

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Sixteenth Delegated Legislation Committee

DRAFT PLANT HEALTH (EU EXIT)
REGULATIONS 2019

DRAFT PLANT HEALTH (AMENDMENT)
(ENGLAND) (EU EXIT) REGULATIONS 2019

Tuesday 19 March 2019

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The Committee consisted of the following Members:

Chair: MR VIRENDRA SHARMA

Bradshaw, Mr Ben (<i>Exeter</i>) (Lab)	† Jones, Mr David (<i>Clwyd West</i>) (Con)
† Caulfield, Maria (<i>Lewes</i>) (Con)	† Martin, Sandy (<i>Ipswich</i>) (Lab)
† Coffey, Dr Thérèse (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>)	† Percy, Andrew (<i>Brigg and Goole</i>) (Con)
† Coyle, Neil (<i>Bermondsey and Old Southwark</i>) (Lab)	† Quince, Will (<i>Colchester</i>) (Con)
† Cruddas, Jon (<i>Dagenham and Rainham</i>) (Lab)	† Rashid, Faisal (<i>Warrington South</i>) (Lab)
† Debonnaire, Thangam (<i>Bristol West</i>) (Lab)	† Seely, Mr Bob (<i>Isle of Wight</i>) (Con)
† Flint, Caroline (<i>Don Valley</i>) (Lab)	† Stewart, Iain (<i>Milton Keynes South</i>) (Con)
† Garnier, Mark (<i>Wyre Forest</i>) (Con)	Jack Dent, <i>Committee Clerk</i>
† Grant, Bill (<i>Ayr, Carrick and Cumnock</i>) (Con)	† attended the Committee
† Hill, Mike (<i>Hartlepool</i>) (Lab)	

Sixteenth Delegated Legislation Committee

Tuesday 19 March 2019

[MR VIRENDRA SHARMA *in the Chair*]

Draft Plant Health (EU Exit) Regulations 2019

2.30 pm

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Dr Thérèse Coffey): I beg to move,

That the Committee has considered the draft Plant Health (EU Exit) Regulations 2019.

The Chair: With this it will be convenient to discuss the draft Plant Health (Amendment) (England) (EU Exit) Regulations 2019.

Dr Coffey: It is a pleasure to serve under your chairmanship today, Mr Marsha. The regulations, together with the Plant Health (Amendment) (England) (EU Exit) Regulations 2019, amend the existing domestic legislation that implements the EU's plant health directive. That directive is implemented in England by the Plant Health (England) Order 2015 and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005, which extends to Great Britain. The existing orders set out obligations for the control and management of plant health risks arising from import from third countries and movement within the EU single market of plant material in order to protect biosecurity and the £8 billion value of plant material to the economy, society and the environment.

This is a new statutory instrument covering obligations on plant health authorities, relating to retained EU law on plant health, which arise when we leave the EU. The instrument contains amendments to retained EU law to address technical deficiencies and inoperability issues. It sets out the import requirements from exit day to trading partners around the world regarding the harmful plant pests we want to stay free from, and the plants and plant products for which we require assurances that they have met our prescribed requirements. It also provides clarity to businesses on the pests, plants and plant products that will be regulated within the UK.

The requirements complement the Plant Health (Amendment) (England) (EU Exit) Regulations 2019, which set out the processes that businesses must follow regarding imports and internal movements of the plants and plant products subject to regulation. The instrument's main purpose is to re-enact the existing list of harmful pests and plant material that apply in England, Wales and Northern Ireland and related import and movement requirements, with appropriate amendments to reflect the UK's withdrawal from the EU.

Scottish Ministers have decided to introduce separate legislation in Scotland and their equivalent legislation will include the existing risks, and thus give effect to UK-wide arrangements. Even though plant health is devolved, the devolved Administrations have worked closely in developing their EU exit legislation to ensure a co-ordinated approach. As a result, these regulations

apply to England, Wales and Northern Ireland, with the equivalent arrangements in Scotland. In practice, this means we have a common list of regulated pests and plant material across the UK on exit day that remain the same as in our existing list, which transposes the EU's list of harmful pests and material.

