

Explanatory Memorandum to the Plant Health (Wales) Order 2018

This Explanatory Memorandum has been prepared by the Plant Health and Environment Protection Branch within the Economy, Skills and Natural Resources 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) Order 2018.

Hannah Blythyn

Minister for Environment

11 October 2018

1. Description

This Order replaces the Plant Health (Wales) Order 2006 (S.I. 2006/1643) (W. 158) and the Plant Health (*Phytophthora ramorum*) (Wales) Order 2006 (S.I. 2006/1344) (W. 134). It implements EU plant health legislation in relation to Wales, including Commission Implementing Decisions 2017/2352/U and 2017/2374/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 and 3 of the Plant Health Act 1967 ('the Act') enable the Welsh Ministers to make such orders as they think expedient to prevent the introduction and spread of plant pests in Great Britain. Section 4 of the Act enables the Welsh Ministers to authorise inspectors to enforce such orders. The Animal and Plant Health Agency (APHA) provide plant health services on behalf of the Welsh Ministers.

The Welsh Ministers are the competent authority for Wales for the purposes of the Act pursuant to section 1(2) of the Act as amended by the Natural Resources Body for Wales (Functions) Order 2013. The functions of the Minister of Agriculture, Fisheries and Food under the Act were, so far as exercisable in relation to Wales, transferred to the Secretary of State by article 2 of, and Schedule 1 to, the Transfer of Functions (Wales) (No.1) Order 1978 (S.I. 1978/272). Those functions were transferred from the Secretary of State to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

This Order is subject to the negative procedure.

4. Purpose & intended effect of the legislation

This instrument implements EU plant health legislation, including Council Directive 2000/29/EC ("the Plant Health Directive") and Council Directives 69/464/EEC on the control of Potato Wart Disease, 93/85/EEC on the control of Potato Ring Rot, 98/57/EC on the control of Potato Brown Rot and 2007/33/EC on the control of Potato Cyst Nematodes ("the Control Directives").

The Plant Health Directive establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Directive is updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. Specific EU emergency measures are introduced to deal with emerging plant health risks prior to an assessment of whether measures to protect against such risks should be included in the Plant Health Directive.

The Control Directives prescribe measures to detect and take against certain harmful organisms of potatoes, to prevent their spread and establishment. A number of these have been updated to reflect changes in the distribution of the organisms concerned and technical developments in relation to their identification and control.

Provisional emergency phytosanitary measures to prevent the introduction into and spread within the Community of *Phytophthora ramorum* insofar as they relate to plants other than forest trees were introduced through Commission Decision 2002/757/EC and implemented in Wales through the Plant Health (*Phytophthora ramorum*) (Wales) Order 2006, rather than the Plant Health (Wales) Order 2006. To simplify the legislative landscape, this Decision is now implemented (except in relation to forest trees), alongside the Plant Health Directive and other similar EU emergency measures, by this instrument. The Plant Health Directive is implemented, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005 No. 2517) which extends to Great Britain.

This instrument also implements European legislation including that set out below and contains ambulatory references to 15 EU instruments containing technical measures.

- Commission Implementing Decision 2014/690/EU repealing Decision 2006/464/EC on provisional emergency measures to prevent the introduction into and the spread within the Community of *Dryocosmus kuriphilus* Yasumatsu;
- Commission Implementing Decision (EU) 2015/749 repealing Decision 2007/410/EC on measures to prevent the introduction into and the spread within the Community of Potato spindle tuber viroid;
- Commission Implementing Decisions (EU) 2015/789, (EU) 2016/764 and (EU) 2017/2352 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.);
- Commission Implementing Decision (EU) 2015/893 as regards measures to prevent the introduction into and the spread within the Union of *Anoplophora glabripennis* (Motschulsky);

- Commission Implementing Decision (EU) 2015/1199 recognising Bosnia and Herzegovina as being free from *Clavibacter michiganensis* ssp. *sepedonicus* (Spieckerman and Kotthof) Davis et al.;
- Commission Implementing Decisions (EU) 2016/715 and (EU) 2017/801 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa;
- Commission Implementing Decision (EU) 2016/1359 amending Implementing Decision 2012/270/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinata* (Lec.) and *Epitrix tuberis* (Gentner);
- Decision No 1/2015 of the Joint Committee on Agriculture concerning the amendment to Appendices 1, 2 and 4 to Annex 4 to the Agreement between the European Community and the Swiss Confederation on trade in agricultural products;
- 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;
- Commission Implementing Decision (EU) 2017/2374 setting out conditions for movement, storage and processing of certain fruits and their hybrids originating in third countries to prevent the introduction into the Union of certain harmful organisms; and
- Commission Implementing Directives (EU) 2017/1279 and (EU) 2017/1920 amending Annexes 1 to V to 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 Community.

Statutory notification of imports of *Prunus* planting material

A statutory notification scheme is in place for imports of oak, plane, sweet chestnut, pine elm and ash trees from other Member States and Switzerland, whereby delivery of imported plants from elsewhere in the EU must be notified in advance to APHA. This instrument adds the species of *Prunus* (e.g. cherry, plum, apricots, laurels) to the notification scheme in response to the threat of a number of harmful organisms which are present in the EU, but not in the UK, where the main hosts include the *Prunus* species.

Introduction of national measures against *Epitrix*

Epitrix (potato flea beetle) are potato pests originating from the Americas and introduced to Europe, with distribution currently limited to Spain and Portugal. EU emergency measures are already in place to protect against this pest (Commission

Implementing Decision 2012/270) but there have been instances of interceptions in the UK of *Epitrix* damaged potatoes from Spain.

In order to minimise the risk of *Epitrix* being introduced into the UK on potatoes imported from Spain, this instrument will require all potatoes from non-demarcated areas of mainland Spain to be washed before export, in order to kill or remove any *Epitrix* which might be present. Imposing a washing requirement will allow imports to continue (some importers have switched to washed potatoes already to reduce the risk of importing infected potatoes).

5. Consultation

The changes which have been adopted which modify the annexes of the Plant Health Directive reflect those already in place at the EU level, which have been published by the European Commission. Some issues have been subject to consultations with the sectors involved, while the others are mainly technical updates or have limited impact on UK business.

The views of stakeholders were sought on *Prunus* measures and five replies from retailers, nurseries, growers and the main trade association representing this sector (Horticultural Trades Association) were received. These were supportive, although two wanted assurances it would not create significant new burdens or slow down business. This instrument contains *Prunus* notification measures. In implementing the system, APHA will work with the industry to ensure these concerns are addressed.

A consultation was also held on national measures against *Epitrix* and stakeholders were broadly supportive of the measures. Of the eight responses received, six (including the main trade organisations) were either supportive or expressed no opinion. Two individual potato importers felt EU measures provided sufficient protection. This instrument contains *Epitrix* washing measures. In response to trade concerns, imports from the Balearic Islands will be exempt as they are well away from the outbreak area and washing could be damaging to the thin skinned potatoes produced there.

6. Regulatory Impact Assessment (RIA)

For the majority of the changes being introduced, there is no impact on business, charities or voluntary bodies. Many changes replace and update existing legislation without any change to policy. There is no impact on the public sector.

The impact on business, charities or voluntary bodies for the statutory notification of imports of *Prunus* planting material is £5,000 per annum. The introduction of national measures against *Epitrix* have no impact on business, charities or voluntary bodies as the key impact will fall on Spanish potato exporters.