

POLICY NOTE

THE PLANT HEALTH (SCOTLAND) AMENDMENT ORDER 2018

SSI 2018/112

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"). The EU legislation which is transposed and implemented by this amendment is:

- Commission Decisions (EU) 2016/715, 2017/801 and 2018/85 which all relate to measures in respect of citrus fruits originating in Brazil, Uruguay and South Africa to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (Citrus blackspot),
- Commission Decisions (EU) 2016/764 and 2017/2352 – measures amending Implementing Decision (EU) 2015/789 to prevent the introduction into and the spread within the Union of *Xylella fastidiosa*.
- Commission Decisions (EU) 2016/1359 and 2018/5 amending Implementing Decision 2012/270/EU - measures against the introduction into and the spread within the Union of *Epitrix* (Potato flea beetle)
- Commission Implementing Regulation (EU) 2016/873 - recognising protected zone status for certain member states
- Commission Implementing Decision (EU) 2017/198 - measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* (Kiwi canker).
- Decision No 1/2015 of the Joint Committee on Agriculture - amending Annex 4 to the EU-Swiss agreement.
- Commission Implementing Directive (EU) 2017/1279– various amendments of plant health requirements for a range of hosts and pests
- Commission Implementing Directive (EU) 2017/1920 - on seeds of *Solanum tuberosum*.

The amendments are described in more detail below

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 PH Order 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 (EU) 2017/1279 which amends Annexes I 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 reflecting technical changes in the assessment of risks presented by particular pests and diseases and introduces new measures to address risks presented by other pests and diseases. In particular it now recognises the UK as a protected zone for 4 new pests namely Bacterial shothole of Prunus (*Xanthomonas arboricola* pv *pruni*) - Elm Yellow's Phytoplasma (*Candidatus* Phytoplasma ulmi) - Palm borer (*Paysandisia archon*) - Red Palm Weevil (*Rhynchophorus ferrugineus*) - Pine Processionary Moth (*Thaumetopoea pitycampae*) and added three new plant species susceptible to *Bemisia tabaci* (Tobacco Whitefly) which UK has already protected zone status. Also new import requirements to confirm absence from the vector of citrus greening disease (*Trioza erytreae* Del Guercio.); within and outwith the EU are required for plants of *Choisya* and *Murraya*. A Transposition Note showing how the Directive is transposed by this Order has been published.

Commission Implementing Directive (EU) 2017/1920 amending Annex IV to Council Directive 2000/29/EC as regards the movement of seeds of *Solanum tuberosum* L. originating in the Union. A Transposition Note showing the Directive is transposed by this Order has been published.

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. Plant material originating in Switzerland (as a non-member of the EU) would normally be subject to the plant health controls set out in the Directive applicable to third countries. Annex 4 of the agreement is intended to facilitate trade between the EU and Switzerland in plant material subject to plant health controls. Appendices to Annex 4 set out what controls should be applied to plant material originating in either the EU or Switzerland and moving between the two and the controls to be applied to material which originated in a third country but which is moved between Switzerland and the EU or vice versa. In most cases Switzerland is treated as a Member State for plant health purposes. This means that material can be traded without the usual additional requirements which apply to third country material, which is beneficial both

to industry and the plant health services. Decision 1/2015 amends appendices 1, 2 and 4 of Annex 4 to reflect changes in the plant health legislative provisions of both parties, which are intended to facilitate trade by further extending the range of plant health material for which equivalence arrangements apply..

Commission Implementing Decision (EU) 2016/715/, 2017/801 and 2018/85 all relate to measures in respect of citrus fruits originating in Brazil, Uruguay and South Africa to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (Citrus blackspot).including strengthening measures and a provision for the import of citrus fruit destined exclusively for industrial processing into juice, by introducing the advance notice of landing requirement for fruit to be juiced in Scotland and their requirements for a licence to move these fruits.

Commission Implementing Decision (EU) 2016/764 and 2017/2352 – continues to strengthen the existing measures to prevent the introduction into and spread within the EU 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). These instruments clarify measures to be taken on infected zones and expand surveillance areas. It also recognises plants in the EU which are free from this pest are subject to the same requirements as plants originating in third countries where this organism is not present. Seven new hosts have been added to the ‘host list’ that require a plant passport when moved within the EU and: there is a requirement for six high risk hosts to be officially inspected, sampled and tested before movement every year:

Commission Implementing Decisions (EU) 2016/1359 and 2018/5 amending 2012/270/EU - measures against the introduction into and the spread within the Union of *Epitrix* (Potato flea beetle) to change the name of one of the pests covered by the Decision and strengthens survey requirements.

Commission Implementing Regulation (EU) 2016/873 amending Regulation 690/2008 (EC) which are additional requirements to apply to movements of specified plants into and within certain member states who have protected zones status for particular plant pests.

Commission Implementing Decision (EU) 2017/198 - measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* (Kiwi canker). Commission Implementing Decision (EU) 2012/756 expired on 31 March 2016 but due to the continued on-going phytosanitary risk posed by this disease the same measures set out previously were retained and due to further evidence gathering the surrounding width from the pest free place or pest free site of production was reduced from 500m to 100m

The instrument also corrects a drafting error in item 85a in Part B of schedule 4 of the PH Order and corrects a numbering issue identified in the form prescribed by in schedule 12.

Consultation

5. With the exception of the final sub-paragraph, the changes outlined in paragraph 4 are required to implement or to transpose EU law. Some issues (i.e. *Phyllosticta citricarpa* and *Xylella fastidiosa*) have been subject to consultations with the sectors involved, while the others are mainly technical updates or have limited impact on UK business.

Timing

6. We are required to transpose and implement EU law into domestic law in a timely manner. On this occasion there has been a delay in transposing Commission Implementing Directives 2017/1279 and 2017/1920 and the transposition deadlines have not been met. In light of the fact that the PH Order has been amended on a number of previous occasions, the decision was taken to group the transposing measures for both the Directives into a single amendment and to incorporate the implementing measures for as many of the recent Commission Implementing Decisions as possible, with a view to reducing the overall number of instruments required to amend the PH Order. There has been a delay in finalising this instrument but no adverse effect on trade has arisen as a result of the failure to meet the transposition deadlines.

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. The EU has conducted the review of the Plant Health Regime as part of the Smarter Rules for Safer Food package on the agri-food chain and EU Plant Health Regulation EU 2016/2031 has been published. This will come into force on 14 December 2019 however the Commission are still considering issues relating to the implementing/delegating acts to this Regulation and in light of this, there are no immediate plans to consolidate the PH Order.

Business and Regulatory Impact

8. A Business and Regulatory Impact Assessment has not been prepared as the Order has no impact on the costs for business. The requirements apply mainly in countries exporting to the EU.

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