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SCOTTISH STATUTORY INSTRUMENTS

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**2020 No. 152**

**PLANT HEALTH**

**The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Amendment Regulations 2020**

<i>Made</i>	- - - -	<i>13th May 2020</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>15th May 2020</i>
<i>Coming into force</i>	- -	<i>27th June 2020</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1) and all other powers enabling them to do so.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Amendment Regulations 2020 and come into force on 27 June 2020.

(2) These Regulations extend to Scotland only.

**Amendment of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019**

2. The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019(2) are amended in accordance with regulations 3 to 23.

**Amendment of regulation 2**

3. In regulation 2 (interpretation: general)—

(a) after the definition of “EU plant health rule” insert—

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- (1) [1972 c.68](#) (“the 1972 Act”). The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act [2018 \(c.16\)](#) (“the 2018 Act”) with effect from exit day (see section 20 of the 2018 Act), but saved, subject to modifications, until IP completion day by section 1A of that Act. Section 1A of the 2018 Act was inserted by the European Union (Withdrawal Agreement) Act [2020 \(c.1\)](#) (“the 2020 Act”), and defines “IP completion day” by reference to section 39(1) to (5) of the 2020 Act. Section 2(2) was amended by the Scotland Act [1998 \(c.46\)](#) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act [2008 \(c.7\)](#) (“the 2008 Act”), section 3(3) and schedule 1, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (2) [S.S.I. 2019/421](#).

““forestry material” means—

- (a) wood which retains part or all of its natural round surface, with or without bark,
- (b) wood in the form of chips, particles, shavings, sawdust, wood waste or scrap,
- (c) conifer trees over 3m in height,
- (d) bark which has been removed or become detached from a living, felled or fallen tree or from part of a living, felled or fallen tree,”

(b) after the definition of “the Forestry Order” insert—

““ISPM 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”(3).

#### **Insertion of regulation 3A**

4. After regulation 3 (interpretation: EU instruments) insert—

##### **“Measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation**

**3A.** Any reference in the EU Plant Health Regulation to a pest that is subject to the measures adopted pursuant to Article 30(1) of that Regulation includes the following plant pests—

- (a) *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner),
- (b) *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyuma & Goto,
- (c) Rose rosette virus,
- (d) Tomato brown rugose fruit virus.”.

#### **Amendment of regulation 5**

5. In regulation 5(4) (designation of competent authority)—

- (a) omit the definition of “forestry material”,
- (b) omit the definition of “ISPM 15”,
- (c) omit the definition of “non-forestry material”,
- (d) before the definition of “tree” insert—

““official controls” includes any official controls within the meaning given in paragraph 5 of Part 4 of schedule 1,”.

#### **Amendment of regulation 6**

6. For regulation 6 (disclosure of information) substitute—

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(3) 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/en/core-activities/standards-setting/ispms/>

“6.—(1) The Scottish Ministers may disclose information to any other competent authority in another part of the Union territory for the purposes of the EU Plant Health Regulation or the Official Controls Regulation.

(2) Nothing in paragraph (1) affects any other power or requirement of the Scottish Ministers to disclose information.”.

#### **Amendment of regulation 7**

7. In regulation 7 (derogation to the requirement to give prior notification) before paragraph (1) insert—

“(A1) The operator who is responsible for a controlled consignment of forestry material which is to be brought into Scotland by air must have notified the Scottish Ministers of the consignment’s expected arrival at least four working hours before its expected arrival in Scotland.”.

#### **Amendment of regulation 12**

8. In regulation 12 (border control posts: authorisation of inspection centre and commercial storage facilities)—

(a) in paragraph (1), after “controlled consignments”, in both places where it occurs, insert “, consignments which are subject to a prohibition or restriction by virtue of Part 2 of schedule 1”,

(b) after paragraph (1) insert—

“(1A) In paragraph (1), “official controls” includes any official controls within the meaning given in paragraph 5 of Part 4 of schedule 1.”.

#### **Amendment of regulation 14**

9. In regulation 14(2) (introduction), in the definition of “prohibited material”—

(a) in sub-paragraph (b), at the end insert “or Part 2 of schedule 1”,

(b) in sub-paragraph (c), at the end insert “or Part 3 of schedule 1”.

#### **Amendment of regulation 21**

10. For regulation 21 (authorisations for other purposes) substitute—

“21.—(1) The Scottish Ministers may grant an authorisation to permit the carrying out of—

(a) any activity specified in a plant health derogation, or

(b) any other activity which requires the approval of the Scottish Ministers under the EU Plant Health Regulation, the Official Controls Regulation or these Regulations.

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

(3) In this regulation, a “plant health derogation” means—

(a) a derogation from provisions of the EU Plant Health Regulation which is set out in the EU Plant Health Regulation, 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 which allows member States to authorise an activity which would otherwise be prohibited by or under the EU Plant Health Regulation.”.

#### **Amendment of regulation 26**

- 11.** In regulation 26 (notification requirements in relation to other plants and plant products)—
- (a) in paragraph (1)(c) after “member State” insert “or solid fuel wood from a third country to which Article 47(1) of the Official Controls Regulation does not apply”,
- (b) in paragraph 2(d) after “have been” insert “, or are to be,”.

#### **Amendment of regulation 27**

- 12.** Omit regulation 27.

#### **Amendment of regulation 28**

- 13.** For regulation 28 (interpretation) substitute—

“**28.**—(1) In this Part—

“ISPM 15 mark” means the mark referred to in Article 96(1) of the EU Plant Health Regulation, which may be applied to wood packaging material to attest that it has been treated in accordance with Annex 1 to ISPM 15,

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

“wood packaging material” includes any wood or other object which is required to be treated and marked in accordance with Annex 1 to ISPM 15.

(2) For the purposes of regulations 32A and 32B, a person “incorrectly” applies the ISPM 15 mark to wood packaging material if they apply 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.”.

#### **Amendment of regulation 29**

- 14.** In regulation 29 (powers of entry)—

- (a) for paragraph (1)(a) substitute—

“(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 an EU plant health rule or to the requirements in schedule 1 comply with that rule or those requirements”,

- (b) for paragraph (6) substitute—

“(6) A plant health inspector may—

- (a) be accompanied by—
    - (i) a representative of the European Commission or an authorised officer of any competent authority designated in the Union territory for the purposes of the EU Plant Health Regulation or the Official Controls Regulation, or
    - (ii) such other persons as the inspector considers necessary, and
  - (b) bring onto the premises such equipment and vehicles as the inspector considers necessary.
- (6A) A plant health inspector who is accompanied by a person mentioned in paragraph (6)(a)(i) may—
- (a) show the person any documents or records which are inspected by the inspector under paragraph (4)(e), and
  - (b) make copies, or require copies to be made, of those documents or records for that person.”.

### **Amendment of regulation 30**

15. In regulation 30 (right of entry conferred by a warrant issued by a sheriff, a summary sheriff or a justice of the peace) in paragraph (1) for “16 or 29” substitute “16, 29 or 32(1)”.

### **Insertion of regulation 32A and 32B**

16. After regulation 32 (failure to comply with a notice) insert—

#### **“Removal of ISPM 15 mark from wood packaging material**

**32A.** Where an inspector knows, or has reasonable grounds for suspecting, that the ISPM 15 mark has been incorrectly applied to wood packaging material, a plant health inspector may remove the mark or, by notice in writing, require another person to remove it.