The instrument also sets out amendments to deal with technical deficiencies and retain directly applicable EU legislation to ensure plant health legislation operates effectively. For example, it provides derogations to facilitate the import of specified material, such as bonsai plants from Japan, to ensure this trade can continue under the same conditions after exit. Similarly, the instrument sets out the actions required by UK plant health authorities in England, Wales and Northern Ireland to control certain pests, such as *Xylella fastidiosa*, in the event of outbreaks—not that we want an outbreak of that. For this instrument, the plant health authority is the Secretary of State in relation to England; the Welsh Ministers in relation to Wales; and the Department of Agriculture, Environment and Rural Affairs in relation to Northern Ireland. The forestry commissioners are the relevant authority for timber and forest pests in England.

Technical expertise and advice to Ministers, as well as actions to control outbreaks, will continue to be provided by Government officials and agencies, including the Animal and Plant Health Agency. Our long-established UK plant health risk group provides a good example of how the UK's plant health authorities and agencies work together to develop specific technical and scientific advice to UK Ministers on managing risks to plant health. This instrument is necessary to ensure that an operable legal framework is in place for exit day and to facilitate the flow of goods, while preserving the current plant health regime's overall aim of preventing and managing pest disease and disease threats. I assure the Committee that Welsh Government Ministers and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland have given their consent for this instrument.

The Plant Health (Amendment) (England) (EU Exit) Regulations 2019 are complementary, as I indicated. The existing orders set out obligations on businesses on the control and management of plant health risks arising from the import from third countries and movement within the EU single market of plant material in order to protect biosecurity and the £8 billion value of plant material. As I have set out, the instrument amends the existing orders to address technical deficiencies and inoperability issues relating to retained EU law on plant health. The key point of this second instrument is that it provides clarity to businesses on the requirements that they need to meet and the authorisations and checks they will be subject to when importing or moving regulated plants and plant products. As is set out in the other regulations, they will set out the list of pests and diseases in plant material that is subject to regulation.

I should make clear that, although businesses will see some changes to import arrangements, those are risk-focused, avoiding unnecessary new burdens while, importantly, preserving the current plant health regime's overall aim of preventing the introduction and spread of pest and disease threats. They do not in any way diminish our controls in this important area and seek to protect biosecurity, while continuing to facilitate trade in plant material.

As I have said, the purpose of the regulations is to correct technical deficiencies—for example, revising definitions to be UK-based instead of EU-based. The instrument also transposes provisions in certain Council directives in relation to the control of relevant potato pests. The aim is to provide clarity to third countries that, following exit, the UK will continue to maintain the same control over the production of potatoes.

There are two aspects in the instrument in relation to the changes to import arrangements that I highlighted. First, regulated plant material that currently enters the UK from the EU or Switzerland with an EU or Swiss plant passport will in future require a phytosanitary certificate, in line with international obligations. This applies mainly to plants for planting and will ensure that we maintain the biosecurity assurances currently provided by the EU plant passport regime once we leave. In order to maintain the flow of goods, this regulated plant material from the EU or Switzerland will not be subject to routine physical checks at the border. That recognises that biosecurity risks from such material do not change immediately on exit day.

Secondly, businesses wishing to bring third-country regulated goods, such as tomatoes from Morocco and cut flowers from Israel and Turkey, into England via the European Union and through roll-on/roll-off ports in England will be required to facilitate plant health checks, which will take place inland at approved premises prior to their release. These new inland checks are necessary to maintain the biosecurity assurances currently provided by checks at the EU border given that other EU member states will no longer be required to carry out those checks on goods in transit for the UK after we leave the European Union.

Mike Hill (Hartlepool) (Lab): On a point of clarification, by “plants”, does the Minister also mean trees? I have recently met with the Woodland Trust, which is very concerned about diseases such as ash dieback. They want to properly protect our indigenous species, and this is the way to go about it.

Dr Coffey: Yes, I do. The forestry commissioners will be the relevant authority in that regard. The majority of ash dieback issues are blown in, so there is nothing we can do about that anyway. The key issue for us is to protect our domestic forests and woodlands from biosecurity risks.

The direct cost on businesses arising from these changes to import arrangements is expected to be low. Officials have held discussions with key stakeholders on the development of our approach to this instrument and the changes to import requirements, and they continue to engage with businesses to support preparation for day one changes.

This instrument also provides for a system of UK plant passports to replace EU plant passports to maintain existing safeguards, to protect biosecurity from the trade in regulated plant material within the UK. The costs and burdens on businesses using plant passports should not change.

