

Explanatory Memorandum to The Plant Health (Wales) (Amendment) (No. 2) Order 2014

This Explanatory Memorandum has been prepared by the Natural Environment & Agriculture Team within the Natural Resources and Food Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Plant Health (Wales) (Amendment) (No. 2) Order 2014.

Alun Davies

Minister for Natural Resources and Food

6 May 2014

1. Description

This Order amends the Plant Health (Wales) Order 2006 (S.I. 2006 No. 1643 (W 158)) (“the PH Order”) which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It extends the existing statutory notification scheme for certain tree species to include elm planting material and also implements Commission Implementing Directive 2014/19/EU and Commission Implementing Decision 2014/62/EU.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

3. Legislative background

Sections 2(1) and 3(1) of the Plant Health Act 1967 permit the Welsh Ministers to make such orders as they think expedient to prevent the introduction and spread of pests within Great Britain.

Section 1(2) (b) of the Plant Health Act 1967 (“the Act”) provides that the competent authority in relation to Wales is the Welsh Ministers. Section 2(1) of the Act provides that the Welsh Ministers as a competent authority may make such orders as the authority thinks expedient or called for by any EU obligation for preventing the introduction of pests into Wales. Section 3(1) of the Act provides that the Welsh Ministers as a competent authority may make such orders as the authority thinks expedient for preventing the spread of pests in Wales or the conveyance of pests by articles exported from Wales. Orders made under the Act are to be made by statutory instrument and subject to the negative procedure in accordance with section 6 of the Act.

Section 14 of the Interpretation Act 1978 provides that where an Act confers power to make orders to be made by statutory instrument, it implies, unless the contrary intention appears, a power, exercisable in the same manner and subject to the same conditions or limitations, to amend any instrument made under the power. Therefore, the Welsh Ministers have the power to amend the Plant Health (Wales) Order 2006 through the addition of the provision relating to Elm and removal of the provisions relating to Diabrotica.

This instrument will follow the negative resolution procedure.

4. Purpose & intended effect of the legislation

Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community¹ (“the Plant Health Directive”) establishes the EU plant health regime. The Directive (and, therefore, the PH Order) is updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. The Plant Health Directive is implemented in Wales by the PH Order and by the Plant Health (Forestry) Order 2005 (S.I. 2005 No. 2517) which extends to Great Britain. Similar but separate legislation to the PH Order operates in England, Scotland and Northern Ireland.

Elm plants for planting are regulated under the EU Plant Health Directive and may only be imported into the EU with a phytosanitary certificate declaring freedom from harmful organisms. *Candidatus* Phytoplasma ulmi (aka elm yellows) are listed on the EU Plant Health Directive (as elm phloem necrosis mycoplasma), because of their lethal effects on native elm species in North America.

There have been a number of outbreaks of elm yellows in the EU (Italy, France and Germany). Findings on European elm species have tended to be less severe to date (general decline,

¹ This Directive can be found at http://europa.eu/eu-law/legislation/index_en.htm

stunting, leaf yellowing). This is because European (and Asian) elm species are considered to be moderately or highly resistant to elm yellows. However, smaller trees tend to be worse affected by elm yellows and even tolerant species may sometimes develop severe symptoms or die. The Field elm (*Ulmus minor*) is known to be susceptible and is widespread whereas the native Wych elm (*Ulmus glabra*) is known to show some resistance.

The movement of elm planting material in the EU is not regulated and movements do occur between Member States, not least in material found by breeders to be resistant to Dutch Elm Disease. Some of these breeding programmes are located in areas known to be infected with elm yellows.

The UK population of mature elm trees was devastated by the effects of Dutch Elm Disease in the 1970s and those that remain are mainly young trees in hedgerows and woodlands. However, although Dutch Elm Disease has killed many mature elms, many millions of young regenerated elms remain across the country despite having been exposed to repeated waves of the disease. It should be noted that such regeneration offers little prospect of developing resistance to Dutch Elm Disease as the regrowth is from rootstocks of the same tree variety, and the trees may be subsequently affected by Dutch Elm Disease once they achieve a certain girth.

