



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**        **The Plant Health (Amendment etc) (EU Exit) Regulations 2020**  
**DATE**        **19 October 2020**  
**BY**            **Rebecca Evans MS, Minister for Finance and Trefnydd**

**SI laid in Parliament, which amends secondary legislation in a devolved area**

### **The Plant Health (Amendment etc) (EU Exit) Regulations 2020**

The purpose of the Plant Health (Amendment etc.) (EU Exit) Regulations 2020 (“the 2020 Regulations”) is to protect biosecurity and support trade by ensuring that effective phytosanitary controls continue to operate within GB and between GB and the EU at the end of the Transition Period on 31 December 2020.

#### European Directly Applicable Instruments amended by the 2020 Regulations

- Regulation (EU) 2016/2031;
- Commission Decision 2002/757/EC;
- Commission Decision 2005/51/EC;
- Commission Implementing Regulation (EU) 2017/2313;
- Commission Implementing Regulation (EU) 2018/2018;
- Commission Delegated Regulation (EU) 2019/827;
- Commission Delegated Regulation (EU) 2019/829;
- Commission Implementing Regulation (EU) 2019/2148;
- Commission Implementing Regulation (EU) 2020/918; and  
Commission Implementing Regulation (EU) 2020/1002.

The 2020 Regulations revoke the EU Legislation listed in the Annex to this notice.

#### Primary domestic legislation amended by the 2020 Regulations

The Plant Health Act 1967.

### Subordinate domestic legislation amended by the 2020 Regulations (none of which applies to Wales)

- The Plant Health (Forestry) (Fees) (England and Scotland) Regulations 2015;
- The Plant Health etc. (Fees) (England) Regulations 2018; and
- Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019.

### Subordinate domestic legislation revoked by the 2020 Regulations

- The Plant Health (Amendment) (England) (EU Exit) Regulation 2019; and
- The Plant Health (EU Exit) Regulations 2019.

### **Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence**

The 2020 Regulations contain provisions that enable the Welsh Ministers to exercise functions in relation to Wales without encumbrance and for the Welsh Ministers to provide consent to the Secretary of State to exercise functions in relation to Wales.

The concurrent functions contained in the 2020 Regulations have the potential to engage the consent requirements in Schedule 7B to the Government of Wales Act 2006 and as such represent a potential restriction on the future competence of the Senedd. However, we are in negotiations with the Secretary of State for Wales in relation to a s.109 Order under the Act to amend Schedule 7B to negate the potential restriction on the future competence of the Senedd.

### **The purpose of the amendments**

The 2020 Regulations make operability and other consequential amendments to domestic legislation, to Regulation (EU) 2016/2031 on the protective measures against the pests of plants and related tertiary legislation to ensure the continued functioning of plant health phytosanitary controls within GB and between GB and the EU at the end of the Transition Period. They create a 'single market' covering GB and the Crown Dependencies. The EU will become a third country and, as a result, be subject to third country import controls.

The amendments introduced by the 2020 Regulations are technical operability amendments and do not include any policy changes. The current policy of risk-based plant health controls applied under EU legislation will continue. However, the regime will now focus on risks to GB, rather than risks to the EU, to ensure it is technically justified in accordance with World Trade Organisation obligations and the EU Regulations. The GB risk assessment process will follow the same internationally accepted principles and approach used in previous Pest Risk Analysis under the EU regime.

If retained EU law were not amended, it would contain inoperable rules that would prevent the UK Government, the Scottish Government and the Welsh Government from being able

to deliver workable legislation on plant health. The legislation being amended would not have the desired effect without amendment as it would not reflect the change in the legislative position following the European Union (Withdrawal) Act 2018, the Northern Ireland Protocol and amendments that have been made to EU legislation since they were made.

