

2017 No. 8

PLANT HEALTH, ENGLAND

The Plant Health (England) (Amendment) Order 2017

Made - - - - *10th January 2017*

Laid before Parliament *11th January 2017*

Coming into force - - *6th February 2017*

The Secretary of State makes this Order in exercise of—

- (a) the powers conferred by sections 2 and 3(1) of the Plant Health Act 1967(a) and now vested in the Secretary of State(b); and
- (b) the powers conferred by paragraph 1A of Schedule 2 to the European Communities Act 1972(c).

This Order makes provision for a purpose mentioned in section 2(2) of the European Communities Act 1972(d) and it appears to the Secretary of State that it is expedient for the references to the European Union instrument mentioned in article 3(a)(iii) to be construed as references to that instrument as amended from time to time.

Citation and commencement

1. This Order may be cited as the Plant Health (England) (Amendment) Order 2017 and comes into force on 6th February 2017.

Amendment of the Plant Health (England) Order 2015

2. The Plant Health (England) Order 2015(e) is amended as follows.

Article 2 (general interpretation)

3. In article 2—

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- (a) 1967 c.8; section 2 was amended by paragraph 8(2)(a) of Schedule 4 to the European Communities Act 1972 (c.68), Part 1 of the table in paragraph 12 of Schedule 4 to the Customs and Excise Management Act 1979 (c.2) and S.I. 1990/2371, 2011/1043. Section 3(1) was amended by paragraph 8(2)(a) and (b) of Schedule 4 to the European Communities Act 1972 and S.I. 2011/1043. The powers conferred by sections 2 and 3(1) are conferred on a “competent authority”, which is defined in section 1(2). Section 1(2) provides that the Secretary of State is the competent authority for England otherwise than as regards the protection of forest trees and timber from attack by pests.
 - (b) The functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967, in so far as they were not exercisable in relation to Wales, were transferred to the Secretary of State by article 2(2) of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002 (S.I. 2002/794).
 - (c) 1972 c.68; paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51) and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7) and S.I. 2007/1388.
 - (d) Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 and Part 1 of the Schedule to the European Union (Amendment) Act 2008.
 - (e) S.I. 2015/610, amended by S.I. 2015/1827, 2016/104.

- (a) in paragraph (1)—
 - (i) after the definition of “authorised officer”, insert—
 - ““citrus fruits for processing under Decision (EU) 2016/715” means fruits of *Citrus* L., *Fortunella* Swingle or *Poncirus* Raf., other than fruits of *Citrus aurantium* L. or *Citrus latifolia* Tanaka, which—
 - (a) originate in Brazil, South Africa or Uruguay;
 - (b) are destined exclusively for industrial processing into juice; and
 - (c) are to be introduced into the European Union under the derogation specified in Article 8 of Decision (EU) 2016/715;”;
 - (ii) in the definition of “Decision 2012/270/EU”, for “*Epitrix similaris* (Gentner)”, substitute “*Epitrix papa* sp. n.”;
 - (iii) after the definition of “Decision (EU) 2015/893”, insert—
 - ““Decision (EU) 2016/715” means Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa(a);”;
- (b) in paragraph (5), for sub-paragraph (o) substitute—
 - “(o) Decision (EU) 2015/893;
 - (p) Decision (EU) 2016/715.”.

Article 6 (advance notification of landing)

4. After article 6(2), insert—

“(2A) In the case of citrus fruits for processing under Decision (EU) 2016/715, the names, addresses and locations of the premises at which the fruits are to be processed must be included under item 13 of the notice set out in Schedule 11.”.

Article 9 (presentation and display of documents)

5. For paragraphs (3) and (4) of article 9 substitute—

“(3) In the case of a consignment which includes notifiable relevant material and which is imported into England by post, the importer must ensure that any phytosanitary certificate or phytosanitary certificate for re-export which is required under article 7 to accompany the consignment is affixed to the outside of the package of the relevant material.

(4) But if the consignment consists of more than one package of notifiable relevant material, the importer must ensure that the certificate is affixed to the outside of one of the packages of notifiable relevant material and that copies of the certificate are affixed to the outside of each of the remaining packages of notifiable relevant material in the consignment.”.

