel involved in the examinations referred to in Article 87.
Article 93(1)	Prohibits authorised operators from issuing replacement plant passports unless certain conditions are fulfilled.
Article 93(5)	Requires authorised operators to retain replacement plant passports or their contents for at least three years.
Article 96(1)	Prohibits the marking of wood packaging material, wood or other objects in the Union territory: <ul style="list-style-type: none"> (a) by any professional operator who is not authorised in accordance with Article 98, or (b) otherwise than in the manner required.
Article 97(1)	Prohibits the repairing of wood packaging material:

- (a) by any professional operator who is not authorised in accordance with Article 98, or
- (b) otherwise than in the manner required.

Marginal Citations

- M45** The list of Union quarantine pests is set out in Annex 2 to Regulation (EU) 2019/2072 (“Phytosanitary Conditions Regulation”) establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants (OJ No. L 319, 10.12.2019, p. 1) (“EU Plant Health Regulation”).
- M46** The list of protected zones and the respective protected zone pests is set out in Annex 3 to the Phytosanitary Conditions Regulation.
- M47** The list of Union regulated non-quarantine pests and the relevant plants for planting, with categories and thresholds, is set out in Annex 4 to the Phytosanitary Conditions Regulation.
- M48** The list of plants, plant products and other objects and the third countries, groups of third countries or specific areas of third countries to which the prohibition applies is set out in Annex 6 to the Phytosanitary Conditions Regulation.
- M49** The list of plants, plant products and other objects originating from third countries and the corresponding special requirements in relation to their introduction into the Union territory is set out in Annex 7 to the Phytosanitary Conditions Regulation.
- M50** The list of plants, plant products and other objects originating in the Union and the corresponding special requirements in relation to their movement within the Union territory is set out in Annex 8 to the Phytosanitary Conditions Regulation.
- M51** The list of high risk plants, plant products and other objects to which the prohibition applies is set out in Annex 1 to Commission Implementing Regulation (EU) 2018/2019 establishing a provisional list of high risk plants, plant products or other objects, within the meaning of Article 42 of Regulation (EU) 2016/2031 and a list of plants for which phytosanitary certificates are not required for introduction into the Union, within the meaning of Article 73 of that Regulation (OJ No. L 323, 19.12.2018, p. 10).
- M52** The list of plants, plant products and other objects for these purposes is set out in Annex 9 to the Phytosanitary Conditions Regulation.
- M53** The list of plants, plant products and other objects for these purposes is set out in Annex 10 to the Phytosanitary Conditions Regulation.
- M54** The list of plants, plant products and other objects for the purposes of Article 72(1) is set out in Part A of Annex 11 to the Phytosanitary Conditions Regulation. The list of plants, plant products and other objects for the purposes of Article 73(1) is set out in Part B of that Annex, but does not include any plants, plant products and other objects in the list set out in Part C of that Annex.
- M55** The list of plants, plant products and other objects for these purposes is set out in Annex 12 to the Phytosanitary Conditions Regulation.
- M56** The list of plants, plant products and other objects for these purposes is set out in Annex 13 to the Phytosanitary Conditions Regulation.
- M57** The list of plants, plant products and other objects for these purposes is set out in Annex 14 to the Phytosanitary Conditions Regulation.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

PART 2

The Official Controls Regulation

Commencement Information

I92 Sch. 3 Pt. 2 in force at 27.3.2020, see reg. 1

Provision of the Official Controls Regulation *Subject matter*

<p>Article 47(5) (as read with Articles 5 and 7 of Commission Delegated Regulation (EU) 2019/2122 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market M58</p> <p>)</p>	<p>Requires the operator responsible for a relevant consignment entering the Union to ensure that it is presented for official controls at the border control post of first arrival into the Union.</p>
<p>Article 50(1)</p>	<p>Requires the operator of a relevant consignment to which Article 47(1) applies to present the original official certificates or documents which are required to accompany the consignment to the competent authorities of the border control post.</p>
<p>Article 50(3)</p>	<p>Prohibits the operator of a relevant consignment from splitting the consignment until official controls have been performed and the Community Health Entry Document (“CHED”) has been finalised.</p>
<p>Article 56(1)</p>	<p>Requires the operator of a relevant consignment to complete the relevant part of the CHED.</p>
<p>Article 56(4) (as read with Article 1(1) of Commission Implementing Regulation (EU) 2019/1013 on the prior notification of consignments of certain categories of animals and goods entering the Union M59</p> <p>and regulation 9)</p>	<p>Requires the operator of a relevant consignment to give prior notification to the competent authorities of the border control post of the arrival of the consignment before the physical arrival of the consignment in the Union.</p>

Marginal Citations

M58 OJ No. L 321, 12.12.2019, p. 45.

M59 OJ No. L 165, 21.6.2019, p. 8.

PART 3

Other EU legislation

Commencement Information

I93 Sch. 3 Pt. 3 in force at 27.3.2020, see reg. 1

<i>Provision of EU legislation</i>	<i>Subject matter</i>
Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying consignments of animals and goods to their destination M60	
Article 3 (as read with Articles 4(a), 5(1) (b) and (d), 5(2)(a) and (c) and 6(a))	Requires the operator responsible for a consignment to ensure that a CHED accompanies the consignment before it is released for free circulation in accordance with Article 57(2)(b) of the Official Controls Regulation.
Commission Delegated Regulation (EU) 2019/2124 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transshipment and onward transportation through the Union M61	
Article 5(a) and (b)	Requires the operator who is responsible for a relevant consignment that has been given authorisation for onward transportation to enter certain details in the CHED and submit the CHED.
Article 6	Requires the operator who is responsible for a relevant consignment that has been given authorisation for onward transportation to comply with the specified conditions relating to its transportation and storage.
Article 16(1) and (3)	Requires the operator who is responsible for a transhipped relevant consignment to notify the specified information to competent authorities.
Article 22(4)	Requires the operator who is responsible for a relevant consignment that is in transit through the Union territory to take specific measures relating to the transportation of the consignment.
[^{F18}Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts	
Article 2(1)(d), (e), (f), (g)(i) and (h) (as read with Article 2(2) and (3)), Article	Requires the operator responsible for a consignment to comply with certain conditions where identity and

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

5(1) (as read with Article 5(2), Article 6(1) and (4) and Article 8(2)) physical checks on the consignment are to be performed at a control point other than a border control post.]

