
DRAFT STATUTORY INSTRUMENTS

2020 No.

The Aquatic Animal Health and Alien Species in Aquaculture,
Animals, and Marketing of Seed, Plant and Propagating
Material (Legislative Functions and Miscellaneous
Provisions) (Amendment) (EU Exit) Regulations 2020

PART 4

Functions relating to the marketing of seed, plant and plant propagating material

CHAPTER 1

Introductory

Meaning of “the appropriate authority”

11.—(1) For the purposes of any power to make regulations under this Part, “the appropriate authority” means—

- (a) in the case of regulations applying in relation to England, the Secretary of State;
- (b) in the case of regulations applying in relation to Wales, the Welsh Ministers;
- (c) in the case of regulations applying in relation to Scotland, the Scottish Ministers.

(2) But “the appropriate authority” is the Secretary of State if consent is given—

- (a) in the case of regulations applying in relation to Wales, by the Welsh Ministers, provided the regulations do not amend, repeal or revoke enactments made by the Welsh Ministers or passed by the Welsh Parliament or require references to such enactments to be read subject to modifications;
- (b) in the case of regulations applying in relation to Scotland, by the Scottish Ministers, provided the regulations do not amend, repeal or revoke enactments made by the Scottish Ministers or passed by the Scottish Parliament or require references to such enactments to be read subject to modifications.

General interpretation

12. In this Part, unless otherwise stated—

“[Directive 93/49/EEC](#)” means Commission [Directive 93/49/EEC](#) setting out the schedule indicating the conditions to be met by ornamental plant propagating material and ornamental plants⁽¹⁾;

(1) OJ No. L 250, 07.10.1993, p.9, as last amended by Commission Implementing Directive (EU) 2020/177 (OJ No. L 41, 13.02.2020, p.1).

“[Directive 93/61/EEC](#)” means Commission [Directive 93/61/EEC](#) setting out the schedules indicating the conditions to be met by vegetable propagating and planting material, other than seed(2);

“[Directive 98/56/EC](#)” means Council [Directive 98/56/EC](#) on the marketing of propagating material of ornamental plants(3);

“[Directive 2008/72/EC](#)” means Council [Directive 2008/72/EC](#) on the marketing of vegetable propagating and planting material, other than seed(4);

“[Directive 2008/90/EC](#)” means Council [Directive 2008/90/EC](#) on the marketing of fruit plant propagating material and fruit plants intended for fruit production(5);

“Fruit Plant Marketing Regulations” means—

- (a) in relation to England, the Marketing of Fruit Plant and Propagating Material (England) Regulations 2017(6);
- (b) in relation to Wales, the Marketing of Fruit Plant and Propagating Material (Wales) Regulations 2017(7);
- (c) in relation to Scotland, the Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017(8);

“fruit plant material” means plants and materials to which, or (as regards Scotland) to the marketing of which, the Fruit Plant Marketing Regulations apply;

“marketing” means holding available or in stock, display with a view to sale, offering for sale, sale or delivery by a supplier to another person;

“ornamental plant material” means plant material intended for the propagation of ornamental plants or intended for their production, provided that, in the case of production from complete plants, the resulting ornamental plant is intended for further marketing;

“vegetable plant material” means plant material to which the Marketing of Vegetable Plant Material Regulations 1995(9) apply.

CHAPTER 2

Retention of functions in [Directive 98/56/EC](#)

Power to set conditions with which ornamental plant material must comply

13.—(1) The appropriate authority may, by regulations—

- (a) amend provision in any enactment which gave effect to provisions made by Article 3 of, and the Annex to, [Directive 93/49/EEC](#);

(2) OJ No. L 250, 07.10.1993, p.19, as last amended by Commission Implementing Directive (EU) 2020/177 (OJ No. L 41, 13.02.2020, p.1).

(3) OJ No. L 226, 13.08.1998, p.16, as last amended by Regulation (EU) 652/2014 (OJ No. L 189, 27.06.2014, p.1).

(4) OJ No. L 205, 1.08.2008, p.28, as last amended by Commission Implementing Directive (EU) 2019/990 (OJ No. L 160, 18.06.2019, p.14).

(5) OJ No. L 267, 8.10.2008, p.8, as last amended by Commission Implementing Decision (EU) 2019/120 (OJ No. L 24, 28.01.2019, p.27).

