

**EXPLANATORY MEMORANDUM TO
THE PLANT HEALTH (ENGLAND) (AMENDMENT) ORDER 2008**

2008 No. 2411

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.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Description**

This Order amends the Plant Health (England) Order 2005 ('the principal Order') which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It implements Commission Directives 2008/64/EC and 2008/61 and Commission Decisions 2008/86/EC and 2006/564/EC and a corrigendum to Council Directive 2000/29/EC.

It also extends existing notification requirements for seed potatoes introduced from Member States and revokes existing notification requirements for ware potatoes .

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

None.

- 4. Legislative Background**

- 4.1 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 ("the Plant Health Directive") establishes the Community plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The Directive is implemented in England, for non-forestry matters, by the Plant Health (England) Order 2005. Similar but separate legislation operates in Scotland, Wales and Northern Ireland.
- 4.2 A number of Community instruments have been adopted amending the annexes of the Directive as a result of technical changes in the assessment of risks presented by particular pests and diseases and introducing new measures to address risks presented by other pests and diseases. These amendments are described in more detail below. The current Statutory Instrument makes the necessary amendments to the Plant Health (England) Order.
- 4.3 The notification requirements for seed potatoes do not derive from amendments to the Plant Health Directive. Article 12 of the Directive, however, requires Member States to organise official checks to ensure compliance with the Directive. Ordinarily, these checks are to be carried out at random but Member States must conduct targeted checks if facts have come to light to suggest that one or more

provisions of the Directive have not been complied with (the potential movement of seed potatoes infected with ring rot being introduced into England from other Member States being a situation justifying the introduction of targeted checks).

4.4 The amending Order is made under sections 2 and 3(1), (2) and (4) of the Plant Health Act 1967, which enable the Secretary of State to make Orders for the purposes of preventing the introduction of plant pests into England and to prevent their spread. The amending Order also makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and references to certain instruments, specified in the Order, are to those instruments as amended from time to time.

5. Territorial Extent and Application

This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Plant Health Directive (Council Directive 2000/29/EC) establishes the Community plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the Community of serious pests and diseases of plants and plant produce. The amendments to the Plant Health Directive which this amendment Order implements arise from technical changes in the assessment of the risks presented by particular pests and diseases. Details of the Commission legislation amending the Plant Health Directive are as follows:

(i) Commission Directive 2008/64/EC downgrades the status of two pests – *Heliothis armigera* (Huber) and *Colletotrichum acutatum* (Simmonds) – recognising, in the case of the former, new information from Member States on a more limited host range and, in the case of the latter, its widespread presence within the EU. It also makes minor changes to the list of areas recognised as protected zones against certain organisms harmful to plant health in the Community; none of which apply to the UK.

(ii) Commission Directive 2008/61/EC repeals and replaces existing EU legislation which provides for the import and keeping of prohibited material for scientific or research purposes. The new directive is largely a codification of the previous version.

(iii) Commission Decision 2008/86/EC makes minor technical changes to the Appendices to Annex 4 of the agreement on trade in agricultural products between the EU and Switzerland, which enables plant material to be moved freely or with a plant passport between the EU and Switzerland where the two parties have equivalent legislation. The amendments reflect changes in the two parties' plant health legislation.

(iv) Corrigendum to Directive 2000/29/EC corrects an error in the main directive which failed to include bulbs in a list of material excluded from the need for specific measures prior to import to the EU.

- 7.2 Potatoes moving into England from elsewhere in the EU are subject to plant passporting and associated requirements, but these do not routinely involve notification to the Plant Health and Seeds Inspectorate (PHSI). Where there has been evidence of an increased plant health risk, for instance through several interceptions of harmful organisms, or an increase in outbreaks associated with a particular origin, Regulations have been put in place requiring prior notification of potatoes introduced from those sources. This allows targeted monitoring (including laboratory testing) to be carried out by the PHSI, to reduce the risk of introducing and circulating infected potatoes. Such Regulations have been introduced for potatoes from Germany (2001), Poland (2004) and the Netherlands (2005).
- 7.3 Recent results of surveys carried out by Member States for the main harmful organisms (ring rot and brown rot) affecting seed and ware potatoes indicate that there remains a risk attached to potatoes from the countries mentioned above, but outbreaks are now occurring at an equivalent or greater level in some other Member States. In a recent consultation exercise stakeholders in England and Wales were asked to consider whether the existing measures remain relevant and whether any revision is necessary in response to the changing disease situation across the EU. Although four options were identified, stakeholders were asked to focus particularly on the two options which offered the best prospects for a long term solution; either the introduction of a blanket notification arrangement for all seed potatoes introduced from other Member States, or the revocation of existing statutory controls and the introduction of a voluntary notification system. Seed potatoes have the greatest potential to multiply and spread any harmful organisms present, so under the first option the intention would be to focus on this category, while revoking the existing arrangements for ware potatoes, which currently affect such potatoes introduced from Netherlands, Germany and Poland. Equivalent consultation exercises were undertaken in Scotland and Northern Ireland.
- 7.4 All respondents favoured an extension of the existing notification requirements to include seed potatoes introduced from any EU source. Diseases such as ring rot and brown remain a key concern for the industry, as there have been only limited outbreaks in the UK, which have dealt with effectively. Statutory notification is regarded as an important protective measure to minimise the risk of further outbreaks, consistent with other official and non-official measures. Ring rot and brown rot can be very costly to eradicate and can also impact on trade opportunities. Therefore the industry see the limited burdens associated with notification as a price well worth paying to help prevent further outbreaks.
- 7.5 A notification system for all seed potatoes from other Member States would provide comprehensive coverage, but would include Member States considered to be low risk at present. It can, however, be justified on the basis that it is necessary to cover unknown or emerging threats and that a notification system which applies across the board would provide greater clarity and consistency for the industry, with little additional burden. There would also be some reduction of burden, by focussing

attention on just seed potatoes (rather than seed and ware as at present). The notification arrangements would be similar to those in place at present (i.e. notification of prescribed details at least 2 days prior to introduction) except that they would apply to all seed potatoes from other Member States, rather than seed and ware potatoes from a limited list of origins.

7.6 Decision 2006/564/EC includes various measures concerning *Diabrotica virgifera*, an important pest of maize. One aspect relates to airports where there has been identified a high risk of introducing the pest (one means by which *Diabrotica* infests new areas is by hitch hiking on planes). Around such airports the Decision requires that, within a one and a half miles radius, Member States must either enforce a rotation so that maize is not grown more than once in two years, or to monitor intensively using pheromone traps. The latter is not considered a realistic proposition and therefore an amendment to the Plant Health (England) Order 2005 is needed to provide the means to introduce a rotation requirement. It is intended to publicise the requirement via the Defra website and local media in relation to relevant airports.

8. Impact

A regulatory impact assessment has not been prepared as the Order has minimal impact on the costs for business.

9. Contact

Iain Johnstone (Defra, Plant Health, 1st Floor, The Quadrant, Newburn Riverside, Newcastle Upon Tyne, NE15 8NZ. Tel: 0191 229 5482, e-mail: iain.johnstone@defra.gsi.gov.uk) can answer any queries regarding the instrument.