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

**32B.—(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 15 mark to wood packaging material at any premises in Scotland.

(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 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 (12).

(5) Any item seized under paragraph (2) may be retained by the Scottish Ministers 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 Scottish Ministers may apply to the 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 Scottish Ministers 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 Scottish Ministers may recover from the appropriate person all reasonable costs incurred by the Scottish Ministers for the purposes of securing the forfeiture of an item under paragraphs (6) to (8).

(11) Where the retention of the 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 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 Scottish Ministers 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 having control 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 ownership over it.

“the court” means a sheriff, summary sheriff or justice of the peace.

(14) Nothing in this regulation affects the powers of a plant health inspector under regulation 32A”.

### **Amendment of regulation 35**

17. In regulation 35 (miscellaneous provisions as to notices), in paragraph (1), after “these Regulations” insert “other than a notice given under regulation 32B(4)”.

### **Amendment of regulation 37**

18. In regulation 37 (general), in paragraph (1)—

- (a) in sub-paragraph (a) replace “2 or 4” with “2(1), 2A(1), 2B(1), 2C(2), 2D(2), 2E(1), 2F(3), 3A, 4(1), 7(2) or (4) or 11(1)”,

- (b) in sub-paragraph (b) for “ or 4(1)” substitute “, 4(1) or 48(2),
- (c) omit sub-paragraph (d).

### **Amendment of regulation 51**

**19.** In regulation 51(1) (transitional provisions: other licences under the Forestry Order or the 2005 Order) for “21(2)” substitute “21(1)(a)”.

### **Amendment of schedule 1**

**20.**—(1) Schedule 1 (temporary national measures) is amended as follows.

(2) In Part 1 (introduction), for paragraph 1(interpretation) substitute—

“1. In this schedule—

“controlled material” means any plant, plant product or other object of a description specified in paragraph 2(1), 2A(1), 2B(1), 2C(2), 2D(2) or 2E(1),

“in transit”, in relation to a schedule 1 consignment or controlled material, means a schedule 1 consignment or controlled material which—

- (a) is being moved through Scotland under customs supervision on its journey from one third country to another third country, or
- (b) is being moved through Scotland on its journey from one part of the Union territory to another part of the Union territory and has passed or is passing through the territory of a third country during that journey,

“introduce” means introduce into Scotland from a third country or another part of the Union territory, and introduction is to be construed accordingly,

“IPPC” means the International Plant Protection Convention 1951(4),

“ISPM 4” means International Standard 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(5),

“phytosanitary certificate” means—

- (a) in the case of any plant, plant product or other object that must be accompanied by a phytosanitary certificate pursuant to Article 72, 73 or 74 of the EU Plant Health Regulation and paragraph 2A(1), 2B, 2C(2) or 2E(1) of Part 2, a phytosanitary certificate which complies with the requirements in Article 71(1) and (2) of the EU Plant Health Regulation as modified by paragraph 2A(2), 2C(3) or 2E(2) of Part 2 (as the case may be),
- (b) in the case of any other plant, plant product or other object that must be accompanied by a phytosanitary certificate pursuant to paragraph 2C(2) of Part 2 a phytosanitary certificate for export in the form set out in Part A of Annex 5 to the EU Plant Health Regulation, or a phytosanitary certificate for re-export in the form set out in Part B of Annex 5 to that Regulation, which—
  - (i) complies with the requirements specified in Article 76(2) of the EU Plant Health Regulation,

(4) Adopted in 1951 (Treaty Series No. 16 (1954), Cmd 9077) and last revised in 1997 (Miscellaneous Series No. 15 (2003), Cmd 5945).

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

- (ii) has been issued by the national plant protection organisation of the country of export or re-export in accordance with the provisions of Article 5(2) of the IPPC,

“schedule 1 consignment” means a consignment which contains controlled material, including any controlled material for non-commercial use,

“transshipment”, in relation to a schedule 1 consignment or controlled material, means its arrival in Scotland by sea or air from a third country, and its movement under customs supervision from the vessel or aircraft of arrival to another vessel or aircraft in the same port or airport in preparation for onward travel, and “transhipped” is to be construed accordingly,

“transit declaration”, in relation to any controlled material, means a signed declaration of the professional operator who is in control of the controlled material stating that the controlled material is in transit or for transshipment.”

- (3) In Part 2 (plants, plant products or other objects from third countries)—

- (a) for the heading to paragraph 2 substitute “Temporary measures in relation to *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.”,
- (b) for sub-paragraph (2), substitute “sub-paragraph (1) is subject to paragraph 2F(1)”
- (c) after paragraph 2 insert—

“**2A.**—(1) No person may introduce any plants or plant products described in columns (2) and (3) of Table A1 unless they are accompanied by a phytosanitary certificate which includes an official statement confirming the matters set out in the corresponding entry in column (4) of that table.

(2) None of the requirements specified in point 39 of Annex 7 to the Phytosanitary Conditions Regulation are to be treated for the purposes of Articles 41(1) and 71(1) (c) of the EU Plant Health Regulation as applying to the introduction of any plants described in columns (2) and (3) of Table A1.

(3) Sub-paragraph (1) is subject to paragraph 2F(1).

**Table A1**

(1)	(2)	(3)	(4)
	<i>Description of plants</i>	<i>CN code</i>	<i>Details of official statement</i>
1.	Plants intended for planting, other than seeds, of <i>Platanus</i> L., originating in Albania, Armenia, Switzerland, Turkey or the USA	ex 0602 10 90 ex 0602 20 20 ex 0602 20 80 ex 0602 90 41 ex 0602 90 45 ex 0602 90 46 ex 0602 90 48 ex 0602 90 50 ex 0602 90 70 ex 0602 90 99	The official statement must confirm that the plants have been grown throughout their life in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Ceratocystis platani</i> (J.M. Walter) Engelbr. & T.C. Harr.

(1) The name of the area(s) must be included in the phytosanitary certificate under the heading “Additional declaration”.



### **Temporary measures in relation to *Candidatus Phytoplasma ulmi***

**2B.—**(1) No person may introduce any plants intended for planting, other than seeds, of *Ulmus* L. which originate in Canada or the USA unless they are accompanied by a phytosanitary certificate which includes an official statement confirming that no symptoms of *Candidatus Phytoplasma ulmi* have been observed at the place of production of the plants or in the immediate vicinity of the place of production since the beginning of the last complete cycle of vegetation.

(2) Sub-paragraph (1) is subject to paragraph 2F(1).

### **Temporary measures in relation to *Agrilus planipennis* Fairmaire**

**2C.—**(1) This paragraph applies to plants, plant products or other objects described in columns (2) and (3) of Table A2 in so far as they are not subject to the prohibition on the introduction into the Union territory of high-risk plants, plant products or other objects that applies by virtue of Article 42(2) of the EU Plant Health Regulation.

(2) No person may introduce any plants, plant products or other objects described in columns (2) and (3) of Table A2 unless they are accompanied by a phytosanitary certificate which includes an official statement confirming—

- (a) the matters set out in the corresponding entry in column (4) of that table, and
- (b) in the case of any plants, plant products or other objects which are not subject to Article 72, 73 or 74 of the EU Plant Health Regulation, certifies that the plants, plant products or other objects are free from Union quarantine pests and pests subject to any measures adopted pursuant to Article 30(1) of that Regulation.

