

2008 No. 2411

PLANT HEALTH, ENGLAND

The Plant Health (England) (Amendment) Order 2008

Made - - - - *9th September 2008*

Laid before Parliament *10th September 2008*

Coming into force - - *1st October 2008*

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(a) and it appears to the Secretary of State that it is expedient for the references to Commission Directive 2008/61/EC (establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections)(b) to be construed as references to that instrument as amended from time to time.

The Secretary of State, in whom the powers conferred by sections 2 and 3(1), (2) and (4) of the Plant Health Act 1967(c) are now vested(d), makes the following Order in exercise of those powers and the powers conferred by paragraph 1A of Schedule 2 to the European Communities Act 1972(e).

Title, commencement, extent and application

1. This Order—

- (a) may be cited as the Plant Health (England) (Amendment) Order 2008;
- (b) comes into force on 1st October 2008;
- (c) extends to England and Wales but only applies in England.

Amendments to the Plant Health (England) Order 2005

2.—(1) The Plant Health (England) Order 2005(f) is amended as follows.

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- (a) 1972 c. 68.
 - (b) OJ No L 158, 18.6.2008, p 41.
 - (c) 1967 c. 8; sections 2(1) and 3(1) and (2) were amended by the European Communities Act 1972, Schedule 4, paragraph 8; section 3(4) was substituted by section 42 of the Criminal Justice Act 1982 (c. 48).
 - (d) Under the Transfer of Functions (Wales) (No.1) Order 1978 (S.I. 1978/272), article 2(1) and Schedule 1, the functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 were, so far as they are exercisable in relation to Wales, transferred to the Secretary of State; and under the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2 and Schedule 1, the functions transferred to the Secretary of State by the 1978 Order were transferred to the National Assembly for Wales. These functions were transferred from the National Assembly for Wales to the Welsh Ministers under section 162 of, and paragraph 30(1) and (2) of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Under article 2(1) and (2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794), the remaining functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 were transferred to the Secretary of State.
 - (e) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c. 51).
 - (f) S.I. 2005/2530, amended by S.I. 2006/2307; there are other amending instruments but none is relevant.

- (2) In article 2(1), for the definition of “Directive 2000/29/EC” substitute—
- ““Directive 2000/29/EC” means 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;”(a).
- (3) After article 19(2), insert—
- “(3) Subject to article 22, no person shall land in England seed potatoes grown, or suspected to have been grown, in another member State or in Switzerland unless written notification is provided to an inspector, at least two days prior to the intended date of introduction into England of the seed potatoes, of the intention to land the seed potatoes and of—
- (a) the intended time, date and means of introduction;
 - (b) the intended point of entry into England;
 - (c) their intended use and destination;
 - (d) their variety and quantity; and
 - (e) the producer’s identification number.”.
- (4) In article 22, after “article 19(1)(e), (f) and (g)” insert “and (3)”.
- (5) After article 39, insert—

“PART 7A

MANAGEMENT ZONES FOR PLANT HEALTH PURPOSES

Measures for preventing the introduction of *Diabrotica virgifera* Le Conte

39A.—(1) Where there is a high risk of the introduction of *Diabrotica virgifera* Le Conte from any aircraft landing at an airport in England, the Secretary of State may designate a zone around the airport (“a designated zone”).

(2) A designated zone shall extend to a radius of at least 2500 metres around the runways of, or around any other areas where aircraft move within, an airport.

(3) The Secretary of State may revoke or vary a designation at any time.

(4) The Secretary of State shall take appropriate measures to notify any designation, revocation or variation to persons growing or intending to grow maize in a designated zone.

(5) Any person acting in the course of a business, trade or other undertaking and growing maize in a designated zone shall ensure that crops are rotated in such a way that maize is only grown once in any field during any period of two consecutive years.

(6) Any premises which are partly inside and partly outside a designated zone shall be deemed to be wholly inside that zone for the purposes of this article.

(7) Paragraph (6) shall not apply in respect of any part of any premises which is situated outside England.”.

