

POLICY NOTE

THE PLANT HEALTH (SCOTLAND) AMENDMENT ORDER 2016

SSI 2016/83

Introduction

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 2, 3 and 4(1) of the Plant Health Act 1967, section 20 of the Agriculture (Miscellaneous Provisions) Act 1972, paragraph 1A of Schedule 2 to the European Communities Act 1972 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument

2. This instrument amends the Plant Health (Scotland) Order 2005 (S.S.I. 2005/613) ('the PH Order'). The PH order contains measures to prevent the introduction and spread of harmful plant pests and diseases and transposes 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 PH Directive"). By amending the PH Order, this instrument transposes and implements the following EU legislation:

Commission Directive 2014/78/EU (insofar as it respectively substitutes and inserts points 11.4 and 18.1 of Section 1, Part A, Annex IV to the PH Directive).

Commission Implementing Decision 2014/237/EU on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain fruits and vegetables originating in India (as amended by Commission Implementing Decision (EU) 2015/237 and Commission Implementing Decision (EU) 2015/2434;

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 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 amended by Commission Implementing Decision (EU) 2015/2417;

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* spp. *Sepedonicus* (Spieckerman and Kotthof) Davis et al.

Commission Implementing Decision (EU) 2015/1849 on measures to prevent the introduction into and the spread within the Union of harmful organisms as regards certain vegetables originating in Ghana; and

In addition, it includes provisions for:

- Removal of the requirement for phytosanitary certificates to be based on inspections performed within 14 days of dispatch of the goods;
- Addition of the genus *Prunus* L. to the list of tree plants which require to be notified prior to landing in Scotland;
- Adjustment of the period of notice for the landing of tree plants in Scotland (from twenty hours in advance to prior notification or no later than five days after landing);
- Introduction of washing requirements for potatoes originating in Spain (except from the Balearic Islands or any non-EU parts of Spain) in relation to the plant pest *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner);
- Correction of numbering/typographical errors by S.S.I. 2015/10

Legislation

3. The PH 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 PH 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 PHSO operates in England, Wales and Northern Ireland.

Policy Background

4. The PH 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. This instrument transposes and implements specific EU measures arising from technical changes in the assessment of the risks presented by particular pests and diseases.

Commission Implementing Directive 2014/78/EU was transposed into Scots law by S.I. 2014/2420 and S.S.I. 2015/10, with the exception of two provisions which substituted point 11.4 and inserted point 18.1 into Section 1, Part A, Annex IV to the PH Directive. Substituted point 11.4 relates to the plant pest *Agrilus planipennis* Fairmaire and point 18.1 relates to *Candidatus Liberibacter* spp., a causal agent of Huanglongbing disease of citrus/citrus greening. Both points restrict the introduction of the plants to which they apply, to those which originate in an “area” (point 11.4) or “country” (point 18.1) which is recognised as being free from the relevant pest by the European Commission. The intended effect of these substituted points was originally thought to be unclear (as no such area or country had been recognised by the Commission) . Transposition was postponed until the intention could be clarified. It’s now understood however that they are intended to operate as prohibitions on the

movement of the relevant plants until such time as the Commission recognises such an area or country and consequently the points are transposed by the instrument.

Commission Implementing Decision 2014/237/EU, 2015/237 and 2015/2434 all relate to ban of certain fruits and vegetables to protect the EU from quarantine pests, mainly insects, like non- European fruit flies from India. When the Indian Plant Health Authorities made significant improvements in the phytosanitary export certification systems and provided assurance that appropriate technical measures are available to ensure that the exports of plants of *Mangifera* L. is free from these flies, additional requirements for the import of mangoes from India was introduced. The ban remains in place for the other fruits and vegetable and a revision of this is to take place on or before 31 December 2016.

Commission Implementing Decision (EU) 2015/749 – Potato Spindle Tuber Viroid is now widely spread within the EU and there is no longer any phytosanitary risks justifying these measures therefore the measures previously put in place are now revoked.

Commission Implementing Decisions (EU) 2015/789 and (EU) 2015/2417 continues to strengthen measures to prevent the introduction and spread of *Xylella fastidiosa* (a bacterium which causes harmful effects on a very broad host range including almond, peach, plum, apricot, grapevines, citrus, coffee as well as oak, elm, Italian ryegrass, blackberry, sunflower and particularly on olives following outbreaks in Italy and France (including Corsica).

Commission Implementing Decision (EU) 2015/893 introduces new measures to protect and stop the spread of *Anoplophora glabripennis* (Motschulsky) (the Asian long-horned beetle) which poses a serious threat to a wide range of broadleaved trees in the EU.

Commission Implementing Decision (EU) 2015/1849 introduces additional requirements for the import of certain vegetables from harmful organisms, mainly non-European *Tephritidae*, like *Ceratitis cosyra* (Walker), *Thrips palmi* Karny or *Bemisia tabaci* (Genn.) from Ghana.

Adding import of *Prunus* planting material to statutory notification requirements

4.1 The current statutory notification scheme applies to oak, plane, sweet chestnut, pine, elm and ash trees. The requirements are in place to help the Plant Health and Seeds Inspectorate (PHSI) and their equivalents in Devolved Administrations build intelligence about particular trades, particularly those where there is a risk of introducing harmful organisms, and to help arrange targeted inspections of such trees. The information is also valuable in the event of an outbreak, to facilitate tracing of trees which may be implicated.

