

2016 No. 259

PLANT HEALTH

The Plant Health (Amendment) Order (Northern Ireland) 2016

Made - - - - *30th June 2016*

Coming into operation - *5th July 2016*

The Department of Agriculture, Environment and Rural Affairs(a) makes the following Order in exercise of the powers conferred by sections 2, 3, 3A and 3B(1) of the Plant Health Act (Northern Ireland) 1967(b), as read with paragraph 1A of Schedule 2(c) to the European Communities Act 1972.

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(d), and it appears to the Department of Agriculture, Environment and Rural Affairs that it is expedient for references to the European Union instruments mentioned in article 3(a) and 3(b) to be construed as references to those instruments as amended from time to time.

Citation and commencement

1. This Order may be cited as the Plant Health (Amendment) Order (Northern Ireland) 2016, and comes into operation on 5th July 2016.

Amendment of the Plant Health Order (Northern Ireland) 2006

2. The Plant Health Order (Northern Ireland) 2006(e) is amended in accordance with articles 3 to 14.

Article 2 (general interpretation)

3. In article 2(1)—

(a) after “Decision 2008/840/EC”(f), at the appropriate place insert—

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- (a) The Ministry of Agriculture became known as the Department of Agriculture by virtue of section 7(5) of the Northern Ireland Constitution Act (c.36), was renamed the Department of Agriculture and Rural Development by Article 3(4) of the Departments (Northern Ireland) Order 1999 (S.I. 1999/283 (N.I.1) and was renamed the Department of Agriculture, Environment and Rural Affairs by section 1 of the Departments Act (Northern Ireland) 2016 (c.5).
- (b) 1967 c.28 (N.I.); sections 2(1) and 3(1) were amended by S.R. & O (N.I.) 1972 No. 351, article 3 and Schedule 2. Section 2(2) was amended by 1979 c.2 section 177(1) and Schedule 4, Part II. Sections 2 and 3 were also amended by S.I. 1984/702 (N.I.2), Articles 15(2), 24 and Schedule.
- (c) 1972 c.68 (N.I.). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51) and amended by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).
- (d) 1972 c.62. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7)
- (e) S.R. 2006 No. 82. Relevant amending instruments are S.R. 2006 No. 165, S.R. 2006 No. 435, S.R. 2007 No. 483, S.R. 2008 No. 205, S.R. 2008 No. 442, S.R. 2008 No. 493, S.R. 2009 No. 179, S.R. 2010 No. 197, S.R. 2010 No. 307, S.R. 2011 No. 22, S.R. 2013 No. 7, S.R. 2013 No. 103, S.R. 2014 No. 172 and S.R. 2015 No. 128.
- (f) The Definition of “Decision 2008/840/EC” was inserted by S.R. 2011 No. 22, article 2(2).

““Decision 2012/270/EU” means Commission 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 subcrinita* (Lec.) and *Epitrix tuberis* (Gentner), as amended by Commission Implementing Decision 2014/679/EU amending Implementing Decision 2012/270/EU as regards its period of application and as regards the movement to packing facilities of potato tubers originating in areas demarcated in order to prevent the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) and as further amended from time to time;”(a)(b);

(b) after “Decision 2014/422/EU”, at the appropriate place insert—

““Decision (EU) 2015/789” means Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.), as last amended by Commission Implementing Decision (EU) 2016/764 amending Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction and the spread within the Union of *Xylella fastidiosa* (Wells et al.) and as further amended from time to time;”(c)(d)(e).

Article 15 (general provisions relating to certificates)

4. In article 15, omit paragraph (4).

Article 19 (prohibitions on landing plant pests and relevant material)

5. For paragraphs (3) to (5) of article 19(f) substitute—

“(3) Subject to article 22, a person shall not land in Northern Ireland any of the following potatoes unless that person has given written notification of the matters referred to in paragraph (4) to an inspector at least 48 hours prior to the intended date of their landing—

- (a) seed potatoes grown in another member State or in Switzerland; or
- (b) potatoes, other than seed potatoes, grown in Poland, Portugal, Romania or any part of Spain (other than the Canary Islands, Ceuta and Melilla).

(4) The matters are—

- (a) the intended date and time of their landing;
- (b) their intended point of entry;
- (c) their intended use;
- (d) their intended destination;
- (e) their variety and quantity; and
- (f) the identification number of the producer of the potatoes.”.

Article 22 (exceptions from certain prohibitions and requirements)

6. In article 22—

- (a) in paragraph (1), for “Article 19(1)(e), (f) and (g) and (4)” substitute “article 19(1)(e), (f) and (g) and (3)”;
- (b) after paragraph (2)(g), add—

(a) OJL 132, 23.5.2012, p.18.

(b) OJL 283, 27.9.2014, p.61-64.

