
WELSH STATUTORY INSTRUMENTS

2020 No. 1134 (W. 259)

PLANT HEALTH, WALES

The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020

<i>Made</i>	- - - -	<i>16 October 2020</i>
<i>Laid before Senedd Cymru</i>		<i>20 October 2020</i>
<i>Coming into force</i>	- -	<i>13 November 2020</i>

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ (“the 1972 Act”) in relation to the common agricultural policy⁽²⁾.

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the 1972 Act and, with the consent of the Treasury, in exercise of the powers conferred by section 56(1) of the Finance Act 1973⁽³⁾ now vested in them⁽⁴⁾.

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

Title and commencement

1. The title of these Regulations is the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) (Amendment) Regulations 2020 and they come into force on 13 November 2020.

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- (1) [1972 c. 68](#). The European Communities Act 1972 (“the 1972 Act”) was repealed by section 1 of the European Union (Withdrawal) Act [2018 \(c. 16\)](#) (“the 2018 Act”) with effect from exit day. “Exit day” is defined in section 20 of the 2018 Act as 31 January 2020 at 11pm. Despite that repeal the 1972 Act continues to have effect with modifications until IP completion day, by virtue of section 1A of the 2018 Act. Section 1A was inserted by section 1 of the European Union (Withdrawal Agreement) Act [2020 \(c. 1\)](#) (“the 2020 Act”). “IP completion day” is defined in section 1A as 31 December 2020 at 11pm (the meaning given in section 39 of the 2020 Act). Section 2(2) of the 1972 Act was previously amended by section 27(1) of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act [2008 \(c. 7\)](#).
- (2) [S.I. 2010/2690](#), which is prospectively revoked by [S.I. 2018/1011](#) from IP completion day.
- (3) [1973 c. 51](#); section 56(1) was amended by [S.I. 2011/1043](#), and is prospectively amended by paragraph 17 of Schedule 8 to the European Union (Withdrawal) Act [2018 \(c. 16\)](#) from a date and time to be appointed.
- (4) By virtue of section 59(5) of the Government of Wales Act [2006 \(c. 32\)](#).

PART 1

Amendment of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020

Amendment of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020

2.—(1) The Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020⁽⁵⁾ are amended as follows.

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

(3) In regulation 3(1)—

(a) omit the definitions of—

- (i) “Commission Implementing Decision (EU) 2017/198”, and
- (ii) “Commission Implementing Decision (EU) 2019/1615”;

(b) at the end insert—

““Commission Implementing Regulation (EU) 2020/885” (*“Rheoliad Gweithredu’r Comisiwn (EU) 2020/885”*) means Commission Implementing Regulation (EU) 2020/885 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto⁽⁶⁾;

“Commission Implementing Regulation (EU) 2020/1191” (*“Rheoliad Gweithredu’r Comisiwn (EU) 2020/1191”*) means Commission Implementing Regulation (EU) 2020/1191 establishing measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (ToBRFV)⁽⁷⁾.”

(4) In regulation 13(10)—

- (a) omit the definition of “working hour”;
- (b) at the appropriate place insert—

““working day” (*“diwrnod gwaith”*) has the meaning given in regulation 7(4).”

(5) In regulation 21—

(a) for paragraph (1) substitute—

“(1) The appropriate authority may grant an authorisation to permit—

- (a) the carrying out of any activity specified in a plant health derogation,
- (b) the introduction into Wales, the movement within Wales, or the holding or multiplication in Wales, of a potential quarantine plant pest for official testing, scientific or educational purposes, trials, varietal selection or breeding, or
- (c) the carrying out of any other activity which requires the approval of the appropriate authority under the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.”;

(b) for paragraph (3) substitute—

⁽⁵⁾ S.I. 2020/206 (W. 48).

⁽⁶⁾ OJ No. L 205, 29.6.2020, p. 9.

⁽⁷⁾ OJ No. L 262, 12.8.2020, p. 6.

