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STATUTORY RULES OF NORTHERN IRELAND

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**2019 No. 230**

**PLANT HEALTH**

**The Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2019**

*Made - - - - 13th December 2019*

*Coming into operation 14th December 2019*

The Department of Agriculture, Environment and Rural Affairs is a Northern Ireland department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to the common agricultural policy of the European Union.

The Department of Agriculture, Environment and Rural Affairs<sup>(3)</sup> makes these Regulations in exercise of the powers conferred by sections 2, 3(1), 3A and 3B(1) of the Plant Health Act (Northern Ireland) 1967<sup>(4)</sup> and section 2(2) of, and Paragraph 1A of Schedule 2 to, the European Communities Act 1972<sup>(5)</sup>.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears expedient to the Department of Agriculture, Environment and Rural Affairs for the references to Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and of the Council, as regards protective measures against pests of plants and repealing [Commission Regulation \(EC\) No 690/2008](#) and amending Commission Implementing Regulation (EU) 2018/2019 (referred to in these Regulations as “the Phytosanitary Conditions Regulation”) and to the European Union instruments mentioned in regulation 3(1) to be construed as references to those instruments as amended from time to time.

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- (1) [S.I. 2000/2812](#).
- (2) [1972 c. 68](#), section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act [2006 \(c. 5\)](#) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act [2008 \(c. 7\)](#). The Act is prospectively repealed by the European Union (Withdrawal) Act [2018 \(c. 16\)](#) section 1 from exit day (see section 20 of that Act).
- (3) The Ministry of Agriculture became known as the Department of Agriculture by virtue of section 7(5) of the Northern Ireland Constitution Act (c. 36), was renamed the Department of Agriculture and Rural Development by Article 3(4) of the Departments (Northern Ireland) Order 1999 ([S.I. 1999/283 \(N.I. 1\)](#)) and was renamed the Department of Agriculture, Environment and Rural Affairs by section 1 of the Departments Act (Northern Ireland) [2016 \(c. 5 \(N.I.\)\)](#).
- (4) [1967 c. 28 \(N.I.\)](#): sections 2(1) and 3(1) were amended by S.R. & O ([N.I.](#)) [1972 No. 351](#), article 3 and Schedule 2. Section 2(2) was amended by [1979 c. 2](#) section 177(1) and Schedule 4, Part 11. Sections 2 and 3 were also amended by [S.I. 1984/702 \(N.I. 2\)](#), Articles 15(2), 24 and Schedule.
- (5) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#) and amended by section 3, and Part 1 of the Schedule to the European Union (Amendment) Act [2008 \(c. 7\)](#).

## PART 1

### Introduction

#### Citation and commencement

1. These Regulations may be cited as the Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2019 and come into operation on 14th December 2019.

#### Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(6)</sup> applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“the 2006 Order” means the Plant Health (Wood and Bark) Order (Northern Ireland) 2006<sup>(7)</sup>;

“the 2018 Order” means the Plant Health Order (Northern Ireland) 2018<sup>(8)</sup>;

“commencement date” means the date on which these Regulations come into operation;

“controlled consignment” 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” means—

(a) a plant pest of a description specified in Annexes 2, 3 or 4 to the Phytosanitary Condition Regulation;

(b) a plant pest of a description specified in an EU emergency decision; or

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

“the Department” means the Department of Agriculture, Environment and Rural Affairs;

“EU Emergency Decision” means an instrument referred to in regulation 3(1);

“EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives [69/464/EEC](#), [74/647/EEC](#), [93/85/EEC](#), [98/85/EEC](#), [98/57/EC](#), [2000/29/EC](#), [2006/91/EC](#) and [2007/33/EC](#)<sup>(9)</sup>;

“EU plant health rule” means a rule within the meaning given in Article 1(2)(g) of the Official Controls Regulation;

<sup>(6)</sup> 1954 c. 33 (N.I.).

<sup>(7)</sup> S.R. 2006 No. 66.

<sup>(8)</sup> S.R. 2018 No. 184.

<sup>(9)</sup> O.J. No. L 317, 23.11.2016, p. 4, amended by Regulation (EU) 2017/625 of the European Parliament and of the Council (O.J. No. L 95, 7.4.2017, p. 1).

“Official Controls Regulation” 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, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429, and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC insofar as it applies to EU plant health rules<sup>(10)</sup>;

“plant health inspector” means an official plant health officer appointed by the Department;

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

“prohibited material” means any plant, plant product or other object which is carrying or is infested by or infected with a controlled plant pest or which may be carrying or infested by or infected with a controlled plant pest;

“regulated item” 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;

“Phytosanitary Conditions Regulation” means Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and of the Council, as regards protective measures against pests of plants and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019<sup>(11)</sup>.

(3) Unless the context otherwise requires, words and expressions which are not defined in these Regulations but appear in both these Regulations and 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, as the case may be, in the Official Controls Regulation.

### Interpretation: EU Decisions

3.—(1) In these Regulations—

“Commission Decision 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>(12)</sup>;

“Commission Decision 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>(13)</sup>;

“Commission Decision 2004/200/EC” means Commission Decision 2004/200 on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus<sup>(14)</sup>;

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<sup>(10)</sup> O.J. No. L 95, 7.4.2017, p. 1, as amended by Commission Delegated Regulation (EU) 2019/478 (O.J. No. L 82, 25.3.2019, p. 4).

<sup>(11)</sup> O.J. No. L 319, 10.12.19.

<sup>(12)</sup> O.J. No. L 27, 3.2.1998, p. 47.

<sup>(13)</sup> O.J. No. L 252, 20.9.2002, p. 37, as last amended by Commission Implementing Decision (EU) 2014/356/EU (O.J. No. L 175, 14.6.2014, p. 38).

<sup>(14)</sup> O.J. No. L 64, 2.3.2004, p. 43.

“Commission Implementing [Decision 2011/78/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(15);

“Commission Implementing [Decision 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)(16);

“Commission Implementing [Decision 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)(17);

“Commission Implementing [Decision 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 Buhrer) Nickle et al. (the pine wood nematode)(18);

“Commission Implementing [Decision 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)(19);

“Commission Implementing Decision (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.)(20);

“Commission Implementing Decision (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* (Motschulksy)(21);

“Commission Implementing Decision (EU) 2016/715” means Commission Implementing Decision 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.(22);

“Commission Implementing Decision (EU) 2017/198/EU” 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(23);

“Commission Implementing Decision (EU) 2018/638” means Commission Implementing Decision 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith)(24);

(15) O.J. No. L 319, 2.12.2011, p. 112.

(16) O.J. No. L 64, 3.3.2012, p. 38, as amended by Commission Implementing Decision (EU) 2014/356/EU (O.J. No. L 175, 14.6.2014, p. 38).

(17) O.J. No. 132, 23.5.2012, p. 18, as last amended by Commission Implementing Decision (EU) 2018/5 (O.J. No. L 2, 5.1.2018, p. 11).

(18) O.J. No. L 266, 2.10.2012, p. 42, as last amended by Commission Implementing Decision (EU) 2018/618 (O.J. No. L 102, 23.4.2018, p. 17).

(19) O.J. No. L 697, 10.11.2012, p. 14.

(20) O.J. No. L 125, 21.5.2015, p. 36, as last amended by Commission Implementing Decision (EU) 2018/1511 (O.J. No. L 255, 11.10.2018, p. 16).

(21) O.J. No. L 146, 11.6.2015, p. 16.

(22) O.J. No. L 125, 13.5.2016, p. 16, as amended by Commission Implementing Decision (EU) 2018/85 (O.J. No. L 15, 20.1.2018, p. 11).

(23) O.J. No. L 31, 4.2.2017, p. 29.

(24) O.J. No. L 105, 25.4.2018, p. 31, as amended by Commission Implementing Decision (EU) 2019/1598 (O.J. No. L 248, 27.9.2019, p. 86).

“Commission Implementing Decision (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)(**25**);

“Commission Implementing Decision (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)(**26**);

“Commission Implementing Decision (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(**27**).

“Commission Implementing Decision (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*) and repealing Decision 2007/433/EC(**28**).

(2) In these Regulations, references to the phytosanitary Conditions Regulation and to the European Union instruments referred to in paragraph (1) are to be construed as references to that Regulation and to those instruments as amended from time to time.

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

4.—(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

#### **Designation of competent authority**

5. The Department of Agriculture, Environment and Rural Affairs is designated as the competent authority responsible for the organisation and the performance of official controls and other official activities in Northern Ireland in so far as they relate to—

- (a) plant pests, plants, plant products and other objects;
- (b) professional operators.

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(25) O.J. No. L 254, 10.10.2018, p. 9.

(26) O.J. No. L 250, 30.9.2015, p. 91.

(27) O.J. No. L265, 18.10.2019, p. 12.

(28) O.J. L No. 313, 4.12.2019, p. 94.

## 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**

6.—(1) The responsible operator of a controlled consignment which is to be brought into Northern Ireland by air must notify the Department of the consignment’s expected arrival at least four working hours before its expected arrival in Northern Ireland.

(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 Northern Ireland at a point of entry which only has a temporary border control post, the responsible operator must notify the Department of the consignment’s arrival at least three working days before its expected arrival in Northern Ireland.

(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” means Commission Implementing Regulation (EU) 2019/1013 on prior notification of consignments of certain categories of animals and goods entering the Union<sup>(29)</sup>;

“responsible operator”, 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” means a border control post in Northern Ireland which has been exempted from the obligations in Article 64(3)(a), (c) and (f) of the Official Controls Regulation pursuant to Article 4 of Commission Delegated Regulation (EU) 2019/1012 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council by derogating from the rules on the designation of control points and from the minimum requirements for border control posts<sup>(30)</sup>;

“working day” means any day, other than—

- (a) a Saturday or Sunday;
- (b) Christmas Day or Good Friday; or
- (c) a public holiday in Northern Ireland including a bank holiday under the Banking and Financial Dealings Act 1971<sup>(31)</sup>;

“working hour” means a period of one hour during a working day.

#### **Suspicion of non-compliance**

7.—(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 Northern Ireland 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.

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<sup>(29)</sup> O.J. No. L 165, 21.6.2019, p. 4.

<sup>(30)</sup> O.J. No. L 165, 21.6.2019, p. 8.

<sup>(31)</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 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) Paragraph (1) applies to any controlled consignment or regulated item whether or not its ultimate destination is in Northern Ireland.

