



**The Plant Health (Brexit) (Amendment) (Guernsey)
Regulations, 2022**

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GUERNSEY STATUTORY INSTRUMENT

2022 No. 5

**The Plant Health (Brexit) (Amendment) (Guernsey)
Regulations, 2022**

<i>Made</i>	<i>18th January, 2022</i>
<i>Coming into operation</i>	<i>18th January, 2022</i>
<i>Laid before the States</i>	<i>, 2022</i>

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 5(1) and 11 of the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018^a, and all other powers enabling it in that behalf, and upon receipt of the certificate required under section 5(3) of that Law, hereby makes the following Regulations –

PART I

AMENDMENT OF PRESERVED EU LAW

Amendment of the Preserved PHR.

1. (1) The Preserved PHR is amended, insofar as it applies to Guernsey, as follows.

(2) Immediately before Article 109 (repeals) insert -

"Article 108

^a Order in Council No. I of 2019; this enactment has been amended.

Additional regulation making powers of the appropriate authority

1. For the purpose set out in paragraph 2, the appropriate authority may by regulations:

- (a) amend this Regulation, any other item of Preserved EU law made under it or any other item of Preserved EU law relating to plant health;
- (b) amend or repeal –
 - (i) the Plant Health (Implementation) (Guernsey) Ordinance, 2020, or any enactment made under that Ordinance or any enactment made under the Plant Health (Enabling Provisions) (Guernsey) Law, 2014, or
 - (ii) any regulations made under section 5 of the Brexit Law,insofar as the same relate to the implementation of an item of Preserved EU law relating to plant health;
- (c) provide for the disapplication of any item of Preserved EU law relating to plant health;
- (d) provide that any item of Preserved EU law relating to plant health or any other enactment, insofar as it relates to plant health, shall have effect subject to such exceptions, adaptations and modifications as may be prescribed by regulations; or
- (e) make provision for the purpose of dealing with matters arising out of or related to any item of Preserved EU law relating to plant health.

2. The purpose referred to in paragraph 1 is to make equivalent provision, in Guernsey legislation relating to plant health, to that in force, or known to be coming into force, in any part of the United Kingdom, except for Northern Ireland, in retained EU law relating to plant health or in any enactment implementing the same subject to any modifications, adaptations or exceptions which the appropriate authority considers necessary or expedient to adapt the provisions to Guernsey.

3. The power in paragraph 1 includes a power to make provision as to the creation and punishment of offences in respect of contraventions of any item of Preserved EU law, any enactment referred to in point (b) of paragraph 1 or made under this Article and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences but subject to the provisions of paragraph 4.

4. The power conferred by paragraphs 1 and 3 to make provision as to the creation and punishment of offences does not include power –

- (a) to provide for offences to be triable only on indictment;
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008; or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

5. This Article is without prejudice to other powers of the appropriate authority to make regulations under other provisions of this Regulation.

6. Regulations of the appropriate authority under this Article shall be laid before a meeting of the States of Deliberation as soon as possible after being made; and if at

that or the next meeting the States of Deliberation resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

7. In this Article:

- (a) 'Brexit Law' means the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018;
- (b) 'implementation' and related expressions have the meaning given by section 12(1) of the Brexit Law;
- (c) 'plant health' means protective measures against pests of plants and other matters in relation to plant health;
- (d) 'Preserved EU law' has the meaning given by section 3 of the Brexit Law; and
- (e) 'retained EU law' has the meaning in section 6(7) of the European Union (Withdrawal) Act 2018."

Amendment of the Preserved Phytosanitary Conditions Regulation.

2. The Preserved Phytosanitary Conditions Regulation is amended, insofar as it applies to Guernsey, as set out the Schedule.

Amendment of Preserved Commission Implementing Regulation (EU) 2019/2148.

3. (1) Preserved Commission Implementing Regulation (EU) 2019/2148 on specific rules concerning the release of plants, plant products and other objects from quarantine stations and confinement facilities pursuant to Regulation (EU) 2016/2031 of the

European Parliament and of the Council^b is amended, insofar as it applies to Guernsey, as follows.

