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WELSH STATUTORY INSTRUMENTS

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**2020 No. 206**

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

**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.

**Interpretation: general**

**2.—(1)** In these Regulations—

“the 2005 Order” (“*Gorchymyn 2005*”) means the Plant Health (Forestry) Order 2005<sup>(1)</sup>;

“the 2018 Order” (“*Gorchymyn 2018*”) means the Plant Health (Wales) Order 2018<sup>(2)</sup>;

“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

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(1) [S.I. 2005/2517](#); amended by [S.I. 2013/755 \(W. 90\)](#). There are other amending instruments but none are relevant

(2) [S.I. 2018/1064](#); there are amending instruments but none are relevant.

(c) a plant pest subject to any other EU plant health rule;

“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<sup>(3)</sup>;

“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<sup>(4)</sup>;

“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<sup>(5)</sup>;

“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<sup>(6)</sup>;

“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<sup>(7)</sup>;

“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<sup>(8)</sup>).

(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).

(3) 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).

(4) 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).

(5) 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>.

(6) 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).

(7) OJ No. L 319, 10.12.2019, p. 1.

(8) 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<sup>(9)</sup>;

“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.<sup>(10)</sup>;

“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<sup>(11)</sup>;

“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<sup>(12)</sup>;

“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)<sup>(13)</sup>;

“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)<sup>(14)</sup>;

“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)<sup>(15)</sup>;

“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)<sup>(16)</sup>;

“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.)<sup>(17)</sup>;

<sup>(9)</sup> OJ No. L 27, 3.2.1998, p. 47.

<sup>(10)</sup> 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).

<sup>(11)</sup> OJ No. L 64, 2.3.2004, p. 43.

<sup>(12)</sup> OJ No. L 319, 2.12.2011, p. 112.

<sup>(13)</sup> 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).

<sup>(14)</sup> 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).

<sup>(15)</sup> 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).

<sup>(16)</sup> OJ No. L 311, 10.11.2012, p. 14.

<sup>(17)</sup> 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).

“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)(18);

“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.(19);

“Commission Implementing Decision (EU) 2017/198” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2017/198*”) means Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyuma & Goto(20);

“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)(21);

“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)(22);

“Commission Implementing Decision (EU) 2019/1615” (“*Penderfyniad Gweithredu'r Comisiwn (EU) 2019/1615*”) means Commission Implementing Decision (EU) 2019/1615 establishing emergency measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV)(23);

“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(24);

“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*)(25).

(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.

### 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—

(18) OJ No. L 146, 11.6.2015, p. 16.

(19) 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).

(20) OJ No. L 31, 4.2.2017, p. 29.

(21) 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).

(22) OJ No. L 254, 10.10.2018, p. 9.

(23) OJ No. L 250, 30.9.2019, p. 91.

(24) OJ No. L 265, 18.10.2019, p. 12.

(25) OJ No. L 313, 4.12.2019, p. 94.

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

#### **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.

## 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;
- (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.

## 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<sup>(26)</sup>;

“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

(26) OJ No. L 165, 21.6.2019, p. 8.

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<sup>(27)</sup>;

“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<sup>(28)</sup>;

“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.

### **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.

### **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.

### **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.

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<sup>(27)</sup> OJ No. L 165, 21.6.2019, p. 4.

<sup>(28)</sup> 1971 c. 80, to which there are amendments not relevant to these Regulations.

(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.

#### **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).

#### **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(29).

### **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—
- (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.

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(29) OJ No. L 165, 21.6.2019, p. 10.

(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<sup>(30)</sup>;

“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<sup>(31)</sup>;

“working hour” (“*awr waith*”) has the meaning given in regulation 7(4).

## 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.

#### Notices in relation to controlled plant pests or prohibited material

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

<sup>(30)</sup> OJ No. L 313, 12.10.2004, p. 16.

<sup>(31)</sup> 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).

- (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.

### **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.

#### **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.

## **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.

## **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.

#### **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.

#### **Authorisations for other purposes**

- 21.**—(1) The appropriate authority may grant an authorisation to permit the carrying out of—
- (a) any activity specified in a plant health derogation, or
  - (b) 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.
- (3) In this regulation, a “plant health derogation” 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.

#### **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.

## PART 7

### Measures relating to certain solanaceous species

#### Schedule 2

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

## 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.

#### 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.

### **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—

- (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.

## **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.

### **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
    - (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.

#### **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.

### 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.

### 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.

(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.

### **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.

### **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.

#### **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.

#### **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.

## **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).

- (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.

### **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 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 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.

## 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.

#### Failure to comply with requirements of notices etc.

- 39.** 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.

#### 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.

#### 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.

### **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.

### **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,
- (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.

### **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.

### **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.

### **Offences by bodies corporate**

**46.**—(1) Where an offence under this Part 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.

### **Offences by partnerships and unincorporated associations**

47.—(1) Proceedings for an offence under this Part 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)(32) and Schedule 3 to the Magistrates' Courts Act 1980 (corporations)(33) 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.

### **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—

(32) 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).

(33) 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).



- (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.

## 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.

#### Revocation of plant health instruments

50. The instruments listed in Schedule 6 are revoked.

#### 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<sup>(34)</sup>;

“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<sup>(35)</sup>;

“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

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<sup>(34)</sup> OJ No. L 137, 23.5.2019, p. 15.

<sup>(35)</sup> OJ No. L 158, 18.6.2008, p. 41.

- (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.

#### **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.

#### **Transitional provisions: notices**

**53.**—(1) Any notice given under the 2005 Order, the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006<sup>(36)</sup> 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.

#### **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.

## 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<sup>(37)</sup> 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”.

2 March 2020

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