

EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (ENGLAND) (AMENDMENT) (No. 2) ORDER 2017

2017 No. 1220

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends the Plant Health (England) Order 2015 (S.I. 2015 No. 610) (“the principal Order”) which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It implements the specific control measures in Commission Implementing Decisions (EU) 2017/801 and (EU) 2017/198 and Commission Implementing Directive (EU) 2017/1279. It also implements Decision No 1/2015 of the Joint Committee on Agriculture set up by the agreement between the European Community and the Swiss Confederation on trade in agricultural products (2017/169/EU).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU¹ (“the Plant Health Directive”) establishes the EU plant health regime. The Plant Health Directive is implemented in England by the Plant Health (England) Order 2015 and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) which extends to Great Britain. Similar but separate legislation to the principal Order operates in Scotland, Wales and Northern Ireland.
- 4.2 A number of EU instruments have been adopted which modify the annexes of the Plant Health Directive as a result of technical changes in the assessment of risks presented by particular pests and diseases and introduce new measures to address risks presented by other pests and diseases.

¹ This Directive can be found at <http://europa.eu.int/eur-lex/en/search/index.html>.

- 4.3 Decision 1/2015 of the Joint Committee on Agriculture responsible for administering the agreement between the European Community and the Swiss Confederation on trade in agricultural products amends the appendices to Annex 4 of that Agreement to reflect changes to the legislative provisions of the EU and Switzerland regarding plant health. Annex 4 is implemented in England by the Plant Health (England) Order 2005 and this instrument makes the necessary amendments to the Order.
- 4.4 These amendments are to be implemented through this instrument which comes into force on 1 January 2017. The changes are described in more detail below.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is to England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The Plant Health Directive (Council Directive 2000/29/EC) 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 (and therefore the principal Order) are updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. This instrument implements the specific EU measures arising from technical changes in the assessment of the risks presented by particular pests and diseases.
- 7.2 These measures are contained in several pieces of EU legislation:
- Commission Implementing Decision (EU) 2017/801 which amends Implementing Decision (EU) 2016/715 on 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 Implementing Decision (EU) 2017/198 which extends and amends the measures in Commission Implementing Decision 2012/756/EU to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* (bacterial canker of kiwifruit).
 - 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. A summary of the changes introduced by Commission Implementing Directive (EU) 2017/1279/EU can be found in the Annex, together with a Transposition Note showing how the Directive is implemented by this Order.

- 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 to the other party and to material arriving in either party via the other from a third country. 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 (2017/169/EU) 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.

Consolidation

7.3 This is not a consolidation as this is the third instrument to amend the principal Order.

8. Consultation outcome

8.1 The changes outlined in paragraph 7.2 reflect those already in place at the EU level, which have been published by the European Commission. Some issues (i.e. *Phyllosticta citricarpa* and *Pseudomonas syringae*) have been subject to consultations with the sectors involved, while the others are mainly technical updates or have limited impact on UK business.

9. Guidance

9.1 The main stakeholders likely to be affected will be informed of the transposition of these EU changes and a summary of the measures will be placed on the Defra website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies. The requirements apply mainly in countries exporting to the EU.

10.2 There is no impact on the public sector.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 The legislation applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

12. Monitoring & review

- 12.1 The Directive (and therefore the Order) are updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. A new EU Plant Health Regulation has recently been published as part of a package of revised regulations under the agri-food chain.

13. Contact

Iain Johnstone, Defra, Second Floor, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel: 02080 265265; e-mail: iain.johnstone@defra.gsi.gov.uk can answer any queries regarding this instrument.

COMMISSION IMPLEMENTING DIRECTIVES (EU) 2017/1279 - SUMMARY OF CHANGES

Commission Implementing Directive (EU) 2017/1279 of 14 July 2017 amend Annexes I, II, III, IV and V of Council Directive 2000/29/EC ('the Plant Health Directive'). The changes are to be implemented in England through an amendment to the Plant Health (England) Order 2015, due to come into force on 1 January 2018.

A summary of the changes relevant for the UK is outlined below.