### **Consignments not correctly presented for official controls**

**8.** 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**

**9.—(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 Northern Ireland from a third country in contravention of an EU plant health rule;
- (b) any controlled consignment or regulated item which has been brought into Northern Ireland 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 Northern Ireland from a third country and which, in the opinion of a plant health inspector, poses a risk to plant health in Northern Ireland or to any other part of the Union territory.

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

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

### **Notices under Regulation 7, 8 or 9**

**10.—(1)** A notice under regulation 7, 8 or 9 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 light of the suspected or known contravention or the risk to plant health in Northern Ireland or to any other part of the Union territory arising from the consignment or item.

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

11.—(1) The Department 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 purpose 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 Department by the operator of the facility or commercial storage facilities in the manner and form required by the Department.

(3) A permit may only be granted under paragraph (1)(a) if the Department 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 be modified, suspended or revoked by the Department 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<sup>(32)</sup>.

**Transitional provision: approved places of inspection**

12.—(1) The Department 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 Department the particulars set out in paragraph (3) no later than three working days before the consignment arrives in Northern Ireland;
- (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;

<sup>(32)</sup> O.J. No. L 165, 21.6.2019, p. 10.



- (b) the scheduled date and time of arrival of the consignment at the place referred to in relation to that consignment;
- (c) if available, the date and place at which that plant health movement document was drawn up;
- (d) the name, address and registration number of the operator; and
- (e) 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 Department 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 Department at the address given by the Department from time to time for the purposes of this regulation.

(6) The Department 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 Department in the manner and form required by the Department.

(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 Department no longer considers that the place to which the approval relates is suitable for the purpose for which the approval was given.

(9) The Department 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” means a place which was approved as a place of inspection by the Department under article 16(1) of the 2006 Order or article 17(1) of the 2018 Order before the commencement date and which remains approved by virtue of regulation 5(1), or a place approved under paragraph (6);

“plant health movement document” 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(33);

“relevant period” means the period beginning on the commencement date and ending on 13<sup>th</sup> December 2020;

“temporary storage facility” means a 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(34);

“working day” has the meaning given in regulation 6(4).

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(33) O.J. No. L 313, 12.10.2004, p. 16.

(34) O.J. No. L 269, 10.10.2013, p. 1, as last amended by Regulation (EU) 2019/632 of the European Parliament and of the Council.

## PART 4

### Official activities to prevent the establishment or spread of plant pests

#### Introduction

**13.—**(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 Northern Ireland.

(2) In this Part, “premises” includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure.

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

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

- (a) requiring the appropriate person to treat, destroy or otherwise dispose of the controlled plant pest or prohibited material;
- (b) prohibiting for the period specified in the notice—
  - (i) the removal of any controlled plant pest or prohibited material from the premises; or
  - (ii) any activity which the inspector considers necessary to prohibit in order to prevent the establishment or spread of a controlled plant pest;
- (c) requiring the removal of any controlled plant pest or prohibited material from the premises;
- (d) in the case of wood packaging material, requiring the appropriate person to remove any mark which has been applied to any wood packaging material in northern Ireland in contravention of Article 96(1) of the EU Plant Health Regulation, as read with Article 97(1) of that Regulation; or
- (e) 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;

“prohibited material” means—

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

### **Action which may be taken by a plant health inspector**

**15.**—(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; or
- (d) in the case of wood packaging material, to remove any mark which has been applied to any wood packaging material in Northern Ireland in contravention of Article 96(1) of the EU Plant Health Regulation, as read with Article 97(1) of that Regulation.

(2) A plant health inspector must, if requested to do so, produce evidence of the inspector's 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 infected with a controlled plant pest or may be carrying or be infected with a controlled plant pest;
- (b) a plant, plant product or other object which is not carrying 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**

**16.**—(1) This regulation applies where the Department has officially confirmed the presence of a controlled plant pest which is not known to be present in Northern Ireland or the presence of a controlled plant pest in an area of Northern Ireland where it was not previously present.

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

## PART 5

### Temporary national measures

17. Schedule 1 contains additional temporary measures to prevent the entry of certain controlled plant pests into Northern Ireland, and their establishment in, and spread within, Northern Ireland.

## PART 6

### Registration, authorisations and certificates

#### Application for registration

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

#### Other applications

19.—(1) The following applications must be made to the Department in the manner and form required by the Department—

- (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 Article 64(2) of the EU Plant Health Regulation;
- (c) an application for an authorisation referred to in Article 89(1) of the EU Plant Health Regulation;
- (d) an application for an authorisation referred to in Article 98(1) of the EU Plant Health Regulation;
- (e) 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 Decision or another EU plant health rule involving—

- (a) the introduction of a plant pest or a plant, plant product or other object into Northern Ireland;
- (b) the movement of a plant pest or a plant, plant product or other object within Northern Ireland;
- (c) the holding of a controlled plant pest or a plant, plant product or other object at premises in Northern Ireland; or
- (d) the multiplication of a plant pest at premises in Northern Ireland.

#### Authorisations for other purposes

20.—(1) This regulation applies to any 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 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 which allows member States to authorise an activity which would otherwise be prohibited by or under the EU Plant Health Regulation.

(2) The Department may grant an authorisation to permit the carrying out of the activity in the manner specified in the relevant derogation.

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

#### **Authorisations granted by the Department**

**21.** An authorisation granted by the Department for the purposes of the EU Plant Health 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 the Department may be modified, suspended or revoked by the Department at any time by notice in writing.

## **PART 7**

### **Measures relating to certain solanaceous species**

**22.** Schedule 2 contains specific measures relating to certain solanaceous species.

## **PART 8**

### **Notification requirements for the organisation of official controls**

#### **Notification requirements in relation to seed potatoes**

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

- (a) seed potatoes grown or suspected to have been grown in another member State or in Switzerland; or
- (b) potatoes, other than seed potatoes, grown or suspected to have 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.
- (f) In paragraph (1)(b), “Spain” has the same meaning as in paragraph 3 of Schedule 1.

#### **Notification requirements in relation to citrus fruits**

**24.—**(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 Department 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 Northern Ireland at which they are to be processed.
- (3) In paragraph (1)—
- “notifiable citrus fruits” 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 Northern Ireland;
- “specified address” means the address given by the Department from time to time for the purposes of this regulation.

#### **Notification requirements in relation to other plants and plant products**

**25.**—(1) A professional operator who is bringing any of the following plants or plant products into Northern Ireland must, before or no later than 4 days after the date of their arrival in Northern Ireland, provide written notification to an appropriate 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.
- (2) The matters are—
- (a) the expected date of the arrival of the consignment or, if the consignment has arrived in Northern Ireland, the date on which it first arrived in Northern Ireland;
  - (b) the intended destination of the consignment, or if the consignment has arrived at its intended destination in Northern Ireland, 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—
- “appropriate plant health inspector” means a plant health inspector appointed by the Department.

“solid fuel wood” means fuel wood in the form of logs, billets, twigs, faggots or other similar forms.

## PART 9

### General powers of inspectors, enforcement, recovery of expenses and appeal

#### Interpretation

26. In this Part, “premises” includes any place, including any land, building, vehicle, vessel, aircraft, hovercraft, freight container, railway wagon, trailer or movable building or structure.

#### Powers of entry

27.—(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 the an EU plant health rule or to the requirements in Schedule 1 comply with the rule or those requirements;
- (b) carrying out other official activities which are to be performed by the Department pursuant to the Official Controls Regulation or 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 the Department 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 lay magistrate may—

- (a) examine, photograph or mark any part of the premises, any object on the premises or anything that is attached to or 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 any plant, plant product or other object or 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 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.
- (7) A person accompanying a plant health inspector under paragraph (6) 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 lay magistrate**

**28.**—(1) A lay magistrate may by signed warrant permit an inspector to enter premises under regulation 27 or 31 if necessary by reasonable force, if the lay magistrate, 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;
  - (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**

**29.**—(1) A plant health inspector may by notice in writing require an appropriate person to give to the inspector, 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 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 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 knows or suspects to have been imported into or exported from Northern Ireland; 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**

**30.**—(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 their 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) Paragraph (1) does not affect any right of entry conferred by a warrant issued by a lay magistrate.

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

(6) A person accompanying a plant health inspector under paragraph (5) 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;
- (c) carry out work on the premises in a manner directed by a plant health inspector.

#### **Marking of wood packaging material: power of seizure**

**31.**—(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 No. 15 mark to wood packaging material at any premises in Northern Ireland.

(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 No. 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 (11).

(5) Any item seized under paragraph (2) may be retained by the Department 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 37(1).

(6) The Department 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 37(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 Department 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 Department may recover from the appropriate person all reasonable costs incurred by the Department for the purposes of securing the forfeiture of an item.

(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 Department 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 their ownership over it.

“ISPM No 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, excluding treatment by methyl bromide<sup>(35)</sup>;

“ISPM No. 15 mark” means the mark referred to in Article 96(1) of the Plant Health Regulation which may be applied to wood packaging material to attest that it has been treated in accordance with Annex I to ISPM No. 15;

(35) 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>.

“wood packaging material” includes any wood or other object which requires an attestation that it has been treated in accordance with Annex I to ISPM No. 15.

(14) For the purposes of paragraph (1), a person “incorrectly” applies the ISPM No. 15 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.

### **Recovery of expenses**

**32.**—(1) Any expenses incurred by the Department in carrying out enforcement activities under these Regulations shall may be charged to the relevant business operator and such expenses must be paid on written demand.

- (2) Any unpaid sum under these Regulations may be recovered—
- (a) as a civil debt;
  - (b) under an order of the court, on such terms as the court may order.

### **Disclosure of information held by the Commissioners for Her Majesty’s Revenue and Customs**

**33.**—(1) The Commissioners for Her Majesty’s Revenue and Customs may disclose any information in their possession to the Department for the purposes of enabling or assisting the Department 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**

**34.**—(1) The Department may disclose information to other competent authorities in the United Kingdom or any other part of the Union territory, for the purposes 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 Department to disclose information.

- (3) In this regulation, “other competent authorities in the UK” means—
- (a) in relation to England, the Secretary of State or the Forestry Commissioners;
  - (b) in relation to Scotland, the Scottish Ministers;
  - (c) in relation to Wales, the Welsh Ministers.