The other amendments are: a new offence in relation to the new import regulations just outlined; a new offence to force any failure by businesses or landowners to comply with pest control measures specified in a

statutory notice in demarcated areas where there is a pest outbreak; and consequential minor amendments to inspection fees. These regulations apply to England only. Wales, Northern Ireland and Scotland will hold separate equivalent legislation just as they do now. This second instrument is necessary to ensure that an operable legal framework is in place for exit day to facilitate the flow of goods while preserving the current plant health regime’s overall aim of preventing and managing pest and disease threats.

2.41 pm

Sandy Martin (Ipswich) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma. The two statutory instruments we are supposedly considering today are 210 and 58 pages long respectively. I say “supposedly” because I do not suppose for one moment that many people in this room have carefully read both documents and fully understand exactly what each one says. We had less than a week’s notice of them being tabled for today. Stakeholders whose pertinent contributions may have been able to influence amendments to the SIs have, for the most part, not responded at all because they are simply overwhelmed by the volume of SIs and are unable to engage.

The Government are proceeding with these SIs because they have to, but the process has become nothing more than a manic tick-box exercise. It did not have to be like this. We have had two and a half years to sort out a deal, and yet the threat of a no-deal Brexit remains very real, with just 10 days to go and a mountain of work still to be done if we do leave without a deal. If the Government intended to maintain the possibility of a no-deal Brexit, we should have started working our way through these SIs months ago, but we only got going on them this year. I confidently predict that there will be mistakes—perhaps not in these particular SIs, but in some of them—and that they will have serious consequences for our residents and businesses over and above the massive overarching mistake, which is the way in which this Government are failing to handle Brexit.

Yesterday the hon. Member for Camborne and Redruth (George Eustice) suggested in response to an intervention of mine that, because of their dedication and professionalism, officials who have worked very late into the night on the hundreds of SIs needed in a short amount of time cannot possibly have made any mistakes. Nobody has more boundless admiration than I for the people who have produced all this difficult and detailed secondary legislation, and I would like to put on the record Labour Members’ appreciation for their work. However, anyone put under that amount of pressure and who has to juggle a number of separate SIs simultaneously is susceptible to inadvertent error. It is of great importance that there is no mistake in these SIs.

Those of my age will remember the magnificent elm trees that used to grace our countryside. We now have ash dieback destroying our ash trees and blight sapping the strength of our horse chestnuts. It is a continuous battle to protect our crops and our wild flowers from exotic diseases and bacteria such as *Xylella fastidiosa*, and the presence of diseases and pests in imported plants is an ever-present danger to our native species. As pointed out by my hon. Friend the Member for Workington (Sue Hayman) during a Westminster Hall debate in June 2018, Prospect recently submitted evidence

[Sandy Martin]

to the House of Lords EU Energy and Environment Sub-Committee inquiry into biosecurity, recommending better training for plant health officers. Does the Minister agree that we need to establish a viable training programme for new and established inspectors, as well as joint trading ventures with the Horticultural Trades Association and the Royal Horticultural Society?

Dealing with pests and pathogens once they are in the UK will be far more difficult and more expensive than it would be to prevent their introduction in the first place. Given the volume of UK-EU trade, which we all hope will not diminish too much as a result of Brexit, the current system for sharing biosecurity intelligence with EU countries must continue in some form. Any loss of that integrated approach would pose a risk to UK biodiversity. Will the Minister commit to retaining the precautionary principle in implementing biosecurity legislation? Have the Government put any thought into a plan to deliver future biosecurity collaboration with the EU post-Brexit?

The Plant Health (EU Exit) Regulations 2019 set up lists for England, Wales and Northern Ireland that replicate current EU lists. They ensure that protected zones can continue to be protected from pests and that emergency measures can continue to be applied where necessary. However, a large raft of EU legislation is being revoked because it is considered to be redundant. Has the Minister looked carefully at schedule 17? Has someone other than the authors of the SI, and with a vested interest in finding any mistakes, been through it with a fine-tooth comb? This is precisely the sort of area—the revocation of supposedly redundant regulations—where it might be easy to make a mistake.

The schedule revokes only 24 EU regulations and Commission decisions, but given that I have not had a few weeks to read through them I am afraid that I cannot say whether they are all redundant. The EU plant health directive requires checks on material imported from third countries at the first point of entry into the EU. However, once we have left the EU the intention is to allow plant material from third countries to pass straight through the EU without checking, to enter the EU without checking at the border, and to rely on checks at the destination premises of the importers. How do the Government intend to ensure that all the plant material brought into this country from third countries without checks is actually going to be checked? How will they ensure that no invasive species, pests or diseases escape into the environment between their entry into this country and being checked at the destination premises?

