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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2019 No.**

**The Forestry (EU Exit) (Scotland)  
(Amendment etc.) Regulations 2019**

**PART 2**

**Amendment of the Plant Health (Forestry) Order 2005**

**3. In article 2—**

**(a) in paragraph (1)—**

**(i) at the appropriate places insert—**

““appropriate UK plant health authority” means—

- (a) in relation to timber and forest pests in England, the Forestry Commissioners;
- (b) otherwise in relation to England, the Secretary of State;
- (c) in relation to Wales, the Welsh Ministers;
- (d) in relation to Scotland, the Scottish Ministers;
- (e) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs;
- (f) in relation to the Bailiwick of Guernsey, the States of Guernsey;
- (g) in relation to the Bailiwick of Jersey, the Department of Environment of the Bailiwick of Jersey;
- (h) in relation to the Isle of Man, the Department of Environment, Food and Agriculture of the Isle of Man;”

““CD territory” means the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man;”

““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)(1), as amended from time to time, before and after exit day(2);”

““ISPM No. 9” means International Standard for Phytosanitary Measures No. 9 of November 1998 on the guidelines for pest eradication programmes, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(3);”

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(1) OJ L 254, 10.10.2018, p.9.

(2) This term is used in schedules 4, 5 and 6, which are substituted by these Regulations. References in these new schedules to the Decision, as it may be modified after exit day, are required in order to ensure the correct phytosanitary measures are applied to imports of the relevant material concerned.

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

““ISPM No. 14” means International Standard for Phytosanitary Measures No. 14 of March 2002 on the use of integrated measures in a systems approach for pest risk management, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(4);”

““ISPM No. 31” means International Standard for Phytosanitary Measures No. 31 of April 2008 on methodologies for sampling consignments, prepared by the Secretariat of the IPPC established by the Food and Agriculture Organisation of the United Nations(5);”

““the list of controlled material” means schedule 6;”

““the list of pest free area controlled material” means schedule 7;”

““the list of prohibited imported material” means schedule 3;”

““the list of prohibited infested material” means schedule 2;”

““the list of prohibited tree pests” means schedule 1;”

““the list of regulated material” means schedule 4;”

““list of *Xylella* host plants” means the list of relevant material contained in the database maintained by the European Commission of host plants found to be susceptible to *Xylella fastidiosa* in the EU, as amended from time to time(6);”

““nursery” means premises wholly or partly used for the cultivation or keeping of plants for the purpose of transplantation or removal to other premises;”

““OPM excluded zone” means the local authority areas mentioned in column 3 of item 1 of Part B of the list of prohibited tree pests (which are listed as exceptions to the UK pest free area in relation to *Thaumetopoea processionea* L.);”

““OPM pest free area” means the area described in column 3 of item 1 of Part B of the list of prohibited tree pests;”

““pest free area” means that part of a UK pest free area that is in Scotland or, where the UK pest free area includes two or more separate parts of Scotland, each such part;”

““the Plant Health Regulations” means the Plant Health (EU Exit) Regulations 2019(7);”

““point of entry” means—

- (a) in the case of relevant material which arrives by air, the airport at which the material first arrives in the United Kingdom;
- (b) in the case of relevant material which arrives by maritime or fluvial transport, the port at which the material first arrives in the United Kingdom;
- (c) in the case of relevant material which arrives by rail, the rail freight terminal at which the material first arrives in the United Kingdom;
- (d) in the case of relevant material which arrives by road, the initial destination of the material after its arrival in the United Kingdom;”

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

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

(6) A copy of the list is available at [https://ec.europa.eu/food/plant/plant\\_health\\_biosecurity/legislation/emergency\\_measures/xylella-fastidiosa/susceptible\\_en](https://ec.europa.eu/food/plant/plant_health_biosecurity/legislation/emergency_measures/xylella-fastidiosa/susceptible_en).

(7) S.I. 2019/XXX.

