STATUTORY INSTRUMENTS

2013 No. 1477

PLANT HEALTH, ENGLAND

The Plant Health (England) (Amendment) (No.2) Order 2013

Made - - - -	*13th June 2013*
Laid before Parliament	*19th June 2013*
Coming into force - -	*15th July 2013*

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. It appears to the Secretary of State that it is expedient for the references to the European Union instruments mentioned in article 3(1)(a) and (d) to be construed as references to those instruments as amended from time to time.

Title and commencement

1. This Order may be cited as the Plant Health (England) (Amendment) (No.2) Order 2013 and comes into force on 15th July 2013.

Amendment of the Plant Health (England) Order 2005

2. The Plant Health (England) Order 2005(**d**) is amended as follows.

(**a**) 1967 c.8. Sections 2 and 3(1) were amended by the European Communities Act 1972 (c.68), Schedule 4, paragraph 8 and S.I. 2011/1043, article 6(1). Section 2(2) was amended by the Customs and Excise Management Act 1979 (c.2), Schedule 4, paragraph 12. Section 2(3) was inserted by S.I. 1990/2371, Schedule 1, paragraph 1. The powers conferred by sections 2 and 3 are conferred on a "competent authority", which is defined in section 1(2), for England and Scotland as regards the protection of forest trees and timber from attack by pests, as the Forestry Commissioners and otherwise, for England, as the Secretary of State.

(**b**) The functions of the Minister of Agriculture, Fisheries and Food under the Plant Health Act 1967 were, so far as exercisable in relation to Wales, transferred to the Secretary of State by article 2 of, and Schedule 1 to, the Transfer of Functions (Wales) Order (No.1) Order 1978 (S.I. 1978/272). Those functions were transferred from the Secretary of State to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). The remaining functions of the Minister of Agriculture, Fisheries and Food 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).

(**d**) S.I. 2005/2530; relevant amending instruments are S.I. 2006/2307, 2007/2950, 2008/2411, 2765, 2009/587, 2010/2962, 2011/1043, 2012/2922, 3033.

Amendment of article 2 (general interpretation)

3.—(1) In paragraph (1) of article 2(**a**)—

(a) after "Decision 2004/416/EC", insert—

""Decision 2012/138/EU" means Commission Implementing Decision 2012/138/EU as regards emergency measures to prevent the introduction into and the spread within the Union of *Anoplophora chinensis* (Forster)(**b**), as amended from time to time;

"Decision 2012/270/EU" means Commission 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 subcrinita* (Lec.) and *Epitrix tuberis* (Gentner)(**c**), as amended from time to time;

"Decision 2012/697/EU" means Commission Implementing Decision 2012/697/EU as regards measures to prevent the introduction into and the spread within the Union of the genus *Pomacea* (Perry)(**d**), as amended from time to time;

"Decision 2012/756/EU" means Commission Implementing Decision 2012/756/EU as regards measures to prevent the introduction into and the spread within the Union of *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto(**e**), as amended from time to time;";

(b) omit the definition of "Decision 2008/840/EC";

(c) for the definition of "protected zone", substitute—

""protected zone" means a member State or an area in a member State which is recognised as a protected zone exposed to particular plant health risks for the purposes of Directive 2000/29/EC, as listed in Annex I to Regulation (EC) No 690/2008(**f**);";

(d) after the definition of "registered", insert—

""Regulation (EC) No 690/2008" means Commission Regulation (EC) No 690/2008 recognising protected zones exposed to particular plant health risks in the Community, as amended from time to time;".

(2) In paragraph (3) of article 2(**g**), for "species", in both places where it occurs, substitute "genus or species".

Amendment of article 6 (advance notification of landing)

4. In article 6(2)(b)(**h**), for paragraphs (ii) and (iii) substitute—

"(ii) listed in the second column of Annex II Part B of Directive 2000/29/EC and in the course of its consignment to a protected zone that is recognised as a protected zone for the plant pest listed in the first column of that Annex opposite the reference to the relevant material; or

(iii) listed in the first column of Annex IV Part B of Directive 2000/29/EC and in the course of its consignment to a protected zone that is recognised as a protected zone for the plant pest specified in the second column of that Annex opposite the reference to the relevant material".

