EXPLANATORY MEMORANDUM TO

THE PLANT HEALTH (ENGLAND) (AMENDMENT) ORDER 2016

2016 No. 104

1. Introduction

1.1 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.

2. Purpose of the instrument

2.1 This instrument amends the Plant Health (England) Order 2015 (S.I. 2015/610) ("the principal Order") which contains measures to prevent the introduction and spread of harmful plant pests and diseases. It extends the existing statutory notification scheme for certain imported tree species to include *Prunus* and introduces measures against *Epitrix* on potatoes imported from Spain. It also implements the specific plant health control measures in various Commission Implementing Decisions.

3. Matters of special interest to Parliament

Matters of special interest to the [Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Council Directive 2000/29/EC on protective measures against the introduction into the EU of organisms harmful to plants or plant products and against their spread within the EU[1] ("the Plant Health Directive") establishes the EU plant health regime. The Plant Health Directive is implemented in England by the Plant Health (England) Order 2015 and, in relation to forestry matters, by the Plant Health (Forestry) Order 2005 (S.I. 2005/2517) which extends to Great Britain. Similar but separate legislation to the principal Order operates in Scotland, Wales and Northern Ireland.

4.2 This instrument, will amend the principal Order by strengthening existing measures intended to protect the health of certain tree species and will introduce new measures to protect against the introduction of a damaging pest of potatoes.

4.3 A number of EU instruments have been adopted which modify the annexes of the Plant Health Directive as a result of technical changes in the assessment of risks presented by particular pests and diseases and introduce new measures to address risks presented by other pests and diseases.

[1] This Directive can be found at http://europa.eu.int/eur-lex/en/search/index.html.

4.4 These amendments are to be implemented through this instrument, which comes into force on 24 February 2016. The changes are described in more detail below.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 The Plant Health Directive establishes the EU plant health regime. It contains measures to be taken in order to prevent the introduction into, and spread within, the EU of serious pests and diseases of plants and plant produce. The Directive (and therefore the principal Order) are updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. This instrument implements the specific EU measures arising from technical changes in the assessment of the risks presented by particular pests and diseases.

7.2 These EU measures are contained in several pieces of EU legislation:

- Commission Implementing Decision 2015/1175 which recognises an area of South Africa as being free from *Guignardia citricarpa* Kiely (Citrus blackspot).
- Commission Implementing Decision (EU) 2015/1199 which recognises Bosnia and Herzegovina as being free from *Clavibacter michiganensis* (Potato ring rot).
- Commission Implementing Decision (EU) 2015/1849 which contains measures to prevent the introduction and spread of harmful organisms on certain vegetables originating in Ghana.
- Commission Implementing Decision (EU) 2015/2417 which strengthens existing measures to prevent the introduction and spread of *Xylella fastidiosa* (a bacterium which causes harmful effects on a range of plants, particularly on olives) following new outbreaks in Italy.
- Commission Implementing Decision 2015/2434 which amends existing measures to prevent the introduction and spread of harmful organisms on certain fruits and vegetables originating in India.

Statutory notification of imports of *Prunus* planting material

7.3 A statutory notification scheme is in place for imports of certain plant/tree imports from other Member States and Switzerland, whereby deliveries of imported plants from elsewhere in the EU must be notified in advance to the Animal and Plant Health Agency (APHA). The current scheme, which extends to oak, plane, sweet chestnut, pine, elm and ash trees, is intended to help APHA's Plant Health and Seeds Inspectorate and their equivalents in Devolved Administrations build intelligence

about particular trades, where there is a risk of introducing harmful organisms, and to help arrange targeted inspections of such trees. The information is also valuable in the event of an outbreak, to facilitate tracing of trees which may be implicated.

7.4 The Plant Health Risk Group, which is a monthly meeting of UK Plant Health Authorities, has reviewed the scope of the scheme to determine if there should be any changes to the list of species covered. While there remains strong justification to retain the current genera included (for example in response to the threat from Oak processionary moth, Plane wilt, Sweet chestnut blight, Pine processionary moth and Ash dieback) we have concluded that species of *Prunus* (e.g. cherry, plum, apricots, laurels) should be added to the notification scheme. This is in response to the threat from a number of harmful organisms which are present elsewhere in the EU, but not in the UK, where the main hosts include *Prunus* species. This includes EU regulated pests such as *Xylella fastidiosa, Anoplophora chinensis, Xylosandrus crassiusculus* and *Xanthonomas arboricola* pv *pruni,* as well as unlisted pests such as *Platynota stultana* and *Aromia bungii.* Information about these pests and their impacts can be found on the UK Plant Health Risk Register, at https://secure.fera.defra.gov.uk/phiw/riskRegister/. Some of these pests are already regulated at EU level and some are not. There have been recent examples of infected plants being received in the UK and causing outbreaks.

7.5 We currently have no means of knowing the precise details of consignments of Prunus arriving in the UK from the EU and Switzerland and so there remains a risk that more infected trees could be imported into the UK. This instrument extends the existing statutory notification scheme in article 19(6) to (8) of the principal Order to require notification of imports of *Prunus* planting material from other member States or Switzerland.