The 2020 Regulations and accompanying Explanatory Memorandum, setting out the provenance and purpose of the Regulations is available here:

<https://www.legislation.gov.uk/ukdsi/2020/9780348213775/introduction>

### **Why consent was given**

Consent has been given for the UK Government to make these corrections in relation to, and on behalf of, Wales for reasons of efficiency and expediency. The amendments have been considered fully and there is no divergence in policy. These amendments are to ensure that the statute book remains functional following the UK's exit from the EU.

## **Annex**

The 2020 Regulations revoke the following EU legislation

### **EU Regulations**

1. Commission Regulation (EC) No 1040/2002 establishing detailed rules for the implementation of the provisions relating to the allocation of a financial contribution from the Community for plant-health control and repealing Regulation (EC) No 2051/97.

2. Commission Regulation (EC) No 1756/2004 specifying the detailed conditions for the evidence required and the criteria for the type and level of the reduction of the plant health checks of certain plants, plant products or other objects listed in Part B of Annex V to Council Directive 2000/29/EC.

### **EU decisions**

3. Commission Decision 91/261/EEC recognising Australia as being free from *Erwinia amylovora* (Burr.) Winsl. *et al.*

4. Commission Decision 93/360/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of wood of *Thuja L.*, originating in Canada.

5. Commission Decision 93/365/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of heat-treated coniferous wood, originating in Canada, and establishing the details of the indicator system to be applied to the heat-treated wood.

**6.** Commission Decision 93/422/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of kiln dried coniferous wood, originating in Canada, and establishing the details of the indicator system to be applied to the kiln dried wood.

**7.** Commission Decision 93/423/EEC authorising the Member States to provide for derogations from certain provisions of Council Directive 77/93/EEC in respect of kiln dried coniferous wood, originating in the United States of America, and establishing the details of the indicator system to be applied to the kiln dried wood.

**8.** Commission Decision 98/109/EC authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand.

**9.** Commission Decision 2002/499/EC authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea.

**10.** Commission Decision 2002/887/EC authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in Japan.

**11.** Commission Decision 2003/248/EC authorising Member States to provide for temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina.

**12.** Commission Decision 2003/249/EC authorising Member States to provide for temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Chile.

**13.** Commission Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus.

**14.** Commission Decision 2005/775/EC amending Decision 2002/499/EC authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea.

**15.** Commission Decision 2005/359/EC providing for a derogation from certain provisions of Council Directive 2000/29/EC as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America.

**16.** Commission Decision 2006/750/EC amending Decision 2005/359/EC as regards the ports of unloading of oak (*Quercus* L.) logs with bark attached, originating in the United States.

**17.** Commission Decision 2007/212/EC amending Decision 2003/248/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina.

**18.** Commission Decision 2007/221/EC amending Decision 2003/249/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Chile.

**19.** Commission Decision 2007/432/EC extending the period of validity of Decision 2002/499/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea.

**20.** Commission Decision 2010/646/EU extending the period of validity of Decision 2002/499/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis* Spach, *Juniperus* L. and *Pinus* L., originating in the Republic of Korea.

**21.** Commission Decision 2011/74/EU amending Decision 2003/248/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Argentina.

**22.** Commission Decision 2010/723/EU extending the period of validity of Decision 2005/359/EC providing for a derogation from certain provisions of Council Directive 2000/29/EC as regards oak (*Quercus* L.) logs with bark attached, originating in the United States of America.

**23.** Commission Decision 2011/75/EU amending Decision 2003/249/EC as regards the extension of the duration of temporary derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria* L.), intended for planting, other than seeds, originating in Chile.

**24.** 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.

**25.** Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis*.

**26.** 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).

**27.** 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).

**28.** 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).

**29.** Commission Implementing Decision 2013/780/EU providing for a derogation from Article 13(1)(ii) of Council Directive 2000/29/EC in respect of bark-free sawn wood of *Quercus* L., *Platanus* L. and *Acer saccharum* Marsh. originating in the United States of America.