Textual Amendments

F18 Words in Sch. 3 Pt. 3 inserted (13.11.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, **2(6)**

Marginal Citations

M60 OJ No. L 250, 30.9.2019, p. 6.

M61 OJ No. L 321, 12.12.2019, p. 73.

SCHEDULE 4

Regulation 38(1)(g)

Offences relating to EU emergency decisions

Commencement Information

I94 Sch. 4 in force at 27.3.2020, see reg. 1

EU decision

Commission Decision [98/109/EC](#)

Commission Decision [2002/757/EC](#)

Commission Decision [2004/200/EC](#)

Provision of EU decision

Article 1 (requirements in relation to the introduction into the Union territory of cut flowers of *Orchidaceae* originating in Thailand)

Article 3(1) and (2) (requirements in relation to the introduction into the Union territory of susceptible plants and susceptible wood originating in the USA)

Article 3(4) (requirements in relation to the movement within the Union territory of certain plants, other than seeds, intended for planting and originating in third countries other than the USA)

Article 4 (prohibition on the introduction into the Union territory of susceptible bark originating in the USA)

Article 5 (requirements in relation to the movement within the Union territory of certain plants intended for planting originating in the Union)

Article 1 (prohibition on the movement within the Union territory of seeds of *Solanum lycopersicum* L. contaminated by Pepino mosaic virus) insofar as it relates to the movement of seeds of *Solanum lycopersicum* L. that were produced before 14 December 2019 and are moved within the Union territory at any time before 14 December 2020

Article 3(1) (requirements in relation to the movement of seeds of *Solanum lycopersicum* L. originating in the

			Union) insofar as it relates to the movement of seeds of <i>Solanum lycopersicum</i> L. that were produced before 14 December 2019 and are moved within the Union territory at any time before 14 December 2020
Commission 2011/787/EU	Implementing	Decision	Article 1(1) (requirements in relation to the introduction into the Union territory of tubers of <i>Solanum tuberosum</i> L. originating in Egypt)
Commission 2012/138/EU	Implementing	Decision	Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries, other than China) Article 3(1) and (2) (requirements in relation to the introduction into the Union territory of specified plants originating in China) Article 4 (requirements in relation to the movement within the Union territory of specified plants originating in, or introduced into, demarcated areas or specified plants introduced into the Union territory in accordance with Article 2 or 3)
Commission 2012/270/EU	Implementing	Decision	Article 1 (prohibition on the introduction into the Union territory, and the spread within the Union territory, of <i>Epitrix cucumeris</i> (Harris), <i>Epitrix papa</i> . (Orlova-Bienkowskaja), <i>Epitrix subcrinita</i> (Lec.) or <i>Epitrix tuberis</i> (Gentner)) Article 2(1) (requirements in relation to the introduction into the Union territory of potato tubers originating in third countries where one or more of the specified organisms are known to be present) Article 3 (requirements in relation to the movement within the Union territory of potato tubers originating in demarcated areas or potato tubers introduced into the Union territory from third countries where one or more of the specified organisms are known to be present)
Commission 2012/535/EU	Implementing	Decision	Article 10(1) and (2) (requirements in relation to the movement within the Union territory of susceptible plants, susceptible wood or susceptible bark)
Commission 2012/697/EU	Implementing	Decision	Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries) Article 3 (requirements in relation to the movement within the Union territory of specified plants originating in demarcated areas)
Commission (EU) 2015/789	Implementing	Decision	Article 9 (requirements in relation to the movement within the Union territory of specified plants, other than any which have been grown for the entire production cycle <i>in vitro</i> or plants belonging to varieties of specified plants listed in Annex III)

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Article 9a (requirements in relation to the movement within the Union territory of specified plants which have been grown for the entire production cycle *in vitro* and for at least part of their life in demarcated areas)

Article 15 (prohibition on the introduction of plants for planting, other than seeds, of *Coffea* originating in Costa Rica or Honduras)

Article 16 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is not present)

Article 17(1) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)

Commission Implementing Decision (EU) 2015/893

Article 2(a) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)

Article 3(a) (requirements in relation to the introduction into the Union territory of specified wood originating in third countries where the specified organism is known to be present)

Article 4 (requirements in relation to the movement within the Union territory of specified plants originating in, or introduced into, demarcated areas, or specified plants introduced into the Union territory from third countries in accordance with Article 2)

Article 5 (requirements in relation to the movement within the Union territory of specified wood originating in demarcated areas, specified wood retaining all or part of its round surface which has been introduced into demarcated areas or specified wood packaging material originating in demarcated areas)

Commission Implementing Decision (EU) 2016/715

Article 5 (requirements in relation to the introduction into the Union territory of specified fruits originating in South Africa or Uruguay)

Article 5a (requirements in relation to the introduction into the Union territory of specified fruits originating in Argentina or Brazil)

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Commission Implementing (EU) 2018/638	Decision	Article 3(a) and (b) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries other than Switzerland)
Commission Implementing (EU) 2018/1503	Decision	Article 7(1), (6) and (7) (requirements in relation to the movement within the Union territory of specified plants originating in demarcated areas, specified plants introduced into demarcated areas or specified plants introduced into the Union territory from third countries where the specified organism is known to be present in accordance with Article 11) Article 8 (requirements in relation to the movement within the Union territory of specified wood originating in demarcated areas or specified wood retaining all or part of its round surface introduced into demarcated areas) Article 9 (requirements in relation to movement within the Union territory of specified wood packaging material originating in demarcated areas) Article 11 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present) Article 12 (requirements in relation to the introduction into the Union territory of specified wood originating in third countries where the specified organism is known to be present)
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Commission Implementing (EU) 2019/1739	Decision	Article 2 (prohibition on the introduction of Rose rosette virus into the Union territory and its spread within the Union territory) Article 5 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)
Commission Implementing (EU) 2019/2032	Decision	Article 6 (requirements in relation to the movement within the Union territory of specified plants) Article 7 (requirements in relation to the movement of specified wood and isolated bark from an infested zone to a buffer zone or from a demarcated area)

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Article 8 (requirements in relation to the movement of wood packaging material from an infested zone to a buffer zone or from a demarcated area)

Article 9 (requirements in relation to the introduction into the Union territory of specified plants originating in non-European third countries)

Article 10 (requirements in relation to the introduction into the Union territory of specified wood or isolated bark originating in non-European third countries)