(3) None of the requirements specified in points 36 and 87 to 89 of Annex 7 to the Phytosanitary Conditions Regulation are to be treated for the purposes of Articles 41(1) and 71(1)(c) of the EU Plant Health Regulation as applying to the introduction of any plants, plant products or other objects described in columns (2) and (3) of Table A2 where they originate in Canada, China, the Democratic People's Republic of Korea, Japan, Mongolia, the Republic of Korea, Russia, Taiwan or the USA.

(4) Sub-paragraph (2) is subject to paragraph 2F(1).

Table A2

(1)	(2)	(3)	(4)
	Description of plants, plant products or other objects	CN code	Details of official statement
1.	Plants, other than fruit or seeds, of <i>Fraxinus</i> L., <i>Juglans ailantifolia</i> Carr., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch. or <i>Pterocarya rhoifolia</i> Siebold & Zucc., originating in Belarus, Canada, China, the Democratic People's Republic of Korea, Japan, Kazakhstan, Mongolia, the Republic of Korea, Russia, Taiwan, Ukraine or the USA	ex 0602 10 90 ex 0602 20 20 ex 0602 20 80 ex 0602 90 41 ex 0602 90 45 ex 0602 90 46 ex 0602 90 48 ex 0602 90 50 ex 0602 90 70 ex 0602 90 99 ex 0604 20 90 ex 1404 90 00	The official statement must confirm that the plants originate in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Agrilus planipennis</i> Fairmaire and that no part of the area lies within 100km of a known outbreak of <i>Agrilus planipennis</i> Fairmaire.  A phytosanitary certificate may not include any such official statement unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas.
2.	Wood of <i>Fraxinus</i> L., <i>Juglans ailantifolia</i> Carr., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch. or <i>Pterocarya rhoifolia</i> Siebold & Zucc., other than in the form of: —chips, particles, sawdust, shavings, wood waste or scrap, obtained in whole or in part from these trees, or —wood packaging material <sup>(2)</sup> , except dunnage which is supporting the wood	ex 4401 12 00 ex 4403 12 00 ex 4403 99 00 ex 4404 20 00 ex 4406 12 00 ex 4406 92 00 4407 95 10 4407 95 91 4407 95 99 ex 4407 99 27 ex 4407 99 40 ex 4407 99 90 ex 4408 90 15 ex 4408 90 35 ex 4408 90 85 ex 4408 90 95 ex 4416 00 00 ex 9406 10 00	The official statement must confirm: (a) that the wood has undergone ionizing irradiation to achieve a minimum absorbed dose of 1kGy throughout the wood, or (b) that the wood originates in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Agrilus planipennis</i> Fairmaire and that no part of the area lies within 100km of a known outbreak of <i>Agrilus planipennis</i> Fairmaire.  A phytosanitary certificate may not include the official statement referred to in sub-paragraph 2(b) unless the national plant protection organisation of the country of origin has previously
(1)	The name of the area(s) must be included in the phytosanitary certificate under the heading "Additional declaration".		
(2)	"wood packaging material" means wood in the form of packing cases, boxes, crates, drums or similar packings, pallets, box pallets or other load boards, pallet collars or dunnage, whether or not actually in use in the transport of objects of any kind.		

(1)	(2)	(3)	(4)
	<i>Description of plants, plant products or other objects</i>	<i>CN code</i>	<i>Details of official statement</i>
	in the consignment and which is constructed from wood of the same type and quality as that wood and meets the requirements in column (4),  but including wood which has not kept its natural round surface, furniture or other objects made of untreated wood, originating in Belarus, Canada, China, the Democratic People's Republic of Korea, Japan, Kazakhstan, Mongolia, the Republic of Korea, Russia, Taiwan, Ukraine or the USA		provided the national plant protection organisation of the United Kingdom with written details of the area or areas.
3.	Wood in the form of chips, particles, sawdust, shavings, wood waste or scrap obtained in whole or in part from <i>Fraxinus</i> L.,  <i>Juglans ailantifolia</i> Carr., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch. or <i>Pterocarya rhoifolia</i> Siebold & Zucc., originating in Belarus, Canada, China, the Democratic People's	ex 4401 22 00 ex 4401 40 10 ex 4401 40 90	The official statement must confirm that the wood originates in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Agrilus planipennis</i> Fairmaire and that no part of the area lies within 100km of a known outbreak of <i>Agrilus planipennis</i> Fairmaire.  A phytosanitary certificate may not include any such official statement unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas.

(1) The name of the area(s) must be included in the phytosanitary certificate under the heading "Additional declaration".

(2) "wood packaging material" means wood in the form of packing cases, boxes, crates, drums or similar packings, pallets, box pallets or other load boards, pallet collars or dunnage, whether or not actually in use in the transport of objects of any kind.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(1)	(2)	(3)	(4)
	Description of plants, plant products or other objects	CN code	Details of official statement
	Republic of Korea, Japan, Kazakhstan, Mongolia, the Republic of Korea, Russia, Taiwan, Ukraine or the USA		
4.	Isolated bark or objects made out of bark of <i>Fraxinus</i> L., <i>Juglans ailantifolia</i> Carr., <i>Juglans mandshurica</i> Maxim., <i>Ulmus davidiana</i> Planch. or <i>Pterocarya rhoifolia</i> Siebold & Zucc., originating in Belarus, Canada, China, the Democratic People's Republic of Korea, Japan, Kazakhstan, Mongolia, the Republic of Korea, Russia, Taiwan, Ukraine or the USA	ex 1404 90 00 ex 4401 40 90	The official statement must confirm that the bark originates in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Agrilus planipennis</i> Fairmaire and that no part of the area lies within 100km of a known outbreak of <i>Agrilus planipennis</i> Fairmaire.  A phytosanitary certificate may not include any such official statement unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the area or areas.
(1)	The name of the area(s) must be included in the phytosanitary certificate under the heading "Additional declaration".		
(2)	"wood packaging material" means wood in the form of packing cases, boxes, crates, drums or similar packings, pallets, box pallets or other load boards, pallet collars or dunnage, whether or not actually in use in the transport of objects of any kind.		

#### National measures in relation to *Xylella fastidiosa* (Wells et al.)

**2D.**—(1) Sub-paragraph (2) applies to any plants that are not subject to the prohibition in Article 15 of Commission Implementing Decision (EU) 2015/789.

(2) No person may introduce any plants, other than fruit or seeds, of *Coffea* or *Polygala myrtifolia* L. which originate in any third country.

(3) Sub-paragraph (2) is subject to paragraph 2F(1).

**2E.**—(1) No person may introduce any plants described in columns (2) and (3) of Table A3 unless—

(a) they are accompanied by a phytosanitary certificate which includes an official statement confirming the matters set out in the corresponding entry in column (4) of that table, and

(b) in the case of any plants referred to in columns (2) and (3) of entry 1 of that table, they are individually labelled with a tamper-proof label which includes details of their place of production.