(c) OJL 125, 21.5.2015, p.36.

(d) OJL 333, 19.12.2015, p.143.

(e) OJL 126, 14.5.2016, p. 77.

(f) Article 19(3) and (4) were substituted by Article 19(3) to (5) by S.R. 2013 No. 7, article 2(2).

(g) Article 22(2) was substituted by S.R. 2006 No. 435, article 2(5).

“(3) The requirements in Article 21(1) and (5) which would apply by virtue of paragraph 11 of Part A of Schedules 6 and 7 to *Xylella* host plants within the meaning of Article 1(b) of Decision (EU) 2015/789 do not apply where the plants are being moved by a person acting for purposes outside the person’s trade, business or profession and the person is acquiring them for personal use.”.

Article 28 (conditions for maintaining registration as a plant trader)

7. In article 28—

(a) for the heading, substitute “Conditions for maintaining registration as a plant trader and other trade-related conditions”;

(b) after paragraph (3), add—

“(4) A professional operator who supplies or is supplied with specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789 which have been grown for at least part of their life in, or have been moved through, a demarcated area established in accordance with Article 4 of that Decision, shall—

(a) keep a record of each lot of the plants supplied by the professional operator and the name of the professional operator to whom the lot was supplied for three years from the date on which it was supplied;

(b) keep a record of each lot of the plants received by the professional operator and the name of the professional operator who supplied the lot for three years from the date on which it was received; and

(c) immediately following the dispatch or receipt of any such lot, notify the Department in writing of the details specified in Article 10(4) of Decision (EU) 2015/789 in respect of that lot.

(5) In paragraph (4), “professional operator” has the meaning given in Article 1(d) of Decision (EU) 2015/789.”.

Article 41 (notification of the presence or suspected presence of certain plant pests)

8. In article 41—

(a) in paragraph (1), for “this Article” substitute “this paragraph”;

(b) in paragraph (2), for “This Article” substitute Paragraph (1)”;

(c) after paragraph (3), add—

“(4) If the Department becomes aware of the presence or suspected presence of *Xylella fastidiosa* (Wells et al.) in any place or area in Northern Ireland, the Department shall immediately inform any person having under their control plants which may be infected by *Xylella fastidiosa* (Wells et al.) of—

(a) its presence or suspected presence;

(b) the possible consequences arising from its presence or suspected presence; and

(c) the measures to be taken as a result.”.

Article 44 (offences)

9. In article 44(1)(a)(xi), for “Article 28(1)” substitute “article 28(1) or (4)”.

Schedule 1 (plant pests which shall not be landed in or spread within Northern Ireland)

10.—(1) In Part A (plant pests not known to occur in any part of the European Community) of Schedule 1—

(a) under the heading “Insects, mites and nematodes”, after item 15a(a) insert—
“15b. *Epitrix subcrinita* (Lec) and *Epitrix tuberis* (Gentner)”;

(b) under the heading “Bacteria”, for item 2(b) substitute—
“2. *Xylella fastidiosa* (Wells et al.)”

(2) In Part B (plant pests known to occur in the European Community) of Schedule 1—
under the heading “Insects, mites and nematodes”, after item 1b(c) insert—
“1c. *Epitrix cucumeris* (Harris) and *Epitrix similaris* (Gentner)”

Schedule 3 (relevant material which may not be landed in Northern Ireland if that material originates in certain third countries)

11. In Schedule 3, after item 17 add—
“18. Plants, other than seeds, of Costa Rica or Honduras”
Coffea, intended for planting

Schedule 4 (restrictions on the landing in and movement within Northern Ireland of relevant material)

12.—(1) In Part A (relevant material, from third countries, which may only be landed in Northern Ireland if special requirements are satisfied) of Schedule 4—

- (a) in the third column of item 36, after “36b” insert “, 36c”;
- (b) in the third column of item 36a, for “and 36b” substitute “, 36b and 36c”;
- (c) in the third column of item 36b, for “36a” substitute “36c”;
- (d) after item 36b(d) insert—

“36c. Tubers of *Solanum tuberosum* L., including those intended for planting, originating in any third country where *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) is known to be present Without prejudice to the requirements in items 33 to 36b, the tubers shall be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” in accordance with Section 1 of Annex 1 to Decision 2012/270/EU”;

(e) after item 86(e) add—
“87. Specified plants (within the meaning of Article 1(c) of Decision (EU) 2015/789) originating in any third country where the specified organism (within the meaning of Article 1(a) of that Decision) is not present The national plant protection organisation of the third country concerned shall have notified the European Commission that the specified organism is not present in the country in accordance with Article 16(a) of Decision (EU) 2015/789; and The plants shall be accompanied by a phytosanitary certificate which

(a) Item 15a was inserted by S.R. 2006 No. 435, article 2(7), and substituted by S.R. 2015 No. 128, article 4(1)(a)(iii).
(b) Item 2 was originally item 1 and was renumbered item 2 by S.R. 2015 No. 128, article 4(1)(b).
(c) Item 1b was inserted by S.R. 2015 No. 128, article 4(2)(a).
(d) Item 36b was inserted by S.R. 2009 No. 179, article 2(8)(c), and substituted by S.R. 2015 No. 128, article 6(1)(i).
(e) Item 86 was inserted by S.R. 2015 No. 128, article 6(1)(z).