[^{F21}Commission Implementing Regulation (EU) 2020/885 Article 2 (prohibition on the introduction of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto into the Union territory, and its spread within the Union territory)

Article 3 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)

Article 7 (requirements in relation to the movement within the Union territory of specified plants that have spent a part of their lives in the Union)

Commission Implementing Regulation (EU) 2020/1191 Article 2 (prohibition on the introduction of Tomato brown rugose fruit virus into the Union territory and its spread within the Union territory)

Article 6 (requirements in relation to the movement within the Union territory of specified plants for planting within the Union)

Article 7 (requirements in relation to the movement within the Union territory of specified seeds)

Article 8 (requirements in relation to the introduction into the Union territory of specified plants for planting originating in third countries)

Article 9 (requirements in relation to the introduction into the Union territory of specified seeds originating in third countries)]

Textual Amendments

- F19** Words in Sch. 4 omitted (13.11.2020) by virtue of [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, [2\(7\)\(a\)\(i\)](#)
- F20** Words in Sch. 4 omitted (13.11.2020) by virtue of [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, [2\(7\)\(a\)\(ii\)](#)
- F21** Words in Sch. 4 inserted (13.11.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) Regulations 2020 \(S.I. 2020/1134\)](#), regs. 1, [2\(7\)\(b\)](#)

[^{F22}SCHEDULE 4A

Regulation 48A

Civil sanctions

Textual Amendments

F22 Sch. 4A inserted (15.12.2020) by [The Official Controls \(Plant Health and Genetically Modified Organisms\) \(Wales\) \(Amendment\) \(No. 2\) Regulations 2020 \(S.I. 2020/1303\)](#), reg. 1, [Sch.](#)

PART 1

Power to impose civil sanctions

Compliance notice

1.—(1) This paragraph applies where the appropriate authority is satisfied on the balance of probabilities that a person has committed an offence under Part 11 of these Regulations.

(2) The appropriate authority may by notice (a “compliance notice”) impose on that person a requirement to take such steps as the appropriate authority may specify, within such period as it may specify, to secure that the offence does not continue or recur.

(3) A compliance notice may not be imposed on more than one occasion in relation to the same act or omission.

Restoration notice

2.—(1) This paragraph applies where the appropriate authority is satisfied on the balance of probabilities that a person has committed an offence under Part 11 of these Regulations.

(2) The appropriate authority may by notice (a “restoration notice”) impose on that person a requirement to take such steps as the appropriate authority may specify, within such period as it may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed.

(3) A restoration notice may not be imposed on more than one occasion in relation to the same act or omission.

Imposition of a fixed monetary penalty

3.—(1) This paragraph applies where the appropriate authority is satisfied on the balance of probabilities that a person has committed an offence under Part 11 of these Regulations.

(2) The appropriate authority may by notice impose on that person a requirement to pay a monetary penalty to the appropriate authority of £250 where the person is an individual and £2000 where the person is a body corporate, partnership or unincorporated association (a “fixed monetary penalty”).

(3) A fixed monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) The appropriate authority may recover any fixed monetary penalty imposed under this paragraph as if payable under an order of the court.

(5) A fixed monetary penalty paid to the appropriate authority under this paragraph must be paid into the Consolidated Fund.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Imposition of a variable monetary penalty

4.—(1) This paragraph applies where the appropriate authority is satisfied on the balance of probabilities that a person has committed an offence under Part 11 of these Regulations.

(2) The appropriate authority may by notice impose on that person a requirement to pay a monetary penalty to the appropriate authority in such amount as it may determine (a “variable monetary penalty”).

(3) A variable monetary penalty may not be imposed on more than one occasion in relation to the same act or omission.

(4) The amount of a variable monetary penalty must not exceed £250,000.

(5) Before serving a notice relating to a variable monetary penalty, the appropriate authority may require the person on whom it is to be served to provide such information as is reasonable to establish the amount of any financial benefit arising as a result of the offence.

(6) The appropriate authority may recover any variable monetary penalty imposed under this paragraph as if payable under an order of the court.

(7) A variable monetary penalty paid to the appropriate authority under this paragraph must be paid into the Consolidated Fund.

Notice of intent

5.—(1) If the appropriate authority proposes to serve on a person a compliance notice, a restoration notice or a notice imposing a fixed or variable monetary penalty under this Part, it must serve on that person a notice of what is proposed (a “notice of intent”).

(2) The notice of intent must include—

(a) the grounds for serving the proposed notice;

(b) the requirements of the proposed notice and, in the case of a penalty, the amount to be paid and how payment may be made;

(c) in the case of a fixed monetary penalty—

(i) a statement that liability for the penalty can be discharged by paying 50% of the penalty within 28 days beginning with the day on which the notice was served, and

(ii) information as to the effect of discharging the penalty;

(d) information as to—

(i) the right to make representations and objections within 28 days beginning with the day on which the notice of intent was served, and

(ii) the circumstances in which the appropriate authority may not serve the proposed notice.

Combination of penalties

6.—(1) The appropriate authority may not serve a notice of intent relating to a fixed monetary penalty if, in relation to the same offence—

(a) a compliance notice, restoration notice or stop notice has been served on that person (see paragraphs 1, 2 and 17),

(b) a variable monetary penalty has been imposed on that person (see paragraph 4), or

(c) a third party or enforcement undertaking has been accepted from that person (see paragraphs 9 and 23).

(2) The appropriate authority may not serve a notice of intent relating to a compliance notice, a restoration notice or a variable monetary penalty, or serve a stop notice, on any person if, in relation to the same offence—

- (a) a fixed monetary penalty has been imposed on that person, or
- (b) that person has discharged liability for a fixed monetary penalty following service of a notice of intent to impose that penalty.

Discharge of liability – fixed monetary penalties

7. A fixed monetary penalty is discharged if a person on whom a notice of intent is served pays 50% of the amount of the penalty within 28 days beginning with the day on which the notice was served.

Making representations and objections

8. A person on whom a notice of intent is served may within 28 days beginning with the day on which the notice is served make written representations and objections to the appropriate authority in relation to the proposed service of a compliance notice, restoration notice or notice imposing a fixed or variable monetary penalty.

Third party undertakings

9.—(1) A person on whom a notice of intent relating to a compliance notice, a restoration notice or a variable monetary penalty is served may offer an undertaking as to action to be taken by that person (including the payment of a sum of money) to benefit any third party affected by the offence (a “third party undertaking”).