General amendments

- The following spelling errors are corrected:
 - *Phyloosticta solitaria* Ell. and Ev. replaced by *Phyllosticta solitaria* Ellis & Everhart
 - *Popilia japonica* Newman replaced by *Popillia japonica* Newman
 - *Aleurocantus* spp. replaced by *Aleurocanthus* spp
 - *Aonidella citrina* Coquillet replaced by *Aonidiella citrina* Coquillet
 - *Amiris* P. Browne replaced by *Amyris* P. Browne
 - *Xanthomonas campestris* pv. *pruni* (Smith) Dye is renamed as *Xanthomonas arboricola* pv. *pruni* (Smith) Vauterin *et al.*
 - *Zea mais* L.' is replaced by *Zea mays* L.

Amendments to Annex IAI - Harmful organisms not known to occur in EU and whose introduction and spread is prohibited within EU

- *Anoplophora malasiaca* (Forster) deleted. (Considered to be a synonym of *Anoplophora chinensis* (Thomson), which is already included in Section I of Part A of Annex I to Directive 2000/29/EC).
- *Bactericera cockerelli* (Sulc.), *Keiferia lycopersicella* (Walsingham), *Saperda candida* Fabricius and *Thaumatotibia leucotreta* (Meyrick) added.
- *Guignardia citricarpa* Kiely renamed as *Phyllosticta citricarpa* (McAlpine) Van der Aa and moved from Annex IIAI to Annex IAI.
- *Xanthomonas campestris* renamed as *Xanthomonas citri* pv. *aurantifolii* and *Xanthomonas citri* pv. *citri*. and moved from Annex IIAI to Annex IAI.

Amendments to Annex IAI - Harmful organisms known to occur in EU and whose introduction and spread is prohibited within EU

- *Xylella fastidiosa* (Wells *et al.*) - change in listing from Annex IAI to Annex IAI.
- Elm phloem necrosis mycoplasma has been renamed '*Candidatus* Phytoplasma ulmi and moved from Annex IAI to Annex IAI

Amendments to Annex IB - Harmful organisms whose introduction and spread within certain protected zones is prohibited

- Changes to protected zones in Portugal for *Bemisia tabaci* Genn. (European populations).
- Changes to protected zones in Spain and Italy for *Dryocosmus kuriphilus* Yasumatsu
- Changes to protected zones in Portugal for *Globodera pallida* (Stone) Behrens.
- Protected zone status for the local authority areas of Guildford and Woking with regard to *Thaumetopoea processionea* L. revoked.
- Protected zone added in Portugal (Azores) for *Globodera rostochiensis* (Wollenweber) Behrens.

Amendments to Annex IIAI - Harmful organisms known to occur in EU and whose introduction and spread is prohibited within EU if present on certain plants or plant products

- Potato spindle tuber viroid - change in listing from Annex IAI to Annex IIAI.

Amendments to Annex IIB - Harmful organisms whose introduction and spread within certain protected zones is prohibited if present on certain plants or plant products

- The following harmful organisms are added:
 - *Candidatus* *Phytoplasma* in relation to protected zone in UK.
 - *Paysandisia archon* (Burmeister) in relation to protected zones in Ireland, Malta and UK.
 - *Rhynchophorus ferrugineus* (Olivier) in relation protected zones in Ireland, Portugal and UK.
 - *Thaumetopoea pityocampa* Denis & Schiffermüller in relation to protected zones in UK.

- *Xanthomonas arboricola* pv. *pruni* (Smith) Vauterin in relation to protected zones in UK.
- Portugal removed from protected zones for *Curtobacterium flaccumfaciens*.
- Changes to protected zones in UK (Northern Ireland and Slovakia for *Erwinia amylovora*).
- Ireland added to protected zones for *Ceratocystis platani*.
- Changes to protected zones in Portugal in relation to *Citrus tristeza virus*

Amendments to Annex IIIB – Plants, plant products and other objects prohibited from certain protected zones

- Changes to protected zones in UK (Northern Ireland) and Slovakia for *Erwinia amylovora*.