### **Appeal**

**35.** A person who is aggrieved by a decision taken by a plant health inspector of the Department in accordance with Article 55, Article 66(3) and (6), Article 67, point (b) of Article 137(3), and Article 138(1) and (2) concerning natural or legal persons shall be subject to such persons’ right of appeal in accordance with the Magistrates’ Court (Northern Ireland) Order 1981 which shall apply to the proceedings<sup>(36)</sup>.

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(36) 1981 No. 1675 (N.I. 26).

## PART 10

### General and supplemental provisions relating to notices

#### Miscellaneous provisions as to notices

**36.**—(1) This regulation applies to any notice given by a plant health inspector under these Regulations.

(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;

(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 Department 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 Department for the service of notices.

(2) A notice may be served on any other person by—

(a) delivering it personally; or

(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 Department 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” means a notice to be given by a plant health inspector under these Regulations;
  - “contact address”, in relation to a registered operator, means—
    - (a) the address of the operator’s principal address in the register; or
    - (b) any other postal address in Northern Ireland that the operator has given to the Department as a contact address for the service of notices.

## PART 11

### Offences

#### General

- 38.**—(1) A person commits an offence if the person contravenes or fails to comply with—
- (a) paragraph 2 or 4 of Schedule 1;
  - (b) paragraphs 2(1) or (2), 3(1) or (2), 6(1) or (2), 12(1), 13(1), 14(1), 15, 20(1), 21(7), 22(2), 27(1), 28(7) or 29(2) of Schedule 2;
  - (c) regulation 30(1);
  - (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 (in so far as it applies to plants, plant products or other objects which are subject to an EU plant health rule);
  - (f) a provision in other EU legislation specified in Part 3 of Schedule 3;
  - (g) a provision of an EU Decision specified in Part 1 of Schedule 4.
- (2) But paragraph (1) does not apply to anything done under, or in accordance with—
- (a) an authorisation or permit granted under these Regulations;
  - (b) a notice given by a plant health inspector under or for the purposes 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 served on the person under these Regulations;
  - (b) a provision or condition of an authorisation, licence or permit granted to the person under these Regulations;
  - (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,
- (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,
- (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;
- (c) fails to produce a document or record when required to do so by 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 the Department.

**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 33(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 33(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
  - (i) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (procedure on charge of offence against corporation)<sup>(37)</sup> and Schedule 4 to the Magistrates’ Courts (Northern Ireland) Order 1981 (corporations)<sup>(38)</sup> 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—

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<sup>(37)</sup> 1945 c. 15.

<sup>(38)</sup> 1981 No. 1675 (N.I. 26).

(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 not exceeding level 5 on the standard scale.

- (2) A person guilty of an offence under regulation 44 is liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding three months, to a fine not exceeding the statutory maximum or to both.

## **PART 12**

### **Miscellaneous**

#### **Minor and consequential amendments**

**49.** Schedule 5 contains minor and consequential amendments to secondary legislation.

#### **Revocation**

**50.** The instruments listed in Schedule 6 are revoked to the extent specified in the corresponding entry in column 3 of that Schedule.

#### **Transitional provisions: licences under article 36(1) of the 2006 Order or article 43(1) of the 2018 Order**

**51.**—(1) Any licence granted by the Department under article 36(1) of the 2006 Order or article 43(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 Department in accordance with Article 5 of Commission Delegated Regulation (EU) 2019/829 on the date on which it was granted under the 2006 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 2006 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” 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>(39)</sup>;

“Council [Directive 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>(40)</sup>;

“Commission [Directive 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>(41)</sup>;

“relevant period”, in relation to a licence, means—

- (a) if the licence expires on or after 31<sup>st</sup> December 2020, the period beginning on the commencement date and ending on 31<sup>st</sup> December 2020; or
- (b) if the licence expires before 31<sup>st</sup> December 2020, the period beginning with the commencement date and ending on the date of expiry of the licence specified in the licence.

#### **Transitional provisions: other licences under the 2006 Order or the 2018 Order**

**52.**—(1) Any licence granted by the Department under Article 35(1)(a) of the 2006 Order or Article 42(1)(a) of the 2018 Order and which has effect on the commencement date remains in force as if it had been granted by the Department under regulation 21(2) on the date on which the licence was granted under the 2006 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 2006 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.

(4) In paragraph (3), “Council [Directive 2000/29/EC](#)” has the same meaning as in regulation 51.

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

**53.**—(1) Any notice given under the 2006 Order 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 2006 Order or the 2018 Order; 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 2006 Order or the 2018 Order includes any official approval given for the purposes of the notice.

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<sup>(39)</sup> O.J. No. L 137, 23.5.2019, p. 15.

<sup>(40)</sup> O.J. No. L 169, 10.7.2000, p. 1, as last amended by Commission Implementing Directive (EU) 2017/1920 (O.J. No. L 86, 28.3.2019, p. 41).

<sup>(41)</sup> O.J. No. L 158, 18.6.2008, p. 41.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on  
13th December 2019.



*John Joe O'Boyle*  
A senior officer of the  
Department of Agriculture, Environment and  
Rural Affairs

## SCHEDULE 1

Regulation 17

### Temporary national measures

## PART 1

### Plants, plant products or other objects from third countries

#### Interpretation

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

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

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

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

(2) In paragraph (1), “ISPM 4” means International Standards for Phytosanitary Measures No. 4 of November 1995 on the requirements for the establishment of pest free areas, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations<sup>(42)</sup>.

## PART 2

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

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

3. In this Part—

“move” means move within Northern Ireland;

“official statement” means a statement issued by, or under the supervision of, an unauthorised representative of the competent authority in the member State of origin;

“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.

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

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

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**Table 1**

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

#### **Inspection and control of potato plant health *Dickeya* spp.**

5.—(1) An inspector may at any reasonable time enter onto any premises on which the inspector reasonably believes that potatoes have been planted, stored, processed or packed and carry out such investigations as the inspector considers necessary for the purpose of establishing whether any potatoes are infected with *Dickeya* spp..

(2) An inspector may take and remove samples of potato or soil for the purpose of establishing whether any potatoes are infected with *Dickeya* spp..

(3) Where an inspector reasonably suspects that potatoes are infected with *Dickeya* spp. the inspector may serve a notice requiring the potato grower or occupier of the premises to take such steps, in such manner and within such time as may be specified in the notice, as appear to the inspector to be necessary to prevent the spread of *Dickeya* spp. to other potatoes.

## SCHEDULE 2

Regulation 22

### PART 1

#### General interpretation

1. In this Schedule—

“[Directive 93/85/EEC](#)” means Council [Directive 93/85/EEC](#) on the control of potato ring rot;

“[Directive 98/57/EC](#)” means Council [Directive 98/57/EC](#) on the control of *Ralstonia solanacearum* (Smith) Yabuuchi *et. al.*;

“[Directive 2007/33/EC](#)” means Council [Directive 2007/33/EC](#) on the control of potato cyst nematodes and repealing [Directive 69/465/EEC](#);

“official”, in relation to any testing or other activity described in this Schedule, means carried out by or performed by the Department, and “officially” is to be construed accordingly;

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

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

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

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

“Seed Potatoes Regulations” means the Seed Potatoes Regulations (Northern Ireland) 2016(43).

## PART 2

### General provisions relating to the planting of certain solanaceous species

#### General restrictions on the planting of potatoes

2.—(1) A person must not knowingly plant, or knowingly cause or permit to be planted, any potatoes which have been grown in a third country, other than Switzerland, or any potatoes produced from those potatoes.

(2) A person must not knowingly plant, or knowingly cause or permit to be planted, any potatoes unless—

- (a) they derive in direct line from potato material which has been obtained under an officially approved programme in the European Union or Switzerland;
- (b) they have been found to be free from Potato ring rot in official tests using the methods set out in Annex 1 to [Directive 93/85/EEC](#);
- (c) they have been found to be free from Potato brown rot in official tests using the methods set out in Annex 2 to [Directive 98/57/EC](#).

#### Restrictions on the planting of potatoes in the protected region

3.—(1) A person must not knowingly plant, or knowingly cause or permit to be planted, any potatoes in the protected region other than—

- (a) potatoes which may be marketed in the protected region under the Seed Potatoes Regulations;
- (b) one year’s direct progeny of the potatoes referred to in paragraph (a) where that direct progeny has been grown by that person.

(2) Any person who is involved in the planting of potatoes in the protected region must retain and make available to a plant health inspector the following documents in relation to the potatoes—

- (a) their official labels;
- (b) the invoices and delivery notes for the potatoes;
- (c) in the case of potatoes marketed or marketable under the Seed Potatoes Regulations or potatoes which are their direct progeny and have been produced by the certificate holder, the certificate of classification.

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- (3) Sub-paragraphs (1) and (2) do not apply where—
- (a) the area to be planted is less than 0.1 hectare; or
  - (b) the area is intended for the production of early potatoes.

(4) In sub-paragraph (3)(b), “early potatoes” means potatoes which are harvested before they are completely mature and marketed immediately after they have been harvested, and whose skins can be easily removed without peeling.

## PART 3

### Measures for the control of Potato wart disease

#### **Interpretation**

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

#### **Official measures relating to contaminated plots of land**

5.—(1) A plant health inspector must demarcate any contaminated plot and a safety zone around that plot which is large enough to ensure the protection of the surrounding areas.

(2) A plant health inspector must serve a notice under regulation 17(1) requiring any potato tubers or haulms which are present on the contaminated plot, or which come from the contaminated plot, to be treated in such a way that the Potato wart disease present on them is destroyed.

(3) Where a plant health inspector is satisfied that any potato tubers or haulms are contaminated with Potato wart disease and the inspector cannot determine whether those tubers or haulms have been present on a contaminated plot, the inspector may serve a notice under regulation 17(1) which requires the whole batch containing the affected tubers or haulms to be treated in such a way that there is no risk of Potato wart disease spreading.

#### **Prohibition on the planting of potatoes on contaminated plots**

- 6.—(1) Where a contaminated plot is demarcated under paragraph 5(1), no person may—
- (a) grow any potatoes on the plot; or
  - (b) grow or store on the plot any plants intended for transplanting.

(2) No person may grow potatoes in a safety zone demarcated under paragraph 5(1) unless a plant health inspector is satisfied that they are of a variety which is resistant to the races of Potato wart disease found on the contaminated plot to which the safety zone relates.

