

2020 No. 1014

PLANT HEALTH, ENGLAND

The Official Controls (Plant Health and Genetically Modified Organisms) (England) (Amendment) (No. 2) Regulations 2020

<i>Made</i>	- - - -	<i>15th September 2020</i>
<i>Laid before Parliament</i>		<i>21st September 2020</i>
<i>Coming into force</i>	- -	<i>15th October 2020</i>

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

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act and, with the consent of the Treasury, in exercise of the powers conferred by section 56(1) of the Finance Act 1973(c).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears expedient to the Secretary of State for the references to the European Union instruments mentioned in regulation 2(3)(b) to be construed as references to those instruments as amended from time to time.

Citation, commencement and application

1.—(1) These Regulations may be cited as the Official Controls (Plant Health and Genetically Modified Organisms) (England) (Amendment) (No. 2) Regulations 2020 and come into force on 15th October 2020.

(2) Regulation 3 applies in relation to England only.

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- (a) 1972 c. 68; the European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
- (b) S.I. 1972/1811, to which there are amendments not relevant to these Regulations. The function of the former Minister of Agriculture, Fisheries and Food of making regulations under section 2(2) was transferred to the Secretary of State by S.I. 2002/794.
- (c) 1973 c. 51; section 56(1) was amended by S.I. 2011/1043, and prospectively amended by paragraph 17 of Schedule 8 to the European Union (Withdrawal Agreement) Act 2020 from a date and time to be appointed.

PART 1

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

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

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

(2) In regulation 2(1), in 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)—

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

“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)^(c)”;

(4) In regulation 13(10), in the definition of “working hour” for “hour” substitute “day”.

(5) In regulation 21—

(a) for paragraph (1) substitute—

“(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 England, the movement within England, or the holding or multiplication in England, 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.”;

(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

(a) S.I. 2019/1517, amended by S.I. 2020/381.

(b) OJ No. L 205, 29.6.2020, p. 9.

(c) OJ No. L 262, 12.8.2020, p. 6.

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 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.”.

(6) In regulation 22, number the first un-numbered paragraph as paragraph (1).

(7) In Schedule 2—

(a) in Part 2, after paragraph 3(3) insert—

“(3A) In sub-paragraphs (1) and (2), “protected region” has the meaning given in regulation 2(1) of the Seed Potatoes (England) Regulations 2015(a).”;

(b) in Part 3—

(i) re-number paragraph 4(1) as paragraph 4;

(ii) re-number paragraph 9(1) as paragraph 9.

(8) In Schedule 3, in the table in Part 3 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(b)

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”.

(9) In the table in Schedule 4—

(a) omit the entries relating to—

(i) Commission Implementing Decision 2017/198/EU; 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 *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

Article 2 (prohibition on the introduction of Tomato brown rugose fruit virus into the Union territory and its spread within

(a) S.I. 2015/1953, amended by S.I. 2019/1517; there are other amending instruments but none is relevant.

(b) OJ No. L 321, 12.12.2019, p. 64.

Regulation (EU)
2020/1191

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)".

PART 2

Consequential amendments to legislation relating to fees

Amendments to the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015

3. In the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015(a), in regulation 1A(1), in the definition of "licence", in paragraph (b), after "21(1)(a)" insert "or (b)".

Amendment to the Plant Health etc. (Fees) (England) Regulations 2018

4. In the Plant Health etc. (Fees) (England) Regulations 2018(b), in regulation 5(5), for "for the purposes of any derogation described in Article 8(1) or 48(1) of the EU Plant Health Regulation" substitute "described in regulation 20(1)(a) or (b)(i) or 21(1)(b) of the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019".

10th September 2020

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

We consent

15th September 2020

Rebecca Harris
Michael Tomlinson
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) (the "2019 Regulations"), which 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); 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).

(a) S.I. 2015/350, amended by S.I. 2019/1488, 1517; there are other amending instruments but none is relevant.

(b) S.I. 2018/289, amended by S.I. 2019/1488; there are other amending instruments but none is relevant.

Regulation 2(3) and (9) updates the references in the 2019 Regulations to:

- (a) 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, Tsuyumu & Goto (OJ No. L 31, 4.2.2017, p.29), which has been repealed and replaced by 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 (OJ No. L 205, 29.6.2020, p.9); and
- (b) 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) (OJ No. L 250, 30.9.2015, p.91), which has been repealed and replaced by 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) (OJ No. L 262, 12.8.2020, p.6).

Regulation 2(5) amends regulation 21 of the 2019 Regulations to allow the appropriate authority to authorise the use of potential quarantine plant pests for official testing, scientific or educational purposes, trials, varietal selection or breeding.

Regulation 2(8) amends Schedule 3 to the 2019 Regulations to enable 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 (OJ No. L 321, 12.12.2019, p.64) to be enforced from 14th December 2020 (the date on which the provisions in that Regulation will apply to certain plants, plant products and other objects).

Regulations 2(2), (4), (6) and (7) and 3 and 4 make consequential and other minor amendments.

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

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