# EXPLANATORY MEMORANDUM TO THE PLANT HEALTH (ENGLAND) ORDER 2015

## 2015 No. 610

**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 consolidates the Plant Health (England) Order 2005 (S.I. 2005/ 2530) which contains measures to prevent the introduction and spread of harmful plant pests and diseases, the Plant Health (England) (*Phytophthora ramorum*) Order 2004 (S.I. 2004/ 2590) which contains measures to prevent the introduction and spread of *Phytophthora ramorum* and various amendments made to those Orders.

2.2 It implements EU plant health legislation in relation to England, including recent Commission Implementing Decisions (Commission Implementing Decisions 2014/497/EU, 2014/679/EU and 2014/690/EU).

2.3 It revokes the above Orders and 17 Orders which amended them.

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

3.1 None.

## 4. Legislative Context

4.1 This instrument implements EU plant health legislation, namely 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") and Council Directives 69/464/EEC on the control of Potato Wart Disease, 93/85/EEC on the control of Potato Ring Rot, 98/57/EC on the control of Potato Brown Rot and 2007/33/EC on the control of Potato Cyst Nematodes (the Control Directives).

4.2 The Plant Health Directive establishes the EU plant health regime. Since 2005, the annexes of the Directive have been amended many times as a result of technical changes in the assessment of risks presented by different pests and various EU emergency measures have been adopted to deal with emerging plant health risks.

4.3 The Control Directives prescribe measures to detect and take measures against certain harmful organisms of potatoes, to prevent their spread and establishment. A number of these have been updated to reflect changes in the distribution of the organisms concerned and technical developments in relation to their identification and control.

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

4.4 This EU legislation is implemented in relation to England by this instrument and replaces the Plant Health (England) Order 2005 and the Plant Health (*Phytophthora ramorum*) (England) Order 2004 (S.I. 2004/2590) which implemented Commission Decision 2002/757/EC on provisional emergency phytosanitary measures to prevent the introduction into and spread within the EU of *Phytophthora ramorum* (except in relation to forest trees). It consolidates various amendments made to those Orders. This instrument also contains ambulatory references to 14 EU instruments containing technical measures.

4.5 The Plant Health Directive is implemented, 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 this instrument r operates in Scotland, Wales and Northern Ireland.

4.6 The EU instruments listed in paragraph 2.2 have been adopted and 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. The measures in those EU instruments are also implemented through this instrument. The changes are described in more detail below.

## 5. Territorial Extent and Application

5.1 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

7.1 The Plant Health Directive (Council Directive 2000/29/EC) 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 is updated frequently, to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments. Specific EU emergency measures are introduced to deal with emerging plant health risks prior to an assessment of whether measures to protect against such risks should be included in the Plant Health Directive.

7.2 Provisional emergency phytosanitary measures to prevent the introduction into and spread within the Community of *Phytophthora ramorum* insofar as they relate to plants other than forest trees were introduced through Commission Decision 2002/757/EC and implemented in England through the Plant Health (*Phytophthora ramorum*) (England) Order 2004, rather than the Plant Health (England) Order 2005. To simplify the legislative landscape, this Decision is now implemented, alongside the Plant Health Directive and other similar EU emergency measures, by this instrument.

7.3 The Potato Control Directives prescribe measures to detect and take measures against certain harmful organisms of potatoes, to prevent their spread and establishment. A

number of these have been updated to reflect changes in the distribution of the organisms concerned and technical developments in relation to their identification and control. Implementation of the Control Directives is through the Plant Health (England) Order, reflecting that the organisms concerned are 'quarantine' organisms, in line with other organisms included in the Order. The measures in the Control Directives are consistent with those that might be taken in relation to other harmful organisms, but given the importance of potatoes as a commodity, their multiplication cycle (with a propensity to spread harmful organisms, if present) and the fact that there are regular findings of the organisms concerned within the EU, the Control Directives are in place to ensure an harmonised approach to the detection and control of the organisms concerned.

7.4 This instrument revokes and consolidates the Plant Health (England) Order 2005, the Plant Health (*Phytophthora ramorum*) (England) Order 2004 and various amendments made to those Orders.

7.5 This instrument also implements the following specific EU measures arising from technical changes in the assessment of the risks presented by particular pests and diseases:

Commission Implementing Decision 2014/497/EU which repeals and replaces Implementing Decision 2014//87/EU to prevent the introduction into and spread within the Union of *Xylella fasidiosa* (Well and Raju) – a bacterium which causes harmful effects particularly on olives.

Commission Implementing Decision 2014/679/EU which amends the measures set out in Implementing Decision 2012/270/EU to prevent the spread within the Union of *Epitrix cucumeris* (Harris), *Epitrix similaris* (Gentner), *Epitrix subcrinita* (Lec.) and *Epitrix tuberis* (Gentner) – a group of flea beetles which feed mainly on potatoes.

Commission Implementing Decision 2014/690/EU which repeals the provisional emergency measures set out in Decision 2006/464/EC to prevent the introduction into and spread within the EU of *Dryocosmus kurpiphilus* Yasumatsu – the chestnut gall wasp, a harmful pest of sweet chestnut trees. The insect is now widely spread within the EU and emergency measures are no longer appropriate. The UK has been designated as a Protected Zone against this pest, through Commission Directive 2014/78/EU.

## 8. Consultation outcome

8.1 The views of stakeholders were sought on the EU measures referred to in paragraph 7.5 and taken into account during negotiations with the Commission and other Member States.

## 9. Guidance

9.1 The main stakeholders have been informed of the proposed changes and a summary of the measures will be placed on the Defra website.

## 10. Impact

10.1 An impact assessment has not been prepared for this instrument as it has no additional impact on the costs for business. It replaces and updates existing legislation without any change to policy. The new specific EU measures arising from technical changes in the assessment of the risks presented by particular pests and diseases implemented through this instrument apply mainly in countries exporting to the EU.

## 11. Regulating small business

11.1 The legislation applies equally to all businesses importing controlled plant health material, including small businesses.

## 12. Monitoring and review

12.1 EU Plant Health legislation is updated frequently (article 50 of this Order requires the Secretary of State to conduct a review of the Order within 5 years), to take account of new or revised risk assessments, pest interceptions, changes in distribution of pests and other developments (including the ongoing review of the EU Plant Health regime) and may therefore require this instrument to be updated.

## 13. Contact

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