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

#### **Revocation of the demarcation of a contaminated plot**

7. Where a plant health inspector is satisfied that Potato wart disease is no longer present on a plot which was demarcated under paragraph 5(1) or on its associated safety zone, the inspector must revoke that demarcation.

## PART 4

### Measures for the control of European populations of Potato cyst nematode

#### Interpretation

8. In this Part—

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

“host plants” means plants with roots of *Capsicum* spp. *Solanum lycopersicum* L. or *Solanum melongra* L.;

“infested field” means a field which is recorded as infested pursuant to paragraph 10(1);

“notice” means a notice under regulation 17(1);

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

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

“susceptible material” means host plants, susceptible bulbs or susceptible plants;

“susceptible plants” means plants with roots of *Allium porrum* L., *Asparagus officinalis* L., *Beta vulgaris* L., *Brassica* spp. or *Fragaria* L.

#### Official investigations and surveys

9. The Department must ensure that—

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

(b) official surveys are carried out in accordance with Article 6 of [Directive 2007/33/EC](#) for the presence of Potato cyst nematodes in fields used for the production of potatoes, other than those intended for the production of seed potatoes.

#### Official records of investigations and surveys

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

(2) Where the officially approved measures set out in Section 3(C) of Annex 3 to [Directive 2007/33/EC](#) have been taken in a field which has been recorded as infested pursuant to subparagraph (1) and, following the completion of those measures, it is officially confirmed that Potato cyst nematodes are no longer present in the field, the Department must ensure that the record is updated accordingly.

### **Notices in relation to infested fields and contaminated susceptible material**

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

(2) The notice may not be withdrawn until it is confirmed, in accordance with paragraph 10(2) that Potato cyst nematode is no longer present in the field.

(3) A plant health inspector must by notice designate as contaminated any susceptible material which comes from a field that has been officially recorded as infested under paragraph 10(1) or any susceptible material which has been in contact with soil in which Potato cyst nematodes have been found.

### **Prohibition on the planting of potatoes in infested fields**

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

(a) plant any potatoes that are intended for the production of seed potatoes in an infested field;  
or

(b) plant or store any susceptible material which is intended for planting in an infested field.

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

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

### **Controls on contaminated seed potatoes etc.**

13.—(1) No person may plant any seed potatoes or any host plants which have been designated as infested pursuant to paragraph 11(3), unless authorised to do so by an inspector.

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

### **Controls on potatoes for industrial processing or grading**

14.—(1) No person may move any potatoes which have been designated as infested pursuant to paragraph 11(3) and are intended for industrial processing or grading, unless authorised to do so by an inspector.

(2) An authorisation under sub-paragraph (1) must be by notice and must require the potatoes to be delivered to a processing or grading plant that has appropriate and officially approved waste disposal procedures that ensure that there is no risk of Potato cyst nematodes spreading.

### **Controls on contaminated bulbs etc.**

15. No person may plant any susceptible bulbs or susceptible plants which have been designated as contaminated pursuant to paragraph 11(3), unless they have been subject to the measures set out in Section 3(A) of Annex 3 to [Directive 2007/33/EC](#) and an inspector has confirmed by notice that they are no longer contaminated.

### **Further investigations for the presence of Potato cyst nematodes**

16. If any suspected occurrence or confirmed presence of Potato cyst nematodes in Northern Ireland results from a breakdown or change in the effectiveness of a resistant potato variety which relates to an exceptional change in the composition of nematode species, pathotype or virulence



group, the Department must ensure that the species of Potato cyst nematode and, where applicable, the pathotype and virulence group involved, is investigated and confirmed by appropriate methods.

## PART 5

### Measures for the control of Potato ring rot

#### Interpretation

17.—(1) In this Part—

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

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

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

“notice” in relation to a notice to be given by a plant health inspector, means a notice under regulation 17(1);

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

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

“susceptible material” means tubers or plants of *Solanum tuberosum* L.;

“zone” means any area, including any individual premises.

#### Official surveys and testing

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

(2) Where the presence of Potato ring rot in susceptible material is suspected, the Department must ensure that—

(a) official testing is carried out using the method set out in Annex 1 to [Directive 93/85/EEC](#) and in accordance with the conditions specified in point 1 of Annex 2 to [Directive 93/85/EEC](#) to confirm whether or not it is present;

(b) the following are retained and appropriately conserved pending completion of the official testing—

(i) all tubers sampled, and wherever possible, all plants sampled;

(ii) any remaining extract and additional preparation material for the screening tests;

(iii) all relevant documentation; and

(c) pending the confirmation of its presence or the refutation of its suspected presence, where suspect diagnostic visual symptoms of Potato ring rot have been seen or symptoms of Potato ring rot have been identified by a positive immunofluorescence test or other appropriate positive test—

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- (i) the movement of all lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato ring rot spreading;
  - (ii) steps are taken to trace the origin of the suspected occurrence; and
  - (iii) additional appropriate precautionary measures based on the level of estimated risk are taken to prevent any spread of the plant pest.
- (3) A notice may contain measures for the purposes of sub-paragraph (2)(c)(i) to (iii).

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

19.—(1) If the presence of Potato ring rot is confirmed in a sample of susceptible material following official testing carried out pursuant to paragraph 19(2)(a) or sub-paragraph (2), the Department must ensure that—

- (a) the susceptible material, the consignment or lot and any object from which the sample was taken and, where appropriate, the place of production and field from which the susceptible material was harvested are designated as contaminated by a plant health inspector;
- (b) a plant health inspector determines the extent of the probable contamination through pre- or post-harvest contact or through any production link with anything designated as contaminated under paragraph (a), taking into account the matters set out in point 1 of Annex 3 to [Directive 93/85/EEC](#);
- (c) a zone is demarcated by a plant health inspector on the basis of the designation made under paragraph (a), taking into account the matters set out in point 2 of Annex 3 to [Directive 93/85/EEC](#).

(2) Where susceptible material has been designated as contaminated under sub-paragraph (1)(a), the Department must ensure that testing is carried out on potato stocks which are clonally related to that susceptible material in the manner specified in paragraph 19(2)(a) in order to determine the probable primary source of infection and the extent of the probable contamination.

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

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

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

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

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

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

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

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

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

### **Measures in relation to a contaminated place of production**

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

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

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planting of any of the following in the field from the date of receipt of the notice and for the first growing year—

- (i) potato tubers, plants or true seeds;
  - (ii) naturally-found host plants of Potato ring rot; and
  - (iii) certified seed potatoes, unless they are for ware production only;
- (b) a requirement that, in the subsequent growing year only the following potatoes be planted for seed or ware production—
- (i) certified seed potatoes; and
  - (ii) seed potatoes officially tested for the absence of Potato ring rot and grown under official control at a place of production which is not a contaminated place of production;
- (c) a requirement that during at least the third growing year only certified seed potatoes or seed potatoes grown under official control from certified seed potatoes be planted for seed or ware production; and
- (d) the measures to be taken in the field from the date of receipt of the notice to the end of the third growing year so as to eliminate volunteer potato plants, and naturally found host plants, of Potato ring rot and a requirement that official testing be carried out on harvested tubers in each field using the method set out in Annex 1 to [Directive 93/85/EEC](#).

(5) A notice served by a plant health inspector under sub-paragraph (2) must additionally include a requirement that all machinery and storage facilities at the place of production which are used for potato production be cleansed and disinfected immediately following the first growing year and specify the appropriate methods for cleansing and disinfecting the machinery and storage facilities.

(6) The measures which may be specified in a notice under sub-paragraph (1) or (5) may be included in a notice with other appropriate measures.

(7) The person on whom a notice is served pursuant to paragraph (1) must ensure that the measures specified in the notice are taken in the required manner.

(8) Where a plant health inspector serves a notice containing the first set of eradication measures, the Department must ensure that an official survey is carried out in relation to the field mentioned in sub-paragraph (2)(d) in accordance with Article 2 of [Directive 93/85/EEC](#).

### **Additional measures applicable to a unit of protected crop production**

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

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

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

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

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

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

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

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

(3) The Department may, in particular, specify in a notice under paragraph (2) that—

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

(4) A notice under sub-paragraph (2)—

- (a) must be in writing;
- (b) must describe the extent of the demarcated zone;
- (c) must specify the date on which each measure is to take effect and for how long;
- (d) must be published in a manner appropriate to bring it to the attention of the public; and
- (e) may be amended, suspended or revoked, in whole or in part, by further notice.

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

(6) A notice published in accordance with sub-paragraph (4) is to be treated as having been served on—

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

(7) The Department must ensure that—

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

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

## PART 6

### Measures for the control of Potato brown rot

24. In this Schedule—

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

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

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

“notice”, in relation to a notice to be given by a plant health inspector, means a notice under regulation 17(1);

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

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

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

- (a) in relation to plants for planting produced before 14<sup>th</sup> December 2019, the requirements specified in respect of those plants for planting in Section 2 of Part A of Annex 2, and Section 2 of Part A of Annex 4, to Council [Directive 2000/29/EC](#);
- (b) in relation to plants for planting produced on or after 14<sup>th</sup> December 2019, the requirements specified in respect of those plants for planting in Part F of Annex 4, and Part E of Annex 5, to the Phytosanitary Conditions Regulation;

“susceptible material” means plants (including tubers), other than true seed, of *Solanum tuberosum* L. or plants, other than fruit or seeds, of *Solanum lycopersicum* L.;

“zone” means any area, including any individual premises.

#### Official surveys and testing

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

(2) Where the presence of Potato brown rot is suspected, the Department must ensure that—

- (a) official testing is carried out to confirm whether it is present—
  - (i) in the case of susceptible material, using the method set out in Annex 2 to [Directive 98/57/EC](#) and in accordance with the conditions specified in point 1 of Annex 3 to [Directive 98/57/EC](#);
  - (ii) in any other case, using any officially approved method;
- (b) pending the confirmation of its presence or the refutation of its suspected presence, where suspect diagnostic visual symptoms of Potato brown rot have been seen and a positive result in a rapid screening test has been obtained or a positive result in the screening tests specified in point 2 of Section 1 and Section 3 of Annex 2 to [Directive 98/57/EC](#) has been obtained—

- (i) the movement of all plants and tubers from all crops, lots or consignments from which the samples have been taken, other than those which are under official control, is prohibited, except where it has been established that there is no identifiable risk of Potato brown rot spreading;
  - (ii) steps are taken to trace the origin of the suspected occurrence; and
  - (iii) additional appropriate precautionary measures based on the level of estimated risk are taken to prevent any spread of Potato brown rot.
- (3) A notice may contain measures for the purposes of sub-paragraph (2)(b)(i) to (iii).

