

Draft Regulations laid before the Scottish Parliament under paragraph 2(2) of schedule 2 of the European Communities Act 1972 and paragraph 1(6) of schedule 7 of the European Union (Withdrawal) Act 2018 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2020 No.

**EXITING THE EUROPEAN UNION
FORESTRY
PLANT HEALTH**

**The Plant Health (EU Exit) (Scotland)
(Amendment etc.) Regulations 2020**

*Made - - - - 2020
Coming into force in accordance with regulation 1(1)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾, paragraph 1(1) and (3) of schedule 2 and paragraph 21(b) of schedule 7 of the European Union (Withdrawal) Act 2018⁽²⁾.

In accordance with paragraph 2(2) of schedule 2 of the European Communities Act 1972, and paragraph 1(6) of schedule 7 of the European Union (Withdrawal) Act 2018, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

In accordance with paragraph 4 of schedule 2 of the European Union (Withdrawal) Act 2018, the Scottish Ministers have consulted with the Secretary of State.

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- (1) 1972 c.68 (“the 1972 Act”). The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) (“the 2018 Act”) with effect from exit day (see section 20 of the 2018 Act), but saved, subject to modifications, until IP completion day by section 1A of that Act. Section 1A of the 2018 Act was inserted by the European Union (Withdrawal Agreement) Act 2020 (c.1) (“the 2020 Act”), and defines “IP completion day” by reference to section 39(1) to (5) of the 2020 Act. Section 2(2) was amended by paragraph 15(3) of schedule 8 of the Scotland Act 1998 (c.46) (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by section 3(3) and Part 1 of schedule 1 of the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”). The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (2) 2018 c.16.

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 and come into force as follows—

- (a) as regards this Part and Part 2 on 31 December 2020,
 - (b) as regards Part 4, immediately before IP completion day,
 - (c) as regards Part 3 on IP completion day.
- (2) These Regulations extend to Scotland only.

PART 2

Amendments made under section 2(2) of the European Communities Act 1972

The Plant Health (Fees) (Scotland) Regulations 2008

2. In the Plant Health (Fees) (Scotland) Regulations 2008⁽³⁾, in regulation 2 (interpretation) in the definition of “licence”, in paragraph (b), for “21(2)” substitute “21(1)”.

The Plant Health (Import Inspection Fees) (Scotland) Regulations 2014

3.—(1) The Plant Health (Import Inspection Fees) (Scotland) Regulations 2014⁽⁴⁾ are amended in accordance with paragraphs (2) to (8).

(2) In regulation 2 (interpretation)—

(a) in paragraph (1)—

- (i) omit the definition of “consignment”,
- (ii) omit the definition of “the Directive”,
- (iii) omit the definition of “documentary check”,
- (iv) omit the definition of “identity check”,
- (v) after the definition of “landed in Scotland” insert—
““lot” means a number of units of a single commodity, identifiable by its homogeneity of composition and origin and forming part of a consignment,”
- (vi) omit the definition of “plants”,
- (vii) omit the definition of “plant health check”,
- (viii) omit the definition of “plant products”,
- (ix) in the definition of “third country” at the end insert—

“(c) Liechtenstein.”,

(b) after paragraph (2) insert—

“(3) Unless the context otherwise requires, words and expressions which are not defined in these Regulations and which appear in the EU Plant Health Regulation or the

⁽³⁾ S.S.I. 2008/153, relevantly amended by S.S.I. 2019/421.

⁽⁴⁾ S.S.I. 2014/338, relevant amending instruments are S.S.I. 2015/392, S.S.I. 2019/421 and S.S.I. 2019/425.

Official Controls Regulation have the same meaning in these Regulations as in the EU Plant Health Regulation or, as the case may be, in the Official Controls Regulation.”.

(3) In regulation 3(2)(b)(ii) (application of the import inspection fee) for “Regulation (EU) 2017/625” to the end substitute “the Official Controls Regulation”.

(4) In regulation 4 (fees)—

- (a) for “plant health check” in both places it occurs substitute “physical check”,
- (b) in paragraph (2), in the words before sub-paragraph (a) omit “or which, but for” to “required to be carried out”.

(5) In regulation 5 (additional fees in respect of potatoes originating in Egypt and Lebanon), in the heading omit “and Lebanon”.

(6) In schedule 1 (import inspections fees for plant health checks), in the heading, for “plant health checks” substitute “physical checks”.