(**a**) The definition of "Decision 2008/840/EC" was inserted by S.I. 2010/2962, article 2(2). The definition of "protected zone" was amended by S.I. 2006/2307, article 2(2)(d). There are other amendments to article 2(1), but none is relevant.
(**b**) OJ No L 64, 3.3.2012, p.38.
(**c**) OJ No L 132, 23.5.2012, p.18.
(**d**) OJ No L 311, 10.12.2012, p.14.
(**e**) OJ No L 335, 7.12.2012, p.49.
(**f**) OJ No L 193, 22.7.2008, p.1.
(**g**) Article 2(3) was amended by S.I. 2006/2307, article 2(3).
(**h**) Article 6(2) was amended by S.I. 2011/1043, article 4(1).

Amendment of article 12 (plant health discharge)

5. In article 12(2)(**a**)—

(a) for sub-paragraph (aa), substitute—

"(aa) in the case of relevant material in the course of its consignment to a protected zone, that the relevant material is free from any plant pest listed in the first column of Annex I to Regulation (EC) No 690/2008 opposite the reference to the protected zone;";

(b) for sub-paragraph (c), substitute—

"(c) in the case of relevant material which is listed in the second column of Annex II Part B of Directive 2000/29/EC and in the course of its consignment to a protected zone that is recognised as a protected zone for the plant pest listed in the first column of that Annex opposite the reference to the relevant material, that the relevant material is not carrying or infected with the plant pest;";

(c) for sub-paragraph (cc), substitute—

"(cc) in the case of relevant material listed in Annex III Part B of Directive 2000/29/EC, that the relevant material is not in the course of being consigned to a protected zone for *Erwinia amylovova* (Burr.) Winsl. *et. al.*;";

(d) for sub-paragraph (e), substitute—

"(e) in the case of relevant material which is listed in the first column of Annex IV Part B of Directive 2000/29/EC and in the course of its consignment to a protected zone that is recognised as a protected zone for the plant pest specified in the second column of that Annex opposite the reference to the relevant material, that the relevant material complies with the requirements specified in the second column of that Annex opposite the reference to the relevant material and where there is one or more alternative requirement, the requirement declared in the phytosanitary certificate or phytosanitary certificate for re-export;".

Amendment of article 22 (exceptions from certain prohibitions and requirements)

6. After article 22(2)(**b**), insert—

"(3) The requirement in article 21(1) for certain relevant material to be accompanied by a plant passport shall not apply to the movement of the following relevant material if the material originates in a demarcated area and is not moved from the demarcated area—

(a) tubers of *Solanum tuberosum* L., including those intended for planting; or

(b) plants intended for planting, other than seeds, which can only grow in water or soil that is permanently saturated with water.

(4) In paragraph (3), "demarcated area" means—

(a) in relation to tubers of *Solanum tuberosum* L., an area which has been established in accordance with Article 5 of Decision 2012/270/EU; and

(b) in relation to plants intended for planting, other than seeds, which can only grow in water or soil that is permanently saturated with water, an area established in accordance with Article 5 of Decision 2012/697/EU.".

(**a**) Article 12(2)(aa) was inserted by S.I. 2006/2307, article 2(4)(a). Article 12(2)(cc) was inserted by S.I. 2006/2307, article 2(4)(b).

(**b**) Article 22(2) was inserted by S.I. 2006/2307, article 2(5).

Amendment of Schedule 1 (plant pests which shall not be landed in or spread within England)

7. In Part A (plant pests not known to occur in any part of the European Union) of Schedule 1(**a**)—

(a) after item 15a under the heading "Insects, mites and nematodes", insert—

"15b. *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner)";

(b) for item 1 under the heading "Bacteria", substitute—

"1. *Pseudomonas syringae* pv. *actinidiae* Takikawa, Serizawa, Ichikawa, Tsuyumu & Goto

2. *Xylella fastidiosa* (Wells and Raju)";

(c) at the end, insert—

"**Molluscs**

1. *Pomacea* (Perry)".

Amendment of Schedule 3 (relevant material which may not be landed in England if that material originates in certain third countries)

8. In Schedule 3(**b**)—

(a) in the third column of item 8, after "Morocco," insert "Serbia,";

(b) omit item 16.