(6) [S.I. 2017/595](#), amended by [S.I. 2019/1220](#), 1517, 2020/248, 682. It is prospectively amended from IP completion day by [S.I. 2019/131](#).

(7) [S.I. 2017/691](#) (W. 163), amended by [S.I. 2019/1382](#) (W. 245), [2020/206](#) (W. 48), [311](#) (W. 70) and [833](#) (W. 182). It is prospectively amended from IP completion day by [S.I. 2019/368](#) (W. 90).

(8) [S.S.I. 2017/177](#), amended by [S.S.I. 2019/59](#), 190, 421, [2020/34](#), 165. It is prospectively amended from IP completion day by [S.S.I. 2019/289](#).

(9) [S.I. 1995/2652](#), amended by [S.I. 2011/1043](#) (in relation to the UK), [2014/487](#) (in relation to England), [2014/519](#) (W. 61) (in relation to Wales) and [S.S.I. 2014/111](#) (in relation to Scotland), and prospectively from IP completion day by [S.I. 2019/131](#) (in relation to England and Wales) and [S.S.I. 2019/59](#) (in relation to Scotland); there are other amendments not relevant to these Regulations.

- (b) make provision requiring (whether by amending an enactment, or otherwise) a reference to Article 3 of, and the Annex to, [Directive 93/49/EEC](#) to be read as a reference to that Article and Annex subject to modifications.
- (2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers it is necessary or appropriate—
- (a) in the light of developments in scientific or technical knowledge, production techniques or agronomic practices;
 - (b) to address concerns relating to the quality of ornamental plant material;
 - (c) due to the economic importance of the ornamental plant material; or
 - (d) for consistency with international standards for pests and diseases affecting the quality of ornamental plant material.

Power to set labelling and document requirements for plant material

14.—(1) The appropriate authority may, by regulations, amend provision in any enactment which gave effect to provision made by Article 8(3) of [Directive 98/56/EC](#).

(2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers it—

- (a) necessary or appropriate to do so in the light of market conditions; or
- (b) necessary to do so to ensure traceability of ornamental plant material.

CHAPTER 3

Retention of functions in [Directive 2008/72/EC](#)

Power to modify the regulated species of vegetable plant material

15.—(1) The appropriate authority may, by regulations—

- (a) amend provision in any enactment which gave effect to provision made by Annex 2 to [Directive 2008/72/EC](#);
- (b) make provision requiring (whether by amending an enactment, or otherwise) a reference to Annex 2 to [Directive 2008/72/EC](#) to be read as a reference to that Annex subject to modifications.

(2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers it is necessary or appropriate to do so—

- (a) in the light of developments in scientific or technical knowledge, production techniques or agronomic practices;
- (b) to address concerns relating to the quality of vegetable plant material; or
- (c) due to the economic importance of the vegetable plant material.

Power to set conditions with which vegetable plant material must comply

16.—(1) The appropriate authority may, by regulations—

- (a) amend provision in any enactment which gave effect to provisions made by Article 3 of, and the Annex to, [Directive 93/61/EEC](#);
- (b) make provision requiring (whether by amending an enactment, or otherwise) a reference to Article 3 of, and the Annex to, [Directive 93/61/EEC](#) to be read as a reference to that Article and Annex subject to modifications.

(2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers it is necessary or appropriate —

- (a) in the light of developments in scientific or technical knowledge, production techniques or agronomic practices;
- (b) to address concerns relating to the quality of vegetable plant material;
- (c) due to the economic importance of the vegetable plant material; or
- (d) for consistency with international standards for pests and diseases affecting the quality of vegetable plant material.

Power to set labelling and document requirements for plant material

17.—(1) The appropriate authority may, by regulations, amend provision in any enactment which corresponds to Article 6 of [Directive 93/61/EEC](#).

(2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers it—

- (a) necessary or appropriate to do so in the light of market conditions; or
- (b) necessary to do so to ensure traceability of vegetable plant material.

Power to derogate in the event of temporary supply difficulties

18.—(1) The appropriate authority may, by regulations, amend, supplement, revoke or derogate from the provisions of the Marketing of Vegetable Plant Material Regulations 1995⁽¹⁰⁾ in the event of a temporary difficulty affecting the supply of vegetable plant material.