- (6) In article 41—
- (a) in paragraph (1) for “Directive 95/44/EC of 26th July 1995” substitute “Directive 2008/61/EC”;
 - (b) in paragraphs (2), (6) and (7)(a) for “Directive 95/44/EC” substitute “Directive 2008/61/EC”; and
 - (c) for paragraph (7)(b) substitute—

“(b) “Directive 2008/61/EC” means Commission Directive 2008/61/EC establishing the conditions under which certain harmful organisms, plants, plant products and other

(a) OJ No L 169, 10.7.2000, p 1, as last amended by Commission Directive 2008/64/EC, OJ No L 168, 28.6.2008, p 31.

objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections, as amended from time to time”.

- (7) After article 45(1)(a)(xiA)(a) insert—
“(xiB) article 39A(5);”.
- (8) In Schedule 1, Part B omit “4. *Heliothis armigera* (Hübner)”.
- (9) In Schedule 2, Part B after item 10 under the heading “Insects, mites and nematodes” add—
- “11. Plants of *Dendranthema* (DC.) Des Moul, *Dianthus* L., *Helicoverpa armigera*
Pelargonium l’Hérit. ex Ait. and of the family (Hübner”).
Solanaceae, intended for planting, other than seeds
- (10) In Schedule 2, Part B omit item 2 under the heading “Fungi”.
- (11) In Schedule 3, item 8 omit “Bulgaria,”(b).
- (12) In Schedule 4—
- (a) in item 41 of Part A and in item 23 of Part B for “*Heliothis armigera* Hübner” substitute “*Helicoverpa armigera* (Hübner)”; and
- (b) in item 71 of Part A after “corms,” add “bulbs”.
- (13) In Schedule 8, Part A—
- (a) in item 2 omit “other than *Sorbus intermedia* (Ehrh.) Pers.”; and
- (b) for item 5(d) substitute—
“(d) seeds or bulbs of *Allium ascalonicum* L., *Allium cepa* L., *Allium schoenoprasum* L., *Helianthus annuus*, *Lycopersicon lycopersicum*, *Medicago sativa* or *Phaseolus* intended for planting;”.

Revocations

3. The following instruments are revoked—
- (a) the Potatoes Originating in Germany (Notification) (England) Order 2001(c);
- (b) the Polish Potatoes (Notification) (England) Order 2004(d); and
- (c) the Dutch Potatoes (Notification) (England) Order 2005(e).

9th September 2008

Jeff Rooker
Minister of State
Department for Environment, Food and Rural Affairs

(a) Article 45(1)(a)(xiA) was inserted by S.I. 2006/2307, article 2(10)(b).
(b) “Bulgaria” was inserted by S.I. 2006/2307, article 2(14).
(c) S.I. 2001/3194.
(d) S.I. 2004/1452.
(e) S.I. 2005/279.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (England) Order 2005 (S.I. 2005/2530) (“the principal Order”) so as to implement—

Commission Directive 2008/64/EC amending Annexes I to IV 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 (OJ No L 168, 28.6.2008, p 31) (article 2(8), (9), (10) and (12));

Commission Directive 2008/61/EC establishing the conditions under which certain harmful organisms, plants, plant products and other objects listed in Annexes I to V to Council Directive 2000/29/EC may be introduced into or moved within the Community or certain protected zones thereof, for trial or scientific purposes and for work on varietal selections (OJ No L 158, 18.6.2008, p 41) (article 2(6)); and

Commission Decision 2008/86/EC, being Decision No. 1/2008 of the Joint Committee on Agriculture set up by the Agreement between the European Community and the Swiss Confederation on Trade in Agricultural Products, which makes changes to the list of relevant material originating in Switzerland which may be landed in or moved within England if accompanied by a Swiss plant passport (article 2(13)).

In addition, this Order—

revokes three statutory instruments concerned with notification requirements for seed and ware potatoes from certain member States and inserts into the principal Order new notification requirements with respect to seed potatoes from all member States and Switzerland (articles 2(3) and (4) and 3); and

establishes measures to designate zones for the management of *Diabrotica virgifera* Le Conte (article 2(5)).

Contravention on the prohibition on landing introduced by article 2(3) is an offence under the Customs and Excise Management Act 1979 (c. 2) and not under the principal Order.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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