Amendment of Schedule 4 (restrictions on the landing in and movement within England of relevant material)

9.—(1) In Part A (relevant material, from third countries, which may only be landed in England if special requirements are satisfied) of Schedule 4(**c**)—

(a) in item 15, omit ", other than Brazil";

(b) omit item 15a;

(c) for the entry in the second column of item 17, substitute "Fruits of *Citrus* L., other than fruits of *Citrus aurantium* L., and fruits of *Fortunella* Swingle or *Poncirus* Raf. which originate in any third country other than Brazil";

(d) for item 17a, substitute—

"17a.	Fruits of *Citrus* L., other than fruits of *Citrus aurantium* L., and fruits of *Fortunella* Swingle or *Poncirus* Raf. which originate in Brazil	Without prejudice to the requirements in items 14, 16, and 18, the fruits shall be accompanied by a phytosanitary certificate which includes an official

(**a**) Part A of Schedule 1 was amended by S.I. 2011/1043, article 4(1). Item 15a under the heading "Insects, mites and nematodes" was inserted by S.I. 2006/2307, article 2(11). There are other amendments to Part A of Schedule 1, but none is relevant.

(**b**) Item 8 was inserted by S.I. 2006/2307, article 2(14) and amended by S.I. 2008/2411, article 2(11). Item 16 was inserted by S.I. 2010/2962, article 2(4). There are other amendments to Schedule 3, but none is relevant.

(**c**) Item 15 was amended by S.I. 2006/2307, article 2(15)(d) and (e) and S.I. 2007/2950, article 6(2)(a). Item 15a was inserted by S.I. 2007/2950, article 6(2)(b). Item 17 was amended by S.I. 2006/2307/EC, article 2(15)(g) and (h) and S.I. 2007/2950, article 6(2)(a). Item 17a was inserted by S.I. 2007/2950, article 6(2)(d). Items 35a and 35b were inserted by S.I. 2009/587, article 2(8)(c). Item 81 was inserted by S.I. 2008/2765, article 2(3) and substituted by S.I. 2010/2962, article 2(5)(b). Item 82 was inserted by S.I. 2010/2962, article 2(5)(b). There are other amendments to Part A of Schedule 4, but none is relevant.

		statement in accordance with point 2 of the Annex to Decision 2004/416/EC”;

(e) in the third column of item 34 of the table, for “35, 36 and 39” substitute “35 to 36”;

(f) in the third column of item 35 of the table, for “36” insert “35b to 36”;

(g) in the third column of item 35a of the table, after “34” insert “and 35b”;

(h) in the third column of item 35b of the table, after “35a” insert “and 35c”;

(i) after item 35b, insert—

“35c.	Tubers of *Solanum tuberosum* L., including those intended for planting, which originate in any third country in which *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) is known to be present	Without prejudice to the requirements in items 32 to 35b and 36, the tubers shall be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” in accordance with Section 1 of Annex I to Decision 2012/270/EU”;

(j) in the third column of item 36 of the table, after “35,” insert “35b, 35c,”;

(k) for items 81and 82, substitute—

“81.	Specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in China	Without prejudice to the requirements in items 4, 12 and 14 of Schedule 3 and items 7, 8 to 12, 19, 21 to 23, 27, 28, 30, 48, 50, 51, 55, 60, 61, 64, 65 and 70 of Part A of this Schedule: (a) the plants shall be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” in accordance with point 1 of Section 1(B) of Annex I to Decision 2012/138/EU; and (b) the place of production of the plants shall meet the requirements specified in Article 1(c) of Decision 2012/138/EU
82.	Specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in any third country where *Anoplophora chinesis* (Forster) is known to be present, other than China	Without prejudice to the requirements in items 4, 12 and 14 of Schedule 3 and items 7, 8 to 12, 19, 21 to 23, 27, 28, 30, 48, 50, 51, 55, 60, 61, 64, 65 and 70 of Part A of this Schedule, the plants shall be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” in accordance with point 1 of Section 1(A) of Annex I to Decision 2012/138/EU”;

(l) after item 82, insert—

“83.	Plants intended for planting, other than seeds, which can only grow in water or soil that is permanently saturated with water and which originate in any third country	The plants shall be accompanied by a phytosanitary certificate which includes an official statement under the heading “Additional declaration” in accordance with point (1) of Section 1 of Annex I to Decision 2012/697/EU
84.	Live pollen and plants intended for planting, other than seeds, of *Actinidia*	The live pollen and plants shall be accompanied by a phytosanitary

	Lindl. which originate in any third country	certificate which includes an official statement under the heading "Additional Declaration" in accordance with Section I of Annex I to Decision 2012/756/EU".