(2) The appropriate authority may accept or reject a third party undertaking.

(3) The appropriate authority must take into account any third party undertaking that it accepts in its decision as to whether or not to serve a final notice, and, if it serves a notice imposing a variable monetary penalty, the amount of the penalty.

Final notice

10.—(1) After the end of the period for making representations and objections, the appropriate authority must decide whether to impose the requirements described in the notice of intent, with or without modifications.

(2) Where the appropriate authority decides to impose a requirement, the notice imposing it (the “final notice”) must comply with paragraph 11 (for compliance or restoration notices) or 12 (for fixed or variable monetary penalties).

(3) The appropriate authority may not impose a final notice on a person where it is satisfied that the person would not, by reason of any defence, permit or licence, be liable to be convicted of the offence to which the notice relates.

(4) Where the appropriate authority serves a final notice relating to a fixed monetary penalty in respect of any offence, the appropriate authority may not in relation to that offence serve—

- (a) a compliance notice,
- (b) a restoration notice,
- (c) a notice imposing a variable monetary penalty, or
- (d) a stop notice.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the *The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020*. (See end of Document for details)

(5) This paragraph does not apply to a person who has discharged a fixed monetary penalty in accordance with paragraph 7.

Contents of final notice: compliance and restoration notices

11. A final notice relating to a compliance notice or a restoration notice must include information as to—

- (a) the grounds for serving the notice,
- (b) what compliance or restoration is required and the period within which it must be completed,
- (c) rights of appeal, and
- (d) the consequences of failing to comply with the notice.

Contents of final notice: fixed and variable monetary penalties

12. A final notice relating to a fixed or variable monetary penalty must include information as to—

- (a) the grounds for imposing the penalty,
- (b) the amount to be paid,
- (c) how payment may be made,
- (d) the period within which payment must be made (the “payment period”), which must be not less than 56 days beginning with the day on which the notice is served,
- (e) in the case of a fixed monetary penalty, details of the early payment discount (see paragraph 13) and late payment penalties (see paragraph 15(2) and (3)),
- (f) rights of appeal, and
- (g) the consequences of failing to comply with the notice.

Fixed monetary penalty: discount for early payment

13. If a person who was served with a notice of intent relating to a proposed fixed monetary penalty made representations or objections concerning that notice within the time limit specified in paragraph 8, that person may discharge the final notice by paying 50% of the final penalty within 28 days beginning with the day on which the final notice was served.

Appeals against a final notice

14.—(1) The person on whom a final notice is served may appeal against it.

(2) The grounds for appeal are—

- (a) that the decision was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable;
- (d) in the case of a non-monetary requirement, that the nature of the requirement is unreasonable;
- (e) that the decision was unreasonable for any other reason;
- (f) that the decision was wrong for any other reason.

Fixed monetary penalty: non-payment within the stated payment period

15.—(1) This paragraph applies to a final notice relating to a fixed monetary penalty.

(2) If the final penalty is not paid within the stated payment period, the amount payable is increased by 50%.

(3) In the case of an appeal which is unsuccessful, the penalty is payable within 28 days of the determination of the appeal, and if it is not paid within 28 days, the amount of the penalty is increased by 50%.

Criminal proceedings

16.—(1) If—

- (a) a compliance notice or restoration notice is served on any person,
- (b) a third party undertaking is accepted from any person,
- (c) a notice imposing a variable monetary penalty is served on any person, or
- (d) a fixed monetary penalty is served on any person,

that person may not at any time be convicted of an offence under Part 11 of these Regulations in respect of the act or omission giving rise to the compliance notice, restoration notice, third party undertaking, variable monetary penalty or fixed monetary penalty except in a case falling within paragraph (a) or (b) (and not also falling within paragraph (c)) where the person fails to comply with a compliance notice, restoration notice or third party undertaking (as the case may be).

(2) Criminal proceedings for offences to which a notice or third party undertaking in sub-paragraph (1) relates may be instituted at any time up to 6 months from the date from when the appropriate authority notifies the person against whom the proceedings are to be taken that the person has failed to comply with that notice or undertaking.

PART 2

Stop notices

Stop notices

17.—(1) The appropriate authority may serve a notice (a “stop notice”) on any person prohibiting that person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.

(2) A stop notice may only be served where—

- (a) the person is carrying on the activity or the appropriate authority reasonably believes that the person is likely to carry on the activity,
- (b) the appropriate authority reasonably believes that the activity is causing, or is likely to cause, economic or environmental harm, or adverse effects to plant health, and
- (c) the appropriate authority reasonably believes that the activity carried on, or likely to be carried on, by that person involves or is likely to involve, the commission of an offence under Part 11 of these Regulations.

(3) The steps referred to in sub-paragraph (1) must be steps to eliminate the risk of the offence being committed.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Contents of a stop notice

- 18.** A stop notice must include information as to—
- (a) the grounds for serving the stop notice,
 - (b) the activity which is prohibited,
 - (c) the steps the person must take to comply with the stop notice and the period within which they must be completed,
 - (d) rights of appeal, and
 - (e) the consequences of failing to comply with the notice.

Appeals

- 19.**—(1) The person on whom a stop notice is served may appeal against the decision to serve it.
- (2) The grounds for appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable;
 - (d) that any step specified in the notice is unreasonable;
 - (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
 - (f) that the person would not, by reason of any defence, permit or licence have been liable to be convicted of the offence had the stop notice not been served;
 - (g) that the decision was wrong for any other reason.

Completion certificates

20.—(1) The appropriate authority must issue a certificate (a “completion certificate”) if, after service of a stop notice, the appropriate authority is satisfied that the person on whom it was served has taken the steps specified in the notice.

(2) A stop notice ceases to have effect on the issue of a completion certificate.

(3) The appropriate authority may require the person on whom the stop notice was served to provide sufficient information to determine that the steps specified in the notice have been taken.

(4) A person on whom a stop notice is served may at any time apply for a completion certificate.

(5) The appropriate authority must decide whether to issue a completion certificate and give written notice of the decision to the applicant (including information as to the right of appeal) within 14 days of the application.

