STATUTORY INSTRUMENTS

2018 No. 1051

PLANT HEALTH, ENGLAND

The Plant Health (England) (Amendment) (No. 4) Order 2018

Made - - - -	*8th October 2018*
Laid before Parliament	*10th October 2018*
Coming into force - -	*1st November 2018*

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) 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) (No. 4) Order 2018 and comes into force on 1st November 2018.

Amendment of the Plant Health (England) Order 2015

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

Article 2

3. In article 2—

(**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 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; relevant amending instruments are S.I. 2015/1827, 2016/104, 2017/1220.

(a) in paragraph (1)—

(i) omit the definition of "Decision 2007/365/EC";

(ii) after the definition of "Decision (EU) 2017/198" insert—

""Decision (EU) 2018/638" means Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith)(**a**)";

(b) in paragraph (5)—

(i) omit sub-paragraph (d);

(ii) at the end of sub-paragraph (q), insert—

";

(r) Decision (EU) 2018/638".

Part B of Schedule 2

4. In the table in Part B of Schedule 2, under the heading "Viruses and virus-like organisms", after item 5 insert—

"5A.	Seeds of *Solanum lycopersicum* L.	Pepino mosaic virus".

Schedule 3

5. In the table in Schedule 3, omit item 18.

Part A of Schedule 4

6. In the table in Part A of Schedule 4—

(a) in the second column of item 61, after "Orchidaceae" insert "originating in any third country, other than Thailand;";

(b) after item 86 insert—

"86A.	Cut flowers of Orchidaceae originating in Thailand	The cut flowers must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes an official statement under the heading "Additional declaration" that they have been: (a) produced at a place of production which has been found to be free from *Thrips palmi* Karny in official inspections carried out at least monthly during the three months prior to export; or (b) subjected, as a consignment prior to export, to an appropriate fumigation treatment to ensure freedom from thysanoptera. Where paragraph (b) applies, the specification of the fumigation treatment must also be included under the heading "Disinfestation and/or disinfection treatment" of the certificate"

(**a**) OJ No. L 105, 25.4.2018, p. 31.

(c) omit item 89 and insert (as the subsequent entry)—

"89A.	Seeds of *Solanum lycopersicum* L. originating in any third country	The seeds must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes an official statement under the heading "Additional declaration" that they have been obtained by means of an appropriate acid extraction method and that they: (a) originate in an area in which Pepino mosaic virus is known not to occur; (b) no symptoms of Pepino mosaic virus have been observed on the plants at the place of production during their complete cycle of vegetation; or (c) have undergone official testing for Pepino mosaic virus on a representative sample and using appropriate methods, and have been found in these tests to be free from Pepino mosaic virus";

(d) omit item 98B;

(e) after item 98C insert—

"98D.	Specified plants within the meaning of Article 1(b) of Decision (EU) 2018/638	The fruits must be accompanied by a phytosanitary certificate or phytosanitary certificate for re-export which includes an official statement in accordance with Article 3(b) of Decision (EU) 2018/638".

Part B of Schedule 4

7. In the table in Part B of Schedule 4—

(a) after item 43 insert—

"43A.	Seeds of *Solanum lycopersicum* L.	The seeds must be accompanied by an official statement that they have been obtained by means of an appropriate acid extraction method and that they: (a) originate in an area in which Pepino mosaic virus is known not to occur; (b) no symptoms of Pepino mosaic virus have been observed on the plants at the place of production during their complete cycle of vegetation; or (c) have undergone official testing for Pepino mosaic virus on a representative sample and using appropriate methods, and have been found in these tests to be free from Pepino mosaic virus";

(b) omit item 44.

Part A of Schedule 5

8. In Part A of Schedule 5—

(a) omit paragraph 11;

(b) omit paragraph 13A and insert (as the subsequent entry)—

"**13B.** Specified plants within the meaning of Article 1(b) of Decision (EU) 2018/638.".

Part A of Schedules 6 and 7

9. In Part A of Schedules 6 and 7, omit paragraph 10.

Gardiner of Kimble
Parliamentary Under Secretary of State
8th October 2018 Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Plant Health (England) Order 2015 (S.I. 2015/610) ("the 2015 Order") to—

(a) implement Commission Implementing Decision (EU) 2018/638 establishing emergency measures to prevent the introduction into and the spread within the Union of the harmful organism *Spodoptera frugiperda* (Smith) (OJ No. L 105, 25.4.2018, p. 31);

(b) amend the 2015 Order to ensure that the following EU instruments are correctly implemented—

(i) Commission Decision 98/109/EC authorising Member States temporarily to take emergency measures against the dissemination of *Thrips palmi* Karny as regards Thailand (OJ No. L 27, 3.2.1998, p. 47);

(ii) Commission Decision 2004/200/EC on measures to prevent the introduction into and the spread within the Community of Pepino mosaic virus (OJ No. L 64, 2.3.2004, p. 43);

(c) remove provisions in the 2015 Order which implement various EU instruments which are no longer in force.

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

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