“(3) In paragraph (1)—

“plant health derogation” (“*rhanddirymiad iechyd planhigion*”) means—

- (a) a derogation from provisions of the EU Plant Health Regulation which is set out in an implementing or delegated act adopted by the European Commission under the EU Plant Health Regulation or the Official Controls Regulation, or
- (b) a derogation in any decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union, which continues to apply for the purposes of the EU Plant Health Regulation on or after the commencement date and allows member States to authorise an activity which would otherwise be prohibited by or under the EU Plant Health Regulation;

“potential quarantine plant pest” (“*pla planhigion cwarantyn posibl*”) means a plant pest which is not a Union quarantine pest, a protected zone quarantine pest or a plant pest subject to any measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation, but which, in the opinion of the appropriate authority, fulfils the criteria set out in Subsection 1 of Section 3 of Annex 1 to that Regulation or may fulfil the criteria in Subsection 2 of that Section.”

(6) In Schedule 3, in the table in Part 3, after the entry for Commission Delegated Regulation (EU) 2019/1602 insert—

“Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts(8)

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

(7) In the table in Schedule 4—

(a) omit the entries relating to—

- (i) Commission Implementing [Decision 2017/198/EU](#), and
- (ii) Commission Implementing Decision (EU) 2019/1615;

(b) at the end insert—

“Commission Implementing Regulation (EU) 2020/885 Article 2 (prohibition on the introduction of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto into the Union territory, and its spread within the Union territory)

Article 3 (requirements in relation to the introduction into the Union territory of specified plants originating in third countries)

	Article 7 (requirements in relation to the movement within the Union territory of specified plants that have spent a part of their lives in the Union)
Commission Implementing Regulation (EU) 2020/1191	Article 2 (prohibition on the introduction of Tomato brown rugose fruit virus into the Union territory and its spread within the Union territory)
	Article 6 (requirements in relation to the movement within the Union territory of specified plants for planting within the Union)
	Article 7 (requirements in relation to the movement within the Union territory of specified seeds)
	Article 8 (requirements in relation to the introduction into the Union territory of specified plants for planting originating in third countries)
	Article 9 (requirements in relation to the introduction into the Union territory of specified seeds originating in third countries)".

PART 2

Consequential amendments to legislation relating to fees

Amendment of the Plant Health etc. (Fees) (Wales) Regulations 2018

3. In the Plant Health etc. (Fees) (Wales) Regulations 2018⁽⁹⁾, in regulation 5(5), for “for the purposes of any derogation described in Article 8(1) or 48(1) of the EU Plant Health Regulation” substitute “described in regulation 20(1)(a) or (b)(i) or 21(1)(b) of the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020”.

Amendment of the Plant Health (Fees) (Forestry) (Wales) Regulations 2019

4. In the Plant Health (Fees) (Forestry) (Wales) Regulations 2019⁽¹⁰⁾, in regulation 2(1), in the definition of “licence”, in paragraph (b), after “21(1)(a)” insert “or (b)”.

16 October 2020

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Affairs, one of the Welsh Ministers

⁽⁹⁾ S.I. 2018/1179 (W. 238), amended by S.I. 2020/44 (W. 5); there are other amending instruments but none are relevant.

⁽¹⁰⁾ S.I. 2019/497 (W. 114), amended by S.I. 2020/44 (W. 5) and S.I. 2020/206 (W. 48).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Official Controls (Plant Health and Genetically Modified Organisms) (Wales) Regulations 2020 (S.I. 2020/206) (W. 48) (“the 2020 Regulations”), that give effect to—

- (a) Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants (OJ No. L 317, 23.11.2016, p. 4), and
- (b) Regulation (EU) 2017/625 of the European Parliament and of the Council on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, in so far as it applies to the rules referred to in Article 1(2)(g) (OJ No. L 95, 7.4.2017, p. 1).

Regulation 2(3) and (7) updates the references in the 2020 Regulations to—

- (a) Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto (OJ No. L 31, 4.2.2017, p. 29), which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/885 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto (OJ No. L 205, 29.6.2020, p. 9), and
- (b) Commission Implementing Decision (EU) 2019/1615 establishing emergency measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (OJ No. L 250, 30.9.2015, p. 91), which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/1191 establishing measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus (OJ No. L 262, 12.8.2020, p. 6).

Regulation 2(5) amends regulation 21 of the 2020 Regulations to allow the appropriate authority to authorise the use of potential quarantine plant pests for official testing, scientific or educational purposes, trials, varietal selection or breeding.

Regulation 2(6) amends Schedule 3 to the 2020 Regulations to enable Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts (OJ No. L 321, 12.12.2019, p. 64) to be enforced from 14 December 2020 (the date on which the provisions in that Regulation will apply to certain plants, plant products and other objects).

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

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.