(2) None of the requirements in Articles 16 and 17 of Commission Implementing Decision (EU) 2015/789 are to be treated for the purposes of Article 71(1)(d) of the EU Plant Health Regulation as applying to the introduction of any plants described in columns (2) and (3) of Table A3.

(3) Sub-paragraph (1) is subject to paragraph 2F(1).

**Table A3**

(1)	(2)	(3)	(4)
	Description of plants	CN code	Details of official statement
1.	Plants intended for planting, other than fruit or seeds, of <i>Olea europaea</i> L. or <i>Prunus dulcis</i> (Mill.) D.A. Webb, originating in any third country	ex 0602 1090 ex 0602 2020 ex 0602 2080 ex 0602 9041 ex 0602 9045 ex 0602 9046 ex 0602 9047 ex 0602 9048 ex 0602 9050 ex 0602 9070 ex 0602 9091 ex 0602 9099	The official statement must confirm: <ul style="list-style-type: none"> <li>(a) that the plants have been grown in a place of production<sup>(1)</sup> which has been registered and supervised by the national plant protection organisation for a period of at least one year prior to the export of the plants,</li> <li>(b) that the place of production, together with a 200m zone surrounding the place of production, is known to be free from <i>Xylella fastidiosa</i> (Wells et al.) on the basis of official inspections, which included testing where appropriate, and were carried out at appropriate times during the 12 months prior to the export of the plants,</li> <li>(c) that the plants have been subjected to an annual official inspection at an appropriate time which included sampling and testing that confirmed the absence of <i>Xylella fastidiosa</i> (Wells et al.) and was carried out in accordance with international standards using a sampling scheme able to identify with 99% reliability a level of presence of infected plants of 1%,</li> <li>(d) that, immediately prior to their export, the plants were subjected to an official visual inspection for the presence of <i>Xylella</i></li> </ul>

(1) Details of the place(s) of production must also be included in the official statement.

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(1)	(2)	(3)	(4)
	Description of plants	CN code	Details of official statement
2.	Plants intended for planting, other than seeds, of <i>Lavandula</i> L., <i>Nerium oleander</i> L. or <i>Rosmarinus officinalis</i> L., originating in any third country		<p><i>fastidiosa</i> (Wells et al.) and, where any symptoms giving rise to a suspicion of its presence were observed, were tested in line with international standards for its presence, confirming its absence, and</p> <p>(e) where the place of production of the plants is located in an area where <i>Xylella fastidiosa</i> (Wells et al.) is known to occur, that the plants have been grown under complete physical protection for a period of at least four years prior to their export or, in the case of plants which are younger than four years, throughout their life.</p> <p>A phytosanitary certificate may not include any such official statement unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the place(s) of production.</p> <p>The official statement must confirm:</p> <p>(a) in the case of plants, other than unrooted cuttings:</p> <p>(i) that the plants have been grown in a place of production<sup>(1)</sup> which has been registered and supervised by the national plant protection organisation for a period of at least one year prior to the export of the plants,</p> <p>(ii) that the place of production, together with a 200m zone surrounding the place of production, is known to be free from <i>Xylella fastidiosa</i> (Wells et al.) on the basis of official inspections, which included testing, where appropriate, that was carried out at appropriate times,</p>

(1) Details of the place(s) of production must also be included in the official statement.

(1)	(2)	(3)	(4)
Description of plants	CN code	Details of official statement	
			<p>(iii) that the plants have been subjected to an annual official inspection at an appropriate time, which included sampling and testing that confirmed the absence of <i>Xylella fastidiosa</i> (Wells et al.) and was carried out in accordance with international standards using a sampling scheme able to identify with 99% reliability a level of presence of infected plants of 5%,</p> <p>(iv) that, immediately prior to their export, the plants were subjected to an official visual inspection for the presence of <i>Xylella fastidiosa</i> (Wells et al.) and, where any symptoms giving rise to a suspicion of its presence were observed, were tested in line with international standards for its presence, confirming its absence,</p> <p>(v) where there has been any evidence of the presence of the vector of <i>Xylella fastidiosa</i> (Wells et al.) at the place of production, that chemical and cultural controls have been used to suppress the vector, and</p> <p>(vi) where the place of production is located in an area where <i>Xylella fastidiosa</i> (Wells et al.) is known to occur, that:</p> <p>(aa) the plants have been grown throughout their life under complete physical protection, and</p> <p>(bb) appropriate hygiene measures have been implemented at the place of production to ensure that <i>Xylella fastidiosa</i> (Wells et al.) is not transmitted by tools or equipment</p> <p>(b) in the case of unrooted cuttings, that they derive from mother plants which were grown in accordance with the requirements</p>

(1) Details of the place(s) of production must also be included in the official statement.

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(1)	(2)	(3)	(4)
	<i>Description of plants</i>	<i>CN code</i>	<i>Details of official statement</i>
			specified in paragraph (a)(i) to (vi).  A phytosanitary certificate may not include any such official statement unless the national plant protection organisation of the country of origin has previously provided the national plant protection organisation of the United Kingdom with written details of the place(s) of production.

(1) Details of the place(s) of production must also be included in the official statement.

#### **Exception for controlled material in transit**

**2F.**—(1) Paragraphs 2(1), 2A(1), 2B(1), 2C(2), 2D(2) and 2E(1) do not apply to the introduction of any controlled material from a third country if the controlled material is in transit when it arrives in Scotland or is transhipped on its arrival in Scotland and the conditions in sub-paragraph (2) are met.

(2) The conditions are that the controlled material is—

- (a) accompanied by a transit declaration, and
- (b) packed and introduced in such a way that there is no risk of any Union quarantine pests, protected zone quarantine pests or pests subject to the measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation being spread on its introduction.

(3) No person may move any controlled material in transit through Scotland unless it is—

- (a) accompanied by a transit declaration, and
- (b) packed and transported in such a way that there is no risk of any Union quarantine pests, protected zone quarantine pests or pests subject to the measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation being spread on its movement through Scotland.”.

(4) In Part 3 (plants, plant products or other objects from another part of the Union territory)—

(a) after paragraph 3 insert—

“**3A.** No person may introduce any plants, other than fruit or seeds, of *Coffea* or *Polygala myrtifolia* L. which originate in any part of the Union territory, other than the United Kingdom.”,

(b) in paragraph 4—

(i) for the words “No person may introduce” to “the matters set out in the corresponding entry in column 3 of that Table.” substitute—

“(1) No person may introduce or move any plants, plant products or other objects described in column 2 of Table 1 unless “that person is a registered operator and the plants, plant products or other objects are accompanied by an official statement confirming the matters set out in the corresponding entry in column 3 of that Table, and, in the case of any plants described in column (2) of that table in respect of entry



5, they are individually labelled with a tamper proof label which contains details of their place of production.

(2) None of the requirements specified in point 17 of Annex 8 to the Phytosanitary Conditions Regulation are to be treated for the purposes of Articles 41(1) and 85(c) of the EU Plant Health Regulation as applying to the introduction of any plants or plant products described in column (2) of Table 1 in respect of entry 3.

(3) None of the requirements in Article 9 and 9a of Commission Implementing Decision (EU) 2015/789 are to be treated for the purposes of Article 85(d) of the EU Plant Health Regulation as applying to the introduction or movement of any plants described in column (2) of Table 1 in respect of entries 5 and 6.”