““regulated tree pest” means—

- (a) a tree pest of a description specified in Part A or C of the list of prohibited tree pests;
- (b) a tree pest of a description specified in Part B of the list of prohibited tree pests which relates to a pest free area;
- (c) a tree pest of a description specified in column 2 of Part A, B or D of the list of prohibited infested material;
- (d) a tree pest of a description specified in column 2 of Part C of the list of prohibited infested material which relates to a pest free area;”

““relevant Plant Health Order” means—

- (a) in relation to relevant material destined for England, the Plant Health (England) Order 2015(8) or this Order in its application to England;
- (b) in relation to relevant material destined for Wales, the Plant Health (Wales) Order 2018(9) or this Order in its application to Wales;
- (c) in relation to relevant material destined for Scotland, the Plant Health (Scotland) Order 2005(10) or this Order in its application to Scotland;
- (d) in relation to relevant material destined for Northern Ireland, the Plant Health (Wood and Bark) (*Phytophthora ramorum*) Order (Northern Ireland) 2005(11), the Plant Health (Wood and Bark) Order (Northern Ireland) 2006(12) or the Plant Health Order (Northern Ireland) 2018;”

““UK pest free area” means an area in the United Kingdom which has been established as a pest free area in accordance with ISPM No. 4;”

““UK plant passport” means a label and, where appropriate, an accompanying document that meets the relevant requirements set out in schedule 9, issued by or with the authority of the appropriate UK plant health authority, and includes any replacement of such a passport;”

““UK territory” means England, Wales, Scotland or Northern Ireland;”

(ii) omit the definitions of “area of plant health control” and “associated controlled dunnage”;

(iii) in the definition of “authorised officer”, for paragraphs (a) to (c) substitute—

- “(a) in relation to a UK plant passport, an inspector acting under the authority of the appropriate UK plant health authority; or
- (b) in relation to a phytosanitary certificate or phytosanitary certificate for re-export, an authorised representative of, or a public officer acting under, the national plant protection organisation of the country in which a phytosanitary certificate or phytosanitary certificate for re-export or a translation of a phytosanitary certificate or phytosanitary certificate for re-export is issued;”

(iv) for the definition of “consignment” substitute—

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(8) S.I. 2005/2530.

(9) S.I. 2018/1064 (W. 223).

(10) S.S.I. 2005/613, as amended by S.S.I. 2006/474, S.S.I. 2007/415, S.S.I. 2007/498, S.S.I. 2008/300, S.S.I. 2008/350, S.S.I. 2009/153, S.S.I. 2010/206, S.S.I. 2010/342, S.S.I. 2012/266, S.S.I. 2012/326, S.S.I. 2013/5, S.S.I. 2013/187, S.S.I. 2013/366, S.S.I. 2014/140, S.S.I. 2015/10, S.S.I. 2016/83, S.S.I. 2018/112 and S.S.I. 2018/283.

(11) S.R. 2005 No. 252.

(12) S.R. 2006 No. 66.

- ““consignment” means a quantity of goods covered by a single document required for customs or other formalities;”,
- (v) omit the definitions of “[Decision 2002/757/EC](#)” and “[Decision 2007/433/EC](#)”,
- (vi) for the definition of “[Decision 2012/138/EU](#)”(13) substitute—
- ““[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)(14), as amended from time to time, before and after exit day;(15)
- (vii) for the definition of “[Decision 2012/535/EU](#)”(16) substitute—
- ““[Decision 2012/535/EU](#)” means Commission Implementing [Decision 2012/535/EU](#) on emergency measures to prevent the spread within the Union *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (the pinewood nematode)(17), as amended from time to time, before and after exit day;(18)
- (viii) for the definition of “Decision (EU) 2015/789”(19) substitute—
- ““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), as amended from time to time, before and after exit day(21);”,
- (ix) for the definition of “Decision (EU) 2015/893”(22) substitute—
- ““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* (Motschulsky)(23), as amended from time to time, before and after exit day(24);”,
- (x) omit the definitions of “the Directive”, “dunnage” and “EC transit goods”,
- (xi) in the definition of “European Union”(25), omit “including the Isle of Man and the Channel Islands”,
- (xii) in the definition of “importer”, for “landing” substitute “consignment”,
- (xiii) omit the definition of “landed”,
- (xiv) for the definition of “lot” substitute—

(13) The definition of “[Decision 2012/138/EU](#)” was inserted by [S.S.I. 2012/266](#).

(14) OJ L 64, 3.3.2012, p.38, as amended by Commission Implementing [Decision 2014/356/EU](#) (OJ L 175, 14.6.2014, p.38).

