

POLICY NOTE

THE PLANT HEALTH (SCOTLAND) AMENDMENT (No.2) ORDER 2013

SSI 2013/187

Introduction

1. The above instrument is made by the Scottish Ministers in exercise of powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967 as read with section 20 of the Agriculture (Miscellaneous Provisions) Act 1972. The instrument is subject to negative resolution procedure.

Purpose of the instrument

2. This instrument amends the Plant Health (Scotland) Order 2005 (S.S.I. 2005/613) ('the PH Order') which contains measures to prevent the introduction and spread of harmful plant pests and diseases. This instrument;

- introduces statutory notification requirements for imports of specified genera of trees - *Platanus* (Plane), *Quercus* (Oak), *Castanea* (Sweet chestnut), *Fraxinus* (Ash) and *Pinus* (Pine) – to strengthen plant health measures already in place in relation to imports of trees;
- implements the following EU Commission Implementing Decisions –
 - Commission Implementing Decision 2012/270/EU – to ensure that potatoes, other than seed potatoes, from third countries where *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) are known to occur may only move within Scotland or to another part of the EU with a plant passport;
 - Commission Implementing Decision 2012/697/EU to protect Scotland from the introduction of *Pomacea* Perry (Island Apple Snail);
 - Commission Implementing Decision 2012/756/EU to protect Scotland from the introduction and spread of *Pseudomonas syringae* pv. *Actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto (kiwi canker);
 - Commission Implementing Decision 2013/67/EU – to recognise that citrus fruit from Brazil is no longer a threat from *Xanthomonas campestris* (bacterial virus); and
- amends, strengthens and clarifies existing articles within the PHO.

Legislation

3. Council Directive 2000/29/EC on protective measures against the introduction into the European Union of organisms harmful to plants or plant products and against their spread within the Union ("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 pests and diseases injurious to plants and plant produce which are specified in the Annexes of the Directive. The Plant Health Directive is implemented in Scotland by the PH Order and, in relation to forest materials, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517), which extends to Great Britain. Similar but separate plant health legislation to the PH Order operates in England, Wales and Northern Ireland.

Policy Background

4. The Scottish Government has been working with Defra and Forestry Commission Scotland to review the top risks to tree health with a view to taking rapid action to address these. As part of this work, a Scottish Tree Health Advisory Group (STHAG) has been established, and initial outputs from its work were presented at a stakeholder Tree Health Summit on 6 March 2013.

5. The conclusion of STHAG was that, while these tree species are regulated under the EU Plant Health Regime, they have been associated with outbreaks of harmful organisms in the UK or elsewhere. As a result, statutory notification of imports will provide a mechanism to monitor such imports more effectively, to identify potential issues at an early stage and to follow up problems. Pre-notification arrangements were introduced in England in January 2013 for the trees noted in paragraph 2, with the exception of *Pinus* (pine). It is Defra's intention to follow the Scottish Government's lead and extend their notification requirements to include pine later in the summer.

(i) Plane

Plane trees are included in the EU Plant Passporting scheme and there are also EU requirements on the movement of plane wood. This is in response to the risk from plane wilt caused by *Ceratocystis platani* which has had a major impact in France's Canal du Midi, with 42,000 trees needing to be felled. It causes severe wilting and tree mortality and is also present in Italy and Switzerland. The main pathway for movement is infected plants for planting. There have been no cases in the UK, but it would be very damaging if introduced. This is because plane trees are commonly planted in urban situations in the UK, due to their reputation for tolerance to water shortage and high levels of pollution. Other unregulated organisms affecting plane are known to be present elsewhere, which could be damaging if introduced to the UK.

(ii) Oak

Oak trees are included in the EU Plant Passporting Scheme and UK measures are also in place in connection with the risk from oak processionary moth, which is present in many EU countries. There have been a number of outbreaks of this pest linked to imported plants, with the main pathway being undetected egg masses moved on dormant plants. The national measures have proved largely successful to date, with no recent introductions on imported plants. The pest is now established in some London boroughs and in west Berkshire, but EU Protected Zone status is being sought for the rest of the UK.

(iii) Sweet chestnut

Sweet chestnut trees are included in the EU Plant Passporting Scheme and there are additional requirements for wood and bark being moved into and within Protected Zones. Despite having EU Protected Zone status, there have been recent findings in the UK of chestnut blight (*Cryphonectria parasitica*) in sweet chestnut orchards, on plants imported

from France. Infected trees have been destroyed, with no evidence of spread in the vicinity of affected sites, although follow up work is continuing.

(iv) Ash

Ash trees are not regulated under the EU Plant Health Directive, but UK measures are in place against *Chalara fraxinea*. These restrict imports and movements to those from Pest Free Areas. While no such Areas have currently been designated, they may be in future and statutory notification will provide a means of monitoring the movement of ash trees into the UK.