(2) In Part B (relevant material, from another part of the European Union, which may only be landed in or moved within England if special requirements are satisfied) of Schedule 4(**a**)—

(a) in the third column of item 16, for "item 15" substitute "items 15 and 19b";

(b) in the third column of item 17, for "item 20" substitute "items 19b and 20";

(c) in the third column of item 19, for "item 19a", substitute "items 19a and 19b";

(d) after item 19a, insert—

"19b.	Tubers of *Solanum tuberosum* L., including those intended for planting, which originate in an area established in accordance with Article 5 of Decision 2012/270/EU	Without prejudice to the requirements in items 15, 16, 18, 19 and 20, the tubers shall be accompanied by an official statement that the tubers meet the requirements specified in point (2) of Section 2 of Annex I to Decision 2012/270/EU";

(e) in the third column of item 20, after "17," insert "19a, 19b,";

(f) for item 37, substitute—

"37.	Specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in an area established in accordance with Article 6 of that Decision	Without prejudice to the requirements in items 3 to 6, 9, 10, 12, 13, 27 and 28, the plants shall be accompanied by an official statement that the plants meet the requirements specified in point 1 of Section 2 of Annex I to Decision 2012/138/EU";

(g) after item 38, insert—

"39.	Specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which do not originate in, but have been introduced into, a place of production that is in an area established in accordance with Article 6 of that Decision	Without prejudice to the requirements in items 3 to 6, 9, 10, 12, 13, 27 and 28, the plants shall be accompanied by an official statement that the place of production into which the plants have been introduced meets the requirements specified in point 1(iii) of Section 2 of Annex I to Decision 2012/138/EU
40.	Live pollen and plants intended for planting, other than seeds, of *Actinidia* Lindl.	The live pollen and plants shall be accompanied by an official statement that they meet one of the requirements specified in point (2) and, where appropriate, one of the requirements in point (3) of Annex II to Decision 2012/756/EU".

(**a**) Part B of Schedule 4 was amended by S.I. 2011/1043, article 4(1). Item 19 was amended by S.I. 2012/3033, article 2(3)(b). Item 19a was inserted by S.I. 2012/3033, article 2(3)(c). Item 37 was inserted by S.I. 2008/2765, article 2(4). Item 38 was inserted by S.I. 2012/2922, article 2(10). There are other amendments to Part B of Schedule 4, but none is relevant.

Amendment of Schedule 5 (relevant material from a third country for which a phytosanitary certificate may be required)

10. In Part A (relevant material which may only be landed in England if accompanied by a phytosanitary certificate) of Schedule 5(**a**), after paragraph 7, insert—

"**8.** Live pollen of *Actinidia* Lindl.".

Amendment of Schedule 6 (prohibitions on the landing in and movement within England of relevant material without a plant passport)

11. In Part A (relevant material, from England or elsewhere in the European Union, which may only be landed in or moved within England if accompanied by a plant passport) of Schedule 6(**b**)—

(a) after paragraph 3a, insert—

"**3B.** Without prejudice to paragraph 3, tubers of *Solanum tuberosum* L., including those intended for planting, which originate in a third country in which *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) is known to be present or which originate in an area which has been established in accordance with Article 5 of Decision 2012/270/EU.";

(b) for paragraph 8, substitute—

"**8.** Without prejudice to paragraphs 1 and 7, specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in a third country in which *Anoplophora chinesis* (Forster) is known to be present or which originate in or have been introduced into an area established in accordance with Article 6 of that Decision.";

(c) after paragraph 9, insert—

"**10.** Plants intended for planting, other than seeds, which can only grow in water or soil that is permanently saturated with water and which originate in an area established in accordance with Article 5 of Decision 2012/697/EU.