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

26.—(1) If the presence of Potato brown rot is confirmed following official testing carried out pursuant to paragraph 25(2)(a), the Department must ensure that the actions specified in sub-paragraphs (2) to (4) are taken in accordance with sound scientific principles, the biology of Potato brown rot and the relevant production, marketing and processing systems of host plants of Potato brown rot.

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

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

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

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

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

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



- (b) a prohibition on the planting of any of the following in the field or the unit during that period—
    - (i) potato tubers, plants or true seeds;
    - (ii) tomato plants or seeds;
    - (iii) taking into account the biology of Potato brown rot, other host plants or plants of the species Brassica in respect of which there is a risk of Potato brown rot surviving;
    - (iv) crops in respect of which there is a risk of Potato brown rot spreading;
  - (c) a requirement that in the first potato or tomato cropping season following that period, only potatoes for ware production be planted in the field or the unit, that the potatoes only be planted if the field or the unit has been found free from volunteer potato and tomato plants and other host plants, including solanaceous weeds, during official inspections of Potato brown rot, for at least two consecutive growing years prior to planting, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to [Directive 98/57/EC](#); and
  - (d) a requirement that an appropriate rotation cycle be applied in subsequent potato or tomato cropping seasons, which must be at least two years where potatoes are to be planted for seed production.
- (3) The second set of eradication measures is—
- (a) the measures to be taken in the field or the unit from the date of receipt of the notice and for five growing years from the start of the first growing year so as to eliminate volunteer potato and tomato plants and other naturally-found host plants, including solanaceous weeds, of Potato brown rot;
  - (b) a requirement that—
    - (i) during the first three of those growing years, the field or the unit be maintained—
      - (aa) in bare fallow;
      - (bb) in cereals, if the inspector is satisfied that there is no risk of Potato brown rot spreading;
      - (cc) in permanent pasture with frequent close cutting or intensive grazing; or
      - (dd) as grass for seed production;
    - (ii) during the fourth and fifth growing years, only non-host plants of Potato brown rot in respect of which there is no risk of Potato brown rot surviving or spreading be planted in the field or the unit; and
  - (c) a requirement that in the first potato or tomato cropping season following that period only potatoes for seed or ware production be planted, that the potatoes only be planted if the field or the unit has been found free from volunteer potato and tomato plants and other host plants, including solanaceous weeds, during official inspections of Potato brown rot, for at least the two consecutive growing years prior to planting, and that harvested tubers or tomato plants be subjected to official testing using the method set out in Annex 2 to [Directive 98/57/EC](#).
- (4) The third set of eradication measures is—
- (a) a requirement that from the date of receipt of the notice and for the first growing year no host plants of Potato brown rot be planted or only the following potatoes and tomato plants be planted in the field—
    - (i) certified seed potatoes for ware production;
    - (ii) tomato plants grown from seed which meets the requirements of [[Directive 2000/29/EC](#)], for fruit production;

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- (b) a requirement that, if potatoes are to be planted in the first subsequent growing year, only the following potatoes be planted for seed or ware production in that year—
    - (i) certified seed potatoes;
    - (ii) seed potatoes officially tested for the absence of Potato brown rot and grown under official control at a place of production which is not contaminated;
  - (c) a requirement that, if tomato plants are to be planted in the first subsequent growing year, only the following tomato plants be planted for plant or fruit production in that year—
    - (i) tomato plants grown from seed which meets the relevant RNQP requirements;
    - (ii) if vegetatively propagated, tomato plants grown from seed which meets the relevant RNQP requirements and grown under official supervision at a place of production which is not contaminated;
  - (d) a requirement, in the case of potatoes, that in the second subsequent growing year and any other subsequent growing year, only certified seed potatoes or seed potatoes grown under official control from certified seed potatoes be planted for seed or ware production in the field;
  - (e) a requirement, in the case of tomatoes, that during the second subsequent growing year and any other subsequent growing year, only tomato plants grown from seed which meets the relevant RNQP requirements or, if vegetatively propagated, tomato plants grown from seed which meets the relevant RNQP requirements and grown under official control be planted for plant or fruit production in the field; and
  - (f) the measures to be taken in the field from the date of receipt of the notice to the end of the growing year specified in the notice so as to eliminate volunteer potato plants, and naturally-found host plants, of Potato brown rot;
  - (g) official inspections of growing crops at appropriate times and official testing of harvested potatoes in accordance with the method set out in Annex 2 to [Directive 98/57/EC](#).
- (5) A notice served by a plant health inspector under sub-paragraph (1)(a) containing the first set of eradication measures must additionally—
- (a) include a requirement that all machinery and storage facilities at the place of production which are used for potato production be cleansed and disinfected immediately and following the first growing year and specify the appropriate methods for cleansing and disinfecting the machinery and storage facilities;
  - (b) prohibit any irrigation or spraying programme at the place of production or specify how any irrigation or spraying programme at the place of production must be carried out, for the purpose of preventing the spread of Potato brown rot.
- (6) The measures which may be specified in a notice under sub-paragraph (1) may be included in a notice with other appropriate measures.
- (7) The person on whom a notice is served pursuant to paragraph (1) must ensure that the measures specified in the notice are taken in the required manner.

#### **Additional measures in relation to units of protected crop production**

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

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

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

- (a) all of the measures to eliminate Potato brown rot and to remove all host plants of Potato brown rot which are specified in a notice in relation to the place of production in which the unit is situated have been complied with;
  - (b) the growing medium in the unit has been completely changed; and
  - (c) the unit and all of the equipment used on the unit has been cleansed and disinfected to eliminate Potato brown rot and remove all host plant material.
- (4) An authorisation under paragraph (2) may—
- (a) in relation to potato production, specify that only certified seed potatoes or mini-tubers or micro-plants derived from officially tested sources may be used in the production;
  - (b) in relation to tomato production, specify that only seed which meets the relevant RNQP requirements or, if vegetatively propagated, tomato plants produced from seed which meets the relevant RNQP requirements and grown under official control, may be used in the production;
  - (c) prohibit any irrigation or spraying programme at the place of production;
  - (d) specify how any irrigation or spraying programme at the place of production must be carried out for the purpose of preventing the spread of Potato brown rot.

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

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

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

- (3) The Department may, in particular, specify in a notice under paragraph (2), that—
- (a) any machinery or storage facilities at premises within the demarcated zone which are used for growing, storing or handling potato tubers or tomatoes within the zone, or any premises within the zone from which machinery for potato or tomato production is operated under contract, must be cleansed and, where appropriate, disinfected so that there is no identifiable risk of Potato brown rot surviving or spreading;
  - (b) in the case of potato crops, only certified seed potatoes or seed potatoes grown under official control may be planted during the specified period;
  - (c) potatoes intended for planting must be handled separately from all other potatoes at premises within the zone or that a system of cleansing and, where appropriate, disinfection must be carried out between the handling of seed and ware potatoes during the specified period;
  - (d) in the case of tomato crops, only tomato plants grown from seed which meets the requirements of [[Directive 2000/29/EC](#)] or, if vegetatively propagated, tomato plants produced from such seed and grown under official control may be planted during the specified period;
  - (e) contaminated surface water must not be used for the irrigation or the spraying of specified plant material and, where appropriate, other host plants of Potato brown rot, without the prior written authorisation of a plant health inspector;
  - (f) if liquid waste discharges have been contaminated, any waste from industrial processing or packaging premises in the zone which handle specified plant material must be disposed of under the supervision of a plant health inspector.
- (4) A notice under sub-paragraph (2)—

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- (a) must be in writing;
  - (b) must describe the extent of the demarcated zone;
  - (c) must specify in relation to each measure whether it applies generally or to an area of surface water in the demarcated zone;
  - (d) must specify the date on which each measure takes effect and for how long;
  - (e) must be published in a manner appropriate to bring it to the attention of the public; and
  - (f) may be amended, suspended or revoked, in whole or in part, by further notice.
- (5) Any premises which are partly within and partly outside a demarcated zone must be treated as within that zone for the purposes of this paragraph, except where the part which is outside the demarcated zone is not in Northern Ireland.
- (6) A notice published in accordance with sub-paragraph (4) is to be treated as having been served on—
- (a) any occupier or other person in charge of any premises within the demarcated zone;
  - (b) any person who—
    - (i) has a right to use any contaminated surface water;
    - (ii) has any contaminated surface water on premises within the demarcated zone which the person occupies or is in charge of; and
    - (iii) any person who operates machinery or carries out any other activity in relation to the production of potatoes or tomatoes within the demarcated zone.
- (7) The Department may only specify the measures referred to in sub-paragraph (3) where the zone has been demarcated—
- (a) in relation to measures referred to in paragraphs (a) to (d) of that sub-paragraph for the purposes of Article 5(1)(a)(iv) of [Directive 98/57/EC](#);
  - (b) in relation to the measures referred to in paragraphs (e) and (f) of that sub-paragraph for the purposes of Article 5(1)(c)(iii) of [Directive 98/57/EC](#).
- (8) The Department must ensure that—
- (a) premises growing, storing or handling potato tubers and premises which operate potato machinery under contract are supervised by plant health inspectors during the specified period;
  - (b) an official survey is carried out in accordance with Article 2 of [Directive 98/57/EC](#) during the specified period;
  - (c) a programme is established, where appropriate, for the replacement of all seed potato stocks over an appropriate period of time.
- (9) For the purposes of sub-paragraphs (3) and (8), the “specified period”, in relation to a zone demarcated pursuant to paragraph 26(3)(d) or (4)(d), must be at least three growing seasons following the year in which the zone was demarcated.