(6) The applicant may appeal against a decision not to issue a completion certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

Compensation

21.—(1) The appropriate authority must compensate a person for loss suffered as the result of the service of the stop notice or the refusal of a completion certificate if that person has suffered loss as a result of the notice or refusal and—

- (a) the stop notice is subsequently withdrawn or amended by the appropriate authority because the decision to serve it was unreasonable or any step specified in the notice was unreasonable,
- (b) the appropriate authority is in breach of its statutory obligations,
- (c) the person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable, or
- (d) the person successfully appeals against the refusal of a completion certificate and the First-tier Tribunal finds that the refusal was unreasonable.

(2) A person may appeal against a decision not to award compensation or the amount of compensation on the grounds that—

- (a) the appropriate authority’s decision was unreasonable,
- (b) the amount offered was based on incorrect facts, or
- (c) the decision was wrong for any other reason.

Offences

22. If a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable on summary conviction to a fine.

PART 3

Enforcement undertakings

Enforcement undertakings

23. Where the appropriate authority has reasonable grounds to suspect that a person has committed an offence under Part 11 of these Regulations, the appropriate authority may accept a written undertaking (an “enforcement undertaking”) given by that person to take such action as may be specified in the undertaking within such period as may be specified.

Contents of an enforcement undertaking

24.—(1) An enforcement undertaking must specify—

- (a) action to be taken by the person to secure that the offence does not continue or recur,
- (b) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed, or
- (c) action (including the payment of a sum of money) to be taken by the person to benefit any person affected by the offence.

(2) It must specify the period within which the action must be completed.

(3) It must include—

- (a) a statement that the undertaking is made in accordance with this Schedule,
- (b) the terms of the undertaking, and

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

(c) information as to how and when the person is to be considered to have discharged the undertaking.

(4) The enforcement undertaking may be varied, or the period within which the action must be completed may be extended, if both the appropriate authority and the person who gave the undertaking agree in writing.

Acceptance of an enforcement undertaking

25.—(1) If the appropriate authority has accepted an enforcement undertaking from a person—

- (a) that person may not at any time be convicted of the offence in respect of the act or omission to which the undertaking relates, and
- (b) the appropriate authority may not serve on that person a compliance notice, restoration notice or stop notice, or impose a fixed or variable monetary penalty on that person, in respect of that act or omission.

(2) Paragraph (1) does not apply if a person who gave the undertaking has failed to comply with it or any part of it.

Discharge of an enforcement undertaking

26.—(1) If the appropriate authority is satisfied that an enforcement undertaking has been complied with, it must issue a certificate (a “discharge certificate”) to that effect.

(2) An enforcement undertaking ceases to have effect on the issue of a discharge certificate.

(3) The appropriate authority may require the person who has given the undertaking to provide sufficient information to determine that the undertaking has been complied with.

(4) The person who gave the undertaking may at any time apply for a discharge certificate.

(5) The appropriate authority must decide whether to issue a discharge certificate, and give written notice of the decision to the applicant (including information as to the right of appeal), within 14 days of such an application.

(6) The applicant may appeal against a decision not to issue a discharge certificate on the grounds that the decision—

- (a) was based on an error of fact;
- (b) was wrong in law;
- (c) was unfair or unreasonable;
- (d) was wrong for any other reason.

Inaccurate, incomplete or misleading information

27.—(1) A person who has given inaccurate, incomplete or misleading information in relation to an enforcement undertaking is to be regarded as not having complied with it.

(2) The appropriate authority may by notice in writing revoke a discharge certificate issued under paragraph 26 if it was issued on the basis of inaccurate, misleading or incomplete information.

Non-compliance with an enforcement undertaking

28.—(1) If a person does not comply with an enforcement undertaking, the appropriate authority may, in the case of an offence committed under Part 11 of these Regulations—

- (a) serve a compliance notice, restoration notice, variable monetary penalty, stop notice or non-compliance penalty, or

(b) bring criminal proceedings.

(2) If a person has complied partly but not fully with an undertaking, that partial compliance must be taken into account in the imposition of any criminal or other sanction on the person.

(3) Criminal proceedings for offences to which an enforcement undertaking relates may be instituted at any time up to 6 months from the date on which the appropriate authority notifies the person that the person has failed to comply with the undertaking.

PART 4

Non-compliance penalties

Non-compliance penalties

29.—(1) The appropriate authority may serve a notice on a person imposing a monetary penalty (a “non-compliance penalty”) if that person fails to comply with—

- (a) a compliance notice, restoration notice or third party undertaking, irrespective of whether a variable monetary penalty was also imposed, or
- (b) an enforcement undertaking.

(2) The amount of the non-compliance penalty must be determined by the appropriate authority, and must be a percentage of the costs of fulfilling the remaining requirements of the compliance notice, restoration notice, third party undertaking or enforcement undertaking.

(3) The percentage must be determined by the appropriate authority having regard to all the circumstances of the case and may, if appropriate, be 100%.

(4) The notice must include information as to—

- (a) the grounds for imposing the non-compliance penalty,
- (b) the amount to be paid,
- (c) how payment must be made,
- (d) the period in which payment must be made, which must not be less than 28 days beginning with the day on which the notice is served,
- (e) rights of appeal,
- (f) the consequences of failure to comply with the notice, and
- (g) any circumstances in which the appropriate authority may reduce the amount of the penalty.

(5) If the requirements of the compliance notice, restoration notice, third party undertaking or enforcement undertaking are fulfilled before the time specified for payment of the non-compliance penalty, the penalty is not payable.

(6) Following expiry of the specified payment period, the appropriate authority may recover the non-compliance penalty as if payable under an order of the court.

(7) A non-compliance penalty paid to the appropriate authority under this paragraph must be paid into the Consolidated Fund.

Appeals

30.—(1) The person on whom the notice imposing the non-compliance penalty is served may appeal against it.

(2) The grounds of appeal are—

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Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (a) that the decision to serve the notice was based on an error of fact;
- (b) that the decision was wrong in law;
- (c) that the decision was unfair or unreasonable for any reason;
- (d) that the amount of the penalty is unreasonable;
- (e) that the decision was wrong for another reason.

PART 5

Withdrawal and amendment of notices

Withdrawing or amending a notice

- 31.** The appropriate authority may at any time in writing—
- (a) withdraw a compliance notice, restoration notice or stop notice, or amend the steps specified in such a notice in order to reduce the amount of work necessary to comply with it,
 - (b) withdraw a notice imposing a fixed monetary penalty, or
 - (c) withdraw a notice imposing a variable monetary penalty or a non-compliance penalty, or reduce the amount of the penalty specified in the notice.