The UK Plant Health Services (Scotland, England, Northern Ireland and Wales) published a consultation on proposals to add *Prunus* to this list and to amend the notification period timing on landing of these plants in response to the threat from a number of harmful organisms present elsewhere in the EU, but not in the UK, where

the main hosts include *Prunus* species. This includes EU regulated pests such as *Xylella fastidiosa*, *Anoplophora chinensis* and *Xanthonomas arboricola* pv. *pruni*, as well as unlisted pests such as *Platynota stultana* and *Aromia bungii*. This action was supported by the sector. The time period for the notification of the landing of *Prunus* L. (and other tree plants listed in article 19B) is extended by the instrument to include notification prior to and no later than five days of landing.

Introduction of national measures against *Epitrix* (Potato flea beetle)

4.2 In Scotland it is vital to protect the health and reputation of the Scottish seed potato industry and its freedom from serious quarantine pests. *Epitrix* species can be very damaging to potatoes and the potato sector. Two species of *Epitrix* have established in parts of Spain and Portugal. These are potentially the most serious plant health threat affecting the UK potato industry, as it would be impossible to eradicate and would have significant impacts on yield and export opportunities.

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) requires the demarcation of outbreak areas and also that potatoes being moved from such areas must be washed or brushed and must be accompanied by a plant passport for movement within the EU. These requirements were implemented in Scots law by S.S.I.s 2013/187 and 2015/10.

However in 2015, in England, Animal and Plant Health Inspectors (APHA) intercepted nine consignments of potatoes from Spain with evidence of *Epitrix* damage. These were all from non-demarcated areas. The consignments included two of unwashed potato tubers, where there is a much greater risk of live pests being present. These findings illustrate that there is an imminent threat of the pest being introduced to the UK from Spain unless stronger measures are taken. This threat exists despite UK Plant Health Services agreeing that inspectors would now check 100% of unwashed tubers from Spain.

As *Epitrix* is still being found in non-demarcated areas in Spain in order to protect the UK potato industry, Scottish Government launched a consultation in November 2015 to seek the sector's view to supplement EU requirements **by introducing a requirement that all potatoes from Spain must be washed before being exported to the UK through our national measures**. The aim is to kill or remove any *Epitrix* which might be present, as well as removing soil in which some life stages of the pest could be present. This consultation was conducted in association with the UK Plant Health Services.

This requirement is limited to potatoes from the parts of Spain which are within the EU (other than the Balearic Islands) and it does not apply to potatoes which are from demarcated areas within Spain (the conditions for which are set by Commission Implementing Decision 2012/270/EU (as amended)). This proposal was agreed by the sector and will remain in place until the Spanish Authorities have managed to control these pests in areas outwith demarcated zones.

4.3 Equivalent legislative changes are in the process of being introduced by Defra and Northern Ireland.

Consultation

***Prunus* Consultation**

5. In January 2015 the GB Plant Health Services launched a 12 week consultation to seek stakeholders views on a proposal to extend the statutory notification scheme for imports of certain plant/tree imports from other EU Member States, to add some or all *Prunus* species. This would include *Prunus* imported both for forestry and non-forestry purposes. The stakeholders agreed that the preferred option was to require notification for all *Prunus* species, as this will provide comprehensive intelligence, as well as avoiding confusion in the trade as to whether particular species are covered or not.

***Epitrix* (Potato flea beetle) Consultation**

5.1 In November 2015 the Scottish Government launched a 4 week consultation to seek the Scottish Stakeholder's views on a proposal to introduce national legislation against *Epitrix* requiring all potatoes imported from mainland Spain (exempting the Balearic Islands) to be washed before exported. Scottish Stakeholders were supportive of these measures. A similar but separate consultation was run elsewhere in the UK.

Timing

6. This Order is necessary now to ensure that a co-ordinated approach is taken across the UK in relation to strengthening measures on *Epitrix* and to adding *Prunus* species to the notification requirements to ensure there is a consistent approach on the improved controls at the borders within other parts of the UK. In addition we are required to reflect the EU Implementing Decisions where applicable in domestic law.

Consolidation

7. The PH Order has been amended on a number of occasions and it is likely that further amendments will be required as EU legislation takes account of new or revised risk assessment, pest interceptions, changes in distribution of pest and other developments. An EU Review of the Plant Health Regime is currently being conducted as part of the Smarter Rules for Safer Food package of revised regulations on the agri-food chain and while this Review is in process, there are no immediate plans to consolidate the PH Order.

Correction to Plant Health (Scotland) Amendment Order 2015 (S.S.I. 2015/10)

8. Article 15 of the instrument makes a minor amendment to article 13(c) of the Plant Health (Scotland) Amendment Order 2015 in response to an error identified during Parliamentary scrutiny of that instrument by the Delegated Powers and Law Reform Committee.

Business and Regulatory Impact

9. A Business and Regulatory Impact Assessment has not been prepared as the Order has no impact on the costs for business.

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02 February 2016, Ex 49692