**30.** Commission Implementing Decision 2014/356/EU amending Implementing Decision 2012/138/EU as regards the conditions of introduction into and movement within the Union of specified plants to prevent the introduction and the spread of *Anoplophora chinensis* (Forster).

**31.** Commission Implementing Decision 2014/679/EU amending Implementing Decision 2012/270/EU as regards its period of application and as regards the movement to packing facilities of potato tubers originating in areas demarcated in order to prevent the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).

**32.** Commission Implementing Decision (EU) 2015/179 authorising Member States to provide for a derogation from certain provisions of Council Directive 2000/29/EC in respect of wood packaging material of conifers (Coniferales) in the form of ammunition boxes originating in the United States of America under the control of the United States Department of Defence.

**33.** Commission Implementing Decision (EU) 2015/226 amending Implementing Decision 2012/535/EU as regards the definition of susceptible wood and measures to be taken in demarcated areas.

**34.** Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky).

**35.** Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckermann and Kotthoff) Davis et al.

**36.** Commission Implementing Decision (EU) 2016/1359 amending 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 similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner).

**37.** Commission Implementing Decision (EU) 2017/427 amending Implementing Decision 2012/535/EU as regards measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhner) Nickle et al. (the pine wood nematode).

**38.** Commission Implementing Decision (EU) 2017/2187 extending the period of validity of Implementing Decision (EU) 2015/179 authorising Member States to provide for a derogation from certain provisions of Council Directive 2000/29/EC in respect of wood packaging material of conifers (Coniferales) in the form of ammunition boxes originating in the United States of America under the control of the United States Department of Defence.

**39.** Commission Implementing Decision (EU) 2018/5 amending Implementing Decision 2012/270/EU as regards the symptoms of *Epitrix cucumeris* (Harris), *Epitrix papa* sp. n., *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) and the establishment of relevant demarcated areas.

**40.** Commission Implementing Decision (EU) 2018/618 amending Implementing Decision 2012/535/EU as regards measures to prevent the spread within the Union of *Bursaphelenchus xylophilus* (Steiner et Buhrer) Nickle et al. (the pine wood nematode).

**41.** Commission Implementing Decision (EU) 2016/2004 amending Implementing Decision 2013/780/EU providing for a derogation from Article 13(1)(ii) of Council Directive 2000/29/EC in respect of bark-free sawn wood of *Quercus* L., *Platanus* L. and *Acer saccharum* Marsh. originating in the United States of America.

**42.** Commission Implementing Decision 2018/638 establishing emergency measures to prevent the introduction into and spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith).

**43.** Commission Implementing Decision (EU) 2018/1503 establishing measures to prevent the introduction into and the spread within the Union of *Aromia bungii* (Faldermann).

**44.** Commission Implementing Decision (EU) 2019/1598 of amending Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith)

**45.** Commission Implementing Decision (EU) 2019/1739 establishing emergency measures to prevent the introduction into and the spread within the Union of Rose Rosette Virus.

**46.** 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.

**47.** Commission Implementing Regulation (EU) 2018/2019 establishing a provisional list of high risk plants, plant products or other objects, within the meaning of Article 42 of Regulation (EU) 2016/2031 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.

**48.** 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.

**49.** 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).

**50.** Commission Implementing Regulation (EU) 2020/1164 providing for a temporary derogation from certain provisions of Implementing Regulation (EU) 2019/2072 in respect of measures to prevent the introduction into and the spread within the Union of the pest *Agrilus planipennis* Fairmaire from Canada and the United States.

**51.** Commission Implementing Regulation (EU) 2020/1199 of 13 August 2020 amending Annex VI to Implementing Regulation (EU) 2019/2072 to temporarily prohibit the introduction into the Union of certain fruits originating in Argentina to prevent the introduction into and the spread within the Union of *Phyllosticta citricarpa* (McAlpine) Van der Aa.

52. Commission Implementing Regulation (EU) 2020/1201 of 14 August 2020 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.).