## SCHEDULE 3

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

Offences: relevant provisions in the EU Regulations

## PART 1

## The EU Plant Health Regulation

<i>Provision of the EU Plant Health Regulation</i>	<i>Subject matter</i>
Article 5(1) (as read with Article 8(1))	Prohibits the introduction of a Union quarantine pest into the Union territory, the movement of a Union quarantine pest within the Union territory or the holding, multiplication or the release of a Union quarantine pest in the Union territory <sup>(44)</sup>
Article 9(3) (as read with Article 33(1))	Requires professional operators to immediately notify competent authorities of any evidence they may have concerning an imminent danger of the entry of: <ul style="list-style-type: none"> <li>— a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) into the Union territory or into a part of the Union territory where it is not yet present, or</li> <li>— a protected zone quarantine pest into the respective protected zone.</li> </ul>
Article 14(1) (as read with Articles 16 and 33(1))	Requires a professional operator who suspects or becomes aware that: <ul style="list-style-type: none"> <li>— a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) is present in plants, plant products or other objects which are under the operator's control,</li> <li>— a protected zone quarantine pest is present in plants, plant products or other objects which are under the operator's control in the respective protected zone,</li> </ul> <p>to immediately notify the competent authority and take precautionary measures to prevent the establishment and spread of the pest.</p>
Article 14(3)	Requires a professional operator: <ul style="list-style-type: none"> <li>— to consult the competent authority where the professional operator has received an official confirmation concerning the presence of a Union quarantine pest or a pest subject to measures adopted pursuant to Article 30(1) in plants, plant products</li> </ul>

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<sup>(44)</sup> The list of Union quarantine pests is set out in Annex 2 to [Regulation (EU)...].

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<i>Provision of the EU Plant Health Regulation</i>	<i>Subject matter</i>
	<p>or other objects which are under the operator's control, and</p> <ul style="list-style-type: none"> <li>— where applicable, proceed with the actions required under Article 14(4) and (7).</li> </ul>
Article 15(1) (as read with Articles 15(2), 16 and 33(1))	<p>Requires a person who is not a professional operator to immediately notify the competent authority where the person becomes aware of:</p> <ul style="list-style-type: none"> <li>— the presence of a Union quarantine pest or has reason to suspect the presence of a Union quarantine pest,</li> <li>— the presence of a protected zone quarantine pest, or has reason to suspect the presence of a protected zone quarantine pest, in the respective protected zone.</li> </ul>
Article 32(2)	<p>Prohibits the introduction of a protected zone quarantine pest into the respective protected zone, the movement of a protected zone quarantine pest within the respective protected zone or the holding, multiplication or the release of a protected zone quarantine pest in the respective protected zone(45).</p>
Article 40(1) (as read with Articles 47 and 48(1))	<p>Prohibits the introduction into the Union territory of certain plants, plant products or other objects if they originate from all or certain third countries or territories(46).</p>
Article 41(1) (as read with Articles 47 and 48(1))	<p>Prohibits:</p> <ul style="list-style-type: none"> <li>— the introduction into the Union territory of certain plants, plant products or other objects from third countries unless the special requirements in respect of those plants, plant products or other objects are fulfilled(47)</li> <li>— the movement within the Union territory of certain plants, plant products or other objects unless the special requirements in respect of those plants, plant products or other objects are fulfilled(48).</li> </ul>

(45) The list of protected zones and the respective protective zone pests is set out in Annex 3 to [Regulation (EU)/...].

(46) The list of plants, plant products and other objects and the third countries, groups of third countries or specific areas of third countries to which the prohibition applies is set out in Annex 6 to [Regulation (EU)/...].

(47) The list of plants, plant products and other objects originating from third countries and the corresponding special requirements in relation to their introduction into the Union territory is set out in Annex 7 to [Regulation (EU)/...].

(48) The list of plants, plant products and other objects originating in third countries and the corresponding special requirements in relation to their movement within the Union territory is set out in Annex 8 to [Regulation (EU)/...].

<i>Provision of the EU Plant Health Regulation</i>	<i>Subject matter</i>
Article 42(2) (as read with Articles 47 and 48(1))	Prohibits the introduction into the Union territory of high-risk plants, plant products or other objects from third countries <sup>(49)</sup> .
Article 43(1)	Prohibits the introduction into the Union territory of wood packaging material, whether or not actually in use in the transport of objects of all kinds, unless it fulfils the specified requirements or is subject to the exemptions provided for in ISPM 15.
Article 45(1), third paragraph (as read with Article 55)	Requires postal services and professional operators involved in sales through distance contracts to make specified information available to their clients through the internet.
Article 53(1) (as read with Articles 57 and 58)	Prohibits: <ul style="list-style-type: none"><li>— the introduction of certain plants, plant products or other objects originating from third countries into certain protected zones,</li><li>— the introduction of certain plants, plant products and other objects originating within the Union territory into certain protected zones<sup>(50)</sup>.</li></ul>
Article 54(1) (as read with Articles 57 and 58)	Prohibits: <ul style="list-style-type: none"><li>— the introduction of certain plants, plant products and other objects into certain protected zones unless the special requirements in respect of those protected zones are fulfilled,</li><li>— the movement of certain plants, plant products or other objects within certain protected zones unless the special requirements in respect of those protected zones are fulfilled<sup>(51)</sup>.</li></ul>
Article 59	Requires vehicles, machinery or packaging material used for: <ul style="list-style-type: none"><li>— specified plants, plant products or other objects moving into or within the Union territory or through the Union territory, to be free from Union quarantine pests and pests subject to measures adopted pursuant to Article 30(1),</li><li>— specified plants, plant products or other objects moving into or within the</li></ul>

<sup>(49)</sup> The list of high-risk plants, plant products and other objects to which the prohibition applies is set out in Annex 1 to Commission Implementing Regulation (EU) 2018/2019 of 18 December 2018 establishing a provisional list of high risk plants, plant products or other objects, within the meaning of Article 42 of Regulation EU 2016/2013 and a list of plants for which phytosanitary certificates are not required for introduction into the Union, within the meaning of Article 73 of that Regulation.

<sup>(50)</sup> The list of plants, plant products and other objects for these purposes is set out in Annex 9 to [Regulation (EU)/...].

<sup>(51)</sup> The list of plants, plant products and other objects for these purposes is set out in Annex 10 to [Regulation (EU)/...].

*Status: This is the original version (as it was originally made).*

<i>Provision of the EU Plant Health Regulation</i>	<i>Subject matter</i>
	protected zones, or through protected zones, to be free from the respective protected zone quarantine pests.
Article 62(1)	Requires a person responsible for a quarantine station or confinement facility to monitor the station or facility and its immediate vicinity for the unintended presence of Union quarantine pests and pests subject to measures adopted pursuant to Article 30(1).
Article 62(2)	Requires a person responsible for a quarantine station or confinement facility to monitor the station or facility to take appropriate action based on the contingency plan referred to in point (e) of Article 61(1) and to comply with the obligations of professional operators in Article 14.
Article 64(1) (as read with Article 64(2))	Prohibits the release of plants, plant products and other objects from quarantine stations or confinement facilities unless authorised by the competent authorities.
Article 66(1) (as read with Article 65(3))	Requires certain professional operators to submit an application for registration to the competent authorities.
Article 66(5) (as read with Article 65(3))	Requires registered operators where relevant: <ul style="list-style-type: none"> <li>— to annually submit an update concerning any changes in the data referred to in points (d) and (e) of Article 66(2) or in the statements referred to in points (b) and (c) of Article 66(2),</li> <li>— to update the data referred to in point (a) of Article 66(2) no later than 30 days after the change in that data.</li> </ul>
Article 69(1) (as read with Articles 65(3) and 69(3))	Requires a professional operator to whom plants, plant products or other objects are supplied that are subject to the specified requirements or conditions to keep a record allowing the operator to identify the professional operator who supplied each trade unit.
Article 69(2) (as read with Article 69(3))	Requires a professional operator who is supplying plants, plant products or other objects that are subject to the specified requirements or conditions to keep a record allowing the operator to identify the professional operator to whom each trade unit was supplied.



<i>Provision of the EU Plant Health Regulation</i>	<i>Subject matter</i>
Article 69(4)	Requires professional operators to keep the records required pursuant to Article 69(1) to (3) for at least three years.
Article 70(1)	Requires professional operators who are supplied with, or supply, the plants, plant products or other objects referred to in Article 69(1) and (2) to have in place traceability systems or procedures to allow identification of the movements of those plants, plant products and other objects within and between their own premises.
Articles 72(1) and 73	Prohibits the introduction into the Union territory of certain plants, plant products and other objects from third countries unless they are accompanied by a phytosanitary certificate.
Article 74(1)	Prohibits the introduction of certain plants, plant products and other objects from third countries into certain protected zones unless accompanied by a phytosanitary certificate
Article 79(1) (as read with Articles 81, 82 and 83)	Prohibits the movement of certain plants, plant products and other objects within the Union territory without a plant passport <sup>(52)</sup> .
Article 80(1) (as read with Articles 81, 82 and 83)	Prohibits the introduction of certain plants, plant products and other objects into certain protected zones, or the movement of certain plants, plant products and other objects within certain protected zones, without a plant passport <sup>(53)</sup> .
Article 84(1)	Prohibits professional operators from issuing plant passports unless they are authorised and from issuing plant passports for plants, plant products or other objects for which they are not responsible.
Article 84(3)	Prohibits authorised professional operators from issuing plant passports except at specified premises, collective warehouses or dispatching centres.
Article 85 (as read with Article 87)	Prohibits authorised professional operators from issuing plant passports for plants, plant products or other objects unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.
Article 86(1) (as read with Articles 86(2) and 87)	Prohibits authorised professional operators from issuing plant passports for plants, plant products

<sup>(52)</sup> The list of plants, plant products and other objects for these purposes is set out in Annex 13 to [Regulation (EU)/...].

<sup>(53)</sup> The list of plants, plant products and other objects for these purposes is set out in Annex 14 to [Regulation (EU)/...].