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| 88. | Specified plants (within the meaning of Article 1(c) of Decision (EU) 2015/789), originating in any third country where the specified organism (within the meaning of Article 1(a) of that Decision) is known to be present | <p>includes an official statement under the heading “Additional declaration” in accordance with Article 16(b) of Decision (EU) 2015/789</p> <p>The plants shall be accompanied by a phytosanitary certificate which includes:</p> <p>(a) in the case of plants originating in an area established as free from the specified organism by the national plant protection organisation of the country from which the plants originate in accordance with ISPM No. 10 and the name of the area has been notified to the European Commission by the national plant protection organisation in accordance with Article 17(2)(a) of Decision (EU) 2015/789, the name of the area under the heading “place of origin”;</p> <p>(b) in the case of plants, other than plants which have been grown for the entire production cycle in vitro, originating in an area in which the specified organism is known to be present:</p> <p>(i) an official statement under the heading “Additional declaration” in accordance with Article 17(3) of Decision (EU) 2015/789; and</p> <p>(ii) the name of the site from which they originate under the heading “place of origin”; or</p> <p>(c) in the case of plants, which have been grown for the entire production cycle in vitro, originating in an area in which the specified organism is known to be present:</p> <p>(i) an official statement under the heading “Additional declaration” in accordance with Article 17(3a) of Decision 2015/789; and</p> <p>(ii) the name of the site from which they originate under the heading “place of origin””</p> |
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(2) In Part B (relevant material, from another part of the European Community, which may only be landed in or moved within Northern Ireland if special requirements are satisfied) of Schedule 4—

- (a) in the third column of item 15, for “15a, 16 and 19a” substitute “15a, 16, 19a and 19b”;
- (b) in the third column of item 16, for “item 15” substitute “items 15 and 19b”;

- (c) in the third column of item 17, for “item 20” substitute “items 19b and 20”;
- (d) in the third column of item 19, for “item 19a” substitute “items 19a and 19b”;
- (e) after item 19a(a) insert—

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| “19b | Tubers of <i>Solanum tuberosum</i> L., including those intended for planting, originating in a demarcated area established in accordance with Article 5 of Decision 2012/270/EU, for the purpose of eradicating, containing and monitoring an infestation of <i>Epitrix cucumeris</i> (Harris), <i>Epitrix similaris</i> (Gentner), <i>Epitrix subcrinita</i> (Lec.) or <i>Epitrix tuberis</i> (Gentner) | Without prejudice to the requirements in items 15, 16, 18, 19 and 20 the tubers shall be accompanied by an official statement that the tubers meet the requirements specified in point (1)(a) to (c) of Section 2 of Annex 1 to Decision 2012/270/EU |
| 19c | Tubers of <i>Solanum tuberosum</i> L., including those intended for planting, originating in any area of Spain, other than those originating in a demarcated area established in accordance with Article 5 of Decision 2012/270/EU or the Balearic Islands, the Canary Islands, Ceuta or Melilla | The tubers shall have been washed so that there is no more than 0.1% of soil remaining”; |

- (f) in the third column of item 20, after “17”, insert “19a, 19b,”;

- (g) after item 38(b), add—

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| “39. | Specified plants (within the meaning of Article 1(c) of Decision (EU) 2015/789), other than specified plants which have been grown for the entire production cycle in vitro, which have been grown for at least part of their life in a demarcated area established in accordance with Article 4 of that Decision | The plants shall be accompanied by an official statement that: (a) they have been grown in a site which meets the requirements specified in Article 9(2) of Decision (EU) 2015/789; and (b) they: (i) meet the requirements specified in Article 9(3), (4) and (5) of that Decision; or (ii) in the case of dormant plants of <i>Vitis</i> intended for planting, other than seeds, meet the requirements specified in Article 9(3), (4a), (5) and (6) of that Decision |
| 40 | Specified plants (within the meaning of Article 1(c) of Decision (EU) 2015/789) which have been grown for the entire production cycle in vitro and for at least part of their life in a demarcated area established in accordance with Article 4 of that Decision | The plants shall be accompanied by an official statement that: (a) they have been grown in a site which meets the requirements specified in Article 9a(2) of Decision (EU) 2015/789; and (b) they meet the requirements specified in Article 9a(3) and (4) of that Decision” |

(a) Item 19a was inserted by S.R. 2013 No. 7, article 4(a), and substituted by S.R. 2015 No. 128, article 6(2)(g).