(7) In schedule 2 (reduced import inspection fees for plant health checks), in the heading, for “plant health checks” substitute “physical checks”.

(8) In schedule 3 (additional fees), in item 1 at column 2 omit “or Lebanon”.

The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015

4.—(1) The Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015(5) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2(1) (interpretation: Scotland), in the definition of “licence”, in paragraph (b), for “21(1)(a)” substitute “(21)(1)”.

(3) In regulation 3 (fees), for “plant health check” in each place it occurs substitute “physical check”.

(4) In schedule 3 (fees for plant health checks)—

- (a) in the heading for “plant health check” substitute “physical check”,
- (b) in the title in column 2 of the table for “plant health check” substitute “physical check”.

The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019

5.—(1) The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019(6) are amended in accordance with paragraphs (2) to (8).

(2) In regulation 2(1) (interpretation: general), in sub-paragraph (c) of the definition of “controlled plant pest”, at the end insert “, including a potential quarantine plant pest within the meaning given in regulation 21(3)”.

(3) In regulation 3(1) (interpretation: EU instruments)—

- (a) omit the definitions of—
 - (i) “Commission Implementing Decision (EU) 2017/198”, and
 - (ii) “Commission Implementing Decision (EU) 2019/1615”,
- (b) at the end insert—

““Commission Implementing Regulation (EU) 2020/885” means Commission Implementing Regulation (EU) 2020/885 as regards measures to prevent the

(5) [S.I. 2015/350](#), relevantly amended by [S.S.I. 2020/176](#).

(6) [S.S.I. 2019/421](#), amended by [S.S.I. 2020/176](#).

introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto⁽⁷⁾,

“Commission Implementing Regulation (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) and repealing Implementing Decision (EU) 2019/1615 ⁽⁸⁾.”.

(4) In regulation 21 (authorisations for other purposes)—

(a) for paragraph (1) substitute—

“(1) The Scottish Ministers may grant an authorisation to permit—

- (a) the carrying out of any activity specified in a plant health derogation,
- (b) the introduction into Scotland, the movement within Scotland or the holding or multiplication in Scotland 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 Scottish Ministers under the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.”,

(b) for paragraph (3) substitute—

“(3) In paragraph (1)—

“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,

“potential quarantine plant pest” 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 Scottish Ministers, 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.”.

(5) In regulation 22 (authorisations granted by the Scottish Ministers)—

- (a) number the first un-numbered paragraph as paragraph (1),
- (b) in paragraph (1) for “or these Regulations” substitute “, the Official Controls Regulation or for the purposes of, or under, these Regulations”.

(6) In schedule 2 (specific measures relating to certain solanaceous species)—

- (a) In Part 1 (general interpretation), in paragraph 1, in the definition of “sampling unit”, for “an area” to the end substitute “a field or Part of a field formed with recognisable boundaries on at least two opposing sides”.

(7) OJ L 205, 29.6.2020, p.9.

(8) OJ L 262, 12.8.2020, p.6.

- (b) in Part 2 (general provisions relating to the planting of certain solanaceous species), in paragraph 4(3)(a) and (b) (potato cyst nematode), for “Part 5” in each place it occurs substitute “tables B and C of Part 5”,
- (c) in Part 8 (measures relating to potatoes originating in Egypt), in paragraph 48(2)(a), for “Egyptian potatoes” substitute “potatoes originating in Egypt”.
- (7) In schedule 3 (offences: relevant provisions in the EU Regulations), in the table in Part 3 (other EU legislation), at the end insert—

“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(9)	
Article 2(1)(d), (e), (f), (g)(i) and (h) (as read with Article 2(2) and (3)), Article 5(1) (as read with Article 5(2), Article 6(1) and (4) and Article 8(2))	Requires the operator responsible for a consignment to comply with certain conditions where identity and physical checks on the consignment are to be performed at a control point other than a border control post”.

- (8) In the table in schedule 4 (offences: EU decisions relating to plant health)—

- (a) omit the entries relating to—
- (i) Commission Implementing Decision (EU) 2017/198, and
 - (ii) Commission Implementing Decision (EU) 2019/1615,
- (b) at the end insert—

“Commission Implementing Regulation (EU) 2020/885	Article 2 (prohibition on the introduction of <i>Pseudomonas syringae</i> pv. <i>actinidiae</i> 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)

(9) OJ L 321, 12.12.2019, p.64.