(iv) Pine

Pine plants for planting are regulated under the EU Plant Health Directive. Dothistroma needle blight is affecting pine throughout Scotland, especially in the north and north east. Although Caledonian pinewoods currently appear to be less susceptible to the disease, there is concern that this could change as there is considerable potential for genetic exchange due to the presence of two mating types and at least 99 genotypes of *Dothistroma septosporum*. *Dothistroma pini* is not known to be present in Great Britain and its arrival would increase this risk of genetic exchange, having adverse consequences for pine, including in Caledonian pinewoods. Furthermore, there is a risk of introducing pine processionary moth, which is not known to be present in Great Britain. Statutory notification will provide a means of monitoring the import of pine trees into the UK.

6. Imports from third countries are already subject to statutory notification, but this means for intra-EU trade statutory notification is now required for anyone importing trees of the genera concerned (including young planting material and seeds). They must notify the Scottish Government Horticulture and Marketing Unit in advance of their landing and provide certain information about the intended import.

Commission Implementing Decisions

7. 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 similis* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) (OJ L 132, 23.5.2012, p.18) was implemented in Scotland by SSI 2012/266. This Order ensures full implementation of the decision however in relation to ware potatoes from third countries where the pest is known to occur, ensuring that such potatoes may only move within Scotland or to other parts of the EU with a plant passport.

8. Commission Implementing Decision 2012/697/EU as regards measures to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry) (OJ L 311, 10.11.2012, p.14.) introduces restrictions on the import of plants intended for planting that can only grow in water or in soil that is permanently saturated with water third countries to protect against the introduction and spread of *Pomacea* (Perry) (the Island Apple Snail). This snail is a popular addition to aquaria and fish tanks. However, experience in Spain has shown that it can have very damaging effects if released into the wider aquatic environment, including waterways, wetlands etc.

9. Commission Decision 2012/756/EU as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto (OJ L 335, 7.12.2012, p. 49.) introduces restrictions

on the import of live pollen and plants intended for planting of *Actinidia* Lindl (Kiwi fruit plants) to protect against a new aggressive strain of an organism affecting kiwi plants. It is not expected to have a major impact on Scotland. There are normally no direct imports of these plants into Scotland however it is necessary to have controls in place to avoid displacement from points of entry elsewhere in Europe. The organism is already present in parts of the EU, but the aim of this emergency legislation is to prevent further introduction and to ensure that movements from affected areas are free of the organism.

10 Commission Implementing Decision 2013/67/EU amending Decision 2004/416/EC on temporary emergency measures in respect of certain citrus fruits originating in Brazil (OJ L 31, 31.1.2013, p.75.) makes amendments to Commission Decision 2004/416/EC (OJ L 151, 30.4.2004), which was introduced to prevent the introduction of *Guignardia citricarpa* Kiely and *Xanthomanas campestris* in respect of fruits of *Citrus* L, *Fortunella* Swingle, *Poncirus* Raf and their hybrids, originating in Brazil and Argentina. Commission Decision 2013/67/EU now recognises that Brazil is no longer a threat from *Xanthomanas campestris* and existing requirements require to be amended. As with imports of *Actinidia* Lindl, there are no direct imports of *Citrus* L, *Fortunella* Swingle, *Poncirus* Raf and their hybrids into Scotland.

Additional revisions

11. Article 31 of the PH Order (which concerns inspectors' powers of examination, sampling and marking) has been amended to strengthen inspectors' powers in relation to determining the presence and distribution of plant pests. Article 40(b) (which concerns licences for activities prohibited by the PH Order) has been amended in order to ensure that the same types of research may be performed on relevant plant pests falling outside the scope of the Plant Health Directive as on those falling within the scope.

Consolidation

13. A commitment was made to amend national plant health legislation as and when required, to take account of new or revised risk assessment, pest interceptions, changes in distribution of pest and other developments, until the EU Review of the Plant Health Regime has been concluded. The Commission published the EU Plant Health proposals on 6 May 2013 and negotiations are now underway in the EU between the Council of Ministers and the European Parliament. Those proposals look to replace a suite of existing EU plant health directives and decisions with a directly applicable regulation (as supplemented in due course by EU implementing measures). If these proposals are adopted, this will have a significant bearing on future implementation of these measures in Scotland. In the meantime there are no plans to consolidate the Plant Health Order 2005.. It is deemed necessary to focus on the urgent need to tackle the plant health threats posed by increased imports of the specified tree genera and to implement the EU Decisions.

Consultation

14 Many of our stakeholders were represented on the Scottish Tree Health Advisory Group when the pre-notification of imports of certain tree species was considered **and full support was given for this requirement.** In addition, when Defra introduced these new measures, the Scottish Government informed businesses in Scotland of the implications of them and that similar measures were being considered in Scotland but would also include pine.

Timing

15. This SSI will come into effect on 29 June 2013.

Business and Regulatory Impact

16. A Business and Regulatory Impact Assessment has been **prepared for pre-import notification requirements for certain trees only**. The requirements introduced by the EU Decisions will not have any impact on Scottish business.

Yvonne Hay

Agriculture and Rural Development Division
Agriculture, Food and Rural Communities Directorate
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