Article 18 (requirements for plant health movement documents)

6. For article 18 substitute—

“18. No person may move any of the following notifiable relevant material unless it is accompanied by a plant health movement document—

- (a) notifiable relevant material which is subject to an EU transit agreement and is being moved to its area of plant health control in England;

(a) OJ No L 125, 13.5.2016, p. 16.

- (b) notifiable relevant material which is subject to an agreement referred to in article 12(4) and is being moved within England or from England to any other place within the European Union.”.

Article 19 (prohibitions on the introduction of plant pests and relevant material from the European Union)

7. In article 19—

- (a) after paragraph (7), insert—

“(7A) In the case of notifiable citrus fruits, the person who is introducing the fruits into the European Union via a point of entry in another part of the European Union must provide written notification to the Secretary of State at the specified address, prior to their arrival at that point of entry, of—

- (a) the expected date of their introduction into the European Union;
- (b) their point of entry into the European Union;
- (c) their volume;
- (d) the identification numbers of their containers;
- (e) the names, addresses and the locations of the premises in England at which they are to be processed.”;

- (b) after paragraph (8), insert—

“(9) In this article—

“notifiable citrus fruits” means citrus fruits for processing under Decision (EU) 2016/715 which are to be introduced into the European Union via a point of entry in another member State and processed into juice in England;

“specified address” means the address given by the Secretary of State from time to time for the purposes of paragraph (7A).”.

Article 24 (general provisions relating to plant passports)

8. For paragraph (3) of article 24 substitute—

“(3) Where a plant passport comprises an official label and is to be affixed by the plant trader who is authorised to issue the plant passport, the plant trader must affix it in such a way that it cannot be re-used.”.

Article 36 (information as to compliance with notices)

9. For article 36 substitute—

“**36.** A notice served under this Order may require the person on whom the notice is served to inform the inspector immediately whether the requirements of the notice have been complied with and, if they have, to provide the inspector with details of the steps taken to comply with those requirements.”.

Article 39 (miscellaneous provisions for certain solanaceous species)

10. In article 39(7), for “5(1)(c)(ii)” substitute “5(1)(c)(iii)”.

Article 46 (offences)

11. In article 46(1), omit sub-paragraph (a)(xii).

Schedule 1 (plant pests which may not be introduced into or spread within England)

12. In Part A of Schedule 1 (plant pests not known to occur in any part of the European Union), in item 20 under the heading “Insects, mites and nematodes”, for “*Epitrix similaris* (Genter)”, substitute “*Epitrix papa*. sp. n”.

Schedule 2 (relevant material which may not be introduced into or moved within England if that relevant material is carrying or infected with plant pests)

13. In Part A of Schedule 2 (plant pests not known to occur in the European Union), in the entry in the third column of item 11 under the heading “Fungi”, for “*Guignardia citricarpa* Kiely” substitute “*Phyllosticta citricarpa* (McAlpine) Van der Aa”.

Schedule 4 (restrictions on the introduction into and movement within England of relevant material)

14.—(1) In Part A of Schedule 4 (relevant material, originating in third countries, which may only be landed if special requirements are complied with)—

- (a) in item 17—
 - (i) in the entry in the second column, for “Brazil or South Africa” substitute “Brazil, South Africa or Uruguay”;
 - (ii) in the entry in the third column, for “*Guignardia citricarpa* Kiely”, in each place it occurs, substitute “*Phyllosticta citricarpa* (McAlpine) Van der Aa”;
- (b) after item 17, insert—