(2) In Article 2 –

(a) for paragraph (a) substitute –

"(a) 'specified material' means any plants, plant products or other objects that are subject to measures, requirements or restrictions under Articles 30(1), 40(1), 41(1), 42(2), 48(1), 49(1), 53(1) or 54(1) of Regulation (EU) 2016/2031"; and

(b) in paragraph (b), for subparagraphs (i) to (iii) substitute –

"(i) Guernsey quarantine pest;

(ii) provisional Guernsey quarantine pest;

(iii) PFA quarantine pest;

and for this purpose, the expressions "Guernsey quarantine pest", "provisional Guernsey quarantine pest" and "PFA quarantine pest" have the meanings given in Regulation (EU) 2016/2031";.

(3) In Article 3 –

^b PEUL (BoG) (IR) 2019/2148.

(a) in the words before paragraph (a), for "Member States" substitute "competent authority, as defined in Regulation (EU) 2016/2031,", and

(b) in paragraph (a) at the end, insert "and".

(4) In the words following Article 5, omit "This Regulation shall be binding in its entirety and directly applicable in all Member States."

PART II

AMENDMENT OF LEGISLATION OF DOMESTIC ORIGIN

Amendment of the 2020 Regulations.

4. (1) The Plant Health (Brexit) (Amendment) (Guernsey) Regulations, 2020^c are amended as follows.

(2) For regulation 6(1) substitute –

"(1) This regulation applies to plants, plant products and other objects, other than qualifying Northern Ireland goods, which originate in, or are dispatched from –

(a) an EU member State, and which are introduced into Guernsey during the period commencing on exit day and ending on 30th June, 2022, or

^c G.S.I. No. 130 of 2020; this enactment has been amended.

- (b) Liechtenstein or Switzerland, and which are introduced into Guernsey during the period commencing on 26th November, 2021 and ending on 30th June, 2022."

PART III
GENERAL PROVISIONS

Interpretation.

5. In these Regulations, unless the context requires otherwise -

"**the Preserved PHR**" means the item of Preserved EU law entitled Preserved Regulation (EU) 2016/2031 of the European Parliament and of the Council on protective measures against pests of plants^d, and

"**the Preserved Phytosanitary Conditions Regulation**" means the item of Preserved EU law entitled Commission Implementing Regulation (EU) 2019/2072 establishing uniform conditions for the implementation of Preserved Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants^e.

Extent.

6. These Regulations have effect in the islands of Guernsey, Herm and Jethou.

^d PEUL (BoG) (RG) 2016/2031. This enactment has been amended insofar as it applies to Guernsey.

^e PEUL (BoG) (IR) 2019/2072. This enactment has been amended insofar as it applies to Guernsey.

Citation.

7. These Regulations may be cited as the Plant Health (Brexit) (Amendment) (Guernsey) Regulations, 2022.

Commencement.

8. These Regulations shall come into force on the 18th January, 2022.

Dated this 18th day of January 2022



P. T. R. FERBRACHE

President of the Policy & Resources Committee

For and on behalf of the Committee

SCHEDULE

Regulation 2

AMENDMENT OF THE PRESERVED PHYTOSANITARY CONDITIONS REGULATION

1. (1) Annex 4 is amended as follows.

(2) In Part E, in the table, for the heading "Fungi and oomycetes" substitute "Bacteria", and

(3) In Part G, in the table, in the second entry relating to "*Sclerotinia sclerotiorum* (Libert) de Bary [SCLESC]" in the third column, for "seed lot of a the specified size", substitute "seed lot of the specified size".

2. (1) Annex 5 is amended as follows.

(2) In Part A, in paragraph 2(1), renumber the second subparagraph (c) as subparagraph (d).

(3) In Part C, in the table –

(a) under "Bacteria", at the end, insert –

" <i>Xanthomonas vesicatoria</i> <i>Capsicum annuum</i> L (ex Doidge) Vauterin et al	In the case of seeds:
	(a) the seeds originate in areas known to be free from <i>Xanthomonas vesicatoria</i> (ex Doidge) Vauterin et al,
	(b) no symptoms of disease caused by

Xanthomonas vesicatoria (ex Doidge) Vauterin et al have been observed on visual inspections at the site of production at appropriate times during the complete cycle of vegetation of the plants, or

(c) the seeds have been subjected to official testing for *Xanthomonas vesicatoria* (ex Doidge) Vauterin et al on a representative sample using appropriate methods (whether or not following an appropriate treatment) and have been found in those tests to be free from that pest.