(2) But regulations may only be made under paragraph (1) where—

- (a) the appropriate authority has carried out an assessment that has taken account of available information regarding the temporary difficulty affecting the supply of vegetable plant material and the reasons for that difficulty;
- (b) the assessment has confirmed that—
 - (i) there is a temporary difficulty affecting the supply of vegetable plant material in the United Kingdom; and
 - (ii) the derogations provide safeguards to address any risk to plant health arising from vegetable plant material in relation to which the derogations apply; and
- (c) the assessment has been approved by the Secretary of State, the Welsh Ministers and the Scottish Ministers.

CHAPTER 4

Retention of functions in [Directive 2008/90/EC](#)

Power to modify the regulated species of fruit plant material

19.—(1) The appropriate authority may, by regulations, amend—

- (a) in relation to England and Wales, Schedule 3 to the Fruit Plant Marketing Regulations;
- (b) in relation to Scotland, Schedule 1 to the Fruit Plant Marketing Regulations.

⁽¹⁰⁾ [S.I. 1995/2652](#), amended by [S.I. 2011/1043](#) (in relation to the UK), [2014/487](#) (in relation to England), [2014/519 \(W. 61\)](#) (in relation to Wales) and [S.S.I. 2014/111](#) (in relation to Scotland), and prospectively from IP completion day by [S.I. 2019/131](#) (in relation to England and Wales) and [S.S.I. 2019/59](#) (in relation to Scotland); there are other amendments not relevant to these Regulations.

(2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers it is necessary or appropriate—

- (a) in the light of developments in scientific or technical knowledge, production techniques or agronomic practices;
- (b) to address concerns relating to the quality of fruit plant material; or
- (c) due to the economic importance of the fruit plant material.

Power to set conditions with which fruit plant material must comply

20.—(1) The appropriate authority may, by regulations, amend—

- (a) in relation to England and Wales, Schedules 1 and 5 to the Fruit Plant Marketing Regulations;
- (b) in relation to Scotland, Schedules 2 and 3 to the Fruit Plant Marketing Regulations.

(2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers it is necessary or appropriate—

- (a) in the light of developments in scientific or technical knowledge, production techniques or agronomic practices;
- (b) to address concerns relating to the quality of fruit plant material;
- (c) due to the economic importance of the fruit plant material; or
- (d) for consistency with international standards for pests and diseases affecting the quality of fruit plant material.

Power to set labelling and document requirements for fruit plant material

21.—(1) The appropriate authority may, by regulations, amend—

- (a) in relation to England and Wales, Schedule 2 to the Fruit Plant Marketing Regulations;
- (b) in relation to Scotland, Schedule 5 to the Fruit Plant Marketing Regulations.

(2) But the appropriate authority may exercise the power in paragraph (1) only to the extent that the appropriate authority considers it—

- (a) necessary or appropriate to do so in the light of market conditions; or
- (b) necessary to do so to ensure traceability of fruit plant material.

Power to derogate in the event of temporary supply difficulties

22.—(1) The appropriate authority may, by regulations, amend, supplement, revoke or derogate from the provisions of the Fruit Plant Marketing Regulations in the event of a temporary difficulty in the supply of fruit plant material.

(2) But regulations may only be made under paragraph (1) where—

- (a) the appropriate authority has carried out an assessment that has taken account of available information regarding the temporary difficulty in the supply of fruit plant material and the reasons for that difficulty;
- (b) the assessment has confirmed that—
 - (i) there is a temporary difficulty in the supply of fruit plant material in the United Kingdom; and
 - (ii) the derogations provide safeguards to address the risk to plant health arising from fruit plant material to which regulations under paragraph (1) will apply; and

- (c) the assessment has been approved by the Secretary of State, the Welsh Ministers and the Scottish Ministers.

CHAPTER 5

Regulations

Procedure for regulations and ancillary powers

23.—(1) This regulation sets out—

- (a) the procedure for the making of regulations under this Part; and
- (b) power to make ancillary provision.

(2) Regulations made by the Secretary of State or the Welsh Ministers are to be made by statutory instrument.

(3) For regulations made by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010⁽¹¹⁾.

(4) A statutory instrument containing regulations made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) A statutory instrument containing regulations made by Welsh Ministers is subject to annulment in pursuance of a resolution of the Welsh Parliament.

(6) Regulations made by the Scottish Ministers are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).

(7) Regulations may—

- (a) contain supplementary, incidental, consequential, transitional, transitory or saving provision (including provision amending, repealing or revoking enactments);
- (b) make different provision for different cases or descriptions of case, different circumstances, different purposes or different areas.

⁽¹¹⁾ 2010 asp 10.