PART 6

Cost recovery

Recovery of enforcement costs

- 32.—**(1) The appropriate authority may serve a cost recovery notice if any of the conditions in sub-paragraph (3) are met.
- (2) A cost recovery notice is a notice requiring the person to pay the appropriate authority's costs.
- (3) The conditions are that the appropriate authority has—
- (a) imposed on the person a compliance notice under paragraph 1,
 - (b) imposed on the person a restoration notice under paragraph 2,
 - (c) imposed on the person a variable monetary penalty under paragraph 4, or
 - (d) served on the person a stop notice under paragraph 17.
- (4) In sub-paragraph (2), the reference to costs is a reference to any costs relating to preparing and giving the compliance notice, restoration notice, variable monetary penalty, or stop notice, as the case may be, and includes a reference to the costs of any related investigation or expert advice (including legal advice).
- (5) The cost recovery notice must include information as to—
- (a) the amount of the costs which must be paid,
 - (b) the period in which payment must be paid, which must not be less than 28 days beginning with the day on which the notice is served,
 - (c) how payment must be made,
 - (d) the consequences of failing to make payment within the specified payment period, and

- (e) rights of appeal.
- (6) Following expiry of the specified payment period, the appropriate authority may recover the costs referred to in the cost recovery notice as if payable under an order of the court.
- (7) The person on whom the cost recovery notice is served may appeal against it.
- (8) The grounds of appeal are—
 - (a) that the decision to serve the notice was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unfair or unreasonable for any reason;
 - (d) that the amount of the penalty was unreasonable;
 - (e) that the decision was wrong for any other reason.

PART 7

Appeals

Appeals

- 33.**—(1) Any appeal under this Schedule must be made to the First-tier Tribunal.
- (2) In any appeal the Tribunal must determine the standard of proof.
 - (3) An appeal against a notice served under this Schedule (other than a stop notice) suspends the effect of the notice appealed against until the appeal is determined or withdrawn.
 - (4) The Tribunal may, in relation to the imposition of a requirement or service of a notice—
 - (a) withdraw the requirement or notice;
 - (b) confirm the requirement or notice;
 - (c) vary the requirement or notice;
 - (d) take such steps as the appropriate authority could take in relation to the act or omission giving rise to the requirement or notice;
 - (e) remit the decision whether to confirm the requirement or notice, or any other matter relating to that decision, to the appropriate authority.

PART 8

Guidance and publicity

Guidance as to the use of civil sanctions

- 34.**—(1) The appropriate authority must publish guidance about its use of civil sanctions.
- (2) The appropriate authority must revise and update guidance where appropriate.
 - (3) The appropriate authority must have regard to the guidance or revised and updated guidance in exercising its functions.
 - (4) In the case of guidance about compliance notices, restoration notices, fixed monetary penalties, variable monetary penalties, stop notices and non-compliance penalties, the guidance must contain information as to—
 - (a) the circumstances in which the civil sanction is likely to be imposed,

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- (b) the circumstances in which it is not likely to be imposed,
 - (c) where relevant, rights to make representations and objections,
 - (d) rights of appeal, and
 - (e) in the case of guidance about variable monetary penalties and non-compliance penalties, the matters likely to be taken into account by the appropriate authority in determining the amount of the penalty (including voluntary reporting by a person of their own non-compliance).
- (5) In the case of guidance about enforcement undertakings, the guidance must contain information as to—
- (a) the circumstances in which the appropriate authority is likely to accept an enforcement undertaking, and
 - (b) the circumstances in which the appropriate authority is not likely to accept an enforcement undertaking.

Consultation on guidance

35. The appropriate authority must consult such persons as it considers appropriate before publishing—

- (a) any guidance, or
- (b) any significant revisions or updates to guidance which has already been published.

Publication of enforcement action

36.—(1) The appropriate authority must publish annually—

- (a) the cases in which civil sanctions have been imposed;
- (b) where the civil sanction is a compliance notice, a restoration notice or variable monetary penalty, the cases in which a third party undertaking has been accepted;
- (c) the cases in which an enforcement undertaking has been accepted.

(2) In sub-paragraph (1)(a), the reference to cases in which civil sanctions have been imposed does not include cases where a sanction has been imposed but overturned on appeal.

(3) This paragraph does not apply in cases where the appropriate authority considers that publication would be inappropriate.]

SCHEDULE 5

Regulation 49

Amendments to secondary legislation relating the marketing of seeds and plant propagating material and plant health fees

PART 1

The Marketing of Vegetable Plant Material Regulations 1995

1.—(1) The Marketing of Vegetable Plant Material Regulations 1995^{M62} are amended as follows.

(2) In regulation 8—

- (a) in paragraph (2), for “Council Directive [2000/29/EC](#)” substitute “ the EU Plant Health Regulation ”;
- (b) after paragraph (4) insert—
 - “(5) In this regulation, “the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants.”

Commencement Information

I95 Sch. 5 para. 1 in force at 27.3.2020, see reg. 1

Marginal Citations

M62 [S.I. 1995/2652](#), amended by [S.I. 2007/2190](#) (W. 174); there are other amending instruments but none is relevant.

PART 2

The Marketing of Ornamental Plant Propagating Material Regulations 1999

2.—(1) The Marketing of Ornamental Plant Propagating Material Regulations 1999 ^{M63} are amended as follows.

- (2) In regulation 2(1)—
 - (a) in the appropriate place insert—
 - ““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants;”;
 - (b) omit the definition of “Directive [2000/29/EC](#)”.
- (3) In regulation 6A(4), in the definition of “responsible official body”, for the words from “a body” to the end, substitute “ , in relation to Wales, the Welsh Ministers ”.
- (4) In regulation 7, for paragraph (4) substitute—
 - “(4) Registration of a supplier on the register of professional operators for the purposes of the EU Plant Health Regulation is deemed to constitute registration for the purposes of paragraph (1) above.”
- (5) In regulation 8(3)—
 - (a) for the words from “notifiable” to “Order 2018” substitute “ plant pest of a description specified in Annex 2, 3 or 4 to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, ”;
 - (b) for “article 42 of that Order (notification of the presence or suspected presence of certain plant pests)” substitute “ the EU Plant Health Regulation ”.
- (6) In regulation 9(2), for “Directive [2000/29/EC](#)” substitute “ the EU Plant Health Regulation ”.
- (7) In regulation 12(3), for the words from “if he delivers” to the end substitute “ , in relation to Wales, if the supplier delivers a phytosanitary certificate for export or a phytosanitary certificate for re-export to the Welsh Ministers ”.