11. Live pollen and plants intended for planting, other than seeds, of *Actinidia* Lindl.".

Amendment of Schedule 7 (prohibitions on the consignment of relevant material to another part of the European Union without a plant passport)

12. In Part A (relevant material which may only be consigned to another part of the European Union if accompanied by a plant passport) of Schedule 7(**c**)—

(a) after paragraph 3a, insert—

"**3B.** Without prejudice to paragraph 3, tubers of *Solanum tuberosum* L., including those intended for planting, which originate in a third country in which *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) or *Epitrix tuberis* (Gentner) is known to be present or which originate in an area which has been established in accordance with Article 5 of Decision 2012/270/EU.";

(b) for paragraph 8, substitute—

"**8.** Without prejudice to paragraphs 1 and 7, specified plants within the meaning of Article 1(a) of Decision 2012/138/EU which originate in a third country in which

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(**a**) There are amendments to Schedule 5, but none is relevant.

(**b**) Part A of Schedule 6 was amended by S.I. 2011/1043, article 4(1). Paragraph 3a was inserted by S.I. 2007/2950, article 5(4)(a). Paragraph 8 was inserted by S.I. 2008/2765, article 2(5). Paragraph 9 was inserted by S.I. 2012/2922, article 2(12). There are other amendments to Part A of Schedule 6, but none is relevant.

(**c**) Part A of Schedule 7 was amended by S.I. 2011/1043, article 4(1). Paragraph 3a was inserted by S.I. 2007/2950, article 5(4)(a). Paragraph 8 was inserted by S.I. 2008/2765, article 2(5). Paragraph 9 was inserted by S.I. 2012/2922, article 2(13). There are other amendments to Part A of Schedule 7, but none is relevant.

Anoplophora chinesis (Forster) is known to be present or which originate in or have been introduced into an area established in accordance with Article 6 of that Decision.";

(c) after paragraph 9, insert—

"**10.** Plants intended for planting, other than seeds, which can only grow in water or soil that is permanently saturated with water and which originate in a demarcated area established in accordance with Article 5 of Decision 2012/697/EU.

11. Live pollen and plants intended for planting, other than seeds, of *Actinidia* Lindl.".

de Mauley
Parliamentary Under Secretary of State
13th June 2013 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 2005 (S.I. 2005/2530) ("the principal Order").

Articles 6, 7 and 9 to 12 amend article 22 of, and Schedules 1, 4, 5, 6 and 7 to, the principal Order. The amendments implement the specific control measures in the Commission Implementing Decisions referred to in article 3(1)(a) and Commission Implementing Decision 2013/67/EU amending Decision 2004/416/EC on temporary emergency measures in respect of certain citrus fruits originating in Brazil (OJ No L 31, 31.1.2013, p. 75).

Articles 3(1)(c), 4 and 5 amend the definition of "protected zone" in article 2(1), and make minor amendments to articles 6(2) and 12(2), of the principal Order to take account of Commission Regulation (EC) No 690/2008 recognising protected zones exposed to particular plant health risks in the Community (OJ No L 193, 22.7.2008, p. 1).

Article 8 amends Schedule 3 to the principal Order to implement Commission Implementing Decision 2012/219/EU recognising Serbia as being free from *Clavibachter michiganensis* ssp. *Sepedonicus* (Spieckerman and Kotthof) Davis *et al*. (OJ No L 114, 26.4.2012, p. 28).

Article 3(1)(a) and (d) provides for the references to Commission Implementing Decision 2012/756/EU, Commission Implementing Decision 2012/697/EU, Commission Implementing Decision 2012/270/EU, Commission Implementing Decision 2012/138/EU and Commission Regulation (EC) No 690/2008 in the principal Order to be read as references to those instruments as amended from time to time.

An impact assessment has not been produced for this instrument as no impact on business or the private or voluntary sector is foreseen. The Explanatory Memorandum for this instrument is available alongside the instrument at www.legislation.gov.uk.

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ISBN 978-0-11-110013-4

£5.75

UK201306174 06/2013 19585

http://www.legislation.gov.uk/id/uksi/2013/1477