**Status:** This is the original version (as it was originally made).

<i>Provision of the EU Plant Health Regulation</i>	<i>Subject matter</i>
Article 88	<p>or other objects to be introduced into, or moved within, a protected zone unless the specified requirements are fulfilled in respect of those plants, plant products or other objects.</p> <p>Requires professional operators to attach plant passports to the trade unit of the plants, plant products or other objects concerned, or where the plants, plant products or other objects are moved in a package, bundle or container, to that package, bundle or container.</p>
Article 90(1)	<p>Requires an authorised operator to:</p> <ul style="list-style-type: none"> <li>— identify and monitor the points in its production process and certain other points concerning the movement of plants, plant products and other objects where the authorised operator intends to issue a plant passport in respect of those plants, plant products or other objects, and</li> <li>— keep records concerning the identification and monitoring of those points for at least three years.</li> </ul>
[Article 90(2)]	<p>Requires authorised operators to ensure that appropriate training is given to its personnel involved in the examinations referred to in Article 87].</p>
Article 93(1)	<p>Prohibits authorised operators from issuing replacement plant passports unless certain conditions are fulfilled.</p>
Article 93(5)	<p>Requires authorised operators to retain replaced plant passport or their contents for at least three years.</p>
Article 96(1)	<p>Prohibits the marking of wood packaging material, wood or other objects in the Union territory by any person who is not authorised in accordance with Article 98 or in the manner required.</p>
Article 97(1)	<p>Prohibits the repairing of wood packaging material by any person who is not authorised in accordance with Article 98 or in the manner required.</p>

## PART 2

## The Official Controls Regulation

<i>Provision of the Official Controls Regulation</i>	<i>Subject matter</i>
Article 47(5) (as read with Articles 7 and 8 of Commission Delegated Regulation (EU)/.. supplementing Regulation (EU) 2017/625 of the European Council as regards certain categories of animals and goods exempted from official controls at border control posts, specific controls on passengers' personal luggage and on small consignments of goods sent to natural persons which are not intended to be placed on the market <sup>(54)</sup> )	Requires the operator responsible for a relevant consignment entering the Union to ensure that it is presented for official controls at the border control post of first arrival into the Union.
Article 50(1)	Requires the operator of a relevant consignment to which Article 47(1) applies to present the original official certificates or documents which are required to accompany the consignment to the competent authorities of the border control post.
Article 50(3)	Prohibits the operator of a relevant consignment from splitting the consignment until official controls have been performed and the Community Health Entry Document ("CHED") has been finalised.
Article 56(1)	Requires the operator of a relevant consignment to complete the relevant part of the CHED.
Article 56(4) (as read with Article 1(1) of Commission Implementing Regulation (EU) 2019/1013 on the prior notification of consignments of certain categories of animals and goods entering the Union <sup>(55)</sup> and regulation 9)	Requires the operator of a relevant consignment to give prior notification to the competent authorities of the border control post of arrival of the consignment prior to the physical arrival of the consignment in the Union.

## PART 3

## Other EU legislation

<i>Provision of EU legislation</i>	<i>Subject matter</i>
<b>Commission Delegated Regulation (EU) 2019/1602 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council concerning the Common Health Entry Document accompanying the consignments of animals and goods to their destination<sup>(56)</sup></b>	

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<sup>(54)</sup> O.J. No. L 54, 26.2.2011, p. 1.

<sup>(55)</sup> O.J. No. 165, 21.6.2019, p. 8.

<sup>(56)</sup> O.J. No. 250, 30.9.2019, p. 6.

**Status:** This is the original version (as it was originally made).

<i>Provision of EU legislation</i>	<i>Subject matter</i>
Article 3 (as read with Article 4(a), 5(1)(b), (d), 5(2)(a) and (c) [or] 6(a)	Requires the operator responsible for a consignment to ensure that a CHED accompanies the consignment before it is released for free circulation in accordance with Article 57(2)(b) of the Official Controls Regulation.

SCHEDULE 4

Regulation 38(1)(g)

EU emergency decisions relating to plant health

PART 1

Offences relating to the EU Decisions

<i>&gt;EU Decision</i>	<i>Provision of EU Decision</i>
Commission <a href="#">Decision 98/109/EC</a>	Article 1 (requirements in relation to the introduction into the Union territory of cut flowers of <i>Orchidaceae</i> originating in Thailand)
Commission <a href="#">Decision 2002/757/EC</a>	Article 3(1) to (3) (requirements in relation to the introduction into the Union territory of susceptible plants and susceptible wood originating in the USA)  Article 3(4) (requirements in relation to the movement within the Union territory of certain plants intended for planting originating in third countries, other than the USA)  Article 4 (prohibition on the introduction into the Union territory of susceptible bark originating in the USA)  Article 5 (requirements in relation to the movement within the Union territory of certain plants intended for planting originating in the Union)
Commission <a href="#">Decision 2004/200/EC</a>	Article 1 (prohibition on the movement within the Union territory of seeds of <i>Solanum lycopersicum</i> L. contaminated by Pepino mosaic virus).  Article 3(1) (requirements in relation to the movement of seeds of <i>Solanum lycopersicum</i> L. originating in the Union).
Commission Decision (EU) 2019/2032	Article 2(1) (requirement for any person who suspects or becomes aware of the presence of the specified organism to immediately inform the competent authority and provide it with all relevant information concerning

>EU Decision	Provision of EU Decision
Commission Implementing <a href="#">Decision 2011/787/EU</a>	<p>the presence, or suspected presence, of the specified organism)</p> <p>Article 1(1) (requirements in relation to the introduction into the Union territory of tubers of <i>Solanum tuberosum</i> L. originating in Egypt).</p>
Commission Implementing <a href="#">Decision 2012/138/EU</a>	<p>Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries, other than China)</p> <p>Article 3(1) and (2) (requirements in relation to the introduction into the Union territory of specified plants originating in China)</p> <p>Article 4 (requirements in relation to the movement within the Union territory of specified plants originating in, or introduced into, demarcated areas or specified plants introduced into the Union territory in accordance with Article 2 or 3)</p>
Commission Implementing <a href="#">Decision 2012/270/EU</a>	<p>Article 1 (prohibition on the introduction of any specified organism into the Union territory and the spread of any specified organism within the Union territory)</p> <p>Article 2(1) (requirements in relation to the introduction into the Union territory of potato tubers originating in third countries where one or more of the specified organisms are known to be present)</p> <p>Article 3 (requirements in relation to the movement within the Union territory of potato tubers introduced into the Union territory from third countries where one or more of the specified organisms are known to be present)</p>
Commission Implementing <a href="#">Decision 2012/535/EU</a>	<p>Article 10(1) and (2) (requirements in relation to the movement within the Union territory of susceptible plants, susceptible wood or susceptible bark)</p>
Commission Implementing <a href="#">Decision 2012/697/EU</a>	<p>Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)</p> <p>Article 3 (requirements in relation to the movement within the Union territory of specified plants originating in demarcated areas)</p>
Commission Implementing <a href="#">Decision (EU) 2015/789</a>	<p>Article 9 (requirements in relation to the movement within the Union territory of specified plants, other than those which have been grown for the entire production cycle <i>in vitro</i> or plants belonging to varieties of specified plants listed in Annex III)</p>

**Status:** This is the original version (as it was originally made).

<i>&gt;EU Decision</i>	<i>Provision of EU Decision</i>
	<p>Article 9a (requirements in relation to the movement within the Union territory of specified plants which have been grown for the entire production cycle <i>in vitro</i> and for at least part of their life in demarcated areas)</p> <p>Article 15 (requirements in relation to the introduction of plants for planting, other than seeds, of <i>Coffea</i> originating in Costa Rica or Honduras)</p> <p>Article 16 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is not present)</p> <p>Article 17(1) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)</p>
<p>Commission Implementing Decision (EU) 2015/893</p>	<p>Article 2(a) (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)</p> <p>Article 3(a) (requirements in relation to the introduction into the Union territory of specified wood originating in third countries where the specified organism is known to be present)</p> <p>Article 4 (requirements in relation to the introduction into the Union territory of specified plants originating in, or introduced into, demarcated areas or specified plants introduced into the Union territory from third countries in accordance with Article 2)</p> <p>Article 5 (requirements in relation to the movement within the Union territory of specified wood originating in demarcated areas, specified wood retaining all or part of its round surface which has been introduced into demarcated areas or specified wood packaging material originating in demarcated areas)</p>
<p>Commission Implementing Decision (EU) 2016/715</p>	<p>Article 4 (requirements in relation to the introduction into the Union territory of specified fruits originating in Brazil)</p> <p>Article 5 (requirements in relation to the introduction into the Union territory of specified fruits originating in South Africa or Uruguay)</p>

<i>&gt;EU Decision</i>	<i>Provision of EU Decision</i>
Commission Implementing Decision 2017/198/EU	Article 5a (requirements in relation to the introduction into the Union territory of specified fruits originating in Argentina)
Commission Implementing Decision (EU) 2018/638	Article 1 (prohibition on the introduction of the specified organism into the Union territory and its spread within the Union territory)
Commission Implementing Decision (EU) 2018/1503	Article 2 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)
Commission Implementing Decision (EU) 2018/638	Article 3 (requirements in relation to the movement within the Union territory of specified plants originating in the Union or specified plants introduced into the Union territory from third countries in accordance with Article 2)
Commission Implementing Decision (EU) 2018/1503	Article 3(a) and (b) (requirements in relation to introduction into the Union territory of specified plants originating in third countries other than Switzerland)
Commission Implementing Decision (EU) 2018/1503	Article 7(1), (6) and (7) (requirements in relation to the movement within the Union territory of specified plants originating in demarcated areas, specified plants introduced into demarcated areas or specified plants introduced into the Union territory from third countries where the specified organism is known to be present in accordance with Article 11)
Commission Implementing Decision (EU) 2018/1503	Article 8 (requirements in relation to the movement within the Union territory of specified wood originating in demarcated areas or specified wood retaining all or part of its round surface introduced into demarcated areas)
Commission Implementing Decision (EU) 2018/1503	Article 9 (requirements in relation to the movement within the Union territory of specified wood packaging material originating in demarcated areas)
Commission Implementing Decision (EU) 2018/1503	Article 11 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries where the specified organism is known to be present)
Commission Implementing Decision (EU) 2018/1503	Article 12 (requirements in relation to the introduction into the Union territory of specified wood originating in third countries where the specified organism is known to be present)
Commission Implementing Decision (EU) 2019/1615	Article 2 (prohibition on the introduction of the specified organism into the Union territory and on its spread within the Union territory)

<i>&gt;EU Decision</i>	<i>Provision of EU Decision</i>
Commission Implementing Decision (EU) 2019/1739	Article 5(1) and (5) (requirements in relation to the movement within the Union territory of specified plants originating in the Union territory)
	Article 6 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)
	Article 2 (prohibition on the introduction of the specified organism into the Union territory and on its spread within the Union territory)
	Article 5 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)

## SCHEDULE 5

Regulation 49

## Amendments to secondary legislation

## PART 1

## The Marketing of Vegetable Plant Material Regulations (Northern Ireland) 1995

1.—(1) The Marketing of Vegetable Plant Material Regulations (Northern Ireland) 1995<sup>(57)</sup> are amended as follows.