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

Commencement Information

I96 Sch. 5 para. 2 in force at 27.3.2020, see reg. 1

Marginal Citations

M63 [S.I. 1999/1801](#); relevant amending instruments are [S.I. 2018/974](#), [S.I. 2018/1216](#) (W. 249) and [S.I. 2019/463](#) (W. 111).

PART 3

The Forest Reproductive Material (Great Britain) Regulations 2002

3.—(1) The Forest Reproductive Material (Great Britain) Regulations 2002 ^{M64} are amended as follows.

(2) In regulation 2(2), in the definition of “plant passport”, for “the Plant Health (Forestry) Order 2005” substitute “ Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants ”.

Commencement Information

I97 Sch. 5 para. 3 in force at 27.3.2020, see reg. 1

Marginal Citations

M64 [S.I. 2002/3026](#), amended by [S.I. 2019/496](#) (W. 133); there are other amending instruments but none is relevant.

PART 4

The Seed Potatoes (Wales) Regulations 2016

4.—(1) The Seed Potatoes (Wales) Regulations 2016 ^{M65} are amended as follows.

(2) In regulation 2(1), in the appropriate place insert—

““the Official Controls (Plant Health) Regulations” (“*y Rheoliadau Rheolaethau Swyddogol (Iechyd Planhigion)*”) means the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020;”.

(3) In regulation 13(9), after “these Regulations” insert “ , Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants ”.

(4) In Schedule 1—

(a) in paragraph 3(d)—

(i) for “Schedule 14 to the Plant Health (Wales) Order 2006” substitute “ Part 3 of Schedule 2 to the Official Controls (Plant Health) Regulations ”;

(ii) for “that Order” substitute “ those Regulations ”;

(b) in paragraph 4(1)(b), for “Schedule 15 to the Plant Health (Wales) Order 2006” substitute “ Part 4 of Schedule 2 to the Official Controls (Plant Health) Regulations ”;

- (c) in paragraph 7(1)(b), for “Schedule 15 to the Plant Health (Wales) Order 2006” substitute “ Part 4 of Schedule 2 to the Official Controls (Plant Health) Regulations ”;
- (d) in paragraph 9(1)(b), for “Schedule 15 to the Plant Health (Wales) Order 2006” substitute “ Part 4 of Schedule 2 to the Official Controls (Plant Health) Regulations ”.
- (5) In Schedule 2, in paragraph 10(b), omit “or the Plant Health (Wales) Order 2006”.
- (6) In Schedule 5, in paragraph 3(b)—
 - (a) for “Schedule 14 to the Plant Health (Wales) Order 2006” substitute “ Part 3 of Schedule 2 to the Official Controls (Plant Health) Regulations ”;
 - (b) for “that Order” substitute “ those Regulations ”.

Commencement Information

I98 Sch. 5 para. 4 in force at 27.3.2020, see reg. 1

Marginal Citations

M65 S.I. 2016/106 (W. 52); there are amending instruments but none is relevant..

PART 5

The Plant Health (Fees) (Forestry) (Wales) Regulations 2019

- 5.—(1) The Plant Health (Fees) (Forestry) (Wales) Regulations 2019^{M66} are amended as follows.
- (2) In regulation 2(1)—
- (a) in the definition of “approved place of inspection” for “article 3 of the Order” substitute “ regulation 13(10) of the Official Controls (Plant Health) Regulations 2020 ”;
 - (b) in the appropriate place insert—

““forestry remedial notice” (*“hysbysiad adfer coedwigaeth”*) means a notice served by a plant health inspector under regulation 10 or 15(1) or (2) of the Official Controls (Plant Health) Regulations 2020;”;
 - (c) for the definition of “licence” substitute—

““licence” (*“trwydded”*) means—

 - (a) a licence referred to in regulation 51(1) of the Official Controls (Plant Health) Regulations 2020 that has been granted by the Welsh Ministers, or
 - (b) an authorisation described in regulation 20(1)(a) or (b)(i) or 21(1)(a) of the Official Controls (Plant Health) Regulations 2020 granted by the Welsh Ministers;”;
 - (d) in the appropriate place insert—

““the Official Controls (Plant Health) Regulations 2020” (*“Rheoliadau Rheolaethau Swyddogol (Iechyd Planhigion) 2020”*) means the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020;”;
 - (e) in the appropriate place insert—

““Phytosanitary Conditions Regulation” (*“Rheoliad Amodau Ffytoiechydol”*) means Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants;”;

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020. (See end of Document for details)

- (f) in the appropriate place insert—
 - ““plant health inspector” (“*arolygydd iechyd planhigion*”) means an official plant health officer appointed by the Welsh Ministers for the purposes of the Official Controls (Plant Health) Regulations 2020;”;
 - (g) in the definition of “plant passport authority”, at the end insert “ and granted by the Welsh Ministers ”;
 - (h) omit the definition of “the Order”;
 - (i) omit the definition of “remedial notice”;
 - (j) in the definition of “remedial work”, for “a remedial notice, or by an inspector under article 32(1) of the Order” substitute “ a forestry remedial notice, or by a plant health inspector under regulation 16(1) of the Official Controls (Plant Health) Regulations 2020 ”;
 - (k) in the definition of “WPM authorisation”, at the end insert “ and granted by the Welsh Ministers ”.
- (3) In regulation 3—
- (a) omit paragraph (6);
 - (b) at the end insert—
 - “(6A) The person on whom a forestry remedial notice is served or who is given notice under regulation 16(1) of the Official Controls (Plant Health) Regulations 2020 must pay the fee specified in Schedule 5 for the carrying out or the monitoring by a plant health inspector of remedial work and associated activities in connection with a controlled consignment.”

Commencement Information

I99 Sch. 5 para. 5 in force at 27.3.2020, see reg. 1

Marginal Citations

M66 S.I. 2019/497 (W. 114), amended by S.I. 2020/44 (W. 5).

PART 6

The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017

6.—(1) The Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017^{M67} are amended as follows.

(2) In regulation 3(1), omit the definition of “Directive [2000/29/EC](#)”.

(3) Omit regulation 10(6).

(4) In regulation 11(7), for the words from “plant trader” to “2018” substitute “ professional operator for the purposes of Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants ”.