There have been no findings of elm yellows in the UK prior to this year, but it has now been confirmed on a propagating nursery in the West of England and a further nursery in the South West of England. An eradication programme is in progress and a pest risk analysis (PRA) has been prepared to help determine longer term policy and provide the technical basis to help direct further action against elm yellows. This included consideration as to whether strengthened EU protection should be sought (e.g. through Protected Zone status) and whether additional precautionary measures should be introduced in the meantime. A public consultation on the PRA ran from 26 February to 9 April 2014.

We currently have no means of knowing the precise details of elm that arrive in the UK from the EU and Switzerland and so there remains a risk that more infected trees could be imported into the UK. A statutory notification scheme for imports of elms from other EU Member States and Switzerland is therefore being introduced.

Notification of imports will help raise awareness, generate evidence about the scale of trade and facilitate inspections in the meantime. General powers in the PH Order are available to take action in the event of findings. A notification system is already in place on a voluntary basis, but experience with other tree species indicates a statutory scheme is needed to ensure good compliance. Such a scheme will be helpful irrespective of the outcome of the published PRA.

This Order extends the existing statutory notification scheme in article 19 (6) to (8) of the PH Order to require notification of imports of elm planting material from other Member States or Switzerland. It also makes a minor change to the requirements to be notified (for all the species covered by the notification requirement), to require the country of export to be indicated. This corrects a loophole, involves negligible additional burden, but is important information for Inspectors.

Commission Implementing Directive 2014/19/EU

Following a review of the spread and establishment of *Diabrotica virgifera virgifera* Le Conte (Western corn rootworm) across the EU the Commission has concluded that no measures are feasible to eradicate it or to effectively prevent its further spread. Commission Implementing Directive 2014/19/EU means that *Diabrotica* will no longer be regarded as a “quarantine” pest in the EU from 1 June 2014 and there will no longer be a legal requirement to prevent the introduction of *Diabrotica* into, or its spread within, the EU. In addition, Commission Decision

2003/766/EC on emergency measure to prevent the spread with the Community of *Diabrotica virgifera virgifera* Le Conte has been repealed by Commission Implementing Decision 2014/62/EU. The Plant Health (Wales) (Amendment) (No. 2) Order 2014 implements these changes and revokes the existing provisions in the PH Order in relation to this organism.

A new Commission Recommendation (2014/63/EU) has been published, promoting monitoring for the presence and distribution of *Diabrotica*, and integrated pest management (IPM) to suppress populations. It also encourages that appropriate information is made available on the use of IPM, including plant protection products, and that other activities are pursued, such as training and research. These actions are in line with Directive 2009/128/EC on the sustainable use of pesticides. The UK measures and activities to implement the Directive, including the role of IPM, are set out in the UK National Action Plan.

5. Consultation outcome

A PRA was prepared to help determine longer term policy and provide the technical basis to help direct further action against elm yellows. The PRA was published for public consultation on 26 February 2014 and ran until 9 April 2014. Seven responses were received to the consultation.

Pending a review of the responses to the consultation, the introduction of a statutory notification scheme for import of elms from other EU Member States will help to generate evidence, facilitate monitoring and help determine whether additional legal requirements would be justified to better protect against the pathogen.

6. Regulatory Impact Assessment (RIA)

There has been no regulatory impact assessment undertaken as the amendments to the PH Order are technical changes only. There is no impact on charities or voluntary bodies foreseen or on the public sector.

The Food and Environment Research Agency (FERA), is an executive agency of the Department for Environment, Food and Rural Affairs (DEFRA) and is responsible in Wales, on behalf of the Welsh Ministers for provision of plant health statutory services to facilitate trade and prevent the introduction of plant pests and diseases. FERA have confirmed that they have no record of any importation of plant or plant material through Welsh ports.