In the case of plants other than seeds:

- (a) the seedlings have been grown from seeds that meet the above requirements, and
- (b) the plants have been maintained in appropriate hygiene conditions to prevent infection.",
-

(b) under "**Viruses, viroids, virus-like diseases and phytoplasmas**"

- (i) in the entry relating to "*Impatiens* necrotic spot tospovirus [INSV00]", for the third column, substitute –

"The plants have been grown in a site of production that has been subjected to monitoring for the relevant thrips vectors (*Frankliniella occidentalis* Pergande) and, upon their detection, to appropriate treatments to ensure effective suppression of their populations, and:

- (a) no symptoms of *Impatiens* necrotic spot tospovirus have been observed on plants at the site of production during the current growing period, or
- (b) any plants at the production site showing symptoms of *Impatiens* necrotic spot tospovirus during the current growing period have been rogued out and a representative sample of the plants to be moved has been tested and found free from *Impatiens* necrotic spot tospovirus.", and
- (ii) in the second entry relating to Tomato ringspot virus [TORSV0] in the third column, in paragraph (b) –

- (A) omit "at least the pest",
- (B) for "pests tested" substitute "pest", and
- (C) omit "item".

(4) In Part E, in the table, under "Bacteria", in the second entry relating to *Xanthomonas vesicatoria* (ex Doidge) Vauterin et al. [XANTVE], in the third column, omit paragraph (c).

(5) In Part G, in paragraph 2(1), renumber the second subparagraph (c) as subparagraph (d).

(6) in Part H –

(a) in the table, under "Bacteria", in the second entry relating to *Xanthomonas euvesicatoria* Jones et al. [XANTEU], for the first column, substitute "*Xanthomonas vesicatoria* (ex Doidge) Vauterin et al. [XANTVE]", and

(b) in the table, under "Fungi and oomycetes", in the second entry relating to *Stromatinia cepivora* Berk. [SCLOCE], in the third column, in paragraph (b), after "plants" insert "or sets".

3. (1) Annex 7 is amended as follows.

(2) In the section headed "Interpretation" after the definition of "EPPO PM 9/26" insert-

"'ISPM10' means International Standards for Phytosanitary Measures Number 10;"

(3) In entry 1, in the third column, in subparagraph (b)(ii), for "the the" substitute "the".

(4) In entry 20, in the third column, for paragraph (d) substitute –

"(d) that:

- (i) they originate in an area in which *Meloidogyne chitwoodi* Golden *et al.* (all populations) is known not to occur,
- (ii) they originate from a place of production which has been found free from *Meloidogyne chitwoodi* Golden *et al.* (all populations) based on an annual survey of host crops by visual inspection of host plants at appropriate times and by visual inspection both externally and by cutting of tubers after harvest from potato crops grown at the place of production, or
- (iii) after harvest, they have been randomly sampled and checked for the presence of symptoms after an appropriate method to induce symptoms has been applied or laboratory tested, as well as inspected visually both externally and by cutting tubers at appropriate times to detect the presence of *Meloidogyne chitwoodi* Golden *et al.*, and in all cases at the time of closing of the packages or containers before movement, and found to be free from symptoms of that pest, and".

(5) In entry 28, in the third column, in paragraph (a), for "*Candidiatus*" substitute "*Candidatus*".

(6) In entry 109, in the third column –

(a) in subparagraph (a)(ii), at the end, omit "or",

(b) in subparagraph (b)(ii), at the end insert "or",

(c) after subparagraph (b), insert –

"(c) an official statement that the wood has been subject to fumigation, the active ingredient, the minimum wood

temperature, the rate (g/m³) and the exposure time of which are indicated on the phytosanitary certificate; but 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 fumigation.", and

- (d) in the final paragraph, for "There", substitute "For the purposes of paragraphs (a) and (b), there".

(7) In entry 110, in the third column –

- (a) in subparagraph (a)(ii), at the end, omit "or",

- (b) in subparagraph (b)(ii), at the end, insert "or", and

- (c) after paragraph (b), insert –

"(c) an official statement that the wood has been subject to fumigation, the active ingredient, the minimum wood temperature, the rate (g/m³) and the exposure time of which are indicated on the phytosanitary certificate; but 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 fumigation.", and

- (d) in the final paragraph, for "There" substitute "For the purposes of paragraphs (a) and (b), there".