(5) In regulation 15(1)(g), for paragraph (iii) substitute—

“(iii) a plant pest of a description specified in Annex 2, 3 or 4 to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants.”

Commencement Information

I100 Sch. 5 para. 6 in force at 27.3.2020, see reg. 1

Marginal Citations

M67 [S.I. 2017/691](#) (W. 163), amended by [S.I. 2019/368](#) (W. 90); there are other amending instruments but none is relevant.

SCHEDULE 6

Regulation 50

Revocation of instruments

Commencement Information

I101 Sch. 6 in force at 27.3.2020, see reg. 1

<i>Instrument</i>	<i>Reference</i>
The Plant Health (Export Certification) (Forestry) (Great Britain) Order 2004	S.I. 2004/1684
The Potatoes Originating in Egypt (Wales) Regulations 2004	S.I. 2004/2245 (W. 209)
The Plant Health (Forestry) Order 2005	S.I. 2005/2517
The Plant Health (Export Certification) (Wales) Order 2006	S.I. 2006/1701 (W. 163)
The Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006	S.I. 2006/2695
The Plant Health (Forestry) (Amendment) Order 2006	S.I. 2006/2696
The Plant Health (Forestry) (Amendment) Order 2008	S.I. 2008/644
The Plant Health (Forestry) (Amendment) Order 2009	S.I. 2009/594
The Plant Health (Forestry) (Amendment) (No. 2) Order 2009	S.I. 2009/3020
The Plant Health (Forestry) (Amendment) Order 2012	S.I. 2012/2707
The Plant Health (Export Certification) (Wales) (Amendment) Order 2013	S.I. 2013/1658 (W. 156)
The Plant Health (Miscellaneous Amendments) (Wales) Regulations 2014	S.I. 2014/1463 (W. 144)
The Plant Health (Export Certification) (Wales) (Amendment) Order 2014	S.I. 2014/1759 (W. 174)
The Plant Health (Forestry) (Amendment) (Wales) Order 2015	S.I. 2015/1723 (W. 235)
The Plant Health (Export Certification) (Wales) (Amendment) Order 2016	S.I. 2016/1084 (W. 259)
The Plant Health (Export Certification) (Wales) (Amendment) Order 2018	S.I. 2018/772 (W. 156)

Status: Point in time view as at 15/12/2020.

Changes to legislation: There are currently no known outstanding effects for the *The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020*. (See end of Document for details)

The Plant Health (Wales) Order 2018	S.I. 2018/1064 (W. 223)
The Plant Health (Wales) (Amendment) Order 2019	S.I. 2019/132 (W. 33)
The Plant Health (Forestry) (Amendment) (Wales) Order 2019	S.I. 2019/498 (W. 115)
The Plant Health (Forestry) (Amendment No. 2) (Wales) Order 2019	S.I. 2019/1153 (W. 202)
The Plant Health (Wales) (Amendment) (No. 2) Order 2019	S.I. 2019/1167 (W. 204)
The Plant Health (Wales) (Amendment) (No. 3) Order 2019	S.I. 2019/1280 (W. 224)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to—

- (a) Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (OJ No. L 317, 23.11.2016, p. 4) (“the EU Plant Health Regulation”), and
- (b) Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, in so far as it applies to the rules referred to in Article 1(2)(g) (OJ No. L 95, 7.4.2017, p. 1) (“the Official Controls Regulation”).

The Regulations also implement in relation to Wales—

- (a) Council Directive [69/464/EEC](#) on the control of Potato Wart Disease (OJ No. L 323, 24.12.1969, p. 1),
- (b) Council Directive [93/85/EEC](#) on the control of potato ring rot (OJ No. L 259, 18.10.1993, p. 1),
- (c) Council Directive [98/57/EC](#) on the control of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.* (OJ No. L 235, 21.8.1998, p. 1), and
- (d) Council Directive [2007/33/EC](#) on the control of potato cyst nematodes (OJ No. L 156, 16.6.2007, p. 12).

Part 1 is introductory and includes definitions. Regulation 3(2) provides for references to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants (OJ No. L 319, 10.12.2019, p. 1), and to the European Union instruments listed in regulation 3(1), to be read as references to those instruments as amended from time to time.

Regulation 6 (in Part 2) designates the Welsh Ministers as the competent authority in Wales for the purposes of the EU Plant Health Regulation and the Official Controls Regulation.

Part 3 makes further provision in relation to consignments of plants, plant products and other objects from third countries which are subject to official controls on their entry into the European Union.

Part 4 contains powers to enable plant health inspectors appointed by the Welsh Ministers to take measures to prevent the establishment or spread of harmful plant pests in Wales.

Part 5 and Schedule 1 impose additional temporary measures to prevent the entry of certain harmful plant pests into Wales or their establishment in, or spread within, Wales.

Part 6 makes further provision in relation to the registration of professional operators and the granting of authorisations to professional operators by the Welsh Ministers.

Part 7 and Schedule 2 impose additional requirements in relation to certain solanaceous species (potatoes and tomatoes) to implement the Directives mentioned above.

Part 8 imposes additional notification requirements in respect of certain plants and plant products which are to be brought into Wales from third countries, other member States or Switzerland.

Part 9 sets out general powers of plant health inspectors to enable them to perform official controls and other official activities, and enforce the EU Plant Health Regulation, the Official Controls Regulation and these Regulations.

Part 10 contains general and supplemental provisions in relation to notices given by plant health inspectors.

Part 11 contains offences for non-compliance with specified provisions of the EU Plant Health Regulation, the Official Controls Regulation and other EU instruments, and offences in relation to these Regulations. Regulation 48 sets out the penalties for these offences.

Part 12 deals with minor and consequential amendments to secondary legislation, revocations and transitional provisions in relation to plant health legislation.

Part 13 amends the Official Controls (Animals, Feed and Food, Plant Health Fees etc.) (Wales) Regulations 2020 to extend certain provisions in those Regulations relating to the implementation and enforcement of Regulation (EU) 2017/625 to official controls on the deliberate release into the environment of genetically modified organisms for the purposes of food and feed production.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Plant Health and Environment Protection branch of the Welsh Government, Rhodfa Padarn, Aberystwyth SY23 3UR.

Status:

Point in time view as at 15/12/2020.

Changes to legislation:

There are currently no known outstanding effects for the The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020.