(15) This term is used in schedules 4, 5 and 6, which are substituted by these Regulations. References in these new schedules to the Decision, as it may be modified after exit day, are required in order to ensure the correct phytosanitary measures are applied to imports of the relevant material concerned.

(16) The definition of “[Decision 2012/535/EU](#)” was inserted by [S.S.I. 2016/1167](#).

(17) OJ L 266, 2.10.2012, p.42, as last amended by Commission Implementing Decision (EU) 2018/618 (OJ L 102, 23.4.2018, p.17).

(18) This term is used in schedules 4, 5 and 6 of the Plant Health (Forestry) Order 2005 (“the 2005 Order”), which are substituted by these Regulations. References in these new schedules to the Decision, as it may be modified after exit day, are required in order to ensure the correct phytosanitary measures are applied to imports of the relevant material concerned.

(19) The definition of “Decision (EU) 2015/789” was inserted by [S.S.I. 2016/83](#).

(20) OJ L 125, 21.5.2015, p.36, as last amended by Commission Implementing Decision (EU) 2018/1511 (OJ L 255, 11.10.2018, p.16).

(21) This term is used in schedules 4, 5 and 6 of the 2005 Order, which are substituted by these Regulations. References in these new schedules to the Decision, as it may be modified after exit day, are required in order to ensure the correct phytosanitary measures are applied to imports of the relevant material concerned.

(22) The definition of “Decision (EU) 2015/893” was inserted by [S.S.I. 2016/83](#).

(23) OJ L 146, 11.6.2015, p.16.

(24) This term is used in schedules 4, 5 and 6 of the 2005 Order, which are substituted by these Regulations. References in these new schedules to the Decision, as it may be modified after exit day, are required in order to ensure the correct phytosanitary measures are applied to imports of the relevant material concerned.

(25) The definition of “European Union” was inserted by [S.I. 2011/1043](#).

- “lot” means a number of units of a single commodity, identifiable by its homogeneity of composition and origin, which form part of a consignment;”,
- (xv) in the definition of “national plant protection organisation”, for “European Commission”, substitute “national plant protection organisation of the United Kingdom”,
  - (xvi) in the definition of “official”, for “responsible official body” substitute “appropriate UK plant health authority”,
  - (xvii) omit the definitions of “official body of destination”, “official body of point of entry” and “official documentation”,
  - (xviii) in the definition of “official label”, for the words from “responsible” to the end substitute “appropriate UK plant health authority”,
  - (xix) in the definition of “official statement”, for “plant passport” substitute “UK plant passport”,
  - (xx) omit the definition of “the OPM protected zone”(26),
  - (xxi) in the definitions of “phytosanitary certificate” and “phytosanitary certificate for re-export” for “articles 7 and” substitute “article”,
  - (xxii) omit the definitions of “plant health check”, “plant health movement document” and “plant passport”,
  - (xxiii) for the definition of “planting” substitute—

“planting” means any operation for the placing of plants to ensure their subsequent growth, reproduction or propagation;”,
  - (xxiv) omit the definition of “protected zone”,
  - (xxv) omit the definition of “Regulation (EC) No 690/2008”,
  - (xxvi) omit the definition of “responsible official body”,
  - (xxvii) omit the definitions of “solid fuel wood”(27) and “Swiss plant passport”,
  - (xxviii) for the definition of “third country” substitute—

“third country” means—

    - (a) a country or territory outside the European Union, other than a territory within the British Islands; or
    - (b) the European Union;”,
  - (b) after paragraph (1) insert—

“(1A) Unless expressly provided otherwise, any reference in this Order to a genus or species is to be construed as a reference to that genus or species or to any of its hybrids.

(1B) Any reference to a numbered CN Code is a reference to the code set out in Annex 1 to Council Regulation 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff(28) as it has effect in EU law immediately before exit day.”,
  - (c) omit paragraph (2),
  - (d) omit paragraph (3A),
  - (e) omit paragraph (5).

(26) The definition of “the OPM protected zone” was inserted by S.I. 2018/1048.

(27) The definition of “solid fuel wood” was inserted by S.I. 2016/1167.

(28) OJ L 256, 7.9.1987, p.1, as last amended by Regulation (EU) No 952/2013 of the European Parliament and of the Council (OJ L 269, 10.10.2013, p.1).

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**Draft Legislation:** This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, The Forestry (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 ISBN 978-0-11-104133-8

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