(ii) in Table 1, after entry 2 insert—

3. Plants intended for planting, other than seeds, of <i>Platanus</i> L., originating in any part of the Union territory, other than the United Kingdom	The official statement must confirm that the plants have been grown throughout their life in an area <sup>(1)</sup> established by the national plant protection organisation in accordance with ISPM 4 as an area that is free from <i>Ceratocystis platani</i> (J.M. Walter) Engelbr. & T.C. Harr.
4. Plants intended for planting, other than seeds, of <i>Ulmus</i> L., originating in any part of the Union territory, other than the United Kingdom	The official statement must confirm that no symptoms of <i>Candidatus</i> <i>Phytoplasma ulmi</i> have been observed at the place of production of the plants or in the immediate vicinity of the place of production since the beginning of the last complete cycle of vegetation.
5. Plants intended for planting, other than fruit or seeds, of <i>Olea europaea</i> L. or <i>Prunus dulcis</i> (Mill.) D.A. Webb, originating in any part of the Union territory, other than the United Kingdom	<p>The official statement must confirm:</p> <p>(a) that the plants have been grown in a place of production<sup>(2)</sup> which—</p> <p>(i) has been registered and supervised by the relevant competent authority in the member State of origin for a period of at least one year prior to their movement from the place of production, and</p> <p>(ii) has previously been notified by the competent authority to the national plant protection organisation of the United Kingdom,</p> <p>(b) that the place of production, along with a 200m zone surrounding the place of production, is known to be free from <i>Xylella fastidiosa</i> (Wells et al.) on the basis of official inspections, which included testing where appropriate, and were carried out at appropriate times during the 12 months prior to their movement from the place of production,</p> <p>(c) that the plants have been subjected to an annual official inspection at an appropriate time, which included sampling and testing that confirmed</p>

“(1) The name of the area(s) must be included in the official statement.

(2) Details of the place(s) of production must also be included in the official statement.

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- the absence of *Xylella fastidiosa* (Wells et al.) and was carried out in accordance with international standards using a sampling scheme able to identify with 99% reliability the level of presence of infected plants of 1%,
- (d) that, immediately prior to their movement from the place of production, the plants were subjected to an official visual inspection for the presence of *Xylella fastidiosa* (Wells et al.) and, where any symptoms giving rise to a suspicion of its presence were observed, were tested in line with international standards for its presence, confirming its absence, and
- (e) where the place of production of the plants is located in an area where *Xylella fastidiosa* (Wells et al.) is known to occur, that the plants have been grown under complete physical protection for a period of at least four years prior to their movement from the place of production or, in the case of plants which are younger than four years, throughout their life.
6. Plants intended for planting, other than seeds, of *Lavandula* L., *Nerium oleander* L. or *Rosmarinus officinalis* L., originating in any part of the Union territory, other than the United Kingdom
- The official statement must confirm:
- (a) in the case of plants, other than unrooted cuttings:
- (i) that the plants have been grown in a place of production<sup>(2)</sup> which—
- (aa) has been registered and supervised by the relevant competent authority in the member State of origin for a period of at least one year prior to the movement of the plants from the place of production, and
- (bb) has previously been notified by the competent authority to the national plant protection organisation of the United Kingdom,
- (ii) that the place of production, together with a 200m zone surrounding the place of production, is known to be free from *Xylella fastidiosa* (Wells et al.) on the basis of official inspections, which included testing, where appropriate, that was carried out at appropriate times,
- (iii) that the plants have been subjected to an annual official inspection at an appropriate time, which included sampling and testing that confirmed the absence of *Xylella fastidiosa* (Wells et al.) and was carried out in accordance with international standards using a sampling scheme able to identify with 99% reliability a level of presence of infected plants of 5%,

“(1) The name of the area(s) must be included in the official statement.

(2) Details of the place(s) of production must also be included in the official statement.

- (iv) that, immediately prior to their movement from the place of production, the plants were subjected to an official visual inspection for the presence of *Xylella fastidiosa* (Wells et al.) and, where any symptoms giving rise to a suspicion of its presence were observed, were tested in line with international standards for its presence, confirming its absence,
- (v) where there has been any evidence of the presence of the vector of *Xylella fastidiosa* (Wells et al.) at the place of production, that chemical and cultural controls have been used to suppress the vector, and
- (vi) where the place of production is located in an area where *Xylella fastidiosa* (Wells et al.) is known to occur, that:
  - (aa) the plants have been grown throughout their life under complete physical protection, and
  - (bb) appropriate hygiene measures have been implemented at the place of production to ensure that *Xylella fastidiosa* (Wells et al.) is not transmitted by tools or equipment,

in the case of unrooted cuttings, that they derive from mother plants which have been grown in accordance with the requirements specified in paragraph (a)(i) to (vi).”.

“(1) The name of the area(s) must be included in the official statement.

(2) Details of the place(s) of production must also be included in the official statement.

(5) After Part 3 insert—

## “PART 4

### Official controls on consignments from third country

5. In this Part—

“border control post” means a border control post in Scotland which has been designated pursuant to Article 59(1) of the Official Controls Regulation for the purposes of the rules referred to in Article 1(2)(g) of that Regulation,

“documentary check”, in relation to a schedule 1 consignment, means an examination of the phytosanitary certificate or transit declaration which is required to accompany the consignment on its introduction from a third country pursuant to Part 2,

“domestic import rule” means any prohibition, restriction or requirement in respect of the introduction of controlled material which applies by virtue of Part 2,

“identity check”, in relation to a schedule 1 consignment, means a visual inspection of the controlled material in the consignment to verify that its contents correspond to the information provided in the phytosanitary certificate or transit declaration accompanying the consignment,

“official controls” means activities performed by the Scottish Ministers or a plant health inspector pursuant to this Part to verify that the controlled material in a schedule 1 consignment complies with the domestic import rules relating to the material and that the operator of the consignment complies with this Part,

“operator”, in relation to a schedule 1 consignment, means the importer of the consignment, or the person acting on behalf of the importer who is in charge of the consignment when presented at the border control post of first arrival in Scotland and makes the necessary declarations to the Scottish Ministers,

“physical check”, in relation to the controlled material in a schedule 1 consignment, means any check on that material, the packaging of the consignment or its means of transport which, in the opinion of a plant health inspector, is necessary to verify that the controlled material complies with the domestic import rules relating to that material,

“plant health entry document” has the meaning given in paragraph 7(1).

(2) Where any controlled material is required to be accompanied by a phytosanitary certificate pursuant to Part 2, any reference in this Part to the controlled material complying with the domestic import rules relating to that material is to be construed as including its compliance with the matters certified in the official statement that has been included in the phytosanitary certificate in respect of the controlled material.

### **Application of this Part**

6.—(1) This Part applies to a schedule 1 consignment which is to be, or is, brought into the Union territory from a third country where its point of first arrival into the Union territory is in Scotland.

(2) But it does not apply to—

- (a) any schedule 1 consignment which forms part of the personal luggage of a passenger where the controlled material in the consignment is intended for personal consumption or use and does not include any plants for planting, or
- (b) any small schedule 1 consignment addressed to a natural person which is not intended to be placed on the market and does not include any plants for planting.