Does the Minister believe that it is more appropriate to offer a lighter-touch inspection regime to imports via ro-ro ferries than to other forms of transportation? Surely, the situation will give importers an added incentive to use ro-ro, which is a less environmentally friendly form of transport than other alternatives. Have the Government made any estimates of the amount of plant material that is imported from third countries via the EU every year? As it is not currently checked, I am not clear that we know how much there is or, therefore, what resources will be needed to check it. If those imports are not checked properly at the multiple inland destinations at which the checking will take place, does the Minister agree that there will be risks for biosecurity?

The explanatory memorandum details the additional costs that will be faced by businesses as a result of needing to use a UK plant passport and having to pre-notify for imports from the EU. I cannot find any acknowledgement of the additional regulatory costs that may be entailed by exporting plant material from this country to remaining EU countries. Can the Minister give us any information about the regime for exporting plant material from the UK to the remaining EU countries, or does she not expect that to happen in the future?

We cannot find anything in these SIs that we believe to be fundamentally wrong, but at the same time we fear that they may contain mistakes or inadequacies that could have serious consequences for plant health in the UK after Brexit. We have had neither the time nor the resources to satisfy ourselves that that is not a danger.

2.49 pm

Dr Coffey: I thank the hon. Member for Ipswich for his questions. There has been direct engagement with stakeholders. Officials prepared for that in anticipation of what was needed.

The hon. Gentleman referred to databases. There is some precedent for third-country access to EU notification systems, which we will seek to negotiate with the European Union. However, we have contingency plans for the eventuality that we lose access to such notification systems. We are developing our own database to capture the details of interceptions and incursions from day one to inform our decision making. All EU systems have publicly available elements, which the UK will continue to be able to access after EU exit, but it is our intention to continue proactively to share information with the European Union.

Our dedicated UK-wide risk and horizon-scanning team will continue to gather intelligence on plant health risks and tree health risks, including from other organisations, agencies and networks, and by increasing bilateral relationships with key trading partners and nearest neighbours. Functionality has been added to the UK-owned and run plant health portal to replace some of the EU notification system functions.

On the hon. Gentleman's question about transit, it is not the case that we will reduce quality in that regard. I am not sure where he was informed that we will not check goods until they get to their destination. There should be approved premises inland. That is done deliberately to recognise that products will be transported safely in a roll-on/roll-off situation—usually in a container. It is fair to say that we need to anticipate that that may initially require some higher level of inspection, but I know that APHA is recruiting. I am trying to recall how many people—I have the figure 30 in my head—but perhaps officials can provide me with the number, which they informed me of the other day but I regret I do not have instantly to hand.

Our focus for day one is those goods that have been deemed a plant health threat and are covered by the EU plant passport system. At present, those goods are not systematically checked when imported, but the businesses dispatching them must ensure that they meet certain requirements and must be officially authorised and audited on a regular basis. In future, those goods will be accompanied by a phytosanitary certificate, an official document issued by the relevant national plant protection

organisation confirming that prescribed requirements have been met. Those requirements will be the same as under the plant passport scheme, and a phytosanitary certificate will be required for each consignment exported.

That will require a greater level of official oversight than is currently necessary under the plant passport scheme, but it is necessary to meet our international obligations. We will continue our risk-based programme of inland surveillance as a further check that such requirements are being met.

Neil Coyle (Bermondsey and Old Southwark) (Lab): Can the Minister say a bit more about physically where those checks will occur and how long they are likely to take?

Dr Coffey: I do not have a list of the premises to hand. I do not know whether my officials have one, but if they cannot provide me with that information before the Committee rises, I will write to the Committee with it.

Sandy Martin: Will the Minister give way?

Dr Coffey: No, because I am trying to finish my answer to the hon. Member for Bermondsey and Old Southwark. I am very conscious that different elements of checks will be required. I have been informed by officials that 227 extra officers have been recruited to facilitate the inspections that we believe may be necessary.

If the hon. Member for Ipswich would like to intervene now, he would be very welcome to do so.

Sandy Martin: I apologise if I have misunderstood the advice in the explanatory memorandum, but I was under the impression that importers would be able to register their premises. That was the basis on which I was talking about the destination of imports. Clearly, the Government do not control how many premises are registered—unless, of course, they decide not to register them, in which case they will have a problem, because people will no longer be able to import.