- “17A. Fruits of *Citrus latifolia* Tanaka originating in Brazil, South Africa or Uruguay
- The fruits must be accompanied by an official statement that:
- (a) they originate in an area recognised as being free from *Phyllosticta citricarpa* (McAlpine) Van der Aa (all strains pathogenic to Citrus), as referred to in Article 3(2) of Decision 2006/473/EC(a), and which is mentioned on the phytosanitary certificate or phytosanitary certificate for re-export;
 - (b) no symptoms of *Phyllosticta citricarpa* (McAlpine) Van der Aa (all strains pathogenic to Citrus) have been observed in the field of production or in its immediate vicinity since the beginning of the last cycle of vegetation, and none of the fruits harvested in the field of production has shown, in appropriate official examination, symptoms of this plant pest; or
 - (c) the fruits originate in a field of production subjected to appropriate treatments against *Phyllosticta citricarpa* (McAlpine) Van der Aa (all strains pathogenic to Citrus), and none of the fruits harvested in the field of production has shown, in appropriate official examination, symptoms of this plant pest
- 17B. Fruits of *Citrus* L., *Fortunella* Swingle or *Poncirus* Raf., other than fruits of *Citrus aurantium* L. or *Citrus latifolia* Tanaka, which originate in Brazil, South Africa or Uruguay and are not destined exclusively for industrial processing into juice
- The fruits must:
- (a) be accompanied by an official statement that they originate in an area recognised as being free from *Phyllosticta citricarpa* (McAlpine) Van der Aa (all strains pathogenic to Citrus), as referred to in Article 3(2) of Decision 2006/473/EC, and which is mentioned on the phytosanitary certificate or phytosanitary certificate for re-export;
 - (b) in the case of fruits originating in Brazil, be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” that they meet the requirements specified in Articles 4 and 7 of Decision (EU) 2016/715; or
 - (c) in the case of fruits originating in South Africa or Uruguay, be accompanied by

(a) OJ No L 187, 8.7.2006, p. 35, as last amended by Commission Implementing Decision (EU) 2016/696 (OJ No L 120, 5.5.2016, p. 33).

- a phytosanitary certificate which includes an official statement under the heading “Additional declaration” that they meet the requirements specified in Articles 5 and 7 of Decision (EU) 2016/715
- 17C. Fruits of *Citrus* L., *Fortunella* Swingle or *Poncirus* Raf., other than fruits of *Citrus aurantium* L. or *Citrus latifolia* Tanaka, which originate in Brazil, South Africa or Uruguay and are destined exclusively for industrial processing into juice
- The fruits:
- (a) must be accompanied by an official statement that:
 - (i) they originate in an area recognised as being free from *Phyllosticta citricarpa* (McAlpine) Van der Aa (all strains pathogenic to Citrus), as referred to in Article 3(2) of Decision 2006/473/EC, and which is mentioned on the phytosanitary certificate or phytosanitary certificate for re-export; or
 - (ii) no symptoms of *Phyllosticta citricarpa* (McAlpine) Van der Aa (all strains pathogenic to Citrus) have been observed in the field of production or in its immediate vicinity since the beginning of the last cycle of vegetation and none of the fruits harvested in the field of production has shown, in appropriate official examination, symptoms of this plant pest; or
 - (b) in the case of citrus fruits for processing under Decision (EU) 2016/715, must be:
 - (i) accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” in accordance with Articles 9(1) and 10 of Decision (EU) 2016/715 and the information specified in Article 9(2) of that Decision;
 - (ii) packaged and labelled in accordance with Article 17 of that Decision; and
 - (iii) subject to a licence granted under Article 40(1) of this Order authorising their movement within England and, where applicable, their processing and storage in England”;
- (c) omit item 88;
 - (d) in the entry in the second column of item 94, for “*Epitrix similaris* (Gentner)” substitute “*Epitrix papa* sp. n.”;
 - (e) omit item 97;

(f) for items 98 and 98A substitute—

“98. Specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789 originating in any third country, other than a third country where *Xylella fastidiosa* (Wells et al.) is known to be present

98A. Specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789 originating in any third country where *Xylella fastidiosa* (Wells et al.) is known to be present

The plants must:

- (a) originate in a third country which has been notified to the European Commission by the relevant national plant protection organisation in accordance with Article 16(a) of Decision (EU) 2015/789; and
- (b) be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” in accordance with Article 16(b) of that Decision

The plants must be accompanied by a phytosanitary certificate which includes:

- (a) in the case of plants originating in an area which has been established as free from *Xylella fastidiosa* (Wells et al.) in accordance with ISPM No. 4 and has been notified to the European Commission by the relevant national plant protection organisation in accordance with Article 17(2)(a) of Decision (EU) 2015/789, the name of the area under the heading “place of origin”;
- (b) in the case of plants which originate in an area where *Xylella fastidiosa* (Wells et al.) is known to be present and have not been grown for their entire production cycle *in vitro*:
 - (i) an official statement under the heading “Additional declaration” in accordance with Article 17(3) of that Decision; and
 - (ii) the name of the site from which they originate under the heading “place of origin”;
- (c) in the case of plants which originate in an area where *Xylella fastidiosa* (Wells et al.) is known to be present and have been grown for their entire production cycle *in vitro*:
 - (i) an official statement under the heading “Additional declaration” in accordance with Article 17(3a) of that Decision; and
 - (ii) the name of the site from which they originate under the heading “place of origin”.

(2) In Part B of Schedule 4 (relevant material, from the European Union, which may only be introduced into or moved within England if special requirements are complied with)—

(a) for item 51 substitute—

“51. Specified plants within the meaning of Article 1(c) of Decision (EU) 2015/789 which have been grown for at least part of their life in an area established in accordance with Article 4 of that Decision

The plants must:

- (a) in the case of plants which have not been grown for their entire production cycle *in vitro*:
 - (i) be accompanied by an official statement that they meet the requirements specified in Article 9(2) to (4) and (5) of Decision (EU) 2015/789; or
 - (ii) in the case of dormant plants, other than seeds, of *Vitis* intended for planting, be accompanied by an official statement that they meet the requirements specified in Article 9(4a) and (5) of that Decision;
- (b) in the case of plants which have been grown for their entire production cycle *in vitro*, be accompanied by an official statement that they meet the requirements specified in Article 9a(2) and (3) of that Decision and be transported in the manner specified in Article 9a(4) of that Decision”;

(b) after item 51A, insert—

“51B. Fruits of *Citrus* L., *Fortunella* Swingle or *Poncirus* Raf., other than fruits of *Citrus aurantium* L. or *Citrus latifolia* Tanaka, which:
—originate in Brazil, South Africa or Uruguay;
—are destined exclusively for industrial processing into juice; and
—have been introduced into another part of the European Union in accordance with Articles 9 to 13 of Decision (EU) 2016/715

The fruits must be:

- (a) packaged and labelled in accordance with Article 17 of that Decision; and
- (b) subject to a licence granted under Article 40(1) of this Order authorising their introduction into, and their movement within, England and, where applicable, their processing and storage in England”.

Schedule 11 (notice of landing)

15. After item 12 of the notice of landing, insert—

13.	Additional information (where required)
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Schedule 16 (potato brown rot)

16. In Part B of Schedule 16 (demarcation of zones for the control of Potato brown rot), in paragraph 20(b), for “5(1)(c)(ii)” substitute “5(1)(c)(iii)”.

Gardiner of Kimble
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

10th January 2017

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (England) Order 2015 (S.I. 2015/610) (“the principal Order”) to implement:

- (a) Commission Implementing Decision (EU) 2016/715 setting out measures in respect of certain fruits originating in certain third countries to prevent the introduction into and the spread within the Union of the harmful organism *Phyllosticta citricarpa* (McAlpine) Van der Aa (OJ No L 125, 13.5.2016, p. 16) (articles 4, 7, 14(1)(a) to (c) and (e), 14(2)(b) and 15 of this Order);
- (b) Commission Implementing Decision (EU) 2016/764 amending 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.) (OJ No L 126, 14.5.2016, p. 77) (articles 14(1)(f) and 14(2)(a) of this Order); and
- (c) Commission Implementing Decision (EU) 2016/1359 amending 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 subcrinata* (Lec.) and *Epitrix tuberis* (Gentner) (OJ No L 215, 10.8.2016, p. 29) (articles 3(a)(ii), 12 and 14(1)(d) of this Order).

Articles 5, 6, 8 to 11 and 16 make amendments to the principal Order to clarify or correct certain provisions of the principal Order.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.

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