(3) Where a schedule 1 consignment contains any plant, plant product or other object which is not controlled material, and Article 47(1) of the Official Controls Regulation applies in relation to that plant, plant product or other object, this Part applies only for the purposes of the performance of official controls on the controlled material in the consignment.

### **Notification and presentation of schedule 1 consignments**

7.—(1) A “plant health entry document” is an entry document, in the form required by the Scottish Ministers, to be used—

- (a) for the prior notification of the arrival of the schedule 1 consignment at a border control post in Scotland, and
- (b) for the purposes of recording the outcome of official controls on the consignment and any decisions taken by a plant health inspector in relation to the consignment under this Part.

(2) The operator who is responsible for a schedule 1 consignment must complete the relevant part of the plant health entry document and submit the completed part of the plant health entry document to the Scottish Ministers—

- (a) in the case of a consignment which is to be brought in by air, at least four working hours before its expected arrival in Scotland,

- (b) in the case of a consignment which consists in whole or in part of unprocessed logs or sawn or chipped wood and is to be brought into a point of entry which only has a temporary border control post, at least three working days before its expected arrival in Scotland,
- (c) in the case of any other consignment, at least one working day before its expected arrival in Scotland.

(3) In the case of a schedule 1 consignment which is intended to be transhipped, the Scottish Ministers may by notice in writing require the operator who is responsible for the consignment to provide it, by the time or date specified in the notice, with the information set out in the notice in relation to the proposed transhipment.

(4) The operator who is responsible for a schedule 1 consignment must arrange for the consignment, together with the phytosanitary certificate or transit declaration accompanying the consignment, to be presented to the Scottish Ministers at the border control post of first arrival.

(5) In sub-paragraph (2)(b), “temporary border control post” means a border control post 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>(6)</sup>.

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

**8.** Where a plant health inspector suspects or is aware that a consignment which has arrived at a border control post in Scotland is a schedule 1 consignment and the operator who is responsible for the consignment has not presented the consignment to the Scottish Ministers in accordance with paragraph 7(4), the plant health inspector must serve a notice on the operator recalling the consignment and placing the consignment under official detention.

#### **Official controls to be performed on schedule 1 consignments**

**9.—(1)** The Scottish Ministers must perform official controls on a schedule 1 consignment at the border control post of arrival.

(2) Any documentary check, identity check or physical check in relation to a schedule 1 consignment must be performed in accordance with this Part by a plant health inspector.

(3) In the case of a schedule 1 consignment which is in transit, a plant health inspector may require the following official controls to be carried out before authorising any onward transit of the consignment—

- (a) a documentary check of the transit declaration and an examination of any other official documents accompanying the consignment,
- (b) a physical check of the consignment’s packaging and means of transport to verify that there is no risk of any Union quarantine pests, protected zone quarantine pests or pests subject to the measures adopted pursuant to Article 30(1) of the EU Plant Health Regulation being spread whilst in transit through the Union territory.

(4) In the case of a schedule 1 consignment which is being transhipped and remains, or is to remain, at the border control post of arrival for longer than the transhipment period, a plant health inspector may require the following official controls to be carried out—

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<sup>(6)</sup> OJ No. L 165, 21.6.2019, p.4.

- (a) a documentary check of the transit declaration and an examination of any other official documents accompanying the consignment,
- (b) an identity check or plant health check in relation to the consignment.

(5) In the case of any other schedule 1 consignment, a plant health inspector must carry out a documentary check, identity check and a physical check.

(6) Any documentary check, identity check or physical check which is carried out in relation to a schedule 1 consignment must, so far as possible, be carried out by a plant health inspector in the same manner as the inspector would carry out the check if the consignment were a consignment of plants, plant products or other objects referred to in Article 47(1)(c) of the Official Controls Regulation.

(7) Where a plant health inspector suspects that a schedule 1 consignment is likely to be, or has been, brought into Scotland from a third country in contravention of a domestic import rule or that any controlled material in the consignment may not otherwise comply with any of the domestic import rule relating to the controlled material in the consignment, the plant health inspector must serve a notice on the operator who is responsible for the consignment—

- (a) placing the consignment under official detention, and
- (b) prohibiting the entry of the consignment into Scotland,

pending the outcome of any additional official controls on the consignment which the inspector considers are necessary to confirm or to eliminate that suspicion.

(8) In this paragraph, “transshipment period” means—

- (a) in relation to an airport, three days or more,
- (b) in relation to any other port, 30 days or more.

### **Completion of official controls**

**10.** Following the completion of official controls on a schedule 1 consignment, a plant health inspector must—

- (a) decide whether the controlled material in the consignment complies with the domestic import rules relating to that material and, where relevant, indicate the applicable customs procedure for the consignment,
- (b) finalise the plant health entry document for that consignment, and
- (c) where the finalised plant health entry document authorises the placing and handling of the consignment under a relevant customs procedure and the consignment was accompanied by a phytosanitary certificate, provide the operator who is responsible for the consignment with an authenticated copy of the phytosanitary certificate or, if the consignment is to be split, with authenticated copies of the phytosanitary certificate for each part of the split consignment.

### **Removal of schedule 1 consignments from border control posts of arrival**

**11.—(1)** No person may remove a schedule 1 consignment from its border control post of arrival or split the consignment unless—

- (a) the finalised plant health entry document for that consignment authorises the placing and handling of the consignment under a relevant customs procedure and, following the presentation of the finalised plant health entry document to HMRC, HMRC has authorised the placing of the consignment under a customs procedure, or
- (b) a plant health inspector has served a notice on the person pursuant to paragraph 12 or 13 authorising its removal from that border control post.

(2) Where a customs declaration is made for a schedule 1 consignment and the finalised plant health entry document for that consignment is not presented to HMRC, HMRC are to notify the Scottish Ministers.

(3) Where a schedule 1 consignment is permitted to leave its border control post pursuant to sub-paragraph (1), a plant health inspector may by notice in writing specify which documents (if any) must accompany the consignment to its place of destination.

(4) In this paragraph, “HMRC” means Her Majesty’s Revenue and Customs.

### **Measures to be taken on non-compliant schedule 1 consignments**

**12.**—(1) Where a plant health inspector is of the opinion that a schedule 1 consignment has been brought into Scotland in contravention of a domestic import rule or that it does not otherwise comply a domestic import rule relating to the controlled material in the consignment, the plant health inspector must—

- (a) place the consignment under official detention and refuse its entry into Scotland,
- (b) where it is not necessary to take action immediately to respond to the risk to plant health posed by the consignment, consult the operator who is responsible for the consignment in relation to the measures to be taken to deal with the non-compliance, and
- (c) without delay, serve a notice on the operator who is responsible for the consignment ordering the operator to—
  - (i) destroy the consignment or, where appropriate, particular lots in the consignment,
  - (ii) re-dispatch the consignment to a third country,
  - (iii) treat the controlled material in the consignment in a manner that ensures that the risk to plant health arising from the controlled material is eliminated and that it otherwise complies with the domestic import rules relating to the controlled material, or
  - (iv) take any other measures which are necessary to ensure that the domestic import rules relating to the controlled material in the consignment are met, and
- (d) invalidate the phytosanitary certificate or transit declaration accompanying the consignment (as the case may be).

(2) A plant health inspector may only serve a notice pursuant to sub-paragraph (1)(c) ordering the operator who is responsible for the consignment to re-dispatch the consignment to a third country if the proposed destination has been agreed with the operator.