7.6 In response to trade concerns through a consultation last year that extending the scheme to include *Prunus* should not create significant new burdens or slow down business, the current requirement for importers to notify APHA of import of the specified genera of trees prior to arrival is being relaxed to allow notification prior to or within five days of landing of trees.

Introduction of national measures against *Epitrix*

7.7 *Epitrix* (potato flea beetle) are potato pests originating from the Americas and introduced to Europe, with distribution currently limited to Spain and Portugal. *Epitrix* larvae feed on the tubers of potatoes, causing damage that reduces quality and value. EU emergency measures are already in place to protect against this damaging pest (Commission Implementing Decision 2012/270), but there were nine UK interceptions of *Epitrix* damaged potatoes from Spain in 2015. A Food and Veterinary Office (the European Commission's auditors) mission in 2013 indicated that Spain was not effectively demarcating and controlling outbreak areas. Commission Implementing Decision 2012/270 has requirements for movement of potatoes from a demarcated area: these must either be washed or brushed to remove excess soil. The effectiveness of brushing as mitigation is under question, larvae intercepted by the UK were found under the skin of potatoes and thus would not have been removed by brushing. The UK is inspecting 100% of unwashed potato consignments from Spain, and 50% of washed consignments. Any damage found on unwashed consignments leads to destruction or re-export. The nine consignments intercepted in the UK originated a considerable distance from the original demarcated areas in Spain and it is possible the pest is more widespread in Spain.

7.8 A further Food and Veterinary Office mission took place in September 2015, following UK representations at the EU Plant Health Standing Committee in July, which will help determine the case for a review of Commission Implementing Decision 2012/270. However, if changes are proposed, it is unlikely that they will be introduced before summer 2016. It is important that strengthened measures are in place in time for the 2016 potato import season, which picks up in terms of volume from around February, both to provide clarity to the industry and to ensure strengthened protection against introduction of the pest.

7.9 In response to these developments we intend to take action to minimise the risk of *Epitrix* being introduced into the UK on potatoes imported from Spain by amending the Plant Health (England) Order 2015 to provide improved protection in advance of any further EU consideration of this issue. This Order will require all potatoes imported from non-demarcated areas of mainland Spain to be washed before export, in order to kill or remove any *Epitrix* which might be present. Imposing a washing requirement will allow imports to continue (some importers have switched to washed potatoes already to reduce the risk of importing infected potatoes).

7.10 Similar measures are being considered by the Devolved Administrations.

Consolidation

7.11 This is not a consolidation as this is the second instrument to amend the principal Order.

8. Consultation outcome

8.1 The views of stakeholders were sought on the *Prunus* measures and 5 replies from retailers, nurseries, growers and the main trade association representing this sector (Horticultural Trades Association) were received. These were supportive, although two wanted assurances that it would not create significant new burdens or slow down business. In implementing the system APHA will work with the industry to ensure that these concerns are addressed. In response to trade concerns expressed in the consultation responses, the current requirement for importers to notify APHA of import of the specified genera of trees prior to arrival is being relaxed to allow notification prior to or within five days of landing of trees.

8.2 A consultation was also held on the measures against *Epitrix* and stakeholders were broadly supportive of the measures. Of the 8 responses received, 6 (including the main trade organisations) were either supportive or expressed no opinion. 2 individual potato importers felt that the current EU measures provided sufficient protection. In response to trade concerns, imports from the Balearic Islands will be exempt as they are well away from the outbreak area and washing could be damaging to the thin skinned potatoes produced there. The national measures will apply to all potatoes from mainland Spain not currently covered by the EU emergency measures (which apply to potatoes coming from demarcated areas and already require that they be washed or brushed, and accompanied by a plant passport). In other words all potatoes from non-demarcated areas should be washed before export.

8.3 The other changes reflect those already in place at the EU level, which have been published by the European Commission.

9. Guidance

9.1 The main stakeholders have been informed of the proposed changes and details will be placed on the Defra website. APHA will liaise with individual clients about the new measures.

10. Impact

10.1 The impact on business, charities or voluntary bodies is £5,000 p.a. for the *Prunus* measures. The measures against *Epitrix* have no impact on business, charities or voluntary bodies, as the key impact will fall on Spanish potato exporters. There will be no impact on business, charities or voluntary arising from the changes in EU legislation.

10.2 There is no impact on the public sector.

10.3 We have secured Regulatory Policy Committee and Cabinet Committee approval to use the fast-track clearance procedure for extending the statutory notification scheme to include *Prunus* planting material and for the introduction of measures against *Epitrix* on the basis that they are low cost. Impact assessments have not been prepared for the other changes, which are minor in nature or reflect technical adjustments to the EU regime.

11. Regulating small business

11.1 This Order applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 This Order applies equally to all businesses importing controlled plant health material, including small businesses. The risk of introducing harmful organisms is not mitigated by the size of the business.

12. Monitoring & review

12.1 The principal Order includes a provision requiring a review five years after the date on which this Order came into force.

12.2 The Directive (and therefore the Order) are updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. The EU plant health regime is also currently under review as part of a package of revised regulations under the agri-food chain.

13. Contact

13.1 Iain Johnstone, Defra, Second Floor, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel: 02080 265265; e-mail: iain.johnstone@defra.gsi.gov.uk can answer any queries regarding this instrument.