EXPLANATORY MEMORANDUM TO

THE OFFICIAL CONTROLS (PLANT HEALTH AND GENETICALLY MODIFIED ORGANISMS) (ENGLAND) (AMENDMENT) (NO.2) REGULATIONS 2020

2020 No. 1014

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food, and Rural Affairs ("Defra") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 (S.I. 2019/1517) (the "2019 Regulations"). It updates references in the 2019 Regulations to EU legislation as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto and Tomato brown rugose fruit virus.

2.2 This instrument amends the 2019 Regulations to allow the authorisation of the use of a potential quarantine plant pest for official testing, scientific or educational purposes, trials, varietal selection or breeding.

2.3 This instrument also amends the 2019 Regulations to enable EU legislation on the conditions under which plant health identity checks and physical checks on certain goods may be performed at control points and documentary checks may be performed at distance from border control posts to be enforced from 14th December 2020 (the date on which the provisions in that Regulation will apply to certain plants, plant products and other objects).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As this instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The EU Plant Health Regulation ((EU) 2016/2031) and the EU Official Controls Regulation ((EU) 2017/625) ("the EU Regulations") establish controls and restrictions which apply to the import (from third countries), and internal movement within and between EU Member States, of certain plants, plants pest and other material (such as soil). The purpose of the regulations is to help reduce biosecurity risk, strengthen the current plant health regime and protect the environment from the spread of harmful pests.

6.2 The EU Regulations, and the tertiary legislation made under these Regulations, are directly applicable in the United Kingdom. Domestic legislation is not needed to implement the substantive provisions in this EU legislation. However, supplementary domestic provisions are necessary to enable the competent authorities to carry out their obligations under the EU Regulations, enforce these Regulations and implement derogations to various provisions in the EU legislation that are available to member States. The Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019 contains these supplementary domestic provisions. Separate but parallel legislation is in place in Wales, Northern Ireland, and Scotland.

7. Policy background

What is being done and why?

7.1 Regulation 2(3) and (9) of this instrument updates the references in the 2019 Regulations to Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto, which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/885.

7.2 Regulation 2(3) and (9) also updates the references in the 2019 Regulations to Commission Implementing Decision (EU) 2017/198 as regards measures to prevent the introduction into and the spread within the Union of Tomato brown rugose fruit virus, which has been repealed and replaced by Commission Implementing Regulation (EU) 2020/1191.

7.3 Regulation 2(5) of this instrument amends regulation 21 of the 2019 Regulations to allow Defra and the Forestry Commission to authorise the use of potential quarantine plant pests (a pest or disease which has provisionally been assessed as having the potential to be a Quarantine Pest but for which a full risk assessment has not yet been completed) for official testing, scientific or educational purposes, trials, varietal selection or breeding. These pests would be managed in line with strict biosecurity requirements with routine inspections to ensure compliance. Regulations 3 and 4 amend the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015 and Plant Health etc. (Fees) (England) Regulations 2018 to provide a mechanism for the Forestry Commission and Defra to charge for the issue of licences authorising the use of such plant pests.

7.4 Regulation 2(6) amends Schedule 3 to the 2019 Regulations to enable Commission Delegated Regulation (EU) 2019/2123 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council as regards rules for the cases where and the conditions under which identity checks and physical checks on certain goods may be

performed at control points and documentary checks may be performed at distance from border control posts to be enforced from 14th December 2020.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 This is not a consolidation and is the second amendment of the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019.

10. Consultation outcome

10.1 The changes outlined in paragraphs 7.1 and 7.2 reflect those already in place at the EU level, which have been published by the European Commission and have been subject to consultations with the sectors involved.

11. Guidance

11.1 The main stakeholders affected will be informed of the changes and a summary of the measures will be placed on the Defra website.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument. There are no significant financial implications. The new measures concern pests which are already subject to Animal and Plant Health Agency and Forestry Commission inspection and surveillance programmes.

13. Regulating small business

13.1 The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

14. Monitoring & review

14.1 A statutory review clause is included in regulation 56 of the Official Controls (Plant Health and Genetically Modified Organisms) (England) Regulations 2019.

15. Contact

15.1 Iain Johnstone at the Department for Environment, Food and Rural Affairs Telephone: 02080 265 265 or email: iain.johnstone@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Nicola Spence, Deputy Director for Plant Health Bees and Seeds, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Lord Gardiner, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.