

The Presiding Officer
c/o The Chamber Desk
Room G10
Scottish Parliament
Edinburgh
EH99 1SP

16 June 2020

Dear Presiding Officer

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

The Plant Health (Official Controls and Miscellaneous Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (the “2020 Regulations”) were made by the Scottish Ministers under section 2(2) of the European Communities Act 1972 today, 16 June 2020, and are being laid before the Scottish Parliament this afternoon. Part of the provisions contained within the 2020 Regulations are due to come into force on 26 June, with the remainder coming into force on the 27 June 2020.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, it has not been possible to comply with this requirement. In accordance with the requirements of section 31(3) of that Act, this letter explains why this requirement has been breached.

The EU Plant Health Regulation (Regulation (EU) 2016/2031) and the EU Official Controls Regulation (Regulation (EU) 2017/625) and associated tertiary legislation (“the EU Regulations”) establish controls and restrictions which apply to the imports from third countries, and internal movement within and between EU Member States, of certain plants, plants pests and other material (such as soil). The purpose of the EU Regulations is to help reduce biosecurity risk, strengthen the current plant health regime and protect the environment from the spread of harmful pests. The EU Regulations in so far as they relate to plant health, were implemented through domestic legislation - the Plant Health (Official Controls and Miscellaneous Provision) (Scotland) Regulations 2019 (SSI 2019/421) (the “2019 Regulations”).

Since the introduction of the 2019 Regulations, subsequent amendments were needed and after due diligence and careful consideration, it was agreed to take this opportunity to bring forward provision under Article 52 (temporary national measures) of the EU Plant Health Regulation for four pests, *Agrilus Planipennis*, *Candidatus Phytoplasma ulmi*, *Ceratocystis plantani* and *Xylella fastidiosa*. The introduction of these measures and other provisions were

to be made through the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Amendment Regulations 2020 (“SSI 2020/152”), which were laid before the Scottish Parliament on 15 May 2020 and are due to come into force on 27 June 2020. Equivalent measures were introduced in England from 21 April 2020 (see amendments in the Official Controls (Plant Health and Generically Modified Organisms) (England) (Amendment) Regulations 2020 (SI 2020/381)) and the other Devolved Administrations were starting their parliamentary procedures.

On receipt of the UK notification to introduce temporary national measures under Article 52 of the EU Regulations, the European Commission took the opportunity to review the requirements being introduced in respect of two of the four plant pests namely *Ceratocystis plantani* and *Xylella fastidiosa*. Their review concluded that the new UK measures in relation to those pests were not justified.

Subsequently, the Commission has, in accordance with Article 52(4) of the EU Plant Health Regulation, and adopted and published Commission Implementing Decision 2020/758 requiring the revocation of the equivalent provisions relating to these pests for which provision was made in the Official Controls (Plant Health and Generically Modified Organisms) (England) (Amendment) Regulations 2020. In light of that Decision, SSI 2020/152 is revoked by the 2020 Regulations in its entirety before it comes into force. The 2020 Regulations also remake the content of SSI 2020/152 with the provisions relating to the two pests addressed in Commission Implementing Decision 2020/758 removed.

The remainder of the provisions from SSI 2020/152 are to be retained as they implement further required measures associated with plant health and imported wood and wood packaging material under the EU Regulation and associated tertiary legislation including other temporary national measures not the subject of Decision 2020/758.

The provision relating to the revocation of SSI 2020/152 is due to come into force on 26 June 2020 (the day before SSI 2020/152 was to come into force) and the remainder of the 2020 Regulations will come into force on 27 June 2020, the date on which SSI 2020/152 was originally to come into force.

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