Amendments to Annex IVAI – Special requirements for import of material from third countries

- Item 14.1 - Special requirements introduced for host plants of *Saperda candida* Fabricius.
- Item 16.2 - Special requirements for *Xanthomonas citri* pv. *aurantifolii* and *Xanthomonas citri* pv. *citri*. amended.
- Item 16.3 – Special requirements for *Cercospora angolensis* amended.
- Item 16.4 – Special requirements for *Phyllosticta citricarpa* (McAlpine) Van der Aa amended.
- Item 16.6 - Special requirements introduced for host plants of *Thaumatotibia leucotreta* (Meyrick).
- Item 18.2 – *Murraya* J. Koenig ex L. and *Choisya* Kunth added to the list of host plants for *Trioza erythrae* Del Guercio.
- Item 18.4 – Special requirements introduced for plants of *Microcitrus* Swingle, *Naringi* Adans., *Swinglea* Merr in relation to *Xanthomonas citri* pv. *aurantifolii* and *Xanthomonas citri* pv. *citri*.
- Item 25.7.1 – Special requirements introduced for plants of *Solanum lycopersicum* and *Solanum melongena* in relation to *Keiferia lycopersicella* (Walsingham).
- Item 25.7.2 - Special requirements introduced for fruits of *Solanum lycopersicum* and *Solanum melongena* in relation to *Keiferia lycopersicella* (Walsingham).

Amendments to Annex IVAII – Special requirements for movement within EU

- Item 8.1 - Special requirements added for *Ulmus* plants in relation to *Candidatus Phytoplasma ulmi*.
- Item 10.1 - *Murraya* J. Koenig ex L. and *Choisya* Kunth added to the list of host plants for *Trioxa erytrae* Del Guercio.

Amendments to Annex IVB – Special requirements for introduction and movement of plants, plant products and other objects into and within certain protected zones

- Item 12.1 - Changes to UK (Northern Ireland) protected zone with regard to *Erwinia amylovora* (Burr.) Winsl. et al..
- Item 16.1 - UK protected zone for *Thaumetopoea pityocampa* Denis & Schiffermüller added.
- Item 20.3 – Portugal (Azores) added to protected zones for which special requirements apply to all plants with roots, planted or intended for planting, grown in the open air in relation to *Globodera pallida* (Stone) Behrens.
- Item 20.4 - Special requirements introduced for all plants with roots, planted or intended for planting, grown in the open air for protected zone in Portugal (Azores) for *Globodera rostochiensis* (Wollenweber) Behrens.
- Item 20.5 - Special requirements introduced for plants of *Prunus* intended for planting, other than seeds, for UK protected zone for *Xanthomonas arboricola* pv. *pruni* (Smith) Vauterin.
- Item 21 - Changes to UK (Northern Ireland) protected zone for which special requirements apply in relation to host plants of *Erwinia amylovora* (Burr.) Winsl. et al..
- Item 21.1 - Changes to special requirements for plants of *Vitis* L. in relation to protected zone for *Daktulosphaeria vitifoliae*.
- Item 21.3 - Changes to UK (Northern Ireland) protected zone for *Erwinia amylovora* (Burr.) Winsl. et al. for which special requirements apply in relation to bee hives.
- Item 21.4 – Special requirements added in relation to protected zones for *Paysandisia archon* in relation to plants of *Palmae* intended for planting.
- Item 21.5 - Special requirements added in relation to protected zones in Ireland, Portugal and UK for *Rhynchophorus ferrugineus* (Olivier) in relation to plants of *Palmae* intended for planting.
- Items 24.1 and 24.2 – Changes to protected zones to which special requirements apply in relation to host material of *Bemisia tabaci* Genn. (European populations).
- Item 24.3 – Changes to host plant material to which special requirements apply in relation to protected zones for *Bemisia tabaci* Genn. (European populations).

- Item 33 - Changes to protected zones to which special requirements apply in relation to plants of *Castanea* Mill and *Dryocosmus kuriphilus*.

Amendments to Annex VAI – Material that must be accompanied by a plant passport for movement within EU

- Item 1.4 - Plants of *Choisya* Kunt and *Murraya* J. Koenig ex L *Trioza erythrae* added.
- Item 2.1 - Plants of *Ulmus* intended for planting – Change in listing from Annex VAI to Annex VAI.

Amendments to Annex VAII – Material that must be accompanied by a plant passport for movement within protected zones

- Item 1.2 - Plants of *Ulmus* intended for planting – Change in listing from Annex VAI to Annex VAII.
- Item 1.3.1 – Introduction of plant passporting requirement for certain plants of *Palmae*, intended for planting (in relation to *Rhynchophorus ferrugineus* (Olivier) protected zone).
- Item 2.1 – Introduction of plant passporting requirement for plants of *Dipladenia* A.DC, *Mandevilla* Lindl. and *Nerium oleander* L., intended for planting, other than seeds (in relation to *Bemisia tabaci* Genn (European populations) protected zone).