(3) The operator who is responsible for a schedule 1 consignment which is detained pursuant to this paragraph must store the consignment and take the measures specified in the notice served pursuant to sub-paragraph (1)(c) at the operator’s own expense.

### **Measures to be taken on schedule 1 consignments**

**13.**—(1) This paragraph applies where—

- (a) the official controls carried out by a plant health inspector pursuant to this Part indicate that the controlled material in a schedule 1 consignment complies with the domestic import rules relating to that material,
- (b) although the controlled material in the consignment complies, or appears to comply, with those domestic import rules, the inspector is of the opinion that the consignment poses a risk to plant health in Scotland or to any other part of the Union territory, and

- (c) Article 67 of the Official Controls Regulation does not apply to the consignment.
- (2) The plant health inspector must—
  - (a) place the consignment under official detention and ensure that the consignment is isolated or quarantined,
  - (b) without delay, serve a notice on the operator who is responsible for the consignment ordering the operator to—
    - (i) destroy the consignment, or
    - (ii) treat the controlled material in the consignment in a manner that ensures that the risk to plant health arising from the controlled material is eliminated and that it otherwise complies with the domestic import rules or EU plant health rules relating to the controlled material, and
  - (b) invalidate the phytosanitary certificate or transit declaration accompanying the consignment (as the case may be).

#### **Notification of decisions to refuse the entry of a schedule 1 consignment into Scotland**

**14.** The Scottish Ministers must ensure that any decision by a plant health inspector to refuse a schedule 1 consignment entry into Scotland is immediately notified in writing to—

- (a) the Commission,
- (b) the competent authorities of other member States,
- (c) the national plant protection organisation of the third country of origin, and
- (d) the operator who is responsible for the consignment.

#### **Notices under this Part**

**15.—(1)** A notice in relation to a schedule 1 consignment under this Part may include any of the following—

- (a) the measures that the operator who is responsible for the consignment must take to isolate or quarantine the consignment or otherwise deal with the risk to plant health arising from the consignment,
- (b) where a plant health inspector requires the consignment to be destroyed or otherwise disposed of, re-exported or treated, the measures that the operator who is responsible for the consignment must take to destroy or otherwise dispose of, re-export or treat the consignment,
- (c) any other measures which the plant health inspector considers are appropriate in the light of the suspected or known contravention or the risk to plant health in Scotland or to any other part of the Union territory arising from the consignment.”.

#### **Amendment of schedule 2**

**21.—(1)** Schedule 2 (specific measures relating to certain solanaceous species) is amended as follows.

(2) In Part 3 (measures for the control of Potato Wart Disease), in paragraph 9(1), after “of this schedule” insert “a plant health inspector must serve a notice under regulation 15 requiring that”.

(3) In Part 6 (measures for the control of Potato Ring Rot), in paragraph 29(1), for heads (a) and (b) substitute—

- “(a) a plant health inspector must serve a notice under regulation 15 requiring that no person may—



- (i) knowingly plant that material, or
  - (ii) knowingly cause or permit that plant material to be planted, and
- (b) the notice under regulation 15 must require that material to be disposed of in accordance with sub-paragraph (2)".
- (4) In Part 7 (measures for the control of *Ralstonia solanacearum* (Smith) Yabuuchi *et al.*), at paragraph 40(1), after “of this schedule” insert “the plant health inspector must serve a notice under regulation 15 requiring that”.
- (5) At the end insert—

## “PART 8

### Measures relating to potatoes originating in Egypt

**48.**—(1) In this paragraph, “potatoes originating in Egypt” means any tubers of *Solanum tuberosum* L., grown in Egypt, which are introduced into the Union territory under Commission Implementing [Decision 2011/787/EU](#).

- (2) Subject to sub-paragraph (3), no professional operator may—
- (a) move any Egyptian potatoes within Scotland unless they are labelled to indicate that they originate in Egypt,
  - (b) carry out in the course of business any treatment, including washing, of potatoes originating in Egypt other than in premises that the Scottish Ministers have approved in writing for that purpose.
- (3) Sub-paragraph (2) does not apply to the packing or preparation of potatoes in a shop, restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) for delivery to the final consumer.
- (4) On having reasonable grounds for suspecting a contravention or likely contravention of sub-paragraph (2), a plant health inspector may exercise the powers conferred by regulation 15 as if a potato originating in Egypt was, within the meaning of regulation 14, prohibited material which the inspector suspects to be present or likely to be present, or which the inspector has become aware is present, on any premises for the purposes of that regulation.”.

### Amendment of schedule 3

- 22.**—(1) Schedule 3 (offences: relevant provisions in the EU regulations) is amended as follows.
- (2) In Part 1 (the EU Plant Health Regulation), in the first column of the table (provision of the EU Plant Health Regulation)—
- (a) in the entry relating to Article 41(1), after “48(1)” insert “and paragraphs 2A(2), 2C(3), and 4(2) of Part 2 of schedule 1”,
  - (b) in the entry relating to Article 66(1), after “Article 66(1)” insert “(as read with Article 65(3))”,
  - (c) in the entry relating to Article 66(5), after “Article 66(5)” insert “(as read with Article 65(3))”,
  - (d) in the entry relating to Article 69(1), after “Article 69(1)” insert “(as read with Articles 65(3) and 69(3))”,
  - (e) in the entry relating to Article 69(2), after “Article 69(2)” insert “(as read with Article 69(3))”,

- (f) in the entry relating to Articles 72(1) and 73, after “73” insert “(as read with paragraphs 2A(2), 2C(3) and 2E(2) of Part 2 of schedule 1)”,
- (g) in the entry relating to Article 85, after “87” insert “and paragraph 4(2) or (3) of Part 3 of schedule 1”.

(3) In Part 2 (the Official Controls Regulation), in the first column of the table (provision of the Official Controls Regulation), for the words “Article 47(5) (as read with the provisions of a delegated act that establishes certain categories of animals and goods exempted from Article 47, made by the Commission under Article 48)” to the end substitute—

“Article 47(5) as read with Articles 5 and 7 of Commission Delegation Regulation (EU) 2019/2122 of 10 October 2019 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards certain categories of animals and good 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 and amending [Commission Regulation \(EU\) No 142/2011](#)(7)

(4) In Part 3 (other EU legislation), at the end insert—

<b>“Commission Delegated Regulation (EU) 2019/2124 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for official controls of consignments of animals and goods in transit, transhipment and onward transportation through the Union(8)</b>	
Article 5(a) and (b)	Requires the operator who is responsible for a relevant consignment that has been given authorisation for onward transportation to enter certain details in the common health entry document and submit the common health entry document.
Article 6	Requires the operator who is responsible for a relevant consignment that has been given authorisation for onward transportation to comply with the specified conditions relating to its transportation and storage.
Article 16(1) and (3)	Requires the operator who is responsible for a transhipped relevant consignment to notify the specified information to competent authorities.
Article 22(4)	Requires the operator who is responsible for a relevant consignment that is in transit through the Union territory to take specific measures relating to the transportation of the consignment.”.