Dr Coffey: I have since been informed by my officials that the hon. Gentleman is correct in his assertion. The location of these centres around the country will vary, but the total of 227 APHA full-time equivalents is a significant increase. I think it is nearly double the current number. They will be able to undertake those additional controls. Forestry commissioners currently have about 10 FTEs, and they will be increasing that by a further five in order to be able to undertake the work for tree imports.

It is important to note that it is mainly plants and trees that will be planted, rather than fruits, vegetables and flowers, which will largely be able to continue to enter the UK freely from the EU. To give some assurance to the Committee, it is important to say that it is not the case that people will just be able to self-register premises. Recognising how important it is to protect the biosecurity of this nation, APHA inspectors will need to approve those premises in advance. I do not think that somebody's back garden can suddenly become an import, unless it is so perfect that APHA agrees that it is necessary—well, it could be a very fancy back garden, I suppose.

The hon. Gentleman asked about training and a better training programme. I have already outlined that we will have additional plant health inspectors and additional Forestry Commission inspectors. We will be

working with the industry, including the Horticultural Trades Association, to develop a plant health assurance scheme that will include training. I am confident that that programme will work well.

I have already answered the question about databases, and I have tried to answer the question about transit in the third country. We do not have data on the volume of EU transit trade, as regulated goods from third countries are currently checked at the first point of entry into the EU, after which they move under single market arrangements. However, APHA estimates that there are about 14,500 consignments from third countries that transit the EU for entry to the UK. That reflects the substantial increase in the number of plant health inspectors, who are already being recruited.

I have tried to answer all the questions, but I keep being sent more information so I will not have to write to the Committee. So far, about 25 businesses have been improved for the inland facilities check. APHA estimates that a maximum of about 100 will be considered eligible. It will be for businesses to decide whether they want inspections for the non-roll off. Felixstowe is one of the major areas and it already carries out such checks at the border. It will be for businesses to decide if they want to change the situation, but in my experience as the local MP for Felixstowe, one of the major ports, there is no reason why we would expect businesses to change that regime.

My noble Friend Lord Gardiner is responsible for biosecurity. I know of nobody who is more passionate about trying to ensure that we prevent all these different diseases from entering our country. My right hon. Friend the Secretary of State wrote to the Commission about, and the Department for Environment, Food and Rural Affairs worked with the Commission last year on, trying to get more checks on *Xylella fastidiosa*, because there is a genuine worry about that coming up, in particular from Italy. We are desperate to ensure that it does not cross into the United Kingdom. Our scientists believe it is only a matter of time with regard to how some of these things might get travelled, but we know that the number of species it affects keeps rising; at one point it was 50, but now it is considerably higher. I assure the Committee that we will continue to press the case on ensuring that we have biosecurity.

Neil Coyle: On that point, will the Minister give way?

Dr Coffey: I really feel that I have answered all the questions about the regulations, as opposed to broader policy.

Neil Coyle: My intervention is linked to my previous question. The Minister mentioned the 14,500 potential checks and 25 extra sites to prevent that disease and others from coming in. I assume the experts know how long these checks are estimated to take. Given the doubling of the workforce required to do that, how much will it cost?

Dr Coffey: I do not have the cost to hand. I have not been given the costs of the extra staff to do that. *[Interruption.]* I do not have a value for how much it costs today. The issue is part of Lord Gardiner's portfolio, and if he were here I expect he would give the answer in a second. If the hon. Gentleman really wants me to find out the costs, I will do so. I am not sure when I will be able to get that information to him, but I will write to him and the Committee.

[Dr Thérèse Coffey]

I think I have answered all the questions about the draft regulations, Mr Varma, and I hope the Committee will agree to them.

The Chair: I am not offended, but my name is Mr Sharma.

Dr Coffey: I am sorry.

Question put and agreed to.

Resolved,

That the Committee has considered the draft Plant Health (EU Exit) Regulations 2019.

**DRAFT PLANT HEALTH (AMENDMENT)
(ENGLAND) (EU EXIT) REGULATIONS 2019**

Resolved,

That the Committee has considered the draft Plant Health (Amendment) (England) (EU Exit) Regulations 2019.—(*Dr Thérèse Coffey.*)

3.2 pm

Committee rose.