- (8) In entry 111, in the third column –
- (a) in paragraph (b), at the end, omit "or",
 - (b) in paragraph (c), at the end, insert "or", and
 - (c) after paragraph (c), insert –
 - "(d) an official statement that the wood has been subject to fumigation, the active ingredient, the minimum wood temperature, the rate (g/m³) and the exposure time of which are indicated on the phytosanitary certificate; but 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 fumigation."
- (9) In entry 112, in the third column –
- (a) in paragraph (c), at the end, omit "or",
 - (b) in paragraph (d), at the end, insert "or", and
 - (c) after paragraph (d), insert –
 - "(e) an official statement that the wood has been subject to fumigation, the active ingredient, the minimum wood temperature, the rate (g/m³) and the exposure time of which are indicated on the phytosanitary certificate; but 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 fumigation."

(10) In entry 113, in the third column –

- (a) in paragraph (b) at the end, omit "or",
- (b) in paragraph (c) at the end, insert "or", and
- (c) after paragraph (c), insert –

"(d) an official statement that the wood has been subject to fumigation, the active ingredient, the minimum wood temperature, the rate (g/m³) and the exposure time of which are indicated on the phytosanitary certificate; but 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 fumigation."

(11) In entry 114, in the third column –

- (a) in paragraph (c) at the end, omit "or",
- (b) in paragraph (d) at the end, insert "or", and
- (c) after paragraph (d), insert –

"(e) an official statement that the wood has been subject to fumigation, the active ingredient, the minimum wood

temperature, the rate (g/m³) and the exposure time of which are indicated on the phytosanitary certificate; but 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 fumigation."

(12) In entry 131, in the third column –

- (a) in paragraph (a), at the end, omit "or",
- (b) in paragraph (b), at the end, insert "or", and
- (c) after paragraph (b), insert –

"(c) an official statement that the wood has been subject to fumigation, the active ingredient, the minimum wood temperature, the rate (g/m³) and the exposure time of which are indicated on the phytosanitary certificate; but 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 fumigation."

(13) In entry 137, in the third column –

- (a) in paragraph (c), at the end, insert "or", and
- (b) after paragraph (c), insert –

"(d) an official statement that the wood has been subject to fumigation, the active ingredient, the minimum wood temperature, the rate (g/m³) and the exposure time of which are indicated on the phytosanitary certificate; but 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 fumigation."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 and make provision which is necessary or expedient as a result of the withdrawal of the United Kingdom from the EU.

The Regulations make further amendments to Preserved EU law in Guernsey in the field of plant health. The amendments in regulations 2 to 4 and the Schedule are made to align with amendments made in Great Britain as, from the end of 2020, Guernsey has been part of a Great Britain and Crown Dependency market in plants and plant products.

Regulation 2 and the Schedule make amendments to Annexes 4, 5 and 7 of the Phytosanitary Conditions Regulation to align with those made recently in Great Britain to points of technical detail. Annexes 4 and 5 relate to lists of certain kinds of pests and measures in relation to the same and Annex 7 relates to requirements applying on the import of plants into Guernsey.

Regulation 3 amends Preserved Commission Implementing Regulation 2019/2148 to operate effectively post the withdrawal of the UK from the EU including by adapting the Regulation to Guernsey by substituting or omitting certain EU specific words and expressions.

Regulation 4 amends the transitional provision in section 6 of the Plant Health (Brexit) (Amendment) (Guernsey) Regulations, 2020, which makes transitional provisions in relation to phytosanitary certificates required to accompany certain plants and plant products imported into Guernsey from EU Member States. The provision extends the transitional provision relating to plants etc from the EU to 30th June, 2022. An amendment is also made extending the transitional provision to certain plants and plant products imported from Liechtenstein or Switzerland within a specified period ending on 30th June, 2022.

Regulation 1 amends the Plant Health Regulation to add a new wider regulation making power for the Committee for the Environment & Infrastructure to make provision for the purposes of making equivalent provision to that in place in certain plant health legislation in the UK. The powers apply in relation to Preserved EU law in relation to plant health in Guernsey and legislation implementing the same.

These Regulations came into force on the 18th January 2022.