#### **Amendment of schedule 4**

**23.**—(1) Schedule 4 (offences: EU decisions relating to plant health) is amended as follows.

(2) In the second column of the table (provision of EU instrument)—

- (a) in the entry relating to Commission Implementing Decision (EU) 2015/789—
- (i) omit the words from “Article 9” to “demarcated areas”,
  - (ii) omit the words from “Article 16” to the end.
- (b) in the entry relating to Commission Implementing Decision (EU) 2019/1739, for “Canada, India or the USA” substitute “third countries”,

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(7) OJ No. L 321, 12.12.2019, p.45.

(8) OJ No. L 321, 12.12.2019, p.73.

- (c) in the entry relating to Commission Implementing Decision (EU) 2019/2032 omit the words from “Article 2” to “of the specified organism”.

#### **Amendment of the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014**

**24.** In regulation 6 (revocations) of the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014<sup>(9)</sup>—

- (a) in paragraph (1), omit sub-paragraph (a),
- (b) in paragraph (2) omit the words “regulation 6 of the Potatoes Originating in Egypt (Scotland) Regulations 2004 or”.

#### **Amendment of the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015**

**25.** In regulation 2(1) (interpretation: Scotland) of the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015<sup>(10)</sup>—

- (a) for the definition of “licence” substitute—
- ““licence” means—
- (a) a licence referred to in regulation 50(1) of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019<sup>(11)</sup> that has been granted by the Scottish Ministers; or
- (b) an authorisation described in regulation 20(1)(a) or (b) or 21(1)(a) of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019;”
- (b) after the definition of “the Official Controls Regulation” insert—
- ““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 the Council, as regards protective measures against pests of plants;
- “plant health inspector” means an official plant health officer appointed by the Forestry Commissioners for the purposes of the Plant Health (Official Controls and Miscellaneous Provisions)(Scotland) Regulations 2019;”
- (c) for the definition of “plant passport authority” substitute—
- ““plant passport authority” means an authorisation described in Article 89(1) of the EU Plant Health Regulation granted by the Scottish Ministers;”
- (d) for the definition of “remedial notice” substitute—
- ““remedial notice” means a notice served by a plant health inspector under regulation 10(2) or 15(1) or (2) of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019;”
- (e) for the definition of “remedial work” substitute—
- ““remedial work” means any steps taken by a person for the purposes of complying with a remedial notice, or by a plant health inspector under regulation 16(1) of the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019;”
- (f) for the definition of “WPM authorisation” substitute—

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<sup>(9)</sup> S.S.I. 2014/338, as relevantly amended by S.S.I. 2019/421.

<sup>(10)</sup> S.I. 2015/350, as relevantly amended by S.S.I. 2019/421.

<sup>(11)</sup> S.S.I. 2019/421.

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““WPM authorisation” means an authorisation referred to in Article 98(1) of the EU Plant Health Regulation and granted by the Scottish Ministers.”.

**Revocations**

**26.** The instruments listed in column 1 of the table in the schedule are revoked to the extent specified in the corresponding entry in column 3 of that table.

St Andrew’s House,  
Edinburgh  
13th May 2020

*MAIRI GOUGEON*  
Authorised to sign by the Scottish Ministers

## SCHEDULE

Regulation 26

## Revocation of instruments

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Instrument revoked</i>	<i>Reference</i>	<i>Extent of revocation</i>
The Potatoes Originating in Egypt (Scotland) Regulations 2004	<a href="#">S.S.I. 2004/111</a>	The whole instrument
The Potatoes Originating in Egypt (Scotland) Amendment Regulations 2007	<a href="#">S.S.I. 2007/94</a>	The whole instrument
The Potatoes Originating in Egypt (Scotland) Amendment Regulations 2012	<a href="#">S.S.I. 2012/37</a>	The whole instrument
The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019	<a href="#">S.S.I. 2019/421</a>	Schedule 5, paragraph 4

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

These Regulations amend the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Regulations 2019 (“the Principal Regulations”).

Regulation 3 amends interpretation provision in regulation 2 of the Principal Regulations to insert definitions of general relevance to forestry provision in the Principal Regulations.

Regulation 4 inserts a new regulation 3A into the Principal Regulations identifying the following pests to which Article 30 of the EU Plant Health Regulation applies.

- (a) *Epitrix cucumeris* (Harris), *Epitrix papa* sp.n., *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner),
- (b) *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyuma & Goto,
- (c) Rose rosette virus,
- (d) Tomato brown rugose fruit virus.

This replaces and expands on provision in regulation 27 of the Principal Regulations in respect of Rose rosette virus and Tomato brown rugose fruit virus. Regulation 27 of the Principal Regulations is revoked by regulation 13 of these Regulations.

Regulation 5 amends regulation 5 of the Principal Regulations in relation to designation of the competent authority, to update interpretation provision.

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Regulation 6 substitutes a new regulation 6 of the Principal Regulations in relation to the disclosure of information between competent authorities on matters relating to Plant Health.

Regulation 7 amends regulation 7 of the Principal Regulations to insert a derogation in respect of forestry material being introduced into Scotland by air.

Regulations 8, 9, and 18(a) amend the Principal Regulations to reflect amendments to schedule 1 of the Principal Regulations by regulation 20 of these Regulations.

Regulation 10 substitutes a new regulation 21 of the Principal Regulations in relation to authorisations granted by the Scottish Ministers to prevent the establishment or spread of harmful pests in Scotland. Regulation 19 makes a consequential amendment to regulation 51 of the Principal Regulations.

Regulations 11, 13, 16 and 17 amend the Principal Regulations to introduce measures relating to wood and wood packaging material.

Regulations 14 and 15 amend regulations 29 and 30 of the Principal Regulations to update provision in relation to plant health inspectors' powers of entry.

Regulation 18 amends regulation 37 of the Principal Regulations to update provision on offences in consequence of other amendments made to the Principal Regulations by these Regulations.

Regulation 20 amends schedule 1 (temporary national measures) of the Principal Regulations and imposes additional measures under Article 52 of the EU Plant Health Regulation to prevent the establishment or spread of the following harmful plant pests in Scotland—

- (a) *Ceratocystis platani* (J.M. Walter) Engelbr. & T.C. Harr.
- (b) *Candidatus Phytoplasma ulmi*,
- (c) *Agrilus planipennis* Fairmaire, and
- (d) *Xylella fastidiosa* (Wells et al.).

Regulation 20 also makes provision to prohibit, or impose additional phytosanitary conditions on, the introduction of certain plants, plant products or other objects from third countries into Scotland and makes provision to enable official controls to be carried out on those plants, plant products or other objects on their arrival in Scotland.

Regulation 21 amends schedule 2 of the Principal Regulations in relation to plant health inspectors powers in the context of measures relating to certain solanaceous species.

Regulation 22 amends schedule 3 of the Principal Regulations which makes provision for offences in relation to the EU Plant Health Regulation, the Official Controls Regulation and certain other EU Regulations.

Regulation 23 amends schedule 4 of the Principal Regulations which makes provision for offences in relation to EU decisions relating to plant health.

Regulation 24 makes provision for minor and consequential amendments to the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014.

Regulation 25 makes provision for minor and consequential amendments to the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015.

Regulation 26 introduces schedule 1 (revocation of instruments).

No impact assessments have been prepared for these Regulations, as no, or no significant impact on the private or voluntary sector is foreseen.