(b) Item 38 was inserted by S.R. 2013 No. 103, article 2(10).

Schedule 6 (prohibitions on the landing in and movement within Northern Ireland of relevant material without a plant passport)

13. In Part A (relevant material from Northern Ireland or elsewhere in the European Community, which may only be landed in or moved within Northern Ireland if accompanied by a plant passport) of Schedule 6, after paragraph 9(a) add—

“10. Without prejudice to paragraph 3, tubers of *Solanum tuberosum* L., including those intended for planting, which originate in a third country in which *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) is known to be present or in a demarcated area established in accordance with Article 5 of Decision 2012/270/EU.

11. Specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789, including plants which have been grown for the entire production cycle in vitro, which have been grown for at least part of their life in a demarcated area established in accordance with Article 4 of that Decision or *Xylella* host plants within the meaning of Article 1(b) of that Decision which have never been grown in such an area”.

Schedule 7 (prohibitions on the consignment of relevant material to another part of the European Community without a plant passport)

14. In Part A (relevant material which may only be consigned to another part of the European Community if accompanied by a plant passport) of Schedule 7, after paragraph 9(b) add—

“10. Without prejudice to paragraph 3, tubers of *Solanum tuberosum* L., including those intended for planting, which originate in a third country in which *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) is known to be present or which originate in a demarcated area established in accordance with Article 5 of Decision 2012/270/EU.

11. Specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789, including plants which have been grown for the entire production cycle in vitro, which have been grown for at least part of their life in a demarcated area established in accordance with Article 4 of that Decision or *Xylella* host plants within the meaning of Article 1(b) of that Decision which have never been grown in such an area.”.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on 30th June 2016.



Malcolm Beatty
A senior officer of the
Department of Agriculture, Environment and Rural Affairs

(a) Paragraph 9 was inserted by S.R. 2013 No. 103, article 2(12).
(b) Paragraph 9 was inserted by S.R. 2013 No. 103, article 2(13).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health Order (Northern Ireland) 2006 (S.R. 2006 No. 82) (“the principal Order”).

The Order implements in part:

- (a) Commission Implementing Decision (EU) 2012/270 which introduces emergency measures to prevent the introduction and spread of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) (OJ No L 132, 23.5.2015, p.18);
- (b) Commission Implementing Decision (EU) 2014/679 amending Implementing Decision (EU) 2012/270 as regards its period of application and as regards the movement to packing facilities of potato tubers originating in areas demarcated in order to prevent the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) (OJ No L 283, 27.9.2014, p.61);
- (c) Commission Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.) (OJ No L 125, 21.5.2015, p.36)
- (d) Commission Implementing Decision (EU) 2015/2417 amending Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.) (OJ No L 333, 19.12.2015, p.143);
- (e) Commission Implementing Decision (EU) 2016/764 amending Implementing Decision (EU) 2015/789 as regards measures to prevent the introduction into and the spread within the Union of *Xylella fastidiosa* (Wells et al.) (OJ No L 126, 14.5.2016, p.77)

Article 3 provides for the references to Commission Implementing Decision 2012/270/EU and Commission Implementing Decision 2015/789/EU to be read as references to those instruments as amended from time to time.

Article 4 amends article 5 of the principal Order to remove the requirement for phytosanitary certificates or phytosanitary certificates for re-export to be based on an inspection performed 14 days before the date of despatch of the relevant material.

Article 5 amends article 19(3) to (5) of the principal Order to exclude potatoes grown in certain parts of Spain from the requirement to give advance written notification of landing in Northern Ireland.

Articles 6 to 9, 10(b), 11, 12(1)(d) and (2)(g), 13(a) and 14(a) amend the principal Order to implement provisions of Commission Implementing Decisions (EU) 2015/789, (EU) 2015/2417 and (EU) 2016/764.

Articles, 12(1)(d) and 2(e), 13(a) and 14(a) amend the principal Order to implement provisions of Commission Implementing Decisions (EU) 2012/270 and (EU) 2014/679.

Article 12(2)(e) makes provision to prevent the introduction of *Epitrix* from any area in mainland Spain which is not demarcated under Commission Implementing Decision (EU) 2012/270 as regards emergency measures to prevent the introduction into and the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) (OJ No L 132, 23.5.2015, p.18). It amends Part B of Schedule 4 to the principal Order to prohibit the introduction of unwashed tubers of *Solanum tuberosum* L., including those intended for planting, from any such area.

An impact assessment has not been produced for this instrument as no impact on business or the private or voluntary sector is foreseen. The Explanatory Memorandum for this instrument is available alongside the instrument at www.legislation.gov.uk.

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