Amendments to Annex VBI - Material that must be accompanied by a phytosanitary certificate for import of material from third countries

- Item 3 - Introduction of phytosanitary certificate requirement for fruits of *Microcitrus* Swingle, *Naringi* Adans., *Swinglea* Merr. and their hybrids.
- Item 3 - Introduction of phytosanitary certificate requirement for fruits of *Punica granatum* L. originating in countries of the African continent, Cape Verde, Saint Helena, Madagascar, La Reunion, Mauritius and Israel.

Transposition Note for the transposition of Commission Implementing Directive (EU) 2017/1279 amending 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

Commission Implementing Directive (EU) 2017/1279		
Provision in Annex	Amendment to Directive 2000/29/EC (“the Plant Health Directive”)	Provision in the Plant Health (England) (Amendment) (No.2) Order 2017
(1)(a)(i)	Amendments to Section I, Part A, Annex I to the Plant Health Directive	Article 8(1) (amending Part A of Schedule 1 to the Plant Health (England) Order 2005 (“the principal Order”). Nothing required for other amendments in (1)(a)(i)
(1)(a)(ii)	Amendments to Section II, Part A, Annex I to the Plant Health Directive	Article 8(2) (amending Part B of Schedule 1 to the principal Order)
(1)(b)(i) and (ii)	Amendment to Part B, Annex I to the Plant Health Directive	Article 8(3) (amending Part C of Schedule 1 to the principal Order). Nothing required for other amendments in (1)(b)
(2)(a)(i)	Amendments to Section I, Part A, Annex II to the Plant Health Directive	Article 9(1) (amending Part A of Schedule 2 to the principal Order). Nothing required for other amendments to (2)(a)(i)
(2)(a)(ii)	Amendments to Section II, Part A, Annex II to the Plant Health Directive	Article 9(2)(b) and (c)(ii) (amending Part B of Schedule 2 to the principal Order)
(2)(b)(i)	Amendment to Part B, Annex II to the Plant Health Directive	Article 9(2)(a) (amending Part B of Schedule 2 to the principal Order)
(2)(b)(ii) and (iii)	Amendment to Part B, Annex II to the Plant Health Directive	Nothing required for amendments in (2)(b)(ii) and (iii)
(2)(b)(iv)	Amendment to Part B, Annex II to the Plant Health Directive	Article 9(2)(c)(i) (amending Part B of Schedule 2). Nothing required for other amendments in (2)(b)(iv)
(3)(a) and (b)	Amendment to Part B, Annex III to the Plant Health Directive	Nothing required for amendments in (3).
(4)(a)(i)	Amendments to Section I, Part A,	Article 11(1) (amending Part A

	Annex IV to the Plant Health Directive	of Schedule 4 to the principal Order). Nothing required for other amendments in (4)(a)(i)
(4)(a)(ii)	Amendments to Section II, Part A, Annex IV to the Plant Health Directive	Article 11(2) (a) to (c) (amending Part B of Schedule 4 to the principal Order).
(4)(b)	Amendments to Part B, Annex IV to the Plant Health Directive	Article 11(3) (amending Part C of Schedule 4 to the principal Order). Nothing required for other amendments in (4)(b).
(5)(a)(i)	Amendments to Section I, Part A, Annex V to the Plant Health Directive	Article 13(1) and article 14(1) (amending Part A of Schedules 6 and 7 to the principal Order)
(5)(a)(ii)	Amendments to Section II, Part A, Annex V to the Plant Health Directive	Articles 13(2) and 14(2) (amending Part B of Schedules 6 and 7 to the principal Order). Nothing required for other amendments in (5)(a)(ii)
(5)(b)(i)	Amendments to Section I, Part B, Annex V to the Plant Health Directive	Article 12 (amending Part A of Schedule 5 to the principal Order). Nothing required for other amendments in (5)(b)(i)
(5)(b)(ii)	Amendments to Section II, Part B, Annex V to the Plant Health Directive	Nothing required for amendments in (5)(b)(ii).