(2) In regulation 2, after the definition of “producer” insert—

““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives [69/464/EEC](#), [74/647/EEC](#), [93/85/EEC](#), [98/57/EC](#), [2000/29/EC](#), [2006/91/EC](#) and [2007/33/EC](#)(**58**);”.

(3) In regulation 8(2), for “Council [Directive 2000/29/EC](#)” substitute “the EU Plant Health Regulation”.

## PART 2

## The Marketing of Ornamental Plant Propagating Material Regulations (Northern Ireland) 1999

2.—(1) The Marketing of Ornamental Plant Propagating Material Regulations (Northern Ireland) 1999 are amended as follows.

(2) In regulation 2(1)—

<sup>(57)</sup> S.R. 1995 No. 415.

<sup>(58)</sup> O.J. No. L 317, 23.11.2016, p. 4.



- (a) omit the definition of “[Directive 2000/29/EC](#)”;
- (b) at the appropriate place insert—
  - “the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives [69/464/EEC](#), [74/647/EEC](#), [93/85/EEC](#), [98/57/EC](#), [2000/29/EC](#), [2006/91/EC](#) and [2007/33/EC](#).
  - “the Plant Health Official Controls Regulations” means the Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2019;”.
- (3) In regulation 6A(4), in the definition of “responsible official body”, for the words from “a body” to the end, substitute “an appropriate authority described in regulation 2(1) of the Plant Health Official Controls Regulations”.
- (4) For regulation 7(5) substitute—
  - “(5) Registration of a supplier on the register of professional operators under regulation 5 of the Plant Health Official Controls Regulations is deemed to constitute registration for the purposes of paragraph (1) above.”.
- (5) In regulation 8(3)—
  - (a) for the words from “a plant pest” to “Order (Northern Ireland) 1993” substitute “a controlled plant pest as defined in regulation 2(1) of the Plant Health Official Controls Regulations”;
  - (b) for the words from “article 20” to “certain plant pests” substitute “the EU Plant Health Regulation”.
- (6) In regulation 9(2), for “[Directive 2000/29/EC](#)” substitute “the EU Plant Health Regulation”.
- (7) In regulation 12(3), for the words from “Article 13(5)” to the end, substitute “the EU Plant Health Regulation”.

## PART 3

### The Forest Reproductive Material Regulations (Northern Ireland) 2002

3.—(1) The Forest Reproductive Material Regulations (Northern Ireland) 2002(**59**) are amended as follows.

- (2) In regulation 2(2)—
  - (a) at the appropriate place insert—
    - “the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives [69/464/EEC](#), [74/647/EEC](#), [93/85/EEC](#), [98/57/EC](#), [2000/29/EC](#), [2006/91/EC](#) and [2007/33/EC](#);”;
  - (b) in the definition of “plant passport”, for “Plant Health (Wood and Bark) Order (Northern Ireland) 2006” substitute “EU Plant Health Regulation”.

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(59) [S.R. 2002 No. 404](#).

## PART 4

### The Seed Potatoes Regulations (Northern Ireland) 2016

- 4.—(1) The Seed Potatoes Regulations (Northern Ireland) 2016<sup>(60)</sup> are amended as follows.
- (2) In regulation 2(1), at the appropriate place insert—
- ““the EU Plant Health Regulation” means Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives [69/464/EC](#), [74/647/EEC](#), [93/85/EEC](#), [98/57/EC](#), [2000/29/EC](#), [2006/91/EC](#) and [2007/33/EC](#);
- “the Plant Health Official Controls Regulations” means the Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2019;”.
- (3) In regulation 11(11), after “these Regulations” insert “, the EU Plant Health Regulation”.
- (4) In Schedule 1—
- (a) in paragraph 3(d)—
- (i) in sub-paragraph (i), for “article 32(4) of the Plant Health Order” substitute “Parts 3 to 5 of Schedule 2 to the Plant Health Official Controls Regulations”;
- (ii) in sub-paragraph (ii), for “article 38(7) of the Plant Health Order” substitute “Part 6 of Schedule 2 to the Plant Health Official Controls Regulations”;
- (b) in paragraph 4(1)(b), for “Schedule 15 to the Plant Health Order” substitute “Part 4 of Schedule 2 to the Plant Health Official Controls Regulations”;
- (c) in paragraph 6(b), for “Schedule 15 to the Plant Health Order” substitute “Part 4 of Schedule 2 to the Plant Health Official Controls Regulations”;
- (5) In Schedule 5, in paragraph 3(b)—
- (a) in sub-paragraph (i), for “article 32(4) of the Plant Health Order” substitute “Parts 3 to 5 of Schedule 2 to the Plant Health Official Controls Regulations”;
- (b) in sub-paragraph (ii), for “article 38(7) of the Plant Health Order” substitute “Part 6 of Schedule 2 to the Plant Health Official Controls Regulations”.

## PART 5

### The Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017

- 5.—(1) The Marketing of Fruit Plant and Propagating Material Regulations (Northern Ireland) 2017<sup>(61)</sup> are amended as follows.
- (2) In regulation 2, in the appropriate place insert—
- ““the Plant Health Official Controls Regulations” means the Plant Health (Official Controls and Miscellaneous Provisions) Regulations (Northern Ireland) 2019;”.
- (3) In regulation 3(1), omit the definition of “[Directive 2000/29/EC](#)”.
- (4) Omit regulation 10(6).

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<sup>(60)</sup> S.R. 2016 No. 190.

<sup>(61)</sup> S.R. 2017 No. 119.

(5) In regulation 11(7), for the words from “plant trader” to “2006” substitute “professional operator under regulation 4 of the Plant Health Official Controls Regulations”.

(6) For regulation 15(1)(g)(iii) substitute—

“a controlled plant pest as defined in regulation 2(1) of the Plant Health Official Controls Regulations.”.

## SCHEDULE 6

Regulation 50

### Revocation of Instruments

<i>Instrument revoked</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Plant Health (Wood and Bark) ( <i>Phytophthora ramorum</i> ) Order (Northern Ireland) 2005	<a href="#">S.R. 2005 No. 252</a>	The whole instrument
The Plant Health (Wood and Bark) Order (Northern Ireland) 2006	<a href="#">S.R. 2006 No. 66</a>	The whole instrument
The Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2009	<a href="#">S.R. 2009 No. 340</a>	The whole instrument
The Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2010	<a href="#">S.R. 2010 No. 48</a>	The whole instrument
The Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2012	<a href="#">S.R. 2012 No. 400</a>	The whole instrument
The Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2015	<a href="#">S.R. 2015 No. 129</a>	The whole instrument
The Seed Potatoes Regulations (Northern Ireland) 2016	<a href="#">S.R. 2016 No. 190</a>	Regulation 25(3)
The Plant Health Order (Northern Ireland) 2018	<a href="#">S.R. 2018 No. 184</a>	The whole instrument
The Plant Health (Amendment) Order (Northern Ireland) 2019	<a href="#">S.R. 2019 No. 49</a>	The whole instrument
The Plant Health (Wood and Bark) (Amendment) Order (Northern Ireland) 2019	<a href="#">S.R. 2019 No. 99</a>	The whole instrument
The Plant Health (Amendment No. 2) Order (Northern Ireland) 2019	<a href="#">S.R. 2019 No. 151</a>	The whole instrument
The Plant Health (Amendment No. 3) Order (Northern Ireland) 2019	<a href="#">S.R. 2019 No. 160</a>	The whole instrument
The Plant Health (Wood and Bark) (Amendment No. 2) Order (Northern Ireland) 2019	<a href="#">S.R. 2019 No. 162</a>	The whole instrument

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations give effect to—

- (a) Regulation (EU) 2016/2031 of the European Parliament of the Council on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council (“the EU Plant Health Regulation”); and
- (b) Regulation (EU) 2017/625 of the European Parliament and of 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) (“the official Controls Regulation”).

The Regulations also implement in relation to Northern Ireland—

- (a) Council [Directive 69/464/EEC](#) on control of Potato Wart Disease (O.J. No. L 323, 24.12.1969, p. 1);
- (b) Council [Directive 93/85/EEC](#) on the control of potato ring rot (O.J. No. L 259, 18.10.1993, p. 1);
- (c) Council [Directive 98/57/EC](#) on the control of *Ralstonia solanacearum* (Smith) Yabuuchi et al. (O.J. No. L 235, 21.8.1998, p. 1); and
- (d) Council [Directive 2007/33/EC](#) on the control of potato cyst nematodes and repealing [Directive 69/465/EEC](#) (O.J. No. L 156, 16.6.2007, p. 12).

Part 1 is introductory and includes definitions. Regulation 3(2) provides for references to the European Union instruments listed in regulation 3(1) to be read as references to those instruments as amended from time to time.

Regulation 5 designates the Department of Agriculture, Environment and Rural Affairs as the competent authority in Northern Ireland.

Part 3 makes further provision in relation to consignments of plants, plant products and other objects from third countries which are subject to official controls on their entry into the European Union.

Part 4 contains powers to enable plant health inspectors appointed by the Department to take measures to prevent the establishment or spread of harmful plant pests in Northern Ireland.

Part 5 imposes additional temporary measures to prevent the entry of certain harmful plant pests into Northern Ireland or their establishment in, or spread within, Northern Ireland.

Part 6 makes further provision in relation to the registration of professional operators and the granting of authorisations to professional operators by the Department.

Part 7 imposes additional requirements in relation to certain solanaceous species (potatoes and tomatoes) to implement the Directives mentioned above.

Part 8 imposes additional notification requirements in respect of certain plants and plant products which are to be brought into Northern Ireland from third countries, other member States or Switzerland.

Part 9 sets out general powers of plant health inspectors to enable them to perform official controls and other official activities, and enforce the EU Plant Health Regulation, the Official Controls

Regulation and these Regulations. Regulation 32 provides for recovery of expenses incurred by the Department and regulation 35 provides for an appeal process.

Part 10 contains general and supplemental provisions in relation to notices given by plant health inspectors.

Part 11 contains offences for non-compliance with specified provisions of the EU Plant Health Regulation and the Official Controls Regulation, and offences in relation to these Regulations. Regulation 48 sets out the penalties for these offences.

Part 12 deals with minor and consequential amendments to secondary legislation, revocations and transitional provisions in relation to Northern Ireland. Regulation 55 requires the Department to review the operation and effect of the EU Plant Health Regulation, the Official Controls Regulation and these Regulations and publish a report at five-yearly intervals.

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